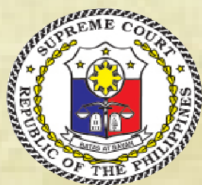

PHILIPPINE REPORTS

VOL. 612

JULY 31, 2009 TO AUGUST 14, 2009

VOLUME 612

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

JULY 31, 2009 TO AUGUST 14, 2009

SUPREME COURT
MANILA
2014

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2014

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[A.C. No. 6121. July 31, 2009]

TRINIDAD H. CAMARA, *complainant, vs.* **ATTY. OSCAR AMANDY REYES,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; DISBARMENT AND DISCIPLINE OF ATTORNEYS; DISCIPLINARY PROCEEDINGS MAY PROCEED DESPITE COMPROMISE BETWEEN THE COMPLAINANT AND THE RESPONDENT.—** The alleged compromise between complainant and respondent is not enough to exonerate the latter from the present disciplinary case. A case of suspension or disbarment may proceed regardless of the interest or lack of interest of the complainant. What matters is whether, on the basis of the facts borne out by the record, the charge of negligence has been duly proved. Disciplinary proceedings involve no private interest and afford no redress for private grievance. They are undertaken and prosecuted solely for the public welfare, and for the purpose of preserving courts of justice from the official ministration of persons unfit to practice in them. The attorney is called to answer to the court for his conduct as an officer of the court. The complainant is in no sense a party, and has generally no interest in the outcome of the case. This is also the reason why this Court may investigate charges against lawyers regardless of complainant's standing.

2. **ID.; ID.; ATTORNEY-CLIENT RELATIONSHIP; WHEN A LAWYER RECEIVED MONEY AS ACCEPTANCE FEE**

FOR LEGAL SERVICES, ATTORNEY-CLIENT RELATIONSHIP IS THEREBY ESTABLISHED; CORRESPONDING DUTIES OF LAWYER TO HIS CLIENT.— When respondent accepted the amount of ₱50,000.00 from complainant, it was understood that he agreed to take up the latter's case, and that an attorney-client relationship between them was established. From then on, it was expected that he would serve his client, herein complainant, with competence, and attend to her cause with fidelity, care and devotion. The act of receiving money as acceptance fee for legal services in handling complainant's case and subsequently failing to render such services is a clear violation of Canon 18 of the Code of Professional Responsibility, which provides that a lawyer shall serve his client with competence and diligence. Specifically, Rule 18.03 states: A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable. A member of the legal profession owes his client entire devotion to the latter's genuine interest, and warm zeal in the maintenance and defense of his rights. An attorney is expected to exert his best efforts and ability to preserve his client's cause, for the unwavering loyalty displayed to his client, likewise, serves the ends of justice. Verily, the entrusted privilege to practice law carries with it the corresponding duties, not only to the client, but also to the court, to the bar and to the public.

3. **ID.; ID.; ID.; FIDUCIARY DUTY OF A LAWYER; ELUCIDATED.—** The fiduciary duty of a lawyer and advocate is what places the law profession in a unique position of trust and confidence, and distinguishes it from any other calling. Once this trust and confidence is betrayed, the faith of the people, not only in the individual lawyer but also in the legal profession as a whole, is eroded. To this end, all members of the bar are strictly required at all times to maintain the highest degree of public confidence in the fidelity, honesty and integrity of their profession.

RESOLUTION

NACHURA, *J.*:

Before us is a Letter-Complaint[1] filed by complainant Trinidad H. Camara against respondent Atty. Oscar Amandy Reyes.

Sometime in 2003, complainant hired the services of respondent to handle her case. As partial acceptance fee, respondent received from complainant ₱50,000.00 evidenced by a receipt[2] placed on his calling card. Respondent, however, took no steps to protect complainant's interest. As no service was rendered by respondent, complainant asked that he return the amount given him so that she could use it in repairing her house. Respondent offered that he would take charge of repairing the house. Yet, he again failed to fulfill his promise, which prompted the complainant to reiterate her demand for the return of the money.[3] As respondent failed to give back the amount demanded, complainant initiated the instant case.

In his Answer, respondent prayed that the case be closed and terminated, simply because the matter has already been resolved by all the parties concerned. He added that complainant went to his office and explained that she signed the letter-complaint not knowing that it was against respondent, as she was made to believe that it was a complaint against her neighbor.[4]

Complainant and respondent failed to attend the mandatory conference; and to submit their respective position papers.

On February 19, 2007, we referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.[5]

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[1] *Rollo*, pp. 4-7.

[2] *Id.* at 13.

[3] *Id.* at 12.

[4] *Id.* at 15.

[5] *Id.* at 27.

In his Report and Recommendation, IBP Commissioner Salvador B. Hababag made the following findings:

> There is proof that respondent receipted the amount of Php50,000.00 in his own handwriting. Even his calling card was given to the complainants.
>
> Canon 16, Rule 16.01 provides that a lawyer shall account for all money or property collected or received for or from the client.
>
> Canon 18, Rule 18.03 provides that a lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.
>
> Canon 18, Rule 18.04 provides that a lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to client's request for information.
>
> Using the above yardsticks, clearly the respondent is liable and failed to live [up] to [the] above mentioned standards.
>
> While it is true that complainant Trinidad Camara allegedly executed an affidavit, the same will not save the respondent.
>
> As a general rule, disbarment proceeding shall not be interrupted or terminated by reason of the desistance, settlement, compromise, restitution, withdrawal of the charges or failure of the complainant to prosecute unless the Court *motu proprio* determines that there is no compelling reason to continue with the disbarment or suspension proceedings against the respondent.
>
> We reiterate that the respondent did not traverse the charges against him. He simply wanted this case to be closed and terminated allegedly because he and Mrs. Camara had already resolved their problem and the latter's son, who also signed the letter-complaint as attorney-in-fact has no authority to do so.
>
> WHEREFORE, premises considered, it [is] most respectfully recommended that the respondent be suspended for six (6) months from the active practice of law.[6]

---

[6] Citations omitted; Report and Recommendation of the IBP Commissioner, p. 3.

In its Resolution No. XVIII-2008-522, the IBP Board of Governors adopted and approved the report and recommendation of the investigating Commissioner, thus:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution a[s] Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and for respondent's violation of Canon 16, Rule 16.01, Canon 18, Rule 18.03 and 18.04 of the Code of Professional Responsibility, Atty. Oscar Amandy Reyes is hereby SUSPENDED from the practice of law for six (6) months.

We agree with the foregoing recommendation.

The Court notes that despite the opportunity accorded to respondent to refute the charges against him, he failed to do so or even offer a valid explanation.[7] It is incumbent upon respondent to meet the issue and overcome the evidence against him. He must show proof that he still maintains that degree of morality and integrity which at all times is expected of him. These, respondent miserably failed to do.[8]

The record is bereft of any evidence to show that respondent has presented any countervailing evidence to dispute the charges against him. In his answer, he did not even deny complainant's allegations. He only prayed that the case be closed and terminated, simply because the problem with complainant had already been resolved.

The alleged compromise between complainant and respondent is not enough to exonerate the latter from the present disciplinary case. A case of suspension or disbarment may proceed regardless of the interest or lack of interest of the complainant. What

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[7] *Dayan Sta. Ana Christian Neighborhood Association, Inc. v. Espiritu*, A.C. No. 5542, July 20, 2006, 495 SCRA 420, 429; *Rangwani v. Dino,* A.C. No. 5454, November 23, 2004, 443 SCRA 408, 415.

[8] *Dayan Sta. Ana Christian Neighborhood Association, Inc. v. Espiritu*, *supra*; *Rangwani v. Dino, supra.*

matters is whether, on the basis of the facts borne out by the record, the charge of negligence has been duly proved.[9]

Disciplinary proceedings involve no private interest and afford no redress for private grievance. They are undertaken and prosecuted solely for the public welfare, and for the purpose of preserving courts of justice from the official ministration of persons unfit to practice in them. The attorney is called to answer to the court for his conduct as an officer of the court. The complainant is in no sense a party, and has generally no interest in the outcome of the case.[10] This is also the reason why this Court may investigate charges against lawyers regardless of complainant's standing.[11]

When respondent accepted the amount of ₱50,000.00 from complainant, it was understood that he agreed to take up the latter's case, and that an attorney-client relationship between them was established. From then on, it was expected that he would serve his client, herein complainant, with competence, and attend to her cause with fidelity, care and devotion.[12]

The act of receiving money as acceptance fee for legal services in handling complainant's case and subsequently failing to render such services is a clear violation of Canon 18 of the Code of Professional Responsibility, which provides that a lawyer shall serve his client with competence and diligence.[13] Specifically, Rule 18.03 states:

> A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

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[9] *Soriano v. Reyes*, A.C. No. 4676, May 4, 2006, 489 SCRA 328, 338-339; *Cojuangco, Jr. v. Palma*, A.C. No. 2474, June 30, 2005, 462 SCRA 310, 318.

[10] *Soriano v. Reyes*, *supra*; *Cojuangco, Jr. v. Palma*, *supra*.

[11] *Cojuangco, Jr. v. Palma*, *supra*.

[12] *Reyes v. Vitan*, A.C. No. 5835, April 15, 2005, 456 SCRA 87, 90.

[13] *Reyes v. Vitan*, *supra*; *Sencio v. Atty. Calvadores*, 443 Phil. 490, 494 (2003).

A member of the legal profession owes his client entire devotion to the latter's genuine interest, and warm zeal in the maintenance and defense of his rights. An attorney is expected to exert his best efforts and ability to preserve his client's cause, for the unwavering loyalty displayed to his client, likewise, serves the ends of justice. Verily, the entrusted privilege to practice law carries with it the corresponding duties, not only to the client, but also to the court, to the bar and to the public.[14]

The fiduciary duty of a lawyer and advocate is what places the law profession in a unique position of trust and confidence, and distinguishes it from any other calling. Once this trust and confidence is betrayed, the faith of the people, not only in the individual lawyer but also in the legal profession as a whole, is eroded. To this end, all members of the bar are strictly required at all times to maintain the highest degree of public confidence in the fidelity, honesty and integrity of their profession.[15]

The factual antecedents in *Reyes v. Vitan*[16] and *Sencio v. Atty. Calvadores*[17] bear a striking similarity to the present case. In *Reyes,* complainant engaged the services of respondent lawyer for the purpose of filing the appropriate complaint or charges against the former's sister-in-law and the latter's niece. After receiving the amount of ₱17,000.00, respondent did not take any action on complainant's case. In *Sencio*, complainant therein, likewise, engaged the services of Atty. Calvadores to prosecute the civil aspect of the case in relation to the death of her son in a vehicular accident. The total amount of ₱12,000.00 was duly acknowledged and received by respondent as attorney's fees. Despite repeated assurances by respondent, complainant discovered that the former had not filed any case on her behalf.

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[14] *Reyes v. Vitan*, *supra*.

[15] *Dayan Sta. Ana Christian Neighborhood Association, Inc. v. Espiritu*, *supra* note 7; *Rangwani v. Dino, supra* note 7, at 419.

[16] A.C. No. 5835, April 15, 2005, 456 SCRA 87.

[17] 443 Phil. 490 (2003).

In both cases, we suspended the respondent lawyers for a period of six (6) months. Thus, we impose the same penalty on respondent herein, as recommended by the IBP Board of Governors.

WHEREFORE, Resolution No. XVIII-2008-522 of the IBP Board of Governors is *AFFIRMED*. Accordingly, Atty. Oscar Amandy Reyes is hereby *SUSPENDED* for a period of *SIX (6) MONTHS* from the practice of law.

Let copies of this Decision be furnished the Office of the Bar Confidant, to be appended to respondent's personal record as an attorney, the Integrated Bar of the Philippines, and all courts in the country for their information and guidance.

SO ORDERED.

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

SECOND DIVISION

[A.M. No. 08-3-73-MeTC. July 31, 2009]

RE: Report on the Judicial Audit Conducted at the Metropolitan Trial Court, Branch 55, Malabon City

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; JUDGES; PROPER AND EFFICIENT COURT MANAGEMENT IS THE RESPONSIBILITY OF THE JUDGE; CASE AT BAR.—** Judge Lindo miserably failed to justify why the 19 inherited cases were left undecided considering that they were submitted for decision way back in the 80's. Even if it were true that his staff was remiss in preparing the docket inventory resulting to

his failure to decide these cases, he cannot hide behind his staff's averred incompetence or negligence to escape responsibility for his own lapses. Judges and branch clerks of court should conduct personally a physical inventory of the pending cases in their courts and examine personally the records of each case at the time of their assumption to office, and every semester thereafter on 30 June and 31 December. Judges ought to know which cases are submitted for decision and they are expected to keep their own record of cases so that they may act on them promptly. Proper and efficient court management is the responsibility of the judge. He is the one directly responsible for the proper discharge of his official functions. A judge cannot simply take refuge behind the inefficiency or mismanagement of his court personnel, for the latter are not the guardians of the former's responsibility. Taking into account that these cases were discovered sometime in 2000, as admitted by Judge Lindo, he should have decided these cases with dispatch. If he had doubts as to what should be done to these cases, he should have asked the OCA for a directive as regards the same. Instead, he chose not to do anything about the matter, and for that, he must be held administratively liable.

2. **ID.; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; REGLEMENTARY PERIOD FOR DECIDING CASES; FAILURE TO DECIDE CASES WITHIN THE REGLEMENTARY PERIOD CONSTITUTES GROSS INEFFICIENCY.—** No less than the Constitution mandates that all cases or matters must be decided or resolved within twenty-four months from date of submission to the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and three months for all lower courts. In implementing this constitutional mandate, Section 5, Canon 6 of the New Code of Judicial Conduct exhorts in the section on "Competence and Diligence" that judges shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness. Failure to decide cases within the reglementary period, without strong and justifiable reason, constitutes gross inefficiency warranting the imposition of an administrative sanction on the defaulting judge.

3. **ID.; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; JUDGES; DELAY IN THE DISPOSITION OF CASES; CONSEQUENCES.—** Delay in the disposition

of cases not only deprives litigants of their right to speedy disposition of their cases, but also tarnishes the image of the judiciary. Procrastination among members of the judiciary in rendering decisions and taking appropriate actions on the cases before them not only causes great injustice to the parties involved but also invites suspicion of ulterior motives on the part of the judge, in addition to the fact that it erodes the faith and confidence of our people in the judiciary, lowers its standards and brings it into disrepute.

4. **ID.; ID.; ID.; ID.; THE RESPONSIBILITY OF MAKING PHYSICAL INVENTORY OF CASES PRIMARILY RESTS ON THE PRESIDING JUDGE; CASE AT BAR.—** Judge Lindo also failed to justify why he did not include in his monthly report the cases we referred to in our Resolution. Administrative Circular No. 4-2004 specifically enjoins presiding judges to reflect in their monthly report of cases all cases assigned to them for hearing and those submitted to them for decision. Failure to do so warrants the withholding of their salaries, without prejudice to whatever administrative sanctions this Court may impose on them or criminal action which may be filed against them. As the master of his court, Judge Lindo must know the pending cases before his court and which ones are submitted for decision, and thereby reflect the same in his monthly report. It should be emphasized that the responsibility of making physical inventory of cases primarily rests on the presiding judge. Thus, he cannot use as an excuse for his non-compliance with the Administrative Circular the absence of an updated docket inventory in his court, or his lack of awareness of when these cases were turned over to his court. This stance all the more shows his incompetence in managing the affairs of his sala. The explanation Judge Lindo gave for not including Criminal Case Nos. 360-90 and 360-91 in his monthly inventory cannot also be given credence for the reason stated earlier.

5. **LEGAL ETHICS; JUDGES; DISCIPLINE OF JUDGES; CLASSIFICATION OF CHARGES; LESS SERIOUS CHARGE; SIMPLE MISCONDUCT; PENALTY; CASE AT BAR.—** [W]e find Judge Lindo liable for simple misconduct for his failure to act on and reflect in his monthly report the cases referred to in our Resolution. He is likewise found liable for gross inefficiency for his undue delay in deciding and/or resolving the cases adverted to therein. Simple misconduct is

a transgression of some established rule of action, an unlawful behavior, or negligence committed by a public officer. It is a less serious offense punishable by suspension from office without salary or other benefits for not less than one month nor more than three months or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. Undue delay in rendering a decision or order is likewise considered a less serious charge, punishable by the same penalty prescribed for simple misconduct.

6. **ID.; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; CLERKS OF COURT; DUTIES AND RESPONSIBILITIES; CASE AT BAR.—** Branch clerks of court are administrative assistants of presiding judges. Their duty is to assist in the management of the calendar of the court and all other matters not involving the exercise of discretion or judgment of judges. Clerks of court must diligently supervise and manage court dockets and records. While clerks of court are not guardians of a judge's responsibility, they are expected to assist in the speedy disposition of cases. As an administrative assistant, it is the duty of Ms. Borgonia, the acting clerk of court, to bring to the attention of the presiding judge cases that necessitate further action from the latter. Judges cannot be expected to memorize the movement of each and every case. It is for this reason that cases need to be calendared—for the judge to make the appropriate action that has to be done therein. Branch clerks of court must realize that their administrative functions are vital to the prompt and proper administration of justice. They are charged with the efficient recording, filing and management of court records, besides having administrative supervision over court personnel. They play a key role in the complement of the court and cannot be permitted to slacken on their jobs under one pretext or another. They must be assiduous in performing their official duties and in supervising and managing court dockets and records. On their shoulders, as much as those of judges, rest the responsibility of closely following development of cases, such that delay in the disposition of cases is kept to a minimum.

7. **ID.; ID.; ID.; ID.; ID.; SIMPLE NEGLECT OF DUTY, A CASE OF; DEFINED; PENALTY.—** While we note that Ms. Borgonia painstakingly explained away her supposed negligence in preparing the case inventory and failure to present to the audit team cases before the subject court for examination, and submitted

pertinent proof to give credence to her asseverations, we cannot brush aside the report of the audit team that the records in said court were in disarray, which shows lack of proper recordkeeping. Additionally, we gathered that as of audit date, the latest semestral docket inventory of Branch 55 was for the second semester of 2005. Its docket inventory for the years 2006 and 2007 was submitted only on February 8, 2008. All the foregoing discussion shows Ms. Borgonia's lack of diligence in her administrative functions. Thus, we find her administratively liable for simple neglect of duty. Simple neglect of duty is defined as the failure to give proper attention to a task expected of an employee resulting from either carelessness or indifference. It is a less grave offense punishable by suspension for one month and one day to six months for the first offense. However, we deem it appropriate to convert her penalty to the payment of a fine to enable her to continue discharging her duties.

D E C I S I O N

QUISUMBING, *J*.:

From July 12 to 19, 2007, the audit team of the Office of the Court Administrator (OCA) conducted a judicial audit and physical inventory of cases pending before Branch 55 of the Metropolitan Trial Court (MeTC) of Malabon City in light of the compulsory retirement of its presiding judge, the Honorable Judge Francisco S. Lindo, on July 24, 2007.

The OCA reported in its Memorandum[1] dated March 17, 2008 that the sala of Judge Lindo has a total caseload of 2,052 cases, consisting of 1,970 criminal and 82 civil cases. They are classified as follows:

STATUS/STAGES OF PROCEEDING	CRIMINAL CASES	CIVIL CASES	TOTAL
Submitted for Decision	15	8	23
With Pending Incidents Submitted for Resolution	4	3	7

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

No Further Action/Unacted Upon for Considerable Length of Time	1,229	29	1,258
No Action Taken Since Filing	21	-	21
With Warrant of Arrest/Summons	67	8	75
For Arraignment	72	-	72
For Setting	28	-	28
For Preliminary Conference/Pre-Trial	138	16	154
For Compliance	-	6	6
With Pending Motions	-	2	2
With Court Order for Compliance	24	-	24
On Trial/For Initial Trial	371	9	380
Suspended Proceedings	1	1	2
TOTAL	**1,970**	**82**	**2,052**

Of the 23 cases submitted for decision, 22 cases, 19 of which were inherited cases, remained undecided despite the lapse of the reglementary period;[2] 7 cases with pending incidents were still awaiting resolution;[3] 1,258 cases were not acted upon for a considerable length of time;[4] while no action had been taken by the court in 21 cases since their filing therein.[5]

Reconciliation of the audited records with the court records revealed that 175 criminal cases were not presented to the audit team for examination, while 270 criminal cases were not reported/reflected in the docket inventory for the years 2006 and 2007.[6]

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[2] *Id.* at 3-4.

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

[4] *Id.* at 6.

[5] *Id.* at 7.

[6] *Id.* at 9-10.

In a Resolution[7] dated April 22, 2008, the Court, acting on the memorandum submitted by OCA, resolved, among others to:

1. **DIRECT** Hon. Francisco S. Lindo, former Presiding Judge, Metropolitan Trial Court, Branch 55, Malabon City to **EXPLAIN** in writing within fifteen (15) days from notice why no administrative sanction shall be imposed on him for

   1.1 failure to report to this Court, through the Office of the Court Administrator, about the following nineteen (19) inherited cases which were allegedly discovered sometime in 2002 or to decide them considering that these cases were submitted for decision way back in the 80's, to wit: Criminal Case Nos. 525-81 & 525-82, 54839, 634-84, 777-84, 909-84, 974-84, 1025-85, 1023-85, 2122-86, 2223-86, 2256-86 & 2249-87; and Civil Case Nos. 529-86, 621-86, 755-87, 767-87, 774-87 & 819-88;

   1.2 failure to decide within the reglementary period the following three (3) cases which were submitted for his decision, to wit: Criminal Case Nos. 360-90 and 361-90; and Civil Case No. 1870-98;

   1.3 failure to resolve within the reglementary period the following seven (7) cases with pending incident or matter for his resolution, to wit: Criminal Case Nos. 7305-98, 7818-98, JL00-577 & JL00-578; and Civil Case Nos. JL00-258, JL00-259 & JL00-272;

   1.4 failure to act on the one thousand two hundred twenty-nine (1,229) criminal cases and twenty-nine (29) civil cases, as enumerated in Annex "A" of the audit report, despite the lapse of a considerable length of time;

   1.5 failure to act on the following twenty-one (21) criminal cases which have not been set in court calendar despite the lapse of a considerable period of time from date of filing, to wit: Criminal Case Nos. JL00-5822 to JL00-5831, JL00-5963 to JL00-5967, JL00-5934, Jl00-7247, JL00-7248, JL00-7571, JL00-7572, JL00-7573; and

[7] *Id.* at 55-59.

1.6 failure to reflect, in all the Monthly Report of Cases he filed with this Office, the nineteen (19) inherited cases submitted for decision as well as Criminal Case Nos. 360-91 and 361-91 submitted for his decision on October 17, 1994 and Civil Case No. 1870-98 submitted for his decision on August 10, 1999.

2. **DIRECT** Ms. Edrine T. Borgonia, Court Legal Researcher and Officer-in-Charge, MeTC, Branch 55, Malabon City to

1.1 **EXPLAIN** within fifteen (15) days from notice why no administrative sanction shall be imposed upon her for

1.1.1 failure to set in the court calendar the following twenty-one (21) criminal cases despite the lapse of considerable period of time, with further directive for her to immediately include them in the court calendar, to wit: Criminal Case Nos. JL00-5822 to JL00-5831, JL00-5963 to JL00-5967, JL00-5934, JL00-7247, JL00-7248, JL00-7571, JL00-7572, JL00-7573;

1.1.2 failure to present to the audit team for examination the following one hundred seventy-five (175) criminal cases:

3621-96	JL00-5214	JL00-6683	JL00-9034
6719-97	JL00-5235	JL00-6817	JL00-9046
7354-98	JL00-5242	JL00-6818	JL00-9081
9830-00	JL00-5249	JL00-6853	JL00-9090
9641-00	JL00-5391	JL00-6869	JL00-9091
8242-99	JL00-5437	JL00-6939 to	JL00-9094
8457-99	JL00-5446	JL00-6946	JL00-9101
8458-99	JL00-5461	JL00-7074	JL00-9109
8459-99	JL00-5483	JL00-7711	JL00-9119
8460-99	JL00-5489	JL00-7882	JL00-9138 to
8490-99	JL00-5681	JL00-7910	JL00-9140

JL00-087	JL00-5777	JL00-7946	JL00-9150
JL00-117	JL00-6022	JL00-7947	JL00-9156
JL00-758	JL00-6271 to	JL00-7952	JL00-9174
JL00-940	JL00-6278	JL00-8094	JL00-9177
JL00-947	JL00-6336	JL00-8210	JL00-9211
JL00-948	JL00-6337	JL00-8226	JL00-9222
JL00-1079	JL00-6343	JL00-8227	JL00-9238 to
JL00-1517	JL00-6360	JL00-8229	JL00-9241
JL00-1666	JL00-6367	JL00-8237	JL00-9247
JL00-2643	JL00-6378	JL00-8287	JL00-9248
JL00-2779	JL00-6490	JL00-8488	JL00-9414
JL00-3058	JL00-6512	JL00-8558 to	JL00-9467
JL00-3220	JL00-6521	JL00-8584	JL00-9494 to
JL00-3221	JL00-6533	JL00-8776	JL00-9499
JL00-3269	JL00-6564	JL00-8781	JL00-9742
JL00-3564	JL00-6574	JL00-8822	JL00-9755
JL00-3785	JL00-6575	JL00-8862 to	JL00-9770
JL00-4088 to	JL00-6631	JL00-8867	JL00-9938
JL00-4090	JL00-6670	JL00-9001	
JL00-4198	JL00-6674	JL00-9028	
JL00-4211	JL00-6698	JL00-9030	

1.1.3 failure to include the following cases in the semestral docket inventory for the years 2006 and 2007:

525-81	8199-99	JL00-2584 to	JL00-9056 to
525-82	8231-99	JL00-2588	JL00-9061
54839	8298-99	JL00-2778	JL00-9073
634-84	8638-99	JL00-2825 to	JL00-9095

777-84	8846-99	JL00-2874	JL00-5822 to
909-84	9001-99	JL00-2892 to	JL00-5828
974-84	9002-99	JL00-2917	JL00-9146
1023-85	9182-99	JL00-3109	JL00-9179
1025-85	9287-99 to	JL00-3241	JL00-9277 to
2122-86	9295-99	JL00-3322	JL00-9280
2223-86	9395-99	JL00-3446	JL00-9281 to
2256-86	9579-99	JL00-3620	JL00-9304
2249-87	9599-99	JL00-3621	JL00-9370
253-90	9600-99	JL00-3622	JL00-9536
360-91	9697-00	JL00-3860 to	JL00-9540
361-91	9739-00	JL00-3869	JL00-9580
402-91	9839-00 to	JL00-4328	JL00-9581
1029-94	9845-00	JL00-4685	JL00-9582
1541-94	9986-00	JL00-5246	JL00-9605
2584-95 to	10016-00	JL00-5417	JL00-9632
2587-95	10273-00	JL00-5622	JL00-9709
2661-95 to	JL00-275	JL00-5749	JL00-9742
2669-95	JL00-311	JL00-5967	JL00-9886
3998-96	JL00-767	JL00-6677 &	JL00-9887
4000-96	JL00-893 to	JL00-4821	8102
6639-97	JL00-899	JL00-7133	8242
6847-97	JL00-900 to	JL00-7456	8243
6976-98	JL00-904	JL00-7562	6934
7203-98	JL00-1101	JL00-9014	
7305-98	JL00-1829	JL00-9015	
7426-98	JL00-2020	JL00-9016	
7818-98	JL00-2033		

1.2 **SUBMIT** within thirty (30) days from notice a written report, duly noted by the Acting Presiding Judge, on the status of the one hundred seventy-five (175) criminal cases enumerated in Item [2.1.1.2] above;

1.3 **IMPLEMENT** a systematic records management; and

1.4 **FILE ON TIME** the Monthly Report of Cases and the Semestral Docket Inventory of Cases following strictly the prescribed format therefor.[8]

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In the same Resolution, this Court directed Judge Edward D. Pacis, the designated acting presiding judge in that court,[9] to decide within 90 days from receipt of notice the 19[10] inherited cases of Judge Lindo and the 4[11] cases submitted for decision but were left undecided; to resolve the pending incidents in the 7[12] cases mentioned in paragraph 1.3 of the subject resolution within 90 days; and to act with dispatch on the 1,229 criminal cases and 29 civil cases which have not been acted upon for a considerable length of time.[13]

In compliance with this Court's Resolution of April 22, 2008, Judge Lindo and Court Legal Researcher and Officer-In-Charge Edrine Borgonia submitted their respective explanations.

In his Explanation[14] dated July 1, 2008, Judge Lindo admitted that he inherited the 19 cases mentioned in this Court's

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[8] *Id.* at 55-58.

[9] Per Administrative Order No. 75-2008.

[10] Criminal Case Nos. 525-81 & 525-82, 54839, 634-84, 777-84, 909-84, 974-84, 1025-85, 1023-85, 2122-86, 2223-86, 2256-86 & 2249-87; and Civil Case Nos. 529-86, 621-86, 755-87, 767-87, 774-87 & 819-88.

[11] Criminal Case Nos. 360-90 and 361-90; and Civil Case Nos. 1870-98 and JL00-830.

[12] Criminal Case Nos. 7305-98, 7818-98, JL00-577 & JL00-578; and Civil Case Nos. JL00-258, JL00-259 & JL00-272.

[13] *Rollo*, p. 58.

[14] *Id.* at 194-266.

Resolution of April 22, 2008 from Branch 56 of the Malabon MeTC. However, he pointed out that even after a thorough inquiry from his court personnel, no one can say for sure when these cases were turned over to their branch; consequently, they were left undecided. He added that since these cases were not included in the monthly report, the same were not referred to him by the OCA. Hence, he does not know what action should be taken thereon.[15] He also faults the absence of an updated docket inventory which could have helped him in scheduling his work on priority cases for resolution/decision.[16]

As to the three other cases mentioned in Paragraph 1.2 of the subject Resolution, Judge Lindo presented a copy of the decisions[17] rendered therein which show that said cases have been disposed of, belying the allegation that such cases have not yet been decided.

With regard to the 7 cases alluded to in Paragraph 1.3 of the subject Resolution, he stated that Criminal Case Nos. JL00-577, JL00-578, and 7305-98 were all dismissed. The first two cases were set for preliminary investigation upon motion of the accused, but subsequently dismissed upon the recommendation of the State Prosecutor. Criminal Case No. 7305-98 on the other hand, was dismissed on the ground of prescription of offense. As regards Civil Case Nos. JL00-258, JL00-259, and JL00-272, he clarified that such cases were not resolved by mere oversight. He explained that plaintiff's failure to inform the court that the defendants therein had received a copy of the Motion to Render Summary Judgment filed by the former, prevented the court from acting upon the said cases.[18] With regard to Criminal Case No. 7818-98, Judge Lindo reasoned that he was not able to decide the case because the accused has not presented any proof that he furnished the public and private prosecutors a copy of his motion for reconsideration.

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[15] *Id.* at 196.

[16] *Id.* at 197.

[17] *Id.* at 277-282. Annexes "6", "7" and "8" (Lindo).

[18] *Id.* at 198-200.

Also, the accused has not informed the court of the name of his new counsel of record.[19]

As to Paragraph 1.4 of the subject Resolution, Judge Lindo claimed that appropriate actions were taken on all of the 1,258 cases mentioned in Annex "A" of the subject Resolution as can be seen in the status remark column in Annex "A" itself.[20] To further bolster his contention that said cases were sufficiently acted upon, he recounted the action he had taken thereon, *viz*:

Criminal Case Nos. 14610, 6975-98, 7130-98, 7156-98, 7372-98, 7875-98, 8368-99, 8724-99, JL00-711, JL00-795, JL00-992, JL00-1049, JL00-1078, JL00-1080, JL00-1090, JL00-1097, JL00-1138, JL00-1176 & JL00-1177, JL00-1197, JL00-1226, JL00-1223, JL00-1236, JL00-1294, JL00-1282, JL00-1313 to JL00-1315, JL00-1321, JL00-1535, JL00-1604, JL00-1690, JL00-1695 & JL00-1696, JL00-1800 to JL00-1802, JL00-1872, JL00-1871, JL00-1886, JL00-1942, JL00-1964, JL00-2438, JL00-2458, JL00-2459, JL00-2451, JL00-2483, JL00-2509, JL00-2593 to JL00-259[4], JL00-3018, JL00-3033, JL00-3037, JL00-3061 & JL00-3076, JL00-3080 & JL00-3081, JL00-3099, JL00-3108, JL00-3136, JL00-3135, JL00-3134, JL00-3168, JL00-3259, JL00-3256, JL00-3316 & JL00-3317, JL00-3359, JL00-3392, JL00-4100 to JL00-4101, JL00-4117, JL00-4128, JL00-4155 to JL00-4157, JL00-4171, JL00-4168, JL00-4166, JL00- 4201, JL00-4286, JL00-4448, JL00-4460, JL00-4803 to JL00-4806, JL00-4530, JL00-1564, JL00-4681, JL00-4795, JL00-4879, JL00-4958, JL00-4926, JL00-4968, JL00-4972, JL00-4999, JL00-5020, JL00-5075, JL00-5552, JL00-5188, JL00-5543 & JL00-5544, JL00-5580 to JL00-5588, JL00-5951 to JL00-5962, JL00-5652, JL00-5680, JL00-5790, JL00-6411, JL00-5917, JL00-6032, JL00-6033, JL00-6089, JL00-5931 to JL00-6496, JL00-6497 to JL00-6506, JL00-6566, JL00-6456, JL00-6489, JL00-6535, JL00-6655, JL00-6918 to JL00-6920, JL00-6870, JL00-7243 & JL00-7244, JL00-6968 to JL00-6970, JL00-6976 to JL00-6977, JL00-6997, JL00-7310 & JL00-7311, JL00-7610 & JL00-7611, JL00-7524 & JL00-7525, JL00-8060, JL00-8100 to JL00-8101, JL00-8145, JL00-8415, JL00-8428 & JL00-8429, JL00-8778, JL00-8732 to JL00-8733, JL00-8796, JL00-8814, JL00-9410 to JL00-9413, JL00-9365, JL00-9515: Archived;

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[19] *Id.* at 199.

[20] *Id.* at 200.

Criminal Case Nos. 7103-98 & 7104-98, 7425-98 to 7427-98, 8204-98, 8579-99, JL00-1051, JL00-1064, JL00-1091, JL00-1098, JL00-1114, JL00-1142, JL00-1153, JL00-1215 & JL00-1216, JL00-1281, JL00-1565, JL00-1811, JL00-1908, JL00-2989, JL00-3384, JL00-3369 to JL00-3371, JL00-3031, JL00-3085, JL00-3306, JL00-3373, JL00-3698 & JL00-3699, JL00-3883, JL00-3984 & JL00-3985, JL00-4187 to JL00-4190, JL00-4347, JL00-4362, JL00-4959 to JL00-4962, JL00-4808 to JL00-4811, JL00-4875, JL00-5131 to JL00-5134, JL00-5537 & JL00-5538, JL00-5669 to JL00-5677, JL00-5000, JL00-5002, JL00-5088 to JL00-5095, JL00-5077, JL00-5207, JL00-5210, JL00-5211, JL00-5213, JL00-5386, JL00-5603, JL00-5615, JL00-5633 & JL00-5634, JL00-5981 to JL00-5983, JL00-5931, JL00-6030, JL00-6086 to JL00-6088, JL00-6097, JL00-6136 to JL00-6138, JL00-6738, JL00-6375, JL00-6548, JL00-6579, JL00-6571, JL00-6584, JL00-6935, JL00-6962, JL00-7060, JL00-7374 to JL00-7387, JL00-7186, JL00-7308, JL00-7370 to JL00-7371, JL00-7463, JL00-7413, JL00-7424 & JL00-7425, JL00-7442, JL00-7444, JL00-7449, JL00-7481, JL00-7502, JL00-7516, JL00-7638, JL00-7671, JL00-7679 to JL00-7680, JL00-7695, JL00-7811, JL00-7873, JL00-7895, JL00-7927, JL00-7928, JL00-8216 & JL00-8217, JL00-8318, JL00-8345, JL00-8348, JL00-8385, JL00-8387, JL00-8448, JL00-8493, JL00-8501, JL00-8594 & JL00-8595, JL00-8601, JL00-8700, JL00-8786 to JL00-8787, JL00-8844, JL00-8883, JL00-8971, JL00-9337, JL00-9338, JL00-9466, and JL00-9500: Accused have standing warrants for their arrest, cases not archived;

Criminal Case Nos. 050-92, 1332-94 to 1335-94, 1439-94, 2050-95 to 2053-95, 7364-98 & 7365-98, JL00-535, JL00-696 to JL00-704, JL00-730, JL00-946, JL00-1038, JL00-2061, JL00-3950 & JL00-3951, JL00-4877, JL00-5163, JL00-5241, JL00-5445, JL00-6124, JL00-6404, JL00-6349, JL00-6352, JL00-7271, JL00-7584, and JL00-9072: Dismissed provisionally or otherwise;

Criminal Case Nos. 8898-99 & 8899-99: Settled amicably;

Criminal Case Nos. JL00-892, JL00-1875, JL00-1890, JL00-2927, JL00-3555, and JL00-8815: Accused were directed to submit their counter-affidavits but failed to comply with the court's order;

Criminal Case No. 8204-98: On April 16, 1999, the public prosecutor asked for ten (10) days to file the necessary pleading;

Criminal Case Nos. JL00-759, JL00-5323, and JL00-7825: Arraignment and Pre-trial set on May 4, 2001, January 28, 2008, and March 28, 2006, respectively;

Criminal Case No. JL00-1465: Accused ordered confined at the National Center for Mental Health. Pre-trial suspended in the meantime;

Criminal Case Nos. JL00-2736 to JL00-2741: Trial *in absentia*;

Criminal Case No. JL00-3384: Accused out on bail;

Criminal Case Nos. JL00-6022 & JL00-6677, JL00-6111, and JL00-6223: On going trial;

Criminal Case No. JL00-4970: Case referred to mediation;

Criminal Case Nos. JL00-5247 to JL00-5248: Pending motion for consolidation of cases;

Criminal Case No. JL00-5245: Prosecution ordered to file manifestation whether it will pursue prosecution of the case;

Criminal Case No. JL00-5631: Accused arraigned on May 21, 2008;

Criminal Case Nos. JL00-7468 & JL00-7469: Cases were ordered revived on July 5, 2004; to be included in the next raffle of cases;

Criminal Case Nos. JL00-7717, JL00-8961, and JL00-8993 to JL00-8995: Initial trial set on January 6, 2007, September 10, 2007, and June 22, 2007, respectively; cases to be heard by acting presiding judge;

Criminal Case Nos. JL00-7858 & JL00-7859: Set for hearing on January 9, 2008, with threat of dismissal should parties fail to appear;

Criminal Case No. JL00-7935: Denied the affidavit of the witnesses for the accused for being filed out of time;

Criminal Case No. JL00-8057: Continuation of trial set on August 15, 2007; case to be handled by the acting presiding judge;

Civil Case Nos. 1641-96, 1846-98, JL00-398: Dismissed provisionally or otherwise;

Civil Case No. 2022-99: *Certiorari* proceeding is pending before Branch 74 of Malabon Regional Trial Court;

Civil Case No. JL00-037: Summons was issued; no answer was filed by defendants;

Civil Case Nos. JL00-218, JL00-242, JL00-329, JL00-331, JL00-351, JL00-647, JL00-779, JL00-836, JL00-855, JL00-879, LRC-034-00: Archived;

Civil Case No. JL00-297, JL00-298, and JL00-300: To date, no answer has yet been filed. Plaintiff, on the other hand, refused several times to heed the court's invitation to submit true copies or duplicate original of actionable documents resulting to the non-disposition of the case;

Civil Case No. JL00-725: Plaintiff given five (5) days from receipt of July 19, 2007 Order to prosecute the case. Compliance therewith was not reported to him by reason of his compulsory retirement;

Civil Case No. JL00-873: Plaintiff's Motion for Bill of Particulars is pending resolution;

Civil Case No. JL00-218: *Kapisanang Pangkaunlaran ng Kababaihang Potrero v. T. Baeza*: No return of summons dated May 30, 2002;

Civil Case No. 508-85: One of the nineteen (19) inherited cases. Not resolved for the reason stated above;

Civil Case No. 1735-97: On appeal before the Regional Trial Court of Malabon;

Civil Case No. JL00-774: Summonses duly served on the defendants. No further action was done by the court due to lack of manifestation by either party in this case.[21]

Judge Lindo enumerated some 800[22] cases whose particulars he could not give. He explained that because said cases had been distributed to the acting presiding judge and two other assisting judges for proper disposition, it was no longer possible for him to verify the status of the said cases. Nevertheless, he contended that the audit report shows what action had been taken therein; hence, he need not elaborate.[23]

As regards Paragraph 1.5 of the subject Resolution, Judge Lindo disclaimed that the cases referred to therein have neither been acted upon nor set in the court calendar. In fact, he stated, in Criminal Case Nos. JL00-5822 to JL00-5831, JL00-5963 to

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[21] *Id.* at 201-253.

[22] *Id.* at 253-264.

[23] *Id.* at 201.

JL00-5967, JL00-7246 to JL00-7248 the accused therein were directed to appear before the court and file their respective counter-affidavits, except that they did not comply with the court's order. The accused in Criminal Case Nos. JL00-5933 to JL00-5934, on the other hand, has a standing warrant of arrest, while in Criminal Case Nos. JL00-7571 to JL00-7573, a copy of the complaint was served on the accused.[24]

As regards Paragraph 1.6 of the subject Resolution asking him to explain his failure to reflect the cases mentioned therein in all the Monthly Report of Cases he filed with the OCA, he proffered the same explanations he gave to discount the allegations in Paragraph 1.1 and 1.2 of the same Resolution.[25]

For her part, Ms. Borgonia, in a Letter[26] dated June 12, 2008, explained that the 21 cases adverted to in Paragraph 2.1.1.1 of the subject Resolution could not be included in the court calendar inasmuch as the last order issued by Judge Lindo in 19[27] of the said cases was for the accused to file their counter-affidavits, while the trial in Criminal Case Nos. JL00-5933 & JL00-5934[28] were suspended pending the arrest of the accused therein. According to her, she cannot at her own discretion calendar the said cases at once as she has to wait for the instruction of Judge Lindo as to what the court would deem appropriate or necessary for these cases under the given situation, that is, whether to set the case for hearing or issue warrants against the accused for their non-compliance with his earlier order. These notwithstanding, all these cases have been disposed of after clarificatory hearings were conducted by Judge Pacis.[29]

In refutation of the allegations in Paragraph 2.1.1.2 of the subject Resolution, Ms. Borgonia attached to her letter

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[24] *Id.* at 264-265.

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

[26] *Id.* at 76-77.

[27] *Id.* at 85-87, 89.

[28] *Id.* at 88.

[29] *Id.* at 77-78, 90-93.

photocopies[30] of the cover pages and/or front pages of the cases mentioned therein, except for the criminal cases that will be mentioned hereafter. Said cover and front pages show that they were signed and dated by a member of the audit team on the day such cases were examined by the audit team – proof that the same were presented to the latter, contrary to what was claimed.[31] She added that only Criminal Case Nos. JL00-9494 to 9499 and JL00-9938 were not presented because said cases have been transferred and raffled to Branch 56.[32]

As for Criminal Case Nos. JL00-3220, JL00-9755, JL00-8862 to JL00-8867, JL00-9094, JL00-9238 to JL00-9241, JL00-9101, JL00-9090, JL00-9091, JL00-9081, JL00-8781, JL00-8776 and JL00-8488, Ms. Borgonia explained that these cases were already archived or otherwise disposed of either because a compromise agreement had been reached, the accused had been sentenced or the case had been dismissed. It is for these reasons that she no longer presented the cases to the audit team.[33]

As to Criminal Case Nos. JL00-947 & 948, JL00-3058, JL00-3564, JL00-8558 to JL00-8584, JL00-9770, JL00-7882, JL00-6818, JL00-7074, and JL00-4088 to JL00-4090,[34] Ms. Borgonia claimed that they were likewise presented to the audit team although the cover pages do not bear the signature of any member of the team. She claimed that the team only initialed the *"cover of the first lower docket number of inter related bundled cases as they were jointly or simultaneously tried and for easy access of the records."*

Additionally, Ms. Borgonia admitted not presenting to the audit team Criminal Case Nos. JL00-6939 to JL00-6946, 6719-97, JL00-3221, JL00-7952, JL00-4211, 9641-00, 8457-99 to

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[30] *Id.* at 94-185.

[31] *Id.* at 77.

[32] *Id.* at 290, 313 and 315. (Annexes "L" and "M").

[33] *Id.* at 289, 295-312. (Annexes "A", "B", "C" to "C-2", "D", "E" to "E-2", "F", "G", "H", "I", "J" and "K").

[34] *Id.* at 289.

8460-99, JL00-7947, JL00-1517, 9830-00, 8490-00, JL00-940, JL00-6631, 7354-98 and JL00-3785. However, she submits that such omission was merely through inadvertence *"as these cases were included, attached or otherwise to the other bundled cases already signed or audited by the team."*[35]

To belie the allegation in Paragraph 2.1.1.3 of the subject Resolution that she failed to include the cases mentioned therein in the semestral docket inventory for the years 2006 and 2007, Ms. Borgonia attached as Annexes to her letter the pertinent pages of the said inventory as proof that such cases were accounted for.[36] As for the cases not included therein, she explained such omission in this wise:

She presumed that Case Nos. 525-81, 909-84, 2223-86, 361-91, 525-82, 974-84, 2256-86, 54839, 1023-85, 2249-87, 634-84, 1025-85, 253-90, 777-84, 2122-86 and 360-91 were included in the July to December 2007 inventory report inasmuch as they were included in the monthly report of July 2007. While Ms. Borgonia admitted failing to double check the final copy of the inventory report, she begged for indulgence for such lapse by reason of the many tasks that she has to attend to, being simultaneously the court's Court Legal Researcher and Officer-in-Charge.[37]

The cases that follow were archived in the year 1997, 2004, 2005 or 2007; for that reason, they were no longer included in the inventory report.

2584-95 to 2587-95, 2661-95 to 2669-95, 6639-97, 6847-97, 7203-98, 7426-98, 8199-99, 8231-99, 88[4]6-99, 9182-99, 9579-99, 9599-

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[35] *Id.* at 290.

[36] *Id.* at 365-418. (Annexes "XX", "YY", "ZZ", "AAA", BBB", "CCC", "DDD", "EEE", "FFF", "GGG", "HHH", "III", "JJJ", "KKK", "LLL", "MMM", "NNN", "OOO", "PPP", "QQQ", "RRR", "SSS", "TTT", "UUU", "VVV", "WWW", "XXX", "YYY", "ZZZ", "AAAA", "BBBB", "CCCC", "DDDD", "EEEE", "FFFF", "GGGG", "HHHH", "IIII", "JJJJ", "KKKK", "LLLL", "MMMM", "NNNN", "OOOO", "PPPP", "QQQQ", "RRRR", "SSSS", "TTTT", "UUUU", "VVVV", "WWWW", "XXXX" and "YYYY").

[37] *Id.* at 290-291.

99, 9600-99, 9697-00, 9739-00, 9839-00 to 9845-00, 9986-00, 10016-00, 10273-00, JL00-893 to 899, JL00-900 to 904, JL00-1829, JL00-2020, JL00-2033, and JL00-2778.[38]

Aside from the cases that were archived, those that were decided, dismissed, terminated, or suspended were likewise not included in the inventory. These cases are:

> 3998-96, 4000-96, 7818-98, 8298-99, 9395-99, JL00-275, JL00-311, JL00-2584 to 2588, JL00-2825 to 2874, JL00-2892 to 2917, JL00-3109, JL00-3446, JL00-4328, JL00-4821, 9001-99, 9002-99, JL00-9277 to 9280, and JL00-9281 to 93[04].[39]

As for Case Nos. 402-91, 1029-94, 1541-94, 7305-98, JL00-3860 to 3869, JL00-5622, JL00-5749, JL00-7133, JL00-767, JL00-4685 and JL00-5417, Ms. Borgonia acknowledged her failure to include said cases in the inventory report, but explained that the omission was not intentional as she "*believe(d) in good faith that she has encoded and included all the voluminous cases pending and that the same were all presented to the judicial audit.*"[40]

As for Criminal Case Nos. 8102, 8242, 8243 and 6934, she submits that they do not exist in the docket of criminal cases as an official court record; hence, not reflected in the inventory report.[41]

Finally, in compliance with Paragraph 2.1.2 of the subject Resolution, Ms. Borgonia submitted the status of the 175 criminal cases enumerated in Paragraph 2.1.1.2, duly noted by Judge Pacis, on June 27, 2008.[42]

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[38] *Id.* at 291, 316-338. (Annexes "O", "P", "Q", "R", "S", "T", "U", "V", "W", "X", "Y", "Z", "AA", "BB", "CC", "DD", "EE", "FF", "GG", "HH", "II", "JJ", "KK" and "KK1").

[39] *Id.* at 291-292, 339-364. (Annexes "LL" to "LL-3", "MM" to "MM-4", "NN", "OO", "PP", "QQ", "RR" to "RR-1", "SS", "TT", "UU" to "UU-5", "VV", "WW").

[40] *Id.* at 293.

[41] *Id.*

[42] *Id.* at 285-288.

Through a Letter[43] dated June 18, 2008, Judge Pacis informed this Court of his progress in regard to the cases enumerated in our Resolution of April 22, 2008 which were referred to him for proper disposition. He reported that out of the cases that were not acted upon since 1981, only five (5) are left for decision. Of the cases referred to in Paragraph 3.3.4 of the subject Resolution, 28 civil cases were already decided, while only 116 criminal cases remain pending for trial. For ready reference, he submitted together with his letter a copy of the monthly report bearing the actions he has taken on the cases mentioned in the said paragraph.[44]

After a careful perusal of the explanations proffered by Judge Lindo and Ms. Borgonia, it is our considered view that both have been remiss in the dispensation of their duties and must be dealt with accordingly.

First off, Judge Lindo miserably failed to justify why the 19 inherited cases were left undecided considering that they were submitted for decision way back in the 80's. Even if it were true that his staff was remiss in preparing the docket inventory resulting to his failure to decide these cases, he cannot hide behind his staff's averred incompetence or negligence to escape responsibility for his own lapses. Judges and branch clerks of court should conduct personally a physical inventory of the pending cases in their courts and examine personally the records of each case at the time of their assumption to office, and every semester thereafter on 30 June and 31 December. Judges ought to know which cases are submitted for decision and they are expected to keep their own record of cases so that they may act on them promptly.[45] Proper and efficient court management is the responsibility of the judge. He is the one directly responsible for the proper discharge of his official functions. A judge cannot simply take refuge behind the inefficiency or

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[43] *Id.* at 650-651.

[44] *Id.* at 653-666.

[45] *Office of the Court Administrator v. Trocino*, A.M. No. RTJ-05-1936, May 29, 2007, 523 SCRA 262, 272.

mismanagement of his court personnel, for the latter are not the guardians of the former's responsibility.[46] Taking into account that these cases were discovered sometime in 2000, as admitted by Judge Lindo,[47] he should have decided these cases with dispatch. If he had doubts as to what should be done to these cases, he should have asked the OCA for a directive as regards the same. Instead, he chose not to do anything about the matter, and for that, he must be held administratively liable.

A thorough review of the evidence presented by Judge Lindo reveals that he failed to disprove the allegations in Paragraphs 1.2 and 1.3 of our Resolution. His Explanation, no less, stated that Civil Case No. 1870-98 was submitted for decision on August 10, 1999, while a copy of the decision[48] he rendered therein and which he furnished us shows that the same was decided only on July 18, 2007, clearly way beyond the 90-day reglementary period. While Judge Lindo tried to persuade us that Criminal Case Nos. 360-90 and 360-91 were already decided by a former judge of that court, suffice it to say that the evidence[49] he presented failed to prove his contention, in that, what were presented were mere handwritten excerpts of the alleged decisions. We also do not find meritorious the reasons Judge Lindo gave for failing to resolve Civil Case Nos. JL00-258, JL00-253 and JL00-272 and Criminal Case No. 7818-98.

No less than the Constitution mandates that all cases or matters must be decided or resolved within twenty-four months from date of submission to the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and three months for all lower courts. In implementing this constitutional mandate, Section 5, Canon 6 of the New Code of Judicial Conduct exhorts in the section on "Competence

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[46] *Report on the Judicial Audit Conducted in the MTCC-Brs. 1, 2 & 3, Mandaue City*, A.M. No. 02-8-188-MTCC, July 17, 2003, 406 SCRA 285, 296.

[47] *Rollo*, p. 7.

[48] *Id.* at 279-282. Annex "8" (Lindo).

[49] Annexes "6" and "7" (Lindo).

and Diligence" that judges shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.[50] Failure to decide cases within the reglementary period, without strong and justifiable reason, constitutes gross inefficiency warranting the imposition of an administrative sanction on the defaulting judge.[51]

Furthermore, Judge Lindo wants to impress upon this Court that he has acted upon the cases referred to in our Resolution. His own Explanation, however, belies his contention. As can be gleaned from his compliance, the last action he has taken on a number of cases enumerated in Paragraphs 1.4 and 1.5 of our Resolution dates as far back as the late 90's and the early 2000's. It was only when Judge Pacis took over that such cases were dismissed, archived, or tried. A judge could not be said to have discharged his duties by the mere fact that he had given out one order in a certain case. What is asked of a judge is to continually act on all the cases pending before his court until their final disposition. He cannot just sit in complacency. The summary he gave as to the actions he had taken on the subject cases reveals his propensity for not monitoring the progress of the cases pending before him, thereby failing to act on them appropriately.

Delay in the disposition of cases not only deprives litigants of their right to speedy disposition of their cases, but also tarnishes the image of the judiciary. Procrastination among members of the judiciary in rendering decisions and taking appropriate actions on the cases before them not only causes great injustice to the parties involved but also invites suspicion of ulterior motives on the part of the judge, in addition to the fact that it erodes the faith and confidence of our people

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[50] *Office of the Court Administrator v. Reyes,* A.M. No. RTJ-05-1892, January 24, 2008, 542 SCRA 330, 337.

[51] *Re: Judicial Audit Conducted in the Regional Trial Court, Branch 6, Tacloban City*, A.M. No. RTJ-09-2171, March 17, 2009, p. 8.

in the judiciary, lowers its standards and brings it into disrepute.[52]

Judge Lindo also failed to justify why he did not include in his monthly report the cases we referred to in our Resolution. Administrative Circular No. 4-2004 specifically enjoins presiding judges to reflect in their monthly report of cases all cases assigned to them for hearing and those submitted to them for decision. Failure to do so warrants the withholding of their salaries, without prejudice to whatever administrative sanctions this Court may impose on them or criminal action which may be filed against them. As the master of his court, Judge Lindo must know the pending cases before his court and which ones are submitted for decision, and thereby reflect the same in his monthly report. It should be emphasized that the responsibility of making physical inventory of cases primarily rests on the presiding judge.[53] Thus, he cannot use as an excuse for his non-compliance with the Administrative Circular the absence of an updated docket inventory in his court, or his lack of awareness of when these cases were turned over to his court. This stance all the more shows his incompetence in managing the affairs of his sala. The explanation Judge Lindo gave for not including Criminal Case Nos. 360-90 and 360-91 in his monthly inventory cannot also be given credence for the reason stated earlier.

All told, we find Judge Lindo liable for simple misconduct for his failure to act on and reflect in his monthly report the cases referred to in our Resolution. He is likewise found liable for gross inefficiency for his undue delay in deciding and/or resolving the cases adverted to therein.

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[52] *Report on the Judicial Audit Conducted in the MTCC-Brs. 1, 2 & 3, Mandaue City*, *supra* note 46, at 293-294. See also *Re: Report on the Judicial Audit Conducted in the Regional Trial Court, Branches 3, 5, 7, 60 and 61, Baguio City*, A.M. No. 02-9-568-RTC, February 11, 2004, 422 SCRA 408, 416.

[53] *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.

Simple misconduct is a transgression of some established rule of action, an unlawful behavior, or negligence committed by a public officer. It is a less serious offense punishable by suspension from office without salary or other benefits for not less than one month nor more than three months or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.[54] Undue delay in rendering a decision or order is likewise considered a less serious charge, punishable by the same penalty prescribed for simple misconduct.[55]

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[54] *China Banking Corporation v. Janolo, Jr.*, A.M. No. RTJ-07-2035, June 12, 2008, 554 SCRA 295, 302.

[55] Rules of Court, Rule 140.

SEC. 9. *Less Serious Charges*. — Less serious charges include:

1. Undue delay in rendering a decision or order, or in transmitting the records of a case;
2. Frequent and unjustified absences without leave or habitual tardiness;
3. Unauthorized practice of law;
4. Violation of Supreme Court rules, directives, and circulars;
5. Receiving additional or double compensation unless specifically authorized by law;
6. Untruthful statements in the certificate of service; and
7. Simple Misconduct.

x x x x x x x x x

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

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

2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or

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

B. If the respondent is guilty of a less serious charge, any of the following sanctions shall be imposed:

As to Ms. Borgonia, the justification she gave for her failure to schedule in the court calendar the 21 cases we referred to does not persuade us. Branch clerks of court are administrative assistants of presiding judges. Their duty is to assist in the management of the calendar of the court and all other matters not involving the exercise of discretion or judgment of judges. Clerks of court must diligently supervise and manage court dockets and records. While clerks of court are not guardians of a judge's responsibility, they are expected to assist in the speedy disposition of cases.[56] As an administrative assistant, it is the duty of Ms. Borgonia, the acting clerk of court, to bring to the attention of the presiding judge cases that necessitate further action from the latter. Judges cannot be expected to memorize the movement of each and every case. It is for this reason that cases need to be calendared—for the judge to make the appropriate action that has to be done therein.

While we note that Ms. Borgonia painstakingly explained away her supposed negligence in preparing the case inventory and failure to present to the audit team cases before the subject court for examination, and submitted pertinent proof to give credence to her asseverations, we cannot brush aside the report of the audit team that the records in said court were in disarray,

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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.

C. If the respondent is guilty of a light charge, any of the following sanctions shall be imposed:

1. A fine of not less than ₱1,000.00 but not exceeding ₱10,000.00; and/or

2. Censure;

3. Reprimand;

4. Admonition with warning.

[56] *Bernaldez v. Avelino*, A.M. No. MTJ-07-1672, July 9, 2007, 527 SCRA 11, 21-22.

which shows lack of proper recordkeeping.[57] Additionally, we gathered that as of audit date, the latest semestral docket inventory of Branch 55 was for the second semester of 2005.[58] Its docket inventory for the years 2006 and 2007 was submitted only on February 8, 2008.[59]

We take as opportune this time to remind Ms. Borgonia, the acting branch clerk of court, to be circumspect in her endeavors. Branch clerks of court must realize that their administrative functions are vital to the prompt and proper administration of justice. They are charged with the efficient recording, filing and management of court records, besides having administrative supervision over court personnel. They play a key role in the complement of the court and cannot be permitted to slacken on their jobs under one pretext or another. They must be assiduous in performing their official duties and in supervising and managing court dockets and records.[60] On their shoulders, as much as those of judges, rest the responsibility of closely following development of cases, such that delay in the disposition of cases is kept to a minimum.[61]

All the foregoing discussion shows Ms. Borgonia's lack of diligence in her administrative functions. Thus, we find her administratively liable for simple neglect of duty.

Simple neglect of duty is defined as the failure to give proper attention to a task expected of an employee resulting from either

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[57] *Rollo*, p. 7.

[58] *Id.* at 8.

[59] *Id.*

[60] *Re: Report on the Judicial Audit Conducted in RTC, Br. 27, Naga City*, A.M. No. 96-11-402-RTC, August 21, 1997, 278 SCRA 8, 16-17.

[61] See *Re: Report on the Judicial Audit Conducted at the Municipal Trial Court in Cities (Branch 1), Surigao City*, A.M. No. P-04-1835, January 11, 2005, 448 SCRA 13, 23.

carelessness or indifference.[62] It is a less grave offense punishable by suspension for one month and one day to six months for the first offense.[63] However, we deem it appropriate to convert her penalty to the payment of a fine to enable her to continue discharging her duties.[64]

WHEREFORE, retired Judge Francisco S. Lindo, former Presiding Judge of the Metropolitan Trial Court of Malabon City, Branch 55, is found *GUILTY* of simple misconduct and undue delay in rendering a decision. He is *FINED* in the amount of Twenty Thousand Pesos (₱20,000.00) in accordance with Section 11, Rule 140 of the Revised Rules of Court, as amended, to be deducted from the One Hundred Thousand Pesos (₱100,000.00) we ordered withheld from his retirement benefits pursuant to our Resolution dated April 22, 2008. The Chief of the Financial Management Office, Office of the Court Administrator is *DIRECTED* to immediately release to retired Judge Francisco S. Lindo the remaining Eighty Thousand Pesos (₱80,000.00).

Ms. Edrine T. Borgonia, Court Legal Researcher and Officer-in-Charge of the same court, is found *GUILTY* of simple neglect of duty and is *FINED* in the amount equivalent to one (1) month salary. She is sternly *WARNED* that a repetition of the same or similar offense shall be dealt with more severely. Ms. Borgonia is likewise *DIRECTED* to immediately implement a systematic records management to aid the court in the proper monitoring of cases, and report to this Court what she has done in this regard, within thirty (30) days from notice.

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[62] *Sesbreño v. Gako, Jr.*, A.M. No. RTJ-08-2144, November 3, 2008, p. 5; *Becina v. Vivero*, A.M. No. P-04-1797, March 25, 2004, 426 SCRA 261, 264.

[63] Uniform Rules on Administrative Cases in the Civil Service, Section 52 (B) (1).

[64] *Sesbreño, v. Gako, Jr.*, *supra* at 7; *Tiu v. Dela Cruz,* A.M. No. P-06-2288, June 15, 2007, 524 SCRA 630, 640.

SO ORDERED.

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

SECOND DIVISION

[A.M. No. MTJ-08-1709. July 31, 2009]
(Formerly A.M. OCA IPI No. 02-1225-MTJ)

LANIE CERVANTES, *complainant, vs.* **JUDGE HERIBERTO M. PANGILINAN and CLERK OF COURT III CARMENCHITA P. BALOCO, both of MUNICIPAL CIRCUIT TRIAL COURT, CUYO-AGUTAYA-MAGSAYSAY, PALAWAN,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; REVISED RULES ON SUMMARY PROCEDURE; GOVERNS THE PROCEEDINGS IN A CRIMINAL CASE FOR SLANDER; VIOLATED IN CASE AT BAR BY RESPONDENT JUDGE.—** The proceedings in a criminal case for Slander are governed by the Revised Rule on Summary Procedure x x x. Instead of first ruling whether the case fell under the Revised Rule on Summary Procedure, Judge Pangilinan immediately issued a warrant of arrest and fixed complainant's bail at ₱2,000. There being no showing

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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.

[***] Designated member of the Second Division per Special Order No. 664.

that complainant failed to appear in court when required by Judge Pangilinan, the warrant of arrest he issued had no legal basis.

2. **ID.; LEGAL ETHICS; DISCIPLINE OF JUDGES; CLASSIFICATION OF CHARGES; SERIOUS CHARGES; GROSS IGNORANCE OF THE LAW; RESPONDENT JUDGE IS FOUND GUILTY THEREOF; PENALTY.—** Judge Pangilinan's *faux pas* cannot be countenanced. For when a judge shows unfamiliarity with the fundamental rules and procedures, he contributes to the erosion of public confidence in the judicial system and is guilty of gross ignorance of the law and procedures which, under Section 8, Rule 140 of the Rules of Court, is a serious charge punishable by: 1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned and controlled corporations. *Provided, however,* that the forfeiture of benefits shall in no case include accrued leave credits; 2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or 3. A fine of more than ₱20,000 but not exceeding ₱40,000.00. As thus recommended by the OCA, Judge Pangilinan should be fined in the amount equivalent to one-half of his monthly salary, which should, in view of his demise, be deducted from the benefits due him. As recommended too, the complaint against Carmenchita is dismissed but should be admonished.

APPEARANCES OF COUNSEL

Glenn C. Gacott for complainant.
Liezeil L. Zabanal for Carmenchita Baloco.

D E C I S I O N

CARPIO MORALES, *J.*:

By letter-complaint[1] of March 11, 2002, Lanie Cervantes (complainant) charged Judge Heriberto M. Pangilinan (Judge

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

Pangilinan) and Clerk of Court III Carmenchita[2] P. Baloco (Carmenchita) of the Municipal Circuit Trial Court (MCTC), Cuyo-Agutaya-Magsaysay, Palawan, with Conduct Prejudicial to the Best Interest of the Service and Ignorance of the Law.

Respondent Judge Pangilinan issued on December 5, 2001 a warrant of arrest[3] in a criminal case for Slander against the therein accused-herein complainant who subsequently posted bail fixed at ₱2,000. On arraignment on December 18, 2001, complainant pleaded not guilty. She later filed on January 22, 2002 a Motion to Admit Counter-Affidavit[4] with her *Ganting Salaysay*[5] (Motion). Respondent Clerk of Court Carmenchita refused to accept the Motion, however, in the absence of Judge Pangilinan, being apprehensive that he might scold her.

On June 28, 2002, as instructed by Carmenchita, complainant returned during which Carmenchita told her not to see the judge that day as he was still tired from his trip. The following day or on January 29, 2002, Judge Pangilinan advised complainant that he could not accept her belatedly filed Motion because she had already been arraigned. Hence, spawned the filing of the present complaint.

By separate Indorsements of April 19, 2002,[6] the Office of the Court Administrator (OCA) directed both respondents to comment on complainant's letter-complaint within 10 days from notice.

By Comment[7] of May 22, 2002, respondent Carmenchita explained that she refused to receive the Motion because there was no proper proof of service, but she advised complainant

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[2] Sometimes spelled Carmencita.

[3] *Rollo,* p. 84.

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

[5] *Id.* at 10-11.

[6] *Id.* at 15-16.

[7] *Id.* at 16-17.

to serve a copy thereof on the Chief of Police of Cuyo, the designated prosecutor, at the police station across the street.

By Comment[8] of May 23, 2002, Judge Pangilinan justified the non-receipt of complainant's motion for lack of proper proof of service, and complainant, instead of heeding the advice to comply therewith, went to Puerto Princesa City to air her grievance over a local radio station.

The Court, by Resolution of April 30, 2003,[9] referred the complaint to Executive Judge Nelia Fernandez for investigation, report and recommendation. This Resolution was later set aside by Resolution of January 17, 2007[10] which directed Executive Judge Perfecto Pe of the Regional Trial Court of Puerto Princesa City to investigate the complaint.

By Order of January 4, 2008,[11] Judge Pe came up with the following evaluation:

> This matter could not have gone this far had the respondent **Judge Heriberto Pangilinan** diligently observed the Rules on Summary Procedure in criminal cases. The case of simple slander is punishable by *arresto menor* with a fine of not more than ₱200.00 which is covered by the Rules of Summary Procedure. **Warrant of Arrest should not have been issued against Lanie Cervantes** which fact during the cross-examination was admitted by respondent judge to be lapses of judgment. He could have ordered Lanie Cervantes to file her Counter-Affidavit within ten (10) days as provided by [t]he Rules before arraignment. What the respondent judge did in this case was that the accused was caused to be arraigned without ordering her to file her Counter-Affidavit which later when Lanie Cervantes had known that she could not put up her defense without a Counter-Affidavit in Summary Procedure, she filed that Counter-Affidavit with the motion to admit the same. Had the motion been admitted, then this administrative case could not have reached this far. On the part of respondent Baloco, her appointment in court is stenographer reporter

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

[9] *Id.* at 23.

[10] *Id.* at 274-275.

[11] *Id.* at 499-503.

and she was just designated as acting clerk of court by the Honorable Judge Pangilinan. She was instructed by the honorable judge not to receive any pleading without proof of service to the party to which she complied in this case. …Due to the position of respondent Carmenchita Baloco being an acting clerk of court designated by the presiding judge of that court and through the order of the Court not to receive pleading without proof of service to the other party, the Court could not consider that the refusal of respondent Carmenchita Baloco to receive the motion to admit Counter-Affidavit is excusable negligence or misapprehension and misinterpretation of facts on her part. However, Cuyo[,] Palawan is a small municipality without lawyers, the court, including its employees must observe and practice courteousness, diligence and helpfulness to the service of the people. **Respondent Carmenchita Baloco** should have received or accepted the Motion to Admit Counter-Affidavit as it was shown in the face of the Motion that the private complainant was furnished through mail. This is a criminal case wherein the Rules can be liberally construed so that the end of justice can be served. It is the findings of this undersigned investigator and his recommendation to the Honorable Supreme Court through the Court Administrator that **respondent Carmenchita Baloco be admonished to be more circumspect in dealing with litigants** who appear before their court so that justice can be fully served to these people who are less fortunate in life and who are not knowledgeable with the Rules and procedure.

This investigator likewise observed as far as respondent Honorable Judge Heriberto Pangilinan that had it not been to the order of arrest and arraignment of the accused without ordering the respondent therein to file her Counter-Affidavit as the case falls under the Summary Procedure, this administrative case for Conduct Prejudicial to the Best Interest of the Service and Ignorance of the Law had not been filed against him. This investigating officer however believes that **there was a lapse of judgment on the part of Honorable Heriberto Pangilinan** in ordering the arrest of the accused in a case covered by Summary Procedure and the failure to order Lanie Cervantes to file her Counter-Affidavit. It could have been rectified by the honorable judge, had he just admitted the Counter-Affidavit as it appears on the face of the Motion that the private complaining witness was duly furnished with copy by mail. It is **recommended** to the Honorable Court through the Court Administrator that respondent Honorable **Judge Heriberto Pangilinan be reprimanded** and the repetition of

the same act be punished accordingly.[12] (Emphasis and underscoring supplied)

By Resolution of March 5, 2008,[13] the Court referred Judge Pe's Order-evaluation to the OCA for evaluation, report and recommendation with which the OCA complied by Memorandum of May 21, 2008,[14] the pertinent portions of which read:

x x x [T]he findings and recommendation of the Investigating Judge are adequately supported by evidence presented during the course of the investigation and [the OCA] hereby adopts the same. However, we take **exception** to the recommended penalty.

x x x x x x x x x

In this case, respondent judge manifested **a lack of mastery of the provision of the 1991 Rules on Summary Procedure.** On 05 December 2001, Judge Pangilinan issued a Warrant of Arrest against Lanie Cervantes, fixing the bond of the accused in the amount of Php2,000.00. The requirement for the accused to p[o]st bail is part of the regular procedure[,] not the Revised Rules on Summary Procedure.

While ordinarily, judges may not be administratively sanctioned for mere errors of judgment absent any bad faith or malice, they nonetheless have obligation to keep abreast of all basic laws and principles (*Belga vs. Buban*, 331 SCRA 531). The claim of good faith and absence of malice in glaring instances of incompetence and ineptitude does not abate a judge's consequent liability. When the law is sufficiently basic, a judge owes it to his office to know and to simply apply it; anything less than that would be constitutive of gross ignorance of the law (*Creer vs. Fabillar*, 337 SCRA 632 (2000); *Pacris vs. Pagalilauan,* 337 SCRA 638).

In the case of *Aguilar vs. Judge Dalanao*, A.M No. MTJ-00-1275, June 8, 2000, respondent was fined equivalent to one-half of his salary for one month, with stern warning that repetition of the same or similar acts will be dealt with more severely. x x x

[12] *Id.* at 502-503.

[13] *Id.* at 524.

[14] *Id.* at 525-529.

x x x x x x x x x

As for the complaint against Carmelita Baloco, since she was just an acting clerk of court and merely following the orders of respondent judge, the charges against her should, as recommended by the investigating judge, be dismissed. However, she should be admonished to be more circumspect in dealing with litigants who appear before their court so that justice can be fully served to those who are less fortunate and who are not knowledgeable with the rules and procedure.[15] (Italics in the original; emphasis and underscoring supplied, citations omitted)

The OCA thus recommended that this case be re-docketed as a regular administrative matter and that respondent Judge be **fined** in the amount equivalent to one-half of his monthly salary, with stern warning that repetition of the same or similar acts will be dealt with more severely; and that the complaint against respondent Carmenchita **be dismissed with admonition** for her to be more circumspect in dealing with litigants.[16]

By Resolution of July 21, 2008,[17] the Court required the parties to manifest within 10 days from notice whether they were willing to submit the case for resolution on the basis of the pleadings filed. By Manifestation of September 20, 2008,[18] Carmenchita expressed her desire to submit another memorandum none of which was received to date. The copy of the July 21, 2008 Resolution sent to Judge Pangilinan was stamped "Return to Sender-deceased."[19]

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[15] *Id.* at 527-528.

[16] *Id.* at 528-529.

[17] *Id.* at 530-531.

[18] *Id.* at 533-535.

[19] Judge Pangilinan passed away on June 29, 2008 per records of the Office of the Court Administrator.

The proceedings in a criminal case for Slander[20] are governed by the Revised Rule on Summary Procedure,[21] the pertinent provisions of which read:

SEC. 2. *Determination of applicability*. – Upon the filing of a civil or criminal action, the court shall **issue an order** declaring whether or not the case shall be governed by this Rule.

A patently erroneous determination to avoid the application of the Rule of Summary Procedure is a ground for disciplinary action.

x x x x x x x x x

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[20] REVISED PENAL CODE, Art. 358. *Slander*. – Oral defamation shall be punished by *arresto mayor* in its maximum period to *prision correccional* in its minimum period if it is of a serious and insulting nature; otherwise the penalty shall be *arresto menor* or a fine not exceeding 200 pesos. (Underscoring supplied)

[21] SECTION 1. *Scope*. – This Rule shall govern the summary procedure in the Metropolitan Trial Courts, the Municipal Trial Courts in Cities, the Municipal Trial Courts, and the Municipal Circuit Trial Courts in the following cases falling within their jurisdiction:

A. Civil Cases:

x x x x x x x x x

B. Criminal Cases:

(1) Violations of traffic laws, rules and regulations;

(2) Violations of the rental law;

(3) Violations of municipal or city ordinances;

(4) Violations of Batas Pambansa Bilang 22 (Bouncing Checks Law);

(5) All other criminal cases where the penalty prescribed by law for the offense charged is imprisonment not exceeding six months, or a fine not exceeding one thousand pesos (₱1,000.00), or both, irrespective of other imposable penalties, accessory or otherwise, or of the civil liability arising therefrom: *Provided, however,* that in offenses involving damage to property through criminal negligence, this Rule shall govern where the imposable fine does not exceed ten thousand pesos (₱10,000.00).

x x x (As amended by A.M. No. 00-11-01-SC of March 25, 2003, which took effect on April 15, 2003).

SEC. 12. *Duty of court.* –

(a) *If commenced by complaint.* – On the basis of the complaint and the affidavits and other evidence accompanying the same, the court may dismiss the case outright for being patently without basis or merit and order the release of the accused if in custody.

(b) *If commenced by information*. – When the case is commenced by information, or is not dismissed pursuant to the next preceding paragraph, the court shall **issue an order** which, together with copies of the affidavits and other evidence submitted by the prosecution, shall require the accused to submit his counter-affidavit and the affidavits of his witnesses as well as any evidence in his behalf, serving copies thereof on the complainant or prosecutor not later than ten (10) days from receipt of said order. The prosecution may file reply affidavits within ten (10) days after receipt of the counter-affidavits of the defense.

x x x x x x x x x

SEC. 16. *Arrest of accused.* – The court shall **not order the arrest of the accused** except for failure to appear whenever required. Release of the person arrested shall either be on bail or on recognizance by a responsible citizen acceptable to the court. (Underscoring and emphasis supplied)

Instead of first ruling whether the case fell under the Revised Rule on Summary Procedure, Judge Pangilinan immediately issued a warrant of arrest and fixed complainant's bail at ₱2,000. There being no showing that complainant failed to appear in court when required by Judge Pangilinan, the warrant of arrest he issued had no legal basis.

In *Agunday v. Judge Tresvalles,*[22] the Court noted that the requirement to post bail is no longer necessary under the Revised Rule on Summary Procedure. Further, in *Martinez, Sr. v. Judge Paguio,*[23] the Court observed that under Republic Act No. 6036,[24]

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[22] 377 Phil. 141, 153 (1999).

[23] 442 Phil. 516, 526 (2002).

[24] AN ACT PROVIDING THAT BAIL SHALL NOT, WITH CERTAIN EXCEPTIONS, BE REQUIRED IN CASES OF VIOLATIONS OF

bail is not generally required for violation of municipal or city ordinances, and for criminal offenses when the prescribed penalty is not higher than *arresto mayor* or fine of ₱2,000 or both, as in the case for Slander against complainant which is covered by Art. 358 of the Revised Penal Code.

As in *Aguilar v. Judge Dalanao*[25] and *Carpio v. De Guzman*[26] in which the Court held,

> x x x The series of patent errors committed by the respondent Judge in immediately issuing a warrant of arrest on the same day the complaint for malicious mischief was filed, thereby completely disregarding the provisions of Section 12(b) and Section 16 of the Revised Rules on Summary Procedure, and in not making a determination of whether or not the case is governed by the summary rules which clearly violates the provision of Section 2, can not be countenanced by this Court. x x x,[27]

Judge Pangilinan's *faux pas* cannot be countenanced. For when a judge shows unfamiliarity with the fundamental rules and procedures, he contributes to the erosion of public confidence in the judicial system and is guilty of gross ignorance of the law and procedures which, under Section 8, Rule 140 of the Rules of Court, is a serious charge[28] punishable by:

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

MUNICIPAL OR CITY ORDINANCES AND IN CRIMINAL OFFENSES WHEN THE PRESCRIBED PENALTY FOR SUCH OFFENSES IS NOT HIGHER THAN *ARRESTO MAYOR* AND/OR A FINE OF TWO THOUSAND PESOS OR BOTH.

[25] 388 Phil. 717 (2000).

[26] Adm. Mat. MTJ-93-850, October 2, 1996, 262 SCRA 615.

[27] *Id.* at 621.

[28] Vide *Garay v. Bartolome*, A.M. No. MTJ-08-1703, June 17, 2008, 554 SCRA 492, 497.

2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or

3. A fine of more than ₱20,000 but not exceeding ₱40,000.00.[29]

As thus recommended by the OCA, Judge Pangilinan should be fined in the amount equivalent to one-half of his monthly salary, which should, in view of his demise,[30] be deducted from the benefits due him. As recommended too, the complaint against Carmenchita is dismissed but should be admonished.

WHEREFORE, the Court finds Judge Heriberto M. Pangilinan, former Judge, Municipal Circuit Trial Court, Cuyo-Agutaya-Magsaysay, Palawan, *GUILTY* of gross ignorance of the law. He is *FINED* in the amount equivalent to one-half of his monthly salary. As the records show, however, that he died on June 29, 2008, the fine shall be deducted from the benefits due him.

The complaint against Carmenchita P. Baloco is dismissed for lack of merit. She is, however, *ADMONISHED* to be more circumspect in dealing with litigants who appear before the court.

SO ORDERED.

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

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[29] RULES OF COURT, Rule 140, Sec. 11(A).

[30] *Supra* note 19.

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

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

[***] Additional member per Special Order No. 664.

SECOND DIVISION

[A.M. No. P-06-2245. July 31, 2009]
(Formerly OCA IPI No. 06-2373-P)

JUDGE JAIME L. DOJILLO, JR., *complainant, vs.* **CONCEPCION Z. CHING, Clerk of Court, MTC, Manaoag, Pangasinan,** *respondent.*

[A.M. No. MTJ-09-1741. July 31, 2009]
(Formerly OCA IPI No. 06-1853-MTJ)

CONCEPCION A. CHING, *complainant, vs.* **JUDGE JAIME L. DOJILLO, JR., MTC, Manaoag, Pangasinan,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; CLASSIFICATION OF OFFENSES; SERIOUS OFFENSES; DISHONESTY AND FALSIFICATION OF OFFICIAL DOCUMENT ARE PUNISHABLE WITH DISMISSAL EVEN FOR THE FIRST OFFENSE; MITIGATING FACTORS; PRESENT IN CASE AT BAR.—** Dishonesty is a serious offense which has no place in the judiciary. Each false entry in the DTR constitutes falsification and dishonesty. The falsification of a DTR constitutes fraud involving government funds. It bears stressing that the DTR is used to determine the salary and leave credits accruable for the period covered thereby. Falsifying one's DTR to cover up absences or tardiness automatically results in financial losses to the government because it enables an employee to receive salary and earn leave credits for services which were never rendered. Under the Uniform Rules on Administrative Cases in the Civil Service, dishonesty and falsification of official document are punishable with dismissal even for the first offense. However, the Court, in certain instances, has not imposed the penalty of dismissal due to the presence of mitigating factors such as the length of service,

acknowledgment of the infractions, and remorse by the respondent. Considering that this is the first administrative charge against Concepcion since she entered the government service in 1996 as a court interpreter, the recommended penalty of suspension for a period of six months is in order.

2. **JUDICIAL ETHICS; JUDGES; THEIR LANGUAGE, BOTH WRITTEN AND SPOKEN, MUST BE GUARDED AND MEASURED; CASE AT BAR.—** In the case of Judge Dojillo, he should be admonished to be more circumspect in his choice of words and use of gender-fair language. There was no reason for him to emphatically describe Concepcion as a "lesbian" because the complained acts could be committed by anyone regardless of gender orientation. His statements like *"I am a true man not a gay to challenge a girl and a lesbian like her,"* "*the handiwork and satanic belief of dirty gossiper,*" and "*the product of the dirty and earthly imagination of a lesbian and gossiper*" were uncalled for. Being called to dispense justice, Judge Dojillo must demonstrate finesse in his choice of words as normally expected of men of his stature. His language, both written and spoken, must be guarded and measured lest the best of intentions be misconstrued.

D E C I S I O N

CARPIO MORALES, *J.*:

By letter-complaint[1] of January 18, 2006, Judge Jaime L. Dojillo, Jr., (Judge Dojillo), presiding judge of the Municipal Trial Court (MTC) of Manaoag, Pangasinan, charged Concepcion Z.[2] Ching (Concepcion), MTC Clerk of Court, with gross misconduct, gross incompetence and inefficiency, violation of the Supreme Court Circular which prohibits smoking inside the office, violation of the Code of Ethics, conduct unbecoming of a public official, conduct prejudicial to the interest of public service, and gross dishonesty.

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[1] *Rollo*, A.M. No. P-06-2245, pp. 2-6.

[2] Sometimes "A" in the records.

By 1st Indorsement[3] of February 2, 2006, the Office of the Court Administrator (OCA) directed Concepcion to comment on the letter-complaint within 10 days from notice, with which she complied by Comment[4] of March 13, 2006 with a prayer to consider it as a "counter complaint/charge" against Judge Dojillo.

Both complaints were referred to Executive Judge Rodrigo Nabor of the Regional Trial Court of Urdaneta City, Pangasinan, for investigation, report and recommendation. Instead of submitting their respective Comments pursuant to Judge Nabor's November 6, 2006 Order,[5] Judge Dojillo and Concepcion filed a joint Manifestation and Motion[6] of June 5, 2007 stating that the "charges and counter-charges involved were filed out of pure misunderstanding" and should thus be dismissed.

By Resolution of October 1, 2007,[7] the Court referred the complaints to the OCA for evaluation, report and recommendation.

By Memorandum of June 25, 2008,[8] the OCA synthesized Judge Dojillo's complaint as follows:

A. GROSS MISCONDUCT

Complainant judge alleged that respondent Ching is a lesbian who is a well-known gossiper and troublemaker in the town of Manaoag, Pangasinan. Even her officemates were not spared of her daily food of venomous gossiping.

Sometime in the year 1999, respondent gossiped that Ramon Paster, Court Stenographer, has an illicit relationship with Mrs. Erlinda L. Marmolejo, the Court Interpreter. Subsequently, respondent allegedly

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[3] *Rollo*, A.M. No. P-06-2245, p. 50.

[4] *Id.* at 55-71.

[5] *Id.* at 188.

[6] *Rollo*, A.M. OCA IPI No. 06-1853-MTJ, p. 51.

[7] *Id.* at 53.

[8] *Rollo*, A.M. No. P-06-2245, pp.194-199.

passed malicious information that the complainant judge and Mrs. Marmolejo had an ongoing illicit affair.

On December 20, 2005, while complainant was having lunch together with some of his staff, respondent banged the main door of the office, showing lack of civility, disrespect, discourtesy, insult and belligerent attitude towards the complainant as the presiding judge and towards respondent's officemates. Further, it was also alleged that respondent threatened with death the complainant *via* typewritten death threats purportedly using the typewriter belonging to respondent's brother.

B. GROSS INCOMPETENCE AND INEFFICIENCY

Complainant judge averred that respondent was not personally doing most of her assigned tasks. She always passed the job to other members of the staff even if she was not doing anything. Further, she was always out of the office. She also refused to learn to type well and to use the computer issued to the court. These resulted in the delay in the preparation and issuance of writs of execution ordered by the court.

C. VIOLATION OF THE SUPREME COURT CIRCULAR BANNING SMOKING INSIDE THE OFFICE.

Respondent Ching, according to the complainant, is a well known chain smoker. She smoked inside the office to the detriment of the health of her officemates.

D. CONDUCT UNBECOMING OF A PUBLIC OFFICIAL AND CONDUCT PREJUDICIAL TO THE INTEREST OF THE SERVICE.

Aside from being a well known gossiper and troublemaker, it was also alleged that respondent was a bad-tempered, impatient, disrespectful and discourteous public employee. Instead of devoting the office hours for work, she was frequently seen loitering, wasting time and parading downstairs as if she is the boss, creating an impression to the public that she could do whatever she wants and pleases and thereby eroding the trust and confidence of the people in the judiciary.

E. VIOLATION OF THE CODE OF ETHICAL STANDARDS

With her malicious motive in mind, she intimidated and harassed Mrs. Erlinda Marmolejo by uttering unsavory and uncalled remarks in order to force the latter to transfer or to resign from work. Certification of entries of incidents in the police blotter were attached

to the complaint to prove that respondent indeed annoyed and harassed Marmolejo.

F. GROSS DISHONESTY

Respondent Ching was also charged for falsifying her Daily Time Record for the month of November 2003 to make it appear that she was present in the office on November 11, 2003 when in truth and in fact, she was not as she went to Manila on that day as evidenced by her application for leave. She also allegedly falsified her Daily Time Record for the month of December 2005 by making it appear that December 12, 2005 was a local holiday in Manaoag, Pangasinan, to make her absence on the aforesaid date excusable.[9]

The OCA summarized Concepcion's Comment with counter-complaint as follows:

x x x She denied the accusations hurled against her. She averred that it has been a long time time [sic] since she heard feedbacks relative to the unusual closeness of Judge Dojillo and Mrs. Marmolejo. She, herself, has witnessed their closeness. She stated that sometime on May 27, 2005, she saw Mrs. Marmolejo came out of the chambers of the complainant looking like she just woke up from sleep. To her shock, Judge Dojillo was also inside the chambers. Thus, she talked to Marmolejo in order to silence the increasing discomfort of the people around them. Marmolejo, however, denied her suspicions. Instead of distancing from one another, Judge Dojillo and Marmolejo were oftentimes seen arriving and leaving the office together. She further advised Marmolejo that if the latter could not stop what was going on between her and the judge, Marmolejo should save herself from destruction by going abroad.

She further averred that sometime in December of 2005, at around 8 in the morning, she went early in the office. She thought that she was all alone but to her surprise, she saw Marmolejo come out of the chambers of the complainant. When she peeked inside the chambers, Judge Dojillo was also there. She thus sternly warned Marmolejo to avoid incidents that would make their colleagues uncomfortable otherwise she will be forced to make the necessary action against her and the judge.

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[9] *Id.* at 194-195.

As to the charge of gross misconduct, she argued that she was a very warm person with strong convictions for propriety and decorum in office. She averred that she made the court accessible to people by immediately entertaining their concerns and advising them of the procedures in court. She also denied being a rumor monger and claimed that all the accusations of the witnesses for the complainant were fabrications in order to malign her person. She, moreover, denied having banged the door on December 20, 2005 claiming that she had to forcefully close the same since the door was bigger than the jamb.

Anent the charge of gross incompetence and inefficiency, she stated that as a clerk of court, her duties were administrative and supervisory. She made sure that all the cases were on file and calendared and that all the pleadings were referred to the complainant for proper action. These delicate tasks were performed by her and it was only the typing job that she delegates. She justified this by saying that it was necessary for her to delegate the typing to others who are faster than her.

As to the allegation that she was always out of the office, her defense was that the nature of her job requires her to leave the office. These include the monthly submission of reports to RTC and to the Prosecutor's Office in Urdaneta City, depositing in bank of the Judiciary Development Fund and Special Allowance for the Judiciary and withdrawing of bonds from the bank whenever necessary. She handles these tasks herself as these are delicate tasks which could not be delegated to others. As to the alleged delay in the issuance of writs of execution, she attributes the delay to Judge Dojillo who fails to immediately release signed orders.

With respect to her alleged violation of the circular regarding smoking ban, she claimed that she is not a chain smoker and she was not the only one smoking among the court employees. She thus could not fathom why she was singled out by complainant. As to the charge of dishonesty, she stood by her claim as to the truthfulness of her Daily Time Record. The reason why her application for leave on November 11, 2003 was not submitted for approval was because she decided not to proceed to Manila and instead choose to stay at the office. As to her DTR for the month of December 2005, she argued that December 12, 2005 was a rest day and in fact the Municipal Hall was closed on that day. Further, according to respondent, the court employees agreed to just state in their DTRs that such was a local holiday due to Galicayo Festival. Moreover, her DTRs were with the approval of the presiding judge. She thus prayed that the

complaint against her be dismissed and that her comment be considered as a counter complaint against Judge Dojillo.[10]

The OCA, passing on the Manifestation and Motion of the parties for the dismissal of their respective charges, states that "the withdrawal of an administrative complaint or subsequent desistance of the complainant does not free the respondent from liability as the purpose of an administrative proceeding is to protect the public service, based on the time-honored principle that a public office i[s] a public trust."

The OCA goes on to state:

> The withdrawal of the complaint or the execution of an affidavit of desistance does not automatically result in the dismissal of the administrative case. x x x It will not divest the Supreme Court of its jurisdiction to investigate the matters alleged in the complaint. Thus, the manifestation and motion filed by the parties praying that the charges and counter-charges be dismissed should be denied.

Evaluating the charges and counter charges, the OCA reports as follows:

> Anent the complaint against Judge Dojillo, it bears stressing that in administrative cases, the burden devolves upon the complainant for him to prove by substantial evidence the allegations in the complaint. In the instant case, records are bereft of any evidence which would render Judge Dojillo guilty of immorality. Complainant Ching miserably failed to present any substantial evidence which will prove that Judge Dojillo is having an illicit affair with Ms. Marmolejo. It was also revealed that it was not only Ms. Marmolejo who enters the chambers of the judge. Even granting that it was only Ms. Marmolejo who enters the chambers of the judge, the same is purely due to work-related reasons since the computer is inside his chambers. It would thus be hasty to conclude that they were having an illicit affair. Moreover, the allegation that Ms. Marmolejo and Judge Dojillo were unusually early in the office deserves scant consideration. It was complainant Ching, herself, who admitted that she saw Marmolejo and Judge Dojillo at around 8 o'clock in the morning. It bears stressing that eight in the morning is no longer unusually early. In fact[,] it is already the start

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[10] *Id.* at 195-196.

of the official office hours for all the personnel of the court. This Office also sees nothing wrong and unsuitable in the actuation of the judge in giving Marmolejo and her family a free ride in his car since the residence of Marmolejo is on the way to the judge's own residence. We find nothing immoral with that. Time and again, the Court will not hesitate to impose penalty to those who are guilty of any wrongdoing but it will likewise not hesitate to exonerate those charged of baseless and unfounded complaints.

Anent the complaint against Ching, the latter should be penalized for her acts. Misconduct is defined as any unlawful conduct on the part of a person concerned in the administration of justice prejudicial to the rights of the parties or to the right determination of the cause. It generally means wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose. Her actuations in maliciously accusing her officemate of having an illicit affair with Judge Dojillo should not be countenanced especially in the instant case where it appears that the accusations made by her are baseless and unfounded. What is more alarming is the fact that she falsified the entries in her DTR in making it appear that December 12, 2005 was a local holiday when in fact it was not. Her claim that the aforesaid date was a local holiday was not corroborated by any other evidence. In fact, her co-employees attested to the fact that such day was a regular working day. In making it appear in her DTR that such day was a holiday only highlights her dishonesty x x x.

x x x x x x x x x

There is no denying that respondent Ching committed misrepresentation when she made it appear in her DTR that she was present in the office while in fact she was not. Falsification of DTR is patent dishonesty. Dishonesty, being a grave offense, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and with perpetual disqualification from re-employment in government service. Indeed, dishonesty is a malevolent act that has no place in the Judiciary. x x x

x x x x x x x x x

Rule IV, Section 52 of the Uniform Rules on Administrative Cases in the Civil Service Commission provides that dishonesty and falsification are grave offenses which carries with it the penalty of dismissal even on the first offense. However, such an extreme penalty is not hastily inflicted upon an erring employee especially in cases

where there exist mitigating circumstances that could alleviate the culpability. Inasmuch as this is respondent Ching's first offense, it is considered a mitigating circumstance in h[er] favor. Even if the law specifically states that the appreciation of the mitigating circumstance must first be invoked or pleaded by the proper party, the same may be considered even if not raised by the respondent in the interest of substantial justice.

In *Re: Failure of Jose Dante E. Guerrero to Register His Time In and Out in Chronolog Time Recorder Machine on Several Dates,* the Court imposed the penalty of six months suspension to an employee found guilty of dishonesty for falsifying his time records.[11] (Italics in the original; underscoring supplied)

Thus, the OCA recommends that

x x x respondent Concepcion Ching, Clerk of Court, MTC, Manaoag, Pangasinan, be found guilty of falsification and dishonesty and be **SUSPENDED** for six (6) months with a **STERN WARNING** that a repetition of the same or similar acts x x x shall be dealt with more severely; [and]

x x x the counter-charge against Judge Jaime L. Dojillo, Jr., MTC, Manaoag, Pangasinan x x x be **DISMISSED** for being barren of merit.[12] (Capitalization and emphasis in the original; underscoring supplied)

By Resolution of August 13, 2008,[13] the Court required the parties to manifest whether they were willing to submit the cases for resolution based on the pleadings filed, within 10 days from notice. By Joint Manifestation of September 29, 2008,[14] the parties answered in the affirmative and prayed that the cases be resolved "soonest."

In her Affidavit, Jenelyn Sernadilla (Jenelyn) of the Office of the Human Resource Management of Manaoag, Pangasinan

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[11] *Id.* at 196-199.

[12] *Id.* at 199.

[13] *Id.* at 204.

[14] *Id.* at 206.

stated that December 12, 2005 was a regular working day.[15] On the other hand, in his Affidavit, Municipal Consultant Sofronio L. Mangonon (Mangonon)[16] stated that on December 12, 2005, a Monday, the municipal hall where the court holds office was closed, for it was a rest day after the *Galicayo* Festival which ended on the preceding Sunday.

Between the two affidavits, that of Jenelyn's appears to be more credible, she being the officer in charge of the attendance of the employees. As Judge Dojillo pointed out, Mangonon, being a consultant, was not required to report to office daily as he, in fact, only reports during paydays. Parenthetically, Concepcion could have submitted the affidavits of employees or the photocopies of their Daily Time Record (DTR) to support her claim that December 12, 2005 was a local holiday.

Dishonesty is a serious offense which has no place in the judiciary.[17] Each false entry in the DTR constitutes falsification and dishonesty.[18] The falsification of a DTR constitutes fraud involving government funds. It bears stressing that the DTR is used to determine the salary and leave credits accruable for the period covered thereby. Falsifying one's DTR to cover up absences or tardiness automatically results in financial losses to the government because it enables an employee to receive salary and earn leave credits for services which were never rendered.[19]

Under the Uniform Rules on Administrative Cases in the Civil Service, dishonesty and falsification of official document

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[15] Affidavit of Jenelyn Sernadilla, *rollo*, A.M. No. P-06-2245, p. 134.

[16] *Id.* at 102.

[17] *De Vera v. Rimas,* A.M. No. P-06-2118, June 12, 2008, 554 SCRA 253, 259.

[18] *Report on the Attendance in Office of Mr. Glenn B. Hufalar, MTCC, Br. 1, San Fernando City, La Union,* A.M. No. 04-10-296-MTCC, July 28, 2008, 560 SCRA 14.

[19] *Flores v. Hon. Layosa*, 479 Phil. 1020, 1038 (2004).

are punishable with dismissal even for the first offense.[20] However, the Court, in certain instances, has not imposed the penalty of dismissal due to the presence of mitigating factors such as the length of service, acknowledgment of the infractions, and remorse by the respondent.[21]

Considering that this is the first administrative charge against Concepcion since she entered the government service in 1996 as a court interpreter, the recommended penalty of suspension for a period of six months is in order.

In the case of Judge Dojillo, he should be admonished to be more circumspect in his choice of words and use of gender-fair language.[22] There was no reason for him to emphatically describe Concepcion as a "lesbian"[23] because the complained acts could be committed by anyone regardless of gender orientation. His statements like *"I am a true man not a gay to challenge a girl and a lesbian like her,"*[24] "*the handiwork and satanic belief of dirty gossiper,*"[25] and "*the product of the dirty and earthly imagination of a lesbian and gossiper*"[26] were uncalled for.

Being called to dispense justice, Judge Dojillo must demonstrate finesse in his choice of words as normally expected

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[20] Civil Service Commission Resolution No. 99-1936 (August 31, 1999), Rule IV, Section 52 (A) (1) & (6).

[21] *Re: Administrative Case for Falsification of Official Documents and Dishonesty against Randy S. Villanueva,* A.M. No. 2005-24-SC, August 10, 2007, 529 SCRA 679, 687; *Servino v. Adolfo*, A.M. No. P-06-2204, November 30, 2006, 509 SCRA 42.

[22] *Vide* A.M. No. 03-05-01-SC (April 27, 2004), NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY, Canon 5.

[23] *Vide* Judge Dojillo's letter-complaint, *rollo*, A.M. No. P-06-2245, p. 2, where he placed emphasis on the word "lesbian."

[24] *Id.* at 110.

[25] *Id.* at 107.

[26] *Id.* at 108.

of men of his stature.[27] His language, both written and spoken, must be guarded and measured lest the best of intentions be misconstrued.[28]

WHEREFORE, Concepcion Ching, Clerk of Court of the Municipal Trial Court of Manaoag, Pangasinan, is found GUILTY of dishonesty and falsification of official document, and is *SUSPENDED* for six months without salary and other benefits, with a STERN WARNING that a repetition of the same or similar acts shall be dealt with more severely.

The complaint against Judge Jaime L. Dojillo, Jr. is *DISMISSED*, but he is *ADMONISHED* to be more circumspect in his choice of words and use of gender-fair language.

SO ORDERED.

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

SECOND DIVISION

[A.M. No. P-08-2578. July 31, 2009]
(Formerly OCA I.P.I. No. 08-2924-P)

GASPAR R. DUTOSME, *complainant, vs.* **ATTY. REY D. CAAYON,** *respondent.*

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[27] Vide Negros *Grace Pharmacy, Inc. v. Judge Hilario,* 461 Phil. 843, 851-852 (2003).

[28] *De la Cruz v. Judge Bersamira,* 402 Phil. 671, 678 (2001).

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

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

[***] Additional member per Special Order No. 664.

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; REVISED UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; MISCONDUCT; IMPOSABLE PENALTY IS SUSPENSION FOR A FIRST OFFENSE; CASE AT BAR.— Respondent's claim of having received the ₱2,500 in trust for Belle representing stenographic fees is belied by the written acknowledgment receipt he himself issued to complainant stating that the amount was for "commissioner's and stenographer's fees." In *Nieva v. Alvarez-Edad*, this Court found the therein respondent Clerk of Court guilty of demanding/receiving commissioner's fee in violation of Section B, Chapter II and Section D(7), Chapter IV of the Manual for Clerks of Court and affirmed the OCA's finding that the respondent issued a receipt in the guise of collecting payment for TSN in behalf of a court stenographer when, in fact, part of the amount indicated in the receipt was due her as commissioner's fee. The Court in that case referred to the Manual as the "Bible for Clerks of Court." Section 52(B), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service imposes a penalty of suspension from one (1) month and one (1) day to six (6) months for a first offense of Misconduct. Considering that this appears to be the first offense of respondent, his suspension from the service for one (1) month and one (1) day without pay is in order.

D E C I S I O N

CARPIO MORALES, *J.*:

Gaspar R. Dutosme (complainant) charged Atty. Rey D. Caayon (respondent), Branch Clerk of Court, Regional Trial Court (RTC), Branch 61, Bogo, Cebu in an affidavit dated August 2, 2006, for soliciting and receiving the amount of ₱2,500 representing commissioner's and stenographer's fees and not issuing an official receipt therefor.

By complainant's claim, he went to Branch 61 of the RTC on May 9, 2006 to secure a copy of a decision in LRC Case

No. 61-0053. He was able to secure a copy of the decision alright but only after respondent asked for and received Two Thousand Five Hundred (₱2,500) Pesos representing what respondent told him to be commissioner's and stenographer's fees. And while respondent gave him a handwritten receipt of the amount, he did not issue an official receipt.

By 1st Indorsement of August 29, 2006[1], the Office of the Court Administrator (OCA) required respondent to file his Comment to complainant's Affidavit.

In his Comment,[2] respondent gave his version as follows: On May 9, 2006, complainant was looking for Belle Garrido (Belle), the stenographer who recorded the proceedings in the LRA case. Since Belle was unavailable as she was the stenographer on duty that day, he furnished complainant a copy of the Decision after which complainant tendered to him a handful of money with the request that the same be given to Belle. Albeit he refused to receive the money, complainant pleaded with him to accept it so, in good faith, he received the money and prepared the above-stated handwritten receipt.

Respondent went on to claim that on his instruction, complainant returned later that day so that Belle could issue a receipt, but when he asked for the handwritten receipt he had earlier issued so he could give him the receipt prepared by Belle, complainant replied that he had already sent it to his boss in Cebu City.

In support of his claim, respondent attached a Certification[3] issued by Garrido and Modesto V. Cuico, both court stenographers of Branch 61, dated September 8, 2006, which stated that they received the amount of ₱2,500 from respondent representing payment for the TSNs in LRC Case No. 61-0053.

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[1] *Rollo,* p. 19.

[2] *Id.* at 13-15.

[3] *Id.* at 18.

Complainant in his letter-reply,[4] insisted that respondent received the ₱2,500 as commissioner's fee.

By Resolution of November 12, 2008,[5] the parties were required by the Court to manifest whether they were willing to submit the matter on the basis of the pleadings. Not one of the parties complied.

By Report and Recommendation dated August 19, 2008,[6] the OCA came up with the following Evaluation.

Atty. Caayon should be held responsible for exacting an amount from a party litigant.

Section B, Chapter II of the Manual for Clerks of Court provides: "*No Branch Clerk of Court shall demand and/or receive commissioner's fees for the reception of evidence ex-parte*."

Despite his denial, we do not doubt that Atty. Caayon exacted an amount for commissioner's fee from Mr. Dutosme. This fact appears on the face of the acknowledgement receipt that he issued. It clearly indicates receipt of the amount of ₱2,500.00 "*representing payment of the* ***Commissioner's fee*** *and Transcript of Stenographic Notes in LRC Case No. 61-0063-LRC.*"

The comment which Atty. Caayon submitted cannot be given more weight that the affidavit executed by Mr. Dutosme, considering that the former was not executed under oath unlike the latter. Further, there was no showing of any motive on the part of Mr. Dutosme to fabricate charges against Atty. Caayon. On the other hand, the certification dated 8 September 2006 issued by Garrido and Cuico and the subsequent letter dated 18 December 2006 of Garrido taking full responsibility for the amount are but attempts to exonerate their superior. All these are self-serving and inconsistent with the tenor of the more convincing evidence – the acknowledgment receipt issued by Atty. Caayon.

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[4] *Id.* at 24.

[5] *Id.* at 29.

[6] *Id.* at 1-5.

Evidently, Atty. Caayon violated the provisions of the Manual for Clerks of Court proscribing the collection of Commissioner's fee in *ex-parte* proceedings.

x x x (Emphasis and italics in the original, underscoring supplied)

The OCA thereupon recommended that respondent be found liable for misconduct and suspended from the service for one (1) month without pay with a warning that a repetition of the same or similar offense shall be dealt with more severely.

The Court finds the Evaluation of the OCA well taken.

Respondent's claim of having received the ₱2,500 in trust for Belle representing stenographic fees is belied by the written acknowledgment receipt he himself issued to complainant stating that the amount was for "commissioner's and stenographer's fees."

In *Nieva v. Alvarez-Edad*,[7] this Court found the therein respondent Clerk of Court guilty of demanding/receiving commissioner's fee in violation of Section B, Chapter II and Section D(7), Chapter IV of the Manual for Clerks of Court and affirmed the OCA's finding that the respondent issued a receipt in the guise of collecting payment for TSN in behalf of a court stenographer when, in fact, part of the amount indicated in the receipt was due her as commissioner's fee.[8] The Court in that case referred to the Manual as the "Bible for Clerks of Court."[9]

Section 52(B), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service[10] imposes a penalty of suspension from one (1) month and one (1) day to six (6)

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[7] A.M. No. P-01-1459, January 31, 2005, 450 SCRA 45.

[8] *Id.* at 51.

[9] *RTC Makati Movement Against Graft and Corruption v. Atty. Inocencio E. Dumlao, Acting Clerk of Court,* A.M. No. P-93-800-A, August 9, 1995, 247 SCRA 108.

[10] CSC Memorandum Circular No. 19, series of 1999, implementing Book V of the Administrative Code of 1987.

months for a first offense of Misconduct. Considering that this appears to be the first offense of respondent, his suspension from the service for one (1) month and one (1) day without pay is in order.

WHEREFORE, the Court finds respondent Branch Clerk of Court Rey D. Caayon *guilty* of Simple Misconduct and *SUSPENDS* him from the service for one (1) month and one (1) day without pay, and with the *WARNING* that a repetition of the same or a similar offense shall be dealt with more severely. Let a copy of this Resolution be attached to the service record of respondent Rey D. Caayon.

SO ORDERED.

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

SECOND DIVISION

[A.M. No. RTJ-08-2132. July 31, 2009]
(Formerly A.M. OCA IPI No. 07-2549-RTJ)

ATTY. FLORENCIO ALAY BINALAY, *complainant, vs.* **JUDGE ELIAS O. LELINA, JR.,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; JUDGES; WHERE THE LAW DOES NOT MAKE ANY DISTINCTION IN PROHIBITING JUDGES FROM ENGAGING IN THE PRIVATE PRACTICE OF LAW WHILE HOLDING JUDICIAL

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* Additional member per Special Order No. 658.

** Additional member per Special Order No. 635.

*** Additional member per Special Order No. 664.

OFFICE, NO DISTINCTION SHOULD BE MADE IN ITS APPLICATION; CASE AT BAR.— *Ubi lex non distinguit nec nos distinguire debemos.* Where the law does not distinguish, the courts should not distinguish. Since Section 35, Rule 138 of the Rules of Court and Section 11, Canon 4 of the New Code of Judicial Conduct for the Philippine Judiciary does not make any distinction in prohibiting judges from engaging in the private practice of law while holding judicial office, no distinction should be made in its application. In the present case, respondent having been merely suspended and not dismissed from the service, he was still bound under the prohibition. *Apropos* is this Court's ruling in *Tabao v. Judge Asis*: x x x Specifically, Section 35 of Rule 138 was promulgated pursuant to the constitutional power of the Court to regulate the practice of law. It is based on sound reasons of public policy, for there is no question that <u>the rights, duties, privileges and functions of the office of an attorney-at-law are so inherently incompatible with the high official functions, duties, powers, discretions and privileges of a judge of the Regional Trial Court</u>. This rule is obligatory upon the judicial officers concerned to give their full time and attention to their judicial duties, prevent them from extending special favors for their own private interests and assure the public of impartiality in the performance of their functions. These objectives are dictated by a sense of moral decency and the desire to promote public interest. Admitting having engaged in the private practice of law while he was under preventive suspension, respondent explains that he was forced to do so out of his sense of responsibility to ameliorate the pitiful condition of his family. The justification does not lie. As a member of the judiciary, albeit a suspended one, he still had the duty to comply with the Rules and the New Code of Judicial Conduct. That respondent tried to secure an authorization to engage in private practice pending the resolution of A.M. No. RTJ-98-1415 shows his awareness of the proscription against engaging in the private practice of law.

2. **ID.; ID.; A JUDGE SHOULD NOT PERMIT A LAW FIRM, OF WHICH HE WAS FORMERLY AN ACTIVE MEMBER, TO CONTINUE TO CARRY HIS NAME IN THE FIRM NAME; RATIONALE; CASE AT BAR.—** x x x [A] judge should not permit a law firm, of which he was formerly an active member, to continue to carry his name in the firm name as that might create the impression that the firm possesses an improper

influence with the judge which consequently is likely to impel those in need of legal services in connection with matters before him to engage the services of the firm. A judge cannot do indirectly what the Constitution prohibits directly, in accordance with the legal maxim, *quando aliquid prohibitur ex directo, prohibitur et per obliquum* or what is prohibited directly is prohibited indirectly. By allowing his name to be included in the firm name "Bartolome Lelina Calimag Densing & Associates Law Offices" while holding a judicial office, he held himself to the public as a practicing lawyer, in violation of the Rules and the norms of judicial ethics.

3. **LEGAL ETHICS; JUDGES; DISCIPLINE OF JUDGES; CLASSIFICATION OF CHARGES; LESS SERIOUS CHARGES; UNAUTHORIZED PRACTICE OF LAW; PENALTY.—** Under Sections 9 and 11(B), Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10 SC, unauthorized practice of law is classified as a less serious charge punishable by suspension from office without salary and other benefits for not less than one nor more than three months, or a fine of more than ₱10,000 but not exceeding ₱20,000.

D E C I S I O N

CARPIO MORALES, *J.*:

By Complaint of July 5, 2006,[1] Atty. Florencio Alay Binalay (complainant), head agent of the National Bureau of Investigation in Bayombong, Nueva Vizcaya, administratively charged Judge Elias O. Lelina, Jr. (respondent), presiding judge of Branch 32 of the Regional Trial Court (RTC) of Cabarroguis, Quirino, for violation of Section 35, Rule 138 of the Rules of Court and Rule 5.07, Canon 5 of the Code of Judicial Conduct.

The Court, by Order of August 5, 1998, preventively suspended respondent on account of an earlier administrative complaint filed by Divina Perez and Margie Monforte, docketed as A.M. No. RTJ-98-1415,[2] charging respondent with harassment

[1] *Rollo*, pp. 6-29.

[2] Formerly AM OCA IPI No. 98-527-RTJ.

in connection with the criminal complaint for Rape filed against him, which he allegedly committed against Margie Monforte, and the complaint for Abduction with Rape and Slight Illegal Detention filed by Divina Perez.

In view of the above-said criminal complaints against him, respondent was placed under detention from the time of his voluntary surrender on November 18, 1998 until his release on July 28, 2005 following his acquittal by the RTC, Branch 27, Manila which reversed its earlier decision of conviction after the conduct of a new trial.

On January 11, 2006, respondent filed a Motion for Early Resolution[3] of A.M. No. RTJ-98-1415 praying for a resolution in his favor, given his acquittal in the criminal cases against him. He subsequently filed a Manifestation, Appeal and Omnibus Motion of June 1, 2006[4] appealing to the Court's "sense of understanding, charity and justice" to grant him the permission to practice law during the remainder of his preventive suspension or, if such cannot be granted, to consider him resigned from the judiciary. It turned out that before he filed the above-said Manifestation, Appeal and Omnibus Motion, respondent engaged in the private practice of law. Thus he represented Melanio Agustin and Patricio Bautista in Criminal Case No. 5192, for violation of Section 68 of Presidential Decree No. 705, pending before the RTC, Branch 27, of Bayombong, Nueva Vizcaya, as shown by a Notice of Hearing dated May 10, 2006[5] addressed to him as counsel for the accused, as well as pleadings[6] signed by him on April 10, 2006 and May 11, 2006. And he also represented a certain Agnes Mariano Gabatin in Civil Case No. 632-2006 before the RTC, Branch 32 of Cabarroguis, Quirino, as shown by a motion dated May 21, 2006[7] signed by

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[3] *Rollo,* pp. 92-94.

[4] *Id.* at 95-97.

[5] *Id.* at 11.

[6] *Id.* at 12-20.

[7] *Id.* at 21-24.

him. The pleadings filed in both cases were signed by him as a partner of the Bartolome Lelina Calimag Densing & Associates Law Offices.[8]

Respondent was thus required to comment on the present Complaint of July 5, 2006 within 10 days from receipt of the Office of the Court Administrator (OCA's) 1st Indorsement of July 10, 2006.[9] (The directive for respondent to comment on the present complaint was later reiterated by the OCA by 1st Tracer of September 5, 2006).[10]

In the meantime, the OCA, by Memorandum of August 17, 2006, directed respondent to desist from engaging in the practice of law pending the Court's resolution of his above-stated Manifestation, Appeal and Omnibus Motion. Responding, respondent, by letter of October 9, 2006 to the OCA, prayed that the "desist order" be set aside and a new one issued considering him resigned and thus not covered by the Code of Judicial Conduct. This letter was, by November 13, 2006 Memorandum of the Court Administrator to then Associate Justice Reynato S. Puno, "treated as urgent motion for the early resolution of the administrative complaint [A.M. No. RTJ-98-1415] against him."[11]

In his October 14, 2006 Comment[12] on the present complaint, respondent posits that the prohibition to engage in the private practice of law applies only to judges who are in the active service and should not cover those under suspension. He stresses that during his preventive suspension and following his release from detention, he was forced to engage in the private practice of law, the only profession known to him, due to "his impoverished life" and "the continuous sufferings of his wife and children"; and that the present administrative case was ill-

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[8] *Id.* at 15, 19 and 24.

[9] *Id.* at 30.

[10] *Id.* at 31.

[11] *Id.* at 102-104.

[12] *Id.* at 84-100.

motivated as complainant bears a grudge against him for his failure to convince his (respondent's) client, Agnes Mariano Gabatin (Agnes) to desist from her complaint against herein complainant pending before the Office of the Ombudsman.

In his Reply to respondent's Comment,[13] complainant denies respondent's attribution to him of ill-motive, explaining that the complaint before the Office of the Ombudsman was filed by Agnes, as advised by respondent, to stymie him from performing his functions as a law enforcer.

By Resolution of March 28, 2007, the Court directed the consolidation of the present complaint with A.M. No. RTJ-98-1415,[14] which directive was later revoked by Resolution of December 12, 2007,[15] A.M. No. RTJ-98-1415 having already been dismissed by Resolution of August 13, 2007[16] (exonerating respondent of the two administrative charges against him).

By Memorandum of May 20, 2008,[17] the OCA, in the present complaint, finds respondent guilty of unauthorized practice of law since by "being merely suspended and not dismissed from [the] service, he remains to be bound by the prohibition to practice conformably with the provision of the code." The OCA thus recommends a penalty of three-month suspension from the service without pay.

Ubi lex non distinguit nec nos distinguire debemos. Where the law does not distinguish, the courts should not distinguish.[18] Since Section 35, Rule 138 of the Rules of Court[19] and Section

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[13] *Id.* at 36-81.

[14] *Id.* at 106.

[15] *Id.* at 137.

[16] *Id.* at 136.

[17] *Id.* at 141-144.

[18] *Guerrero v. COMELEC*, 391 Phil. 344 (2000).

[19] Sec. 35. *Certain attorneys not to practice.*– No judge or other official or employee of the superior courts or of the Office of the Solicitor General shall engage in private practice of law as a member of the bar or give professional advice to clients.

11, Canon 4 of the New Code of Judicial Conduct for the Philippine Judiciary[20] does not make any distinction in prohibiting judges from engaging in the private practice of law while holding judicial office, no distinction should be made in its application. In the present case, respondent having been merely suspended and not dismissed from the service, he was still bound under the prohibition.

Apropos is this Court's ruling in *Tabao v. Judge Asis*:[21]

> x x x Specifically, Section 35 of Rule 138 was promulgated pursuant to the constitutional power of the Court to regulate the practice of law. It is based on sound reasons of public policy, for there is no question that <u>the rights, duties, privileges and functions of the office of an attorney-at-law are so inherently incompatible with the high official functions, duties, powers, discretions and privileges of a judge of the Regional Trial Court</u>. This rule is obligatory upon the judicial officers concerned to give their full time and attention to their judicial duties, prevent them from extending special favors for their own private interests and assure the public of impartiality in the performance of their functions. These objectives are dictated by a sense of moral decency and the desire to promote public interest.[22] (Underscoring supplied)

Admitting having engaged in the private practice of law while he was under preventive suspension, respondent explains that he was forced to do so out of his sense of responsibility to ameliorate the pitiful condition of his family. The justification does not lie. As a member of the judiciary, albeit a suspended one, he still had the duty to comply with the Rules and the New Code of Judicial Conduct.

That respondent tried to secure an authorization to engage in private practice pending the resolution of A.M. No. RTJ-

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[20] A.M. No. 03-05-01-SC (April 27, 2004), which took effect on June 1, 2004, Section 11 of which provides that "[j]udges shall not practice law whilst the holder of judicial office." *<u>Vide</u>* old provision in Sec. 5.07, Canon 5, CODE OF JUDICIAL CONDUCT.

[21] 322 Phil. 630 (1996).

[22] *Id.* at 633-634.

98-1415[23] shows his awareness of the proscription against engaging in the private practice of law.

Additionally, a judge should not permit a law firm, of which he was formerly an active member, to continue to carry his name in the firm name as that might create the impression that the firm possesses an improper influence with the judge which consequently is likely to impel those in need of legal services in connection with matters before him to engage the services of the firm. A judge cannot do indirectly what the Constitution prohibits directly, in accordance with the legal maxim, *quando aliquid prohibitur ex directo, prohibitur et per obliquum* or what is prohibited directly is prohibited indirectly.[24]

By allowing his name to be included in the firm name "Bartolome Lelina Calimag Densing & Associates Law Offices"[25] while holding a judicial office, he held himself to the public as a practicing lawyer, in violation of the Rules and the norms of judicial ethics.

Under Sections 9 and 11(B), Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10 SC,[26] unauthorized practice of law is classified as a less serious charge punishable by suspension from office without salary and other benefits for not less than one nor more than three months, or a fine of more than ₱10,000 but not exceeding ₱20,000.

Records of the Court show that respondent, in two separate administrative complaints, A.M. No. OCA IPI 99-860-RTJ and A.M. No. OCA IPI 99-588-RTJ,[27] was charged with gross

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[23] *Id.* at 95-99.

[24] RUBEN E. AGPALO, *LEGAL AND JUDICIAL ETHICS* (2002), pp. 587-588.

[25] *Id.* at 15, 19 and 24.

[26] Discipline of Judges of Regular and Special Courts and Justices of Court of Appeals and Sandiganbayan (effective October 1, 2001).

[27] Filed by *Mga Umaasang Mamamayan ng Quirino* and Onofre G. Dulay, respectively. The two complaints were consolidated and docketed as A.M. No. RTJ-99-1516; *rollo*, p. 4.

misconduct, bias, violation of RA No. 3019 and other illegal activities. By Decision of July 14, 2005, the Court found him guilty of gross misconduct and suspended him from office for six (6) months, without salary and other benefits.

With the dismissal on August 13, 2007 of A.M. No. RTJ-98-1415, as reflected above, the suspension of respondent on account of said case was deemed lifted.

Given that respondent is not a first-time offender, he having been previously faulted for gross misconduct with warning of stiffer penalties on future infractions,[28] the Court finds the penalty recommended by the OCA in order.

WHEREFORE, the Court finds Judge Elias O. Lelina, Jr. of Branch 32, Regional Trial Court of Cabarroguis, Quirino *GUILTY* of unauthorized practice of law, and is *SUSPENDED* from office for Three (3) Months without salary and other benefits and *STERNLY WARNED* that a repetition of the same or similar acts shall be dealt with more severely.

SO ORDERED.

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

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[28] *Dulay v. Lelina, Jr.,* A.M. No. RTJ-99-1516, July 14, 2005, 463 SCRA 269.

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

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

[***] Additional member per Special Order No. 664.

SPECIAL THIRD DIVISION

[G.R. No. 151424. July 31, 2009]

EAGLE REALTY CORPORATION, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES Represented by the Administrator of the Land Registration Authority, NATIONAL TREASURER OF THE PHILIPPINES, HEIRS OF CASIANO DE LEON and MARIA SOCORRO DE LEON,** *respondents.*

SYLLABUS

CIVIL LAW; EFFECT AND APPLICATION OF LAWS; JUDICIAL INTERPRETATION OF A STATUTE CONSTITUTES PART OF THE LAW AS OF THE DATE IT WAS ORIGINALLY PASSED; IT DOES NOT AMOUNT TO THE PASSAGE OF A NEW LAW; CASE AT BAR.— Judicial interpretation of a statute constitutes part of the law as of the date it was originally passed, since the Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect. Such judicial doctrine does not amount to the passage of a new law, but consists merely of a construction or interpretation of a pre-existing one, as is the situation in this case. The assailed decision merely defines an "innocent purchaser for value" with respect to entities engaged in the real estate business. In *Sunshine Finance,* the Court required, for the first time, investment and financing corporations to take the necessary precautions to ascertain if there were any flaws in the certificate of title and examine the condition of the property they were dealing with. Although the property involved was mortgaged to and, subsequently, purchased by therein petitioner several years before the said decision was promulgated, we note that the rule was immediately applied to that case. Our herein assailed ruling expands the ruling in *Sunshine Finance* to cover realty corporations, which, because of the nature of their business, are, likewise, expected to exercise a higher standard of diligence in ascertaining the status of the property, not merely rely on what appears on the face of a certificate of title. In like manner, our ruling should be applied to the present case; otherwise, it would be reduced to "a mere academic exercise

> with the result that the doctrine laid down would be no more than a dictum, and would deprive the holding in the case of any force."

APPEARANCES OF COUNSEL

Villaraza & Angangco Law Offices for petitioner.
The Solicitor General for public respondent.
Modesto Jimenez for private respondent.
Remulla & Associates Law Offices for Heirs of Casiano de Leon and Socorro de Leon.

R E S O L U T I O N

NACHURA, *J.*:

Petitioner Eagle Realty Corporation seeks the reconsideration of this Court's Decision dated July 4, 2008, which affirmed the Court of Appeals Decision dated January 22, 2001 and Resolution dated January 8, 2002, and upheld the cancellation of petitioner's certificate of title based on a finding that it is not a purchaser in good faith and for value.

In the assailed decision, the Court held that "a corporation engaged in the buying and selling of real estate is expected to exercise a higher standard of care and diligence in ascertaining the status and condition of the property subject of its business transaction." Citing *Sunshine Finance and Investment Corporation v. Intermediate Appellate Court*,[1] the Court declared that, similar to investment and financing corporations, such corporation "cannot simply rely on an examination of a Torrens certificate to determine what the subject property looks like as its condition is not apparent in the document."

Petitioner's Motion for Reconsideration centers on the application of *Sunshine Finance* to the present case. Petitioner argues therein that the ruling in *Sunshine Finance* is a recent innovation, established long after the subject property was

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[1] G.R. Nos. 74070-71, October 28, 1991, 203 SCRA 210.

transferred in petitioner's name in 1984, hence, should not be applied to the case. Prior jurisprudence that protected banks, investment corporations and realty companies, without imposing any additional burden of going beyond the face of the title, should be applied instead. Petitioner points out that it purchased the subject property in 1984, when prevailing jurisprudence did not, as yet, impose upon realty companies the obligation to look beyond the certificate of title for it to qualify as an innocent purchaser for value. To charge petitioner with such additional obligation is to burden it with a then non-existent obligation which thus violates its right to due process.[2]

In its Comment, the Office of the Solicitor General (OSG) averred that the ruling in *Sunshine Finance* is not in the nature of a statute that cannot be retroactively applied; it is jurisprudence that merely restates the definition of an innocent purchaser for value.[3]

We agree with the OSG and, consequently, deny the motion for reconsideration.

Judicial interpretation of a statute constitutes part of the law as of the date it was originally passed, since the Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect. Such judicial doctrine does not amount to the passage of a new law, but consists merely of a construction or interpretation of a pre-existing one,[4] as is the situation in this case. The assailed decision merely defines an "innocent purchaser for value" with respect to entities engaged in the real estate business.

In *Sunshine Finance,* the Court required, for the first time, investment and financing corporations to take the necessary precautions to ascertain if there were any flaws in the certificate of title and examine the condition of the property they were dealing with. Although the property involved was mortgaged

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[2] *Rollo,* pp. 1523-1525.

[3] *Id*. at pp. 1734-1735.

[4] *Senarillos v. Hermosisima,* 101 Phil. 561 (1956).

to and, subsequently, purchased by therein petitioner several years before the said decision was promulgated, we note that the rule was immediately applied to that case.

Our herein assailed ruling expands the ruling in *Sunshine Finance* to cover realty corporations, which, because of the nature of their business, are, likewise, expected to exercise a higher standard of diligence in ascertaining the status of the property, not merely rely on what appears on the face of a certificate of title. In like manner, our ruling should be applied to the present case; otherwise, it would be reduced to "a mere academic exercise with the result that the doctrine laid down would be no more than a dictum, and would deprive the holding in the case of any force."[5]

The other arguments advanced by petitioner are a mere rehash of the arguments in its previous pleadings, which had already been passed upon adequately by the Court in the assailed decision.

IN LIGHT OF THE FOREGOING, the Motion for Reconsideration is *DENIED WITH FINALITY* for lack of merit.

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio Morales,[*] *Chico-Nazario,* and *Leonardo-de Castro,*[**] *JJ.,* concur.

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[5] *Serrano v. National Labor Relations Commission,* 387 Phil. 345, 357 (2000).

[*] Designated member per raffle dated March 18, 2009.

[**] Designated additional member per Special Order No. 669 dated July 15, 2009.

SECOND DIVISION

[G.R. No. 161062. July 31, 2009]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **FERVENTINO U. TANGO,** *respondent.*

SYLLABUS

1. **CIVIL LAW; FAMILY CODE; SUMMARY JUDICIAL PROCEEDINGS IN THE FAMILY LAW; RULE ON APPEAL OF JUDGMENTS RENDERED THEREON; EXPLAINED; CASE AT BAR.—** By express provision of law, the judgment of the court in a summary proceeding shall be immediately final and executory. As a matter of course, it follows that no appeal can be had of the trial court's judgment in a summary proceeding for the declaration of presumptive death of an absent spouse under Article 41 of the Family Code. It goes without saying, however, that an aggrieved party may file a petition for *certiorari* to question abuse of discretion amounting to lack of jurisdiction. Such petition should be filed in the Court of Appeals in accordance with the Doctrine of Hierarchy of Courts. To be sure, even if the Court's original jurisdiction to issue a writ of *certiorari* is concurrent with the RTCs and the Court of Appeals in certain cases, such concurrence does not sanction an unrestricted freedom of choice of court forum. From the decision of the Court of Appeals, the losing party may then file a petition for review on *certiorari* under Rule 45 of the Rules of Court with the Supreme Court. This is because the errors which the court may commit in the exercise of jurisdiction are merely errors of judgment which are the proper subject of an appeal. In the case before us, petitioner committed a serious procedural lapse when it filed a notice of appeal in the Court of Appeals instead of a petition for *certiorari*. The RTC equally erred in giving due course to said appeal and ordering the transmittal of the records of the case to the appellate court. By no means did the Court of Appeals acquire jurisdiction to review the judgment of the RTC which, by express provision of law, was immediately final and executory. Adding to the confusion, the Court of Appeals entertained the appeal and treated the same as an ordinary appeal under Rule 41 of the Rules of

Court. As it were, the Court of Appeals committed grave reversible error when it failed to dismiss the erroneous appeal of the Republic on the ground of lack of jurisdiction because, by express provision of the law, the judgment was not appealable. Before us, petitioner filed a petition for review on *certiorari* under Rule 45 of the Rules of Court. But, even if petitioner used the correct mode of appeal at this level, the hands of the Court are tied. Without a doubt, the decision of the trial court had long become final.

2. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DOCTRINE OF FINALITY OF JUDGMENT; EXCEPTIONS; ABSENT IN CASE AT BAR.—** Deeply ingrained in our jurisprudence is the principle that a decision that has acquired finality becomes immutable and unalterable. As such, it 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. In light of the foregoing, it would be unnecessary, if not useless, to discuss the issues raised by petitioner. The doctrine of finality of judgment is grounded on the fundamental principle of public policy and sound practice that, at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final on some definite date fixed by law. The only exceptions to the general rule are the correction of clerical errors, the so-called *nunc pro tunc* entries which cause no prejudice to any party, void judgments, and whenever circumstances transpire after the finality of the decision which render its execution unjust and inequitable. None of the exceptions obtains here to merit the review sought.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Ritchie R. Regala for respondent.

DECISION

QUISUMBING, *J.*:

This is a petition for review on *certiorari* of the Decision[1] dated November 28, 2003 of the Court of Appeals in CA-G.R. CV No. 76387 which denied the Republic's appeal from the Order[2] dated July 23, 2002 of the Regional Trial Court (RTC) of Ligao City, Branch 11 in Special Proceeding No. 357. The trial court had declared the wife of respondent Ferventino U. Tango (Ferventino), Maria Jose Villarba (Maria), presumptively dead under Article 41[3] of the Family Code.

The present controversy arose from the following facts:

On March 9, 1987, Ferventino and Maria were married[4] in civil rites before then Mayor Ignacio Bunye of Muntinlupa City. None of Maria's relatives witnessed the ceremony as they were opposed to her relationship with Ferventino. The two had only spent a night together and had been intimate once when Maria told Ferventino that she and her family will soon be leaving for the United States of America (USA). Maria assured Ferventino, however, that she will file a petition so he can live

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[1] *Rollo*, pp. 28-33. Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Renato C. Dacudao and Lucas P. Bersamin (now a member of this Court) concurring.

[2] *Id.* at 34-36. Penned by Pairing Judge Romulo SG. Villanueva.

[3] Art. 41. A marriage contracted by any person during the subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, the prior spouse had been absent for four consecutive years and the spouse present had a well-founded belief that the absent spouse was already dead. In case of disappearance where there is danger of death under the circumstances set forth in the provisions of Article 391 of the Civil Code, an absence of only two years shall be sufficient.

For the purpose of contracting the subsequent marriage under the preceding paragraph, the spouse present must institute a summary proceeding as provided in this Code for the declaration of presumptive death of the absentee, without prejudice to the effect of reappearance of the absent spouse.

[4] Records, p. 41.

with her in the USA. In the event that said petition is denied, she promised to return to the Philippines to live with him. On March 13, 1987, Maria and her family flew to Seattle, USA.

Ferventino alleges that Maria kept in touch for a year before she stopped responding to his letters. Out of resentment, he burned all the letters Maria wrote him. He claims to have forgotten her address since.

Ferventino recounts the efforts he made to find Maria. Upon inquiry from the latter's uncle, Antonio Ledesma, in Las Piñas, Ferventino learned that even Maria's relatives were unaware of her whereabouts. He also solicited the assistance of a friend in Texas, Capt. Luis Aris of the U.S. Air Force, but to no avail. Finally, he sought the aid of his parents Antonio and Eusebia in Los Angeles, and his aunt Anita Castro-Mayor in Seattle. Like, Ledesma though, their attempts to find Maria proved fruitless. The next 14 years went by without any news of Maria.

On the belief that his wife had died, Ferventino filed a verified petition[5] dated October 1, 2001 before the Ligao City RTC for the declaration of presumptive death of Maria within the contemplation of Article 41 of the Family Code.

When the case was called for initial hearing on January 8, 2002, nobody entered any opposition. On July 22, 2002, Ferventino presented evidence *ex parte* and testified in court about the details of his search. On July 23, 2002, Branch 11 of the Ligao City RTC issued an Order, the dispositive portion of which reads as follows:

> WHEREFORE, judgment is hereby rendered, declaring MARIA JOSE V. VILLARBA, wife of FERVENTINO U. TANGO, presumptively dead within the meaning of Article 41 of the Family Code.
>
> SO ORDERED.[6]

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[5] *Id.* at 2-3.

[6] *Rollo*, p. 36.

This prompted the Office of the Solicitor General (OSG), for the Republic, to file a Notice of Appeal.[7] Acting thereon, Presiding Judge Romulo SG. Villanueva of the Ligao City RTC had the records of the case transmitted to the Court of Appeals.

The Court of Appeals, treating the case as an ordinary appealed case under Rule 41 of the Rules of Court, affirmed the RTC's Order. It held that Maria's absence for 14 years without information about her location despite diligent search by Ferventino was sufficient to support a well-founded belief of her death. The appellate court observed that neither the OSG nor the Assistant Provincial Prosecutor objected to the evidence which Ferventino presented on trial. It noted, in particular, that the OSG did not dispute the adequacy of Ferventino's basis to engender a well-founded belief that Maria is dead. Hence, in a Decision dated November 28, 2003, the Court of Appeals denied the Republic's appeal in this tenor:

> WHEREFORE, the appeal is hereby **DENIED**. Accordingly, the July 23, 2002 Order of the Regional Trial Court of Ligao City, Branch 11 in Spec. Proc. No. 357 is **AFFIRMED**.
>
> SO ORDERED.[8]

Before us, petitioner anchors this petition for review on *certiorari* on the following two grounds:

I.

THE TESTIMONY OF RESPONDENT ON THE ALLEGED EFFORTS MADE BY HIS FRIEND AND RELATIVES IN LOCATING HIS MISSING WIFE IN SEATTLE, UNITED STATES, IS HEARSAY AND DEVOID OF PROBATIVE VALUE[; AND]

II.

EVEN ASSUMING THAT THE AFORESAID TESTIMONY MAY BE CONSIDERED IN EVIDENCE, THE ALLEGED EFFORTS OF RESPONDENT'S FRIEND AND RELATIVES IN LOCATING HIS MISSING WIFE IN SEATTLE, UNITED STATES, DO NOT

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[7] Records, p. 46.

[8] *Rollo*, p. 33.

SUFFICIENTLY SUPPORT A "WELL-FOUNDED BELIEF" THAT RESPONDENT'S ABSENT SPOUSE IS PROBABLY DEAD.[9]

Unadorned, the issues for our determination are: (1) whether the testimony of respondent Ferventino is hearsay; and (2) whether respondent Ferventino has established a basis to form a well-founded belief that his absent spouse is already dead.

The Republic, through the OSG, contests the appellate court's holding that the absence of respondent's wife Maria for 14 years provides sufficient basis to entertain a well-founded belief that she is dead. The OSG discounts respondent's testimony, on the steps he took to find Maria, as hearsay because none of the persons who purportedly helped in his search testified in court. Notably, the OSG observes that only Capt. Aris gave a detailed account of his efforts to track down Maria. According to Capt. Aris, he went over the Seattle phone directory for Maria's name and inquired about her from the registrar's office in Seattle, but both efforts proved to be in vain.

The OSG belittles its failure to object to the admissibility of respondent's testimony during trial. Instead, it invokes Constitutional provisions that advocate the state policy of preserving marital institutions.

On March 16, 2007, respondent's counsel, Atty. Richie R. Regala, manifested to this Court his intent to withdraw as counsel for respondent. According to Atty. Regala, he received a letter by which respondent expressed a desire to withdraw from the proceeding.[10] In view of this, the Court issued a Resolution[11] on April 21, 2008 which deemed as waived the filing of respondent's comment on the petition. Previously, the Court of Appeals had also issued a Resolution[12] dated October 15, 2003 submitting the case for decision and ordering its re-raffling

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[9] *Id.* at 13.

[10] *Id.* at 54.

[11] *Id.* at 65.

[12] CA *rollo*, p. 40.

for respondent's failure to file an appellee's brief. In other words, apart from the verified petition for the declaration of presumptive death of Maria dated October 1, 2001, which respondent filed before the Ligao City RTC, he has not submitted any other pleading in connection with the petition.

Respondent's apparent lack of desire to pursue the proceedings notwithstanding, the Court is inclined to rule against the Republic.

This case presents an opportunity for us to settle the rule on appeal of judgments rendered in summary proceedings under the Family Code and accordingly, refine our previous decisions thereon.

Article 238 of the Family Code, under Title XI: SUMMARY JUDICIAL PROCEEDINGS IN THE FAMILY LAW, establishes the rules that govern summary court proceedings in the Family Code:

> ART. 238. Until modified by the Supreme Court, the procedural rules in this Title shall apply in all cases provided for in this Code requiring summary court proceedings. Such cases shall be decided in an expeditious manner without regard to technical rules.

In turn, Article 253 of the Family Code specifies the cases covered by the rules in chapters two and three of the same title. It states:

> ART. 253. The foregoing rules in Chapters **2** and 3 hereof shall likewise govern **summary proceedings** filed under Articles **41**, 51, 69, 73, 96, 124 and 217, insofar as they are applicable. (Emphasis supplied.)

In plain text, Article 247 in Chapter 2 of the same title reads:

> ART. 247. The judgment of the court shall be immediately final and executory.

By express provision of law, the judgment of the court in a summary proceeding shall be immediately final and executory. As a matter of course, it follows that no appeal can be had of the trial court's judgment in a summary proceeding for the declaration of presumptive death of an absent spouse under

Article 41 of the Family Code. It goes without saying, however, that an aggrieved party may file a petition for *certiorari* to question abuse of discretion amounting to lack of jurisdiction. Such petition should be filed in the Court of Appeals in accordance with the Doctrine of Hierarchy of Courts. To be sure, even if the Court's original jurisdiction to issue a writ of *certiorari* is concurrent with the RTCs and the Court of Appeals in certain cases, such concurrence does not sanction an unrestricted freedom of choice of court forum.[13] From the decision of the Court of Appeals, the losing party may then file a petition for review on *certiorari* under Rule 45 of the Rules of Court with the Supreme Court. This is because the errors which the court may commit in the exercise of jurisdiction are merely errors of judgment which are the proper subject of an appeal.[14]

In the case before us, petitioner committed a serious procedural lapse when it filed a notice of appeal in the Court of Appeals instead of a petition for *certiorari*. The RTC equally erred in giving due course to said appeal and ordering the transmittal of the records of the case to the appellate court. By no means did the Court of Appeals acquire jurisdiction to review the judgment of the RTC which, by express provision of law, was immediately final and executory.

Adding to the confusion, the Court of Appeals entertained the appeal and treated the same as an ordinary appeal under Rule 41 of the Rules of Court. As it were, the Court of Appeals committed grave reversible error when it failed to dismiss the erroneous appeal of the Republic on the ground of lack of jurisdiction because, by express provision of the law, the judgment was not appealable.[15]

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[13] *Flaminiano v. Adriano*, G.R. No. 165258, February 4, 2008, 543 SCRA 605, 610.

[14] *Heirs of Maura So v. Obliosca*, G.R. No. 147082, January 28, 2008, 542 SCRA 406, 417.

[15] *Republic v. Bermudez-Lorino*, G.R. No. 160258, January 19, 2005, 449 SCRA 57, 64.

Before us, petitioner filed a petition for review on *certiorari* under Rule 45 of the Rules of Court. But, even if petitioner used the correct mode of appeal at this level, the hands of the Court are tied. Without a doubt, the decision of the trial court had long become final.

Deeply ingrained in our jurisprudence is the principle that a decision that has acquired finality becomes immutable and unalterable. As such, it 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.[16] In light of the foregoing, it would be unnecessary, if not useless, to discuss the issues raised by petitioner.

The doctrine of finality of judgment is grounded on the fundamental principle of public policy and sound practice that, at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final on some definite date fixed by law. The only exceptions to the general rule are the correction of clerical errors, the so-called *nunc pro tunc* entries which cause no prejudice to any party, void judgments, and whenever circumstances transpire after the finality of the decision which render its execution unjust and inequitable.[17] None of the exceptions obtains here to merit the review sought.

WHEREFORE, the instant petition is *DENIED* for lack of merit. No pronouncement as to costs.

SO ORDERED.

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

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[16] *Heirs of Maura So v. Obliosca*, *supra* at 418.

[17] *Id.*

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

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

[***] Designated member of the Second Division per Special Order No. 664.

FIRST DIVISION

[G.R. No. 166640. July 31, 2009]

HERMINIO MARIANO, JR., *petitioner, vs.* **ILDEFONSO C. CALLEJAS and EDGAR DE BORJA,** *respondents.*

SYLLABUS

CIVIL LAW; SPECIAL CONTRACTS; LEASE; SAFETY OF PASSENGERS; PRESUMPTION OF NEGLIGENCE OF THE CARRIER ARISES IN CASE OF DEATH; CASE AT BAR.— Celyrosa Express, a common carrier, through its driver, respondent De Borja, and its registered owner, respondent Callejas, has the express obligation "to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with a due regard for all the circumstances," and to observe extraordinary diligence in the discharge of its duty. The death of the wife of the petitioner in the course of transporting her to her destination gave rise to the presumption of negligence of the carrier. To overcome the presumption, respondents have to show that they observed extraordinary diligence in the discharge of their duty, or that the accident was caused by a fortuitous event. x x x In the case at bar, petitioner cannot succeed in his contention that respondents failed to overcome the presumption of negligence against them. The totality of evidence shows that the death of petitioner's spouse was caused by the reckless negligence of the driver of the Isuzu trailer truck which lost its brakes and bumped the Celyrosa Express bus, owned and operated by respondents.

APPEARANCES OF COUNSEL

Alfredo M. Cargo for petitioner.
Omar M. Mayo for respondents.

D E C I S I O N

PUNO, *C.J.*:

On appeal are the Decision[1] and Resolution[2] of the Court of Appeals in CA-G.R. CV No. 66891, dated May 21, 2004 and January 7, 2005 respectively, which reversed the Decision[3] of the Regional Trial Court (RTC) of Quezon City, dated September 13, 1999, which found respondents jointly and severally liable to pay petitioner damages for the death of his wife.

First, the facts:

Petitioner Herminio Mariano, Jr. is the surviving spouse of Dr. Frelinda Mariano who was a passenger of a Celyrosa Express bus bound for Tagaytay when she met her death. Respondent Ildefonso C. Callejas is the registered owner of Celyrosa Express, while respondent Edgar de Borja was the driver of the bus on which the deceased was a passenger.

At around 6:30 p.m. on November 12, 1991, along Aguinaldo Highway, San Agustin, Dasmariñas, Cavite, the Celyrosa Express bus, carrying Dr. Mariano as its passenger, collided with an Isuzu truck with trailer bearing plate numbers PJH 906 and TRH 531. The passenger bus was bound for Tagaytay while the trailer truck came from the opposite direction, bound for Manila. The trailer truck bumped the passenger bus on its left middle portion. Due to the impact, the passenger bus fell on its right side on the right shoulder of the highway and caused the death of Dr. Mariano and physical injuries to four other passengers. Dr. Mariano was 36 years old at the time of her death. She left behind three minor children, aged four, three and two years.

Petitioner filed a complaint for breach of contract of carriage and damages against respondents for their failure to transport

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[1] *Rollo*, pp. 20-31.

[2] *Id*. at 41-42.

[3] *Id*. at 58-64.

his wife and mother of his three minor children safely to her destination. Respondents denied liability for the death of Dr. Mariano. They claimed that the proximate cause of the accident was the recklessness of the driver of the trailer truck which bumped their bus while allegedly at a halt on the shoulder of the road in its rightful lane. Thus, respondent Callejas filed a third-party complaint against Liong Chio Chang, doing business under the name and style of La Perla Sugar Supply, the owner of the trailer truck, for indemnity in the event that he would be held liable for damages to petitioner.

Other cases were filed. Callejas filed a complaint,[4] docketed as Civil Case No. NC-397 before the RTC of Naic, Cavite, against La Perla Sugar Supply and Arcadio Arcilla, the truck driver, for damages he incurred due to the vehicular accident. On September 24, 1992, the said court dismissed the complaint against La Perla Sugar Supply for lack of evidence. It, however, found Arcilla liable to pay Callejas the cost of the repairs of his passenger bus, his lost earnings, exemplary damages and attorney's fees.[5]

A criminal case, Criminal Case No. 2223-92, was also filed against truck driver Arcilla in the RTC of Imus, Cavite. On May 3, 1994, the said court convicted truck driver Arcadio Arcilla of the crime of reckless imprudence resulting to homicide, multiple slight physical injuries and damage to property.[6]

In the case at bar, the trial court, in its Decision dated September 13, 1999, found respondents Ildefonso Callejas and Edgar de Borja, together with Liong Chio Chang, jointly and severally liable to pay petitioner damages and costs of suit. The dispositive portion of the Decision reads:

> ACCORDINGLY, the defendants are ordered to pay as follows:
>
> 1. The sum of ₱50,000.00 as civil indemnity for the loss of life;

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[4] RTC Records, Exhibit "1", pp. 84-89.

[5] RTC Records, Exhibit "3", pp. 90-93.

[6] RTC Records, Exhibit "6", p. 165.

2. The sum of ₱40,000.00 as actual and compensatory damages;

3. The sum of ₱1,829,200.00 as foregone income;

4. The sum of ₱30,000.00 as moral damages;

5. The sum of ₱20,000.00 as exemplary damages;

6. The costs of suit.

SO ORDERED.[7]

Respondents Callejas and De Borja appealed to the Court of Appeals, contending that the trial court erred in holding them guilty of breach of contract of carriage.

On May 21, 2004, the Court of Appeals reversed the decision of the trial court. It reasoned:

. . . the presumption of fault or negligence against the carrier is only a disputable presumption. It gives in where contrary facts are established proving either that the carrier had exercised the degree of diligence required by law or the injury suffered by the passenger was due to a fortuitous event. Where, as in the instant case, the injury sustained by the petitioner was in no way due to any defect in the means of transport or in the method of transporting or to the negligent or wilful acts of private respondent's employees, and therefore involving no issue of negligence in its duty to provide safe and suitable cars as well as competent employees, with the injury arising wholly from causes created by strangers over which the carrier had no control or even knowledge or could not have prevented, the presumption is rebutted and the carrier is not and ought not to be held liable. To rule otherwise would make the common carrier the insurer of the absolute safety of its passengers which is not the intention of the lawmakers.[8]

The dispositive portion of the Decision reads:

WHEREFORE, the decision appealed from, insofar as it found defendants-appellants Ildefonso Callejas and Edgar de Borja liable for damages to plaintiff-appellee Herminio E. Mariano, Jr., is

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[7] *Rollo*, p. 64.

[8] *Id*. at 28.

REVERSED and SET ASIDE and another one entered absolving them from any liability for the death of Dr. Frelinda Cargo Mariano.[9]

The appellate court also denied the motion for reconsideration filed by petitioner.

Hence, this appeal, relying on the following ground:

THE DECISION OF THE HONORABLE COURT OF APPEALS, SPECIAL FOURTEENTH DIVISION IS NOT IN ACCORD WITH THE FACTUAL BASIS OF THE CASE.[10]

The following are the provisions of the Civil Code pertinent to the case at bar:

ART. 1733. Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case.

ART. 1755. A common carrier is bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with a due regard for all the circumstances.

ART. 1756. In case of death of or injuries to passengers, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as prescribed in Articles 1733 and 1755.

In accord with the above provisions, Celyrosa Express, a common carrier, through its driver, respondent De Borja, and its registered owner, respondent Callejas, has the express obligation "to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with a due regard for all the circumstances,"[11] and to observe extraordinary diligence in the discharge of its

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[9] *Id*. at 31.

[10] *Id*. at 12.

[11] Art. 1755, Civil Code.

duty. The death of the wife of the petitioner in the course of transporting her to her destination gave rise to the presumption of negligence of the carrier. To overcome the presumption, respondents have to show that they observed extraordinary diligence in the discharge of their duty, or that the accident was caused by a fortuitous event.

This Court interpreted the above quoted provisions in ***Pilapil v. Court of Appeals***.[12] We elucidated:

> While the law requires the highest degree of diligence from common carriers in the safe transport of their passengers and creates a presumption of negligence against them, **it does not, however, make the carrier an insurer of the absolute safety of its passengers.**
>
> Article 1755 of the Civil Code qualifies the duty of extraordinary care, vigilance and precaution in the carriage of passengers by common carriers to only such as human care and foresight can provide. What constitutes compliance with said duty is adjudged with due regard to all the circumstances.
>
> Article 1756 of the Civil Code, in creating a presumption of fault or negligence on the part of the common carrier when its passenger is injured, merely relieves the latter, for the time being, from introducing evidence to fasten the negligence on the former, because the presumption stands in the place of evidence. **Being a mere presumption, however, the same is rebuttable by proof that the common carrier had exercised extraordinary diligence as required by law in the performance of its contractual obligation, or that the injury suffered by the passenger was solely due to a fortuitous event.**
>
> In fine, we can only infer from the law the intention of the Code Commission and Congress to curb the recklessness of drivers and operators of common carriers in the conduct of their business.
>
> **Thus, it is clear that neither the law nor the nature of the business of a transportation company makes it an insurer of the passenger's safety**, but that its liability for personal injuries sustained by its passenger rests upon its negligence, its failure to exercise the degree of diligence that the law requires.

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[12] G.R. No. 52159, December 22, 1989, 180 SCRA 546, 551-552.

In the case at bar, petitioner cannot succeed in his contention that respondents failed to overcome the presumption of negligence against them. The totality of evidence shows that the death of petitioner's spouse was caused by the reckless negligence of the driver of the Isuzu trailer truck which lost its brakes and bumped the Celyrosa Express bus, owned and operated by respondents.

First, we advert to the sketch prepared by PO3 Magno S. de Villa, who investigated the accident. The sketch[13] shows the passenger bus facing the direction of Tagaytay City and lying on its right side on the shoulder of the road, about five meters away from the point of impact. On the other hand, the trailer truck was on the opposite direction, about 500 meters away from the point of impact. PO3 De Villa stated that he interviewed De Borja, respondent driver of the passenger bus, who said that he was about to unload some passengers when his bus was bumped by the driver of the trailer truck that lost its brakes. PO3 De Villa checked out the trailer truck and found that its brakes really failed. He testified before the trial court, as follows:

ATTY. ESTELYDIZ:

q You pointed to the Isuzu truck beyond the point of impact. Did you investigate why did *(sic)* the Isuzu truck is beyond the point of impact?

a Because the truck has no brakes.

COURT:

q What is the distance between that circle which is marked as Exh. 1-c to the place where you found the same?

a More or less 500 meters.

q Why did you say that the truck has no brakes?

a I tested it.

q And you found no brakes?

a Yes, sir.

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[13] RTC Records, pp. 26, 34.

x x x x x x x x x

q When you went to the scene of accident, what was the position of Celyrosa bus?

a It was lying on its side.

COURT:

q Right side or left side?

a Right side.

ATTY. ESTELYDIZ:

q On what part of the road was it lying?

a On the shoulder of the road.

COURT:

q How many meters from the point of impact?

a Near, about 5 meters.[14]

His police report bolsters his testimony and states:

> Said vehicle 1 [passenger bus] was running from Manila toward south direction when, in the course of its travel, it was hit and bumped by vehicle 2 [truck with trailer] then running fast from opposite direction, causing said vehicle 1 to fall on its side on the road shoulder, causing the death of one and injuries of some passengers thereof, and its damage, after collission *(sic)*, vehicle 2 continiously *(sic)* ran and stopped at approximately 500 meters away from the piont *(sic)* of impact.[15]

In fine, the evidence shows that before the collision, the passenger bus was cruising on its rightful lane along the Aguinaldo Highway when the trailer truck coming from the opposite direction, on full speed, suddenly swerved and encroached on its lane, and bumped the passenger bus on its left middle portion. Respondent driver De Borja had every right to expect that the trailer truck coming from the opposite direction would stay on its proper

[14] TSN, November 4, 1994, pp. 6, 8.

[15] RTC Records, p. 33.

lane. He was not expected to know that the trailer truck had lost its brakes. The swerving of the trailer truck was abrupt and it was running on a fast speed as it was found 500 meters away from the point of collision. Secondly, any doubt as to the culpability of the driver of the trailer truck ought to vanish when he pleaded guilty to the charge of reckless imprudence resulting to multiple slight physical injuries and damage to property in Criminal Case No. 2223-92, involving the same incident.

IN VIEW WHEREOF, the petition is *DENIED*. The Decision dated May 21, 2004 and the Resolution dated January 7, 2005 of the Court of Appeals in CA-G.R. CV No. 66891 are *AFFIRMED*.

SO ORDERED.

Carpio, Corona, Leonardo-de Castro, and *Bersamin, JJ.*, concur.

THIRD DIVISION

[G.R. No. 167232. July 31, 2009]

D.B.T. MAR-BAY CONSTRUCTION, INCORPORATED, *petitioner, vs.* **RICAREDO PANES, ANGELITO PANES, SALVADOR CEA, ABOGADO MAUTIN, DONARDO PACLIBAR, ZOSIMO PERALTA and HILARION MANONGDO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; COURTS; INHERENT POWERS; ONE OF ITS INHERENT POWERS IS TO AMEND AND CONTROL ITS PROCESSES SO AS TO MAKE THEM

CONFORMABLE TO LAW AND JUSTICE; IN THE CASE AT BAR, THE TRIAL COURT COULD, THEREFORE, VALIDLY ENTERTAIN THE DEFENSES OF PRESCRIPTION AND LACHES IN PETITIONER'S MOTION FOR RECONSIDERATION.— Indeed, one of the inherent powers of courts is to amend and control its processes so as to make them conformable to law and justice. This includes the right to reverse itself, especially when in its opinion it has committed an error or mistake in judgment, and adherence to its decision would cause injustice. Thus, the RTC in its Order dated November 8, 2001 could validly entertain the defenses of prescription and laches in DBT's motion for reconsideration.

2. **CIVIL LAW; CONTRACTS; ACTION FOR RECONVEYANCE; CAN BE BARRED BY PRESCRIPTION.—** Verily, an action for reconveyance can be barred by prescription. When an action for reconveyance is based on fraud, it must be filed within four (4) years from discovery of the fraud, and such discovery is deemed to have taken place from the issuance of the original certificate of title. On the other hand, an action for reconveyance based on an implied or constructive trust prescribes in ten (10) years from the date of the issuance of the original certificate of title or transfer certificate of title. The rule is that the registration of an instrument in the Office of the RD constitutes constructive notice to the whole world and therefore the discovery of the fraud is deemed to have taken place at the time of registration.

3. **ID.; ID.; ID.; ID.; EXEMPTION APPLIES WHERE PLAINTIFF WHO IS REAL OWNER OF THE PROPERTY ALSO REMAINS IN POSSESSION OF THE PROPERTY.—** However, the prescriptive period applies only if there is an actual need to reconvey the property as when the plaintiff is not in possession of the property. If the plaintiff, as the real owner of the property also remains in possession of the property, the prescriptive period to recover title and possession of the property does not run against him. In such a case, an action for reconveyance, if nonetheless filed, would be in the nature of a suit for quieting of title, an action that is imprescriptible. Thus, in *Vda. de Gualberto v. Go*, this Court held: [A]n action for reconveyance of a parcel of land based on implied or constructive

trust prescribes in ten years, the point of reference being the date of registration of the deed or the date of the issuance of the certificate of title over the property, **but this rule applies only when the plaintiff or the person enforcing the trust is not in possession of the property**, since if a person claiming to be the owner thereof is in actual possession of the property, as the defendants are in the instant case, the right to seek reconveyance, **which in effect seeks to quiet title to the property, does not prescribe**. The reason for this is that one who is in actual possession of a piece of land claiming to be the owner thereof may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right, the reason for the rule being, that his undisturbed possession gives him a continuing right to seek the aid of a court of equity to ascertain and determine the nature of the adverse claim of a third party and its effect on his own title, which right can be claimed only by one who is in possession.

4. **ID.; ID.; ID.; ID.; ID.; ID.; IN QUIETING OF TITLE, "TITLE" DOES NOT NECESSARILY DENOTE A CERTIFICATE OF TITLE ISSUED IN FAVOR OF THE PERSON FILING THE SUIT; CASE AT BAR.—** Insofar as Ricaredo and his son, Angelito, are concerned, they established in their testimonies that, for some time, they possessed the subject property and that Angelito bought a house within the subject property in 1987. Thus, the respondents are proper parties to bring an action for quieting of title because persons having legal, as well as equitable, title to or interest in a real property may bring such action, and "title" here does not necessarily denote a certificate of title issued in favor of the person filing the suit.

5. **ID.; ID.; ID.; PRESCRIPTION; LACHES; DOCTRINE OF LACHES INAPPLICABLE WHERE THE ACTION WAS FILED WITHIN THE PRESCRIPTIVE PERIOD PROVIDED BY LAW; CASE AT BAR.—** Although prescription and laches are distinct concepts, we have held, nonetheless, that in some instances, the doctrine of laches is inapplicable where the action was filed within the prescriptive period provided by law. Therefore, laches will not apply to this case, because respondents' possession of the subject property has rendered their right to bring an action for quieting of title imprescriptible and, hence, not barred by laches. Moreover,

since laches is a creation of equity, acts or conduct alleged to constitute the same must be intentional and unequivocal so as to avoid injustice. Laches will operate not really to penalize neglect or sleeping on one's rights, but rather to avoid recognizing a right when to do so would result in a clearly inequitable situation.

6. **ID.; LAND REGISTRATION; REGISTERED LAND; TITLE; WELL-ENTRENCHED RULE THAT NO TITLE TO REGISTERED LAND IN DEROGATION OF THE RIGHTS OF THE REGISTERED OWNER SHALL BE ACQUIRED BY PRESCRIPTION OR ADVERSE POSSESSION.—** It is a well-entrenched rule in this jurisdiction that no title to registered land in derogation of the rights of the registered owner shall be acquired by prescription or adverse possession. Article 1126 of the Civil Code in connection with Section 46 of Act No. 496 (The Land Registration Act), as amended by Section 47 of P.D. No. 1529 (The Property Registration Decree), clearly supports this rule. Prescription is unavailing not only against the registered owner but also against his hereditary successors. Possession is a mere consequence of ownership where land has been registered under the Torrens system, the efficacy and integrity of which must be protected. Prescription is rightly regarded as a statute of repose whose objective is to suppress fraudulent and stale claims from springing up at great distances of time and surprising the parties or their representatives when the facts have become obscure from the lapse of time or the defective memory or death or removal of witnesses.

7. **ID.; ID.; ID.; IN THE CASE AT BAR, PROOF OF POSSESSION BY THE RESPONDENTS IS IMMATERIAL AND INCONSEQUENTIAL.—** Thus, respondents' claim of acquisitive prescription over the subject property is baseless. Under Article 1126 of the Civil Code, acquisitive prescription of ownership of lands registered under the Land Registration Act shall be governed by the special laws. Correlatively, Act No. 496, as amended by PD No. 1529. provides that no title to registered land in derogation of that of the registered owner shall be acquired by adverse possession. Consequently, in the instant case, proof of possession by the respondents is immaterial and inconsequential.

8. **REMEDIAL LAW; APPEALS; FINDINGS OF FACTS; COURT IS NOT TRIER OF FACTS; EXCEPTIONS.—**

While factual issues are admittedly not within the province of this Court, as it is not a trier of facts and is not required to re-examine or contrast the oral and documentary evidence anew, we have the authority to review and, in proper cases, reverse the factual findings of lower courts when the findings of fact of the trial court are in conflict with those of the appellate court.

9. **ID.; ID.; ID.; ID.; ID.; IN THE CASE AT BAR, THE COURT REVIEWED THE RECORDS OF THIS CASE AND FOUND NO CLEAR EVIDENCE THAT THE PETITIONER PARTICIPATED IN THE FRAUDULENT SCHEME.—** In this regard, we reviewed the records of this case and found no clear evidence that DBT participated in the fraudulent scheme. In *Republic v. Court of Appeals*, this Court gave due importance to the fact that the private respondent therein did not participate in the fraud averred. We accord the same benefit to DBT in this case.

10. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; *DACION EN PAGO*.—** *Dacion en pago* is the delivery and transmission of ownership of a thing by the debtor to the creditor as an accepted equivalent of the performance of the obligation. It is a special mode of payment where the debtor offers another thing to the creditor, who accepts it as an equivalent of the payment of an outstanding debt. In its modern concept, what actually takes place in *dacion en pago* is an objective novation of the obligation where the thing offered as an accepted equivalent of the performance of an obligation is considered as the object of the contract of sale, while the debt is considered as the purchase price.

11. **ID.; LAND REGISTRATION; TORRENS SYSTEM; TITLE HOLDER SHOULD NOT BE MADE TO BEAR THE UNFAVORABLE EFFECT OF THE MISTAKE OR NEGLIGENCE OF THE STATE'S AGENTS.—** While the Torrens system is not a mode of acquiring title, but merely a system of registration of titles to lands, justice and equity demand that the titleholder should not be made to bear the unfavorable effect of the mistake or negligence of the State's agents, in the absence of proof of his complicity in a fraud or of manifest damage to third persons. The real purpose of the Torrens system is to quiet title to land and put a stop forever to any question as to the legality of the title, except claims that were noted in the certificate at the time of the

registration or that may arise subsequent thereto. Otherwise, the integrity of the Torrens system would forever be sullied by the ineptitude and inefficiency of land registration officials, who are ordinarily presumed to have regularly performed their duties.

12. **ID.; ID.; ID.; ID.; INNOCENT THIRD PERSONS MAY RELY ON THE CORRECTNESS OF THE CERTIFICATE OF TITLE ISSUED; RIGHTS THUS ACQUIRED OVER THE PROPERTY CANNOT BE DISREGARDED BY THE COURT.—** Thus, where innocent third persons, relying on the correctness of the certificate of title thus issued, acquire rights over the property, the court cannot disregard those rights and order the cancellation of the certificate. The effect of such outright cancellation will be to impair public confidence in the certificate of title. The sanctity of the Torrens system must be preserved; otherwise, everyone dealing with the property registered under the system will have to inquire in every instance on whether the title had been regularly or irregularly issued, contrary to the evident purpose of the law. Every person dealing with the registered land may safely rely on the correctness of the certificate of title issued therefor, and the law will in no way oblige him to go behind the certificate to determine the condition of the property.

13. **ID.; ID.; ID.; ID.; ID.; IN THE CASE AT BAR, THIRD PERSONS, RELYING ON THE CERTIFICATES OF TITLE SHOWN TO THEM, ARE INNOCENT PURCHASERS IN GOOD FAITH AND FOR VALUE.—** It must also be noted that portions of the subject property had already been sold to third persons who, like DBT, are innocent purchasers in good faith and for value, relying on the certificates of title shown to them, and who had no knowledge of any defect in the title of the vendor, or of facts sufficient to induce a reasonably prudent man to inquire into the status of the subject property.

14. **ID.; ID.; ID.; ID.; ID.; ID.; THE PETITIONER IS AN INNOCENT PURCHASER FOR VALUE AND GOOD FAITH THROUGH THE *DACION EN PAGO* MODE OF PAYMENT.—** To add, DBT is an innocent purchaser for value and good faith which, through a *dacion en pago* duly entered into with B.C. Regalado, acquired ownership over the subject property, and whose rights must be protected under Section 32 of P.D. No. 1529.

APPEARANCES OF COUNSEL

Rondain and Mendiola for petitioner.
Borja and Arcilla Law Office for respondents.

D E C I S I O N

NACHURA, *J.*:

Before this Court is a Petition[1] for Review on *Certiorari* under Rule 45 of the Rules of Civil Procedure, assailing the Court of Appeals (CA) Decision[2] dated October 25, 2004 which reversed and set aside the Order[3] of the Regional Trial Court (RTC) of Quezon City, Branch 216, dated November 8, 2001.

The Facts

Subject of this controversy is a parcel of land identified as Lot Plan Psu-123169,[4] containing an area of Two Hundred Forty Thousand, One Hundred Forty-Six (240,146) square meters, and situated at Barangay (Brgy.) *Pasong Putik*, Novaliches, Quezon City (subject property). The property is included in Transfer Certificate of Title (TCT) No. 200519,[5] entered on July 19, 1974 and issued in favor of B.C. Regalado & Co. (B.C. Regalado). It was conveyed by B.C. Regalado to petitioner D.B.T. Mar-Bay Construction, Inc. (DBT) through a *dacion en pago*[6] for services rendered by the latter to the former.

On June 24, 1992, respondents Ricaredo P. Panes (Ricaredo), his son Angelito P. Panes (Angelito), Salvador Cea, Abogado

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[1] *Rollo*, pp. 3-19.

[2] Particularly docketed as CA-G.R. CV No. 75550, penned by Associate Justice Eloy R. Bello, Jr., with Associate Justices Regalado E. Maambong and Lucenito N. Tagle, concurring; *rollo*, pp. 22-36.

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

[4] Records, Vol. 1, p. 15.

[5] Records, Vol. 3, pp. 723-739.

[6] *Id.* at 740-755.

Mautin, Donardo Paclibar, Zosimo P. Peralta, and Hilarion Manongdo (herein collectively referred to as respondents) filed a Complaint[7] for "Quieting of Title with Cancellation of TCT No. 200519 and all Titles derived thereat (sic), Damages, with Petition for the Issuance of Injunction with Prayer for the Issuance of Restraining Order *Ex-Parte*, *Etc*." against B.C. Regalado, Mar-Bay Realty, Inc., Spouses Gereno Brioso and Criselda M. Brioso, Spouses Ciriaco and Nellie Mariano, Avelino C. Perdido and Florentina Allado, Eufrocina A. Maborang and Fe Maborang, Spouses Jaime and Rosario Tabangcura, Spouses Oscar Ikalina and the Register of Deeds (RD) of Quezon City. Subsequently, respondents filed an Amended Complaint[8] and a Second Amended Complaint[9] particularly impleading DBT as one of the defendants.

In the Complaints, Ricaredo alleged that he is the lawful owner and claimant of the subject property which he had declared for taxation purposes in his name, and assessed in the amount of ₱2,602,190.00 by the City Assessor of Quezon City as of the year 1985. Respondents alleged that per Certification[10] of the Department of Environment and Natural Resources (DENR) National Capital Region (NCR) dated May 7, 1992, Lot Plan Psu-123169 was verified to be correct and on file in said office, and approved on July 23, 1948.

Respondents also claimed that Ricaredo, his immediate family members, and the other respondents had been, and still are, in actual possession of the portions of the subject property, and their possession preceded the Second World War. To perfect his title in accordance with Act No. 496 (The Land Registration Act) as amended by Presidential Decree (P.D.) No. 1529 (The Property Registration Decree), Ricaredo filed with the RTC

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[7] Records, Vol. 1, pp. 1-13.

[8] *Id.* at 197-209.

[9] *Id.* at 266-278.

[10] *Id.* at 16.

of Quezon City, Branch 82 a case docketed as LRC Case No. Q-91-011, with LRC Rec. No. N-62563.[11]

Respondents averred that in the process of complying with the publication requirements for the Notice of Initial Hearing with the Land Registration Authority (LRA), it was discovered by the Mapping Services of the LRA that there existed an overlapping of portions of the land subject of Ricaredo's application, with the subdivision plan of B.C. Regalado. The said portion had, by then, already been conveyed by B.C. Regalado to DBT.

Ricaredo asseverated that upon verification with the LRA, he found that the subdivision plan of B.C. Regalado was deliberately drawn to cover portions of the subject property. Respondents claimed that the title used by B.C. Regalado in the preparation of the subdivision plan did not actually cover the subject property. They asserted that from the records of B.C. Regalado, they gathered that TCT Nos. 211081,[12] 211095[13] and 211132,[14] which allegedly included portions of the subject property, were derived from TCT No. 200519. However, TCT No. 200519 only covered Lot 503 of the Tala Estate with an area of Twenty-Two Thousand Six Hundred Fifteen (22,615) square meters, and was different from those mentioned in TCT Nos. 211081, 211095 and 211132. According to respondents, an examination of TCT No. 200519 would show that it was derived from TCT Nos. 14814,[15] 14827,[16] 14815[17] and T-28.

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[11] *Id.* at 17-20.

[12] *Id.* at 21.

[13] *Id.* at 22.

[14] In the pleadings filed by respondents, they alleged that the aforementioned TCT bore the number 211152. However, a perusal of the said title reveals that the TCT bears the number 211132; Records, Vol. 1, p. 288.

[15] Records, Vol. 1, p. 290.

[16] *Id.* at 291.

[17] *Id.* at 292.

In essence, respondents alleged that B.C. Regalado and DBT used the derivative titles which covered properties located far from *Pasong Putik*, Novaliches, Quezon City where the subject property is located, and B.C. Regalado and DBT then offered the same for sale to the public. Respondents thus submitted that B.C. Regalado and DBT through their deliberate scheme, in collusion with others, used (LRC) Pcs-18345 as shown in the consolidation-subdivision plan to include the subject property covered by Lot Plan Psu-123169.

In his Answer[18] dated July 24, 1992, the RD of Quezon City interposed the defense that at the time of registration, he found all documents to be in order. Subsequently, on December 5, 1994, in his Motion[19] for Leave to Admit Amended Answer, with the Amended Answer attached, he admitted that he committed a grave mistake when he earlier said that TCT No. 200519 covered only one lot, *i.e.* Lot 503. He averred that upon careful examination, he discovered that TCT No. 200519 is composed of 17 pages, and actually covered 54 lots, namely: Lots 503, 506, 507, 508, 509, 582, 586, 655, 659, 686, 434, 495, 497, 299, 498, 499, 500, 501, 502, 493, 692, 776, 496, 785, 777, 786, 780, 783, 505, 654, 660, 661, 663, 664, 665, 668, 693, 694, 713, 716, 781, 779, 784, 782, 787, 893, 1115, 1114, 778, 669 and 788, all of the Tala Estate. Other lots included therein are Lot 890-B of Psd 36854, Lot 2 of (LRC) Pcs 12892 and Lot 3 of (LRC) Pcs 12892. Thus, respondents' allegation that Lots 661, 664, 665, 693 and 694 of the Tala Estate were not included in TCT No. 200519 was not true.

On December 28, 1993, then defendants Spouses Jaime and Rosario Tabangcura (Spouses Tabangcura) filed their Answer[20] with Counterclaim, claiming that they were buyers in good faith and for value when they bought a house and lot covered by TCT No. 211095 from B.C. Regalado, the latter being a subdivision developer and registered owner thereof, on June

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

[19] *Id.* at 395-397.

[20] *Id.* at 350-354.

30, 1986. When respondent Abogado Mautin entered and occupied the property, Spouses Tabangcura filed a case for Recovery of Property before the RTC, Quezon City, Branch 97 which rendered a decision[21] in their favor.

On its part, DBT, traversing the complaint, alleged that it is the legitimate owner and occupant of the subject property pursuant to a *dacion en pago* executed by B.C. Regalado in the former's favor; that respondents were not real parties-in-interests because Ricaredo was a mere claimant whose rights over the property had yet to be determined by the RTC where he filed his application for registration; that the other respondents did not allege matters or invoke rights which would entitle them to the relief prayed for in their complaint; that the complaint was premature; and that the action inflicted a chilling effect on the lot buyers of DBT.[22]

The RTC's Rulings

On June 15, 2000, the RTC through Judge Marciano I. Bacalla (Judge Bacalla), rendered a Decision[23] in favor of the respondents. The RTC held that the testimony of Ricaredo that he occupied the subject property since 1936 when he was only 16 years old had not been rebutted; that Ricaredo's occupation and cultivation of the subject property for more than thirty (30) years in the concept of an owner vested in him equitable ownership over the same by virtue of an approved plan, Psu 123169; that the subject property was declared under the name of Ricaredo for taxation purposes;[24] and that the subject property per survey should not have been included in TCT No. 200519, registered in the name of B.C. Regalado and ceded to DBT. The RTC further held that Spouses Tabangcura failed to present satisfactory evidence to prove their claim. Thus, the RTC disposed of the case in this wise:

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[21] Penned by former RTC Judge Oscar Leviste.

[22] Records, Vol. 1, pp. 355-358.

[23] *Rollo*, pp. 56-61.

[24] Records, Vol. 2, pp. 709-710.

WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered declaring Certificate of Title No. 200519 and all titles derived thereat as null and void insofar as the same embrace the land covered by Plan PSU-123169 with an area of 240,146 square meters in the name of Ricaredo Panes; ordering defendant DBT Marbay Realty, Inc. to pay plaintiff Ricaredo Panes the sum of TWENTY THOUSAND (₱20,000) pesos as attorney's fees plus costs of suit.

SO ORDERED.

On September 12, 2000, DBT filed a Motion[25] for Reconsideration, based on the grounds of prescription and laches. DBT also disputed Ricaredo's claim of open, adverse, and continuous possession of the subject property for more than thirty (30) years, and asserted that the subject property could not be acquired by prescription or adverse possession because it is covered by TCT No. 200519.

While the said Motion for Reconsideration was pending, Judge Bacalla passed away.

Meanwhile, on January 2, 2001, a Motion[26] for Intervention and a Complaint in Intervention were filed by Atty. Andres B. Pulumbarit (Atty. Pulumbarit), representing the Don Pedro/ Don Jose de Ocampo Estate. The intervenor alleged that the subject property formed part of the vast tract of land with an area of 117,000 hectares, covered by Original Certificate of Title (OCT) No. 779 issued by the Honorable Norberto Romualdez on March 14, 1913 under Decree No. 10139, which belongs to the Estate of Don Pedro/Don Jose de Ocampo. Thus, the Complaint[27] in Intervention prayed that the RTC's Decision be reconsidered; that the legitimacy and superiority of OCT 779 be upheld; and that the subject property be declared as belonging to the Estate of Don Pedro/Don Jose de Ocampo.

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[25] Records, Vol. 3, pp. 799-808.

[26] *Id.* at 837-838.

[27] *Id.* at 839-843.

In its Order[28] dated March 13, 2001, the RTC, through Acting Judge Modesto C. Juanson (Judge Juanson), denied Atty. Pulumbarit's Motion for Intervention because a judgment had already been rendered pursuant to Section 2,[29] Rule 19 of the 1997 Rules of Civil Procedure.

On April 10, 2001, the RTC issued an Order[30] stating that there appeared to be a need for a clarificatory hearing before it could act on DBT's Motion for Reconsideration. Thus, a hearing was held on May 17, 2001. Thereafter, supplemental memoranda were required of the parties.[31] Both parties complied.[32] However, having found that the original copy of TCT No. 200519 was not submitted to it for comparison with the photocopy thereof on file, the RTC directed DBT to present the original or certified true copy of the TCT on August 21, 2001.[33] Respondents moved to reconsider the said directive[34] but the same was denied.[35] DBT, on the other hand, manifested that a copy of TCT No. 200519, consisting of 17 pages, had already been admitted in evidence; and that because of the fire in the Office of the RD in Quezon City sometime in 1988, DBT, despite diligent effort, could not secure an original or certified true copy of said TCT. Instead, DBT submitted a certified true copy of Consolidated Subdivision Plan Pcs 18345.[36]

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[28] *Id.* at 866.

[29] **SEC. 2.** *Time to intervene*.— The motion to intervene may be filed at any time before rendition of judgment by the trial court. A copy of the pleading-in-intervention shall be attached to the motion and served on the original parties.

[30] Records, Vol. 3, p. 867.

[31] *Id.* at 884.

[32] *Id.* at 885-888 and 890-893.

[33] *Id.* at 894.

[34] *Id.* at 896-900.

[35] *Id.* at 902.

[36] *Id.* at 903-906.

On November 8, 2001, the RTC, through Judge Juanson, issued an Order[37] reversing the earlier RTC Decision and dismissing the Complaint for lack of merit. The RTC held that prescription does not run against registered land; hence, a title once registered cannot be defeated even by adverse, open or notorious possession. Moreover, the RTC opined that even if the subject property could be acquired by prescription, respondents' action was already barred by prescription and/or laches because they never asserted their rights when B.C. Regalado registered the subject property in 1974; and later developed, subdivided and sold the same to individual lot buyers.

On December 18, 2001, respondents filed a Motion for Reconsideration[38] which the RTC denied in its Order[39] dated June 17, 2002. Aggrieved, respondents appealed to the CA.[40]

The CA's Ruling

On October 25, 2004, the CA reversed and set aside the RTC Orders dated November 8, 2001 and June 17, 2002 and reinstated the RTC Decision dated June 15, 2000. The CA held that the properties described and included in TCT No. 200519 are located in San Francisco del Monte, San Juan del Monte, Rizal and Cubao, Quezon City while the subject property is located in Brgy. *Pasong Putik*, Novaliches, Quezon City. Furthermore, the CA held that Engr. Vertudazo's testimony that there is a gap of around 1,250 meters between Lot 503 and Psu 123169 was not disproved or refuted. The CA found that Judge Juanson committed a procedural infraction when he entertained issues and admitted evidence presented by DBT in its Motion for Reconsideration which were never raised in the pleadings and proceedings prior to the rendition of the RTC Decision. The CA opined that DBT's claims of laches and prescription clearly appeared to be an afterthought. Lastly, the CA held that DBT's

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

[38] *Id.* at 86-92.

[39] *Id.* at 101-103.

[40] Records, Vol. 3, pp. 939-940.

Motion for Reconsideration was not based on grounds enumerated in the Rules of Procedure.[41]

Petitioner filed a Motion for Reconsideration,[42] which was, however, denied by the CA in its Resolution[43] dated February 22, 2005.

Hence, this Petition.

The Issues

Petitioner raises the following as grounds for this Petition:

I.

PETITIONER'S FAILURE TO ALLEGE PRESCRIPTION IN ITS ANSWER IS NOT A WAIVER OF SUCH DEFENSE.

II.

IT IS NOT ERRONEOUS TO REQUIRE THE PRODUCTION OF A CERTIFIED TRUE COPY OF TCT NO. 200519 AFTER THE DECISION ON THE MERITS HAS BEEN RENDERED BUT BEFORE IT BECAME FINAL.

III.

A REGISTERED LAND CAN NOT BE ACQUIRED BY ACQUISITIVE PRESCRIPTION.

IV.

THE TESTIMONY OF ENGR. VERTUDAZO ON THE BASIS OF THE TECHNICAL DESCRIPTION OF LOT 503 IN AN INCOMPLETE DOCUMENT IS UNRELIABLE.

V.

MR. PANES HAS NEVER BEEN IN OPEN, ADVERSE AND CONTINUOUS POSSESSION OF THE SUBJECT PROPERTY FOR MORE THAN THIRTY (30) YEARS.[44]

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[41] *Supra* note 2.

[42] *Rollo*, pp. 150-163.

[43] *Id.* at 37-38.

[44] *Supra* note 1 at 7-8.

Distilled from the petition and the responsive pleadings, and culled from the arguments of the parties, the issues may be reduced to two questions, namely:

1) Did the RTC err in upholding DBT's defenses of prescription and laches as raised in the latter's Motion for Reconsideration?

2) Which between DBT and the respondents have a better right over the subject property?

Our Ruling

We answer the first question in the affirmative.

It is true that in *Dino v. Court of Appeals*[45] we ruled:

> (T)rial courts have authority and discretion to dismiss an action on the ground of prescription when the parties' pleadings or other facts on record show it to be indeed time-barred; (*Francisco v. Robles*, Feb. 15, 1954; *Sison v. McQuaid*, 50 O.G. 97; *Bambao v. Lednicky*, Jan. 28, 1961; *Cordova v. Cordova*, Jan. 14, 1958; *Convets, Inc. v. NDC*, Feb. 28, 1958; 32 SCRA 529; *Sinaon v. Sorongan*, 136 SCRA 408); and it may do so on the basis of a motion to dismiss (Sec. 1, [f] Rule 16, Rules of Court), or an answer which sets up such ground as an affirmative defense (Sec. 5, Rule 16), or **even if the ground is alleged after judgment on the merits, as in a motion for reconsideration** (*Ferrer v. Ericta*, 84 SCRA 705); or **even if the defense has not been asserted at all, as where no statement thereof is found in the pleadings** (*Garcia v. Mathis*, 100 SCRA 250; *PNB v. Pacific Commission House*, 27 SCRA 766; *Chua Lamco v. Dioso, et al.*, 97 Phil. 821); or where a defendant has been declared in default (*PNB v. Perez*; 16 SCRA 270). **What is essential only, to repeat, is that the facts demonstrating the lapse of the prescriptive period be otherwise sufficiently and satisfactorily apparent on the record; either in the averments of the plaintiff's complaint, or otherwise established by the evidence**. (Emphasis supplied)

Indeed, one of the inherent powers of courts is to amend and control its processes so as to make them conformable to

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[45] 411 Phil. 594, 603-604 (2001), citing *Gicano v. Gegato*, No. 63575, January 20, 1988, 157 SCRA 140.

law and justice. This includes the right to reverse itself, especially when in its opinion it has committed an error or mistake in judgment, and adherence to its decision would cause injustice.[46] Thus, the RTC in its Order dated November 8, 2001 could validly entertain the defenses of prescription and laches in DBT's motion for reconsideration.

However, the conclusion reached by the RTC in its assailed Order was erroneous. The RTC failed to consider that the action filed before it was not simply for reconveyance but an action for quieting of title which is imprescriptible.

Verily, an action for reconveyance can be barred by prescription. When an action for reconveyance is based on fraud, it must be filed within four (4) years from discovery of the fraud, and such discovery is deemed to have taken place from the issuance of the original certificate of title. On the other hand, an action for reconveyance based on an implied or constructive trust prescribes in ten (10) years from the date of the issuance of the original certificate of title or transfer certificate of title. The rule is that the registration of an instrument in the Office of the RD constitutes constructive notice to the whole world and therefore the discovery of the fraud is deemed to have taken place at the time of registration.[47]

However, the prescriptive period applies only if there is an actual need to reconvey the property as when the plaintiff is not in possession of the property. If the plaintiff, as the real owner of the property also remains in possession of the property, the prescriptive period to recover title and possession of the property does not run against him. In such a case, an action for reconveyance, if nonetheless filed, would be in the nature of

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[46] *Mauricio v. National Labor Relations Commission*, G.R. No. 164635, November 17, 2005, 475 SCRA 323, 331, citing *Tocao v. Court of Appeals*, G.R. No. 127405, September 20, 2001, 365 SCRA 463, 464; and *Astraquillo v. Javier*, G.R. No. L-20034, January 30, 1965, 13 SCRA 125.

[47] *Millena v. Court of Appeals*, 381 Phil. 132, 138 (2000).

a suit for quieting of title, an action that is imprescriptible.[48] Thus, in *Vda. de Gualberto v. Go*,[49] this Court held:

> [A]n action for reconveyance of a parcel of land based on implied or constructive trust prescribes in ten years, the point of reference being the date of registration of the deed or the date of the issuance of the certificate of title over the property, **but this rule applies only when the plaintiff or the person enforcing the trust is not in possession of the property**, since if a person claiming to be the owner thereof is in actual possession of the property, as the defendants are in the instant case, the right to seek reconveyance, **which in effect seeks to quiet title to the property, does not prescribe**. The reason for this is that one who is in actual possession of a piece of land claiming to be the owner thereof may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right, the reason for the rule being, that his undisturbed possession gives him a continuing right to seek the aid of a court of equity to ascertain and determine the nature of the adverse claim of a third party and its effect on his own title, which right can be claimed only by one who is in possession.

Insofar as Ricaredo and his son, Angelito, are concerned, they established in their testimonies that, for some time, they possessed the subject property and that Angelito bought a house within the subject property in 1987.[50] Thus, the respondents are proper parties to bring an action for quieting of title because persons having legal, as well as equitable, title to or interest in a real property may bring such action, and "title" here does not necessarily denote a certificate of title issued in favor of the person filing the suit.[51]

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[48] *Aguirre v. Heirs of Lucas Villanueva*, G.R. No. 169898, June 8, 2007, 524 SCRA 492, 494.

[49] G.R. No. 139843, July 21, 2005, 463 SCRA 671, 681, citing *Development Bank of the Phils. v. CA*, G.R. No. 129471, April 28, 2000, 331 SCRA 267, 270.

[50] TSN, February 2, 1996, pp. 53-55.

[51] Art. 477, New Civil Code; *Mamadsual v. Moson,* G.R. No. 92557, September 27, 1990, 190 SCRA 82, 89.

Although prescription and laches are distinct concepts, we have held, nonetheless, that in some instances, the doctrine of laches is inapplicable where the action was filed within the prescriptive period provided by law. Therefore, laches will not apply to this case, because respondents' possession of the subject property has rendered their right to bring an action for quieting of title imprescriptible and, hence, not barred by laches. Moreover, since laches is a creation of equity, acts or conduct alleged to constitute the same must be intentional and unequivocal so as to avoid injustice. Laches will operate not really to penalize neglect or sleeping on one's rights, but rather to avoid recognizing a right when to do so would result in a clearly inequitable situation.[52]

Albeit the conclusion of the RTC in its Order dated November 8, 2001, which dismissed respondents' complaint on grounds of prescription and laches, may have been erroneous, we, nevertheless, resolve the second question in favor of DBT.

It is a well-entrenched rule in this jurisdiction that no title to registered land in derogation of the rights of the registered owner shall be acquired by prescription or adverse possession.[53]

Article 1126[54] of the Civil Code in connection with Section 46[55] of Act No. 496 (The Land Registration Act), as amended

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[52] *Maestrado v. Court of Appeals*, 384 Phil. 418, 430 (2000).

[53] *Abadiano v. Martir*, G.R. No. 156310, July 31, 2008, 560 SCRA 676, 693; *Ragudo v. Fabella Estate Tenants Association, Inc.*, G.R. No. 146823, August 9, 2005, 466 SCRA 136, 148; A*lcantara-Daus v. Sps. De Leon*, 452 Phil. 92, 102 (2003); *Velez, Sr. v. Rev. Demetrio*, 436 Phil. 1, 9 (2002); *Villegas v. Court of Appeals*, 403 Phil. 791, 801 (2001); *Bishop v. Court of Appeals*, G.R. No. 86787, May 8, 1992, 208 SCRA 636, 641; and *Barcelona, et al. v. Barcelona and Ct. of Appeals*, 100 Phil. 251, 256-257 (1956).

[54] ARTICLE 1126. Against a title recorded in the Registry of Property, ordinary prescription of ownership or real rights shall not take place to the prejudice of a third person, except in virtue of another title also recorded; and the time shall begin to run from the recording of the latter.

As to the lands registered under the Land Registration Act, the provisions of that special law shall govern.

[55] SECTION 46. No title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession.

by Section 47[56] of P.D. No. 1529 (The Property Registration Decree), clearly supports this rule. Prescription is unavailing not only against the registered owner but also against his hereditary successors. Possession is a mere consequence of ownership where land has been registered under the Torrens system, the efficacy and integrity of which must be protected. Prescription is rightly regarded as a statute of repose whose objective is to suppress fraudulent and stale claims from springing up at great distances of time and surprising the parties or their representatives when the facts have become obscure from the lapse of time or the defective memory or death or removal of witnesses.[57]

Thus, respondents' claim of acquisitive prescription over the subject property is baseless. Under Article 1126 of the Civil Code, acquisitive prescription of ownership of lands registered under the Land Registration Act shall be governed by special laws. Correlatively, Act No. 496, as amended by PD No. 1529, provides that no title to registered land in derogation of that of the registered owner shall be acquired by adverse possession. Consequently, in the instant case, proof of possession by the respondents is immaterial and inconsequential.[58]

Moreover, it may be stressed that there was no ample proof that DBT participated in the alleged fraud. While factual issues are admittedly not within the province of this Court, as it is not a trier of facts and is not required to re-examine or contrast the oral and documentary evidence anew, we have the authority to review and, in proper cases, reverse the factual findings of lower courts when the findings of fact of the trial court are in

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[56] SECTION 47. *Registered land not subject to prescription*. — No title to registered land in derogation of the title of the registered owner shall be acquired by prescription or adverse possession.

[57] *Gallardo v. Intermediate Appellate Court*, G.R. No. 67742, October 29, 1987, 155 SCRA 248, 260. (Citations omitted)

[58] *Feliciano v. Zaldivar*, G.R. No. 162593, September 26, 2006, 503 SCRA 182, 197, citing *Natalia Realty Corporation v. Vallez, et al.*, G.R. Nos. 78290-94, May 23, 1989, 173 SCRA 534.

conflict with those of the appellate court.[59] In this regard, we reviewed the records of this case and found no clear evidence that DBT participated in the fraudulent scheme. In *Republic v. Court of Appeals*,[60] this Court gave due importance to the fact that the private respondent therein did not participate in the fraud averred. We accord the same benefit to DBT in this case. To add, DBT is an innocent purchaser for value and good faith which, through a *dacion en pago* duly entered into with B.C. Regalado, acquired ownership over the subject property, and whose rights must be protected under Section 32[61] of P.D. No. 1529.

Dacion en pago is the delivery and transmission of ownership of a thing by the debtor to the creditor as an accepted equivalent of the performance of the obligation. It is a special mode of payment where the debtor offers another thing to the creditor, who accepts it as an equivalent of the payment of an outstanding debt. In its modern concept, what actually takes place in *dacion*

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[59] *Tan v. Court of Appeals*, 421 Phil. 134, 141-142 (2001).

[60] G.R. No. 116111, January 21, 1999, 301 SCRA 366, 370.

[61] SECTION 32. *Review of decree of registration; Innocent purchaser for value*. — The decree of registration shall not be reopened or revised by reason of absence, minority, or other disability of any person adversely affected thereby, nor by any proceeding in any court for reversing judgment, subject, however, to the right of any person, including the government and the branches thereof, deprived of land or of any estate or interest therein by such adjudication or confirmation of title obtained by **actual fraud**, to file in the proper Court of First Instance a petition for reopening and review of the decree of registration not later than one year from and after the date of the entry of such decree of registration, **but in no case shall such petition be entertained by the court where an innocent purchaser for value has acquired the land or an interest therein whose rights may be prejudiced. Whenever the phrase "innocent purchaser for value" or an equivalent phrase occurs in this Decree, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrancer for value**.

Upon the expiration of said period of one year, the decree of registration and the certificate of title issued shall become incontrovertible. Any person aggrieved by such decree of registration in any case may pursue his remedy by action for damages against the applicant or any other person responsible for the fraud (Emphasis supplied).

en pago is an objective novation of the obligation where the thing offered as an accepted equivalent of the performance of an obligation is considered as the object of the contract of sale, while the debt is considered as the purchase price.[62]

It must also be noted that portions of the subject property had already been sold to third persons who, like DBT, are innocent purchasers in good faith and for value, relying on the certificates of title shown to them, and who had no knowledge of any defect in the title of the vendor, or of facts sufficient to induce a reasonably prudent man to inquire into the status of the subject property.[63] To disregard these circumstances simply on the basis of alleged continuous and adverse possession of respondents would not only be inimical to the rights of the aforementioned titleholders, but would ultimately wreak havoc on the stability of the Torrens system of registration.

A final note.

While the Torrens system is not a mode of acquiring title, but merely a system of registration of titles to lands, justice and equity demand that the titleholder should not be made to bear the unfavorable effect of the mistake or negligence of the State's agents, in the absence of proof of his complicity in a fraud or of manifest damage to third persons. The real purpose of the Torrens system is to quiet title to land and put a stop forever to any question as to the legality of the title, except claims that were noted in the certificate at the time of the registration or that may arise subsequent thereto. Otherwise, the integrity of the Torrens system would forever be sullied by the ineptitude and inefficiency of land registration officials, who are ordinarily presumed to have regularly performed their duties.[64] Thus, where innocent third persons, relying on the

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[62] *Uy v. Sandiganbayan*, G.R. No. 111544, July 6, 2004, 433 SCRA 424, 438. (Citations omitted)

[63] *Agag v. Alpha Financing Corporation*, G.R. No. 154826, July 31, 2003, 407 SCRA 602, 610.

[64] *Republic v. Guerrero,* G.R. No. 133168, March 28, 2006, 485 SCRA 424, 445.

correctness of the certificate of title thus issued, acquire rights over the property, the court cannot disregard those rights and order the cancellation of the certificate. The effect of such outright cancellation will be to impair public confidence in the certificate of title. The sanctity of the Torrens system must be preserved; otherwise, everyone dealing with the property registered under the system will have to inquire in every instance on whether the title had been regularly or irregularly issued, contrary to the evident purpose of the law. Every person dealing with the registered land may safely rely on the correctness of the certificate of title issued therefor, and the law will in no way oblige him to go behind the certificate to determine the condition of the property.[65]

WHEREFORE, the instant Petition is *GRANTED* and the assailed Court of Appeals Decision dated October 25, 2004 is hereby *REVERSED* and *SET ASIDE*. A new judgment is hereby entered *DISMISSING* the Complaint filed by the respondents for lack of merit.

SO ORDERED.

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

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[65] *Republic v. Orfinada, Sr.*, G.R. No. 141145, November 12, 2004, 442 SCRA 342, 359, citing *Heirs of Spouses Benito Gavino and Juana Euste v. Court of Appeals*, G.R. No. 120154, June 29, 1998, 291 SCRA 495, 509.

SECOND DIVISION

[G.R. No. 171968. July 31, 2009]

XYST CORPORATION, *petitioner, vs.* **DMC URBAN PROPERTIES DEVELOPMENT, INC.,** *respondent.* **FE AURORA C. CASTRO,** *intervenor.*

SYLLABUS

1. **CIVIL LAW; CONTRACTS; THREE STAGES OF A CONTRACT.—** Equally important are the three stages of a contract: (1) preparation or negotiation, (2) perfection, and (3) consummation. Negotiation begins from the time the prospective contracting parties manifest their interest in the contract and ends at the moment of agreement of the parties. The perfection or birth of the contract takes place when the parties agree upon the essential elements of the contract. The last stage is the consummation of the contract wherein the parties fulfill or perform the terms agreed upon in the contract, culminating in the extinguishment thereof.

2. **ID.; ID.; ID.; CONSENSUAL CONTRACTS ARE PERFECTED BY MERE CONSENT.—** It is a fundamental rule that, being consensual, a contract is perfected by mere consent. From the moment of a meeting of the offer and the acceptance upon the object and the cause that would constitute the contract, consent arises. The essence of consent is the conformity of the parties on the terms of the contract, that is, the acceptance by one of the offer made by the other.

3. **ID.; ID.; ID.; ID.; WHERE THE PARTIES MERELY EXCHANGED OFFERS AND COUNTER-OFFERS, NO-CONTRACT WAS PERFECTED.—** However, the acceptance must be absolute; otherwise, the same constitutes a counter-offer and has the effect of rejecting the offer. Where the parties merely exchanged offers and counter-offers, no agreement or contract is perfected.

4. **ID.; ID.; ID.; ID.; EARNEST MONEY APPLIES TO A PERFECTED SALE; CASE AT BAR.—** As to XYST's claim that the ₱1,000,000.00 reservation fee it paid is earnest money, we hold that it is not. Earnest money applies to a perfected

sale. Here, no contract whatsoever was perfected since the element of consent was lacking. Therefore, the reservation fee paid by XYST could not be earnest money.

5. **ID.; DAMAGES; ATTORNEY'S FEES; WHEN RECOVERABLE.—** Article 2208 of the Civil Code states that in the absence of a stipulation, attorney's fees cannot be recovered, except in any of the following circumstances: (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; (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.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez & Gatmaitan for petitioner.
Britanico Sarmiento and Franco Law Offices for respondent.
Benedictine Law Center for intervenor Fe Aurora C. Castro.

D E C I S I O N

QUISUMBING, *J.*:

Before us is a petition for review assailing the September 26, 2005 Decision[1] and the March 13, 2006 Order[2] of the Regional Trial Court (RTC) of Makati City, Branch 64 in Civil Case No. 95-063.

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[1] *Rollo*, pp. 9-29. Penned by Judge Delia H. Panganiban.

[2] *Id.* at 30-31.

The facts are as follows:

DMC Urban Properties Development, Inc. and Citibank N.A. entered into an agreement whereby they agreed to take part in the construction of the Citibank Tower, an office condominium building located at Villar corner Valero Streets, Makati City. In said agreement, DMC was allocated the 18th floor of the Citibank Tower subject to the condition that DMC shall not transfer any portion of its allocated floor or rights or interests thereto prior to the completion of the building without the written consent of Citibank N.A.

Subsequently, DMC gave authority to sell to several brokers, one of which is herein intervenor, Fe Aurora Castro. Through her effort, Castro found a prospective buyer, Saint Agen Et Fils Limited (SAEFL for brevity), a foreign corporation represented by William Seitz. Notwithstanding the fact that the construction of the Citibank Tower was not yet completed, DMC negotiated with Seitz for the sale of its allocated floor to SAEFL.

In a letter dated September 14, 1994,[3] SAEFL accepted DMC's offer to sell. The terms of said letter are reproduced below:

(1) **Property Description**

Location	:	18th Floor, Citibank Tower Paseo de Roxas, Makati Metro Manila
Gross Floor Area	:	2,034 sq m
Net Saleable Area	:	1,866 sq m
Net Usable Area	:	1,678 sq m
Selling Price	:	₱53,500/ - psm of saleable area
Total Price	:	₱99,831,000/-*
Parking Slots	:	22

* VAT tax for the account of the buyer, except that if payment of 26% of the total price is made before 30 September 1994, then VAT, if any, shall be for the account of the seller.

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[3] *Id.* at 105-106.

The balance of ₱6,822,552.97 due to Citibank is included and, hence, is to be deducted from the amount due to DMC-UPDI.

(2) **Payment Terms** *

Reservation Fee		:	₱1,000,000/ - good [until] 26 September 1994 Non-refundable but applicable to the downpayment
26% -	Upon signing of agreement but not later than first banking hour of the 28th of September 1994.	:	₱24,956,060/ -
24% -	Due on 31 October 1994 (via post-dated check)	:	₱23,959,440/-
50% -	Due on 30 November 1994 (via post-dated check)	:	₱43,092,947.03
* For the Account of the Seller		:	Expanded Withholding Tax with BIR clearance to the buyer stating that the seller has paid capital gains tax.
For the Account of the Buyer		:	Doc stamps; registration; and notarial and all other [similar] fees.

On September 16, 1994,[4] SAEFL, knowing that the consent of Citibank N.A. must first be obtained, sent another letter obliging DMC to cause Citibank N.A. to enter into a Contract to Sell with SAEFL as an additional condition to the payment of the ₱1,000,000.00 reservation fee.

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[4] *Id.* at 107.

Soon after, Seitz was informed that the 18th floor is not available for foreign acquisition, so Seitz told DMC that he would instead use XYST Corporation, a domestic corporation of which he is a director and shareholder, to purchase the subject property. XYST then paid the reservation fee. However, DMC advised XYST that the signing of the formal document will not take place since Citibank N.A. opted to exercise its right of first refusal. Hence, the parties agreed that should Citibank N.A. fail to purchase the 18th floor on the agreed date, the same should be sold to XYST.

Eventually, Citibank N.A. did not exercise its right of first refusal, but it reminded DMC that should the sale of the floor to any party materialize, it should be consistent with the documents adopted by the co-founders of the project. Hence, a copy of a pro-forma Contract to Sell was given to DMC, a copy of which was then forwarded to XYST.

DMC then undertook to obtain the conformity of Citibank N.A. to the intended sale but DMC encountered problems getting Citibank N.A. to accept the amendments that XYST wanted on the pro-forma contract. For such failure, DMC allowed XYST and Citibank N.A. to negotiate directly with one another to facilitate the transaction, but to no avail. Citibank N.A. refused to concur with the amendments imposed by XYST on the pro-forma contract. Hence, DMC decided to call off the deal and return the reservation fee of ₱1,000,000.00 to XYST.

A complaint for specific performance with damages was then filed by XYST against DMC. Trial ensued and on September 26, 2005, the RTC dismissed XYST's complaint. The dispositive portion of said decision reads:

WHEREFORE, in view of the foregoing, judgment is rendered as follows:

1. The Complaint for Specific Performance and Damages filed by plaintiff XYST CORPORATION against defendant DMC-URBAN PROPERTIES DEVELOPMENT, INC., is DISMISSED. Plaintiff XYST CORPORATION is hereby ordered to pay defendant DMC-URBAN PROPERTIES DEVELOPMENT, INC. the amount of ₱1,000,000.00 as attorney's fees; and

2. The counterclaim of defendant DMC-URBAN PROPERTIES DEVELOPMENT, INC. against the Intervenor Fe Aurora Castro is DISMISSED.

SO ORDERED.[5]

XYST's motion for reconsideration was likewise denied. Hence, the instant petition where XYST raises the following issues:

I.

DID THE TRIAL COURT ERR IN FINDING THAT THERE WAS NO PERFECTED CONTRACT TO SELL BETWEEN XYST AND DEFENDANT DMC BASED ON THE SEPTEMBER 14 AND 16, 1994 LETTER AGREEMENTS, AND THAT DMC CANNOT BE COMPELLED TO PERFORM ITS OBLIGATIONS UNDER THE AGREEMENT?

II.

DID THE TRIAL COURT ERR IN ORDERING XYST TO PAY DMC ATTORNEY'S FEES?

III.

IS XYST ENTITLED TO ATTORNEY'S FEES AND EXEMPLARY DAMAGES.[6]

Simply stated, in our view, there is one major legal issue for our resolution: whether there is a perfected contract between DMC and XYST. This issue of a legal nature assumes primordial significance because it justified direct resort by petitioner to this Court in a petition for review.

XYST argues that there exists a perfected contract of sale between the parties. This was perfected from the moment there was a meeting of the minds upon the thing which is object of the contract and upon the price as manifested by the September 14, 1994 letter. Hence, upon the perfection of the contract, the parties may reciprocally demand performance. Further,

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[5] *Id.* at 29.

[6] *Id.* at 436-437.

XYST avers that the ₱1,000,000.00 reservation fee it paid is actually in the nature of earnest money or down payment and shall be considered as part of the price and as proof of the perfection of the contract.

Conversely, DMC insists that a contract to sell was entered into by the parties. It avers that in the contract to sell, the element of consent is lacking, and since the acceptance made by XYST is not absolute, no contract of sale existed between the parties. It claims that the terms, conditions and amendments which XYST tried to impose upon DMC and Citibank N.A. were proof that indeed XYST had qualifiedly accepted DMC's offer.

We find the petition of XYST Corporation bereft of merit.

It is a fundamental rule that, being consensual, a contract is perfected by mere consent.[7] From the moment of a meeting of the offer and the acceptance upon the object and the cause that would constitute the contract, consent arises.[8] The essence of consent is the conformity of the parties on the terms of the contract, that is, the acceptance by one of the offer made by the other.[9] However, the acceptance must be absolute; otherwise, the same constitutes a counter-offer[10] and has the effect of rejecting the offer.[11]

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[7] CIVIL CODE, Art. 1315.

[8] *Insular Life Assurance Company, Ltd. v. Asset Builders Corporation*, G.R. No. 147410, February 5, 2004, 422 SCRA 148, 160.

[9] *Salonga v. Farrales*, No. L-47088, July 10, 1981, 105 SCRA 359, 368.

[10] CIVIL CODE,

Art. 1319. Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. **The offer must be certain and the acceptance absolute. A qualified acceptance constitutes a counter-offer.** (Emphasis supplied.)

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[11] III J.C. VITUG, *CIVIL LAW*, *OBLIGATIONS AND CONTRACTS*, 116 (2003).

Equally important are the three stages of a contract: (1) preparation or negotiation, (2) perfection, and (3) consummation. Negotiation begins from the time the prospective contracting parties manifest their interest in the contract and ends at the moment of agreement of the parties. The perfection or birth of the contract takes place when the parties agree upon the essential elements of the contract. The last stage is the consummation of the contract wherein the parties fulfill or perform the terms agreed upon in the contract, culminating in the extinguishment thereof.[12]

XYST and DMC were still in the negotiation stage of the contract when the latter called off the deal. The facts show that DMC as agreed undertook to obtain the conformity of Citibank N.A. However, Citibank N.A.'s consent to the intended sale cannot be obtained since it does not conform to the amendments made by XYST on the pro-forma Contract to Sell. By introducing amendments to the contract, XYST presented a counter-offer to which DMC did not agree. Clearly, there was only an offer and a counter-offer that did not sum up to any final arrangement containing the elements of a contract. No meeting of the minds was established. The rule on the concurrence of the offer and its acceptance did not apply because other matters or details–in addition to the subject matter and the consideration–would still be stipulated and agreed upon by the parties.[13]

Therefore, since the element of consent is absent, there is no contract to speak of. Where the parties merely exchanged offers and counter-offers, no agreement or contract is perfected.

As to XYST's claim that the ₱1,000,000.00 reservation fee it paid is earnest money, we hold that it is not. Earnest money applies to a perfected sale. Here, no contract whatsoever was

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[12] *Gateway Electronics Corporation v. Land Bank of the Philippines,* G.R. Nos. 155217 and 156393, July 30, 2003, 407 SCRA 454, 459.

[13] *Insular Life Assurance Company, Ltd. v. Asset Builders Corporation, supra* at 161-162.

perfected since the element of consent was lacking. Therefore, the reservation fee paid by XYST could not be earnest money.

Coming now to the issue of whether DMC is entitled to attorney's fees, the Court finds that the award of attorney's fees to DMC is not proper. Article 2208 of the Civil Code states that in the absence of a stipulation, attorney's fees cannot be recovered, except in any of the following circumstances:

(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;

(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 the instant case, none of the enumerated grounds for recovery of attorney's fees is present.

WHEREFORE, this petition is *DENIED*. The September 26, 2005 Decision and March 13, 2006 Order of the Regional Trial Court of Makati City, Branch 64 in Civil Case No. 95-

063 are hereby *AFFIRMED* with the modification that the award of attorney's fees in favor of DMC is deleted. Costs against petitioner.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 172574. July 31, 2009]

NOLI LIM, *petitioner, vs.* **ANGELITO DELOS SANTOS (deceased) now his Heirs, represented by BELEN DELOS SANTOS,** *respondents,*

DENIA R. ADOYO, ***ET AL.,*** *intervenors,*

GLORIA MURILLO, ***ET AL.,*** *protestants.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; DOCKET FEES; PAYMENT WITHIN THE PRESCRIBED PERIOD IS MANDATORY FOR THE PERFECTION OF AN APPEAL.—** It is a well-established rule that the payment of docket fees within the prescribed period is mandatory for

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

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

[***] Designated member of the Second Division per Special Order No. 664.

the perfection of an appeal. Without such payment, the appellate court does not acquire jurisdiction over the subject matter of the action and the decision or final order sought to be appealed from becomes final and executory. The payment of docket fees is not mere technicality of law or procedure, but an essential requirement for the perfection of an appeal.

2. **ID.; ID.; ID.; ID.; ID.; EXCEPTIONS.—** In exceptional cases, we had allowed a liberal application of the rule. The recent case of *Villena v. Rupisan,* extensively discussed and enumerated the various instances recognized as exceptions to the stringent application of the rule in the matter of paying the docket fees, such as: (1) most persuasive and weighty reasons; (2) to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; (3) good faith of the defaulting party by immediately paying within a reasonable time from of the default; (4) the existence of special or compelling circumstances; (5) the merits of the case; (6) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (7) a lack of any showing that the review sought is merely frivolous and dilatory; (8) the other party will not be unjustly prejudiced thereby; (9) fraud, accident, mistake or excusable negligence without appellant's fault; (10) peculiar legal and equitable circumstances attendant to each case; (11) in the name of substantial justice and fair play; (12) importance of the issues involved; and (13) exercise of sound discretion by the judge guided by all the attendant circumstances.

3. **ID.; ID.; ID.; ID.; ID.; FAILURE TO PERFECT AN APPEAL RENDERS THE QUESTIONED DECISION FINAL AND EXECUTORY.—** It bears emphasizing that perfection of an appeal within the statutory or reglementary period is not only mandatory but also jurisdictional, and failure to do so renders the questioned decision final and executory, and deprives the appellant court of jurisdiction to alter the final judgment, much less to entertain the appeal.

4. **ID.; ID.; ID.; ID.; ID.; ID.; BARE INVOCATION OF SUBSTANTIAL JUSTICE FOR ALLOWANCE OF AN APPEAL; SUSPENSION OF PROCEDURAL RULES NOT WARRANTED IN CASE AT BAR.—** Now as to invocation by petitioner of substantial justice which warrants the allowance of his appeal, the pronouncement by this Court in the case at *Lazaro v. Court of Appeals*, is apt: We must stress that the bare

invocation of "the interest of substantial justice" is not a magic wand that will automatically compel this Court to suspend procedural rules. "Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed."

5. **ID.; ID.; ID.; FINDINGS OF ADMINISTRATIVE AGENCIES; ACCORDED RESPECT, IF NOT FINALITY, BY THE COURTS.—** Well settled is the rule that findings of administrative agencies, which have acquired expertise because their jurisdiction is confined to specific matters, are accorded respect, if not finality, by the courts.

APPEARANCES OF COUNSEL

Jomer H. Aquino for petitioner.
Andres C. Villaruel, Jr. for respondents.
Ferdinand M. Sacmar for Augusto D. Marte.

D E C I S I O N

QUISUMBING, *J.*:

This petition for review on *certiorari* seeks to reverse the Decision[1] dated April 21, 2006 of the Court of Appeals in CA-G.R. SP No. 82645. The Court of Appeals had dismissed petitioner's petition for review and affirmed the Orders of the Office of the President dated December 22, 2003[2] and February 13, 2004[3] dismissing petitioner's appeal from the Decision[4]

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[1] *Rollo,* pp. 30-37. Penned by Associate Justice Jose C. Reyes, Jr., with Associate Justices Arturo D. Brion (now a member of this Court) and Magdangal M. de Leon concurring.

[2] CA *rollo*, pp. 22-23.

[3] *Id.* at 24-26.

[4] *Id.* at 39-43.

dated April 12, 1999 and Order[5] dated December 5, 2002 of the Office of the Secretary of the Department of Environment and Natural Resources (DENR).

The antecedent facts are as follows.

On July 17, 1991, petitioner Noli Lim filed a Protest[6] with the DENR Regional Office against the free patent application (F.P.A. No. IV-8) 5958 of Angelito delos Santos (now deceased) over Lot No. 3389-A, Csd-04-13289-D, Pls-83 located at Barrio Mar-Francisco,[7] Pinamalayan, Oriental Mindoro. Petitioner alleged that he and some other persons are the actual occupants of the land in question; that they had introduced various improvements thereon; and that when they first entered the land in 1960, there were already improvements introduced by Hospicio and Alfonso Magcawit, the tenants of Florencia Carl, who was the registered owner of the disputed property. Petitioner added that applicant Angelito delos Santos never took possession of the land nor introduced any improvements thereon.

On August 7, 1995, the Regional Executive Director of DENR Region IV-B issued an Order[8] dismissing petitioner's protest. In his order, Regional Executive Director Leonito C. Umali declared that the preferential right of applicant Angelito delos Santos and that of his predecessor-in-interest over the land in question had already been recognized, citing the decision of the Regional Trial Court (RTC) in Civil Case No. R-445, entitled "*Republic v. Carmen Carl-Gillette, et al.*"[9] In the said decision, the free patent and original certificate of title issued in the name of one Florencia L. Carl was cancelled and nullified on the ground of misrepresentation after it was discovered by a representative of the Bureau of Lands that she, as well as her children, never entered nor cultivated the land in question,

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[5] *Id.* at 50-53.

[6] *Rollo,* pp. 44-45. Docketed as DENR Case No. IV-B-5506.

[7] "Marfrancisco," in other parts of the records.

[8] *Rollo*, pp. 46-48.

[9] *Id.* at 48.

contrary to her allegation in her application that she had been continuously occupying and cultivating the parcel of land since 1906. Relying on the said decision, the Regional Executive Director ruled that the claim of protestant Noli Lim who is the son of Florencia Lim, the overseer of the land formerly claimed by Florencia Carl, must necessarily fail.[10] The dispositive portion of the Order states:

> WHEREFORE, premises considered, the Protest dated July 17, 1991 filed by protestant Noli L. Lim is hereby as it is ordered DISMISSED and dropped from the records for lack of merit and whatever amount paid on account thereof is forfeited in favor of the Government.
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> Consequently, the Free Patent Application No. (IV-8)-5958 of Angelito delos Santos for Lot No. 3389-A, PLS-83, located at Barangay Mar-Francisco, Pinamalayan, Oriental Mindoro, be now given further due course leading to the issuance of patent therefor.
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> SO ORDERED.[11]

On appeal, the DENR Secretary affirmed the said Order and dismissed petitioner's appeal for lack of merit. The DENR Secretary found that the controverted lot was previously titled in the name of Florencia Carl under Original Certificate of Title (OCT) No. P-9106, issued by virtue of Free Patent No. 514819. The subject lot was under the care of Florencia Lim, through her sons Noli and Eli Lim and Hospicio Magcawit. Said lot later became the subject of *Civil Case No. R-445*, entitled, *Republic of the Philippines v. Carmen Carl-Gillette, et al.*, for Annulment of Patent and Reversion of the Land to the State, where judgment was rendered on June 27, 1988 by the RTC of Pinamalayan, Oriental Mindoro, Branch 41, declaring void *ab initio* Free Patent No. 514819 and OCT No. P-9106 issued in the name of Florencia Carl. Moreover, the DENR Secretary noted the trial court's finding that as early as 1936, therein protestant's (Angelito delos Santos) father was the one actually

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

[11] *Id.* at 48.

occupying the land in question and that after his demise in 1969, his son, Angelito delos Santos, continued with the cultivation and occupation of the same.

Thus, according to DENR Secretary, since the title of Florencia Carl, from whom petitioner Noli Lim derived his claim and gained entry to the land in question, had been cancelled, then Noli Lim cannot claim a better right over respondent Angelito delos Santos whose predecessor-in-interest had been found to have possessed the land since 1936.

Petitioner filed a motion for reconsideration from the said decision, but his motion was denied for lack of merit. In the same order, the Motion for Intervention filed by Denia R. Adoyo, *et al.,* and the Protest filed by Gloria Murillo, *et al*. were also denied.

Not satisfied, petitioner elevated the case to the Office of the President. Thereupon, petitioner was directed, among others, to submit his appeal memorandum and remit, within fifteen (15) days from receipt of the order, the sum of Five Hundred Pesos (₱500.00) as appeal fee.[12] Petitioner prayed for an additional period of fifteen (15) days from October 18, 2003 or until November 2, 2003 within which to file the appeal memorandum and to pay the appeal fee. The Office of the President granted petitioner's motion and petitioner was given an extension of fifteen (15) days or until November 2, 2003 within which to comply. On November 10, 2003, he filed another motion requesting for another extension of five (5) days to file the appeal memorandum and to pay the appeal fee, which was not acted upon by the said Office. Thereafter, on November 14, 2003, petitioner filed his appeal memorandum through registered mail but allegedly opted to wait for the appeal memorandum to reach the Office of the President before paying the corresponding appeal fee. On January 7, 2004, petitioner paid the appeal fee.

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[12] *Id.* at 68.

In the meantime, the Office of the President, after verifying that no appeal fee has been paid by petitioner although an appeal memorandum has been filed by his counsel, issued on December 22, 2003 an order dismissing petitioner's appeal for lack of jurisdiction to entertain the same. In the said order, the Office of the President stated that the requirement of appeal fee is jurisdictional and non-payment thereof justifies dismissal of the appeal. Petitioner's motion for reconsideration from the dismissal order was likewise denied.

Undaunted, petitioner filed a petition for review before the Court of Appeals which rendered the herein assailed Decision affirming the orders of the Office of the President. The Court of Appeals held that perfection of appeals in the manner and within the period permitted by law is not only mandatory but also jurisdictional; and indispensable to the perfection of an appeal is the payment of the appellate docket fees.[13] The appellate court acknowledged that the dismissal of an appeal for non-payment of docket and lawful fees is discretionary, but enunciated that the Office of the President cannot be faulted for exercising such discretion and proceeded to dismiss petitioner's appeal, since petitioner was given every opportunity to perfect his appeal through the filing of an appeal memorandum and the payment of corresponding appeal fees.[14] Said court further concluded that inasmuch as the payment of the appellate docket fees was made long after the expiration of the period for the perfection of an appeal, the Office of the President did not acquire jurisdiction to take cognizance of the case, except to order its dismissal.[15]

Hence, petitioner is now before us raising the <u>sole issue</u> of whether or not the Court of Appeals erred in sustaining the orders of the Office of the President in dismissing his appeal for failure to timely pay the corresponding appeal fees.

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[13] *Id.* at 33.

[14] *Id.* at 34.

[15] *Id.* at 36.

In the main, petitioner asserts that he has paid the corresponding appeal fees within a reasonable time after the appeal memorandum was filed and that the dismissal of the appeal on a mere technicality is tantamount to denial of substantial justice. Petitioner begs this Court to disregard the rules of technicality and consider the merits of the case.[16]

Respondents (the heirs of Angelito delos Santos), on the other hand, contend that the appeal interposed by petitioner before the Office of the President was filed out of time; hence the decision of the DENR Secretary has become final and executory. Also, they argue that the petitioner cannot claim that the Office of the President disregarded the merits of the case because he was given enough opportunity to present his evidence before the DENR and was given an extension to file his memorandum and pay the appeal fees before the Office of the President but he failed to do so.[17]

Simply stated, the question before us now may be rephrased as follows: does petitioner's failure to pay on time the appeal fee warrant the dismissal of his appeal filed with the Office of the President?

It is a well-established rule that the payment of docket fees within the prescribed period is mandatory for the perfection of an appeal.[18] Without such payment, the appellate court does not acquire jurisdiction over the subject matter of the action and the decision or final order sought to be appealed from becomes final and executory.[19] The payment of docket fees is not a mere technicality of law or procedure, but an essential requirement for the perfection of an appeal.[20]

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[16] *Id.* at 18.

[17] *Id.* at 152-154.

[18] *Caspe v. Court of Appeals*, G.R. No. 142535, June 15, 2006, 490 SCRA 588, 591.

[19] *Enriquez v. Enriquez*, G.R. No. 139303, August 25, 2005, 468 SCRA 77, 85.

[20] *La Salette College v. Pilotin*, G.R. No. 149227, December 11, 2003, 418 SCRA 380, 389.

In the instant case, petitioner failed to perfect his appeal with the Office of the President, despite having been given reasonable opportunity to do so. Records would show that petitioner was granted an extension of fifteen (15) days from October 18, 2003 or until November 2, 2003 to file his appeal memorandum and to pay the appeal fee. Instead of complying, petitioner, on November 10, 2003, when the extension granted had already expired, requested for another extension of five (5) days. It is specifically provided under Section 4 of Administrative Order No. 18[21] that extension of time for the payment of appeal fee and the filing of pleadings shall not be allowed, except for good and sufficient cause and only if the motion for extension is filed before the expiration of the time sought to be extended.

Indeed, petitioner's motion was appropriately not acted upon, it having been filed after the expiration of the period sought to be extended. Also, while petitioner filed his appeal memorandum on November 14, 2003, it took him more than two months from November 2, 2003, to pay the appeal fee as records show that petitioner was able to pay only on January 7, 2004. The reason advanced by petitioner for the late payment, that he opted to wait for his appeal memorandum which was filed through mail, to reach the Office of the President before paying the appeal fee, is flimsy and is not sufficient to justify the relaxation of the rules. In the case of *KLT Fruits, Inc. v. WSR Fruits, Inc.*,[22] this Court has denied the appeal when the docket fee was filed more than 30 days after the period to appeal had expired.[23]

In exceptional cases, we had allowed a liberal application of the rule. The recent case of *Villena v. Rupisan*,[24] extensively

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[21] PRESCRIBING RULES AND REGULATIONS GOVERNING APPEALS TO THE OFFICE OF THE PRESIDENT OF THE PHILIPPINES, done on February 12, 1987.

[22] G.R. No. 174219, November 23, 2007, 538 SCRA 713.

[23] *Id*. at 730.

[24] G.R. No. 167620, April 3, 2007, 520 SCRA 346.

discussed and enumerated the various instances recognized as exceptions to the stringent application of the rule in the matter of paying the docket fees, such as: (1) most persuasive and weighty reasons; (2) to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; (3) good faith of the defaulting party by immediately paying within a reasonable time from the time of the default; (4) the existence of special or compelling circumstances; (5) the merits of the case; (6) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (7) a lack of any showing that the review sought is merely frivolous and dilatory; (8) the other party will not be unjustly prejudiced thereby; (9) fraud, accident, mistake or excusable negligence without appellant's fault; (10) peculiar legal and equitable circumstances attendant to each case; (11) in the name of substantial justice and fair play; (12) importance of the issues involved; and (13) exercise of sound discretion by the judge guided by all the attendant circumstances.[25]

Considering that petitioner has not proffered an acceptable explanation for the delay in the payment of the appeal fee, his reason not being one of the recognized exceptions, we agree with the Court of Appeals that there is no compelling reason to reverse the orders of the Office of the President dismissing the appeal filed by petitioner. It bears emphasizing that perfection of an appeal within the statutory or reglementary period is not only mandatory but also jurisdictional, and failure to do so renders the questioned decision final and executory, and deprives the appellate court of jurisdiction to alter the final judgment, much less to entertain the appeal.[26]

Here, petitioner paid the appeal fee only after the Office of the President had already dismissed his appeal on December 22, 2003. Obviously, at the time of payment, the assailed decision and order of the DENR had already attained finality. A judgment

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[25] *Id.* at 367-368.

[26] *Meatmasters International Corporation v. Lelis Integrated Development Corporation*, G.R. No. 163022, February 28, 2005, 452 SCRA 626, 631.

becomes "final and executory" by operation of law. Finality becomes a fact when the reglementary period to appeal lapses and no appeal is perfected within such period.[27] Hence, 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 case.[28]

Now as to the invocation by petitioner of substantial justice which warrants the allowance of his appeal, the pronouncement by this Court in the case of *Lazaro v. Court of Appeals*,[29] is apt:

> We must stress that the bare invocation of "the interest of substantial justice" is not a magic wand that will automatically compel this Court to suspend procedural rules. "Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed."[30]

Moreover, as to the alleged merit of his case claimed by petitioner, we are not convinced. Both the Regional Executive Director and the DENR Secretary are in agreement that Angelito delos Santos' preferential right over the land in question had been recognized by the RTC whose decision has long been final. Well settled is the rule that findings of administrative agencies, which have acquired expertise because their jurisdiction is confined to specific matters, are accorded respect, if not finality, by the courts.[31]

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[27] *Social Security System v. Isip*, G.R. No. 165417, April 3, 2007, 520 SCRA 310, 314.

[28] *National Power Corporation v. Degamo*, G.R. No. 164602, February 28, 2005, 452 SCRA 634, 641-642.

[29] G.R. No. 137761, April 6, 2000, 330 SCRA 208.

[30] *Id.* at 214.

[31] *Estrella v. Robles, Jr.*, G.R. No. 171029, November 22, 2007, 538 SCRA 60, 76.

As regards the claim of one Augusto Marte, who allegedly purchased one (1) hectare or ten thousand (10,000) square meters of the subject property from the heirs of deceased respondent, Angelito delos Santos, and who filed his comment to the petition before this Court seeking to protect his rights and interests in the property, we deem that his claim is not a proper subject in the instant petition, as it would entail the presentation of evidence which is beyond the ambit of the instant review.

To conclude, we find no error on the part of the Court of Appeals in affirming the orders of the Office of the President dismissing petitioner's appeal for his failure to timely pay the appeal fee. The appellate court's ruling is in accordance with the time-honored principle that the right to appeal is not a natural right or a part of due process, it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law. The party who seeks to avail of the privilege must comply with the requirement of the rules. Failing to do so, the right to appeal is lost.

WHEREFORE, the petition for review on *certiorari* is hereby *DENIED* for lack of merit. The Decision dated April 21, 2006 of the Court of Appeals docketed as CA-G.R. SP No. 82645 is *AFFIRMED*. Costs against petitioner.

SO ORDERED.

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

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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.

[***] Additional member per Raffle of June 10, 2009 in place of Associate Justice Arturo D. Brion who took no part due to prior action in the Court of Appeals.

SECOND DIVISION

[G.R. No. 174830. July 31, 2009]

ISABELITA *vda. de* DAYAO and HEIRS OF VICENTE DAYAO, *petitioners, vs.* **HEIRS OF GAVINO ROBLES, namely PLACIDA *vda. de* ROBLES, TEODORA ROBLES MENDOZA, CRISPINA ROBLES-ABAGAT, PAVIA ROBLES *vda. de* ADRIANO, TEOFILA ROBLES VILLAFLORES and REGINO ROBLES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF ADMINISTRATIVE AGENCIES CHARGED WITH A SPECIFIC FIELD OF EXPERTISE ARE GENERALLY AFFORDED GREAT WEIGHT AND RESPECT BY THE COURTS.—** At the onset, factual findings of administrative agencies charged with a specific field of expertise are afforded great weight and respect by the courts, and are generally binding and final so long as they are supported by substantial evidence found in the records of the case. However, when these administrative bodies base their conclusions on surmises, speculations or conjectures or when they disregard or grossly misappreciate the evidence presented, we are permitted to set aside their findings and make our own assessment of the submitted evidence.

2. **ID.; APPEAL UNDER RULE 45; A PETITION FOR REVIEW UNDER RULE 45 IS LIMITED ONLY TO QUESTIONS OF LAW.—** Settled is the rule that factual questions are not the proper subject of an appeal by *certiorari*, as a petition for review under Rule 45 is limited only to questions of law. Moreover, it is settled doctrine that the "errors" which may be reviewed by this Court in a petition for *certiorari* are those of the Court of Appeals, and not directly those of the trial court or the quasi-judicial agency, tribunal, or officer which rendered the decision in the first instance.

3. **ID.; ID.; ID.; EXCEPTIONS.—** When supported by substantial evidence, the findings of fact of the Court of Appeals are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions: (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of facts 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 are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) When the findings of fact of the Court of Appeal are premised on the supposed absence of evidence and contradicted by the evidence on record.
4. **ID.; ID.; ID.; ID.; CASE AT BAR.—** We find that this case falls under the exceptions, since the findings of fact of the DAR are contrary to that of the Court of Appeals warranting review by this Court.

APPEARANCES OF COUNSEL

Arni R. Topico for petitioners.
Jaime G. Mena for respondents.

DECISION

QUISUMBING, *J.*:

This is a petition for review on *certiorari* seeking the reversal of the Decision[1] dated January 26, 2006 and the Resolution[2] dated September 22, 2006 of the Court of Appeals in CA-G.R. SP No. 81637. The Court of Appeals had reversed the Decision[3] dated June 30, 2003 of the Office of the President which earlier affirmed the Order[4] dated May 19, 1997 of then Department of Agrarian Reform (DAR) Secretary Ernesto D. Garilao, upholding the grant of the application for retention of the Heirs of Vicente O. Dayao and his sister Isabelita O. Dayao.

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

Anacleto Dayao was the owner of parcels of land located in Paombong, Hagonoy and Malolos, in the Province of Bulacan, and in Minalin, Province of Pampanga. He died on July 24, 1934, leaving behind his spouse, Trinidad Ople Dayao and his two children, Vicente and Isabelita.[5]

On January 31, 1976, Vicente filed before the DAR an application for retention of several parcels of land. In his Small Landowner's Undertaking, Application for Retention and Affidavit,[6] Vicente stated his desire to retain not more than 7 hectares of his rice and/or corn lands pursuant to Presidential

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[1] *Rollo*, pp. 38-62. Penned by Associate Justice Arturo D. Brion (now a member of this Court), with Associate Justices Bienvenido L. Reyes and Mariflor P. Punzalan Castillo concurring.

[2] *Id.* at 63-68. Penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Bienvenido L. Reyes and Mariano C. Del Castillo concurring.

[3] *Id.* at 109-110.

[4] *Id.* at 77-83.

[5] *Id.* at 39.

[6] CA *rollo*, pp. 27-28.

Decree No. 27,[7] composed of the following tenanted rice and/ or corn lands:

IV. TENANTED RICE AND/OR CORN LANDS APPLIED FOR RETENTION			
OCT/TCT/TD No.	NAME OF TENANT-FARMER	LOCATION OF FARMHOLDINGS	AREA (in hectares)
TCT No.18548	Juan Alcoriza, Policarpio Alcoriza & Victorino Teodoro	Dakila, Malolos, Bulacan	3.5001
CT No. 38	Perlito Santos	Kapitangan, Paombong, [Bulacan]	1.1000
TD No. 2762	Jose Santiago	San Sebastian, [Hagonoy], [Bulacan]	.4252
TD No. 2761	Jose Santiago	San Sebastian, Hagonoy, [Bulacan]	.9000
TD No. 2529	Gavino Robles	Sta. Elena, Hagonoy, [Bulacan]	.8425[8]

Twenty years later or on October 16, 1996 Director Eugenio B. Bernardo of DAR Region III, San Fernando, Pampanga granted Vicente's application for retention.[9] By that time, Vicente had already died and was survived by his heirs who substituted for him in the action.[10]

The DAR Order granting Vicente's application for retention states:

WHEREFORE, in view of the foregoing, ORDER is hereby issued:

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[7] DECREEING THE EMANCIPATION OF TENANTS FROM THE BONDAGE OF THE SOIL, TRANSFERRING TO THEM THE OWNERSHIP OF THE LAND THEY TILL AND PROVIDING THE INSTRUMENTS AND MECHANISM THEREFOR, done on October 21, 1972.

[8] CA *rollo*, p. 28.

[9] *Rollo*, pp. 72-74.

[10] *Id.* at 41-42.

1. GRANTING the Application for retention filed by the Heirs of Vicente O. Dayao, namely: Basilia D. Tiongson, Delfin O. Dayao, Mario O. Dayao, and Teresa D. Contreras, with respect to their father's share more specifically described as:

TD No.	LOCATION	AREA
6341	Dakila, Malolos, Bulacan	3.5001 hectares
2529	San Pablo, Hagonoy, Bulacan	1.2829 hectares
661	Iba, Hagonoy, Bulacan	.3828 hectares
	TOTAL:	5.1[65]8 hectares

which shall be divided among the aforementioned Heirs to the extent of their legal shares;

2. GRANTING the retention right of Isabelita O. Dayao with respect to her own share, more specifically described as:

TD No.	LOCATION	AREA
4389	Kapitangan, Paombong, Bulacan	1.0923 hectares
8482	Sta. Elena, Hagonoy, Bulacan	.8925 hectares
7353	San Sebastian, Hagonoy, Bulacan	.9256 hectares
7374	San Sebastian, Hagonoy, Bulacan	.4752 hectares
662	Iba, Hagonoy, Bulacan	1.2410 hectares
	TOTAL:	4.6266 hectares

3. CANCELLING the CLTs issued to the tenants in the retained area, and in lieu thereof, directing the MARO concerned to assist the tenants in the execution of leasehold contracts with the landowners over their respective tillages; and

4. ORDERING the applicants to accordingly respect the security of tenure of their tenants/lessees, and to leave them in their peaceful cultivation of the land.

SO ORDERED.[11]

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[11] *Id.* at 73-74.

Gavino Robles, one of the tenant-farmers of the parcels of land which Vicente had applied for, appealed the order granting Vicente's application for retention.

On May 19, 1997, then DAR Secretary Ernesto D. Garilao issued an Order denying Gavino's appeal and affirming the order of the DAR Region III Regional Director, as follows:

> WHEREFORE, [i]n [v]iew of [a]ll the [a]bove, Order is hereby issued denying the instant appeal for utter lack of merit and affirming the Order of DARRO, Region III dated 16 October 1996. The MARO of Hagonoy, Bulacan is hereby ordered to assist herein movant-appellant to execute a leasehold contract with the owner of the land at Sta. Elena, Hagonoy, Bulacan upon sufficient proof from movant-appellant Gavino Robles that he is actually tenanting therein. Likewise, the PARO of Bulacan is hereby ordered to initiate with the DARAB for the cancellation of any registered CLT or EP generated or issued in favor of movant-appellant Gavino Robles over that property at San Pablo, Hagonoy, Bulacan. However, any CLT or EP which is generated but not yet registered in the name of Gavino Robles is hereby ordered cancelled.
>
> SO ORDERED.[12]

Gavino filed a motion for reconsideration of the May 19, 1997 Order, but former DAR Secretary Horacio R. Morales denied the same. Gavino Robles then appealed to the Office of the President which, on June 30, 2003, issued a Decision denying his appeal, the dispositive portion of which states as follows:

> WHEREFORE, premises considered, judgment appealed from is hereby **AFFIRMED** *in toto*.
>
> SO ORDERED.[13]

Gavino subsequently filed a petition for review before the Court of Appeals.

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[12] *Id.* at 83.

[13] *Id.* at 110.

On January 26, 2006, the Court of Appeals issued a decision reversing the orders of the DAR and the Office of the President. The Court of Appeals ruled that Vicente's application for retention was insufficient, incomplete and lacking forthrightness. Hence, the DAR had no basis to grant Vicente's application for retention. The Court of Appeals also held that contrary to the finding of the DAR, Vicente's sister, Isabelita, never applied for retention and hence, the DAR had no jurisdiction to grant her any retention. The dispositive portion of the decision states:

WHEREFORE, premises considered, we hereby **GRANT** the petition for review and accordingly **REVERSE** and **SET ASIDE** the Order dated June 30, 2003 of the Office of the President. Vicente Dayao's application for retention is **DENIED** for lack of merit.

SO ORDERED.[14]

Petitioners herein Isabelita Dayao and the Heirs of Vicente Dayao filed a motion for reconsideration before the Court of Appeals but it was denied in a Resolution dated September 22, 2006.

Hence, the instant petition under Rule 45 of the Rules of Court.

Petitioners raise the following issue for our resolution:

THE HONORABLE COURT OF APPEALS ERRED WHEN IT FAILED TO APPLY THE PROVISIONS OF PD 27 AND RELATED LAWS ON RETENTION RIGHTS OF LANDOWNERS, VICENTE DAYAO AND ISABELITA DAYAO, THEREBY DENYING THE PETITIONERS OF THEIR GUARANTEED RIGHTS UNDER THE LAW.[15]

The sole issue is: Did the Court of Appeals err when it reversed the orders of the DAR and the Office of the President granting petitioners' application for retention?

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[14] *Id.* at 61-62.

[15] *Id.* at 354.

At the onset, factual findings of administrative agencies charged with a specific field of expertise are afforded great weight and respect by the courts, and are generally binding and final so long as they are supported by substantial evidence found in the records of the case. However, when these administrative bodies base their conclusions on surmises, speculations or conjectures or when they disregard or grossly misappreciate the evidence presented, we are permitted to set aside their findings and make our own assessment of the submitted evidence.

Settled is the rule that factual questions are not the proper subject of an appeal by *certiorari*, as a petition for review under Rule 45 is limited only to questions of law. Moreover, it is settled doctrine that the "errors" which may be reviewed by this Court in a petition for *certiorari* are those of the Court of Appeals, and not directly those of the trial court or the quasi-judicial agency, tribunal, or officer which rendered the decision in the first instance. Finally, it is settled that factual findings of administrative agencies are generally accorded respect and even finality by this Court, if such findings are supported by substantial evidence. The factual findings of the Secretary of Agrarian Reform who has acquired expertise in specific matters within his jurisdiction, deserve full respect and, without justifiable reason, ought not to be altered, modified or reversed.[16]

Also well-settled is the rule that the Supreme Court is not a trier of facts. When supported by substantial evidence, the findings of fact of the Court of Appeals are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions:

(1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;

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[16] *Sebastian v. Morales*, G.R. No. 141116, February 17, 2003, 397 SCRA 549, 562.

(2) When the inference made is manifestly mistaken, absurd or impossible;

(3) Where there is a grave abuse of discretion;

(4) When the judgment is based on a misapprehension of facts;

(5) When the findings of fact are conflicting;

(6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;

(7) When the findings are contrary to those of the trial court;

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

(9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and

(10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.[17]

We find that this case falls under the exceptions, since the findings of fact of the DAR are contrary to that of the Court of Appeals warranting review by this Court.

Accordingly, we shall now focus on the findings of fact of the Court of Appeals, which categorically held as follows:

One of the earliest issues that the petitioners' predecessor – Gavino Robles – raised was the question of who applied for retention. Gavino pointed to… – the Small Landowner's Undertaking, Application for Retention and Affidavit – that Vicente filed on January 31, 1976 to claim that Vicente was the sole applicant. Isabelita's name surfaced in the records of the case only through an Extrajudicial Settlement that Vicente filed in 1981 showing how he and his sister Isabelita

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[17] *Ontimare, Jr. v. Elep*, G.R. No. 159224, January 20, 2006, 479 SCRA 257, 265.

were dividing up the estate of their deceased father (and presumably of their mother Trinidad although no information about her death can be found in the records before us). The petitioners did not frontally raise this same issue in the present petition for review, thus suggesting that this is not an issue before us. Whether the grantee of a right of retention had filed an application for retention, however, is a jurisdictional matter that the parties cannot simply gloss over; the DAR has no authority to decree a retention when no application was in the first place ever filed….

We find from our review that the above ruling is not supported by the records before us. The petition's Annex "A", to be sure, contains no indication that there is an applicant other than Vicente. Our examination of the records in fact shows that Vicente categorically claimed ownership of the lands he listed, with the qualification that "All the mentioned properties with the exception of TCT No. T-51369 are still in the names of the former owners". It likewise significantly appears that he only included his share of the Minalin, Pampanga ricelands (with areas of 2.3030 and 3.6998 respectively out of the total 24 hectares that had been placed under OLT) in his sworn declaration. This, in our view, confirms that he filed the application only in his own behalf.

We likewise examined the 1981 extrajudicial settlement, copy of which was attached as Annex "1" to the respondents' comment to the petition. While this notarized deed did mention Vicente was the "representative of my co-owner Isabelita Dayao," there was no mention that Isabelita was joining him as applicant for retention or that the deed was submitted for purposes of their application for retention. Thus, it requires a good stretch of the imagination to say – as the DAR did – that Isabelita had joined Vicente in the latter's application for retention.

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We disagree with the DAR and the OP's conclusions as we believe that Vicente failed to comply with the requirements for retention. He is not entitled to retention because he failed to list all his properties in his application and in the 1981 extrajudicial settlement he subsequently submitted. We base this conclusion on our reading that the legal significance and materiality of Gavino's submissions, consisting of the 1959 extrajudicial settlement and the various certifications issued by the Municipal Assessors of the different cities and municipalities of Bulacan, cannot be ignored and should have

been properly appreciated and given due weight by the DAR and by the Office of the President.

The 1959 extrajudicial settlement provides a summary of Anacleto's properties that Trinidad ([Anacleto's] wife), Vicente and Isabelita acquired by inheritance after Anacleto died in 1934. As the DAR order correctly noted, this extrajudicial settlement did not assign specific properties to the heirs but merely divided the inherited properties pro-indiviso; one-half of the totality went to Trinidad while the remaining half was divided between the children Vicente and Isabelita. In this light, this extrajudicial settlement may not be a conclusive indicator of Vicente's landholdings in 1976 (*i.e.*, at the time he applied for retention), but it is still material and significant for Vicente's application in terms of the properties it listed that continued to appear in Anacleto's name for taxation purposes under the Municipal Assessors' certifications, and as a standard of comparison to test the evidentiary weight of the 1981 extrajudicial settlement that the DAR almost wholly relied upon. Confronted with the 1959 extrajudicial settlement and the submitted certifications, the least that Vicente should have done is to explain and to reconcile the different listings of properties in the two extrajudicial settlements and his own 1976 sworn application for retention. It does not appear from the records before us, however, that Vicente ever made any such clarification. To us, this omission is legally significant as the burden of proving Vicente's entitlement thereby shifted. In the absence of any clarification from Vicente, the DAR lost its basis to justify Vicente's entitlement to retention. For, in our view, the 1959 extrajudicial settlement – read in relation with the Municipal Assessors' certifications and with the 1981 Extra Judicial Settlement of Estate – directly suggested that Vicente failed to give a complete listing of his landholdings when he applied for retention in 1976 and did not rectify it through the submission of the 1981 extrajudicial settlement. Thus, Vicente's application suffered from material omissions and was fatally incomplete. We find it significant that even in the petition before us, Vicente's heirs have been deafeningly silent about the 1959 extrajudicial settlement and the Municipal Assessors' certifications, apparently relying on the generalizations made in the DAR order regarding these submissions.

To illustrate the extent of the properties still in [Anacleto's] name, in Malolos City alone, there are several tracts of land that Vicente should have accounted for in his sworn application for retention. These

are the following: (1) a 2,626 square meter land in Mabolo; and (2) the 935 square meter and the 333 square meter lands in San Vicente.

In the Municipality of Hagonoy, the Office of the Treasurer issued a certification that several lands in the different *barangays* of the municipality, with an aggregate of 81,223 square meters (8.1223 hectares), were still declared in [Anacleto's] name as of **1974**. Out of these total landholdings in Hagonoy, the 18,728 square meter land in San Miguel, Hagonoy and the 22,862 square meter land in San Agustin, Hagonoy were similarly not accounted for in Vicente's application. In addition, the Office of the Municipal Assessor of Hagonoy issued a certification that Anacleto owned a parcel of land measuring 15,448 square meters (1.5448 hectares) in Abulalas and that several parcels of land in the different *barangays* of the municipality, with an aggregate area of 18,420 square meters (1.842 hectares), are claimed either by Trinidad or Anacleto although these lands are now declared in Gavino's name. Vicente likewise did not declare these lands in his application, although the San Pablo lands were mentioned in the 1981 extrajudicial settlement.

In Paombong, the Office of the Municipal Assessor issued a certification that Anacleto was the previous owner of a parcel of land measuring 11,634 square meters (1.1634 hectares) located in Barangay Pinalagdan (in 1997, this land was already declared in the name of Gabriel Sapitan) and that Trinidad claimed a 10,389 square meter – (1.0389 hectares) land located in the same *barangay*. Vicente also did not likewise account for these lands in his application. In addition, Anacleto was the previous declarant of a parcel of land, with an area of 2,051 square meters, situated in Barangay, San Isidro II (which in 1997 was already declared in the name of Melchor de Roxas, married to Cecilia Torres), which was likewise not listed in Vicente's application for retention.

Since no other heirs were indicated in the records and since all these lands already belonged to Anacleto's heirs after his death in 1934, Vicente had been less than forthright in the application for retention that the DAR passed upon. His application therefore should have been disapproved for its patent incompleteness that left the DAR with no certain way of knowing, given Vicente's silence, how and why he should be entitled to retention. Both the DAR on motion for reconsideration and the Office of the President should have made this conclusion as they had the benefit of Gavino's critical submissions. DAR Region III, for its part, is no less responsible for what happened in light of its unusually lengthy inaction, and its failure to inquire

deeper given two extrajudicial settlements that substantially differed in their listed properties. In sum, we hold that both the DAR and the OP misappreciated material evidence and thus made the wrong considerations when they approved Vicente's application for retention.[18]

After careful perusal of the records, we find that the abovementioned findings of fact of the Court of Appeals are accurate and well documented. We therefore sustain its findings that Isabelita Dayao did not apply for retention, and Vicente's application for retention failed to comply with the legal requirements for retention, such application being "insufficient, incomplete and lacking in forthrightness." Indeed, the DAR had no basis for granting Vicente's application for retention. Hence, the Court of Appeals committed no error in granting Gavino Robles' petition below.

WHEREFORE, the instant petition of petitioners Dayaos is *DENIED*. The assailed Decision dated January 26, 2006 and Resolution dated September 22, 2006 of the Court of Appeals in CA-G.R. SP No. 81637 are *AFFIRMED*.

Costs against petitioners.

SO ORDERED.

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

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[18] *Rollo*, pp. 49-61.

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

[**] Designated member of the Second Division per Special Order No. 665.

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

SECOND DIVISION

[G.R. No. 175677. July 31, 2009]

SPOUSES AZUCENA B. CORPUZ AND RENATO S. CORPUZ, *petitioners, vs.* **CITIBANK, N.A. and HON. RAUL B. VILLANUEVA as Presiding Judge of Branch 255, Regional Trial Court in Las Piñas City,** *respondents.*

[G.R. No. 177133. July 31, 2009]

CITIBANK, N.A., *petitioner, vs.* **SPOUSES AZUCENA B. CORPUZ AND RENATO S. CORPUZ,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PRE-TRIAL; DISMISSAL OF ACTION DUE TO PLAINTIFF'S NON-APPEARANCE AT PRE-TRIAL SHALL BE WITH PREJUDICE; PROPER REMEDY IN CASE AT BAR.—** Section 5 of Rule 18 provides that the dismissal of an action due to the plaintiff's failure to appear at the pre-trial shall be with prejudice, unless otherwise ordered by the court. In this case, the trial court deemed the plaintiffs-herein spouses as non-suited and ordered the dismissal of their Complaint. As the dismissal was a final order, the proper remedy was to file an ordinary appeal and not a petition for *certiorari.* The spouses' petition for *certiorari* was thus properly dismissed by the appellate court.

2. **ID.; ID.; ID.; ID.; EXCUSABLE NEGLIGENCE, AS A VALID CAUSE FOR NON-APPEARANCE AT PRE-TRIAL, MUST BE IN CONSEQUENCE OF SOME UNEXPECTED OR UNAVOIDABLE HINDRANCE OR DEFECT; CASE AT BAR.—** Procedural infirmities aside, this Court took a considered look at the spouses' excuse to justify their non-appearance at the pre-trial but found nothing exceptional to warrant a reversal of the lower courts' disposition thereof. Counsel for the spouses admit having failed to inform his clients of the scheduled pre-trial because he forgot to note the same in his calendar and eventually forgot about it due to "heavy workload." The spouses

eventually admitted to having received the notice of pre-trial. Azucena, who is a lawyer herself, advanced the reason that she forgot about the scheduled pre-trial owing to her then forthcoming retirement at the Office of the Solicitor General to thus press her to accomplish her assigned work including winding up all administrative matters in the office prior to her leaving. While Section 4 of Rule 18 of the Rules of Court allows as an exception a *valid cause* for the non-appearance of a party at the pre-trial, the instances cited by the spouses and their counsel hardly constitute compelling exigencies or situations which warrant occasional flexibility of litigation rules. In *Quelnan v. VHF Philippines* where the counsel for the therein petitioner failed to calendar a scheduled pre-trial in his diary, the Court held that: **The alleged failure of petitioner's counsel to record the scheduled pre-trial in his 1997 diary to justify his absence at the pre-trial cannot amount to excusable negligence. To constitute excusable negligence, the absence must be due to petitioner's counsel's failure to take the proper steps at the proper time, not in consequence of his carelessness, inattention or willful disregard of the process of the court, but in consequence of some unexpected or unavoidable hindrance or accident. x x x**

3. **ID.; ID.; ID.; ID.; DEFENDANT MAY PURSUE HIS COUNTERCLAIM DESPITE DISMISSAL OF ACTION DUE TO PLAINTIFF'S FAULT; CASE AT BAR.—** As for the spouses' assertion that Section 5 of Rule 18 "does not give the defendant [Citibank in this case] the alternative remedy of prosecuting its Counterclaim, whether compulsory or permissive, in the same or separate action because there is no longer any pending action where he can prosecute his claim," consideration thereof has been rendered unnecessary by, as will be dealt with shortly, this Court's denial of Citibank's motion for reconsideration of the dismissal of its herein petition. Suffice it to state that the spouses' view, apparently established in *BA Finance v. Co,* had long been abandoned by the Court. In the 2006 case of *Pinga v. Heirs of German Santiago*, the Court, after noting the observations of Justice Florenz Regalado in his separate opinion in *BA Finance* on Section 3 of Rule 17 which section, for convenience, is again quoted, *viz*: SEC. 3. *Dismissal due to fault of plaintiff*. – If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action

for an unreasonable length of time, **or to comply with these Rules or any order of the court,** the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court. **Section 3, [of Rule 17] on the other hand, contemplates a dismissal not procured by plaintiff, albeit justified by causes imputable to him and which, in the present case, was petitioner's failure to appear at the pre-trial. This situation is also, covered by Section 3, as extended by judicial interpretation, and is ordered upon motion of defendant or *motu propio* by the court.** x x x As the failure of the spouses to appear at the pre-trial amounted to a failure to comply with the Rules or any order of the court, the dismissal of their Complaint was essentially due to their fault and the therein defendant Citibank could still prosecute its Counterclaim in the same or in a separate action.

4. **ID.; EVIDENCE; PRESENTATION OF EVIDENCE *EX PARTE;* BRANCH CLERK OF COURT, AS COMMISSIONER IN SUCH A PROCEEDING, HAS DISCRETION TO TERMINATE THE SAME; CASE AT BAR.—** From the trial court's Order of September 17, 2003, x x x it is clear that Citibank was "allowed to present its evidence [*ex parte*] on its counterclaim within the 30-day period provided therein reckoned anew from the date of receipt hereof." The Order plainly mentioned the allowable period when Citibank was to present its evidence. As to when the *ex parte* presentation of evidence would terminate, the branch clerk of court, as the commissioner in such a proceeding, has discretion thereon. It bears noting that Citibank never attempted to present even just initial evidence within the 30-day period ordered by the trial court, despite receipt of such Order on September 29, 2003. It thereafter *belatedly* filed a motion to defer presentation of evidence on January 5, 2004, or more than two months after the expiration of the 30-day period. The clerk of court, via Commissioner's Report of October 20, 2003, even pointed out Citibank's failure to present evidence. It bears noting furthermore that Citibank did not seek reconsideration of the trial court's Order of February 13, 2004 denying its *ex parte* motion to present evidence, and it was only after more than five months or on August 4, 2005 when it, again, *belatedly* filed a motion for

reconsideration of the June 30, 2005 Order dismissing its Counterclaim.

5. **ID.; CIVIL ACTIONS; ESTOPPEL; PRESENT IN CASE AT BAR.—** During the pendency of this petition or on January 5, 2004, Citibank filed before the trial court a motion to defer the presentation of evidence on its Counterclaim in view of the pendency of said petition of the spouses before the appellate court. The trial court did not act on Citibank's motion, however, as it bore no notice of hearing. x x x Citibank faulted the trial court for denying its motion for deferment for lack of notice of hearing. It does not lie, given that Citibank re-filed the same motion, this time with the requisite notice of hearing. Clearly, it is estopped from raising this issue.

6. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI;* SHALL NOT INTERRUPT THE COURSE OF THE PRINCIPAL CASE; EXCEPTION; CASE AT BAR.—** AT ALL EVENTS, the appellate court was correct in its finding that the trial court did not commit any reversible error in proceeding with the case as no restraining order or injunction was issued in CA G.R. SP No. 80095. Section 7 of Rule 65 of the Rules of Court, as amended, provides that a petition for *certiorari* shall not interrupt the course of the principal case unless the public respondent is enjoined from further proceeding with the case.

APPEARANCES OF COUNSEL

Picazo Buyco Tan Fider and Santos for Citibank, N.A.

Azucena R. Balanon-Corpuz for Sps. Azucena B. Corpuz and Renato S. Corpuz.

D E C I S I O N

CARPIO MORALES, *J.*:

The facts which spawned the filing of the present consolidated petitions are as follows:

Azucena Corpuz (Azucena) was a cardholder of Citibank Mastercard No. 5423-3925-5788-2007 and Citibank VISA Card No. 4539-7105-2572-2001 both issued by Citibank, N.A.

(Citibank). Each card had a credit limit of ₱40,000.00. In view of her then impending official business trip to Europe, Azucena paid in full on December 7, 1998 her monthly charges[1] on both credit cards via checks and also made advance check payments of ₱20,000.00 on December 8, 1998 for her VISA Card, and another ₱20,000.00 for her Mastercard on December 14, 1998, to cover future transactions.[2]

While in Italy on December 9, 1998, Azucena dined at a restaurant. To settle her bill of 46,000 liras, she presented her VISA Card, but to her surprise and embarrassment, the restaurant did not honor it. She then brought out her Mastercard which the restaurant honored. On even date, Azucena incurred a bill of 378,000 liras at a shop which she intended to charge to her credit cards. This time, both her VISA and Mastercard were not honored, drawing her to pay the bill in cash.[3]

Informed of the incidents via overseas telephone calls to Manila, Azucena's husband Renato Corpuz (Renato) inquired why his wife's credit cards were not honored, to which Citibank explained that her check-payments had not yet been cleared at the time.[4]

Upon her return to the country, Azucena wrote Citibank on January 13, 1999 informing it that her credit cards had not been honored and demanding the refund of her overseas call expenses amounting to 132,000 liras or ₱3,175.00 at the time.[5] Citibank did not respond to the letter, however, drawing Azucena to write Citibank for the cancellation of the cards.[6]

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[1] Amounting to ₱18,288.40 and ₱30,402.70 for her Citibank MasterCard and VISA accounts, respectively.

[2] Records, p. 3.

[3] *Ibid.*

[4] *Id.* at 4.

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

[6] *Id.* at 16.

Citibank still sent billing statements to Azucena, however, charging her interest charges and late payment penalties.[7] Only after Azucena's counsel informed Citibank of imminent legal remedies[8] on her part did Citibank indulge Azucena with a written explanation why her credit cards were not honored in Italy.[9]

Azucena and Renato (hereafter the spouses) later filed on November 12, 1999 a complaint for damages against Citibank at the Regional Trial Court of Las Piñas City.

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[7] *Id.* at 17-19.

[8] *Id.* at 20-21.

[9] *Id.* at 90. Citibank's reply read: x x x x.

A review of our records shows that on December 9, 1998, Ms. Corpuz's outstanding balance for her Citibank MasterCard was ₱35,718.32 vs. her credit line of ₱40,000.00. This was broken down as follows:

November 15, 1998 statement -	₱ 18,288.40
Posted purchases after Nov. 15 stmt. -	16,355.45
Pending transactions* -	1,074.47
TOTAL	35,718.32

Similarly, Ms. Corpuz's outstanding balance for her Citibank VISA was ₱41,041.35 vs. her credit line of ₱40,000.00. This was broken down as follows:

November 30, 1998 statement -	₱30,402.70
Posted purchases after Nov.30 stmt -	9,768.65
Pending transactions* -	870.00
TOTAL	41,041.35

x x x x x x x x x

We also noted that Ms. Corpuz made check payments of ₱18,288.40 and ₱30,402.70 last December 7, 1998 for her Citibank MasterCard and VISA accounts, respectively, but these were not immediately available due to the 3-working day clearing period. The said payments were only credited to her account on December 10, 1998 at 5:00 a.m., when we updated her files. It is for this reason that the Point-of-Sale (POS) terminal triggered a decline response when her Citibank MasterCard was swiped in Italy on December 10, 1998 at 1:50 a.m. and 1:51 a.m. (Manila time), and when her Citibank VISA was swiped at 1:52 a.m.

x x x x x x x x x.

To the Complaint, Citibank filed a motion to dismiss for improper venue.[10] The spouses opposed the motion and moved to have Citibank declared in default.[11] Branch 255 of the RTC, by Order of September 28, 2000, denied the motion to dismiss as well as the motion to declare Citibank in default.[12]

Citibank thus filed its Answer with Compulsory Counterclaim.[13] After an exchange of pleadings — reply, rejoinder and sur-rejoinder — by the parties, and the issues having been joined, the trial court set the case for pre-trial conference[14] on May 5, 2003 during which the spouses and their counsel failed to appear, despite notice. On Citibank's counsel's motion, the trial court, by Order[15] of even date, dismissed the spouses' Complaint and directed Citibank to present evidence on its Compulsory Counterclaim.

The spouses moved for the reconsideration of the trial court's May 5, 2003 Order, explaining that their failure to attend the pre-trial conference was due to the negligence[16] of their counsel who "failed to inform [them] about [the pre-trial] and include the same in his calendar because . . . the pre-trial was still far away."

The spouses' motion for reconsideration was denied by Order of September 17, 2003.[17] <u>In the same Order, the trial court directed Citibank to present evidence on its Counterclaim **within 30 days from receipt thereof.**</u> Citibank received copy of this

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[10] *Id.* at 30-33.

[11] *Id.* at 52-56.

[12] *Id.* at 96.

[13] *Id.* at 97-106.

[14] Due to supervening events the pre-trial conference had been reset on various dates, September 20, 2001; February 13, 2003; and May 5, 2003.

[15] Records, p. 237.

[16] *Id.* at 240-247.

[17] *Id.* at 312-316.

Order on September 29, 2003[18] and, therefore, had up to October 29, 2003 to present evidence on its Counterclaim.

The spouses assailed the trial court's Order dismissing their Complaint via petition for *certiorari* before the Court of Appeals, docketed as CA-G.R. SP No. 80095. During the pendency of this petition or on January 5, 2004, Citibank filed before the trial court a motion to defer the presentation of evidence on its Counterclaim in view of the pendency of said petition of the spouses before the appellate court. The trial court did not act on Citibank's motion, however, as it bore no notice of hearing.[19]

Citibank re-filed on January 30, 2004 the motion to defer, this time containing a notice of hearing.[20] The trial court thereupon set the motion for hearing on February 13, 2004 during which only Azucena appeared. The motion was denied for lack of merit by Order of February 13, 2004.[21]

Citibank having failed to present evidence within 30 days from its receipt[22] on September 29, 2003 of the trial court's Order of September 17, 2003, the trial court dismissed its Counterclaim by Order of June 30, 2005.[23] Its motion for reconsideration of this June 30, 2005 Order having been denied, Citibank went on *certiorari* to the Court of Appeals, docketed as CA G.R. CV No. 86401.

In the meantime or on May 25, 2006, the appellate court, by Decision of even date in CA-G.R. SP No. 80095, set aside the trial court's September 17, 2003 Order[24] allowing Citibank to

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[18] *Id.* at 317.

[19] *Id.* at 321.

[20] *Id.* at 325-327.

[21] *Id.* at 336.

[22] *Id.* at 324.

[23] *Id.* at 462.

[24] *Rollo* (G.R. No. 175677), pp. 43-57; Penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Elvi John S. Asuncion and Noel G. Tijam concurring.

present evidence *ex parte* on its Counterclaim, but upheld the dismissal of the spouses' Complaint, it holding that they should have filed an appeal, instead of a petition for *certiorari*, as the trial court's order dismissing their complaint was a final decision on the merits. At all events, it underscored that:

> [the spouses] did not come forward with the most persuasive of reasons for the relaxation of the rules. We cannot consider the following excuses to be valid and justifiable: 1) the failure to note down the date of pre-trial was because the date of resetting was three months away; 2) the [spouses'] counsel was beset with heavy case load and conflict of schedule; 3) the instant case was a personal case of [spouses'] counsel and not one of the cases assigned by the office where he worked which was the reason why his secretary failed to calendar the pre-trial; and 4) [spouses], being members of the bar, were also busy with their own cases. (Underscoring supplied)

The spouses and Citibank moved for reconsideration and partial reconsideration, respectively, of the appellate court's May 25, 2006 decision. By Resolution of November 30, 2006, the appellate court granted only Citibank's motion for partial reconsideration, ultimately allowing it to prosecute its Counterclaim. Thus the appellate court explained:[25]

> Section 3, Rule 17 provides that if a complaint is dismissed due to the fault of the plaintiff, such dismissal is "without prejudice to the right of the defendant to prosecute his counterclaim in the **same or in a separate action**. Under this new innovation, the dismissal of the complaint due to the fault of plaintiff does not necessarily carry with it the dismissal of the counterclaim, compulsory or otherwise. In fact, the dismissal of the complaint is without prejudice to the right of defendants to prosecute the counterclaim. In this case, the private respondent bank, after moving that the case against it be dismissed for failure of the petitioners to prosecute, properly moved that it be allowed to present evidence *ex-parte* on its counterclaim. (Citations omitted; emphasis and underscoring supplied)

The spouses' motion for reconsideration of the appellate court's Resolution of November 30, 2006 upholding the dismissal

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[25] *Id.* at 73-79.

of their Complaint having been denied, they filed a petition for review before this Court, docketed as **G.R. No. 175677**, the first petition subject of this Decision.

In the meantime, the appellate court, by Decision of September 27, 2006 in CA-G.R. CV No. 86401, affirmed the trial court's June 30, 2005 Order dismissing Citibank's Counterclaim, drawing Citibank to file a petition for review before this Court, **G.R. No. 177133**, the other petition subject of this Decision.

By Resolution of June 6, 2007, the Court denied Citibank's petition for review in **G.R. No. 177133** for failure to sufficiently show that the appellate court had committed any reversible error in dismissing its Counterclaim.[26] Citibank filed a Motion for Reconsideration during the pendency of which the Court resolved to consolidate **G.R. No. 177133** with **G.R. No. 175677**.[27]

RE G.R. NO. 175677: The spouses assert that their non-appearance at the pre-trial may be excused if there is a valid cause such as when a party forgets the date of the pre-trial; that the merits of their case should have been considered when their Complaint was dismissed; that Sections 4 and 5 of Rule 18 on pre-trial and Section 3 of Rule 17 on dismissal due to the fault of the plaintiff provide for different and distinct sanctions, citing *Pinga v. Heirs of German Santiago*; and that *certiorari* was their proper remedy before the appellate court as the trial court's order was not in accord with Section 5 of Rule 18 or even with Section 3 of Rule 17.[28]

The Court denies the spouses' petition.

Section 5[29] of Rule 18 provides that the dismissal of an action due to the plaintiff's failure to appear at the pre-trial shall be

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[26] *Rollo* (G.R. No. 177133), p. 299.

[27] *Id.* at 321; Per Resolution of November 14, 2007.

[28] *Rollo* (G.R. No. 175677), pp. 29-30.

[29] SEC. 5. *Effect of failure to appear.* – The failure of the plaintiff to appear **[at the pre-trial]** when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be

with prejudice, unless otherwise ordered by the court. In this case, the trial court deemed the plaintiffs-herein spouses as non-suited and ordered the dismissal of their Complaint. As the dismissal was a final order, the proper remedy was to file an ordinary appeal and not a petition for *certiorari*. The spouses' petition for *certiorari* was thus properly dismissed by the appellate court.

Procedural infirmities aside, this Court took a considered look at the spouses' excuse to justify their non-appearance at the pre-trial but found nothing exceptional to warrant a reversal of the lower courts' disposition thereof.

Counsel for the spouses admit having failed to inform his clients of the scheduled pre-trial because he forgot to note the same in his calendar and eventually forgot about it due to "heavy workload." The spouses eventually admitted to having received the notice of pre-trial.[30] Azucena, who is a lawyer herself, advanced the reason that she forgot about the scheduled pre-trial owing to her then forthcoming retirement at the Office of the Solicitor General to thus press her to accomplish her assigned work including winding up all administrative matters in the office prior to her leaving.

While Section 4[31] of Rule 18 of the Rules of Court allows as an exception a *valid cause* for the non-appearance of a party at the pre-trial, the instances cited by the spouses and their counsel hardly constitute compelling exigencies or situations which warrant occasional flexibility of litigation rules.

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with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof.

[30] Vide: records, p. 235.

[31] SEC. 4. *Appearance of parties*. – It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents. (Underscoring supplied)

In *Quelnan v. VHF Philippines*[32] where the counsel for the therein petitioner failed to calendar a scheduled pre-trial in his diary, the Court held that:

> **The alleged failure of petitioner's counsel to record the scheduled pre-trial in his 1997 diary to justify his absence at the pre-trial cannot amount to excusable negligence. To constitute excusable negligence, the absence must be due to petitioner's counsel's failure to take the proper steps at the proper time, not in consequence of his carelessness, inattention or willful disregard of the process of the court, but in consequence of some unexpected or unavoidable hindrance or accident**. (Underscoring in the original)
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> **Petitioner's counsel's failure to record the date of pre-trial in his 1997 diary reflects his carelessness, his failure to heed his responsibility of not neglecting a legal matter entrusted to him,** especially given the fact that he was given a Special Power of Attorney to represent petitioner in the pre-trial and trial of the case and that the repeated resettings of the pre-trial for a period of 1 year and more than 10 months had unduly prolonged the disposition of petitioner's complaint which was filed in 1994 yet.
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> **Petitioner's counsel must know that pre-trial is mandatory. Being mandatory, the trial court has discretion to declare a party non-suited. Absent a showing of grave abuse in the trial court's exercise thereof, as in the case at bar, appellate courts will not interfere.**[33] (Citations omitted; underscoring and emphasis supplied)

As for the spouses' assertion that Section 5 of Rule 18 "does not give the defendant [Citibank in this case] the alternative remedy of prosecuting its Counterclaim, whether compulsory or permissive, in the same or separate action because there is no longer any pending action where he can prosecute his claim," consideration thereof has been rendered unnecessary by, as will be dealt with shortly, this Court's denial of Citibank's motion for reconsideration of the dismissal of its herein petition. Suffice it to state that the spouses' view, apparently

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[32] G.R. No. 145911, 433 SCRA 631 (2004).

[33] *Id.* at 639.

established in *BA Finance v. Co*,[34] had long been abandoned by the Court.

In the 2006 case of *Pinga v. Heirs of German Santiago*,[35] the Court, after noting the observations of Justice Florenz Regalado in his separate opinion in *BA Finance* on Section 3 of Rule 17 which section, for convenience, is again quoted,[36] *viz*:

> SEC. 3. *Dismissal due to fault of plaintiff*. – If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, **or to comply with these Rules or any order of the court**, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court. (Emphasis and underscoring supplied),

explained:

> x x x x x x x x x
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> **Section 3, [of Rule 17] on the other hand, contemplates a dismissal not procured by plaintiff, albeit justified by causes imputable to him and which, in the present case, was petitioner's failure to appear at the pre-trial. This situation is also covered by Section 3, as extended by judicial interpretation, and is ordered upon motion of defendant or *motu proprio* by the court.** Here, the issue of whether defendant has a pending counterclaim, permissive or compulsory is not of determinative significance. The dismissal of plaintiff's complaint is evidently a confirmation of the failure of evidence to prove his cause of action outlined therein, hence the dismissal is considered, *as a matter of evidence*, an adjudication on

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[34] G.R. No. 105751, 224 SCRA 163 (1993). In this case, the Court ruled that the dismissal of the complaint for non-appearance of plaintiff at the pre-trial, upon motion of the defendant, carried with it the dismissal of their compulsory counterclaim.

[35] G.R. No. 170354, June 30, 2006, 494 SCRA 393 (2006).

[36] Earlier quoted under note 26.

the merits. This does not, however, mean that there is likewise such an absence of evidence to prove defendant's counterclaim although the same arises out of the subject matter of the complaint which was merely terminated for lack of proof. **To hold otherwise would not only work injustice to defendant but would be reading a further provision into Section 3 and wresting a meaning therefrom although neither exists even by mere implication**. x x x. (Emphasis and italics in the original; underscoring supplied)[37]

Besides, Section 5 of Rule 18 which is, for convenience, again requoted,[38] provides:

SEC. 5. *Effect of failure to appear.—* The failure of the plaintiff to appear [at the pre-trial] when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof.,

must be read in conjunction with the above-quoted Section 3 of Rule 17.

Thus, in *Perkin Elmer Singapore v. Dakila Trading*,[39] the Court, discussing the application of the dictum in *Pinga* to situations outside of Section 3 of Rule 17, held:

It is true that the aforesaid declaration of the Court refers to instances covered by Section 3, Rule 17 of the 1997 Revised Rules of Civil Procedure on dismissal of the complaint due to fault of the plaintiff. Nonetheless, it does not also preclude the application of the same to the instant case just because the dismissal of respondent's [plaintiff's] Complaint was upon the instance of the petitioner[-defendant] who correctly argued lack of jurisdiction over its person.[40]

As the failure of the spouses to appear at the pre-trial amounted to a failure to comply with the Rules or any order of the court,

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[37] *Id.* at 410.

[38] Earlier quoted in note 30.

[39] G.R. No. 172242, August 14, 2007, 530 SCRA 170.

[40] *Id.* at 200.

the dismissal of their Complaint was essentially due to their fault and the therein defendant Citibank could still prosecute its Counterclaim in the same or in a separate action.

RE G.R. NO. 177133: As stated early on, this Court, by Resolution of November 30, 2006, denied Citibank's petition for review from the appellate court's September 27, 2006 Decision in CA-G.R. CV No. 86401, drawing it to file a motion for reconsideration now the subject of consideration. In its Decision[41] of September 27, 2006, the appellate court affirmed the trial court's Orders dated June 30, 2005 and January 13, 2006 dismissing Citibank's Counterclaim. In affirming the trial court's dismissal Orders, the appellate court ratiocinated:

> The pending petition with the Court of Appeals does not automatically suspend the proceedings in the lower court. Under Section 7, Rule 65 of the 1997 Rules of Civil Procedure it provides that unless a temporary restraining order or writ of preliminary injunction was issued, the proceedings of the principal case is never suspended.
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> x x x x x x x x x
>
> Citibank already knew of the denial [by Order of February 13, 2004] of its request for the deferment of its presentation of evidence pending the spouses' Petition for *Certiorari* as early as February 23, 2004. It should have proceeded in prosecuting its compulsory counterclaim, but despite that Citibank never presented evidence on its counterclaim. It never sought a reconsideration of the Order dated February 13, 2004, denying Citibank's *ex parte* Motion to present evidence. **It was only on August 4, 2005 when Citibank filed a Motion for Reconsideration. Indeed, it is too late to ask for a reconsideration of an Order that had long become final.** (Emphasis and underscoring supplied)

Citibank contends that the appellate court issued two conflicting decisions in CA G.R. SP No. 80095 (the subject of G.R. No. 175677) and CA G.R. CV No. 86401 (the subject of

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[41] *Rollo* (G.R. No. 177133), pp.45-53; Penned by Associate Justice Juan Q. Enriquez Jr. with Associate Justices Ruben T. Reyes (now a retired Associate Justice of the Court) and Vicente S.E. Veloso concurring.

G.R. No. 177133) where "one ruling hold[s] that [Citibank] can prosecute its counterclaims and another ruling hold[s] that it cannot prosecute the same counterclaims";[42] that the trial court's order for it to present evidence on its Counterclaim "did not acquire finality for being an incomplete order as it failed to provide the period within which the *ex parte* presentation . . . should be completed";[43] that the trial court erred in denying its motion to defer the presentation of evidence on its Counterclaim for lack of notice of hearing considering that a hearing on an *ex parte* motion is not required;[44] and that the motion for deferment was filed out of deference to the appellate court where the spouses' petition involving the same parties was then still pending.[45]

The Court denies Citibank's Motion for Reconsideration.

To be sure, there is no conflict in the appellate court's rulings in CA G.R. SP No. 80095 and CA G.R. CV No. 86401. The appellate court ruled in CA G.R. SP No. 80095 that Citibank could still prosecute its Counterclaim, while it ruled in CA G.R. CV No. 86401 that Citibank's right to present evidence thereon had lapsed, hence, it denied Citibank's motion to defer and dismissed its Counterclaim.

Complementary as they are, <u>the appellate court's rulings essentially resolved that Citibank could present evidence on its Counterclaim but within the 30-day period, as mandated by the trial court</u>.

The trial court's Order of September 17, 2003, which reiterated its earlier May 5, 2003 Order, is not an incomplete order as it is clear that Citibank was "allowed to present its evidence [*ex parte*] on its counterclaim within the 30-day period provided therein reckoned anew from the date of receipt hereof." The

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[42] *Rollo* (G.R. No. 177133), p. 305.

[43] *Id.* at 307-308.

[44] *Id.* at 310-311.

[45] *Id.* at 309-310.

Order plainly mentioned the allowable period when Citibank was to present its evidence. As to when the *ex parte* presentation of evidence would terminate, the branch clerk of court, as the commissioner in such a proceeding,[46] has discretion thereon.

It bears noting that Citibank never attempted to present even just initial evidence within the 30-day period ordered by the trial court, despite receipt of such Order on September 29, 2003. It thereafter *belatedly* filed a motion to defer presentation of evidence on January 5, 2004, or more than two months after the expiration of the 30-day period. The clerk of court, via Commissioner's Report of October 20, 2003, even pointed out Citibank's failure to present evidence.

It bears noting furthermore that Citibank did not seek reconsideration of the trial court's Order of February 13, 2004 denying its *ex parte* motion to present evidence, and it was only after more than five months or on August 4, 2005 when it, again, *belatedly* filed a motion for reconsideration of the June 30, 2005 Order dismissing its Counterclaim.

As for Citibank's faulting the trial court for denying its motion for deferment for lack of notice of hearing, it does not lie, given that Citibank re-filed the same motion, this time with the requisite notice of hearing. Clearly, it is estopped from raising this issue.

AT ALL EVENTS, the appellate court was correct in its finding that the trial court did not commit any reversible error in proceeding with the case as no restraining order or injunction was issued in CA G.R. SP No. 80095. Section 7 of Rule 65 of

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[46] Section 9 of Rule 31 of the Rules states that: SEC. 9. *Judge to receive evidence; delegation to clerk of court.* – The judge of the court where the case is pending shall personally receive the evidence to be adduced by the parties. However, in default or *ex parte* hearings, and in any case where the parties agree in writing, the court may delegate the reception of evidence to its clerk of court who is a member of the bar. The clerk of court shall have no power to rule on objections to any question or to the admission of exhibits, which objections shall be resolved by the court upon submission of his report and the transcripts within ten (10) days from termination of the hearing.

the Rules of Court, as amended, provides that a petition for *certiorari* shall not interrupt the course of the principal case unless the public respondent is enjoined from further proceeding with the case.[47]

WHEREFORE, the petition for review in *G.R. No. 175677* is *DENIED* for lack of merit.

Petitioner's motion for reconsideration in *G.R. No. 177133* is *DENIED* for lack of merit.

Costs against petitioners in both petitions.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 177728. July 31, 2009]

JENIE SAN JUAN DELA CRUZ and minor CHRISTIAN DELA CRUZ "AQUINO," represented by JENIE SAN JUAN DELA CRUZ, *petitioners, vs.* **RONALD PAUL S. GRACIA, in his capacity as City Civil Registrar of Antipolo City,** *respondent.*

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[47] SEC.7. *Expediting proceedings; injunctive relief.* – x x x

The public respondent shall proceed with the principal case within ten (10) days from the filing of a petition for *certiorari* with a higher court or tribunal, absent a temporary restraining order or a preliminary injunction, or upon its expiration. Failure of the public respondent to proceed with the principal case may be a ground for an administrative charge.

[*] Additional member per Special Order No. 664 dated July 15, 2009.

SYLLABUS

1. **CIVIL LAW; FAMILY CODE; ILLEGITIMATE CHILD; RECOGNITION; USE OF SURNAME OF FATHER.—** Article 176 of the Family Code, as amended by R.A. 9255, permits an illegitimate child to use the surname of his/her father if the latter had expressly recognized him/her as his offspring through the record of birth appearing in the civil register, **or** through an admission made in a public or private handwritten instrument. The recognition made in any of these documents is, in itself, a consummated act of acknowledgment of the child's paternity; hence, no separate action for judicial approval is necessary.

2. **ID.; ID.; ID.; ID.; ID.; ARTICLE 176 OF THE FAMILY CODE MUST BE READ IN CONJUNCTION WITH ARTICLES 175 AND 172 OF THE SAME CODE TO SHOW THAT A FATHER WHO ACKNOWLEDGES PATERNITY OF A CHILD THROUGH A WRITTEN INSTRUMENT MUST AFFIX HIS SIGNATURE THEREON.—** Article 176 of the Family Code, as amended, does not, indeed, explicitly state that the private handwritten instrument acknowledging the child's paternity must be signed by the putative father. This provision must, however, be read in conjunction with related provisions of the Family Code which require that recognition by the father must bear his signature, thus: Art. 175. Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children. x x x Art. 172. The filiation of *legitimate* children is established by any of the following: (1) The record of birth appearing in the civil register or a final judgment; or (2) An admission of legitimate filiation in a public document or a private handwritten instrument and **signed** by the parent concerned. x x x That a father who acknowledges paternity of a child through a written instrument must affix his signature thereon is clearly implied in Article 176 of the Family Code. Paragraph 2.2, Rule 2 of A.O. No.1, Series of 2004, merely articulated such requirement; it did not "unduly expand" the import of Article 176.

3. **ID.; ID.; ID.; ID.; ID.; COURT PROMULGATES RULES RESPECTING THE REQUIREMENT OF AFFIXING THE SIGNATURE OF THE ACKNOWLEDGING PARENT IN ANY PRIVATE HANDWRITTEN INSTRUMENT.—** The

Court sees it fit to adopt the following rules respecting the requirement of affixing the signature of the acknowledging parent in any private handwritten instrument wherein an admission of filiation of a legitimate or illegitimate child is made: 1) Where the private handwritten instrument is the lone piece of evidence submitted to prove filiation, there should be strict compliance with the requirement that the same must be signed by the acknowledging parent; and 2) Where the private handwritten instrument is accompanied by other relevant and competent evidence, it suffices that the claim of filiation therein be shown to have been made and handwritten by the acknowledging parent as it is merely corroborative of such other evidence.

4. **ID.; ID.; ID.; ID.; ID.; ID.; EXISTENCE OF SPECIAL CIRCUMSTANCES TO UPHOLD AUTOBIOGRAPHY ACKNOWLEDGING CHILD'S PATERNITY, THOUGH UNSIGNED BY THE PUTATIVE FATHER; CASE AT BAR.—** In the present case, however, special circumstances exist to hold that Dominique's Autobiography, though unsigned by him, substantially satisfies the requirement of the law. *First,* Dominique died about two months prior to the child's birth. *Second,* the relevant matters in the Autobiography, unquestionably handwritten by Dominique, correspond to the facts culled from the testimonial evidence Jenie proffered. *Third*, Jenie's testimony is corroborated by the *Affidavit of Acknowledgment* of Dominique's father Domingo Aquino and testimony of his brother Joseph Butch Aquino whose hereditary rights could be affected by the registration of the questioned recognition of the child. These circumstances indicating Dominique's paternity of the child give life to his statements in his Autobiography that "JENIE DELA CRUZ" is "MY WIFE" as "WE FELL IN LOVE WITH EACH OTHER" and "NOW SHE IS PREGNANT AND FOR THAT WE LIVE TOGETHER."

5. **ID.; ID.; ID.; ID.; POLICY OF THE FAMILY CODE TO LIBERALIZE THE RULE ON THE INVESTIGATION OF THE PATERNITY AND FILIATION OF CHILDREN, ESPECIALLY OF ILLEGITIMATE CHILDREN.—** Our laws instruct that the welfare of the child shall be the "paramount consideration" in resolving questions affecting him. Article 3(1) of the United Nations Convention on the Rights of a Child of which the Philippines is a signatory is similarly emphatic: Article 3 (1). In all actions concerning children, whether undertaken

by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. It is thus "(t)he policy of the Family Code to liberalize the rule on the investigation of the paternity and filiation of children, especially of illegitimate children x x x." Too, "(t)he State as *parens patriae* affords special protection to children from abuse, exploitation and other conditions prejudicial to their development."

APPEARANCES OF COUNSEL

Tagle-Chua Cruz & Aquino for petitioners.
The Solicitor General for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

For several months in 2005, then 21-year old petitioner Jenie San Juan Dela Cruz (Jenie) and then 19-year old Christian Dominique Sto. Tomas Aquino (Dominique) lived together as husband and wife without the benefit of marriage. They resided in the house of Dominique's parents Domingo B. Aquino and Raquel Sto. Tomas Aquino at Pulang-lupa, Dulumbayan, Teresa, Rizal.

On September 4, 2005, Dominique died.[1] After almost two months, or on November 2, 2005, Jenie, who continued to live with Dominique's parents, gave birth to her herein co-petitioner minor child Christian Dela Cruz "Aquino" at the Antipolo Doctors Hospital, Antipolo City.

Jenie applied for registration of the child's birth, using Dominique's surname Aquino, with the Office of the City Civil Registrar, Antipolo City, in support of which she submitted the child's *Certificate of Live Birth*,[2] *Affidavit to Use the Surname*

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[1] Annex "B" (Certificate of Death), Petition; *rollo*, pp. 21-22.

[2] Annex "C", Petition; *id.* at 23-24. Under the "Affidavit of Acknowledgment /Admission of Paternity" portion of the child's birth

of the Father[3] (AUSF) which she had executed and signed, and *Affidavit of Acknowledgment* executed by Dominique's father Domingo Butch Aquino.[4] Both affidavits attested, *inter alia*, that during the lifetime of Dominique, he had continuously acknowledged his yet unborn child, and that his paternity had never been questioned. Jenie attached to the AUSF a document entitled "AUTOBIOGRAPHY" which Dominique, during his lifetime, wrote in his own handwriting, the pertinent portions of which read:

AQUINO, CHRISTIAN DOMINIQUE S.T.

AUTOBIOGRAPHY

I'M CHRISTIAN DOMINIQUE STO. TOMAS AQUINO, 19 YEARS OF AGE TURNING 20 THIS COMING OCTOBER 31, 2005.[5] I RESIDE AT PULANG-LUPA STREET BRGY. DULUMBAYAN, TERESA, RIZAL. I AM THE YOUNGEST IN OUR FAMILY. I HAVE ONE BROTHER NAMED JOSEPH BUTCH STO. TOMAS AQUINO. MY FATHER'S NAME IS DOMINGO BUTCH AQUINO AND MY MOTHER'S NAME IS RAQUEL STO. TOMAS AQUINO. x x x.

x x x x x x x x x

AS OF NOW I HAVE MY WIFE NAMED JENIE DELA CRUZ. WE MET EACH OTHER IN OUR HOMETOWN, TEREZA RIZAL. AT FIRST WE BECAME GOOD FRIENDS, THEN WE FELL IN LOVE WITH EACH OTHER, THEN WE BECAME GOOD COUPLES. **AND AS OF NOW** SHE IS PREGNANT **AND FOR THAT** WE LIVE TOGETHER IN OUR HOUSE NOW. THAT'S ALL.[6] (Emphasis and underscoring supplied)

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certificate, only petitioner Jenie signed as the child's mother, leaving blank the space for the father's signature as the latter died about two months prior to the child's birth.

[3] Annex "D", Petition; *id.* at 25.

[4] Annex "E", *id.* at 26.

[5] Dominique was born on October 31, 1985 as shown in his Certificate of Live Birth; *rollo*, p. 27.

[6] Annex "A", Petition; *rollo,* p. 20.

By letter dated November 11, 2005,[7] the City Civil Registrar of Antipolo City, Ronald Paul S. Gracia (respondent), denied Jenie's application for registration of the child's name in this wise:

> 7. Rule 7 of Administrative Order No. 1, Series of 2004 (Implementing Rules and Regulations of Republic Act No. 9255 ["An Act Allowing Illegitimate Children to Use the Surname of their Father, Amending for the Purpose, Article 176 of Executive Order No. 209, otherwise Known as the 'Family Code of the Philippines'"]) provides that:
>
> Rule 7. Requirements for the Child to Use the Surname of the Father
>
> 7.1 For Births Not Yet Registered
>
> 7.1.1 The illegitimate child shall use the surname of the father if a public document is executed by the father, either at the back of the Certificate of Live Birth or in a separate document.
>
> 7.1.2 If admission of paternity is made through a private handwritten instrument, the child shall use the surname of the father, provided the registration is supported by the following documents:
>
> a. AUSF[8]
>
> b. Consent of the child, if 18 years old and over at the time of the filing of the document.
>
> c. Any two of the following documents showing clearly the paternity between the father and the child:

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[7] Annex "F", *id.* at 28-30.

[8] This *Affidavit to Use Surname of the Father* may be executed by "the father, mother, child if of age, or the guardian, x x x in order for the child to use the surname of the father" (Rule 3 of Administrative Order No. 1, Series of 2004).

1. Employment records
2. SSS/GSIS records
3. Insurance
4. Certification of membership in any organization
5. Statement of Assets and Liability
6. Income Tax Return (ITR)

In summary, the child cannot use the surname of his father because he was born out of wedlock and the father unfortunately died prior to his birth and has no more capacity to acknowledge his paternity to the child (either through the back of Municipal Form No. 102 – Affidavit of Acknowledgment/Admission of Paternity – or the Authority to Use the Surname of the Father). (Underscoring supplied)

Jenie and the child promptly filed a complaint[9] for injunction/registration of name against respondent before the Regional Trial Court of Antipolo City, docketed as SCA Case No. 06-539, which was raffled to Branch 73 thereof. The complaint alleged that, *inter alia,* the denial of registration of the child's name is a violation of his right to use the surname of his deceased father under **Article 176 of the Family Code, as amended by Republic Act (R.A.) No. 9255**,[10] which provides:

Article 176. Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. However, illegitimate children may use the surname of their father if their filiation has been expressly recognized by the father through the record of birth appearing in the civil register, **or when an admission in a public document or private handwritten instrument** is made by the father. *Provided*, the father has the right to institute an action before the regular courts to prove

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[9] *Rollo,* pp. 15-19.

[10] "AN ACT ALLOWING ILLEGITIMATE CHILDREN TO USE THE SURNAME OF THEIR FATHER, AMENDING FOR THE PURPOSE, ARTICLE 176 OF EXECUTIVE ORDER NO. 209, OTHERWISE KNOWN AS THE 'FAMILY CODE OF THE PHILIPPINES.'"

non-filiation during his lifetime. The legitime of each illegitimate child shall consist of one-half of the legitime of a legitimate child. (Emphasis and underscoring supplied)

They maintained that the Autobiography executed by Dominique constitutes an admission of paternity in a "private handwritten instrument" within the contemplation of the above-quoted provision of law.

For failure to file a responsive pleading or answer despite service of summons, respondent was declared in default.

Jenie thereupon presented evidence *ex-parte*. She testified on the circumstances of her common-law relationship with Dominique and affirmed her declarations in her AUSF that during his lifetime, he had acknowledged his yet unborn child.[11] She offered Dominique's handwritten Autobiography (Exhibit "A") as her documentary evidence-in-chief.[12] Dominique's lone brother, Joseph Butch S.T. Aquino, also testified, corroborating Jenie's declarations.[13]

By Decision[14] of April 25, 2007, the trial court dismissed the complaint "for lack of cause of action" as the Autobiography was unsigned, citing paragraph 2.2, Rule 2 (Definition of Terms) of **Administrative Order (A.O.) No. 1, Series of 2004 (the Rules and Regulations Governing the Implementation of R.A. 9255)** which defines "private handwritten document" through which a father may acknowledge an illegitimate child as follows:

2.2 Private handwritten instrument – an instrument executed in the handwriting of the father and duly signed by him where he expressly recognizes paternity to the child. (Underscoring supplied)

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[11] Decision dated April 25, 2007 of the RTC of Antipolo City, Branch 73; *rollo*, p. 13.

[12] *Ibid.*

[13] *Ibid.*

[14] *Id.* at 12-14.

The trial court held that even if Dominique was the author of the handwritten Autobiography, the same does not contain any express recognition of paternity.

Hence, this direct resort to the Court via Petition for Review on *Certiorari* raising this purely legal issue of:

> WHETHER OR NOT THE UNSIGNED HANDWRITTEN STATEMENT OF THE DECEASED FATHER OF MINOR CHRISTIAN DELA CRUZ CAN BE CONSIDERED AS A RECOGNITION OF PATERNITY IN A "PRIVATE HANDWRITTEN INSTRUMENT" WITHIN THE CONTEMPLATION OF ARTICLE 176 OF THE FAMILY CODE, AS AMENDED BY R.A. 9255, WHICH ENTITLES THE SAID MINOR TO USE HIS FATHER'S SURNAME.[15] (Underscoring supplied)

Petitioners contend that Article 176 of the Family Code, as amended, does not expressly require that the private handwritten instrument containing the putative father's admission of paternity must be signed by him. They add that the deceased's handwritten Autobiography, though unsigned by him, is sufficient, for the requirement in the above-quoted paragraph 2.2 of the Administrative Order that the admission/recognition must be "duly signed" by the father is void as it "unduly expanded" the earlier-quoted provision of Article 176 of the Family Code.[16]

Petitioners further contend that the trial court erred in not finding that Dominique's handwritten Autobiography contains a "clear and unmistakable" recognition of the child's paternity.[17]

In its Comment, the Office of the Solicitor General (OSG) submits that respondent's position, as affirmed by the trial court, is in consonance with the law and thus prays for the dismissal of the petition. It further submits that Dominique's Autobiography "merely acknowledged Jenie's pregnancy but not [his] paternity of the child she was carrying in her womb."[18]

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[15] *Id.* at 6.

[16] *Id.* at 7.

[17] *Id.* at 8.

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

Article 176 of the Family Code, as amended by R.A. 9255, permits an illegitimate child to use the surname of his/her father if the latter had expressly recognized him/her as his offspring through the record of birth appearing in the civil register, **or** through an admission made in a public or private handwritten instrument. The recognition made in any of these documents is, in itself, a consummated act of acknowledgment of the child's paternity; hence, no separate action for judicial approval is necessary.[19]

Article 176 of the Family Code, as amended, does not, indeed, explicitly state that the private handwritten instrument acknowledging the child's paternity must be signed by the putative father. This provision must, however, be read in conjunction with related provisions of the Family Code which require that recognition by the father must bear his signature, thus:

> Art. 175. Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children.
>
> x x x x x x x x x
>
> Art. 172. The filiation of *legitimate* children is established by any of the following:
>
> (1) The record of birth appearing in the civil register or a final judgment; or
>
> (2) An admission of legitimate filiation in a public document or a private handwritten instrument and **signed** by the parent concerned.
>
> x x x x x x x x x (Emphasis and underscoring supplied)

That a father who acknowledges paternity of a child through a written instrument must affix his signature thereon is clearly implied in Article 176 of the Family Code. Paragraph 2.2, Rule 2 of A.O. No. 1, Series of 2004, merely articulated such

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[19] *De Jesus v. Estate of Decedent Juan Gamboa Dizon*, G.R. No. 142877, October 2, 2001, 366 SCRA 499, 503.

requirement; it did not "unduly expand" the import of Article 176 as claimed by petitioners.

In the present case, however, special circumstances exist to hold that Dominique's Autobiography, though unsigned by him, *substantially* satisfies the requirement of the law.

First, Dominique died about two months prior to the child's birth. *Second,* the relevant matters in the Autobiography, unquestionably handwritten by Dominique, correspond to the facts culled from the testimonial evidence Jenie proffered.[20] *Third*, Jenie's testimony is corroborated by the *Affidavit of Acknowledgment* of Dominique's father Domingo Aquino and testimony of his brother Joseph Butch Aquino whose hereditary rights could be affected by the registration of the questioned recognition of the child. These circumstances indicating Dominique's paternity of the child give life to his statements in his Autobiography that "JENIE DELA CRUZ" is "MY WIFE" as "WE FELL IN LOVE WITH EACH OTHER" and "NOW SHE IS PREGNANT AND FOR THAT WE LIVE TOGETHER."

In *Herrera v. Alba*,[21] the Court summarized the laws, rules, and jurisprudence on establishing filiation, discoursing in relevant part:

Laws, Rules, and Jurisprudence
Establishing Filiation

The relevant provisions of the Family Code provide as follows:

ART. 175. Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children.

x x x x x x x x x

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[20] See *Reyes v. Court of Appeals*, No. L-39537, March 19, 1985, 135 SCRA 439, 450, citing *Varela v. Villanueva*, 95 Phil. 248 (1954).

[21] G.R. No. 148220, June 15, 2005, 460 SCRA 197, 206-208.

ART. 172. The filiation of legitimate children is established by any of the following:

(1) The record of birth appearing in the civil register or a final judgment; or

(2) An admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned.

In the absence of the foregoing evidence, the legitimate filiation shall be proved by:

(1) The open and continuous possession of the status of a legitimate child; or

(2) Any other means allowed by the Rules of Court and special laws.

The Rules on Evidence include provisions on pedigree. The relevant sections of Rule 130 provide:

SEC. 39. Act or declaration about pedigree. — The act or declaration of a person deceased, or unable to testify, in respect to the pedigree of another person related to him by birth or marriage, may be received in evidence where it occurred before the controversy, and the relationship between the two persons is shown by evidence other than such act or declaration. The word "pedigree" includes relationship, family genealogy, birth, marriage, death, the dates when and the places where these facts occurred, and the names of the relatives. It embraces also facts of family history intimately connected with pedigree.

SEC. 40. Family reputation or tradition regarding pedigree. — The reputation or tradition existing in a family previous to the controversy, in respect to the pedigree of any one of its members, may be received in evidence if the witness testifying thereon be also a member of the family, either by consanguinity or affinity. Entries in family bibles or other family books or charts, engraving on rings, family portraits and the like, may be received as evidence of pedigree.

This Court's rulings further specify what incriminating acts are acceptable as evidence to establish filiation. In *Pe Lim v. CA*, a case petitioner often cites, we stated that the issue of paternity still has to be resolved by such **conventional evidence as the**

> **relevant incriminating verbal and written acts by the putative father**. Under Article 278 of the New Civil Code, voluntary recognition by a parent shall be made in the record of birth, a will, a statement before a court of record, or in **<u>any authentic writing</u>**. **<u>To be effective, the claim of filiation must be made by the putative father himself and the writing must be the writing of the putative father</u>**. A notarial agreement to support a child whose filiation is admitted by the putative father was considered acceptable evidence. Letters to the mother vowing to be a good father to the child and pictures of the putative father cuddling the child on various occasions, together with the certificate of live birth, proved filiation. However, a student permanent record, a written consent to a father's operation, or a marriage contract where the putative father gave consent, cannot be taken as authentic writing. Standing alone, neither a certificate of baptism nor family pictures are sufficient to establish filiation. (Emphasis and underscoring supplied.)

In the case at bar, there is no dispute that the earlier quoted statements in Dominique's Autobiography have been made and written by him. Taken together with the other relevant facts extant herein – that Dominique, during his lifetime, and Jenie were living together as common-law spouses for several months in 2005 at his parents' house in Pulang-lupa, Dulumbayan, Teresa, Rizal; she was pregnant when Dominique died on September 4, 2005; and about two months after his death, Jenie gave birth to the child – they sufficiently establish that the child of Jenie is Dominique's.

In view of the pronouncements herein made, the Court sees it fit to adopt the following rules respecting the requirement of affixing the signature of the acknowledging parent in any private handwritten instrument wherein an admission of filiation of a legitimate or illegitimate child is made:

1) Where the private handwritten instrument is the <u>lone</u> piece of evidence submitted to prove filiation, there should be strict compliance with the requirement that the same must be signed by the acknowledging parent; and

2) Where the private handwritten instrument is <u>accompanied</u> by other relevant and competent evidence, it suffices that the claim of filiation therein be shown to have been made and

handwritten by the acknowledging parent as it is merely corroborative of such other evidence.

Our laws instruct that the welfare of the child shall be the "paramount consideration" in resolving questions affecting him.[22] Article 3(1) of the United Nations Convention on the Rights of a Child of which the Philippines is a signatory is similarly emphatic:

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.[23] (Underscoring supplied)

It is thus "(t)he policy of the Family Code to liberalize the rule on the investigation of the paternity and filiation of children, especially of illegitimate children x x x."[24] Too, "(t)he State as *parens patriae* affords special protection to children from abuse, exploitation and other conditions prejudicial to their development."[25]

In the eyes of society, a child with an unknown father bears the stigma of dishonor. It is to petitioner minor child's best interests to allow him to bear the surname of the now deceased Dominique and enter it in his birth certificate.

WHEREFORE, the petition is *GRANTED*. The City Civil Registrar of Antipolo City is *DIRECTED* to immediately *enter* the surname of the late Christian Dominique Sto. Tomas *Aquino* as the surname of petitioner minor Christian dela Cruz in his Certificate of Live Birth, and *record* the same in the Register of Births.

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[22] *Concepcion v. Court of Appeals*, G.R. No. 123450, August 31, 2005, 468 SCRA 438, 457, citing Article 8 of Presidential Decree 603 (The Child and Youth Welfare Code).

[23] Cited in *Concepcion v. Court of Appeals*, *id.*

[24] *Herrera v. Alba*, *supra* note 21 at 219.

[25] *Concepcion v. Court of Appeals*, *supra* note 22.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 177847. July 31, 2009]

LAURENCE M. SISON, *petitioner, vs.* **EUSEBIA CARIAGA,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION OF COURT; DETERMINED BY ALLEGATIONS OF THE COMPLAINT AND CHARACTER OF THE RELIEF SOUGHT.—** The nature of an action and which court has jurisdiction over it are determined by the allegations of the complaint and the character of the relief sought. They cannot be made to depend upon the defenses set up in the Answer or pleadings filed by the defendant, and neither can they be made to depend on the exclusive characterization of the case by one of the parties.

2. **ID.; ID.; EJECTMENT; ISSUE OF OWNERSHIP RESOLVED ONLY TO DETERMINE ISSUE OF POSSESSION; CASE AT BAR.—** That respondent has, in her Answer, claimed that her father owned the lot on which her house stands did not render the complaint for unlawful detainer dismissible, for the issue of ownership may, in an ejectment case, be resolved only to determine the issue of possession.

3. **ID.; EVIDENCE; JUDICIAL ADMISSION; WHEN RESPONDENT FILED BEFORE THE DARAB A**

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[*] Additional member per Special Order No. 664 dated July 15, 2009.

PETITION FOR ANNULMENT OF SALE OF LAND IN QUESTION BY LAND BANK TO PETITIONER'S PREDECESSORS-IN-INTEREST, SHE EFFECTIVELY ADMITTED OWNERSHIP OF PETITIONER OVER LAND; CASE AT BAR.— On the merits, by respondent and her siblings' filing before the DARAB of a petition for annulment of the sale of Lot 23-B, by the Land Bank to petitioner's predecessors-in-interest Teofilo and Nelson Sison and for them (respondent and her siblings) to purchase said lot, respondent effectively admitted the ownership of petitioner and his co-owners of the subject lot which forms part of Lot 23-B and that her house indeed stands on the subject lot. On that score, the Court finds for petitioner.

APPEARANCES OF COUNSEL

Reyes & Santos Law Offices for petitioner.
Public Attorney's Office for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

In issue in the present petition for review on *certiorari* is whether petitioner availed of the proper remedy of filing a complaint for unlawful detainer and, if in the affirmative, whether he, by preponderance of evidence, should prevail.

On October 12, 1999, Teofilo Sison and his son Nelson purchased from the Land Bank of the Philippines a parcel of land situated in Barangay Cabuaan, Bautista, Pangasinan, denominated as Lot 23-B and covered by TCT No. 243937.

On December 14, 1999, Teofilo and Nelson donated, via a Deed of Donation, the 11 lots into which Lot 23-B was subdivided in favor of Laurence Sison (petitioner) and his therein named siblings. On even date, the donors also executed an Affidavit of Confirmation of Subdivision terminating their co-ownership and describing and apportioning the 11 lots to the donees. Lot 23-B-11 (the subject lot) measuring around 799 sq. m., which was later to be covered by Transfer Certificate of Title (TCT)

No. 245861 issued on April 13, 2000 in petitioner's and his co-donees' name, was designated as the ROAD LOT of "the parties."

After a relocation/verification survey of the subject lot, it was found out that the house of Eusebia Cariaga (respondent) was erected thereon, hence, petitioner, as co-owner, repeatedly demanded the vacation thereof by respondent, the last of which was by a September 15, 2003 letter informing her that her occupation of the subject lot was illegal and merely tolerated. The demands were, however, unheeded.

Petitioner as co-owner of the subject lot thus filed on January 19, 2004 a complaint[1] for unlawful detainer against respondent before the Municipal Circuit Trial Court (MCTC), Alcala, Pangasinan.

In her Answer with Counterclaim,[2] respondent claimed that, *inter alia*, her house stands on Lot 23-D, covered by TCT No. 10949 (Emancipation Patent No. A-351476) issued on August 17, 1989 (not December 15, 1989 as alleged in the pleadings) in the name of her deceased father Juan Cariaga; that her siblings' houses are also constructed on the same lot of which her father and they have been in peaceful, continuous, public and adverse possession since 1940; and that she never sought permission from petitioner when she reconstructed her house in 1993.

By Decision of September 7, 2004, the MCTC rendered judgment in favor of petitioner, disposing as follows:

WHEREFORE, IN VIEW OF THE FOREGOING, PLAINTIFF BY PREPONDERANCE OF EVIDENCE HAS ESTABLISHED HIS OWNERSHIP OVER THE LAND IN QUESTION HENCE, HIS RIGHT OF POSSESSION FOLLOWS TOO SOON. In consonance therewith, the Court renders judgment in favor of plaintiff Laurence M. Sison as against defendant Eusebia Cariaga. As prayed for, defendant and all persons claiming right are ordered to vacate the

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[1] Annex "L" of the Petition, *rollo*, pp. 146-154.

[2] Annex "I" of the Petition, *id.* at 120-122.

said property. But as to the demand of civil liabilities the Court so orders:

1. Prayer No. 2-A for the demand of ₱112,500.00 as unpaid rental is not granted. There is no proof on record that plaintiff had demanded payment of rental since April 2000, when he came to know that defendant's possession of the lot is illegal, hence, her stay is by tolerance. Defendant was not informed of his rent prior to the filing of this case;

2. As to prayer No. 2-B, defendant shall pay the amount of ₱2,500.00 per month beginning January, 2004 as rental until defendant shall have vacated the lot she now unlawfully withheld possession;

3. As to the twelve percent (12%) interest per annum is granted until defendant shall have fully paid her rental;

4. As to moral damage, defendant is to pay plaintiff the amount of ₱25,000.00;

5. As to the attorney's fee and appearance fee the defendant be ordered to pay ₱25,000.00 as attorney's fee and ₱4,000.00 as appearance fee; and

6. To pay the cost of suit.

No other fees are ordered for the defendant to pay.[3]

The MCTC took respondent's statement in her Position Paper[4] that "it may be true that [petitioner *et al*.'s] TCT No. 245861 issued on April 13, 2003 supposedly covering [respondent's] lot where her house is constructed exist[s]]" as respondent's conceding that her house is constructed on the subject lot.

And the MCTC took note of respondent's claim that her house is constructed on Lot 23-D, which claim contradicts her earlier averment in "a former [*sic*] Civil Case 794" that it is her sister Virginia Cariaga who occupies said lot.[5]

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[3] Records, p. 166.

[4] Annex "J" of Petition, *rollo*, pp.124-126.

[5] *Vide*, MCTC Decision, *id.* at 107.

The MCTC thus concluded that given respondent's virtual admission of occupancy of the subject lot and of her failure to substantiate her claim of ownership, the nature of her possession is possession without title, while petitioner has the title but without possession.

On appeal by respondent, the RTC reversed the MCTC decision and dismissed petitioner's complaint by Decision dated February 9, 2005. The RTC held that petitioner failed to substantiate his allegation that respondent's occupation of the subject lot was merely tolerated, hence, the complaint did not satisfy the jurisdictional requirement to constitute a valid cause of action for unlawful detainer. Petitioner's motion for reconsideration having been denied by Order dated April 8, 2005, petitioner elevated the case to the Court of Appeals.

By the assailed Decision dated October 3, 2006,[6] the appellate court affirmed the RTC decision, holding that the tolerance which petitioner claimed was not present from the inception of respondent's possession of the subject lot, for prior to petitioner and his co-owner's acquisition thereof via donation in 1999, respondent, who constructed her house in "1972," was already in peaceful and prior possession thereof.

The appellate court further held that the alleged tolerance merely started after it was discovered that respondent's house is erected on the subject lot following the conduct of the relocation/verification survey, not the tolerance which is contemplated by law in unlawful detainer cases.[7]

Furthermore, the appellate court held that the filing of the complaint for unlawful detainer was not the proper remedy, as what is principally involved is not merely possession *de facto*, but possession *de jure* as both parties are claiming ownership of the subject lot. It added that the summary nature of an unlawful

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[6] Penned by Associate Justice Rosmari D. Carandang, with the concurrence of Associate Justices Renato C. Dacudao and Estela M. Perlas-Bernabe; *rollo*, pp. 55-64.

[7] No. L-22984, March, 27, 1968, 22 SCRA 1257.

detainer case is not adequate to fully thresh out the issue of ownership.

Finally, the appellate court held that what is involved is a boundary dispute, not a simple case of who has the better right of possession, hence, the proper remedy was for petitioner to institute before the RTC an *accion publiciana* or an *accion reivindicatoria*.

Petitioner's motion for reconsideration having been denied by the appellate court by Resolution of May 8, 2007, he filed the present petition.

Petitioner assails the appellate court's finding that respondent erected her house in the lot as early as "1972," for nowhere in the pleadings is the same reflected. It assails too the appellate court's failure to consider that the title of the Land Bank of the Philippines, from which his predecessors-in-interest acquired Lot 23-B of which the subject lot forms part, was issued on July 28, 1988 – more than a year before the purported issuance of respondent's father's TCT No. 10949 on August 17, 1989.

Petitioner also maintains that, contrary to the appellate court's finding the issue is not one of ownership or boundary dispute, it being one of possession, a proper subject of a suit for unlawful detainer. For, so petitioner avers, respondent's father's title TCT No. 10949 covers Lot 23-D, with an area of around 383 sq. m., whereas his and his co-owner's title covers Lot 23-B-11 with an area of more or less 799 sq.m., clearly showing that their respective titles cover different properties.

Petitioner goes on to fault the appellate court for not taking judicial notice that respondent and her siblings filed on March 13, 2000 a petition, DARAB Case No. 01-1898 EP'00, "*Alejandro Inciso, and Virginia, Conchita, Eusebia, Nina and Jose, all Cariaga versus Nelson M. Sison, Teofilo O. Sison, and the Land Bank of the Philippines*," to annul the sale between his predecessors-in-interest Teofilo and Nestor Sison and the Land Bank on the ground that their (respondent and her siblings') houses are erected thereon, and to compel the Land Bank into

selling Lot 23-B to them –which petition had been dismissed with finality by the DARAB by Decision of August 9, 2006.[8]

On the appellate court's finding that the jurisdictional requirements to constitute a valid cause of action for unlawful detainer were not met, petitioner contends that the same is contrary to the ruling in *Benitez vs. Court of Appeals*[9] which held that, *inter alia*, an action for unlawful detainer is the proper remedy if the facts show that, after conducting a relocation survey, it is discovered that there has been an encroachment on a portion of the plaintiff's land by the defendant; notices to vacate were forthwith sent to the defendant; and the plaintiff files the suit within one year from last demand. Petitioner thus maintains that he had complied with these requirements.

The petition is impressed with merit.

The nature of an action and which court has jurisdiction over it are determined by the allegations of the complaint and the character of the relief sought.[10] They cannot be made to depend upon the defenses set up in the Answer or pleadings filed by the defendant, and neither can they be made to depend on the exclusive characterization of the case by one of the parties.[11]

The material portions of petitioner's complaint read:

14. After a relocation/verification of survey conducted by Engineer Saldivar, it has been discovered that Defendant's house is illegally constructed over the Property.

15. As co-owner of the Property, Plaintiff has demanded Defendant to remove her house and vacate the same, but the latter adamantly refused to heed to the demands of the former.

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[8] Annex "K" of the Petition, *rollo*, pp. 134-145.

[9] G.R. No. 104828, January 16, 1997, 266 SCRA 242.

[10] *Ten Forty Realty and Development Corp. v. Cruz*, G.R. No. 151212, September 10, 2003, 410 SCRA 484.

[11] *Larano v. Sps. Calendacion*, G.R. No. 158231, June 19, 2007, 525 SCRA 57, 65.

x x x x x x x x x

17. On September 22, 2003, the Plaintiff's counsel has sent Defendant a demand letter dated September 15, 2003, informing the latter that her occupation of the Property is illegal and no longer tolerated. Likewise, in the said letter dated September 15, 2003, Plaintiff's counsel has demanded Defendant to vacate the Property and to remit the sum of One Hundred Two Thousand Five Hundred Pesos, representing the unpaid rental from April 13, 2000 up to the said date, plus interest at the rate of twelve percent (12%) per annum, within fifteen (15) days from receipt thereof.

x x x x x x x x x

18. Despite receipt of the said demand letter dated September 15, 2003, Defendant has adamantly failed and refused and still refuses to vacate the Property and pay the unpaid rental from April 13, 2000.

x x x x x x x x x

19. Despite repeated oral and written demands, defendant adamantly continues to surrender possession of the Property to the Plaintiff, to the prejudice of the latter and his other co-owners.[12]

Clearly, petitioner's complaint established the basic elements of a complaint for unlawful detainer to vest jurisdiction over it in the MCTC.

That respondent has, in her Answer, claimed that her father owned the lot on which her house stands did not render the complaint for unlawful detainer dismissible, for the issue of ownership may, in an ejectment case, be resolved only to determine the issue of possession.[13]

On the merits, by respondent and her siblings' filing before the DARAB of a petition for annulment of the sale of Lot 23-B

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[12] *Rollo*, pp. 146-154.

[13] Sec. 16, Rule 70 provides:

SEC.16. *Resolving defense of ownership*. – When the defendant raises the defense of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession.

by the Land Bank to petitioner's predecessors-in-interest Teofilo and Nelson Sison and for them (respondent and her siblings) to purchase said lot, respondent effectively admitted the ownership of petitioner and his co-owners of the subject lot which forms part of Lot 23-B, and that her house indeed stands on the subject lot. On that score, the Court finds for petitioner.

WHEREFORE, the Decision of the Court of Appeals dated October 3, 2006 and the Resolution dated May 8, 2007 are *REVERSED* and *SET ASIDE*. The Decision of the 8th Municipal Circuit Trial Court, Alcala, Pangasinan in Civil Case No. 807 is *REINSTATED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 178058. July 31, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JESSIE MALIAO *y* MASAKIT, NORBERTO CHIONG *y* DISCOTIDO and LUCIANO BOHOL** *y* **GAMANA,** *accused.*

JESSIE MALIAO *y* MASAKIT, *accused-appellant.*

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

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

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; EXTRAJUDICIAL CONFESSION; EXTRAJUDICIAL CONFESSION OF ACCUSED ASSISTED BY A MUNICIPAL ATTORNEY IS NOT ADMISSIBLE IN EVIDENCE.—** The Court of Appeals correctly held that despite the inadmissibility of his extrajudicial confession, Maliao is not entitlted to an acquittal. Citing *People v. Culala,* the Court of Appeals rightfully noted that the extrajudicial confession of an accused who was assisted by a Municipal Attorney during the custodial investigation is not admissible in evidence because the latter cannot be considered an independent attorney.

2. **ID.; EVIDENCE; JUDICIAL ADMISSION; NO PROOF REQUIRED; CASE AT BAR.—** Section 4, Rule 129 of the Revised Rules of Court on Evidence provides that an admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made. Maliao admitted he saw Bohol and Chiong rape AAA; that Chiong picked up a wooden stool and hit AAA with it on the chest and head; that Bohol and Chiong carried the bloodied body of AAA, instructed him to clean the floor and then they went out of the house; that he cleaned the room by wiping the bloodstains; and that he threw the t-shirt of AAA, placed the latter's short pants inside a sack containing garbage, threw the curtains which used in wiping the bloodstains, and hid the wooden stool. He likewise admitted that he led the police officers to the place where he threw the pieces of clothes which he used in wiping the bloodstains in his house and that he accompanied the police officers to his house and pointed to them the wooden stool which he hid.

3. **CRIMINAL LAW; ACCOMPLICE; WHEN LIABLE AS SUCH; CASE AT BAR.—** To hold a person liable as an accomplice, two elements must concur; (1) community of design, which means that the accomplice knows of, and concurs with, the criminal design of the principal by direct participation; and (2) the performance by the accomplice of previous or simultaneous acts that are not indispensable to the commission of the crime. In this case, Maliao facilitated the commission of the crime by providing his own house as the venue thereof. His

presence throughout the commission of the heinous offense, without him doing anything to prevent the malefactors or help the victim, indubitably show community of design and cooperation, although he had no direct participation in the execution thereof.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

QUISUMBING, *J.*:

For automatic review before this Court is the Decision[1] dated August 2, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01299 affirming with modification the Decision[2] dated January 29, 2003 of the Regional Trial Court (RTC) of Olongapo City, Branch 75. The trial court had found accused Norberto Chiong, Luciano Bohol, and accused-appellant Jessie Maliao guilty beyond reasonable doubt as principals of the crime of rape with homicide.

In a Second Amended Information[3] dated April 28, 1998, Jessie Maliao, Norberto Chiong, and Luciano Bohol were charged of the crime of rape with homicide before the RTC of Olongapo City, as follows:

That on or about the seventeenth (17th) day of March, 1998, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, with lewd design, and by means of force, violence or intimidation applied upon

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[1] CA *rollo*, pp. 134-154. Penned by Associate Justice Marina L. Buzon, with Associate Justices Regalado E. Maambong and Lucenito N. Tagle concurring.

[2] *Id.* at 75-82. Penned by Judge Avelino A. Lazo.

[3] Records, pp. 41-42.

the person of one AAA,[4] a minor who is six (6) years of age, did then and there willfully, unlawfully and feloniously have carnal knowledge with said AAA, and in pursuance of their conspiracy and acting simultaneously or otherwise, and with the qualifying circumstances of treachery, [evident] premeditation and taking advantage of their superior number and strength to the said victim who is a minor and of tender age and with intent to kill, did then and there willfully, unlawfully and feloniously assault, attack, strangle and hit with a wooden stool said AAA which directly caused her death shortly thereafter, to the damage and prejudice of the parents of said AAA.

CONTRARY TO LAW.[5]

During arraignment on May 26, 1998, Maliao, Chiong and Bohol pleaded not guilty.[6] Thereafter, trial proceeded.

The prosecution presented the oral testimonies of Dr. Ronaldo Mendez, Senior Medico-Legal Officer of the National Bureau of Investigation (NBI), Dennis Alonzo, SPO2 Norberto Maninang, Jr., SPO3 Orlando Reyes, NBI Forensic Biologist I Pet Byron Buan, Atty. Alreuela Bundang Ortiz, Danilo Agrabio, Armando Tadeo, and Roel Santos. It also presented the testimonies of BBB and CCC, AAA's mother and grandaunt, respectively. The defense presented the testimony of accused Jessie Maliao.

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

AAA was born on December 21, 1991.[7] She was the daughter of BBB and DDD who reside at Block 12, Lot 6, Gordon Heights, Olongapo City.[8]

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[4] Consistent with the Court's decision in *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, the real name of the rape victim is withheld and, instead, fictitious initials are used to represent her. The identities of her immediate family are likewise not disclosed in this decision.

[5] *Id.* at 41.

[6] *Id.* at 55.

[7] *Id.* at 237.

[8] *Id.*

AAA left her house at about 8:00 p.m. on March 17, 1998 to watch a television show in the adjacent house of her grandaunt, CCC. She was then wearing a white blouse, as testified to by BBB, her mother. Both BBB and CCC subsequently left to go to a mini-carnival. When CCC returned to her house, AAA was no longer there. When BBB and her husband, DDD, returned home, AAA was not yet in the house. The spouses looked for AAA in their neighborhood but they did not find her.[9]

At about noontime of the following day, March 18, 1998, the naked and lifeless body of AAA was found between two banana plants in a vacant lot near her house. The matter was reported to the police authorities of Precinct 5, Sta. Rita, Olongapo City. An investigation was conducted by the police authorities and a cartographic sketch of the suspect was prepared by an artist of the NBI.[10]

On March 21, 1998, the desk officer of Police Precinct 5 received a telephone call from a concerned citizen reporting that a bloodstained shirt was found in a vacant lot which was being used as a carnival. SPO2 Norberto Maninang, Jr., SPO4 Bonifacio Chavez and SPO2 Godofredo Ducut proceeded to the area and they found the t-shirt hanging on a plant. A police officer called for BBB, the mother of AAA, and she identified the t-shirt as the one worn by AAA in the evening of March 17, 1998. As the police officers were conducting an investigation in the area, SPO2 Maninang noticed a man who looked like the person in the cartographic sketch which he was carrying at the time. The police officers arrested the man who turned out to be accused-appellant Jessie Maliao. Upon interrogation, Maliao told the police officers that he was bothered by his conscience.[11]

On March 21, 1998, Maliao executed an extrajudicial confession before SPO3 Orlando C. Reyes. Before proceeding

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[9] CA *rollo*, p. 136.

[10] *Id.*

[11] *Id.* at 136-137.

with the investigation, SPO3 Reyes advised Maliao of his constitutional rights in the presence of Atty. Areuela Bundang Ortiz. Maliao declared that he went home at about 10:00 p.m. of March 17, 1998 after having a drinking session with accused Bohol and Chiong and several others. After twenty minutes, Bohol and Chiong, together with AAA, arrived in his house and they asked him if he still wanted to drink but he declined the invitation. Bohol, Chiong and AAA then entered his house. He narrated he went out of his house because he did not want to drink anymore. But when he heard a groan, he went back inside his house and saw Bohol on top of AAA who was already naked while Chiong was seated on the wooden bed watching. When Bohol stood up, Chiong laid on top of AAA. Maliao confessed he just stood beside a cabinet and masturbated. He then watched Chiong stand up, take a small stool and use it to hit AAA on the chest and head. Bohol and Chiong then carried the bloodied body of AAA and told him to clean the room. He wiped the bloodstains in the room, on the clothes of AAA, and on the wooden bed and small stool. He threw the t-shirt of AAA at the lot behind his house and placed her short pants inside a sack which contained garbage. He also threw the curtains he used in wiping bloodstains at his house and hid the small stool. He did not know where Bohol and Chiong brought the body of AAA but was aware that the body was found the following day in a vacant lot in front of his house. After AAA was found, Bohol approached him and told him not to say anything or else he would be killed. He saw Chiong standing near a store. Maliao identified the t-shirt, curtains, small stool and wooden bench and human figures representing Bohol and AAA while the former was on top of the latter.[12]

Dr. Ronaldo B. Mendez, Medico-Legal Officer of the NBI, performed the autopsy on the body of AAA on March 20, 1998. He stated in his autopsy report that AAA's cause of death was traumatic head injury.[13] He testified that AAA sustained

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[12] *Id.* at 137-138.

[13] Records, p. 255.

numerous abrasions and contusions on different parts of her body, hematoma on the forehead and scalp, fractures on the skull and complete laceration of her hymen at the 3 o'clock and 6 o'clock positions.[14]

After the prosecution rested its case, the accused Bohol and Chiong filed a Motion for Express Leave of Court to File Judgment on Demurrer which the RTC denied.

Among the accused, only Maliao put up a defense.

On January 29, 2003, the RTC rendered a decision finding all the accused guilty beyond reasonable doubt and sentenced them to suffer three death penalties, as follows:

> WHEREFORE, finding all accused ***guilty beyond*** reasonable doubt as charged, this Court hereby sentences them each to suffer three (3) ***death penalties***. They are further ordered jointly and severally to indemnify in the amount of ₱100,000.00 … the heirs of the victim; ₱100,000.00 for moral damages and to pay the costs of the proceedings.
>
> SO ORDERED.[15]

Pursuant to *People v. Mateo*,[16] this case was first referred to the Court of Appeals for appropriate action and disposition.

The Court of Appeals, in a Decision dated August 2, 2006, affirmed with modification the decision of the RTC by finding accused Maliao guilty not as principal but as an accomplice to the crime as well as modifying the damages awarded. The dispositive portion of the decision reads:

> WHEREFORE, the Decision appealed from is **AFFIRMED** with **MODIFICATION**, by finding accused-appellants Norberto Chiong *y* Discotido and Luciano Bohol *y* Gamana guilty as principals in the crime of rape with homicide and sentencing each of them to two (2) *reclusion perpetua*, and finding accused-appellant Jessie Maliao

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[14] TSN, March 17, 1999, p. 8.

[15] CA *rollo*, p. 82.

[16] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

y Masakit guilty as accomplice in the same crime and sentencing him to an indeterminate penalty of EIGHT (8) 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 accused-appellants are further **ORDERED** to pay the heirs of AAA the amounts of ₱200,000.00 as civil indemnity, ₱200,000.00 as moral damages and ₱50,000.00 as exemplary damages, with the principals being solidarily liable for ₱150,000.00 as civil indemnity, ₱150,000.00 as moral damages and ₱35,000.00 as exemplary damages and subsidiarily for the accomplice, and the accomplice being liable for ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱15,000[.]00 as exemplary damages and subsidiarily for the civil liability of the principals.

SO ORDERED.[17]

From the Court of Appeals, the case was then elevated to this Court for automatic review. In separate Manifestations, appellee, through the Office of the Solicitor General (OSG), and appellant Maliao, through the Public Attorney's Office (PAO), informed the Court that they were no longer filing supplemental briefs and will merely adopt their briefs before the Court of Appeals as their supplemental briefs.

Accused-appellant Maliao raises the following issues:

I.

THE COURT *A QUO* GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

II.

THE COURT *A QUO* GRAVELY ERRED IN ADMITTING IN EVIDENCE THE ALLEGED EXTRAJUDICIAL CONFESSION OF THE ACCUSED-APPELLANT.

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[17] CA *rollo*, pp. 153-154.

III.

THE COURT *A QUO* GRAVELY ERRED IN FINDING THAT THERE WAS CONSPIRACY IN THE CASE AT BAR.[18]

The only issue to be resolved is: Was accused-appellant Maliao's guilt as accomplice in the crime of rape with homicide proven beyond reasonable doubt?

The appeal, in our view, lacks merit. Appellant Maliao's conviction as accomplice in the crime of rape with homicide must be sustained.

The Court of Appeals correctly held that despite the inadmissibility of his extrajudicial confession, Maliao is not entitled to an acquittal. Citing *People v. Culala,*[19] the Court of Appeals rightfully noted that the extrajudicial confession of an accused who was assisted by a Municipal Attorney during the custodial investigation is not admissible in evidence because the latter cannot be considered an independent attorney.[20]

However, in spite of the inadmissibility of his extrajudicial confession, Maliao is not entitled to an acquittal because when he testified on cross-examination, he admitted that all the answers he gave to the questions propounded on him by the police investigator are true and correct of his own personal knowledge.

On cross-examination, Maliao implicitly admitted, to wit:

Q: Now, in this sketch[,] there is a figure, who made this sketch?
A: [(Maliao)]: I, myself, sir.

Q: And also there is [the] name AAA *nakahiga*, who wrote [these] words?
A: Me, sir.

Q: And the other human figure, thereof there appears an arrow pointed to Luciano – *nakadapa*, who wrote these words?
A: I was the one, sir.

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[18] *Id.* at 63.

[19] G.R. No. 83466, October 13, 1999, 316 SCRA 582.

[20] *Id.* at 591.

Q: And there is also a word "*papag*" who wrote this?
A: I, sir.

Q: And you also sketch[ed] the *papag*?
A: Yes, sir.

Q: Will you please explain to us why you said Luciano-*nakadapa* and AAA-*nakahiga*?
A: Because I have seen [the] incident in my house.

Q: So, you saw Luciano on top of AAA?

ATTY. ABELLERA:

Objection, the description is *nakadapa* not on top, your honor.

Q: So, when you said Luciano-*nakadapa*, Luciano was on top of AAA?
A: Yes, sir.

Q: Now, where were you in this sketch if you will be required to point your distance from Luciano and AAA when you saw them in that specific position?
A: I was beside the *aparador,* sir.

Q: More or less how many f[ee]t or meters?
A: Around 1 ½-arm leng[th].

Q: You testified that you have several companions in having a drinking spree?
A: Yes, sir.

Q: And eventually you left your house together with certain persons, who are these persons?
A: Luciano Bohol and Norberto Chiong, sir.

Q: And [the] two co-accused of yours arrived with a girl?
A: Yes, sir.

Q: And then after the incident happened and during the investigation, you depicted that in your sketch the persons of AAA and Luciano Bohol?
A: Yes, sir.

Q: Now, in all events that happened in your house, you want to impress the court that you have nothing to do with the incident?
A: None, sir.

Q: Now, you pinpointed Norberto Chiong what was he doing at that time?
A: He was just inside our house.

Q: What do you mean inside the house was it together with Luciano Bohol and AAA?
A: He was with Luciano Bohol and AAA.

x x x x x x x x x

Q: So who brought AAA to your house?
A: Luciano Bohol and Norberto Chiong, sir.

Q: So what did you do when you saw the scene that Luciano was on top of AAA?

ATTY. ABELLERA:

Objection, your honor.

Q: Were you the one who lead the Police Investigator to recover the wooden stool?
A: Yes, sir.

Q: Were you the one who lead the Police to recover the t-shirt worn by AAA?
A: No, sir.

Q: What about some pieces of clothes?
A: Yes, sir.

Q: Why did you lead the Police to recover [the] pieces of clothes?
A: Because they told me to help them, sir.

Q: And where did you find [the] pieces of clothes?
A: The pieces of clothes were recovered at the other side of the fence.

Q: The fence of your house?
A: Yes, sir.

Q: Do you know who [threw] [the] pieces of clothes at the fence?
A: Yes, sir. I, myself.

Q: Why did you throw [the] pieces of clothes?
A: Because of my fear, sir.

Q: And [those were] the clothes worn by AAA during that time?
A: Yes, sir.

Q: What time were you investigated by Police Investigator Reyes?
A: Around 11 or 12:00, sir.

Q: But the final investigation was only terminated at around 4:30 p.m.?
A: Yes, sir.

Q: And it was the time when Atty. Bundang arrived?
A: Atty. Bundang arrived at around 5 to 6 and it was already dark, sir.

Q: Mr. Jessie Maliao, is it not a fact that before the commencement of the investigation, you asked the Police Officer to call Atty. Alinea [who] [was] the best friend of your father when he was in [the] mines?
A: Yes, sir.

ATTY. ALINEA:

No more questions.

ATTY. ABELLERA:

Q: Mr. [W]itness, you said that you were the one who lead the Police to recover the stool of AAA and this was recovered near your place, is that correct?
A: Yes, sir.

Q: And did you go with them when you recovered those clothes?
A: Yes, sir.

Q: And when you went to that place do you know [who your companions were]?
A: Yes, sir.

Q: And when you went to that place do you know [who your companions were]?
A: Yes, sir.

Q: Who are they?
A: Maninang, delos Reyes, Ducot and other Police Officers, sir.

Q: Were you accompanied by Atty. Ortiz in going to that place?
A: No, sir.

ATTY. ABELLERA:

That's all, your honor.

COURT:

Q: During the incident subject matter of this case, you [stated] that [the blood were] scattered in your house?
A: Yes, sir.

Q: And you were the one who wiped it off?
A: Yes, sir.

Q: And [you] used the curtains in wiping it off?
A: Yes, sir.

Q: And were those curtains included when [you] pointed the wooden stool to the Police?
A: Yes, sir.[21]

Section 4, Rule 129 of the Revised Rules of Court on Evidence provides that an admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made. Maliao admitted he saw Bohol and Chiong rape AAA; that Chiong picked up a wooden stool and hit AAA with it on the chest and head; that Bohol and Chiong carried the bloodied body of AAA, instructed him to clean the floor and then they went out of the house; that he cleaned the room by wiping the bloodstains; and that he threw the t-shirt of AAA, placed the latter's short pants inside a sack containing garbage, threw the curtains which he used in wiping the bloodstains, and hid the wooden stool. He likewise admitted that he led the police officers to the place where he threw the pieces of clothes which he used in wiping the bloodstains in his house and that he accompanied the police officers to his house and pointed to them the wooden stool which he hid.

To hold a person liable as an accomplice, two elements must concur: (1) community of design, which means that the

[21] TSN, November 16, 2000, pp. 32-38.

accomplice knows of, and concurs with, the criminal design of the principal by direct participation; and (2) the performance by the accomplice of previous or simultaneous acts that are not indispensable to the commission of the crime.[22] In this case, Maliao facilitated the commission of the crime by providing his own house as the venue thereof. His presence throughout the commission of the heinous offense, without him doing anything to prevent the malefactors or help the victim, indubitably show community of design and cooperation, although he had no direct participation in the execution thereof.

Having admitted his involvement in the crime and considering the weave of evidence presented by the prosecution, seamlessly linking Maliao's participation in the heinous offense, as elucidated by the autopsy report and testimonies of other prosecution witnesses, no doubt can be entertained as to Maliao's guilt. Beyond reasonable doubt, he is guilty as accomplice to the crime of rape with homicide.

WHEREFORE, the Decision dated August 2, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01299, including the sentence of guilt and the penalty imposed on accused-appellant Jessie Maliao, is hereby *AFFIRMED*. Costs *de oficio*.

SO ORDERED.

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

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[22] *People v. Cachola*, G.R. Nos. 148712-15, January 21, 2004, 420 SCRA 520, 525.

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

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

[***] Designated member of the Second Division per Special Order No. 664.

SECOND DIVISION

[G.R. No. 178976. July 31, 2009]

ABELARDO P. ABEL, *petitioner, vs.* **PHILEX MINING CORPORATION, represented by FERNANDO AGUSTIN,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; SUPREME COURT; LIMITED TO REVIEWING ERRORS OF LAW; EXCEPTION; CASE AT BAR.—** While it is well-established that the jurisdiction of the Court in cases brought before it via a petition for review on *certiorari* is limited to reviewing errors of law, excepted therefrom is where, as in the present case, the findings of the NLRC contradict those of the Labor Arbiter, then the Court, in the exercise of its equity jurisdiction, may look into the records of the case and reexamine the questioned findings.

2. **LABOR LAW AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; VALIDITY; BURDEN OF PROVING VALIDITY RESTS WITH EMPLOYER.—** The heart of the controversy is the validity of petitioner's dismissal, which hinges on the satisfaction of two substantive requirements, v*iz:* (1) the dismissal must be for any of the causes provided for in Article 282 of the Labor Code; and (2) the employee was accorded due process, basic of which is the opportunity to be heard and to defend himself. The law mandates that the burden of proving the validity of the termination of employment rests with the employer. Failure to discharge this evidentiary burden would necessarily mean that the dismissal was not justified and, therefore, illegal. Unsubstantiated suspicions, accusations, and conclusions of employers do not provide legal justification for dismissing employees. In case of doubt, such cases should be resolved in favor of labor pursuant to the social justice policy of labor laws and the Constitution.

3. **ID.; ID.; ID.; ID.; ID.; BURDEN OF PROOF MEANS SUBSTANTIAL EVIDENCE.—** This burden of proof was clarified in *Community Rural Bank of San Isidro (N.E.), Inc.*

v. Paez to mean substantial evidence: The Labor Code provides that an employer may terminate the services of an employee for just cause and this must be supported by substantial evidence. The settled rule in administrative and quasi-judicial proceedings is that proof beyond reasonable doubt is not required in determining the legality of an employer's dismissal of an employee, and not even a preponderance of evidence is necessary as substantial evidence is considered sufficient. Substantial evidence is more than a mere scintilla of evidence or relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.

4. **ID.; ID.; ID.; ID.; DISMISSAL BASED ON LOSS OF TRUST AND CONFIDENCE.—** Article 282(c) of the Labor Code allows an employer to terminate the services of an employee for loss of trust and confidence: ART. 282. Termination by employer. — An employer may terminate an employment for any of the following causes: x x x c) Fraud or willful breach by the employee of the trust reposed in him by his employer or his duly authorized representative.

5. **ID.; ID.; ID.; ID.; ID.; REQUISITES AS A GROUND FOR VALID DISMISSAL.—** The first requisite for dismissal on the ground of loss of trust and confidence is that the employee concerned must be holding a position of trust and confidence. The second requisite is that there must be an act that would justify the loss of trust and confidence. Loss of trust and confidence, to be a valid cause for dismissal, must be based on a willful breach of trust and founded on clearly established facts. The basis for the dismissal must be clearly and convincingly established but proof beyond reasonable doubt is not necessary.

6. **ID.; ID.; ID.; ID.; ID.; TWO CLASSES OF POSITIONS OF TRUST AND CONFIDENCE; CASE AT BAR.—** There are two classes of positions of trust. The *first* class consists of managerial employees. They are defined as those vested with the powers or prerogatives to lay down management policies and to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions. The *second* class consists of cashiers, auditors, property custodians, *etc*. They are defined as those who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property. In

this case, petitioner was a Contract Claims Assistant at respondent's Legal Department at the time he allegedly committed the acts which led to its loss of trust and confidence. It is not the job title but the actual work that the employee performs. It was part of petitioner's responsibilities to monitor the performance of respondent's contractors in relation to the scope of work contracted out to them. Respondent relies on petitioner's reports regarding his inspection of the work accomplishment of such contractors. As a result of his monitoring the enforcement of respondent's contracts which involve large sums of money, petitioner may well be considered an employee with a position of trust analogous to those falling under the second class. A position where a person is entrusted with confidence on delicate matters, or with the custody, handling or care and protection of the employer's property is one of trust and confidence.

7. **ID.; ID.; ID.; ID.; ID.; WILLFUL BREACH OF TRUST AS BASIS THEREFOR NOT CLEARLY ESTABLISHED IN CASE AT BAR.—** Respondent's evidence failed to clearly establish petitioner's willful breach of trust that would justify respondent's loss of trust and confidence. Its lone witness, Lupega, did not support his affidavit and testimony during the company investigation with any piece of evidence at all. No other employee working at respondent's mine site attested to the truth of any of his statements. Standing alone, Lupega's account of the subsidence area anomaly could hardly be considered substantial evidence. And while there is no concrete showing of any ill motive on the part of Lupega to falsely accuse petitioner, that Lupega himself was under investigation when he implicated petitioner in the subsidence area anomaly makes his corroborated version suspect.

8. **ID.; ID.; ID.; ID.; DISMISSAL ON GROUND OF GROSS AND HABITUAL NEGLECT BY THE EMPLOYEE OF HIS DUTIES.—** [Pursuant to] Article 282(b) of the Labor Code an employer may terminate an employee for gross and habitual neglect by the employee of his duties. To warrant removal from service, the negligence should not merely be gross but also habitual. Gross negligence implies a want or absence of or failure to exercise even slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them. Habitual neglect implies repeated failure to perform one's duties for a

period of time, depending upon the circumstances. The single or isolated act of negligence does not constitute a just cause for the dismissal of the employee.

9. **ID.; ID.; ID.; ID.; ID.; HABITUALITY NOT SHOWN IN CASE AT BAR.—** In this case, respondent faulted petitioner for his supposed inaction on Lupega's report regarding the alleged incidents of underloading of ANSECA's trucks during backfilling operations. Respondent considered petitioner's referral of the matter to Tabogader improper because his immediate superior was Gil C. Pagulayan, Contract and Claim Section Head. Respondent's arguments fail to persuade. To the Court, petitioner's referral of the matter to Tabogader, who was then the Subsidence Area Head, hardly indicates gross negligence as it in fact belies the total absence of care or thoughtless disregard of consequences. Petitioner's subsequent inaction was brought about by Tabogader's assurance that the problem had been solved, which respondent does not contest. AT ALL EVENTS, even assuming that there was some lapse in judgment on the part of petitioner in the way he handled the report of Lupega, the same does not amount to habitual neglect as petitioner did not repeatedly fail to perform his duties for a period of time. Respondent has not cited other similar shortcomings of petitioner to show habituality.

10. **ID.; ID.; ID.; ID.; TWIN NOTICE REQUIREMENT TO ACCORD EMPLOYEE DUE PROCESS.—** In *R.B. Michael Press v. Galit*, the Court had occasion to reiterate that under the twin notice requirement, the employees must be given two notices before their employment could be terminated: (1) a first notice to apprise the employees of their fault, and (2) a second notice to communicate to the employees that their employment is being terminated. To this, the Court added: Not to be taken lightly, of course, is the hearing or opportunity for the employee to defend himself personally or by counsel of his choice.

11. **ID.; ID.; ID.; ID.; ID.; PURPOSE OF FIRST WRITTEN NOTICE REQUIREMENT; CASE AT BAR.—** A careful examination of the disciplinary procedure adopted by respondent which led to the dismissal of petitioner shows that respondent did not satisfy the first written notice requirement. Albeit the September 17, 2002 Notice to Explain of respondent to petitioner required him to show cause why he should not be meted out any disciplinary sanction for his involvement in the subsidence

area anomaly per Lupega's allegations, there was clearly no intimation therein that petitioner could be terminated from employment. No such intention to dismiss petitioner can be inferred from the general tenor of the notice. Neither did it apprise petitioner as to which among the grounds under Article 282 of the Labor Code was being charged against him. No mention whatsoever was made of either loss of trust and confidence or gross and habitual neglect of duty. The Court cannot overemphasize that the first written notice to the employee bears heavily upon his intelligent preparation for his defense. It enables him to squarely address the accusations against him and guides him in deciding whether to consult a union official or lawyer, or gather data and evidence.

12. **ID.; ID.; ID.; ID.; DISMISSAL WITHOUT JUST CAUSE AND PROCEDURAL DUE PROCESS; EMPLOYEE ENTITLED TO REINSTATEMENT AND FULL BACKWAGES; EXCEPTION; CASE AT BAR.—** IN FINE, petitioner, although not entirely faultless, was dismissed without just cause and procedural due process. Consequently, he is entitled to reinstatement and full backwages. If, however, reinstatement is no longer possible due to the strained relations between petitioner and respondent, separation pay should instead be paid equivalent to one month salary for every year of service, in addition to full backwages.

APPEARANCES OF COUNSEL

Agranzamendez Liceralde Gallardo and Associates for petitioner.

Nicasio S. Palaganas for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Assailed in this petition for review on *certiorari* is the January 22, 2007 Decision of the Court of Appeals in CA-G.R. SP No. 91988 denying due course to and dismissing petitioner's petition for *certiorari* which assailed the January 31, 2005 Decision of the National Labor Relations Commission (NLRC) in NLRC

NCR CA No. 037631-03 that petitioner was legally dismissed from service on the grounds of loss of trust and confidence and gross and habitual neglect of duty.

By his claim, petitioner was first hired by respondent in January, 1988. He was eventually assigned to respondent's Legal Department as a Contract Claims Assistant, a position he occupied for five years prior to his transfer to the Mine Engineering and Draw Control Department wherein he was appointed Unit Head in early 2002.[1]

Sometime in September, 2002, petitioner was implicated in an irregularity occurring in the subsidence area of respondent's mine site at Pacdal, Tuba, Benguet. Petitioner's co-worker Danilo R. Lupega (Lupega), a Subsidence Checker at the mine site who was himself under administrative investigation for what came to be known as the "subsidence area anomaly," executed an affidavit[2] which read in relevant part:

3. That as a Subsidence Checker, I was strict in monitoring the trips of ANSECA contract [*sic*] for their backfilling operations, seeing to it that every truck is to be fully loaded with backfills;

4. That I noticed that there were many instances when the ANSECA trucks were not fully loaded and, likewise, the bucket of the back-hoe machine was not fully/properly loaded;

5. That I reported my unusual observations to Crispin Y. Tabogader and he replied, "*Sige sasabihin ko kay Ben Garcia.*" (Alright, I will tell Ben Garcia.), project manager of ANSECA;

6. That I remember reporting also the matter to Robert L. Montes, but I heard no response from him;

7. That for some days, the back-hoe operator had fully loaded the ANSECA trucks but the irregular practice of not fully loading the same had been continued;

8. That when my reports seemed unacted [*sic*] by Crispin Y. Tabogader & Robert L. Montes because I still observe [*sic*]

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[1] NLRC Records, Vol. I, p. 9.

[2] *Id.* at 22-24.

the continuance of the irregularity of the loading operations, I went at [*sic*] the office of the Contract Committee to report the matter, and when I was there, I reported it to Abelardo P. Abel, and he told me, "*mauna ka na at susunod na lang ako at maghahanap pa ako ng sasakyan.*" (Go ahead, I will follow when I find a ride.). So I went ahead and kept on waiting but Abel did not show up at the Subsidence Area;

x x x x x x x x x

13. That sometime in 2001, I was then on 2nd shift duty eating my dinner at a little past 7:00 PM when the telephone rang. I lifted the phone receiver and the caller was asking for Didith, whom I knew was the ANSECA Accountant. I told the caller to re-dial the phone number and after he had done it, I was tempted to lift the phone receiver and I heard the caller telling Didith, "*Si Abel ito, paano na yung usapan natin?*" (This is Abel. What happened to our deal?), and Didith answered that, "*O sige, huwag kang mag-alala, ipapaalam ko sa Cebu*" (Alright, do not worry. I will take it up with our Cebu office.), then I put back the phone receiver on its place;

14. That again sometime in 2001, I was then on 1st shift duty when the telephone rang. I lifted the receiver and the caller said, "Open pit watcher, *sa* ANSECA *nga*" (To ANSECA please.), and I answered "*I-dial mo ulit*" (Please dial again.), and I immediately put the receiver down on its place. When he re-dialed and was answered by ANSECA, I was again tempted to lift the phone receiver and I heard the caller saying, "*Si Abel ito, paano na yung usapan natin*[?]" (This is Abel. What happened to our deal?), and the ANSECA accountant replied, "*O sige, hintayin mo ako sa bangko at magwiwithdraw ako*." (Alright, wait for me at the bank. I will come to make the withdrawal.). That this was only the conversation I heard between the two because I already put down the phone receiver. (Italics and translations supplied)

The incidents alleged in Lupega's affidavit supposedly took place when petitioner was still a Contract Claims Assistant at respondent's Legal Department.

In compliance with respondent's directive to respond to Lupega's charges, petitioner wrote a letter to Fernando Agustin (Agustin), respondent's Vice President for Operations, denying

Lupega's allegations of extortion from Anseca Development Corporation (ANSECA) and failure to report the incidents of underloading of ANSECA's trucks during backfilling operations. Petitioner averred that Lupega was only seeking to deflect his own responsibility for the irregularities then occurring at the mine site.[3]

An investigation was promptly launched by respondent's officers by conducting several fact-finding meetings for the purpose. Petitioner attended the meetings but claimed that he was neither asked if he needed the assistance of counsel nor allowed to properly present his side.[4]

By Memorandum dated December 7, 2002,[5] respondent's Administrative Division, Litigation and Investigation Section found petitioner guilty of (1) fraud resulting in loss of trust and confidence and (2) gross neglect of duty, and was meted out the penalty of dismissal from employment effective December 8, 2002.[6]

Petitioner thus filed a complaint for illegal dismissal with the NLRC against respondent, represented by Agustin, with claims for annual vacation leave pay for 2001 and 2002.[7]

Respondent, admitting that it dismissed petitioner, contended that the decision was preceded by regular and proper proceedings, all attended by petitioner; that petitioner had agreed to submit his case for decision; that it lost almost ₱9,000,000 from the subsidence area anomaly; and that Crispin Y. Tabogader, Jr. (Tabogader), Subsidence Area Head, Robert L. Montes, Draw Control Superintendent, and Eduardo R. Garcia, Jr., Mine Engineering and Draw Control Department Manager, had all been dismissed for their involvement in the anomaly.[8]

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[3] *Id.* at 27.

[4] *Id.* at 10-11.

[5] *Id.* at 36-40.

[6] *Id.* at 41.

[7] *Id.* at 1.

[8] *Vide* Position Paper for Respondent, *id.* at 42-52.

By Decision of September 19, 2003,[9] the Labor Arbiter, ruling that petitioner was dismissed illegally, disposed as follows:

WHEREFORE, premises considered, judgment is hereby rendered finding respondents guilty of illegal dismissal.

Respondents must reinstate complainant to his former or equivalent position without loss of seniority rights and other privileges and to pay him full backwages reckoned from the time his compensation was effectively withheld from him up to the time of his actual reinstatement, which as of this writing amount to One Hundred Sixty Nine Thousand Four Hundred Fifty Eight Pesos and Thirty Four Centavos (₱169,458.34).

The Labor Arbiter found that respondent failed to prove by substantial evidence the alleged fraud committed by petitioner, explaining that the telephone conversations between petitioner and Didith Caballero of ANSECA would not suffice to lay the basis for respondent's loss of trust and confidence in petitioner.

On the charge of gross negligence, the Labor Arbiter held that no negligence was present as respondent itself admitted that petitioner reported the underloading to Tabogader, who was then in charge of the subsidence area where the alleged anomaly was happening.

On respondent's appeal, the NLRC *reversed* the decision of the Labor Arbiter by Decision dated January 31, 2005,[10] finding that petitioner was guilty of gross and habitual neglect of duty as he continually reported ANSECA's backfilling operations as "okay" per his inspection notwithstanding the gross underloading; and that he did not act on Lupega's report concerning certain irregularities. To the NLRC, petitioner's failure to perform his duty of inspecting ANSECA's operations and vacillation on certain matters during the company investigation, among other things, constituted sufficient basis for respondent's loss of trust and confidence.

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[9] *Id.* at 127-137.

[10] NLRC Records, Vol. II, pp. 614-623.

Petitioner's Motion for Reconsideration having been denied by Resolution of July 7, 2005,[11] he appealed to the Court of Appeals via *certiorari*.[12]

As reflected early on, the appellate court denied due course to, and dismissed, petitioner's appeal by Decision dated January 22, 2007,[13] upon a finding that what petitioner was questioning were the findings of fact and conclusions of the NLRC which would, at most, constitute errors of law and not abuse of discretion correctable by *certiorari*. It likewise found that petitioner failed to substantiate the grave abuse of discretion imputed to the NLRC, he not having demonstrated how the NLRC decided in a manner contrary to the constitution, law or jurisprudence, or how it acted whimsically, capriciously, or arbitrarily out of malice, ill will, or personal bias.

His Motion for Reconsideration having been denied by Resolution of July 6, 2007,[14] petitioner comes before this Court via the present Petition for Review on *Certiorari*.

Petitioner argues that respondent's lone witness Lupega offered no proof of the alleged incidents of underloading of the trucks of ANSECA during backfilling operations; that he nevertheless reported the supposed underloading to Tabogader who subsequently told him that the problem had been solved; that it was not his principal duty to inspect the actual loading of every truck of ANSECA as he was in fact only spending about 20% of his time on the field; that the charge of fraud based on the purported extortion attempt was not proven; and that assuming he was negligent in handling the reported underloading, the penalty of dismissal was too harsh given his length of service and untarnished record.[15]

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[11] *Id.* at 641-642.

[12] CA *rollo,* pp. 2-21.

[13] *Id.* at 234-243; penned by Associate Justice Jose L. Sabio, Jr., with the concurrence of Associate Justices Jose C. Reyes, Jr. and Myrna Dimaranan Vidal.

[14] *Id.* at 276.

[15] *Vide* Petition, *rollo,* pp. 10-42.

Respondent counters that petitioner raises questions of fact or evidentiary matters which are improper in a petition for review on *certiorari*; and that the findings of the NLRC are supported by substantial evidence.[16]

The petition is impressed with merit.

While it is well-established that the jurisdiction of the Court in cases brought before it via a petition for review on *certiorari* is limited to reviewing errors of law,[17] excepted therefrom is where, as in the present case, the findings of the NLRC contradict those of the Labor Arbiter, then the Court, in the exercise of its equity jurisdiction, may look into the records of the case and reexamine the questioned findings.[18]

The heart of the controversy is the validity of petitioner's dismissal, which hinges on the satisfaction of two substantive requirements, *viz*: (1) the dismissal must be for any of the causes provided for in Article 282 of the Labor Code; and (2) the employee was accorded due process, basic of which is the opportunity to be heard and to defend himself.[19]

The law mandates that the burden of proving the validity of the termination of employment rests with the employer. Failure to discharge this evidentiary burden would necessarily mean that the dismissal was not justified and, therefore, illegal. Unsubstantiated suspicions, accusations, and conclusions of employers do not provide legal justification for dismissing employees. In case of doubt, such cases should be resolved in

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[16] *Vide* Respondent's Comment, *id.* at 194-199.

[17] *Go v. Court of Appeals*, G.R. No. 158922, May 28, 2004, 430 SCRA 358, 364.

[18] *Jo v. National Labor Relations Commission,* G.R. No. 121605, February 2, 2000, 324 SCRA 437, 445.

[19] *Petron Corporation v. National Labor Relations Commission,* G.R. No. 154532, October 27, 2006, 505 SCRA 596, 609.

favor of labor pursuant to the social justice policy of labor laws and the Constitution.[20]

This burden of proof was clarified in *Community Rural Bank of San Isidro (N.E.), Inc. v. Paez*[21] to mean substantial evidence:

> The Labor Code provides that an employer may terminate the services of an employee for just cause and this must be supported by substantial evidence. The settled rule in administrative and quasi-judicial proceedings is that proof beyond reasonable doubt is not required in determining the legality of an employer's dismissal of an employee, and not even a preponderance of evidence is necessary as substantial evidence is considered sufficient. Substantial evidence is more than a mere scintilla of evidence or relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.

In this case, respondent dismissed petitioner on the following grounds: (1) fraud resulting in loss of trust and confidence and (2) gross neglect of duty.

Respecting the first ground, Article 282(c) of the Labor Code allows an employer to terminate the services of an employee for loss of trust and confidence:

> ART. 282. Termination by employer. — An employer may terminate an employment for any of the following causes:
>
> x x x x x x x x x
>
> c) Fraud or willful breach by the employee of the trust reposed in him by his employer or his duly authorized representative.

The first requisite for dismissal on the ground of loss of trust and confidence is that the employee concerned must be holding a position of trust and confidence. Verily, the Court must first determine if petitioner holds such a position.

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[20] *Times Transportation Co., Inc. v. National Labor Relations Commission*, G.R. Nos. 148500-01, November 29, 2006, 508 SCRA 435, 443.

[21] G.R. No. 158707, November 27, 2006, 508 SCRA 245, 257-258.

There are two classes of positions of trust.[22] The *first* class consists of managerial employees. They are defined as those vested with the powers or prerogatives to lay down management policies and to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions.[23] The *second* class consists of cashiers, auditors, property custodians, *etc*. They are defined as those who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property.[24]

In this case, petitioner was a Contract Claims Assistant at respondent's Legal Department at the time he allegedly committed the acts which led to its loss of trust and confidence. It is not the job title but the actual work that the employee performs.[25] It was part of petitioner's responsibilities to monitor the performance of respondent's contractors in relation to the scope of work contracted out to them.[26]

Respondent relies on petitioner's reports regarding his inspection of the work accomplishment of such contractors. As a result of his monitoring the enforcement of respondent's contracts which involve large sums of money, petitioner may well be considered an employee with a position of trust analogous to those falling under the second class. A position where a person is entrusted with confidence on delicate matters, or with the custody, handling or care and protection of the employer's property is one of trust and confidence.[27]

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[22] *Mabeza v. National Labor Relations Commission,* G.R. No. 118506, April 18, 1997, 271 SCRA 670, 682.

[23] *Ibid.*

[24] *Ibid.*

[25] *Bristol Myers Squibb (Phils.), Inc. v. Baban,* G.R. No. 167449, December 17, 2008.

[26] Vide *rollo,* pp. 181-183.

[27] Vide *Panday v. National Labor Relations Commission,* G.R. No. 67664, May 20, 1992, 209 SCRA 122, 125.

The second requisite is that there must be an act that would justify the loss of trust and confidence.[28] Loss of trust and confidence, to be a valid cause for dismissal, must be based on a willful breach of trust and founded on clearly established facts. The basis for the dismissal must be clearly and convincingly established but proof beyond reasonable doubt is not necessary.[29] Respondent's evidence against petitioner fails to meet this standard. Its lone witness, Lupega, did not support his affidavit and testimony during the company investigation with any piece of evidence at all. No other employee working at respondent's mine site attested to the truth of any of his statements. Standing alone, Lupega's account of the subsidence area anomaly could hardly be considered substantial evidence. And while there is no concrete showing of any ill motive on the part of Lupega to falsely accuse petitioner, that Lupega himself was under investigation when he implicated petitioner in the subsidence area anomaly makes his uncorroborated version suspect.

The Labor Arbiter correctly found that the alleged telephone conversations between petitioner and Didith Caballero of ANSECA would not suffice to lay the basis for respondent's loss of trust and confidence in petitioner. The relevant paragraphs of Lupega's affidavit[30] are restated below for convenience:

> 13. That sometime in 2001, I was then on 2nd shift duty eating my dinner at a little past 7:00 PM when the telephone rang. I lifted the phone receiver and the caller was asking for Didith, whom I knew was the ANSECA Accountant. I told the caller to re-dial the phone number and after he had done it, I was tempted to lift the phone receiver and I heard the caller telling Didith, "*Si Abel ito, paano na yung usapan natin?*" (This is Abel. What happened to our deal?), and Didith answered

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[28] Vide *Equitable Banking Corporation v. National Labor Relations Commission,* G.R. No. 102467, June 13, 1997, 273 SCRA 352, 376.

[29] *Garcia v. National Labor Relations Commission,* G.R. No. 113774, April 15, 1998, 289 SCRA 36, 46.

[30] *Supra* note 2.

that, "*O sige, huwag kang mag-alala, ipapaalam ko sa Cebu*" (Alright, do not worry. I will take it up with our Cebu office.), then I put back the phone receiver on its place;

14. That again sometime in 2001, I was then on 1st shift duty when the telephone rang. I lifted the receiver and the caller said, "Open pit watcher, *sa* ANSECA *nga*" (To ANSECA please.), and I answered "*I-dial mo ulit*" (Please dial again.), and I immediately put the receiver down on its place. When he re-dialed and was answered by ANSECA, I was again tempted to lift the phone receiver and I heard the caller saying, "*Si Abel ito, paano na yung usapan natin*?" (This is Abel. What happened to our deal?), and the ANSECA accountant replied, "*O sige, hintayin mo ako sa bangko at magwiwithdraw ako*." (Alright, wait for me at the bank. I will come to make the withdrawal.). That this was only the conversation I heard between the two because I already put down the phone receiver. (Italics and translations supplied)

Even assuming that the foregoing conversations attributed to petitioner and Didith Caballero of ANSECA took place, they do not amply establish petitioner's involvement in a scheme to defraud respondent. Lupega's account is only one piece of a huge puzzle. There are yet too many missing pieces. The purported telephone conversations fail to convince the Court that they constitute such relevant evidence as a reasonable mind might accept as adequate to support the conclusion that petitioner attempted to extort money from ANSECA in connection with its backfilling operations to the prejudice of respondent. To doubt is to rule in favor of labor.

With regard to the second ground for petitioner's dismissal, Article 282(b) of the Labor Code provides:

ART. 282. An employer may terminate an employment for any of the following causes:

x x x x x x x x x

(b) Gross and habitual neglect by the employee of his duties.

To warrant removal from service, the negligence should not merely be gross but also habitual.[31] Gross negligence implies a want or absence of or failure to exercise even slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.[32] Habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances. The single or isolated act of negligence does not constitute a just cause for the dismissal of the employee.[33]

In this case, respondent faulted petitioner for his supposed inaction on Lupega's report regarding the alleged incidents of underloading of ANSECA's trucks during backfilling operations. Respondent considered petitioner's referral of the matter to Tabogader improper because his immediate superior was Gil C. Pagulayan, Contract and Claim Section Head.[34]

Respondent's arguments fail to persuade. To the Court, petitioner's referral of the matter to Tabogader, who was then the Subsidence Area Head, hardly indicates gross negligence as it in fact belies the total absence of care or thoughtless disregard of consequences. Petitioner's subsequent inaction was brought about by Tabogader's assurance that the problem had been solved, which respondent does not contest.

AT ALL EVENTS, even assuming that there was some lapse in judgment on the part of petitioner in the way he handled the report of Lupega, the same does not amount to habitual neglect as petitioner did not repeatedly fail to perform his duties for a period of time. Respondent has not cited other similar shortcomings of petitioner to show habituality.

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[31] *Union Motor Corporation v. National Labor Relations Commission*, G.R. No. 159738, December 9, 2004, 445 SCRA 683, 694.

[32] *Philippine Aeolus Automotive United Corporation v. National Labor Relations Commission*, 387 Phil. 250, 263 (2000).

[33] *Genuino Ice Co., Inc. v. Magpantay,* G.R. No. 147790, June 27, 2006, 493 SCRA 195, 205-206.

[34] *Vide* NLRC Records, Vol. I, p. 39.

There being no just cause for the termination of petitioner's employment, the compelling conclusion is that he was dismissed illegally. While it is unnecessary at this point to delve into the requirement of procedural due process, the Court shall nevertheless discuss it in view of its importance.

In *R.B. Michael Press v. Galit*,[35] the Court had occasion to reiterate that under the twin notice requirement, the employees must be given two notices before their employment could be terminated: (1) a first notice to apprise the employees of their fault, and (2) a second notice to communicate to the employees that their employment is being terminated. To this, the Court added:

> Not to be taken lightly, of course, is the hearing or opportunity for the employee to defend himself personally or by counsel of his choice.

The procedure for this twin notice and hearing requirement was thoroughly explained in *King of Kings Transport v. Mamac*[36] in this wise:

> (1) The first written notice to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which

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[35] G.R. No. 153510, February 13, 2008, 545 SCRA 23, 35.

[36] G.R. No. 166208, June 29, 2007, 526 SCRA 116, 125-126.

company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.

(2) After serving the first notice, the employers should schedule and conduct a hearing or conference wherein the employees will be given an opportunity to (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, the conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

(3) After determining that termination of employment is justified, the employers shall serve the employees a written notice of termination indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.

A careful examination of the disciplinary procedure adopted by respondent which led to the dismissal of petitioner shows that respondent did not satisfy the first written notice requirement.

Albeit the September 17, 2002 Notice to Explain[37] of respondent to petitioner required him to show cause why he should not be meted out any disciplinary sanction for his involvement in the subsidence area anomaly per Lupega's allegations, there was clearly no intimation therein that petitioner could be terminated from employment. No such intention to dismiss petitioner can be inferred from the general tenor of the notice. Neither did it apprise petitioner as to which among the grounds under Article 282 of the Labor Code was being charged against him. No mention whatsoever was made of either loss of trust and confidence or gross and habitual neglect of duty.

The Court cannot overemphasize that the first written notice to the employee bears heavily upon his intelligent preparation for his defense. It enables him to squarely address the accusations

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[37] NLRC Records, Vol. I, p. 64.

against him and guides him in deciding whether to consult a union official or lawyer, or gather data and evidence.

The Court is not unmindful of the equally important right of respondent as employer under the Constitution to be protected in its property and interest. The particular circumstances attendant in this case, however, convince the Court that the supreme penalty of dismissal upon petitioner is not justified. The law regards the workers with compassion. Even where a worker has committed an infraction of company rules and regulations, a penalty less punitive than dismissal may suffice. This is not only because of the law's concern for the workingman. There is, in addition, his family to consider. Unemployment brings untold hardships and sorrows on those dependent upon the wage-earner.[38]

IN FINE, petitioner, although not entirely faultless, was dismissed without just cause and procedural due process. Consequently, he is entitled to reinstatement and full backwages. If, however, reinstatement is no longer possible due to the strained relations between petitioner and respondent, separation pay should instead be paid equivalent to one month salary for every year of service, in addition to full backwages.

Finally, petitioner's claims for annual vacation leave pay for 2001 and 2002 must be denied in light of his failure to prove the bases therefor.

WHEREFORE, the assailed Decision of the Court of Appeals is *REVERSED* and *SET ASIDE*. Respondent is ordered to reinstate petitioner to his former position or its equivalent without loss of seniority rights and privileges, and to pay him full backwages inclusive of allowances and other benefits or their monetary equivalent, from the time of his dismissal until his actual reinstatement; or, if reinstatement is no longer feasible, to give him separation pay equivalent to at least one month salary for every year of service, computed from the time of engagement up to the finality of this decision.

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[38] *National Labor Relations Commission v. Salgarino,* G.R. No. 164376, July 31, 2006, 497 SCRA 361, 383.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 179154. July 31, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ROGER PEREZ and DANILO PEREZ,** *appellants.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; FINDINGS OF FACTS OF THE TRIAL COURT; ACCORDED HIGH RESPECT IF NOT CONCLUSIVE EFFECT BY THE APPELLATE COURTS.—** The legal aphorism is that the findings of facts of the trial court, its calibration of the testimonial evidence, its assessment of the probative weight thereof as well as its conclusions anchored on the said findings are accorded high respect if not conclusive effect by the appellate courts. The *raison d' être* for this principle is that the trial court is able to observe and monitor, at close range, the conduct, behavior and deportment of the witnesses as they testify. In fact, the rule finds an even more stringent application where the said findings are sustained by the Court of Appeals.

2. **ID.; EVIDENCE; ALIBI; ACCUSED MUST PROVE IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO BE AT THE SCENE OF THE CRIME AT THE TIME OF ITS COMMISSION.—** It is jurisprudentially held that for alibi to

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

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

[***] Additional member per Special Order No. 664.

prosper, it is not enough for the accused to prove that he was somewhere else when the crime was committed. He must demonstrate that it was physically impossible for him to be at the scene of the crime at the time of its commission.

3. **ID.; ID.; ALIBI AND DENIAL; CANNOT PREVAIL OVER THE POSITIVE AND UNEQUIVOCAL IDENTIFICATION BY AN EYEWITNESS.—** Moreover, it is well-settled that a bare alibi and denial, being merely self-serving, is itself hardly given credence. Alibi and denial cannot prevail over the positive and unequivocal identification by an eyewitness. Categorical and consistent positive identification, absent any showing of ill motive on the part of the eyewitness testifying on the matter, prevail over the twin defenses of denial and alibi.

4. **CRIMINAL LAW; CONSPIRACY; MAY BE SHOWN THROUGH CIRCUMSTANTIAL EVIDENCE.—** Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Direct proof of previous agreement to commit a crime is not necessary. Conspiracy may be shown through circumstantial evidence, deduced from the mode and manner in which the offense was perpetrated, or inferred from the acts of the accused themselves when such lead to a joint purpose and design, concerted action, and community of interest.

5. **ID.; MURDER; MOTIVE; NOT AN ELEMENT THEREOF.—** Motive is not an element of the crime of murder. Motive is totally irrelevant when ample direct evidence sustains the culpability of the accused beyond reasonable doubt. Where a reliable eyewitness had fully and satisfactorily identified the accused as the perpetrator of the felony, motive becomes immaterial in the successful prosecution of a criminal case.

6. **ID.; ID.; *CORPUS DELICTI* REFERS TO THE FACT THAT A CRIME HAS BEEN ACTUALLY COMMITTED.—** *Corpus delicti* refers to the fact that a crime has been actually committed. It does not refer to the autopsy report evidencing the nature of the wounds sustained by the victim nor the testimony of the physician who conducted the autopsy or medical examination. It is made up of two elements: (a) that a certain result has been proved and (b) that some person is criminally responsible for the act. While the autopsy report of a medico legal expert in cases of murder is preferably accepted to show

the extent of injuries suffered by the victim, it is not the only competent evidence to prove the injuries and the fact of death. It may be proved by the testimonies of credible witnesses.

7. ID.; AGGRAVATING CIRCUMSTANCES; TREACHERY.— Treachery exists when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.

8. ID.; ID.; ABUSE OF SUPERIOR STRENGTH; NECESSARILY ABSORBED IN TREACHERY; CASE AT BAR.— Furthermore, abuse of superior strength attended the killing when the appellants, together with an unidentified person who held the victim's hands, took advantage of their combined strength in order to consummate the offense. However, the aggravating circumstance of abuse of superior strength cannot be appreciated separately, it being necessarily absorbed in treachery.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Gaspar V. Tagalo for appellants.

D E C I S I O N

QUISUMBING, *J.*:

On appeal is the Decision[1] dated May 31, 2007 of the Court of Appeals in CA-G.R. CR HC No. 01586. The Court of Appeals had affirmed with modification the Decision[2] dated February 11, 2005 of the Regional Trial Court (RTC) of Quezon City, Branch 81, finding appellants guilty of the crime of murder in Criminal Case No. Q-00-94135.

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[1] *Rollo*, pp. 2-25. Penned by Associate Justice Enrico A. Lanzanas, with Associate Justices Remedios Salazar-Fernando and Rosalinda Asuncion Vicente concurring.

[2] CA *rollo*, pp. 44-54. Penned by Presiding Judge Ma. Theresa L. De la Torre-Yadao.

On August 1, 2000, an Information[3] was filed charging the accused, now appellants herein, with murder allegedly committed as follows:

That on or about the 29th day of January 2000, in Quezon City, Philippines, the said accused, conspiring, confederating [with] another person whose true name, identity and whereabouts [have] not as yet been ascertained and mutually helping one another did then and there willfully, unlawfully and feloniously with intent to kill, qualified by evident premeditation and treachery, taking advantage of superior strength, assault, attack and employ personal violence upon the person of one FULGENCIO MAGLENTE CUYSONA by then and there stabbing him with the use of a bladed weapon, hitting him on his trunk, 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 Fulgencio Maglente *y* Cuysona.

CONTRARY TO LAW.[4]

Upon arraignment, the accused pleaded not guilty to the charge. Thereafter, trial ensued. The prosecution presented Ariel Baque and Rolando Gangca, two eyewitnesses who allegedly saw the stabbing incident on January 29, 2000, and Araceli Cuysona, widow of the victim Fulgencio Cuysona.

Ariel Baque testified that he was in his house located at 147 Lilac Street, Fairview, Quezon City on January 29, 2000 at about 9:30 in the evening when he saw the victim Fulgencio before the stabbing incident. Baque narrated that Fulgencio was standing in front of a store, which was about four arms length away directly in front of his house, when he saw appellant Danilo Perez stab Fulgencio at the back, followed by appellant Roger Perez, who stabbed Fulgencio at the chest. Thereafter, Fulgencio ran but was blocked by a man with blond hair whom Baque could not name and whom he only knew to be a vendor. The man with the blond hair held Fulgencio's arm so he could not run and the three took turns in stabbing Fulgencio.[5]

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[3] Records, pp. 1-2.

[4] *Id.* at 1.

[5] TSN, May 8, 2002, pp. 4-12.

On cross-examination, Baque testified that he is a tricycle driver but on January 29, 2000, he neither drove his tricycle nor went to Cavite as insisted by the defense counsel, but just stayed at home. Baque likewise denied that a certain Marcial Dungallo instructed him to implicate appellant Roger Perez and maintained that he actually saw appellant Roger Perez as one of the three persons who stabbed Fulgencio.[6]

Rolando Gangca, also a resident of Lilac Street, Fairview, Quezon City, testified that he was in his house on January 29, 2000 at about 9:30 in the evening. He decided to go out to buy a cigarette, but was not able to do so because when he turned at the corner, he saw Jerry Bautista running towards the house of Boy Aguilar. When Gangca looked at the place where Jerry Bautista came from, he saw Fulgencio being stabbed by appellants Danilo Perez and Roger Perez. Gangca saw three persons, two of them stabbing the victim while the other was holding the victim's hands. Appellant Danilo Perez used an icepick while appellant Roger Perez used a stainless steel knife. The two were in front of the victim and took turns stabbing him.[7]

Araceli Cuysona, Fulgencio's widow, testified that her husband died on January 29, 2000 because he was stabbed; that when he was stabbed, she was in Taiwan; that she spent ₱877.00 for hospitalization expenses and ₱30,000.00 for funeral expenses of her husband.[8]

The defense, for its part, presented SPO1 Resty San Pedro of PNP CPD, Station 5 Police Station, Fairview, Quezon City; Francisco Dayola, Jr.; and appellants Roger Perez and Danilo Perez.

SPO1 Resty San Pedro's testimony on direct examination was dispensed with when the prosecution and the defense stipulated that: (1) at about 10:30 in the evening of November

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[6] *Id.* at 17-21.

[7] TSN, June 6, 2002, pp. 4-9.

[8] TSN, November 13, 2002, pp. 2-4.

4, 2000, appellants Roger Perez and Danilo Perez voluntarily surrendered at Fairview Police Station 5 accompanied by their lawyer, Atty. Gaspar Tagalo; (2) both appellants were interviewed by SPO1 San Pedro who was on duty at the time; (3) appellant Danilo Perez admitted to SPO1 San Pedro during the interview that he stabbed to death Fulgencio Cuysona and SPO1 San Pedro reduced the oral admission of Danilo Perez in typewritten (question and answer) form; and (4) SPO1 San Pedro gave the typewritten confession to appellant Danilo Perez who read the same and voluntarily signed the written admission in the presence of his counsel. The defense marked in evidence the following exhibits: Exhibit 8-a, signature of appellant Danilo Perez; Exhibit 8-b, signature of Atty. Gaspar Tagalo; Exhibit 8-c, signature of the Administering Officer; and Exhibit 8-d, Tanong at Sagot No. 8 where he admitted and claimed sole responsibility for killing Fulgencio.[9]

Likewise, during the hearing on January 28, 2004, the direct examination of appellant Danilo Perez was dispensed with considering that his testimony would only corroborate the testimony of SPO1 Resty San Pedro given during the hearing on December 10, 2003.[10]

On cross-examination, appellant Danilo Perez testified that he stabbed the victim on January 29, 2000 and that he surrendered and gave a statement to the police only on November 4, 2000 or ten months after the stabbing incident and when there was already a warrant of arrest issued for his apprehension. He likewise identified his written admission marked as Exhibit 8.[11]

Francisco Dayola testified that at about 10:00 in the evening on January 29, 2000 he was in front of the store of Tatang waiting for it to close as he was fetching his girlfriend, Analyn Ladiao, who worked there. While he was waiting, Rolando Gangca arrived and bought a cigarette and gin and proceeded

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[9] Records, pp. 396-397. RTC Order dated December 10, 2003.

[10] *Id.* at 416-417. RTC Order dated January 28, 2004.

[11] TSN, January 28, 2004, pp. 2-5.

to the house of Arnel Castro, where Gangca's other friends, namely, Jerry Caber, Daniel Castro and Fernando Sarmiento, were having a drinking spree. At past 10:00 in the evening, Dayola went to appellant Roger Perez' house which was also his residence and reached the same at 10:15 in the evening. Dayola saw that appellant Roger Perez was already sleeping. Dayola helped his co-workers Ferdinand Bascug, Freddie Castillo, Reynoso Sega and Reyco Salige to make *suman*. After a while, they heard shouts outside the house. They went out and saw Fulgencio lying in front of the store of one Kuya Cesar.[12]

On cross-examination, Dayola testified that he is employed by appellant Roger Perez and that he is in court by virtue of a subpoena. He confirmed that on January 29, 2000, he was inside the house of appellant Roger Perez preparing rice cake and *suman* when he heard shouts outside the house. When he went out to find out what the commotion was about, he saw Fulgencio's body lying in front of said Kuya Cesar's store but he did not see who attacked Fulgencio. He inquired what happened to Fulgencio and somebody told him that Fulgencio was stabbed by the cousin of Ariel Baque – a fact which he admitted he failed to mention to the police. He also did not tell Fulgencio's wife who stabbed the victim because she was abroad at that time.[13]

Appellant Roger Perez testified that he was a jeepney operator and owned a variety store. On January 29, 2000 at about 8:30 in the evening, he was in his house located at 147-D Lilac Street, Fairview, Quezon City having a drink with his fellow co-workers Rolando Gangca, Boy Adilan and Jerry Bautista. After a while, he excused himself from the group to go to sleep since he had work the following day. While he was already sleeping together with his wife, Elvira, and his wife's niece, Mirasol, he heard a commotion and noise outside his house. When he went out, he learned that Fulgencio has been stabbed and was brought by relatives to the hospital. Thereafter, some policemen arrived.

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[12] TSN, October 8, 2003, pp. 4-8.

[13] TSN, November 5, 2003, pp. 3-4.

He was brought to the Fairview, Quezon City Police Station 5 where he was investigated and his statement taken. But he was allowed to go home at 2:00 in the early morning of January 30, 2000.[14]

On February 4, 2000 at 7:00 in the morning, he was again apprehended while he was in his house. He learned that Rolando Gangca gave a statement implicating him in the stabbing of Fulgencio, but he told the police that he had nothing to do with the stabbing incident.[15]

On cross-examination, appellant Roger Perez confirmed that he had a drink with his friends at about 8:30 in the evening of January 29, 2000; that he consumed only a few bottles of beer; that while they were drinking, his brother, appellant Danilo Perez, went home to eat; that at about 10:00 in the evening of the same day, he came to know that Fulgencio had been stabbed; that he did not attend the wake of Fulgencio although he knew the deceased during his lifetime; and that he also knew Ariel Baque and Rolando Gangca with whom he has no quarrel or dispute such that there is no reason for them to testify against him. He added that he learned that he was a suspect in the stabbing of Fulgencio only on February 4, 2000 when the policemen came to his house and that he was present when his brother Danilo Perez voluntarily admitted killing Fulgencio.[16]

On February 11, 2005, the trial court rendered its decision finding appellants guilty of the crime of murder. The decretal portion of the RTC decision reads:

> WHEREFORE, in view of the foregoing, the Court finds both accused ROGER PEREZ *y* CAROLINO and DANILO PEREZ *y* CAROLINO guilty beyond reasonable doubt of the crime of Murder, qualified by treachery, defined and penalized under Article 248 of the Revised Penal Code as amended, and applying the provisions of the said Code, hereby sentences each of them to *Reclusion Perpetua*,

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[14] TSN, March 3, 2004, pp. 4-8.

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

[16] TSN, April 14, 2004, pp. 3-6.

with all the accessory penalties provided by law and to pay jointly and severally the heirs of the late FULGENCIO CUYSONA the amounts of Fifty Thousand Pesos (₱50,000.00) as indemnity for the death of the victim, ₱39,877.00 as actual damages and Fifty Thousand Pesos (₱50,000.00) as moral damages.

The period during which the accused was under detention should be deducted from the service of his sentence.

SO ORDERED.[17]

Appellants seasonably filed their appeal. However, in a Decision dated May 31, 2007, the Court of Appeals affirmed with modification the trial court's decision, thus:

WHEREFORE, the appealed Decision of the Regional Trial Court, Branch 81, Quezon City, dated February 11, 2005, in Criminal Case No. Q-00-94135 sentencing accused Roger Perez *y* Carolino and Danilo Perez *y* Carolino to suffer the penalty of *reclusion perpetua* is **AFFIRMED** with **MODIFICATION** in that in addition to the amounts awarded by the court *a quo*, the additional amount of ₱25,000.00 as exemplary damages is awarded to the heirs of the victim Fulgencio Cuysona.

Costs *de oficio*.

SO ORDERED.[18]

Hence, this appeal.

On February 6, 2008, we required the parties to submit their respective supplemental briefs. Both the Office of the Solicitor General (OSG) and the appellants, however, manifested that they were adopting their respective briefs filed before the Court of Appeals as their supplemental briefs.

Appellants assign the following errors:

I.

THE LOWER COURT ERRED IN NOT HOLDING THAT THE PROSECUTION'S EVIDENCE IS SO WEAK TO THE EFFECT

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

[18] *Rollo*, p. 24.

THAT BOTH THE TESTIMONIAL AND DOCUMENTARY EXHIBITS OFFERED BY THE PROSECUTION MISERABLY FAILED TO OVERCOME THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE OF THE ACCUSED-APPELLANT ROGER PEREZ, HENCE, ROGER PEREZ SHOULD BE EXONERATED AND ACQUITTED HIS GUILT NOT BEING ESTABLISHED BY PROOF BEYOND REASONABLE DOUBT AS POINTED OUT IN SUBSEQUENT ERRORS HEREUNDER ASSIGNED;

II.

THE COURT BELOW ALSO ERRED IN NOT HOLDING THAT THE "FACT OF DEATH" OR *CORPUS DELICTI* WAS NOT PROVEN BY THE PROSECUTION EVIDENCE BEYOND REASONABLE DOUBT (SIC) AS AGAINST ACCUSED-APPELLANT ROGER PEREZ;

III.

THE COURT BELOW LIKEWISE ERRED IN NOT RULING THAT CONSPIRACY AND MOTIVE ARE NOT ESTABLISHED BY PROSECUTION EVIDENCE BEYOND REASONABLE DOUBT AGAINST APPELLANT ROGER PEREZ;

IV.

THE LOWER COURT FURTHER ERRED IN ADMITTING AS DOCUMENTARY EVIDENCE THE HEARSAY PROSECUTION EXHIBITS "C"; "E"; AND "F" AS AGAINST ROGER PEREZ;

V.

THE COURT *A QUO* SERIOUSLY ERRED IN NOT RULING THAT THE EXTRA JUDICIAL CONFESSION OF ACCUSED-APPELLANT DANILO PEREZ *Y* CAROLINO REPEATED BY HIS TESTIMONY IN COURT IS CONVERTED INTO A JUDICIAL CONFESSION; AND

VI.

FINALLY, THE TRIAL COURT OBVIOUSLY ERRED IN NOT HOLDING SAID APPELLANT DANILO PEREZ GUILTY OF HOMICIDE ONLY AND THE SENTENCING OF SAID APPELLANT UNDER THE INDETERMINATE SENTENCE LAW.[19]

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[19] CA *rollo*, pp. 67-68.

In essence, appellants ask us to resolve the following two issues: (1) Did the prosecution prove the guilt of appellant Roger Perez beyond reasonable doubt? and (2) Did the trial court err in holding appellant Danilo Perez guilty of murder instead of homicide?

In their brief, appellants claim that the trial court gravely erred in giving full probative value and credence to the testimonies, of the prosecution eyewitnesses, which, appellants argue, were allegedly fabricated, manufactured and perjured. They insist that it was only appellant Danilo Perez who stabbed Fulgencio considering that appellant Roger Perez was already sleeping in their house at that time. Moreover, they aver that the prosecution was not able to prove the *corpus delicti* or fact of death because it failed to present the medico-legal officer who autopsied the body of Fulgencio and prepared the Medico-Legal Report[20] showing the wounds sustained by the victim. Appellants likewise assert that conspiracy and motive were not established, and that Danilo should be convicted of the crime of homicide only.

For its part, the OSG counters that the testimonies of the prosecution eyewitnesses are clear, straightforward, consistent and categorical. It asserts that appellants failed to show any ill motive on the part of the prosecution eyewitnesses to testify falsely against them. The OSG further claims that even without the testimony of the doctor who prepared the Medico-Legal Report, the prosecution was still able to prove the *corpus delicti* by establishing the fact that the victim died and that such death occurred after he was stabbed by the appellants. Moreover, it argues that proof of motive is not indispensable for a conviction and that conspiracy may be proved by circumstantial evidence. Finally, it claims that Danilo should be convicted of the crime of murder since treachery and abuse of superior strength attended the commission of the crime.

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[20] Records, pp. 108-109.

After a meticulous review of the records, we affirm appellants' conviction. We shall now discuss the parties' arguments *in seriatim*.

First, the trial court did not err in appreciating the testimonies of the prosecution eyewitnesses. The legal aphorism is that the findings of facts of the trial court, its calibration of the testimonial evidence, its assessment of the probative weight thereof as well as its conclusions anchored on the said findings are accorded high respect if not conclusive effect by the appellate courts. The *raison d' être* for this principle is that the trial court is able to observe and monitor, at close range, the conduct, behavior and deportment of the witnesses as they testify.[21] In fact, the rule finds an even more stringent application where the said findings are sustained by the Court of Appeals.[22]

Applying these guidelines, we find no reason to disturb the trial court's assessment of the prosecution eyewitnesses' credibility. Close review of the records reveal that Baque and Gangca's testimonies are positive, clear and straightforward, without any tinge of falsehood or sign of fabrication. They were subjected to lengthy and rigorous cross-examinations, yet they stuck to their testimonies. Also, not only were the appellants identified by the prosecution eyewitnesses, the latter also testified as to appellants' roles and their specific deeds in the killing. Further, no evidence on record was presented to prove that the prosecution eyewitnesses had any ill motive to prevaricate and falsely pinpoint appellants as the perpetrators of the crime.

Second, appellants' defense of denial and alibi must fail. It is jurisprudentially held that for alibi to prosper, it is not enough for the accused to prove that he was somewhere else when the crime was committed. He must demonstrate that it was physically impossible for him to be at the scene of the crime at the time

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[21] *People v. Aquinde*, G.R. No. 133733, August 29, 2003, 410 SCRA 162, 174.

[22] *People v. Cabugatan,* G.R. No. 172019, February 12, 2007, 515 SCRA 537, 547.

of its commission. In this case, Roger failed to prove that it was physically impossible for him to be at the crime scene. In fact, Roger's house was only a few meters away from where the crime happened. As correctly pointed out by the appellate court, Roger's defense that he was asleep with his wife in his house when the incident took place must be rejected since his testimony was not even corroborated by his wife whom he claimed to be with him when the victim was stabbed.

Moreover, it is well-settled that a bare alibi and denial, being merely self-serving, is itself hardly given credence. Alibi and denial cannot prevail over the positive and unequivocal identification by an eyewitness. Categorical and consistent positive identification, absent any showing of ill motive on the part of the eyewitness testifying on the matter, prevail over the twin defenses of denial and alibi.[23] Here, prosecution eyewitness Baque positively identified that Roger was present when the stabbing incident occurred. In fact, he was only four arms length away from the crime scene when he saw Roger stabbing the victim.

Third, appellants' contention that Danilo's admission that he alone committed the crime, hence, Roger should be exonerated, must necessarily fail. To uphold this argumentation would leave in the hands of the one accused who elects to plead guilty, the automatic exemption of his co-accused from all criminal responsibility.[24] Plainly, this should not be automatically allowed since the culpability or innocence of Roger should be determined based on the evidence of their individual participation in the offense charged. The prosecution clearly proved that Roger participated in the stabbing of Fulgencio.

Fourth, we sustain the finding of conspiracy. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit

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[23] *People v. Borbon,* G.R. No. 143085, March 10, 2004, 425 SCRA 178, 187.

[24] *People v. Abordo*, G.R. No. 107245, December 17, 1999, 321 SCRA 23, 35.

it. Direct proof of previous agreement to commit a crime is not necessary. Conspiracy may be shown through circumstantial evidence, deduced from the mode and manner in which the offense was perpetrated, or inferred from the acts of the accused themselves when such lead to a joint purpose and design, concerted action, and community of interest.[25]

In this case, conspiracy between the appellants was clearly established. Danilo initially stabbed Fulgencio at the back followed by Roger who stabbed the latter at the chest. When the victim tried to run for his life, a man with blonde hair blocked his path and the three continued to stab the victim. These acts undoubtedly showed appellants' unanimity in design, intent and execution. The appellants performed specific acts with closeness and coordination as to unmistakably indicate a common purpose and design[26] to bring about the death of Fulgencio.

Also, the claim that Roger lacked the motive to commit the crime will not preclude his conviction. Motive is not an element of the crime of murder. Motive is totally irrelevant when ample direct evidence sustains the culpability of the accused beyond reasonable doubt. Where a reliable eyewitness had fully and satisfactorily identified the accused as the perpetrator of the felony, motive becomes immaterial in the successful prosecution of a criminal case.[27]

Fifth, we are not persuaded by the appellants' claim that the prosecution failed to prove *corpus delicti*. *Corpus delicti* refers to the fact that a crime has been actually committed. It does not refer to the autopsy report evidencing the nature of the wounds sustained by the victim nor the testimony of the physician who conducted the autopsy or medical examination. It is made

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[25] *Mangangey v. Sandiganbayan*, G.R. Nos. 147773-74, February 18, 2008, 546 SCRA 51, 66.

[26] *People v. Quirol*, G.R. No. 149259, October 20, 2005, 473 SCRA 509, 517.

[27] *People v. Ducabo*, G.R. No. 175594, September 28, 2007, 534 SCRA 458, 472-473.

up of two elements: (a) that a certain result has been proved and (b) that some person is criminally responsible for the act. While the autopsy report of a medico legal expert in cases of murder is preferably accepted to show the extent of injuries suffered by the victim, it is not the only competent evidence to prove the injuries and the fact of death. It may be proved by the testimonies of credible witnesses.[28]

The testimony of the doctor who prepared the Medico-Legal Report, therefore, is not crucial in proving *corpus delicti*. The fact that Fulgencio died and that such death occurred after he was stabbed by appellants was clearly established by the testimonies of the prosecution eyewitnesses and the evidence adduced by the prosecution during the trial. In fact, Danilo himself admitted in his extrajudicial confession that he killed Fulgencio.

Finally, we are not convinced by appellants' asseverations that Danilo should be convicted only of homicide. We agree with the conclusion of the court *a quo* that the appellants should be convicted of murder. The killing of Fulgencio was attended by treachery and abuse of superior strength, and any one of these two aggravating circumstances may qualify a killing into murder.

Treachery exists when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[29] The events narrated

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[28] *People v. Quimzon,* G.R. No. 133541, April 14, 2004, 427 SCRA 261, 270-271.

[29] REVISED PENAL CODE,

ART. 14. *Aggravating circumstances*. The following are aggravating circumstances:

x x x x x x x x x

16. That the act be committed with treachery (*alevosia*).

There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof

by the prosecution eyewitnesses point to the fact that Fulgencio could not have been aware that he would be attacked by the appellants. There was no opportunity for him to defend himself, as appellants, suddenly and without provocation, stabbed him at the back and on the chest.

Furthermore, abuse of superior strength attended the killing when the appellants, together with an unidentified person who held the victim's hands, took advantage of their combined strength in order to consummate the offense. However, the aggravating circumstance of abuse of superior strength cannot be appreciated separately, it being necessarily absorbed in treachery.[30]

All told, we hold that appellants Roger Perez and Danilo Perez are guilty beyond reasonable doubt of the crime of murder.

WHEREFORE, the Decision dated May 31, 2007 of the Court of Appeals in CA-G.R. CR HC No. 01586 finding appellants guilty of the crime of murder is hereby *AFFIRMED*. Costs *de oficio*.

SO ORDERED.

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

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which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.

x x x x x x x x x

[30] *People v. Loreto*, G.R. Nos. 137411-13, February 28, 2003, 398 SCRA 448, 462.

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

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

[***] Designated member of the Second Division per Special Order No. 664.

THIRD DIVISION

[G.R. No. 179653. July 31, 2009]

UNITED MUSLIM AND CHRISTIAN URBAN POOR ASSOCIATION, INC. represented by its President, MANUEL V. BUEN, *petitioner, vs.* **BRYC-V DEVELOPMENT CORPORATION represented by its President, BENJAMIN QUIDILLA; and SEA FOODS CORPORATION, represented by its Executive Vice President, VICENTE T. HERNANDEZ,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF TRIAL COURT; ACCORDED THE HIGHEST DEGREE OF RESPECT; EXCEPTIONS.—** Well-entrenched in jurisprudence is the rule that factual findings of the trial court, especially when affirmed by the appellate court, are accorded the highest degree of respect and are considered conclusive between the parties. A review of such findings by this Court is not warranted except upon a showing of highly meritorious circumstances, such as: (1) when the findings of a trial court are grounded entirely on speculation, surmises or conjectures; (2) when a lower court's inference from its factual findings is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion in the appreciation of facts; (4) when the findings of the appellate court go beyond the issues of the case, or fail to notice certain relevant facts which, if properly considered, would justify a different conclusion; (5) when there is a misappreciation of facts; (6) when the findings of fact are conclusions without mention of the specific evidence on which they are based, or are premised on the absence of evidence, or are contradicted by evidence on record. None of the foregoing exceptions necessitating a reversal of the assailed decision obtain in this instance.

2. **CIVIL LAW; SPECIAL CONTRACTS; SALES; CONDITIONAL CONTRACT OF SALE; BILATERAL CONTRACT TO SELL; DISTINCTION.—** The case of *Coronel v. Court of Appeals* is illuminating and explains the distinction between a

conditional contract of sale under Article 1458 of the Civil Code and a bilateral contract to sell under Article 1479 of the same code: A contract to sell may thus be defined as a bilateral contract whereby the prospective seller, while expressly reserving the ownership of the subject property despite delivery thereof to the prospective buyer, binds himself to sell the said property exclusively to the prospective buyer upon fulfillment of the condition agreed upon, that is, full payment of the purchase price. A contract to sell as defined hereinabove, may not even be considered as a conditional contract of sale where the seller may likewise reserve title to the property subject of the sale until the fulfillment of a suspensive condition, because in a conditional contract of sale, the first element of consent is present, although it is conditioned upon the happening of a contingent event which may or may not occur. If the suspensive condition is not fulfilled, the perfection of the contract of sale is completely abated. However, if the suspensive condition is fulfilled, the contract of sale is thereby perfected, such that if there had already been previous delivery of the property subject of the sale to the buyer, ownership thereto automatically transfers to the buyer by operation of law without any further act having to be performed by the seller. In a contract to sell, upon the fulfillment of the suspensive condition which is the full payment of the purchase price, ownership will not automatically transfer to the buyer although the property may have been previously delivered to him. The prospective seller still has to convey title to the prospective buyer by entering into a contract of absolute sale. It is essential to distinguish between a contract to sell and a conditional contract of sale specially in cases where the subject property is sold by the owner not to the party the seller contracted with, but to a third person, as in the case at bench. In a contract to sell, there being no previous sale of the property, a third person buying such property despite the fulfillment of the suspensive condition such as the full payment of the purchase price, for instance, cannot be deemed a buyer in bad faith and the prospective buyer cannot seek the relief of reconveyance of the property. There is no double sale in such case. Title to the property will transfer to the buyer after registration because there is no defect in the owner-seller's title *per se*, but the latter, of course, may be sued for damages by the intending buyer. In a conditional contract of sale, however, upon the fulfillment of the suspensive condition, the sale becomes absolute and this

will definitely affect the seller's title thereto. In fact, if there had been previous delivery of the subject property, the seller's ownership or title to the property is automatically transferred to the buyer such that, the seller will no longer have any title to transfer to any third person. Applying Article 1544 of the Civil Code, such second buyer of the property who may have had actual or constructive knowledge of such defect in the seller's title, or at least was charged with the obligation to discover such defect, cannot be a registrant in good faith. Such second buyer cannot defeat the first buyer's title. In case a title is issued to the second buyer, the first buyer may seek reconveyance of the property subject of the sale.

APPEARANCES OF COUNSEL

Manuelito R. Luna for petitioner.

Go Covarrubias Acosta and Associates Law Office for BRYC-V Development Corp.

Gonzalo B. Garcia for Sea Foods Corporation.

D E C I S I O N

NACHURA, *J*.:

This petition for review on *certiorari* seeks to set aside the Decision[1] of the Court of Appeals (CA) in CA G.R. CV No. 62557 which affirmed *in toto* the Decision[2] of the Regional Trial Court (RTC), Branch 16, Zamboanga City in Civil Case No. 467(4544).

The facts are simple.

Respondent Sea Foods Corporation (SFC) is the registered owner of Lot No. 300 located in Lower Calainan, Zamboanga City and covered by Transfer Certificate of Title (TCT) No. 3182 (T-576).

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[1] Penned by Associate Justice Ramon R. Garcia with Associate Justices Romulo V. Bora and Antonio Villamor, concurring; *rollo*, pp. 13-29.

[2] Penned by Judge Jesus C. Carbon, Jr.; *rollo*, 55-68.

Sometime in 1991, petitioner United Muslim and Christian Urban Poor Association, Inc. (UMCUPAI), an organization of squatters occupying Lot No. 300, through its President, Carmen T. Diola, initiated negotiations with SFC for the purchase thereof. UMCUPAI expressed its intention to buy the subject property using the proceeds of its pending loan application with National Home Mortgage Finance Corporation (NHMF). Thereafter, the parties executed a Letter of Intent to Sell by [SFC] and Letter of Intent to Purchase by UMCUPAI, providing, in pertinent part:

WHEREAS, [SFC] is the registered owner of a parcel [of] land designated as Lot No. 300 situated in Lower Calarian, Zamboanga City, consisting of 61,736 square meters, and more particularly described in Transfer Certificate of Title No. 576 of the Registry of Deeds of Zamboanga City;

WHEREAS, UMCUPAI, an association duly registered with the SEC (Registration No. 403410) and duly accredited with the Presidential Commission for the Urban Poor, has approached [SFC] and negotiated for the ACQUISITION of the above-described property of [SFC];

WHEREAS, in pursuance to the negotiations between [SFC] and UMCUPAI, the latter has taken steps with the proper government authorities particularly the Mayor of Zamboanga City and its City Housing Board which will act as "Originator" in the acquisition of said property which will enable UMCUPAI to avail of its Community Mortgage Program;

WHEREAS, it appears that UMCUPAI will ultimately apply with the Home Mortgage and Finance Corporation for a loan to pay the acquisition price of said land;

WHEREAS, as one of the steps required by the government authorities to initiate proceedings is to receive a formal manifestation of Intent to Sell from [SFC];

NOW, THEREFORE, for and in consideration of the foregoing premises, the parties hereto agree as follows:

1. [SFC] expressly declares its intention to sell Lot No. 300 with an area of 61,736 square meters situated in Lower Calarian, Zamboanga City and covered by TCT No. 576 of the Registry of Deeds of

Zamboanga City to UMCUPAI at the price of ₱105.00 per square meter, free from all liens, charges and encumbrances;

2. That UMCUPAI hereby expressly declares its intention to buy the aforesaid property and shall endeavor to raise the necessary funds to acquire same at the abovementioned price of ₱105.00 per square meter;

3. That the Absolute Deed of Sale shall be executed, signed and delivered together with the title and all other pertinent documents upon full payment of the purchase price;

4. That [SFC] shall pay the capital gains tax and documentary stamps, Registration, transfer tax and other expenses shall be paid by the UMCUPAI.[3]

However, the intended sale was derailed due to UMCUPAI's inability to secure the loan from NHMF as not all its members occupying Lot No. 300 were willing to join the undertaking. Intent on buying the subject property, UMCUPAI, in a series of conferences with SFC, proposed the subdivision of Lot No. 300 to allow the squatter-occupants to purchase a smaller portion thereof.

Consequently, sometime in December 1994, Lot No. 300 was subdivided into three (3) parts covered by separate titles:

1. Lot No. 300-A with an area of 41,460 square meters under TCT No. T-117,448;

2. Lot No. 300-B with an area of 1,405 square meters under TCT No. T-117,449; and

3. Lot No. 300-C with an area of 18,872 square meters under TCT No. T-117,450.

On January 11, 1995, UMCUPAI purchased Lot No. 300-A for ₱4,350,801.58. In turn, Lot No. 300-B was constituted as road right of way and donated by SFC to the local government.

UMCUPAI failed to acquire Lot No. 300-C for lack of funds. On March 5, 1995, UMCUPAI negotiated anew with SFC and

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[3] *Rollo*, pp. 15-16.

was given by the latter another three months to purchase Lot No. 300-C. However, despite the extension, the three-month period lapsed with the sale not consummated because UMCUPAI still failed to obtain a loan from NHMF. Thus, on July 20, 1995, SFC sold Lot No. 300-C for ₱2,547,585.00 to respondent BRYC-V Development Corporation (BRYC).

A year later, UMCUPAI filed with the RTC a complaint against respondents SFC and BRYC seeking to annul the sale of Lot No. 300-C, and the cancellation of TCT No. T-121,523. UMCUPAI alleged that the sale between the respondents violated its valid and subsisting agreement with SFC embodied in the Letter of Intent. According to UMCUPAI, the Letter of Intent granted it a prior, better, and preferred right over BRYC in the purchase of Lot No. 300-C.

In refutation, BRYC said that UMCUPAI's complaint did not state a cause of action since UMCUPAI had unequivocally recognized its ownership of Lot No. 300-C when UMCUPAI likewise sent BRYC a Letter of Intent dated August 18, 1995 imploring BRYC to re-sell the subject lot.

In a separate Answer, SFC countered that the Letter of Intent dated October 4, 1991 is not, and cannot be considered, a valid and subsisting contract of sale. On the contrary, SFC averred that the document was drawn and executed merely to accommodate UMCUPAI and enable it to comply with the loan documentation requirements of NHMF. In all, SFC maintained that the Letter of Intent dated October 4, 1991 was subject to a condition *i.e.*, payment of the acquisition price, which UMCUPAI failed to do when it did not obtain the loan from NHMF.

After trial, the RTC dismissed UMCUPAI's complaint. The lower court found that the Letter of Intent was executed to facilitate the approval of UMCUPAI's loan from NHMF for its intended purchase of Lot No. 300. According to the RTC, the Letter of Intent was simply SFC's declaration of intention to sell, and not a promise to sell, the subject lot. On the whole, the RTC concluded that the Letter of Intent was neither a promise,

nor an option contract, nor an offer contemplated under Article 1319 of the Civil Code, or a bilateral contract to sell and buy.

As previously adverted to, the CA, on appeal, affirmed *in toto* the RTC's ruling.

Hence, this recourse by UMCUPAI positing a sole issue for our resolution:

IS THE LETTER OF INTENT TO SELL AND LETTER OF INTENT TO BUY A BILATERAL RECIPROCAL CONTRACT WITHIN THE MEANING OR CONTEMPLATION OF ARTICLE 1479, FIRST PARAGRAPH, CIVIL CODE OF THE PHILIPPINES?[4]

The petition deserves scant consideration. We completely agree with the lower courts' rulings.

Well-entrenched in jurisprudence is the rule that factual findings of the trial court, especially when affirmed by the appellate court, are accorded the highest degree of respect and are considered conclusive between the parties.[5] A review of such findings by this Court is not warranted except upon a showing of highly meritorious circumstances, such as: (1) when the findings of a trial court are grounded entirely on speculation, surmises or conjectures; (2) when a lower court's inference from its factual findings is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion in the appreciation of facts; (4) when the findings of the appellate court go beyond the issues of the case, or fail to notice certain relevant facts which, if properly considered, would justify a different conclusion; (5) when there is a misappreciation of facts; (6) when the findings of fact are conclusions without mention of the specific evidence on which they are based, or

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[4] *Id*. at 44.

[5] *Titan Construction Corporation v. Uni-Field Enterprises, Inc.*, G.R. No. 153874, March 7, 2007, 517 SCRA 180; *Sigaya v. Mayuga*, G.R. No. 143254, August 18, 2005, 467 SCRA 341.

are premised on the absence of evidence, or are contradicted by evidence on record.[6] None of the foregoing exceptions necessitating a reversal of the assailed decision obtain in this instance.

UMCUPAI is adamant, however, that the CA erred when it applied the second paragraph of Article 1479 of the Civil Code instead of the first paragraph thereof. UMCUPAI urges us that the first paragraph of Article 1479 contemplates a bilateral reciprocal contract which is binding on the parties. Yet, UMCUPAI is careful not to designate the Letter of Intent as a Contract to Sell. UMCUPAI simply insists that the Letter of Intent is not a unilateral promise to sell or buy which has to be supported by a consideration distinct from the price for it to be binding on the promissor. In short, UMCUPAI claims that the Letter of Intent did not merely grant the parties the option to respectively sell or buy the subject property. Although not stated plainly, UMCUPAI claims that the Letter of Intent is equivalent to a conditional contract of sale subject only to the suspensive condition of payment of the purchase price.

UMCUPAI appears to labor under a cloud of confusion. The first paragraph of Article 1479 contemplates the bilateral relationship of a contract to sell as distinguished from a contract of sale which may be absolute or conditional under Article 1458[7] of the same code. It reads:

> Art. 1479. A promise to buy and sell a determinate thing for a price certain is reciprocally demandable.
>
> An accepted unilateral promise to buy or to sell a determinate thing for a price certain is binding upon the promissor if the promise is supported by a consideration distinct from the price.

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[6] *Ilao-Quianay v. Mapile*, G.R. No. 154087, October 25, 2005, 474 SCRA 246, 247. See *Child Learning Center, Inc. v. Tagorio*, G.R. No. 150920, November 25, 2005, 476 SCRA 236, 236-237.

[7] Art. 1458. By the contract of sale one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.

A contract of sale may be absolute or conditional.

The case of *Coronel v. Court of Appeals*[8] is illuminating and explains the distinction between a conditional contract of sale under Article 1458 of the Civil Code and a bilateral contract to sell under Article 1479 of the same code:

A contract to sell may thus be defined as a bilateral contract whereby the prospective seller, while expressly reserving the ownership of the subject property despite delivery thereof to the prospective buyer, binds himself to sell the said property exclusively to the prospective buyer upon fulfillment of the condition agreed upon, that is, full payment of the purchase price.

A contract to sell as defined hereinabove, may not even be considered as a conditional contract of sale where the seller may likewise reserve title to the property subject of the sale until the fulfillment of a suspensive condition, because in a conditional contract of sale, the first element of consent is present, although it is conditioned upon the happening of a contingent event which may or may not occur. If the suspensive condition is not fulfilled, the perfection of the contract of sale is completely abated. However, if the suspensive condition is fulfilled, the contract of sale is thereby perfected, such that if there had already been previous delivery of the property subject of the sale to the buyer, ownership thereto automatically transfers to the buyer by operation of law without any further act having to be performed by the seller.

In a contract to sell, upon the fulfillment of the suspensive condition which is the full payment of the purchase price, ownership will not automatically transfer to the buyer although the property may have been previously delivered to him. The prospective seller still has to convey title to the prospective buyer by entering into a contract of absolute sale.

It is essential to distinguish between a contract to sell and a conditional contract of sale specially in cases where the subject property is sold by the owner not to the party the seller contracted with, but to a third person, as in the case at bench. In a contract to sell, there being no previous sale of the property, a third person buying such property despite the fulfillment of the suspensive condition such as the full payment of the purchase price, for instance, cannot be deemed a buyer in bad faith and the prospective buyer cannot seek the relief

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[8] G.R. No. 103577, October 7, 1996, 331 Phil. 294.

of reconveyance of the property. There is no double sale in such case. Title to the property will transfer to the buyer after registration because there is no defect in the owner-seller's title *per se*, but the latter, of course, may be sued for damages by the intending buyer.

In a conditional contract of sale, however, upon the fulfillment of the suspensive condition, the sale becomes absolute and this will definitely affect the seller's title thereto. In fact, if there had been previous delivery of the subject property, the seller's ownership or title to the property is automatically transferred to the buyer such that, the seller will no longer have any title to transfer to any third person. Applying Article 1544 of the Civil Code, such second buyer of the property who may have had actual or constructive knowledge of such defect in the seller's title, or at least was charged with the obligation to discover such defect, cannot be a registrant in good faith. Such second buyer cannot defeat the first buyer's title. In case a title is issued to the second buyer, the first buyer may seek reconveyance of the property subject of the sale.

In the instant case, however, the parties executed a Letter of Intent, which is neither a contract to sell nor a conditional contract of sale. As found by the RTC, and upheld by the CA, the Letter of Intent was executed to accommodate UMCUPAI and facilitate its loan application with NHMF. The 4th and 5th paragraphs of the recitals (whereas clauses) specifically provide:

WHEREAS, it appears that UMCUPAI will ultimately apply with the Home Mortgage and Finance Corporation for a loan to pay the acquisition price of said land;

WHEREAS, as one of the steps required by the government authorities to initiate proceedings is to receive a formal manifestation of Intent to Sell from [SFC].

Nowhere in the Letter of Intent does it state that SFC relinquishes its title over the subject property, subject only to the condition of complete payment of the purchase price; nor, at the least, that SFC, although expressly retaining ownership thereof, binds itself to sell the property exclusively to UMCUPAI. The Letter of Intent to Buy and Sell is just that – a manifestation of SFC's intention to sell the property and UMCUPAI's intention to acquire the same. This is quite obvious from the reference

to the execution of an Absolute Deed of Sale in paragraph three[9] of the Letter of Intent.

As the CA did, we quote with favor the RTC's disquisition:

> The Decision in this case hinges on the legal interpretation of the Agreement entered into by SFC and UMCUPAI denominated as "Letter of Intent to Sell by Landowner and Letter of Intent to Purchase by United Muslim and Christian Urban Poor Association, Inc."
>
> Black's Law Dictionary says that a Letter of Intent is customarily employed to reduce to writing a preliminary understanding of parties who intend to enter into contract. It is a phrase ordinarily used to denote a brief memorandum of the preliminary understanding of parties who intend to enter into a contract. It is a written statement expressing the intention of the parties to enter into a formal agreement especially a business arrangement or transaction.
>
> In their Agreement, SFC expressly declared its "intention" to sell and UMCUPAI expressly declared its "intention" to buy subject property. An intention is a mere idea, goal, or plan. It simply signifies a course of action that one proposes to follow. It simply indicates what one proposes to do or accomplish. A mere "intention" cannot give rise to an obligation to give, to do or not to do (Article 1156, Civil Code). One cannot be bound by what he proposes or plans to do or accomplish. A Letter of Intent is not a contract between the parties thereto because it does not bind one party, with respect to the other, to give something, or to render some service (Art. 1305, Civil Code).
>
> x x x x x x x x x
>
> The Letter of Intent/Agreement between SFC and UMCUPAI is merely a written preliminary understanding of the parties wherein they declared their intention to enter into a contract of sale. It is subject to the condition that UMCUPAI will "apply with the Home Mortgage and Finance Corporation for a loan to pay the acquisition price of said land." One of the requirements for such loan is "a formal manifestation of Intent to Sell" from SFC. Thus, the Letter of Intent to Sell fell short of an "offer" contemplated in Article 1319 of the

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[9] 3. That the Absolute Deed of Sale shall be executed, signed and delivered together with the title and all other pertinent documents upon full payment of the purchase price.

Civil Code because it is not a certain and definite proposal to make a contract but merely a declaration of SFC's intention to enter into a contract. UMCUPAI's declaration of intention to buy is also not certain and definite as it is subject to the condition that UMCUPAI shall endeavor to raise funds to acquire subject land. The acceptance of the offer must be absolute; it must be plain and unconditional. Moreover, the Letter of Intent/Agreement does not contain a promise or commitment to enter into a contract of sale as it merely declared the intention of the parties to enter into a contract of sale upon fulfillment of a condition that UMCUPAI could secure a loan to pay for the price of a land.

The Letter of Intent/Agreement is not an "option contract" because aside from the fact that it is merely a declaration of intention to sell and to buy subject to the condition that UMCUPAI shall raise the necessary funds to pay the price of the land, and does not contain a binding promise to sell and buy, it is not supported by a distinct consideration distinct from the price of the land intended to be sold and to be bought x x x No option was granted to UMCUPAI under the Letter of Intent/Agreement to buy subject land to the exclusion of all others within a fixed period nor was SFC bound under said Agreement to Sell exclusively to UMCUPAI only the said land within the fixed period.

Neither can the Letter of Intent/Agreement be considered a bilateral reciprocal contract to sell and to buy contemplated under Article 1479 of the Civil Code which is reciprocally demandable. The Letter of Intent/Agreement does not contain a PROMISE to sell and to buy subject property. There was no promise or commitment on the part of SFC to sell subject land to UMCUPAI, but merely a declaration of its intention to buy the land, subject to the condition that UMCUPAI could raise the necessary funds to acquire the same at the price of ₱105.00 per square meter x x x.

While UMCUPAI succeeded in raising funds to acquire a portion of Lot No. 300-A, it failed to raise funds to pay for Lot No. 300-C. From October 4, 1991 when the Letter of Intent was signed to June, 1995, UMCUPAI had about three (3) years and eight (8) months within which to pursue its intention to buy subject land from SFC. Within that period, UMCUPAI had ample time within which to acquire Lot No. 300-C, as in fact it had acquired Lot No. 300-A which is much bigger than Lot No. 300-C and occupied by more members of UMCUPAI. The failure of UMCUPAI to acquire Lot No. 300-C before it was sold to BRYC-V cannot be blamed on SFC because all that

UMCUPAI had to do was to raise funds to pay for Lot No. 300-C which it did with respect to Lot No. 300-A. SFC had nothing to do with SFC's unilateral action through Mrs. Antonina Graciano to "postpone" the processing of the acquisition of Lot No. 300-C, which it referred to as Phase II, until after the payment to SFC of the acquisition price for Lot No. 300-A or Phase I x x x.

WHEREFORE, premises considered, the petition is hereby *DENIED*. The Decision of the Court of Appeals in CA G.R. CV No. 62557 and the Regional Trial Court in Civil Case No. 467(4544) are *AFFIRMED*. Costs against the petitioner.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 179807. July 31, 2009]

RAMY GALLEGO, *petitioner, vs.* **BAYER PHILIPPINES, INC., DANPIN GUILLERMO, PRODUCT IMAGE MARKETING, INC., and EDGARDO BERGONIA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; SUPREME COURT; ONLY ERRORS OF LAW GENERALLY REVIEWED; EXCEPTION; CASE AT BAR.—** Only errors of law are generally reviewed by this Court in petitions for review on *certiorari* of the appellate court's decisions, and the question of whether an employer-employee relationship exists in a given case is essentially a question of fact. Be that as it may, when, as here, the findings of the NLRC

contradict those of the Labor Arbiter, this Court, in the exercise of its equity jurisdiction, may look into the records of the case and reexamine the questioned findings.

2. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; DISMISSAL OF PETITION PROPER FOR FAILURE TO ATTACH RELEVANT PLEADINGS THERETO; EXCEPTION; CASE AT BAR.—** Respecting the appellate court's dismissal of petitioner's Petition for *Certiorari* for his failure to attach thereto the relevant pleadings filed with the Labor Arbiter, the requirement to attach the same under Section 1, Rule 65 is considered *vis a vis* Section 3, Rule 46 which states that the failure of the petitioner to comply with any of the documentary requirements, such as the attachment of relevant pleadings, "shall be sufficient ground for the dismissal of the petition." By and large, the outright dismissal of a petition for failure to comply with said requirement cannot be assailed as constituting either grave abuse of discretion or reversible error of law. The Court, however, is inclined to, as it does, overlook petitioner's failure to attach the subject relevant pleadings to his Petition for *Certiorari* before the appellate court in view of the serious matters dealt with in this case. That brings the Court to consider the substantial merits of the case, thus rendering it unnecessary to still discuss the other procedural matters raised by respondents.

3. **LABOR LAW AND SOCIAL LEGISLATION; LABOR CODE; PERMISSIBLE JOB CONTRACTING OR SUBCONTRACTING; CONDITIONS FOR A JOB CONTRACTING OR SUBCONTRACTING ARRANGEMENT.—** Permissible job contracting or subcontracting refers to an arrangement whereby a principal agrees to farm out with a contractor or subcontractor the performance of a specific job, work, or service within a definite or predetermined period, regardless of whether such job, work or, service is to be performed or completed within or outside the premises of the principal. Under this arrangement, the following conditions must be met: (a) the contractor carries on a distinct and independent business and undertakes the contract work on his account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of his work except as to the results thereof; (b) the contractor has substantial capital or investment; and (c) the

agreement between the principal and contractor or subcontractor assures the contractual employees' entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social welfare benefits.

4. **REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; REGULAR PERFORMANCE OF DUTY; THE DOLE CERTIFICATE OF REGISTRATION NUMBERED NCR-8-0602-176 CARRIES WITH IT THE PRESUMPTION IT WAS ISSUED IN THE REGULAR PERFORMANCE OF OFFICIAL DUTY; CASE AT BAR.—** The Court notes that PRODUCT IMAGE was issued by the Department of Labor and Employment (DOLE) Certificate of Registration Numbered NCR-8-0602-176. x x x The DOLE certificate having been issued by a public officer, it carries with it the presumption that it was issued in the regular performance of official duty. Petitioner's bare assertions fail to rebut this presumption. Further, since the DOLE is the agency primarily responsible for regulating the business of independent job contractors, the Court can presume, in the absence of evidence to the contrary, that it had thoroughly evaluated the requirements submitted by PRODUCT IMAGE before issuing the Certificate of Registration.

5. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; JOB CONTRACTING AND SUBCONTRACTING; OTHER CIRCUMSTANCES SHOWING PRODUCT IMAGE AS A LEGITIMATE JOB CONTRACTOR IN CASE AT BAR.—** Independently of the DOLE's Certification, among the circumstances that establish the status of PRODUCT IMAGE as a legitimate job contractor are: (1) PRODUCT IMAGE had, during the period in question, a contract with BAYER for the promotion and marketing of BAYER products; (2) PRODUCT IMAGE has an independent business and provides services nationwide to big companies such as Ajinomoto Philippines and Procter and Gamble Corporation; and (3) PRODUCT IMAGE's total assets from 1998 TO 2000 amounted to ₱405,639, ₱559,897, and ₱644,728, respectively. PRODUCT IMAGE also posted a bond in the amount of ₱100,000 to answer for any claim of its employees for unpaid wages and other benefits that may arise out of the implementation of its contract with Bayer. PRODUCT IMAGE cannot thus be considered a labor-only contractor.

6. **LABOR LAW AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; REQUISITES; CASE AT BAR.—** The existence of an employer-employee relationship is determined on the basis of four standards, namely: (a) the manner of selection and engagement of the putative employee; (b) the mode of payment of wages; (c) the presence or absence of power of dismissal; and (d) the presence or absence of control of the putative employee's conduct. Most determinative among these factors is the so-called "*control test.*" The presence of the first requisite which refers to selection and engagement is evidenced by a document entitled Job Offer, whereby PRODUCT IMAGE offered to hire petitioner as crop protection technician effective April 7, 1997, which offer petitioner accepted. On the second requisite regarding the payment of wages, it was PRODUCT IMAGE that paid the wages and other benefits of petitioner, pursuant to the stipulation in the contract between PRODUCT IMAGE and BAYER that BAYER shall pay PRODUCT IMAGE an amount based on services actually rendered without regard to the number of personnel employed by PRODUCT IMAGE; and that PRODUCT IMAGE shall faithfully comply with the provisions of the Labor Code and hold BAYER free and harmless from any claim of its employees arising from the contract. As to the third requisite which relates to the power of dismissal, and the fourth requisite which relates to the power of control, both powers are vested in PRODUCT IMAGE. The Contract of Promotional Services provides that PRODUCT IMAGE shall have the power to discipline its employees assigned at BAYER, such that no control whatsoever shall be exercised by BAYER over those personnel on the manner and method by which they perform their duties, and that all directives, complaints, or observations of BAYER relating to the performance of the employees of PRODUCT IMAGE shall be addressed to the latter.

7. **ID.; ID.; ID.; ID.; "CONTROL TEST" OF EMPLOYER ON EMPLOYEE PERTAINS NOT ONLY TO THE RESULTS BUT ALSO TO THE MANNER AND METHOD OF DOING THE WORK; CASE AT BAR.—** If at all, the only control measure retained by Bayer over petitioner was to act as his *de facto* supervisor in certifying to the veracity of the accomplishment reports he submitted to PRODUCT IMAGE. This is by no means the kind of control that establishes an

employer-employee relationship as it pertains only to the results and not the manner and method of doing the work.

8. ID.; ID.; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; FACT OF DISMISSAL MUST FIRST BE ESTABLISHED BY EMPLOYEE; CASE AT BAR.— Respecting the issue of illegal dismissal, the Court appreciates no evidence that petitioner was dismissed. What it finds is that petitioner unilaterally stopped reporting for work before filing a complaint for illegal dismissal, based on his belief that Guillermo and Bergonia had spread rumors that his transactions on behalf of BAYER would no longer be honored as of April 30, 2002. This belief remains just that – it is unsubstantiated. While in cases of illegal dismissal, the employer bears the burden of proving that the dismissal is for valid or authorized cause, the employee must first establish by substantial evidence the fact of dismissal.

APPEARANCES OF COUNSEL

Mario R. Pefianco for petitioner.

Angara Abello Concepcion Regala and Cruz for Bayer Phils., Inc. and Danpin Guillermo.

Que Lebrilla Ausan & Sullano for Product-Image Marketing Services, Inc. and/or Edgardo Bergonia.

D E C I S I O N

CARPIO MORALES, *J.*:

Ramy Gallego (petitioner) was contracted in April 1992 by Bayer Philippines, Inc. (BAYER) <u>as crop protection technician</u> to promote and market BAYER products.[1] Under the supervision of Aristeo Filipino, BAYER sales representative for Panay Island, petitioner made farm visits to different municipalities in Panay Island to convince farmers to buy BAYER products.[2]

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[1] NLRC records, p. 42.

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

In 1996, petitioner's employment with BAYER came to a halt, prompting him to seek employment with another company. BAYER eventually reemployed petitioner, however, in 1997 through Product Image and Marketing Services, Inc. (PRODUCT IMAGE) of which respondent Edgardo Bergonia (Bergonia) was the President and General Manager, performing the same task as that of crop protection technician – promoting BAYER products to farmers and dealers in Panay Island – solely for the benefit of BAYER.[3]

By petitioner's claim, in October, 2001, he was directed by Pet Pascual, the newly assigned BAYER sales representative, to submit a resignation letter, but he refused; and that in January, 2002, he was summoned by his immediate supervisors including respondent Danpin Guillermo (Guillermo), BAYER District Sales Manager for Panay, and was ordered to quit his employment which called for him to return all pieces of service equipment issued to him, but that again he refused.[4]

Still by petitioner's claim, he continued performing his duties and receiving compensation until the end of January, 2002; that on April 7, 2002, he received a memorandum that his area of responsibility would be transferred to Luzon, of which memorandum he sought reconsideration but to no avail; and that Guillermo and Bergonia spread rumors that reached the dealers in Antique to the effect that he was not anymore connected with BAYER and any transaction with him would no longer be honored as of April 30, 2002.[5]

Believing that his employment was terminated, petitioner lodged on June 6, 2002 a complaint for illegal dismissal with the National Labor Relations Commission (NLRC) against herein respondents BAYER, Guillermo, PRODUCT IMAGE, and Bergonia, with claims for reinstatement, backwages and/or

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[3] *Ibid.*

[4] *Id.* at 44-45.

[5] *Ibid.*

separation pay, unpaid wages, holiday pay, premium pay, service incentive leave and allowances, damages and attorney's fees.[6]

Respondents BAYER and Guillermo denied the existence of an employer-employee relationship between BAYER and petitioner, explaining that petitioner's work at BAYER was simply occasioned by the Contract of Promotional Services that BAYER had executed with PRODUCT IMAGE whereby PRODUCT IMAGE was to promote and market BAYER products on its (PRODUCT IMAGE) own account and in its own manner and method. They added that as an independent contractor, PRODUCT IMAGE retained the exclusive power of control over petitioner as it assigned full-time supervisors to exercise control and supervision over its employees assigned at BAYER.[7]

Respondents PRODUCT IMAGE and Bergonia, on the other hand, admitted that petitioner was hired as an employee of PRODUCT IMAGE on April 7, 1997 on a contractual basis to promote and market BAYER products pursuant to the Contract of Promotional Services forged between it and BAYER. They alleged that petitioner was a field worker who had no fixed hours and worked under minimal supervision, his performance being gauged only by his accomplishment reports duly certified to by BAYER acting as his *de facto* supervisor;[8] that petitioner was originally assigned to Iloilo but later transferred to Antique; that petitioner was not dismissed, but went on official leave from January 23 to 31, 2002, and stopped reporting for work thereafter; and that petitioner was supposed to have been reassigned to South Luzon effective March 15, 2002 in accordance with a personnel reorganization program, but he likewise failed to report to his new work station.[9]

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[6] *Id.* at 1.

[7] *Vide* Position Paper for BAYER and Mr. Guillermo, *id.* at 51-88.

[8] *Vide* Position Paper for PRODUCT IMAGE and Mr. Bergonia, *id.* at 315-326.

[9] *Ibid.*

By Decision of May 6, 2004,[10] the Labor Arbiter declared respondents guilty of illegal dismissal, disposing as follows:

WHEREFORE, judgment is rendered declaring respondents, Bayer Phil. Inc./Danpin Guillermo and Product Image Marketing Services, Inc./Edgardo Begornia [*sic*] guilty of Illegal Dismissal and is hereby **ORDERED** to **Reinstate** complainant to his former or equivalent position ten (10) days from receipt hereof and to immediately pay complainant upon receipt of this decision the following:

Backwages	Php	228,000.00
13th Month Pay	Php	19,000.00
Holiday Pay	Php	9,500.00
Service Incentive Leave Pay	Php	4,750.00
Attorney's Fees	Php	26,125.00
Total:	**Php**	**287,375.00**

In so deciding, the Labor Arbiter found, among other things, that there was an employer-employee relationship between BAYER and petitioner since BAYER furnished petitioner the needed facilities and paraphernalia, and fixed the methodology to be used in the performance of his work.

On appeal by respondents, the NLRC reversed the Decision of the Labor Arbiter and dismissed petitioner's complaint by Decision of February 22, 2006,[11] holding that as an independent contractor, PRODUCT IMAGE was the employer of petitioner but there was no evidence that petitioner was dismissed by either PRODUCT IMAGE or BAYER. Sustaining PRODUCT IMAGE's claim of abandonment, it held that an employee is deemed to have abandoned his job if he failed to report for work after the expiration of a duly approved leave of absence or if, after being transferred to a new assignment, he did not report for work anymore.

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[10] *Id.* at 459-468.

[11] *Id.* at 717-721.

Petitioner's Motion for Reconsideration having been denied by Resolution of May 25, 2006,[12] he appealed to the Court of Appeals *via Certiorari*.[13]

By Resolution of September 25, 2006, the appellate court dismissed petitioner's petition for failure to attach to it the complaint and the parties' respective position papers filed with the Labor Arbiter.[14] His Motion for Reconsideration having been denied by Resolution of August 14, 2007,[15] petitioner comes before this Court via the present Petition for Review on *Certiorari*.

Petitioner argues that the appellate court erred in dismissing his petition outright considering that it had previously allowed subsequent submission of required documents not attached to a petition for *certiorari*; and that he attached the required pleadings to his Motion for Reconsideration with the appellate court. Moreover, he contends that respondents failed to discharge the burden of proving the validity of his dismissal in order to overturn the finding of the Labor Arbiter that he was illegally dismissed.[16]

BAYER and Guillermo counter that petitioner raised factual issues in his petition before the appellate court which are not reviewable by *certiorari*; that petitioner's failure to attach the required pleadings to his petition before the appellate court, coupled with his failure to offer any justification therefor, provides no occasion for a liberal application of the rules in his favor; that petitioner has no cause of action against them as his employer is PRODUCT IMAGE; and that assuming that petitioner is entitled to his money claims, the same should be enforced against the performance bond posted by PRODUCT IMAGE to cover the claims of its employees assigned at BAYER.[17]

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[12] *Id.* at 769.

[13] CA *rollo,* pp. 3-11.

[14] *Id.* at 43.

[15] *Id.* at 249-251.

[16] *Vide* Petition for Review, *rollo,* pp. 4-17.

[17] *Vide* Comment of BAYER and Mr. Guillermo, *id.* at 135-182.

PRODUCT IMAGE and Bergonia postulate in their Comment that the appellate court's outright dismissal of petitioner's appeal was proper in view of, among other things, the summary nature of proceedings in labor cases. They also contend that petitioner's present petition suffers from the following infirmities: (1) it does not contain an affidavit of service; (2) it is not accompanied by petitioner's Petition for *Certiorari* before the appellate court; (3) it does not specify the errors of law allegedly committed by the appellate court; (4) it is not accompanied by proof of service upon the adverse party of a copy of the payment of docket fees; (5) it raises questions of fact; and (6) it impleads the NLRC and imputes grave abuse of discretion to the appellate court, thereby implying that the petition is likewise made under Rule 65 of the Rules of Court. Lastly, they maintain that petitioner was not dismissed as he actually abandoned his job.[18]

The Court shall first resolve the procedural issues.

Only errors of law are generally reviewed by this Court in petitions for review on *certiorari* of the appellate court's decisions,[19] and the question of whether an employer-employee relationship exists in a given case is essentially a question of fact.[20] Be that as it may, when, as here, the findings of the NLRC contradict those of the Labor Arbiter, this Court, in the exercise of its equity jurisdiction, may look into the records of the case and reexamine the questioned findings.[21]

Respecting the appellate court's dismissal of petitioner's Petition for *Certiorari* for his failure to attach thereto the relevant pleadings filed with the Labor Arbiter, the requirement to attach

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[18] *Vide* Comment of PRODUCT IMAGE and Mr. Bergonia, *id.* at 369-380.

[19] *Mitsubishi Motors Philippines Corporation v. Chrysler Philippines Labor Union*, G.R. No. 148738, June 29, 2004, 433 SCRA 206, 217.

[20] *Manila Water Company, Inc. v. Pena*, G.R. No. 158255, July 8, 2004, 434 SCRA 53, 58.

[21] *Diamond Motors Corporation v. Court of Appeals*, 462 Phil. 452, 458 (2003).

the same under Section 1, Rule 65[22] is considered *vis a vis* Section 3, Rule 46[23] which states that the failure of the petitioner to comply with any of the documentary requirements, such as the attachment of relevant pleadings, "shall be sufficient ground

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[22] 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 [its or his] jurisdiction, and there is no appeal, or 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.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

[23] SEC. 3. Contents and filing of petition; effect of non-compliance with requirements. — The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.

In actions filed under Rule 65, the petition shall further indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received.

It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner and shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. The certification shall be accomplished by the proper clerk of court or by his duly-authorized representative, or by the proper officer of the court, tribunal, agency or office involved or by his duly authorized representative. The other requisite number of copies of the petition shall be accompanied by clearly legible plain copies of all documents attached to the original.

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The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.

for the dismissal of the petition." By and large, the outright dismissal of a petition for failure to comply with said requirement cannot be assailed as constituting either grave abuse of discretion or reversible error of law.[24]

The Court, however, is inclined to, as it does, overlook petitioner's failure to attach the subject relevant pleadings to his Petition for *Certiorari* before the appellate court in view of the serious matters dealt with in this case. That brings the Court to consider the substantial merits of the case, thus rendering it unnecessary to still discuss the other procedural matters raised by respondents.

In the main, the substantive issues are: whether PRODUCT IMAGE is a labor-only contactor and BAYER should be deemed petitioner's principal employer; and whether petitioner was illegally dismissed from his employment.

Permissible job contracting or subcontracting refers to an arrangement whereby a principal agrees to farm out with a contractor or subcontractor the performance of a specific job, work, or service within a definite or predetermined period, regardless of whether such job, work or, service is to be performed or completed within or outside the premises of the principal.[25] Under this arrangement, the following conditions must be met: (a) the contractor carries on a distinct and independent business and undertakes the contract work on his account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of his work except as to the results thereof; (b) the contractor has substantial capital or investment; and (c) the agreement between the principal and contractor or subcontractor assures the contractual employees' entitlement to all labor and

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[24] Vide *Philippine Agila Satellite, Inc. v. Trinidad-Lichauco*, G.R. No. 142362, May 3, 2006, 489 SCRA 22, 34.

[25] *Acevedo v. Advanstar Company, Inc.,* G.R. No. 157656, November 11, 2005, 474 SCRA 656, 667.

occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social welfare benefits.[26]

In distinguishing between permissible job contracting and prohibited labor-only contracting,[27] the totality of the facts and the surrounding circumstances of the case are to be considered,[28] each case to be determined by its own facts, and all the features of the relationship assessed.[29]

In the case at bar, the Court finds substantial evidence to support the finding of the NLRC that PRODUCT IMAGE is a legitimate job contractor.

The Court notes that PRODUCT IMAGE was issued by the Department of Labor and Employment (DOLE) Certificate of Registration Numbered NCR-8-0602-176 reading:

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[26] *Vide Purefoods Corporation v. National Labor Relations Commission,* G.R. No. 172241, November 20, 2008.

[27] In **legitimate job contracting**, the law creates an employer-employee relationship for a limited purpose, *i.e.,* to ensure that the employees are paid their wages. The principal employer becomes jointly and severally liable with the job contractor only for the payment of the employees' wages whenever the contractor fails to pay the same. Other than that, the principal employer is not responsible for any claim made by the employees.

On the other hand, **in labor-only contracting**, the statute creates an employer-employee relationship for a comprehensive purpose: to prevent a circumvention of labor laws. The contractor is considered merely an agent of the principal employer and the latter is responsible to the employees of the labor-only contractor as if such employees had been directly employed by the principal employer. The principal employer therefore becomes solidarity liable with the labor-only contractor for all the rightful claims of the employees. [*San Miguel Corporation v. MAERC Integrated Services, Inc.*, 453 Phil. 543, 566-567 (2003)]

[28] *Sasan, Sr., et al. v. National Labor Relations Commission,* G.R. No. 176240, October 17, 2008.

[29] *Encyclopaedia Britannica (Phils.), Inc. v. National Labor Relations Commission,* 332 Phil. 1, 9 (1996).

CERTIFICATE OF REGISTRATION
Numbered NCR-8-0602-176

issued to

Mr. Edgardo V. Bergonia
President
PRODUCT IMAGE & MARKETING SERVICES, INC.
Unit 5& 6 GF J & L Bldg., 251 EDSA Greenhills,
Mandaluyong City

for having complied with the requirements as provided for under the Labor Code, as amended, and its implementing Rules and having paid the registration fee in the amount of ***ONE HUNDRED (₱100) PESOS*** per Official Receipt Number 6530485Y, dated 21 June 2002.[30]

The DOLE certificate having been issued by a public officer, it carries with it the presumption that it was issued in the regular performance of official duty.[31] Petitioner's bare assertions fail to rebut this presumption. Further, since the DOLE is the agency primarily responsible for regulating the business of independent job contractors, the Court can presume, in the absence of evidence to the contrary, that it had thoroughly evaluated the requirements submitted by PRODUCT IMAGE before issuing the Certificate of Registration.

Independently of the DOLE's Certification, among the circumstances that establish the status of PRODUCT IMAGE as a legitimate job contractor are: (1) PRODUCT IMAGE had, during the period in question, a contract with BAYER for the promotion and marketing of BAYER products;[32] (2) PRODUCT IMAGE has an independent business and provides services nationwide to big companies such as Ajinomoto Philippines and Procter and Gamble Corporation;[33] and (3) PRODUCT IMAGE's total assets from 1998 to 2000 amounted to ₱405,639,

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[30] *Rollo,* p. 244.

[31] *Vide* RULES OF COURT, Rule 131 Section 3(m).

[32] NLRC Records, pp. 116-122.

[33] *Id.* at 53-54.

₱559,897, and ₱644,728, respectively.[34] PRODUCT IMAGE also posted a bond in the amount of ₱100,000 to answer for any claim of its employees for unpaid wages and other benefits that may arise out of the implementation of its contract with BAYER.[35]

PRODUCT IMAGE cannot thus be considered a labor-only contractor.

The existence of an employer-employee relationship is determined on the basis of four standards, namely: (a) the manner of selection and engagement of the putative employee; (b) the mode of payment of wages; (c) the presence or absence of power of dismissal; and (d) the presence or absence of control of the putative employee's conduct. Most determinative among these factors is the so-called "*control test*."[36]

The presence of the first requisite which refers to selection and engagement is evidenced by a document entitled Job Offer, whereby PRODUCT IMAGE offered to hire petitioner as crop protection technician effective April 7, 1997, which offer petitioner accepted.[37]

On the second requisite regarding the payment of wages, it was PRODUCT IMAGE that paid the wages and other benefits of petitioner, pursuant to the stipulation in the contract between PRODUCT IMAGE and BAYER that BAYER shall pay PRODUCT IMAGE an amount based on services actually rendered without regard to the number of personnel employed by PRODUCT IMAGE; and that PRODUCT IMAGE shall faithfully comply with the provisions of the Labor Code and hold BAYER free and harmless from any claim of its employees arising from the contract.[38]

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[34] *Id.* at 96-113.

[35] *Id.* at 123-124.

[36] *De los Santos v. National Labor Relations Commission*, 423 Phil. 1020, 1029 (2001).

[37] NLRC Records, p. 362.

[38] *Id.* at 117.

As to the third requisite which relates to the power of dismissal, and the fourth requisite which relates to the power of control, both powers are vested in PRODUCT IMAGE. The Contract of Promotional Services provides that PRODUCT IMAGE shall have the power to discipline its employees assigned at BAYER, such that no control whatsoever shall be exercised by BAYER over those personnel on the manner and method by which they perform their duties,[39] and that all directives, complaints, or observations of BAYER relating to the performance of the employees of PRODUCT IMAGE shall be addressed to the latter.[40]

If at all, the only control measure retained by BAYER over petitioner was to act as his *de facto* supervisor in certifying to the veracity of the accomplishment reports he submitted to PRODUCT IMAGE. This is by no means the kind of control that establishes an employer-employee relationship as it pertains only to the results and not the manner and method of doing the work. It would be a rare contract of service that gives untrammelled freedom to the party hired and eschews any intervention whatsoever in his performance of the engagement.[41] Surely, it would be foolhardy for any company to completely give the reins and totally ignore the operations it has contracted out.[42]

In fine, PRODUCT IMAGE is ineluctably the employer of petitioner.

Respecting the issue of illegal dismissal, the Court appreciates no evidence that petitioner was dismissed. What it finds is that petitioner unilaterally stopped reporting for work before filing a complaint for illegal dismissal, based on his belief that

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[39] *Ibid.*

[40] *Ibid.*

[41] *Insular Life Assurance Co., Ltd. v. NLRC*, G.R. No. 84484, November 15, 1989, 179 SCRA 459, 464-465.

[42] *Purefoods Corporation v. National Labor Relations Commission, supra* note 26.

Guillermo and Bergonia had spread rumors that his transactions on behalf of BAYER would no longer be honored as of April 30, 2002. This belief remains just that – it is unsubstantiated. While in cases of illegal dismissal, the employer bears the burden of proving that the dismissal is for a valid or authorized cause, the employee must first establish by substantial evidence the fact of dismissal.[43]

WHEREFORE, the petition is, in light of the foregoing, *DENIED*.

SO ORDERED.

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

EN BANC

[G.R. No. 180055. July 31, 2009]

FRANKLIN M. DRILON as President and in representation of the LIBERAL PARTY OF THE PHILIPPINES (LP), AND HON. JOSEPH EMILIO A. ABAYA, HON. WAHAB M. AKBAR, HON. MARIA EVITA R. ARAGO, HON. PROCESSO J. ALCALA, HON. ROZZANO RUFINO BIAZON, HON. MARY MITZI CAJAYON, HON. FREDENIL H. CASTRO, HON. GLENN ANG CHONG, HON. SOLOMON R.

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[43] Vide *Ledesma, Jr. v. National Labor Relations Commission,* G.R. No. 174585, October 19, 2007, 537 SCRA 358, 370.

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

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

[***] Additional member per Special Order No. 664.

CHUNGALAO, HON. PAUL RUIZ DAZA, HON. ANTONIO A. DEL ROSARIO, HON. CECILIA S. LUNA, HON. MANUEL M. MAMBA, HON. HERMILANDO I. MANDANAS, HON. ALVIN SANDOVAL, HON. LORENZO R. TAÑADA III, HON. REYNALDO S. UY, HON. ALFONSO V. UMALI JR., HON. LIWAYWAY VINZONS-CHATO, *petitioners, vs.* **HON. JOSE DE VENECIA JR. in his official capacity as Speaker of the House of Representatives; HON. ARTHUR D. DEFENSOR, SR., in his official capacity as Majority Floor Leader of the House of Representatives, HON. MANUEL B. VILLAR, in his official capacity as *ex-officio* Chairman of the Commission on Appointments, ATTY. MA. GEMMA D. ASPIRAS, in her official capacity as Secretary of the Commission on Appointments, HON. PROSPERO C. NOGRALES, HON. EDGARDO C. ZIALCITA, HON. ABDULLAH D. DIMAPORO, HON. JOSE CARLOS V. LACSON, HON. EILEEN R. ERMITA-BUHAIN, HON. JOSE V. YAP, HON. RODOLFO T. ALBANO III, HON. EDUARDO R. GULLAS, HON. CONRADO M. ESTRELLA III, HON. RODOLFO "OMPONG" PLAZA, HON. EMMYLOU J. TALIÑO-MENDOZA and HON. EMMANUEL JOEL J. VILLANUEVA, in their individual official capacities as "elected" members of the Commission on Appointments,** *respondents.*

[G.R. No. 183055. July 31, 2009]

SENATOR MA. ANA CONSUELO A.S. MADRIGAL, *petitioner, vs.* **SENATOR MANUEL VILLAR in his capacity as Senate President and *Ex-Officio* Chairman of the Commission on Appointments, REPRESENTATIVE PROSPERO NOGRALES in his capacity as the Speaker of the House of Representatives, and THE COMMISSION ON APPOINTMENTS,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PARTIES IN-INTEREST; *LOCUS STANDI*; CASE AT BAR.—** Senator Madrigal failed to show that she sustained direct injury as a result of the act complained of. Her petition does not in fact allege that she or her political party PDP-Laban was deprived of a seat in the CA, or that she or PDP-Laban possesses personal and substantial interest to confer on her/it *locus standi.*

2. **POLITICAL LAW; CONSTITUTIONAL LAW; BRANCHES OF GOVERNMENT; PRIMARY JURISDICTION; CASE AT BAR.—** Senator Madrigal's *primary* recourse rests with the respective Houses of Congress and not with this Court. The doctrine of ***primary jurisdiction*** dictates that prior recourse to the House is necessary before she may bring her petition to court. Senator Villar's invocation of said doctrine is thus well-taken, as is the following observation of Speaker Nograles, citing *Sen. Pimentel, Jr. v. House of Representatives Electoral Tribunal*: In order that the remedies of Prohibition and *Mandamus* may be availed of, there must be "no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law." It is worth recalling that, in the 11th Congress, Senator Aquilino Pimentel advocated the allocation of a position in the Commission on Appointments for the Party-List Representatives. Just like the Petitioner in the instant case, Senator Pimentel first wrote to the Senate President, requesting that the Commission on Appointments be restructured to conform to the constitutional provision on proportional representation. xxx Without awaiting final determination of the question xxx, Pimentel filed a Petition for Prohibition and *Mandamus* with the Supreme Court. In the said case, the Honorable Court ruled: *"The Constitution expressly grants to the House of Representatives the prerogative, within constitutionally defined limits, to choose from among its district and party-list representatives those who may occupy the seats allotted to the House in the HRET and the CA. Section 18, Article VI of the Constitution explicitly confers on the Senate and on the House the authority to elect among their members those who would fill the 12 seats for Senators and 12 seats for House members in the Commission on Appointments. Under Section 17, Article VI of the Constitution, each chamber exercises the power to choose, within constitutionally defined limits, who*

among their members would occupy the allotted 6 seats of each chamber's respective electoral tribunal. xxx Thus, ***even assuming that party-list representatives comprise a sufficient number and have agreed to designate common nominees to the HRET and the CA, their primary recourse clearly rests with the House of Representatives and not this Court.*** *Under Sections 17 and 18, Article VI of the Constitution, party-list representatives must first show to the House that they possess the required strength to be entitled to seats in the HRET and the CA. Only if the House fails to comply with the directive of the Constitution on proportional representation of political parties in the HRET and the CA can the party-list representatives seek recourse to this Court under its power of judicial review.* ***Under the doctrine of primary jurisdiction, prior recourse to the House is necessary before petitioners may bring the instant case to the court. Consequently, petitioner's direct recourse to this Court is premature.*** Following the ruling in *Pimentel*, it cannot be said that recourse was already had in the House of Representatives. Furnishing a copy of Petitioner's letter to the Senate President and to the Speaker of the House of Representatives does not constitute the primary recourse required prior to the invocation of the jurisdiction of the Supreme Court. Further, it is the Members of the House who claim to have been deprived of a seat in the Commission on Appointments that must first show to the House that they possess the required numerical strength to be entitled to seats in the Commission on Appointments. Just like Senator Pimentel, demanding seats in the Commission on Appointments for Congressmen, who have not even raised the issue of its present composition in the House, is not Senator Madrigal's affair.

3. **ID.; ID.; ID.; ID.; LEGISLATIVE BRANCH; PARTY AFFILIATIONS; QUESTION OF FACT WHICH COURT DOES NOT RESOLVE; CASE AT BAR.—** Senator Madrigal's suggestion – that Senators Pilar Juliana Cayetano and Richard Gordon be considered independent senators such that the latter should not be allowed to be a member of the CA, and that Senator Alan Peter Cayetano be considered a member of the NP such that he may sit in the CA as his inclusion in NP will entitle his party to one seat – involves a determination of party affiliations, a question of fact which the Court does not resolve.

APPEARANCES OF COUNSEL

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David Jonathan V. Yap C. Kenneth S. Tampal and Adrian A. Arpon for Hon. Manuel B. Villar.

Wilfred D. Asis for petitioners.

Leonardo B. Palicte III for Hon. Jose De Venecia, Jr., Hon. Arthur Defensor, Sr. and Hon. Prospero Nograles.

Agustinus V. Gonzaga for Hon. Manuel B. Villar and Ma. Gemma D. Aspiras.

D E C I S I O N

CARPIO MORALES, *J.*:

In August 2007, the Senate and the House of Representatives elected their respective contingents to the Commission on Appointments (CA).

The contingent in the Senate to the CA was composed of the following senators with their respective political parties:

Sen. Maria Ana Consuelo A.S. Madrigal	**PDP-Laban**
Sen. Joker Arroyo	KAMPI
Sen. Alan Peter Cayetano	Lakas-CMD
Sen. Panfilo Lacson	UNO
Sen. Jinggoy Ejercito Estrada	PMP
Sen. Juan Ponce Enrile	PMP
Sen. Loren Legarda	NPC
Sen. Richard Gordon	Lakas-CMD
Sen. Mar Roxas	LP
Sen. Lito Lapid	Lakas-CMD
Sen. Miriam Defensor-Santiago	PRP

The members of the contingent of the House of Representatives in the CA and their respective political parties were as follows:

Rep. Prospero C. Nograles	Lakas-CMD
Rep. Eduardo C. Zialcita	Lakas-CMD
Rep. Abdullah D. Dimaporo	Lakas-CMD
Rep. Jose Carlos V. Lacson	Lakas-CMD
Rep. Eileen R. Ermita-Buhain	Lakas-CMD
Rep. Jose V. Yap	Lakas-CMD
Rep. Rodolfo T. Albano III	KAMPI
Rep. Eduardo R. Gullas	KAMPI
Rep. Rodolfo "Ompong" G. Plaza	NPC
Rep. Conrado M. Estrella	NPC
Rep. Emmylou J. Taliño-Mendoza	NP
Rep. Emmanuel Joel J. Villanueva	CIBAC Party List

In the second week of August 2007, petitioners in the *first* petition, G.R. No. 180055, went to respondent then Speaker Jose de Venecia to ask for one seat for the Liberal Party in the CA. Speaker Jose de Venecia merely said that he would study their demand.[1]

During the session of the House of Representatives on September 3, 2007, petitioner in the *first* petition, Representative Tañada, requested from the House of Representatives leadership[2] one seat in the CA for the Liberal Party.[3] To his request, Representative Neptali Gonzales II[4] begged the indulgence of the Liberal Party "to allow the Legal Department to make a study on the matter."[5]

In a separate move, Representative Tañada, by letter of September 10, 2007, requested the Secretary General of the House of Representatives the reconstitution of the House contingent in the CA to include one seat for the Liberal Party

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[1] *Vide rollo* (G.R. No. 180055), pp. 23-24.

[2] *Vide id.* at 14.

[3] *Ibid*.

[4] In what capacity he replied to Representative Tañada is not mentioned in the *rollo*.

[5] *Rollo* (G.R. No. 180055), p. 14.

in compliance with the provision of Section 18, Article VI of the Constitution.[6] Representative Tañada also brought the matter to the attention of then Speaker De Venecia, reiterating the position that since there were at least 20 members of the Liberal Party in the 14th Congress, the party should be represented in the CA.[7]

As of October 15, 2007, however, no report or recommendation was proffered by the Legal Department, drawing Representative Tañada to request a report or recommendation on the matter within three days.[8]

In reply, Atty. Grace Andres of the Legal Affairs Bureau of the House of Representatives informed Representative Tañada that the department was constrained to withhold the release of its legal opinion because the handling lawyer was directed to secure documents necessary to establish some of the members' party affiliations.[9]

Hence spawned the filing on October 31, 2007 of the *first* petition by petitioner former Senator Franklin M. Drilon (in representation of the Liberal Party), *et al*., for prohibition, *mandamus*, and *quo warranto* with prayer for the issuance of writ of preliminary injunction and temporary restraining order, against then Speaker De Venecia, Representative Arthur Defensor, Sr. in his capacity as Majority Floor Leader of the House of Representatives, Senator Manuel B. Villar in his capacity as *ex officio* chairman of the CA, Atty. Ma. Gemma D. Aspiras in her capacity as Secretary of the CA, and the individual members of the House of Representatives contingent to the CA.[10] The petition in G.R. No. 180055 raises the following issues:

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[6] *Id.* at 25.

[7] *Ibid.*

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

[9] *Id.* at 53.

[10] *Id.* at 3-44.

a. *WHETHER THE LIBERAL PARTY WITH AT LEAST TWENTY (20) MEMBERS WHO SIGNED HEREIN AS PETITIONERS, IS CONSTITUTIONALLY ENTITLED TO ONE (1) SEAT IN THE COMMISSION ON APPOINTMENTS.*

b. *WHETHER THE HOUSE OF REPRESENTATIVES' RESPONDENTS HAVE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN CONSTITUTING THE COMMISSION ON APPOINTMENTS IN CONTRAVENTION OF THE REQUIRED PROPORTIONAL CONSTITUTION BY DEPRIVING THE LIBERAL PARTY OF ITS CONSTITUTIONAL ENTITLEMENT TO ONE (1) SEAT THEREIN.*

c. *WHETHER AS A RESULT OF THE GRAVE ABUSE OF DISCRETION COMMITTED BY THE HOUSE OF REPRESENTATIVES RESPONDENTS, THE WRITS PRAYED FOR IN THIS PETITION BE ISSUED NULLIFYING THE CURRENT COMPOSITION OF THE COMMISSION ON APPOINTMENTS, RESTRAINING THE CURRENT HOUSE OF REPRESENTATIVE MEMBERS FROM SITTING AND PARTICIPATING IN THE PROCEEDINGS OF THE COMMISSION ON APPOINTMENTS, OUSTING THE AFFECTED RESPONDENTS WHO USURPED, INTRUDED INTO AND UNLAWFULLY HELD POSITIONS IN THE COMMISSION ON APPOINTMENTS AND REQUIRING THE RESPONDENTS TO RECONSTITUTE AND/OR REELECT THE MEMBERS OF SAID COMMISSION.*[11] (Italics in the original)

And it prays that this Court:

a. Immediately upon the filing of the instant Petition, issue a Temporary Restraining Order and/or a Writ of Preliminary Prohibitory and Mandatory Injunction, enjoining all Respondents and all persons under their direction, authority, supervision, and control from further proceeding with their actions relating to the illegal and unconstitutional constitution of the Commission on Appointments and to the unlawful exercise of its members' functions, contrary to the rule on proportional representation of political parties with respect to the House of Representatives contingent in the said Commission;

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[11] *Id.* at 26.

b. After careful consideration of the merits of the case, render judgment making the injunction permanent and ordering Respondents and all persons under their direction, authority, supervision, and control;

x x x x x x x x x

c. Declare Respondents' action in not allotting one (1) seat to Petitioners null and void for being a direct violation of Section 18, Article VI of the Constitution;

d. Declare the proceedings of the Commission on Appointments null and void, insofar as they violate the rule on proportional representation of political parties in said Commission;

e. Oust the affected respondents, whoever they are, who usurped, intruded into and have unlawfully held positions in the Commission on Appointments and

f. Require Respondents to alter, reorganize, reconstitute and reconfigure the composition of the Commission on Appointments in accordance with proportional representation based on the actual numbers of members belonging to duly accredited and registered political parties who were elected into office during the last May 14, 2007 Elections by, at the very least, respecting and allowing Congressman Alfonso V. Umali, Jr. as the duly nominated Commission on Appointments member of the Liberal Party of the Philippines to sit therein as such.[12]

Respondents Senator Villar and CA Secretary Aspiras filed their Comment[13] on December 6, 2007, moving for the dismissal of the petition on these grounds:

I. THE POWER TO ELECT MEMBERS TO THE COMMISSION ON APPOINTMENTS BELONGS TO EACH HOUSE OF CONGRESS PURSUANT TO THE CONSTITUTION. AS SUCH, THE PETITION IS NOT DIRECTED AT THE HEREIN RESPONDENTS.

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[12] *Id.* at 35-36.

[13] *Id.* at 69-77.

II. **THE CONSTITUTION DOES NOT REQUIRE THAT THE COMMISSION MUST HAVE COMPLETE MEMBERSHIP IN ORDER THAT IT CAN FUNCTION. WHAT THE CONSTITUTION REQUIRES IS THAT THERE MUST AT LEAST BE A MAJORITY OF ALL THE MEMBERS OF THE COMMISSION FOR IT TO VALIDLY CONDUCT ITS PROCEEDINGS AND TRANSACT ITS BUSINESS.**[14] (Emphasis in the original)

Then Speaker De Venecia and Representative Defensor filed their Comment and Opposition[15] on February 18, 2008, moving too for the dismissal of the petition on these grounds:

I. **THE ACTS COMPLAINED OF DO NOT CONSTITUTE GRAVE ABUSE OF DISCRETION THAT WILL JUSTIFY THE GRANT OF THE EXTRAORDINARY WRIT OF *MANDAMUS*.**[16]

II. **THE LIBERAL PARTY DOES NOT POSSESS THE REQUISITE NUMBER OF MEMBERS THAT WOULD ENTITLE THE PARTY TO A SEAT IN THE COMMISSION ON APPOINTMENTS. IT IS, THEREFORE, NOT THE PROPER PARTY TO INSTITUTE THE INSTANT PETITION FOR *QUO WARRANTO*.**[17]

III. **THE PETITIONERS FAILED TO EXHAUST THE REMEDIES AVAILABLE TO THEM.**[18]

IV. **THE CONFLICTING CLAIMS OF THE PARTIES AS TO THE AFFILIATION OF THE MEMBERS NEED TO BE SETTLED IN A TRIAL.**[19] (Emphasis in the original)

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[14] *Id.* at 71, 73.

[15] *Id.* at 111-181.

[16] *Id.* at 113.

[17] *Id.* at 125.

[18] *Id.* at 133.

[19] *Id.* at 137.

Meantime, Senator Ma. Ana Consuelo A.S. Madrigal of PDP-Laban, by separate letters of April 17, 2008 to Senator Villar and Speaker Prospero Nograles, claimed that the composition of the Senate contingent in the CA violated the constitutional requirement of proportional representation for the following reasons:

1. PMP has two representatives in the CA although it only has two members in the Senate and thus [is] entitled only to one (1) seat.
2. KAMPI has only one (1) member in the Senate and thus is not entitled to a CA seat and yet it is represented in the CA.
3. PRP has only one (1) member in the Senate and thus is not entitled to a CA seat and yet it is represented in the CA.
4. If Senators Richard Gordon and Pilar Juliana Cayetano are Independents, then Sen. Gordon cannot be a member of the CA as Independents cannot be represented in the CA even though there will be three Independents in the CA.
5. If Sen. Alan Peter Cayetano is now NP, he still can sit in the CA representing NP.[20]

She also claimed that the composition of the House of Representatives contingent in the CA violated the constitutional requirement of proportional representation for the following reasons:

1. Lakas-CMD currently has five (5) members in the Commission on Appointments although it is entitled only to four (4) representatives and thus [is] in excess of a member;
2. KAMPI currently has three (3) members in the Commission on Appointments although it is entitled only to two (2) representatives and thus is excess of a member;
3. Liberal Party is not represented in the Commission on Appointments although it is entitled to one (1) nominee; and

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[20] *Rollo* (G.R. No. 183055), pp. 34-35.

4. Party-List CIBAC has a representative in the Commission on Appointments although it only has two members in the House of Representatives and therefore [is] not entitled to any seat.[21]

Senator Madrigal thus requested the reorganization of the membership of the CA and that, in the meantime, "all actions of [the] CA be held in abeyance as the same may be construed as illegal and unconstitutional."[22]

By letter of May 13, 2008, Senator Madrigal again wrote Senator Villar as follows:

Today, I was advised that the Committee on Budget and Management of Senator Mar Roxas has endorsed the *ad interim* appointment of Rolando G. Andaya as Secretary of the Department of Budget and Management for approval by the CA in the plenary. I believe it is imperative that the serious constitutional questions that I have raised be settled before the plenary acts on this endorsement by the Committee on Budget and Management. Otherwise, like Damocles' sword, a specter of doubt continues to be raised on the validity of actions taken by the CA and its committees.[23]

Still later or on May 19, 2008, Senator Madrigal sent another letter to Senator Villar declaring that she "cannot in good conscience continue to participate in the proceedings of the CA, until such time as [she] get[s] a response to [her] letters and until the constitutional issue of the CA's composition is resolved by the leadership of the Commission,"[24] and that without any such resolution, she would be forced to invoke Section 20 of the CA rules against every official whose confirmation would be submitted to the body for deliberation.[25]

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[21] *Id.* at 37.

[22] *Id.* at 37-38.

[23] *Id.* at 39.

[24] *Id.* at 42.

[25] *Ibid.*

The CA Committee on Rules and Resolutions, by letter-comment of May 26, 2008, opined that the CA has neither the power nor the discretion to reject a member who is elected by either House, and that any complaints about the election of a member or members should be addressed to the body that elected them.[26]

By letter of May 28, 2008, Senator Villar advised Senator Madrigal as follows:

x x x x x x x x x

Noting your position that you will not continue to participate in the proceedings of the CA … "until the constitutional issue of the CA's composition is resolved by the leadership of the Commission" x x x, the Secretary of the Commission, upon my instructions, transmitted the same to the CA Committee on Rules and Resolutions. It was my intention to have the Committee study and deliberate on the matter and to recommend what step/s to take on your request that "all actions of the Commission be held in abeyance" x x x.

In view however, of your manifestation during the May 26, 2008 meeting of the CA Committee on Rules and Resolutions, and of the written **comment of Sen. Arroyo** that "If there is a complaint in the election of a member or members, it shall be addressed to the body that elected them, namely the Senate and/or the House," I have given instructions to transmit the original copies of your letters to the Senate Secretary for their immediate inclusion in the Order of Business of the Session of the Senate so that your concerns may be addressed by the Senate in caucus and/or in plenary.[27] (Emphasis and underscoring supplied)

Undaunted, Senator Madrigal, by letter of June 2, 2008 addressed to Senator Villar, reiterated her request that all actions of the CA be held in abeyance pending the reorganization of both the Senate and House of Representatives contingents.[28]

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[26] *Id.* at 43.

[27] *Id.* at 44.

[28] *Id.* at 46.

Senator Madrigal thereafter filed on June 13, 2008 the *second* petition, G.R. No. 183055, for prohibition and *mandamus* with prayer for issuance of temporary restraining order/writ of preliminary injunction against Senator Villar in his capacity as Senate President and *Ex-Officio* Chairman of the CA, Speaker Nograles, and the CA,[29] alleging that respondents committed grave abuse of discretion amounting to lack or excess of jurisdiction

> **A. . . . IN FAILING TO COMPLY WITH THE CONSTITUTIONALLY REQUIRED PROPORTIONAL PARTY REPRESENTATION OF THE MEMBERS OF THE COMMISSION ON APPOINTMENTS;**
>
> **B. . . . IN CONTINUOUSLY CONDUCTING HEARINGS AND PROCEEDINGS ON THE APPOINTMENTS DESPITE THE COMMISSION ON APPOINTMENTS' UNCONSTITUTIONAL COMPOSITION WHICH MUST BE PROHIBITED BY THIS HONORABLE COURT; and**
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> **C. . . . IN FAILING, DESPITE REPEATED DEMANDS FROM PETITIONER, TO RE-ORGANIZE THE COMMISSION ON APPOINTMENTS IN ACCORDANCE WITH THE MANDATED PROPORTIONAL PARTY REPRESENTATION OF THE 1987 CONSTITUTION, WHICH REQUIREMENT MUST BE ENFORCED BY THIS HONORABLE COURT.**[30] (Emphasis in the original)

She thus prayed for the

> 1. . . . issu[ance of] a temporary restraining order/a writ of preliminary injunction to enjoin Respondents from proceeding with their illegal and unlawful actions as officials and members of the Commission on Appointments which composition is unconstitutional, pending resolution of the instant Petition;
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> 2. Declar[ation that] the composition of the Commission on Appointments [is] null and void insofar as it violates the proportional party representation requirement mandated by Article VI, Section 18 of the 1987 Philippine Constitution;

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[29] *Id.* at 3-29.

[30] *Id.* at 12.

3. Issu[ance of] a Writ of Prohibition against respondents Senate President Manuel Villar, Speaker Prospero Nograles and Secretary Gemma Aspiras to desist from further proceeding with their illegal and unlawful actions as officers of the Commission on Appointments, the composition of which is null and void for being violative of the proportional party representation requirement under Article VI, Section 18 of the 1987 Philippine Constitution; and

4. Issu[ance of] a Writ of *Mandamus* commanding respondents Senate President Manuel Villar, Speaker Prospero Nograles and Secretary Gemma Aspiras to reorganize and reconstitute the Commission on Appointments in accordance with the 1987 Constitution.[31]

The Court consolidated G.R. No. 180055[32] and G.R. No. 183055 on July 1, 2008.

Petitioners in the *first* petition, G.R. No. 180055, later filed on August 15, 2008 a Motion with Leave of Court to Withdraw the Petition,[33] alleging that with the designation of Representative Alfonso V. Umali, Jr. of the Liberal Party as a member of the House of Representatives contingent in the CA in replacement of Representative Eduardo M. Gullas of KAMPI, their petition had become moot and academic.

In his Comment of August 19, 2008 on the *second* petition, respondent Senator Villar proffered the following arguments:

I.

Petitioner has no standing to file [the] petition.

II.

Petitioner failed to observe the doctrine of primary jurisdiction or prior resort. Each House of Congress has the sole function of reconstituting or changing the composition of its own contingent to the CA.

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[31] *Id.* at 26-27.

[32] *Id.* at 106.

[33] *Id.* at 245-257.

III.

Petitioner is estopped.

IV.

Presumption of regularity in the conduct of official functions.

V.

The extraordinary remedies of Prohibition and *Mandamus* and the relief of a TRO are not available to the Petitioner.[34] (Emphasis in the original; underscoring supplied)

In his Comment and Opposition[35] filed on September 3, 2008, Speaker Nograles proffered the following arguments:

A. WITH RESPECT TO THE HOUSE OF REPRESENTATIVES, THE PETITIONS HAVE ALREADY BECOME MOOT AND ACADEMIC UPON THE ELECTION OF REPRESENTATIVE ALFONSO V. UMALI, JR., MEMBER OF THE LIBERAL PARTY, TO THE HOUSE CONTINGENT TO THE COMMISSION ON APPOINTMENTS.[36]

B. THE ACTS COMPLAINED OF DO NOT CONSTITUTE GRAVE ABUSE OF DISCRETION THAT WILL JUSTIFY THE ASSUMPTION OF JURISDICTION BY THE HONORABLE COURT AND THE GRANT OF THE EXTRAORDINARY WRITS OF *MANDAMUS* AND PROHIBITION.[37]

C. THE REMEDY OF THOSE WHO SEEK TO RECONSTITUTE THE HOUSE CONTINGENT TO THE COMMISSION ON APPOINTMENTS RESTS, IN THE FIRST INSTANCE, WITH THE HOUSE OF REPRESENTATIVES.[38]

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[34] *Id.* at 133.

[35] *Id.* at 158-184.

[36] *Id.* at 163.

[37] *Id.* at 164.

[38] *Id.* at 174.

D. CONSIDERING THE AFOREMENTIONED FACTS AND JURISPRUDENCE, IT IS SUBMITTED THAT SENATOR MADRIGAL HAS NO STANDING TO PURSUE THE INSTANT CASE.

E. THE PETITION IS NOT ACCOMPANIED BY A VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING AS REQUIRED BY RULE 65 SECTIONS 2 AND 3 AND SUPREME COURT ADMINISTRATIVE CIRCULAR NO. 28-91. (Emphasis and underscoring in the original)

The *first* petition, G.R. No. 180055, has thus indeed been rendered moot with the designation of a Liberal Party member of the House contingent to the CA, hence, as prayed for, the petition is withdrawn.

As for the *second* petition, G.R. No. 183055, it fails.

Senator Madrigal failed to show that she sustained direct injury as a result of the act complained of.[39] Her petition does not in fact allege that she or her political party PDP-Laban was deprived of a seat in the CA, or that she or PDP-Laban possesses personal and substantial interest to confer on her/it *locus standi*.

Senator Madrigal's *primary* recourse rests with the respective Houses of Congress and not with this Court. The doctrine of ***primary jurisdiction*** dictates that prior recourse to the House is necessary before she may bring her petition to court.[40] Senator Villar's invocation of said doctrine is thus well-taken, as is the following observation of Speaker Nograles, citing *Sen. Pimentel, Jr. v. House of Representatives Electoral Tribunal*:[41]

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[39] *Vide David v. Macapagal-Arroyo*, G.R. No. 171396, May 3, 2006, 489 SCRA 160, 327.

[40] *Sen. Pimentel, Jr. v. House of Representatives Electoral Tribunal*, 441 Phil. 492, 503 (2002).

[41] *Id.* at 497-498, 500-503.

In order that the remedies of Prohibition and *Mandamus* may be availed of, there must be "no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law".

It is worth recalling that, in the 11th Congress, Senator Aquilino Pimentel advocated the allocation of a position in the Commission on Appointments for the Party-List Representatives. Just like the Petitioner in the instant case, Senator Pimentel first wrote to the Senate President, requesting that the Commission on Appointments be restructured to conform to the constitutional provision on proportional representation. xxx Without awaiting final determination of the question xxx, Pimentel filed a Petition for Prohibition and *Mandamus* with the Supreme Court. In the said case, the Honorable Court ruled:

> *"The Constitution expressly grants to the House of Representatives the prerogative, within constitutionally defined limits, to choose from among its district and party-list representatives those who may occupy the seats allotted to the House in the HRET and the CA. Section 18, Article VI of the Constitution explicitly confers on the Senate and on the House the authority to elect among their members those who would fill the 12 seats for Senators and 12 seats for House members in the Commission on Appointments. Under Section 17, Article VI of the Constitution, each chamber exercises the power to choose, within constitutionally defined limits, who among their members would occupy the allotted 6 seats of each chamber's respective electoral tribunal.*
>
> *x x x x x x x x x*
>
> *Thus,* ***even assuming that party-list representatives comprise a sufficient number and have agreed to designate common nominees to the HRET and the CA, their primary recourse clearly rests with the House of Representatives and not this Court****. Under Sections 17 and 18, Article VI of the Constitution, party-list representatives must first show to the House that they possess the required strength to be entitled to seats in the HRET and the CA. Only if the House fails to comply with the directive of the Constitution on proportional representation of political parties in the HRET and the CA can the party-list representatives seek recourse to this Court under its power of judicial review.* ***Under the doctrine of primary jurisdiction, prior recourse to the House is necessary before petitioners may bring the instant***

> ***case to the court. Consequently, petitioner's direct recourse to this Court is premature.***
>
> Following the ruling in *Pimentel*, it cannot be said that recourse was already had in the House of Representatives. Furnishing a copy of Petitioner's letter to the Senate President and to the Speaker of the House of Representatives does not constitute the primary recourse required prior to the invocation of the jurisdiction of the Supreme Court. Further, it is the Members of the House who claim to have been deprived of a seat in the Commission on Appointments that must first show to the House that they possess the required numerical strength to be entitled to seats in the Commission on Appointments. Just like Senator Pimentel, demanding seats in the Commission on Appointments for Congressmen, who have not even raised the issue of its present composition in the House, is not Senator Madrigal's affair.[42] (Italics, underscoring, and emphasis supplied by Representative Nograles)

It bears noting that Senator Villar had already transmitted original copies of Senator Madrigal's letters to the Senate Secretary for inclusion in the Order of Business of the Session of the Senate to address her concerns. Senator Madrigal's filing of the *second* petition is thus premature.

Senator Madrigal's suggestion – that Senators Pilar Juliana Cayetano and Richard Gordon be considered independent senators such that the latter should not be allowed to be a member of the CA,[43] and that Senator Alan Peter Cayetano be considered a member of the NP such that he may sit in the CA as his inclusion in NP will entitle his party to one seat – involves a determination of party affiliations, a question of fact which the Court does not resolve.

WHEREFORE, the Motion with Leave of Court to Withdraw the Petition in G.R. No. 180055 is *GRANTED.* The Petition is *WITHDRAWN.* The Petition in G.R. No. 183055 is *DISMISSED.*

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[42] *Rollo* (G.R. No. 183055), pp. 175-176.

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

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.

SECOND DIVISION

[G.R. No. 180465. July 31, 2009]

ERIC DELA CRUZ and RAUL M. LACUATA, *petitioners, vs.* **COCA-COLA BOTTLERS PHILS., INC.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FINDINGS OF FACTS OF THE LABOR ARBITER AND THE NLRC WILL GENERALLY NOT BE INTERFERED WITH ON APPEAL; EXCEPTION.—** As a general rule, findings of fact of the Labor Arbiter and the NLRC will not be interfered with unless it is shown that they arbitrarily disregarded or misappreciated the evidence before them to such extent as to compel a contrary conclusion if such evidence has been properly appreciated.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; AWARD OF BACK WAGES AND SEPARATION PAY, WHEN JUSTIFIED; CASE AT BAR.—** Indeed, an award of back wages and separation pay is justified only if there is a finding of illegal dismissal. Since petitioners were supervisory employees and were thus covered by the trust and confidence rule, the Court of Appeals correctly overturned the ruling of the NLRC and the Labor Arbiter (granting them backwages and separation pay).

3. **ID.; ID.; ID.; LOSS OF TRUST AND CONFIDENCE; MUST BE WILLFUL AND WORK-RELATED; PRESENT IN CASE AT BAR.—** Petitioners contend, that for loss of trust and confidence to be a ground for termination of employment, it must be willful and must be connected with the employee's work. This contention has been passed upon by the Court of Appeals, thus: The records of the case are rife with proof that the supervisors committed acts which are inimical to the interests and stability, not only of management, but of the company itself. They did so, through deceitful means and methods. The detailed account of what transpired between August 12 to 16, 2002 by Asuncion, Calderon, the witnesses and the supervisors themselves were not only substantial proof of the grave infraction committed by them but indubitable proof of their anomalous acts. Indeed, by obtaining an altered police report and medical certificate, petitioners deliberately attempted to cover up the fact that Sales was under the influence of liquor at the time the accident took place. In so doing, they committed acts inimical to respondent's interests. They thus committed a work-related willful breach of the trust and confidence reposed in them.

APPEARANCES OF COUNSEL

Rafael O. Orencia for petitioners.
Martin T. Menes for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

On August 12, 2000, Raymund Sales (Sales), a salesman of Coca-Cola Bottlers Phils., Inc. (respondent), figured in a motor vehicle accident while driving respondent's motor vehicle which he was then not authorized to use.

Sales was hospitalized in Lorma Medical Center in San Fernando, La Union where he was observed to have been under the influence of liquor at the time of the accident.[1] The August

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[1] NLRC records (Vol. 2), p. 184.

12, 2000 police blotter of the incident indeed indicates that Sales was under the influence of liquor.[2]

Respondent soon discovered that Sales' co-employees secured an August 15, 2000 police report and an August 14, 2000 medical certificate which omitted the statement that Sales was under the influence of liquor.[3]

After an initial investigation, respondent issued separate memoranda to its Sales Supervisor John F. Espina (Espina), and herein petitioners Sales Delivery Supervisor Raul M. Lacuata (Lacuata) and Sales Supervisor Eric David C. dela Cruz (dela Cruz) requiring them to explain why no disciplinary action should be taken against them for violation of the Employees' Code of Disciplinary Rules and Regulations *vis-à-vis* Article 282 of the Labor Code in connection with their production of the August 15, 2000 police report and August 14, 2000 medical certificate which did not indicate full details of the accident, and the use of the name of the General Manager in producing such reports.[4]

Petitioner de la Cruz replied that all he did was to send to Melvin Asuncion, a refrigeration foreman of respondent, a text message asking for a copy of the police report.[5]

Petitioner Lacuata, on the other hand, claimed that he had no participation in the preparation of the questioned documents as all he did was to pick up the medical certificate from the hospital.[6] Espina likewise denied any participation in the "alteration" of the documents.[7]

Further investigation conducted by respondent showed that Espina and petitioners conspired to have an "altered report"

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[2] *Id.* at 182.

[3] *Id.* at 183, 185.

[4] *Id.* at NLRC records (Vol. 1), pp. 377-379.

[5] *Id.* at 388-389.

[6] *Id.* at 390-391.

[7] *Id.* at 392-405.

prepared to make it appear that Sales was not under the influence of liquor at the time of the accident.

Espina and petitioners were thereupon dismissed from employment,[8] drawing them to file separate complaints for illegal suspension and dismissal against respondent.[9]

The Labor Arbiter dismissed Espina's complaint for lack of merit.[10]

De la Cruz was found to have been illegally dismissed, hence, his reinstatement, as well as payment to him of back wages, 13th month pay, attorney's fees, and moral damages,[11] was ordered.

Respecting Lacuata, the Labor Arbiter found him to be at fault in "d[oing] nothing to stop Espina from obtaining false police and medical reports," hence, respondent was justified in losing trust and confidence in him. Nevertheless, respondent was ordered to grant him back wages, 13th month pay, and separation pay.[12]

On appeal by respondent, the National Labor Relations Commission (NLRC) affirmed the Labor Arbiter's decision but deleted the award of moral damages in favor of dela Cruz.[13] Its motion for reconsideration[14] having been denied,[15] respondent filed a Petition for *Certiorari*[16] before the Court of Appeals.

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[8] *Id.* at 416-427.

[9] *Id.* at 1-6.

[10] *Id.* at 329.

[11] *Id.* at 328-329.

[12] *Id.* at 314-316, 329.

[13] *Id.* at 545-571.

[14] *Id.* at 573-601.

[15] *Id.* at 676-677.

[16] CA *rollo*, pp. 9-49.

By Decision[17] of July 27, 2007, the Court of Appeals SET ASIDE the NLRC decision, it finding that petitioners, were validly dismissed.

Hence, the present petition for Review,[18] petitioners contending that the Court of Appeals erred

I. **In rejecting the Labor Arbiter's and NLRC's appreciation of the facts, concluding that there were facts established to warrant petitioners' separation from employment.**

II. **In considering that the respondent has successfully discharged the burden of proof required by the Constitution.**

III. **In considering the alleged breach of confidence, if any there be, willful breach of confidence.**

IV. **In considering the alleged infraction, if any there be, as connected with petitioners' work.**

V. **In holding that dismissal from service was the proper penalty to be imposed upon the petitioners, notwithstanding the absence of substantial evidence and manifestly oppressive nature of the penalty.**

VI. **In rejecting the keystone principle that all doubt in the implementation of the Labor Code or arising from the evidence should be resolved in favor of labor.**[19] (Emphasis in the original)

As a general rule, findings of fact of the Labor Arbiter and the NLRC will not be interfered with unless it is shown that they arbitrarily disregarded or misappreciated the evidence before

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[17] Penned by Court of Appeals Associate Justice Marlene Gonzales-Sison, with the concurrence of Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso. *Id.* at 776-794.

[18] *Rollo*, pp. 33-88.

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

them to such extent as to compel a contrary conclusion if such evidence has been properly appreciated.[20]

In the case of Lacuata, the Court of Appeals concurred with the findings of fact of the Labor Arbiter and the NLRC, but held that it was error to award back wages and separation pay to him in light of the finding that "[r]espondent . . . was justified in losing its trust and confidence in Lacuata"[21] for not doing anything to prevent Espina from obtaining the "altered" documents.

The petition fails.

Indeed, an award of back wages and separation pay is justified only if there is a finding of illegal dismissal. Since petitioners were supervisory employees and were thus covered by the trust and confidence rule,[22] the Court of Appeals correctly overturned the ruling of the NLRC and the Labor Arbiter.

Petitioners contend, however, that for loss of trust and confidence to be a ground for termination of employment, it must be willful and must be connected with the employee's work.[23] This contention has been passed upon by the Court of Appeals, thus:

> The records of the case are rife with proof that the supervisors committed acts which are inimical to the interests and stability, not only of management, but of the company itself. They did so, through deceitful means and methods. The detailed account of what transpired between August 12 to 16, 2002 by Asuncion, Calderon, the witnesses and the supervisors themselves were not only substantial proof of the grave infraction committed by them but indubitable proof of their anomalous acts.[24] (Underscoring supplied)

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[20] Vide *Mayon Hotel & Restaurant v. Adana*, G.R. No. 157634, May 16, 2005, 458 SCRA 609, 623-624.

[21] NLRC records (Vol. I), p. 317; CA *rollo,* pp. 790-791.

[22] *Sagales v. Rustan's Commercial Corporation,* G.R. No. 166554, November 27, 2008.

[23] *Rollo*, pp. 76-79.

[24] CA *rollo*, p. 789.

Indeed, by obtaining an altered police report and medical certificate, petitioners deliberately attempted to cover up the fact that Sales was under the influence of liquor at the time the accident took place. In so doing, they committed acts inimical to respondent's interests. They thus committed a work-related willfull breach of the trust and confidence reposed in them.

WHEREFORE, the petition is *DENIED*. The decision of the Court of Appeals dated July 27, 2007 is *AFFIRMED*.

Costs against petitioners.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 181531. July 31, 2009]

NATIONAL UNION OF WORKERS IN HOTELS, RESTAURANTS AND ALLIED INDUSTRIES-MANILA PAVILION HOTEL CHAPTER, *petitioner, vs.* **SECRETARY OF LABOR AND EMPLOYMENT, BUREAU OF LABOR RELATIONS, HOLIDAY INN MANILA PAVILION HOTEL LABOR UNION and ACESITE PHILIPPINES HOTEL CORPORATION,** *respondents.*

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

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

[***] Additional member per Special Order No. 664.

SYLLABUS

1. **POLITICAL LAW; CONSTITUTION; RIGHT OF WORKERS TO SELF-ORGANIZATION; OVERRIDES ANY PROVISION IN A CBA DISQUALIFYING PROBATIONARY EMPLOYEES FROM VOTING IN A CERTIFICATION ELECTION.—** The provision in a CBA disqualifying probationary employees from voting cannot override the Constitutionally-protected right of workers to self-organization, as well as the provisions of the Labor Code and its Implementing Rules on certification elections and jurisprudence thereon. A law is read into, and forms part of, a contract. Provisions in the contract are valid only if they are not contrary to law, morals, good customs, public order or public policy.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; LABOR UNIONS; CERTIFICATION ELECTION, DEFINED.—** A certification election is the process of determining the sole and exclusive bargaining agent of the employees in an appropriate bargaining unit for purposes of collective bargaining. Collective bargaining, refers to the negotiated contract between a legitimate labor organization and the employer concerning wages, hours of work and all other terms and conditions of employment in a bargaining unit.

3. **ID.; ID.; ID.; ID.; EMPLOYEE'S RIGHT TO VOTE THEREIN; CASE AT BAR.—** The significance of an employee's right to vote in a certification election cannot thus be overemphasized. For he has considerable interest in the determination of who shall represent him in negotiating the terms and conditions of his employment.

4. **ID.; ID.; ID.; ID.; ID.; PROBATIONARY EMPLOYEES ENTITLED TO VOTE THEREIN; CASE AT BAR.—**The inclusion of Gatbonton's vote was proper not because it was not questioned but because probationary employees have the right to vote in a certification election. The votes of the six other probationary employees should thus also have been counted. As *Airtime Specialists, Inc. v. Ferrer-Calleja* holds: In a certification election, **all rank and file employees in the appropriate bargaining unit, whether probationary or permanent are entitled to vote.** This principle is clearly stated in Art. 255 of the Labor Code which states that the "labor

organization designated or selected by the majority of the employees in an appropriate bargaining unit shall be the exclusive representative of the employees in such unit for purposes of collective bargaining." Collective bargaining covers all aspects of the employment relation and the resultant CBA negotiated by the certified union binds all employees in the bargaining unit. Hence, all rank and file employees, probationary or permanent, have a substantial interest in the selection of the bargaining representative. x x x

5. **ID.; ID.; ID.; ID.; ID.; APPEAL TO THE SECRETARY OF LABOR FROM THE ARBITER'S ORDER TO CONDUCT A CERTIFICATION ELECTION; PERIOD OF RECKONING LIST OF ELIGIBLE VOTERS IS THE DATE WHEN ORDER OF THE SECRETARY OF LABOR BECOMES FINAL AND EXECUTORY; CASE AT BAR.—** Rule XI, Sec. 5 of Department Order No. 40-03, on which the SOLE and the appellate court rely to support their position that probationary employees hired after the issuance of the Order granting the petition for the conduct of certification election must be excluded, should not be read in isolation and must be harmonized with the other provisions of D. O. Rule XI, Sec. 5 of D.O. 40-03. x x x. Sections 5,13 and 21 of Rule XI, Sec. 5 of D.O. 40-03, x x x and prescinding from the principle that all employees are, from the first day of their employment, eligible for membership in a labor organization, it is evident that the period of reckoning in determining who shall be included in the list of eligible voters is, in cases where a timely appeal has been filed from the Order of the Med-Arbiter, **the date when the Order of the Secretary of Labor and Employment, whether affirming or denying the appeal, becomes final and executory**. x x x The filing of an appeal to the SOLE from the Med-Arbiter's Order stays its execution, in accordance with Sec. 21, and rationally, the Med-Arbiter cannot direct the employer to furnish him/her with the list of eligible voters pending the resolution of the appeal. During the pendency of the appeal, the employer may hire additional employees. To exclude the employees hired after the issuance of the Med-Arbiter's Order but before the appeal has been resolved would violate the guarantee that every employee has the right to be part of a labor organization from the first day of their service. In the present case, records show that the probationary employees, including Gatbonton, were included in the list of employees in

the bargaining unit submitted by the Hotel on May 25, 2006 in compliance with the directive of the Med-Arbiter after the appeal and subsequent motion for reconsideration have been denied by the SOLE, rendering the Med-Arbiter's August 22, 2005 Order final and executory 10 days after the March 22, 2007 Resolution (denying the motion for reconsideration of the January 22 Order denying the appeal), and rightly so. Because, for purposes of self-organization, those employees are, in light of the discussion above, deemed eligible to vote.

6. **ID.; ID.; ID.; ID.; "DOUBLE MAJORITY RULE" FOR A VALID CERTIFICATION ELECTION.—** It is well-settled that under the so-called "double majority rule," **for there to be a valid certification election, majority of the bargaining unit must have voted AND the winning union must have garnered majority of the valid votes cast.**

7. **ID.; ID.; ID.; ID.; ID.; IMPORTANCE OF ASCERTAINING THE NUMBER OF VALID VOTES CAST.—** It bears reiteration that the true importance of ascertaining the number of valid votes cast is for it to serve as basis for computing the required majority, and not just to determine which union won the elections. The opening of the segregated but valid votes has thus become material. **To be sure, the conduct of a certification election has a two-fold objective: to determine the appropriate bargaining unit and to ascertain the majority representation of the bargaining representative, if the employees desire to be represented at all by anyone.** It is not simply the determination of who between two or more contending unions won, but whether it effectively ascertains the will of the members of the bargaining unit as to whether they want to be represented and which union they want to represent them.

8. **ID.; ID.; ID.; ID.; ID.; RUN-OFF ELECTION; CASE AT BAR.—** A run-off election refers to an election between the labor unions receiving the two (2) highest number of votes in a certification or consent election with three (3) or more choices, where such a certified or consent election results in none of the three (3) or more choices receiving the majority of the valid votes cast; provided that the total number of votes for all contending unions is at least fifty percent (50%) of the number of votes cast.

APPEARANCES OF COUNSEL

Sentro ng Alternatibong Lingap Panligal for petitioner.
Gancayco Balasbas and Associates Law Offices for Acesite Philippines Hotel Corporation.

D E C I S I O N

CARPIO MORALES, *J.*:

National Union of Workers in Hotels, Restaurants and Allied Industries – Manila Pavilion Hotel Chapter (NUWHRAIN-MPHC), herein petitioner, seeks the reversal of the Court of Appeals November 8, 2007 Decision[1] and of the Secretary of Labor and Employment's January 25, 2008 Resolution[2] in OS-A-9-52-05 which affirmed the Med-Arbiter's Resolutions dated January 22, 2007[3] and March 22, 2007.[4]

A certification election was conducted on June 16, 2006 among the rank-and-file employees of respondent Holiday Inn Manila Pavilion Hotel (the Hotel) with the following results:

EMPLOYEES IN VOTERS' LIST	= 353
TOTAL VOTES CAST	= 346
NUWHRAIN-MPHC	= 151
HIMPHLU	= 169
NO UNION	= 1

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[1] CA *rollo*, pp. 194-203. Penned by Associate Justice Remedios A. Salazar Fernando and concurred in by Associate Justices Rosalinda Asuncion Vicente and Enrico A. Lanzanas.

[2] *Id*. at 237-238. Penned by Associate Justice Remedios A. Salazar Fernando and concurred in by Associate Justices Rosalinda Asuncion Vicente and Enrico A. Lanzanas.

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

[4] *Id*. at 24-25.

SPOILED	=	3
SEGREGATED	=	22

In view of the significant number of segregated votes, contending unions, petitioner, NUHWHRAIN-MPHC, and respondent Holiday Inn Manila Pavillion Hotel Labor Union (HIMPHLU), referred the case back to Med-Arbiter Ma. Simonette Calabocal to decide which among those votes would be opened and tallied. Eleven (11) votes were initially segregated because they were cast by <u>dismissed</u> employees, albeit the legality of their dismissal was still pending before the Court of Appeals. Six other votes were segregated because the employees who cast them were <u>already occupying</u> <u>supervisory positions</u> at the time of the election. Still five other votes were segregated on the ground that they were cast by <u>probationary</u> <u>employees</u> and, pursuant to the existing Collective Bargaining Agreement (CBA), such employees cannot vote. It bears noting early on, however, that the vote of one Jose Gatbonton (Gatbonton), a probationary employee, was counted.

By Order of August 22, 2006, Med-Arbiter Calabocal ruled for the opening of 17 out of the 22 segregated votes, specially those cast by the 11 dismissed employees and those cast by the six supposedly supervisory employees of the Hotel.

Petitioner, which garnered 151 votes, appealed to the Secretary of Labor and Employment (SOLE), arguing that the votes of the probationary employees should have been opened considering that probationary employee Gatbonton's vote was tallied. And petitioner averred that respondent HIMPHLU, which garnered 169 votes, should not be immediately certified as the bargaining agent, as the opening of the 17 segregated ballots would push the number of valid votes cast to 338 (151 + 169 + 1 + 17), hence, the 169 votes which HIMPHLU garnered would be one vote short of the majority which would then become 169.

By the assailed Resolution of January 22, 2007, the Secretary of Labor and Employment (SOLE), through then Acting Secretary Luzviminda Padilla, affirmed the Med-Arbiter's Order.

It held that pursuant to Section 5, Rule IX of the Omnibus Rules Implementing the Labor Code on exclusion and inclusion of voters in a certification election, the probationary employees cannot vote, as at the time the Med-Arbiter issued on August 9, 2005 the Order granting the petition for the conduct of the certification election, the six probationary employees were not yet hired, hence, they could not vote.

The SOLE further held that, with respect to the votes cast by the 11 dismissed employees, they could be considered since their dismissal was still pending appeal.

As to the votes cast by the six alleged supervisory employees, the SOLE held that their votes should be counted since their promotion took effect months after the issuance of the above-said August 9, 2005 Order of the Med-Arbiter, hence, they were still considered as rank-and-file.

Respecting Gatbonton's vote, the SOLE ruled that the same could be the basis to include the votes of the other probationary employees, as the records show that during the pre-election conferences, there was no disagreement as to his inclusion in the voters' list, and neither was it timely challenged when he voted on election day, hence, the Election Officer could not then segregate his vote.

The SOLE further ruled that even if the 17 votes of the dismissed and supervisory employees were to be counted and presumed to be in favor of petitioner, still, the same would not suffice to overturn the 169 votes garnered by HIMPHLU.

In fine, the SOLE concluded that the certification of HIMPHLU as the exclusive bargaining agent was proper.

Petitioner's motion for reconsideration having been denied by the SOLE by Resolution of March 22, 2007, it appealed to the Court of Appeals.

By the assailed Decision promulgated on November 8, 2007, the appellate court affirmed the ruling of the SOLE. It held that, contrary to petitioner's assertion, the ruling in *Airtime*

Specialist, Inc. v. Ferrer Calleja[5] stating that in a certification election, all rank-and-file employees in the appropriate bargaining unit, whether probationary or permanent, are entitled to vote, is inapplicable to the case at bar. For, the appellate court continued, the six probationary employees were not yet employed by the Hotel at the time the August 9, 2005 Order granting the certification election was issued. It thus held that *Airtime Specialist* applies only to situations wherein the probationary employees were already employed as of the date of filing of the petition for certification election.

Respecting Gatbonton's vote, the appellate court upheld the SOLE's finding that since it was not properly challenged, its inclusion could no longer be questioned, nor could it be made the basis to include the votes of the six probationary employees.

The appellate court brushed aside petitioner's contention that the opening of the 17 segregated votes would materially affect the results of the election as there would be the likelihood of a run-off election in the event none of the contending unions receive a majority of the valid votes cast. It held that the "majority" contemplated in deciding which of the unions in a certification election is the winner refers to the majority of valid votes cast, not the simple majority of votes cast, hence, the SOLE was correct in ruling that even if the 17 votes were in favor of petitioner, it would still be insufficient to overturn the results of the certification election.

Petitioner's motion for reconsideration having been denied by Resolution of January 25, 2008, the present recourse was filed.

Petitioner's contentions may be summarized as follows:

1. Inclusion of Jose Gatbonton's vote but excluding the vote of the six other probationary employees violated the principle of equal protection and is not in accord with the ruling in *Airtime Specialists, Inc. v. Ferrer-Calleja*;

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[5] 180 SCRA 749.

2. The time of reckoning for purposes of determining when the probationary employees can be allowed to vote is not August 9, 2005 – the date of issuance by Med-Arbiter Calabocal of the Order granting the conduct of certification elections, but March 10, 2006 – the date the SOLE Order affirmed the Med-Arbiter's Order.

3. Even if the votes of the six probationary employees were included, still, HIMPHLU could not be considered as having obtained a majority of the valid votes cast as the opening of the 17 ballots would increase the number of valid votes from 321 to 338, hence, for HIMPHLU to be certified as the exclusive bargaining agent, it should have garnered at least 170, not 169, votes.

Petitioner justifies its not challenging Gatbonton's vote because it was precisely its position that probationary employees should be allowed to vote. It thus avers that justice and equity dictate that since Gatbonton's vote was counted, then the votes of the 6 other probationary employees should likewise be included in the tally.

Petitioner goes on to posit that the word "order" in Section 5, Rule 9 of Department Order No. 40-03 reading "[A]ll employees who are members of the appropriate bargaining unit sought to be represented by the petitioner at the time of the issuance of the <u>order</u> granting the conduct of certification election shall be allowed to vote" refers to an order which has already become final and executory, in this case the March 10, 2006 Order of the SOLE.

Petitioner thus concludes that if March 10, 2006 is the reckoning date for the determination of the eligibility of workers, then all the segregated votes cast by the probationary employees should be opened and counted, they having already been working at the Hotel on such date.

Respecting the certification of HIMPHLU as the exclusive bargaining agent, petitioner argues that the same was not proper for if the 17 votes would be counted as valid, then the total number of votes cast would have been 338, not 321, hence, the

majority would be 170; as such, the votes garnered by HIMPHLU is one vote short of the majority for it to be certified as the exclusive bargaining agent.

The relevant issues for resolution then are *first*, whether employees on probationary status at the time of the certification elections should be allowed to vote, and *second*, whether HIMPHLU was able to obtain the required majority for it to be certified as the exclusive bargaining agent.

On the first issue, the Court rules in the affirmative.

The inclusion of Gatbonton's vote was proper not because it was not questioned but because probationary employees have the right to vote in a certification election. The votes of the six other probationary employees should thus also have been counted. As *Airtime Specialists, Inc. v. Ferrer-Calleja* holds:

> In a certification election, **all rank and file employees in the appropriate bargaining unit, whether probationary or permanent are entitled to vote**. This principle is clearly stated in Art. 255 of the Labor Code which states that the "labor organization designated or selected by the majority of the employees in an appropriate bargaining unit shall be the exclusive representative of the employees in such unit for purposes of collective bargaining." Collective bargaining covers all aspects of the employment relation and the resultant CBA negotiated by the certified union binds all employees in the bargaining unit. Hence, all rank and file employees, probationary or permanent, have a substantial interest in the selection of the bargaining representative. **The Code makes no distinction as to their employment status as basis for eligibility in supporting the petition for certification election. The law refers to "all" the employees in the bargaining unit. All they need to be eligible to support the petition is to belong to the "bargaining unit."** (Emphasis supplied)

Rule II, Sec. 2 of Department Order No. 40-03, series of 2003, which amended Rule XI of the Omnibus Rules Implementing the Labor Code, provides:

Rule II

Section 2. **Who may join labor unions and workers' associations**. — All persons employed in commercial, industrial and agricultural

enterprises, including employees of government owned or controlled corporations without original charters established under the Corporation Code, as well as employees of religious, charitable, medical or educational institutions whether operating for profit or not, shall have the right to self-organization and to form, join or assist labor unions for purposes of collective bargaining: provided, however, that supervisory employees shall not be eligible for membership in a labor union of the rank-and-file employees but may form, join or assist separate labor unions of their own. Managerial employees shall not be eligible to form, join or assist any labor unions for purposes of collective bargaining. Alien employees with valid working permits issued by the Department may exercise the right to self-organization and join or assist labor unions for purposes of collective bargaining if they are nationals of a country which grants the same or similar rights to Filipino workers, as certified by the Department of Foreign Affairs.

For purposes of this section, any employee, whether employed for a definite period or not, shall beginning on the first day of his/her service, be eligible for membership in any labor organization.

All other workers, including ambulant, intermittent and other workers, the self-employed, rural workers and those without any definite employers may form labor organizations for their mutual aid and protection and other legitimate purposes except collective bargaining. (Emphasis supplied)

The provision in the CBA disqualifying probationary employees from voting cannot override the Constitutionally-protected right of workers to self-organization, as well as the provisions of the Labor Code and its Implementing Rules on certification elections and jurisprudence thereon.

A law is read into, and forms part of, a contract. Provisions in a contract are valid only if they are not contrary to law, morals, good customs, public order or public policy.[6]

Rule XI, Sec. 5 of D.O. 40-03, on which the SOLE and the appellate court rely to support their position that probationary

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[6] CIVIL CODE, Art. 1306.

employees hired after the issuance of the Order granting the petition for the conduct of certification election must be excluded, should not be read in isolation and must be harmonized with the other provisions of D.O. Rule XI, Sec. 5 of D.O. 40-03, *viz*:

Rule XI

x x x x x x x x x

Section 5. Qualification of voters; inclusion-exclusion. - **All employees who are members of the appropriate bargaining unit sought to be represented by the petitioner at the time of the issuance of the order granting the conduct of a certification election shall be eligible to vote.** An employee who has been dismissed from work but has contested the legality of the dismissal in a forum of appropriate jurisdiction at the time of the issuance of the order for the conduct of a certification election shall be considered a qualified voter, unless his/her dismissal was declared valid in a final judgment at the time of the conduct of the certification election. (Emphasis supplied)

x x x x x x x x x

Section 13. Order/Decision on the petition. — Within ten (10) days from the date of the last hearing, the Med-Arbiter shall issue a formal order granting the petition or a decision denying the same. In organized establishments, however, no order or decision shall be issued by the Med-Arbiter during the freedom period.

The **order granting the conduct of a certification election shall state the following**:

(a) the name of the employer or establishment;

(b) the description of the bargaining unit;

(c) a statement that none of the grounds for dismissal enumerated in the succeeding paragraph exists;

(d) the names of contending labor unions which shall appear as follows: petitioner union/s in the order in which their petitions were filed, forced intervenor, and no union; and

(e) **a directive upon the employer and the contending union(s) to submit within ten (10) days from receipt of the order, the certified list of employees in the bargaining unit**, or where necessary, the payrolls covering the members of the bargaining

unit for the last three (3) months prior to the issuance of the order. (Emphasis supplied)

x x x x x x x x x

Section 21. Decision of the Secretary. — The Secretary shall have fifteen (15) days from receipt of the entire records of the petition within which to decide the appeal. **The filing of the memorandum of appeal from the order or decision of the Med-Arbiter stays the holding of any certification election.**

The decision of the Secretary shall become final and executory after ten (10) days from receipt thereof by the parties. No motion for reconsideration of the decision shall be entertained. (Emphasis supplied)

In light of the immediately-quoted provisions, and prescinding from the principle that all employees are, from the first day of their employment, eligible for membership in a labor organization, it is evident that the period of reckoning in determining who shall be included in the list of eligible voters is, in cases where a timely appeal has been filed from the Order of the Med-Arbiter, **the date when the Order of the Secretary of Labor and Employment, whether affirming or denying the appeal, becomes final and executory**.

The filing of an appeal to the SOLE from the Med-Arbiter's Order stays its execution, in accordance with Sec. 21, and rationally, the Med-Arbiter cannot direct the employer to furnish him/her with the list of eligible voters pending the resolution of the appeal.

During the pendency of the appeal, the employer may hire additional employees. To exclude the employees hired after the issuance of the Med-Arbiter's Order but before the appeal has been resolved would violate the guarantee that every employee has the right to be part of a labor organization from the first day of their service.

In the present case, records show that the probationary employees, including Gatbonton, were included in the list of employees in the bargaining unit submitted by the Hotel on May 25, 2006 in compliance with the directive of the Med-

Arbiter after the appeal and subsequent motion for reconsideration have been denied by the SOLE, rendering the Med-Arbiter's August 22, 2005 Order final and executory 10 days after the March 22, 2007 Resolution (denying the motion for reconsideration of the January 22 Order denying the appeal), and rightly so. Because, for purposes of self-organization, those employees are, in light of the discussion above, deemed eligible to vote.

A certification election is the process of determining the sole and exclusive bargaining agent of the employees in an appropriate bargaining unit for purposes of collective bargaining. Collective bargaining, refers to the negotiated contract between a legitimate labor organization and the employer concerning wages, hours of work and all other terms and conditions of employment in a bargaining unit.[7]

The significance of an employee's right to vote in a certification election cannot thus be overemphasized. For he has considerable interest in the determination of who shall represent him in negotiating the terms and conditions of his employment.

Even if the Implementing Rules gives the SOLE 20 days to decide the appeal from the Order of the Med-Arbiter, experience shows that it sometimes takes months to be resolved. To rule then that only those employees hired as of the date of the issuance of the Med-Arbiter's Order are qualified to vote would effectively disenfranchise employees hired during the pendency of the appeal. More importantly, reckoning the date of the issuance of the Med-Arbiter's Order as the cut-off date would render inutile the remedy of appeal to the SOLE.

But while the Court rules that the votes of all the probationary employees should be included, under the particular circumstances of this case and the period of time which it took for the appeal to be decided, the votes of the six supervisory employees must be excluded because at the time the certification elections was conducted, they had ceased to be part of the rank and file, their promotion having taken effect two months before the election.

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[7] *Honda Phils, Inc. v. Samahan ng Malayang Manggagawa sa Honda*, G.R. No. 145561, June 15, 2005, 460 SCRA 186.

As to whether HIMPHLU should be certified as the exclusive bargaining agent, the Court rules in the negative. It is well-settled that under the so-called "double majority rule," **for there to be a valid certification election, majority of the bargaining unit must have voted AND the winning union must have garnered majority of the valid votes cast**.

Prescinding from the Court's ruling that all the probationary employees' votes should be deemed valid votes while that of the supervisory employees should be excluded, it follows that the number of valid votes cast would increase – from 321 to 337. Under Art. 256 of the Labor Code, the union obtaining the majority of the valid votes cast by the eligible voters shall be certified as the sole and exclusive bargaining agent of all the workers in the appropriate bargaining unit. This majority is 50% + 1. Hence, 50% of 337 is 168.5 + 1 or at least **170**.

HIMPHLU obtained 169 while petitioner received 151 votes. Clearly, HIMPHLU was not able to obtain a majority vote. The position of both the SOLE and the appellate court that the opening of the 17 segregated ballots will not materially affect the outcome of the certification election as for, so they contend, even if such member were all in favor of petitioner, still, HIMPHLU would win, is thus untenable.

It bears reiteration that the true importance of ascertaining the number of valid votes cast is for it to serve as basis for computing the required majority, and not just to determine which union won the elections. The opening of the segregated but valid votes has thus become material. **To be sure, the conduct of a certification election has a two-fold objective: to determine the appropriate bargaining unit and to ascertain the majority representation of the bargaining representative, if the employees desire to be represented at all by anyone**. It is not simply the determination of who between two or more contending unions won, but whether it effectively ascertains the will of the members of the bargaining unit as to whether they want to be represented and which union they want to represent them.

Having declared that no choice in the certification election conducted obtained the required majority, it follows that a run-off election must be held to determine which between HIMPHLU and petitioner should represent the rank-and-file employees.

A run-off election refers to an election between the labor unions receiving the two (2) highest number of votes in a certification or consent election with three (3) or more choices, where such a certified or consent election results in none of the three (3) or more choices receiving the majority of the valid votes cast; provided that the total number of votes for all contending unions is at least fifty percent (50%) of the number of votes cast.[8] With 346 votes cast, 337 of which are now deemed valid and HIMPHLU having only garnered 169 and petitioner having obtained 151 and the choice "NO UNION" receiving 1 vote, then the holding of a run-off election between HIMPHLU and petitioner is in order.

WHEREFORE, the petition is *GRANTED*. The Decision dated November 8, 2007 and Resolution dated January 25, 2008 of the Court of Appeals affirming the Resolutions dated January 22, 2007 and March 22, 2007, respectively, of the Secretary of Labor and Employment in OS-A-9-52-05 are *ANNULLED* and *SET ASIDE*.

The Department of Labor and Employment-Bureau of Labor Relations is *DIRECTED* to cause the holding of a run-off election between petitioner, National Union of Workers in Hotels, Restaurants and Allied Industries-Manila Pavilion Hotel Chapter (NUWHRAIN-MPC), and respondent Holiday Inn Manila Pavilion Hotel Labor Union (HIMPHLU).

SO ORDERED.

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

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[8] Department Order No. 40-03, series of 2003.

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

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

[***] Additional member per Special Order No. 664.

THIRD DIVISION

[G.R. No. 185095. July 31, 2009]

MARIA SUSAN L. RAÑOLA, ROSSAN DIOKLAN L. RAÑOLA & ROSETTE L. RAÑOLA, Assisted by her mother, MARIA SUSAN L. RAÑOLA, *petitioners, vs.* **SPOUSES FERNANDO & MA. CONCEPCION M. RAÑOLA,** *respondents.*

SYLLABUS

1. **CIVIL LAW; CONTRACTS; COMPROMISE AGREEMENT; CONSTRUED.—** Article 1306 of the Civil Code of the Philippines provides that contracting parties may establish such stipulations, clauses, terms, and conditions, as they may deem convenient, provided that they are not contrary to law, morals, good customs, public order, or public policy. A compromise agreement is a contract whereby the parties make reciprocal concessions, avoid litigation, or put an end to one already commenced. It is an accepted, even desirable and encouraged, practice in courts of law and administrative tribunals.

2. **ID.; ID.; ID.; JUDICIAL COMPROMISE; HAS THE FORCE AND EFFECT OF A JUDGMENT.—** A compromise agreement intended to resolve a matter already under litigation is a judicial compromise. Having judicial mandate and entered as its determination of the controversy, such judicial compromise has the force and effect of a judgment. It transcends its identity as a mere contract between the parties, as it becomes a judgment that is subject to execution in accordance with the Rules of Court.

3. **ID.; ID.; ID.; ID.; WHEN APPROVED BY THE COURT; JUDICIAL COMPROMISE ATTAINS THE EFFECT AND AUTHORITY OF *RES JUDICATA*.—** Thus, a compromise agreement that has been made and duly approved by the court attains the effect and authority of *res judicata*, although no execution may be issued unless the agreement receives the approval of the court where the litigation is pending and compliance with the terms of the agreement is decreed.

APPEARANCES OF COUNSEL

Jose Vicente D. Fernandez for petitioners.
Avelino Sales, Jr. for respondents.

R E S O L U T I O N

NACHURA, *J*.:

For our consideration is a Manifestation[1] dated June 27, 2009, informing the Court that the parties have already executed a Compromise Agreement[2] dated March 17, 2009 copy atttached, and seeking the dismissal of this case. The Compromise Agreement is as follows:

COMPROMISE AGREEMENT

Parties assisted by their respective counsels, most respectfully submit the foregoing compromise agreement, the terms and conditions of which are:

1. That they now wish to put an end to the following legal cases now pending before the various courts and forum, namely:

(a) Civil Case No. 2352 (Declaration of Nullity of Contract, Cancellation of Certificate of Title, *etc*. pending before RTC, Branch 13, Ligao City.

(b) Civil Case No. 1304 (Unlawful Detainer) judgment of which had been affirmed by the Honorable Court of Appeals in CA-G.R. No. 98694 and by the Honorable Supreme Court in G.R. No. 185254.

(c) Special Proceedings No. 431 (Settlement of estate of the late Ronald O. Rañola) pending before RTC, Branch 13, Ligao City.

(d) Criminal Case No. 5500 (Estafa) now pending before RTC, Branch 13, Ligao City.

(e) Appeal before the Department of Justice (with pending motion for reconsideration) I.S. No. 13-06.

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[1] *Rollo,* p. 434.

[2] *Id*. at 435-438.

(f) Petition before the Supreme Court in G.R. No. 185095 entitled "*Ma. Susan L. Rañola, et al. vs. Sps. Fernando and Ma. Concepcion Rañola*.

(g) And all other cases necessarily connected with or arising from the various causes of action between and among the parties to these cases. For this purpose and to this end, parties agree to submit copies of this agreement to the various courts, government agencies and forum before which the said actions/proceedings are pending so that the corresponding orders of dismissal may already be promulgated and issued.

2. That Lot No. 759-B, covered by TCT No. 129660 of the Register of Deeds of Ligao City and presently registered in the exclusive names of the spouses FERNANDO & MA. CONCEPCION M. RAÑOLA, shall be divided into two, which shall be apportioned as follows: a portion of Lot 759-B, with an area of 35,109 square meters (including all improvements and structures thereon found) shall remain to be the property of and titled to the spouses FERNANDO & MA. CONCEPCION M. RAÑOLA, while the property with an area of 34,153 square meters, including the structures thereon found and improvements existing thereon shall be ceded to DIOKLAN L. RAÑOLA and ROSETTE L. RAÑOLA, as specified in the provisional sketch plan herewith attached to become [an] integral part hereof; provided that, within 30 days from the approval of this Compromise Agreement, a duly licensed geodetic engineer shall relocate Lot 759-B and prepare a subdivision plan and have the same approved by the Lands Management Bureau of the DENR which shall be the basis for the division and issuance of separate certificates of title over the same property. Expenses to be incurred for this shall be for the account of the spouses Fernando & Ma. Concepcion M. Rañola.

3. MARIA SUSAN L. RAÑOLA, DIOKLAN L. RAÑOLA, and ROSETTE L. RAÑOLA warrant that the property ceded to them shall be exclusively and solely used as a continuation of the piggery and hog business of the late Ronald O. Rañola, and should they (the former) decide to sell the property and the business, they shall respect the "right of first refusal" of the spouses FERNANDO & MA. CONCEPCION M. RAÑOLA. To this end, spouses FERNANDO & MA. CONCEPCION M. RAÑOLA hereby allow the free use of the water tank facility (built upon the portion of the property belonging to them) for as long as the water shall be exclusively used for piggery activities and enterprise by Dioklan and Rosette L. Rañola; provided that, if and when fencing shall be made, the said water tank and facility

shall be temporarily possessed by Dioklan and Rosette during the times when they shall be using the same for the piggery; provided still further, that if Dioklan and Rosette would abandon the business, the water tank and facility shall be enclosed to form part of the property of the spouses Fernando and Ma. Concepcion Rañola; provided finally, that if and when there shall be changes in the use of the properties by either parties, then the primordial consideration is that the shift shall not endanger and put to risk the other's line of business and the parties undertake to spend time to talk and find ways to avoid any risks upon each others' line of business.

4. The hammer mill shall be relocated from where it now is installed to some ______ meters southwest of the "grower/finisher building" as appearing on the sketch plan so that the birds in the aviary shall not be disturbed by the noise emitted from [it] as a result of the operation of the same hammer mill. Immediately prior to the transfer, plaintiffs shall inform defendants of the exact location of the place of transfer.

5. All monies deposited with the Regional Trial Court, Branch 13 stationed at Ligao City, arising from or is necessarily connected with the suits enumerated in par. 1 hereof, shall all be given to MA. SUSAN L. RAÑOLA and the siblings of DIOKLAN & ROSETTE L. RAÑOLA.

6. The steel bars found at the gestating and farrowing building shall be taken therefrom without danger to the buildings' structures and be given to MA. SUSAN, DIOKLAN & ROSETTE, all surnamed RAÑOLA.

7. The four (4) residential lots in Legazpi City (covered by TCT Nos. 55015, 35205, 56211, and 56210) and which are all now in the names of DIOKLAN L. RAÑOLA, ROSETTE L. RAÑOLA, RAY RAÑOLA and RACHEL RAÑOLA shall be respected and any and all interested persons hereby waive and quit any and all claims as against these four aforenamed registered owners.

8. Simultaneously with the execution of this Agreement, MA. SUSAN L. RAÑOLA shall execute an Affidavit of Desistance with Motion to Dismiss Criminal Case I.S. No. 13-06 now pending before the Department of Justice and Criminal Case No. 5500, now pending before RTC, Branch 13, Ligao City, upon her and her daughters' express admission that the birds and fowls subject matter of that criminal case are all owned by the spouses FERNANDO & MA. CONCEPCION M. RAÑOLA.

9. In continuing on with the piggery business, MA. SUSAN, DIOKLAN & ROSETTE L. RAÑOLA hereby undertake not to raise, maintain, or have any other fowl in their property like, among others, chickens, turkeys, ducks, geese, fighting cocks, nor conduct any form of poultry business and the like to avoid any avian disease or flu that will cause any undue risk to the aviary owned and maintained by the spouses FERNANDO & MA. CONCEPCION M. RAÑOLA; provided further that no dogs or cats or any domesticated animals shall be allowed to stray near the aviary and must thus be caged, should there be any.

10. MA. SUSAN, DIOKLAN & ROSETTE L. RAÑOLA hereby undertake, within a period of ninety (90) days from the time of the approval of the Amicable Settlement, to transfer all personal properties or animals and/or stocks in trade still in the property adjudicated to the spouses Fernando and Ma. Concepcion Rañola to their own property.

11. Expenses relative to capital gains taxes, documentary stamp taxes, realty taxes, transfer taxes (BIR & local) and fees for documentation shall all [be] for the account of MA. SUSAN, DIOKLAN & ROSETTE L. RAÑOLA, provided that, the amount of FIVE HUNDRED THOUSAND PESOS (Php500,000.00) shall be withdrawn from the funds deposited with the RTC (mentioned in par. 5 hereof), to defray any and all expenses therefor.

12. The parties hereby waive all claims and counterclaim they may have as against each other, whether present, real or inchoate, and vow to abide by the terms and conditions herein stated and agreed upon. It is the essence of this agreement that the parties endeavor to maintain and bring back the good familial relations between and among them; to this end, the parties shall not file any action or proceedings as against each other rooted upon or connected with the issues raised in the enumerated cases in paragraph 1 hereof.

Wherefore, it is most respectfully prayed that a Decision be issued and promulgated approving this Amicable Settlement. Other reliefs and remedies as are just and equitable under the circumstances are here prayed for.

Ligao City, Philippines. 17 March, 2009.

(signed)	(signed)	(signed)
MA. SUSAN L. RAÑOLA	**DIOKLAN L. RAÑOLA**	**ROSETTE L. RAÑOLA**
Plaintiff	**Plaintiff**	**Plaintiff**

Assisted by:

(signed)	(signed)
Atty. JOSE VICENTE D. FERNANDEZ	**Atty. RAMIRO BORRES, JR.**

(signed)	(signed)
FERNANDO O. RAÑOLA	**MA. CONCEPCION M. RAÑOLA**
Defendant	**Defendant**

Assisted by:

(signed)
AVELINO V. SALES, JR.
For Himself and as counsel for the spouses

(signed)
ROSITA R. MILANTE
Defendant

(signed)
Atty. AILEEN ZAMORA
For Herself and as counsel of Ms. Milante

Article 1306 of the Civil Code of the Philippines provides that contracting parties may establish such stipulations, clauses, terms, and conditions, as they may deem convenient, provided that they are not contrary to law, morals, good customs, public order, or public policy. A compromise agreement is a contract whereby the parties make reciprocal concessions, avoid litigation, or put an end to one already commenced.[3] It is an accepted, even desirable and encouraged, practice in courts of law and administrative tribunals.[4]

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[3] Article 2028, Civil Code of the Philippines; *Harold v. Aliba,* G.R. No. 130864, October 2, 2007, 534 SCRA 478, 486.

[4] *DMG Industries, Inc. v. Philippine American Investments Corporations,* G.R. No. 174114, July 6, 2007, 526 SCRA 682, 687.

A compromise agreement intended to resolve a matter already under litigation is a judicial compromise. Having judicial mandate and entered as its determination of the controversy, such judicial compromise has the force and effect of a judgment. It transcends its identity as a mere contract between the parties, as it becomes a judgment that is subject to execution in accordance with the Rules of Court. Thus, a compromise agreement that has been made and duly approved by the court attains the effect and authority of *res judicata*, although no execution may be issued unless the agreement receives the approval of the court where the litigation is pending and compliance with the terms of the agreement is decreed.[5]

Finding the Manifestation to be meritorious, and the Compromise Agreement dated March 17, 2009 to be validly executed and not contrary to law, morals, good customs, public order or public policy; we therefore, accept and approve the same.

WHEREFORE, the Manifestation dated June 27, 2009 informing this Court that the parties had already arrived at an agreement to settle their legal controversies and praying for the dismissal of this case is *GRANTED*. Judgment is hereby rendered in accordance with the Compromise Agreement dated March 17, 2009. The instant case is *DISMISSED*. No pronouncement as to costs.

SO ORDERED.

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

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[5] *Viesca v. Gilinsky*, G.R. No. 171698, July 4, 2007, 526 SCRA 533, 557-558.

THIRD DIVISION

[A.M. No. P-08-2436. August 4, 2009]
(Formerly OCA I.P.I. No. 06-2394-P)

TEOPICIO TAN, *complainant, vs.* **SALVACION D. SERMONIA, CLERK IV, MUNICIPAL TRIAL COURT IN CITIES, ILOILO CITY,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; WILLFUL FAILURE TO PAY JUST DEBT; JUST DEBT, DEFINED.—** "Just debts" refer to (1) claims adjudicated by a court of law; or (2) claims the existence and justness of which are admitted by the debtor. x x x Tan's claim against Sermonia is a just debt, not only because its existence and justness are admitted by the latter, but also because it was already adjudicated by the MTCC. It is a just debt that remains unpaid by Sermonia.

2. **ID.; ID.; ID.; ID.; FINANCIAL DIFFICULTIES, NOT SUFFICIENT EXCUSE FOR FAILING TO PAY JUST DEBTS; CASE AT BAR.—** Sermonia's averment of financial difficulties is not a sufficient excuse for failing to pay her debt to Tan. Nonpayment is not Sermonia's only option. Instead of meeting Tan's demands for payment with anger and foul utterances, Sermonia could have just humbly requested a readjustment of the terms of her debt to something more manageable for her to comply with, given her financial circumstances.

3. **ID.; ID.; ID.; COURT PERSONNEL; MUST COMPLY WITH JUST CONTRACTUAL OBLIGATIONS, ACT FAIRLY AND ADHERE TO HIGH ETHICAL STANDARDS.—** Having incurred a just debt, Sermonia had the moral duty and legal responsibility to settle it when it became due. In the words of this Court in *In Re: Complaint for Failure to Pay Just Debts Against Esther T. Andres:* The Court cannot overstress the need for circumspect and proper behavior on the part of court employees. "While it may be just for an individual to incur

indebtedness unrestrained by the fact that he is a public officer or employee, caution should be taken to prevent the occurrence of dubious circumstances that might inevitably impair the image of the public office." Employees of the court should always keep in mind that the court is regarded by the public with respect. Consequently, the conduct of each court personnel should be circumscribed with the heavy burden of onus and must at all times be characterized by, among other things, uprightness, propriety and decorum. x x x. Indeed, when Sermonia backtracked on her promise to pay her debt, such act already constituted a ground for administrative sanction, for any act that would be a bane to the public trust and confidence reposed in the judiciary shall not be countenanced. Sermonia's unethical conduct has diminished the honor and integrity of her office, stained the image of the judiciary and caused unnecessary interference, directly or indirectly, in the efficient and effective performance of her functions. Certainly, to preserve decency within the judiciary, court personnel must comply with just contractual obligations, act fairly and adhere to high ethical standards. Like all other court personnel, Sermonia is expected to be a paragon of uprightness, fairness and honesty not only in all her official conduct but also in her personal actuations, including business and commercial transactions, so as to avoid becoming her court's albatross of infamy.

4. **ID.; ID.; ID.; WILLFUL FAILURE TO PAY JUST DEBT; PENALTY.—** Section 22(1), Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292, as amended by CSC Memorandum Circular No. 19, series of 1999, provides that willful failure to pay just debts is classified as a light offense, punishable by reprimand for the first infraction, suspension for one to 30 days for the second transgression, and dismissal for the third offense.

5. **ID.; ID.; REVISED UNIFORM RULES ON ADMINISTRATIVE CASES IN CIVIL SERVICE; DISCIPLINING AUTHORITY; GRANTED THE DISCRETION TO CONSIDER MITIGATING CIRCUMSTANCES IN THE IMPOSITION OF PROPER PENALTY IN ADMINISTRATIVE CASES; CASE AT BAR.—** Sermonia has been previously charged twice for nonpayment of debts in *Madia-as Lending Corporation v. Salvacion Sermonia* and *GRIO Lending Services v. Salvacion Sermonia,* and was reprimanded by the Court in both instances.

Thus, this is Sermonia's third case of willful failure to pay a just debt, which would have called for her dismissal from service. Nevertheless, Section 53, Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty. The Court has also ruled that where a penalty less punitive would suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe. It is not only for the law's concern for the workingman; there is, in addition, his family to consider. Unemployment brings untold hardships and sorrows on those dependent on wage earners. As a result, in several administrative cases, the Court has refrained from strictly imposing the penalties provided by the law or rules, in the presence of factors such as the offending court employee's length of service, acknowledgment of his or her infractions and feeling of remorse, family circumstances, advanced age, and other humanitarian and equitable considerations. In the case at bar, the Court, taking into consideration Sermonia's more than 30 years in government service, her voluntary acknowledgment of her indebtedness to Tan, her financial and health difficulties, and the not so substantial amount of her unpaid obligation, finds that suspension for six months without pay is already sufficient penalty.

6. **REMEDIAL LAW; COURTS; SUPREME COURT; A RESOLUTION OF THE SUPREME COURT SHOULD NOT BE CONSTRUED AS A MERE REQUEST, AND SHOULD BE COMPLIED WITH PROMPTLY AND COMPLETELY; CASE AT BAR.—** Sermonia's failure to comply with the OCA's directive to submit her comment on Tan's Complaint constitutes a clear and willful disrespect, not just for the OCA, but also for the Court, which exercises direct administrative supervision over trial court officers and employees through the OCA. In fact, it can be said that Sermonia's non-compliance is tantamount to insubordination to the Court itself. After all, a resolution of the Supreme Court should not be construed as a mere request, and should be complied with promptly and completely. Such failure to comply accordingly betrays not only a recalcitrant streak in character, but also disrespect for the Court's lawful order and directive. This contumacious conduct of refusing to abide by the lawful directives issued by the Court has, likewise,

been considered as an utter lack of interest to remain with, if not contempt of, the system. Sermonia's insolence is further aggravated by the fact that she is an employee of the Judiciary, who, more than an ordinary citizen, should be aware of her duty to obey the orders and processes of the Supreme Court without delay. For her failure to timely file her comment on Tan's Complaint as directed by the OCA, Sermonia should be admonished.

R E S O L U T I O N

CHICO-NAZARIO, *J.*:

Before this Court is an administrative complaint filed by Teopicio Tan (Tan) against Salvacion D. Sermonia (Sermonia), Clerk IV of the Municipal Trial Court in Cities (MTCC), Iloilo City, for willful failure to pay just debts and conduct unbecoming a court employee.

According to the Complaint[1] dated 23 January 2006, sometime in February to March 2000, Sermonia purchased on credit from Tan various construction materials amounting to ₱15,145.50, promising to pay for the same within 30 days. However, after the lapse of the said period, Sermonia failed to pay her debt. Everytime Tan demanded payment from Sermonia, the latter got angry and uttered bad words against the former. Tan made his final demand on 21 November 2000, but Sermonia still refused to pay her debt. Hence, on 16 January 2002, Tan filed before the MTCC a civil complaint against Sermonia for collection of sum of money, docketed as Civil Case No. 20730. A Decision was rendered by the MTCC in Civil Case No. 20730 on 29 December 2003 ordering Sermonia to pay Tan ₱15,145.50, plus 12% interest per annum, from the date of demand until full payment, and 25% of the amount payable as attorney's fees, as well as to pay the costs of the suit.

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[1] *Rollo*, p. 1.

On 9 March 2006, the Office of the Court Administrator (OCA) required Sermonia to file her comment within 10 days.[2] However, Sermonia failed to comply, and a 1st Tracer[3] dated 30 June 2006 was issued to her.

In response, Sermonia sent the OCA a letter[4] dated 21 July 2006 requesting an extension of 30 days within which to file her comment since she had yet to secure the services of a counsel. The OCA granted her request on 30 August 2006. Despite the lapse of the extended period granted her, Sermonia still failed to submit her comment. Consequently, then Deputy Court Administrator Zenaida N. Elepaño submitted an Agenda[5] Report on 23 May 2007, informing the Court of Sermonia's refusal to file her comment on Tan's Complaint.

Acting on said Agenda Report, the Court issued a Resolution[6] dated 9 July 2007 directing Sermonia to file her comment within a non-extendible period of 10 days from notice, and to show cause why she should not be administratively dealt with for her failure to file the same comment despite the extended period previously granted her.

Sermonia filed her Comment[7] only on 26 September 2007. Sermonia explained in her Comment that she did not pay her debt to Tan because she opposed the accuracy and justness of the amount he had demanded. Sermonia claimed to have already made partial payments of her debt, but she misplaced the papers/receipts evidencing her payments. She failed to make subsequent payments due to severe financial difficulties, since she was the principal provider for an extended family of elders, nephews, and nieces, plus she was incurring spiraling expenses brought

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[2] *Id.* at 7.

[3] *Id.* at 8.

[4] *Id.* at 9.

[5] *Id.* at 12-13.

[6] *Id.* at 14.

[7] *Id.* at 15-19.

about by her obesity. She did acknowledge, however, that she had moral and legal responsibilities to settle her financial obligation to Tan.

On 14 January 2008, the OCA submitted its Report[8] with the following recommendation:

PREMISES CONSIDERED, it is respectfully recommended to the Honorable Court that respondent Salvacion Sermonia, Clerk IV, MTCC, Iloilo City be **SUSPENDED** from the service for one (1) year for willful failure to pay just debts and for failure to comply with the directive of the Office of the Court Administrator and **WARNED** that a repetition of the same or similar infraction in the future will be dealt with more severely.

On 3 March 2008, the Court required the parties to manifest[9] within 10 days from notice if they were willing to submit the matter for resolution based on the pleadings filed.[10] Since both parties failed to submit such manifestations, the Court considered that they were deemed to have submitted the case for deliberation based on the pleadings filed.

The Court agrees in the findings of the OCA, except in the recommended penalty.

A review of the records would reveal that Sermonia was indeed guilty of willful failure to pay a just debt.

"Just debts" refer to (1) claims adjudicated by a court of law; or (2) claims the existence and justness of which are admitted by the debtor.[11]

In the case at bar, there is no question that Sermonia admitted her debt to Tan when the former stated in her Comment that:

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

[9] *Id.* at 42.

[10] *Id.* at 28.

[11] See Section 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292.

3. **[Sermonia], while refusing to pay the debt subject of Civil Case No. 20730, did not do so willfully**. Rather, she was only **constrained and found difficulty** to do so as she was in disagreement with the accuracy and justness of the amount that was being demanded of her by [Tan]. In fact, she had actually made partial payments thereon but has misplaced the small pieces of paper that was issued to her to prove the same. She was just biding (sic) for time during which she could have found these small pieces of paper and, thereby, reduce her liability.

4. When [Tan] filed Civil Case No. 20730, [Sermonia] did not file a responsive pleading anymore knowing that without those misplaced small pieces of paper she, nevertheless, would not succeed in reducing her liability anyway. In this regard, in one occasion she just approached the counsel of [Tan] and told him, that she is just submitting herself to the usual course of the proceedings without interposing any defense, in effect, acknowledging the existence of her subject indebtedness. In doing so, she was of the honest belief that she will even make matters much easier for [Tan], who would as a consequence quickly obtain a favorable judgment from the court, which he could cause to be executed for satisfaction anytime.[12] (Emphasis supplied.)

As can be gleaned above, Sermonia does not deny she has an unpaid debt to Tan. Sermonia, though, alleges that she refused to pay the amount demanded by Tan, because she disagreed with the accuracy and justness thereof, given that she had already made previous partial payments of her debt. This is a matter, however, which this Court can no longer take cognizance of in the resolution of the present administrative case.

It must be remembered that Tan already instituted Civil Case No. 20730, an action for collection of sum of money, against Sermonia, before the MTCC. It was in Civil Case No. 20730 where Sermonia could have appropriately assailed the amount being demanded by Tan and raised the defense of previous payments made. Yet, Sermonia chose not to file an answer to Tan's Complaint in Civil Case No. 20730, because she purportedly lost the receipts which could prove the previous

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[12] *Rollo,* p. 16.

payments she had made on her debt. Sermonia deemed it best to just let Civil Case No. 20730 proceed without opposition from her part. The MTCC rendered its Decision on 29 December 2003, ruling against Sermonia and ordering her to pay Tan's total demand of ₱15,145.50, plus 12% interest per annum, 25% attorney's fees, and costs of the suit. Even with this final and executory[13] judgment of the MTCC in Civil Case No. 20730, Sermonia has still failed to finally settle her obligation to Tan.

In consideration of the foregoing, Tan's claim against Sermonia is a just debt, not only because its existence and justness are admitted by the latter, but also because it was already adjudicated by the MTCC. It is a just debt that remains unpaid by Sermonia.

Sermonia's averment of financial difficulties is not a sufficient excuse for failing to pay her debt to Tan. Nonpayment is not Sermonia's only option. Instead of meeting Tan's demands for payment with anger and foul utterances, Sermonia could have just humbly requested a readjustment of the terms of her debt to something more manageable for her to comply with, given her financial circumstances.

Having incurred a just debt, Sermonia had the moral duty and legal responsibility to settle it when it became due. In the words of this Court in *In Re: Complaint for Failure to Pay Just Debts Against Esther T. Andres*[14]*:*

> The Court cannot overstress the need for circumspect and proper behavior on the part of court employees. "While it may be just for an individual to incur indebtedness unrestrained by the fact that he is a public officer or employee, caution should be taken to prevent the occurrence of dubious circumstances that might inevitably impair the image of the public office." Employees of the court should always keep in mind that the court is regarded by the public with respect. Consequently, the conduct of each court personnel should be circumscribed with the heavy burden of onus and must at all times

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[13] *Id.* at 17.

[14] 493 Phil. 1, 11 (2005).

be characterized by, among other things, uprightness, propriety and decorum. x x x.

Indeed, when Sermonia backtracked on her promise to pay her debt, such act already constituted a ground for administrative sanction,[15] for any act that would be a bane to the public trust and confidence reposed in the judiciary shall not be countenanced.[16] Sermonia's unethical conduct has diminished the honor and integrity of her office, stained the image of the judiciary and caused unnecessary interference, directly or indirectly, in the efficient and effective performance of her functions. Certainly, to preserve decency within the judiciary, court personnel must comply with just contractual obligations, act fairly and adhere to high ethical standards. Like all other court personnel, Sermonia is expected to be a paragon of uprightness, fairness and honesty not only in all her official conduct but also in her personal actuations, including business and commercial transactions, so as to avoid becoming her court's albatross of infamy.[17]

The gravamen of Sermonia's offense is her unwillingness to pay a just obligation. The penalty imposed by the law is not directed at Sermonia's private life, but at her actuation unbecoming a public official.[18]

Section 22(1), Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292, as amended by CSC Memorandum Circular No. 19, series of 1999, provides that willful failure to pay just debts is classified as a light offense, punishable by reprimand for the first infraction, suspension for one to 30 days for the second transgression, and dismissal for the third offense.

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[15] *Villaseñor v. De Leon*, 447 Phil. 457, 464 (2003).

[16] *In Re: Complaint for Failure to Pay Just Debts Against Esther T. Andres*, *supra* note 14.

[17] *Villaseñor v. De Leon*, *supra* note 15.

[18] *Grio Lending Services v. Sermonia*, 463 Phil. 14, 17 (2003), citing *Uy v. Magallanes, Jr*., 430 Phil. 211, 214 (2002).

Sermonia has been previously charged twice for nonpayment of debts in *Madia-as Lending Corporation v. Salvacion Sermonia*[19] and *GRIO Lending Services v. Salvacion Sermonia,*[20] and was reprimanded by the Court in both instances. Thus, this is Sermonia's third case of willful failure to pay a just debt, which would have called for her dismissal from service.

Nevertheless, Section 53, Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service,[21] grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty. The Court has also ruled that where a penalty less punitive would suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe.[22] It is not only for the law's concern for the workingman; there is, in addition, his family to consider. Unemployment brings untold hardships and sorrows on those dependent on wage earners.[23]

As a result, in several administrative cases, the Court has refrained from strictly imposing the penalties provided by the law or rules, in the presence of factors such as the offending court employee's length of service, acknowledgment of his or her infractions and feeling of remorse, family circumstances, advanced age, and other humanitarian and equitable considerations.[24]

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[19] A.M. No. P-02-1563, 27 February 2002 (Resolution).

[20] *Supra* note 18.

[21] CSC Memorandum Circular No. 19-99, 14 September 1999.

[22] *Re: Habitual Absenteeism of Mr. Fernando P. Pascual*, A.M. No. 2005-16-SC, 22 September 2005, 470 SCRA 569, 573.

[23] *Mendoza v. Navarro*, A.M. No. P-05-2034, 11 September 2006, 501 SCRA 354, 364.

[24] In *Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Secretary I, and Angelita C. Esmerio, Clerk III, Office of the Division Clerk of Court, Third Division* (A.M. No. 2001-7-SC & 2001-8-SC, 22 July 2005, 464 SCRA 1), where therein respondents were found guilty of dishonesty, the Court, **for humanitarian considerations**, in addition to various

In the case at bar, the Court, taking into consideration Sermonia's more than 30 years in government service, her voluntary acknowledgment of her indebtedness to Tan, her

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mitigating circumstances in respondents' favor, meted out a penalty of six-month suspension instead of imposing the most severe penalty of dismissal from service. In imposing a lower penalty on respondents, the Court took note of the following mitigating circumstances: (1) for ELIZABETH L. TING: **her continued long years of service in the judiciary amounting to 21 years; her acknowledgment of her infractions and feelings of remorse**; the importance and complexity of the nature of her duties (*i.e*., the preparation of the drafts of the Minutes of the Agenda); the fact that she stays well beyond office hours in order to finish her duties; and her Performance Rating which has always been "Very Satisfactory" and her total score of 42 points, which is the highest among the employees of the Third Division of the Court; and (2) for respondent ANGELITA C. ESMERIO: her continued long years of service in the judiciary amounting to 38 years; her faithful observance of office rules and regulations from the time she submitted her explanation-letter up to the present; **her acknowledgment of her infractions and feeling of remorse**; her retirement on 31 May 2005; and her family circumstances (*i.e*., support of a 73-year old maiden aunt and a 7-year old adopted girl).

In *Concerned Taxpayer v. Doblada, Jr.* (A.M. No. P-99-1342, 20 September 2005, 470 SCRA 218), the penalty of dismissal imposable against therein respondent Norberto V. Doblada, Jr., was reduced by the Court to six-month suspension without pay for the **attendant equitable and humanitarian considerations**, to wit: Doblada, Jr. had **spent 34 years of his life in government** service, and he was about to retire; this was the first time that he was found administratively liable per available record; Doblada, Jr. and his wife were suffering from various illnesses that required constant medication, and they were relying on Doblada Jr.'s retirement benefits to augment their finances and to meet their medical bills and expenses.

In *Civil Service Commission v. Belagan* (G.R. No. 132164, 19 October 2004, 440 SCRA 578, 601), Allyson Belagan, who was charged with sexual harassment and found guilty of Grave Misconduct, was meted out the penalty of suspension from office without pay for one year, instead of the heavier penalty of dismissal, **given his length of service**, unblemished record in the past, and numerous awards.

In *Buntag v. Pana* (G.R. No. 145564, 24 March 2006, 485 SCRA 302), the Court affirmed the findings of the Court of Appeals and the Ombudsman when they took into consideration Corazon G. Buntag's **length of service** in the government and the fact that this was her first infraction. Thus, the penalty of dismissal for Falsification of Official Document was reduced to merely one-year suspension.

financial and health difficulties, and the not so substantial amount of her unpaid obligation, finds that suspension for six months without pay is already sufficient penalty.

As a final matter, the Court resolves the show-cause order it issued against Sermonia for her failure to timely file her Comment as directed by the OCA.

Sermonia claims that she has the highest respect for this Court and has no intention of disregarding her duty to obey its orders and processes without delay. She explains that she did not file a comment as directed because she believed, in all honesty and good faith, that while she was civilly liable for a just debt, her failure to settle the same did not amount to an administrative charge for "willful refusal to pay just debt amounting to conduct unbecoming of a court employee." In this regard, she asks for the understanding and compassion of this Court, again taking into consideration her 30 years of continuous and dedicated service in the judiciary.

The Court is not persuaded. The Court finds Sermonia's defense of honesty and good faith utterly baseless. It should be recalled that Sermonia, at first, asked for, and was granted by the OCA, an extension of time to file her comment because she had yet to engage the services of a counsel. This was evidently inconsistent with her subsequent assertion that she did not immediately file her comment, believing in good faith that she did not need to file at all, since she could not be held liable for the administrative charge against her.

Sermonia's failure to comply with the OCA's directive to submit her comment on Tan's Complaint constitutes a clear and willful disrespect, not just for the OCA, but also for the Court, which exercises direct administrative supervision over trial court officers and employees through the OCA. In fact, it can be said that Sermonia's non-compliance is tantamount to insubordination to the Court itself. After all, a resolution of the Supreme Court should not be construed as a mere request, and should be complied with promptly and completely. Such failure to comply accordingly betrays not only a recalcitrant streak in character, but also disrespect for the Court's lawful

order and directive.[25] This contumacious conduct of refusing to abide by the lawful directives issued by the Court has, likewise, been considered as an utter lack of interest to remain with, if not contempt of, the system.[26] Sermonia's insolence is further aggravated by the fact that she is an employee of the Judiciary, who, more than an ordinary citizen, should be aware of her duty to obey the orders and processes of the Supreme Court without delay. For her failure to timely file her comment on Tan's Complaint as directed by the OCA, Sermonia should be admonished.

WHEREFORE, respondent Salvacion D. Sermonia, Clerk IV of the Municipal Trial Court in Cities, Iloilo City, is adjudged guilty of willful failure to pay a just debt, for which she is *SUSPENDED* for 6 months without pay. She is further *ORDERED* to pay complainant Teopicio Tan ₱15,145.50, plus 12% interest per annum, 25% attorney's fees, and the costs of suit, as decreed in the MTCC Decision dated 29 December 2003 in Civil Case No. 20730, within six (6) months from receipt of this Resolution.

Additionally, Sermonia is *ADMONISHED* for her repeated failure to promptly file her Comment as directed by the Office of the Court Administrator.

Finally, Sermonia is *WARNED* that a commission of the same or similar acts in the future, including a violation of this Resolution, shall be dealt with more severely.

Let a copy of this Resolution be attached to Sermonia's 201 file.

SO ORDERED.

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

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[25] *Tugot v. Judge Coliflores,* 467 Phil. 391, 402 (2004).

[26] *Parane v. Reloza*, A.M. No. MTJ-92-718, 7 November 1994, 238 SCRA 1.

[*] Associate Justice Lucas P. Bersamin was designated to sit as additional member replacing Associate Justice Presbitero J. Velasco, Jr. per Raffle dated 28 July 2009.

THIRD DIVISION

[A.M. No. P-09-2665. August 4, 2009]

JUDGE ALMA CRISPINA B. COLLADO-LACORTE, Metropolitan Trial Court, Branch 51, Caloocan City, *complainant, vs.* **EDUARDO RABENA, Process Server, Municipal Trial Court in Cities, Vigan City,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; SUMMONS; PERSONAL SERVICE; PREFERRED MODE OF SERVICE IN AN ACTION *IN PERSONAM*; SUBSTITUTED SERVICE, WHEN ALLOWED.—** As emphasized in *Ma. Imelda M. Manotoc v. Hon. Court of Appeals,* which is also applicable to process servers: In an action strictly *in personam*, personal service on the defendant is the preferred mode of service, that is, by handing a copy of the summons to the defendant in person. **If defendant, for excusable reasons, cannot be served with the summons within a reasonable period, then substituted service can be resorted to. While substituted service of summons is permitted, "it is extraordinary in character and in derogation of the usual method of service." Hence, it must faithfully and strictly comply with the prescribed requirements and circumstances authorized by the rules. Indeed, "compliance with the rules regarding the service of summons is as much important as the issue of due process of jurisdiction.** Requirements for Substituted Service — Section 8 of Rule 14 of the old Revised Rules of Court which applies to this case provides: SEC. 8. *Substituted Service*. If the defendant cannot be served within a reasonable time as provided in the preceding section [personal service on defendant], service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof. We can break down this section into the following requirements to effect a valid substituted service: (1) Impossibility of Prompt Personal Service — The party relying on substituted service or the sheriff **must show**

that defendant cannot be served promptly or there is impossibility of prompt service. Section 8, Rule 14 provides that the plaintiff or the sheriff is given a "reasonable time" to serve the summons to the defendant in person, but no specific time frame is mentioned. 'Reasonable time' is defined as "so much time as is necessary under the circumstances for a reasonably prudent and diligent man to do, conveniently, what the contract or duty requires that should be done, having regard for the rights and possibility of loss, if any [,] to the other party." Under the Rules, the service of summons has no set period. However, when the court, clerk of court, or the plaintiff asks the sheriff to make the return of the summons and the latter submits the return of summons, then the validity of the summons lapses. The plaintiff may then ask for an *alias* summons if the service of summons has failed. What then is a reasonable time for the sheriff to effect a personal service in order to demonstrate impossibility of prompt service? To the plaintiff, "reasonable time" means no more than seven (7) days since an expeditious processing of a complaint is what a plaintiff wants. To the sheriff, "reasonable time" means 15 to 30 days because at the end of the month, it is a practice for the branch clerk of court to require the sheriff to submit a return of the summons assigned to the sheriff for service. The Sheriff's Return provides data to the Clerk of Court, which the clerk uses in the Monthly Report of Cases to be submitted to the Office of the Court Administrator within the first ten (10) days of the succeeding month. Thus, one month from the issuance of summons can be considered "reasonable time with regard to personal service on the defendant. Sheriffs are asked to discharge their duties on the service of summons with due care, utmost diligence, and reasonable promptness and speed so as not to prejudice the expeditious dispensation of justice. Thus, they are enjoined to try their best efforts to accomplish personal service on defendant. On the other hand, since the defendant is expected to try to avoid and evade service of summons, the sheriff must be resourceful, persevering, canny, and diligent in serving the process on the defendant. **For substituted service of summons to be available, there must be several attempts** by the sheriff **to personally serve the summons within a reasonable period [of one month] which eventually resulted in failure to prove impossibility of prompt service. "Several attempts" means at least three (3) tries, preferably on at least two different dates.** In addition,

the sheriff must cite why such efforts were unsuccessful. It is only then that impossibility of service can be confirmed or accepted. (2) Specific Details in the Return — The sheriff **must describe in the Return of Summons the facts and circumstances surrounding the attempted personal service. The efforts made to find the defendant and the reasons behind the failure must be clearly narrated in detail in the Return. The date and time of the attempts on personal service, the inquiries made to locate the defendant, the name/s of the occupants of the alleged residence or house of defendant and all other acts done, though futile, to serve the summons on defendant must be specified in the Return to justify substituted service.** The form on Sheriff's Return of Summons on Substituted Service prescribed in the Handbook for Sheriffs published by the Philippine Judicial Academy requires a narration of the efforts made to find the defendant personally and the fact of failure. Supreme Court Administrative Circular No. 5 dated November 9, 1989 requires that impossibility of prompt service should be shown by stating the efforts made to find the defendant personally and the failure of such efforts, which should be made in the proof of service.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; PROCESS SERVERS; SIMPLE NEGLECT OF DUTY; FAILURE TO GIVE PROPER ATTENTION TO REQUIRED TASKS, A CASE OF.—** A process server's primary duty is to serve court notices. This requires utmost dedication on his part to ensure that all notices assigned to him are duly served on the parties. The significance of the duties of a process server was enunciated in *Zenauda Musni v. Ernesto G. Morales*. It is through the process server that defendants learn of the action brought against them by the complainant. More important, it is also through the service of summons by the process server that the trial court acquires jurisdiction over the defendant. It is therefore important that summons, other writs and court processes be served expeditiously. Considering the grave responsibilities imposed on him, Eduardo R. Rabena, despite his explanation that he had performed his duty with utmost good faith, proved to be careless and imprudent in discharging his duties. Neither neglect nor delay should be allowed to stall the expeditious disposition of cases. As such, he is indeed guilty of simple neglect of duty, which is the failure of an employee

to give proper attention to a required task. Simple neglect of duty signifies "disregard of a duty resulting from carelessness or indifference."

3. ID.; ID.; ID.; ID.; ID.; ID.; PENALTY; CASE AT BAR.— Under Section 23, Rule XIV of the Omnibus Civil Service Rules and Regulations, (simple) neglect of duty is punishable by suspension of one month and one day to six months for the first offense. However, under Sec. 19, Rule XIV of the same Rules, the penalty of fine (instead of suspension) may also be imposed in the alternative. Following the Court's ruling in several cases involving (simple) neglect of duty, this Court finds the penalty of a fine in the amount of ₱5,000.00 just and reasonable.

D E C I S I O N

NACHURA, *J.*:

The instant case arose from a letter[1] complaint sent to the Office of the Court Administrator dated 13 February 2008 by Presiding Judge Francisco A. Ante, Jr., Municipal Trial Court in Cities, First Judicial Region, Vigan City, on the improper service of summons made by Ernesto R. Rabena, Process Server of the said court, relative to Civil Case No. 07-29131, entitled *Moneyline Lending Investors Inc., v. Rowell Mark D. Abero & Ernesto R. Rabena,* which was raffled off to Branch 51, Metropolitan Trial Court of Caloocan City, presided by Judge Alma Crispina B. Collado-Lacorte.

As stated by the Office of the Court Administrator, the facts of the case are as follows:

According to Judge Collado-Lacorte, the Officer's Return dated 18 February 2008 revealed that summons upon defendants Rowell Mark D. Abero and Ernesto R. Rabena were served, through substituted service, upon Elvira Abero and Anita Rabena, respectively. The service was made without stating in the Return the facts and circumstances surrounding the failed personal service; the date and time of the attempts on personal service;

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[1] *Rollo,* p. 1.

the inquiries made to locate the defendants; the names of the occupants of the defendants' alleged residence, and all other acts done, though futile, to serve the summons on defendants. Hence, the substituted service on the defendants was improper, as it failed to comply with the requirements prescribed by the Rules of Court, and deviated from the ruling of the Supreme Court in *Ma. Imelda M. Manotoc v. Court of Appeals*.[2] Accordingly, the court did not acquire jurisdiction over their persons.

On 16 September 2008, an Order was issued by Judge Collado-Lacorte that since the substituted service on the defendants were improperly made, an *Alias* Summons be issued to them.

In his Letter dated 4 February 2009, Eduardo Rabena explained: 1) the defendant Ernesto R. Rabena was not related to him; 2) after showing to Ernesto R. Rabena the summons with the complaint attached, Ernesto R. Rabena ran away, thus, although he was duly notified, the said defendant wantonly refused to receive and sign the same; 3) the other defendant Rowell Mark A. Abero could not be located, as he failed to appear for six (6) months at his residence; and when he tendered the summons to Rowell's mother Elvira Abero, she said that her son told her, "*HUWAG TATANGGAP NG ANO MANG DUMATING NA PAPELES O DOKUMENTO LALO NA KONG GALING SA KORTE*," such that he no longer insisted lest he be charged with Grave Coercion; and 4) he had performed his duty with utmost good faith. Hence, he should not be faulted for the refusal of the concerned persons to receive the summons.

After evaluation of the case, the Office of the Court Administrator recommended that the case be re-docketed as a regular administrative matter and that Eduardo R. Rabena be found guilty of simple neglect of duty and be fined the amount of ₱5,000.00, and be sternly warned that a repetition of the same or similar act shall be dealt with more severely.

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[2] G.R. No. 130974, August 16, 2006, 499 SCRA 21.

The Court agrees with the findings and recommendations of the Office of the Court Administrator.

In the 16 September 2008 Order, the Return of Service of Summons of Process Server Eduardo R. Rabena states:

> The undersigned respectfully returned to the Hon. Court, Metropolitan Trial Court, First Judicial Region, Branch 51, Caloocan City the herein summons on the person of MR. ERNESTO RABENA was duly notified and received by his sister Anita Rabena, as evidenced by her signature appearing on the face of the herein summons.
>
> The undersigned respectfully returned to the Hon. Court, Metropolitan Trial Court, Branch 51, Caloocan City the herein summons on the person of ROWELL MARK D. ABERO was duly notified and received by his mother Mrs. Elvira Abero, as evidenced by her signature appearing on the face of the herein summons.

It is clear that Eduardo R. Rabena failed to fulfill his duty with utmost diligence as a process server. As emphasized in *Ma. Imelda M. Manotoc v. Hon. Court of Appeals,*[3] which is also applicable to process servers:

> In an action strictly *in personam*, personal service on the defendant is the preferred mode of service, that is, by handing a copy of the summons to the defendant in person**. If defendant, for excusable reasons, cannot be served with the summons within a reasonable period, then substituted service can be resorted to. While substituted service of summons is permitted, "it is extraordinary in character and in derogation of the usual method of service." Hence, it must faithfully and strictly comply with the prescribed requirements and circumstances authorized by the rules. Indeed, "compliance with the rules regarding the service of summons is as much important as the issue of due process of jurisdiction."**
>
> Requirements for Substituted Service
>
> Section 8 of Rule 14 of the old Revised Rules of Court which applies to this case provides:
>
> SEC. 8. *Substituted Service*. If the defendant cannot be served within a reasonable time as provided in the preceding section [personal

[3] *Id*. at 33.

service on defendant], service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.

We can break down this section into the following requirements to effect a valid substituted service:

(1) Impossibility of Prompt Personal Service

The party relying on substituted service or the sheriff **must show that defendant cannot be served promptly or there is impossibility of prompt service**. Section 8, Rule 14 provides that the plaintiff or the sheriff is given a "reasonable time" to serve the summons to the defendant in person, but no specific time frame is mentioned. 'Reasonable time' is defined as "so much time as is necessary under the circumstances for a reasonably prudent and diligent man to do, conveniently, what the contract or duty requires that should be done, having regard for the rights and possibility of loss, if any [,] to the other party." Under the Rules, the service of summons has no set period. However, when the court, clerk of court, or the plaintiff asks the sheriff to make the return of the summons and the latter submits the return of summons, then the validity of the summons lapses. The plaintiff may then ask for an *alias* summons if the service of summons has failed. What then is a reasonable time for the sheriff to effect a personal service in order to demonstrate impossibility of prompt service? To the plaintiff, "reasonable time" means no more than seven (7) days since an expeditious processing of a complaint is what a plaintiff wants. To the sheriff, "reasonable time" means 15 to 30 days because at the end of the month, it is a practice for the branch clerk of court to require the sheriff to submit a return of the summons assigned to the sheriff for service. The Sheriff's Return provides data to the Clerk of Court, which the clerk uses in the Monthly Report of Cases to be submitted to the Office of the Court Administrator within the first ten (10) days of the succeeding month. Thus, one month from the issuance of summons can be considered "reasonable time with regard to personal service on the defendant.

Sheriffs are asked to discharge their duties on the service of summons with due care, utmost diligence, and reasonable promptness and speed so as not to prejudice the expeditious dispensation of justice. Thus, they are enjoined to try their best efforts to accomplish personal service on defendant. On the other hand, since the defendant is expected to

try to avoid and evade service of summons, the sheriff must be resourceful, persevering, canny, and diligent in serving the process on the defendant. **For substituted service of summons to be available, there must be several attempts** by the sheriff **to personally serve the summons within a reasonable period [of one month] which eventually resulted in failure to prove impossibility of prompt service. "Several attempts" means at least three (3) tries, preferably on at least two different dates**. In addition, the sheriff **must cite why such efforts were unsuccessful. It is only then that impossibility of service can be confirmed or accepted**.

(2) Specific Details in the Return

The sheriff **must describe in the Return of Summons the facts and circumstances surrounding the attempted personal service. The efforts made to find the defendant and the reasons behind the failure must be clearly narrated in detail in the Return. The date and time of the attempts on personal service, the inquiries made to locate the defendant, the name/s of the occupants of the alleged residence or house of defendant and all other acts done, though futile, to serve the summons on defendant must be specified in the Return to justify substituted service**. The form on Sheriff's Return of Summons on Substituted Service prescribed in the Handbook for Sheriffs published by the Philippine Judicial Academy requires a narration of the efforts made to find the defendant personally and the fact of failure. Supreme Court Administrative Circular No. 5 dated November 9, 1989 requires that impossibility of prompt service should be shown by stating the efforts made to find the defendant personally and the failure of such efforts, which should be made in the proof of service.

x x x x x x x x x(emphasis supplied)

As gleaned from the cited case and from the Return of Service of Summons of Process Server Eduardo R. Rabena and his explanation, respondent is liable for simple neglect or dereliction of duty.

A process server's primary duty is to serve court notices. This requires utmost dedication on his part to ensure that all notices assigned to him are duly served on the parties.[4] The

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[4] *Rodrigo-Ebron v. Adolfo*, 522 SCRA 286.

significance of the duties of a process server was enunciated in *Zenauda Musni v. Ernesto G. Morales*.[5]

> It is through the process server that defendants learn of the action brought against them by the complainant. More important, it is also through the service of summons by the process server that the trial court acquires jurisdiction over the defendant. It is therefore important that summons, other writs and court processes be served expeditiously.

Considering the grave responsibilities imposed on him, Eduardo R. Rabena, despite his explanation that he had performed his duty with utmost good faith, proved to be careless and imprudent in discharging his duties. Neither neglect nor delay should be allowed to stall the expeditious disposition of cases. As such, he is indeed guilty of simple neglect of duty, which is the failure of an employee to give proper attention to a required task. Simple neglect of duty signifies "disregard of a duty resulting from carelessness or indifference."

Under Section 23, Rule XIV of the Omnibus Civil Service Rules and Regulations, (simple) neglect of duty is punishable by suspension of one month and one day to six months for the first offense. However, under Sec. 19, Rule XIV of the same Rules, the penalty of fine (instead of suspension) may also be imposed in the alternative. Following the Court's ruling in several cases involving (simple) neglect of duty, this Court finds the penalty of a fine in the amount of ₱5,000.00 just and reasonable.

WHEREFORE, Process Server Eduardo B. Rabena is hereby *FOUND GUILTY* of Simple Neglect of Duty and is *FINED* in the amount of ₱5,000.00. He is, likewise, *STERNLY WARNED* 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 *Peralta, JJ.,* concur.

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[5] A.M. No. P-99-1340, September 23, 1999, 315 SCRA 85.

THIRD DIVISION

[A.M. No. RTJ-07-2031. August 4, 2009]
(Formerly OCA IPI No. 06-2484-RTJ)

ADELPHA E. MALABED, *complainant, vs.* **JUDGE ENRIQUE C. ASIS, Regional Trial Court, Branch 16, Naval, Biliran,** *respondent.*

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; SHOULD ADMINISTER JUSTICE IMPARTIALLY AND WITHOUT DELAY; PARTIALITY OR BIAS, DEFINED.—** Rule 1.02, Canon I of the Code of Judicial Conduct provides that a judge should administer justice impartially and without delay. Partiality, or bias, has been defined as a predisposition to decide a cause or an issue in a certain way, which does not leave the mind perfectly open to conviction. However, mere suspicion that respondent Judge is partial is not enough. Clear and convincing evidence to prove the charge is required. The burden to prove that respondent Judge committed the acts complained of rests on the complainant.

2. **ID.; ID.; A JUDGE'S ERRONEOUS JUDGMENT CANNOT BE A GROUND FOR DISCIPLINARY ACTION IN THE ABSENCE OF BAD FAITH; CASE AT BAR.—** Equally tenuous is complainant's contention that the CA's finding of grave abuse of discretion on the part of respondent Judge proves the latter's bias and partiality. A finding of grave abuse of discretion does not necessarily prove that respondent Judge displayed a preference for one of the party-litigants. As aptly observed by the Investigating Justice, the reversal of a judge's order by a superior court in a *certiorari* case is, in itself, not a ground for an administrative action against the judge. Respondent Judge, by granting the petition for relief in Civil Case No. B-1016 on the ground that complainant failed to disclose a verbal agreement between her family and defendants therein, may have committed an error of judgment. However, in the absence of bad faith, such erroneous judgment cannot be a ground for disciplinary action. In *Maylas, Jr. v. Judge Sese,* respondent Judge was administratively charged because he granted a motion

to quash based on a ground not raised by the accused, and the CA found that such act was tantamount to a grave abuse of discretion. The Court dismissed the complaint against respondent Judge, holding thus: x x x in the absence of fraud, dishonesty and corruption, the acts of a judge in his official capacity are not subject to disciplinary action. He cannot be subjected to liability – civil, criminal or administrative – for any of his official acts, no matter how erroneous as long as he acts in good faith. Only judicial errors tainted with fraud, dishonesty, gross ignorance, bad faith or deliberate intent to do an injustice will be administratively sanctioned. Settled is the rule that errors committed by a judge in the exercise of his adjudicative functions cannot be corrected through administrative proceedings, but should instead be assailed through judicial remedies.

3. ID.; ID.; A JUDGE'S CONDUCT SHOULD BE FREE OF IMPROPRIETY WITH RESPECT TO THE PERFORMANCE OF HIS OFFICIAL DUTIES AND TO HIS BEHAVIOR AS A PRIVATE INDIVIDUAL.— Respondent Judge must bear in mind that membership in the judiciary circumscribes one's personal conduct and imposes upon him certain restrictions, the faithful observance of which is the price one has to pay for holding such a distinguished position. A magistrate of the law must comport himself in a manner that his conduct must be free of a whiff of impropriety, not only with respect to the performance of his official duties, but also to his behavior outside of his sala and as a private individual. His conduct must be able to withstand the most searching public scrutiny, for the ethical principles and sense of propriety of a judge are essential to the preservation of the people's faith in the judicial system lest public confidence in the judiciary would be eroded by the incompetent, irresponsible and negligent conduct of judges. In this case, respondent Judge should have been more cautious in his close associations with members of the Bar that led complainant to believe that the former had already been predisposed to the opposing party and, hence, renders his impartiality questionable.

DECISION

PERALTA, *J.*:

Before this Court is a verified complaint[1] dated February 23, 2006, filed by complainant Adelpha E. Malabed with the Office of the Court Administrator (OCA), charging respondent Judge Enrique C. Asis with violation of Rule 1.02, Canon I of the Code of Judicial Conduct for exhibiting bias and partiality with regard to Civil Case No. B-1016, entitled *Adelpha E. Malabed v. Sps. Ruben Cericos and Delia Cericos*.

Herein complainant, therein plaintiff in the civil case, acquired a parcel of land from her brother Conrado Estreller. Thereafter, therein defendants, spouses Ruben and Delia Cericos, began building their house on the said parcel of land belonging to Estreller. When complainant knew that she would acquire the parcel of land from Estreller, she wrote the Spouses Cericos, informing them of her intention to use the land, and asked that they vacate the premises. After the title to the land had been transferred in her name, complainant, through counsel, made a written demand on the spouses Cericos to vacate the land in question within a period of 90 days from receipt thereof. Still, the Spouses Cericos refused to heed complainant's request and the parties failed to reach an amicable settlement. Thus, on April 15, 1996, complainant filed a civil case for ejectment and damages with the Municipal Circuit Trial Court (MCTC) of Kawayan-Almeria, Kawayan, Biliran, docketed as Civil Case No. 860, entitled *Adelpha E. Malabed v. Sps. Ruben Cericos and Delia T. Cericos*.

In its Decision[2] dated July 11, 1997, the MCTC rendered judgment in favor of complainant (therein plaintiff), the dispositive portion of which reads:

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[1] *Rollo*, pp. 1-4.

[2] *Id.* at 6-12.

WHEREFORE, for all the foregoing, judgment is hereby rendered in favor of the plaintiff and against the defendants:

1. Ordering the defendants to vacate the premises by removing any structure found or building inside the lot of the plaintiff which is described in paragraph 2 of the complaint;
2. Ordering the defendants to pay the plaintiff the sum of ₱10,000.00 as attorney's fee and appearance fees of ₱3,500.00;
3. Ordering the defendants to pay the plaintiff the expenses of litigation in the amount of ₱5,000.00;
4. Ordering the defendants to pay plaintiff punitive and corrective damages in the amount of ₱3,000.00.

SO ORDERED.

The defendants in said civil case, represented by counsel, Atty. Redentor Villordon, appealed to the Regional Trial Court (RTC), Branch 16 of Naval, Biliran, where respondent Judge presided. Said case was re-docketed as Civil Case No. B-1016.

On January 25, 1999, respondent Judge affirmed the MCTC Decision[3] dated July 11, 1997. Defendants Spouses Cericos filed a Motion for Reconsideration on March 2, 1999, but said motion was denied by respondent Judge for lack of merit in an Order[4] dated March 4, 1999.

On May 3, 1999, respondent Judge issued a Writ of Execution, pursuant to which the sheriff padlocked the house of defendants Spouses Cericos and delivered possession thereof to complainant.

On May 12, 1999, defendants Spouses filed a Petition for Relief from Judgment[5] prepared by their new counsel, Atty. Meljohn de la Peña, which complainant duly opposed. Complainant, in turn, filed a Motion for Writ of Demolition on June 10, 1999, which defendants Spouses opposed.

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[3] *Id.* at 13-17.

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

[5] *Id.* at 197-202.

In an Order[6] dated August 12, 1999, respondent Judge granted the petition for relief and denied the motion for writ of demolition, stating thus:

x x x x x x x x x

The thrust of the petition is anchored on the fact that plaintiff-appellee failed to disclose a material fact in court that she had given her consent to the defendants-appellants before they started to build the residential house on the lot allegedly owned by plaintiff-appellee which is the subject matter of the above-entitled case.

Defendants-appellants' mother, Simplicia A. Ybañez, widow, manifested in her affidavit of good faith that sometime in the month of April 1990, she, her daughter Delia Cericos, and one Melda Ampong, met Adelpha E. Malabed, plaintiff-appellee, her mother Matilde Estreller, Conrado Estreller, eldest brother, and one Charita Estreller, elder sister of the plaintiff-appellee in a rented house of Charita Estreller and Conrado Estreller at Kamuning, Quezon City for the purpose of asking their formal consent to renovate her old house standing on the lot in question. In that meeting, Adelpha E. Malabed, plaintiff-appellee, together with her mother, brother and sisters, approved her plans and had given their consent not only to the renovation of the old house owned by Simplicia A. Ybañez but, if possible, to construct a new one for the Cericos Family and her mother.

That pursuant to the approval, consent and agreement to allow them to construct said residential house and to surrender the same to the plaintiff-appellee after twenty-five (25) years as one of the terms and conditions, defendants-appellants through [their] mother, Simplicia A. Ybañez, started working in the construction sometime in 1991 and the house was finished in 1992.

Considering the warranty under this verbal agreement which induced the defendants-appellants to construct the said residential house at the cost of Five Hundred Thousand Pesos (₱500,000.00), there is therefore a need to look into and dig deeper by way of giving the defendants-appellants their day in court to show by evidence whether this [is] true or not. This alleged warranty on the part of the plaintiff-appellee which she failed to disclose is very material and could possibly tilt the judgment of this court on the ground of bad faith on the part

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[6] *Id.* at 20-23.

of plaintiff-appellee. As a matter of fact, Conrado Estreller, plaintiff-appellee's eldest brother, was the one who procured the building permit for the defendants-appellants. The failure therefore on the part of the plaintiff-appellee to disclose this material fact of prior agreement, which resulted in the judgment in favor of the plaintiff-appellee, is tantamount to extrinsic fraud.

x x x x x x x x x

The Court believes that there is a need to ventilate the facts and the evidences pertaining to that prior agreement which, as a result of the failure on the part of the plaintiff-appellee to disclose this material fact, resulted to the injury of the defendants-appellants whose house is now the subject of a motion for demolition.

x x x x x x x x x

Respondent Judge likewise denied complainant's motion for reconsideration in an Order dated December 20, 1999.

Complainant then filed a petition for *certiorari*[7] with the Court of Appeals (CA) assailing the Order dated August 12, 1999 of respondent Judge.

In its Decision[8] dated June 23, 2000, the CA granted complainant's petition and annulled the Orders dated August 12, 1999 and December 20, 1999, stating thus:

x x x x x x x x x

The petition for relief was filed out of time (on May 12, 1999). The 60-day period for its filing should be reckoned from the date of receipt by private respondents of the RTC decision. However, such material date does not appear in the record. But even if the decision was received by private respondents on the date (March 2, 1999) of filing of their motion for reconsideration thereof, the petition was still filed out of time. It was presented on the 71st day counted from March 2, 1999.

x x x x x x x x x

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[7] Date of filing does not appear in the records.

[8] *Rollo*, pp. 25-34.

Furthermore, in *Garcia v. Court of Appeals* (202 SCRA 228), it was held that fraud as a ground for petition for relief must be extrinsic or collateral. In the same case, the Supreme Court made a distinction between extrinsic and intrinsic fraud, thus:

x x x x x x x x x

Given the definitions of extrinsic and intrinsic fraud, private respondents' averments concerning the fraud purportedly committed by petitioner and her predecessor-in-interest (Conrado) do not constitute extrinsic fraud.

x x x x x x x x x

In her Complaint, complainant alleged that respondent Judge showed bias and partiality in favor of defendants Spouses Cericos because their new counsel, Atty. De la Peña, represented respondent Judge in administrative complaints filed against the latter. Complainant further averred that her sister, Perla Haverly, was plaintiff in a civil case for ejectment docketed as Civil Case No. 973, filed with the MCTC of Kawayan, Biliran, which rendered a decision in her sister's favor. The defendants therein filed an appeal with respondent Judge's court, which granted the same. Complainant claimed that respondent Judge reversed the decision of the MCTC because the counsel for the defendants was Atty. De la Peña.

In his Comment[9] dated May 23, 2006, respondent Judge denied that he granted the petition for relief from judgment because Atty. De la Peña represented him in an administrative complaint filed against him docketed as A.M. No. RTJ-00-1590, entitled *Gina B. Ang v. Judge Enrique C. Asis.* He stated that, when Atty. De la Peña filed the petition for relief from judgment on behalf of defendants Spouses on August 12, 1999, the administrative case against him had not yet been filed, as it was only filed on April 7, 2000. He refuted the charge that he was biased in favor of Atty. De la Peña in relation to the civil case filed by complainant's sister, arguing that Atty. De la Peña was neither a defendant nor a plaintiff in the said civil case,

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[9] *Id.* at 46-51.

which could have influenced him in deciding the case. Respondent Judge added that it was, in fact, complainant herself who came to his office several times, lobbying for a favorable judgment for her sister in a civil case for quieting of title[10] filed before his sala. He told her that he would not hesitate to write a correct verdict based on the evidence appearing in the case records. He claimed that after a conscientious deliberation of the case, he rendered a decision in accordance with the evidence and the applicable law and jurisprudence on the matter.

In her Reply[11] dated July 19, 2006, complainant denied approaching respondent Judge to lobby for a favorable decision. She emphasized that she had filed a petition for review relative to Civil Case No. B-1016 before the CA, Cebu City.

In his Rejoinder to Reply[12] dated August 24, 2006, respondent Judge asserted that there was no finding of misconduct in the CA Decision dated June 23, 2000, which merely annulled and set aside the assailed Orders in Civil Case No. B-1016. He added that in complainant's attempt to strengthen her case, she added as her second cause of action the administrative case of *Felicitas V. Dadizon v. Judge Enrique Asis* docketed as A.M. No. RTJ-03-1760, which was already dismissed by the Court on January 15, 2004.

In its Report[13] dated October 17, 2006, the OCA gave the following findings:

> **EVALAUTION:** (sic) Before a respondent judge can be declared as biased and partial in favor of a party, the court has to be shown acts and conduct of a judge clearly indicative of arbitrariness or prejudice. Mere suspicion that the judge is partial to a party is not

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[10] Docketed as Civil Case No. B-1118, entitled *Perla Estreller Haverly, joined by her husband William J. Haverly v. Rodolfo M. Catigbe, Sr., Juan Catigbe, Adriano G. Ampong and Composa G. Ampong*.

[11] *Rollo,* pp. 71-73.

[12] *Id.* at 151-160.

[13] *Id.* at 188-192.

enough; there should be adequate evidence to prove the charge. *(Opis vs. Judge Dimaano, A.M. No. RTJ-05-1942, 28 July 2005)*

In this case, complainant alleged that respondent judge was biased in favor of Atty. Meljohn Dela Peña because he was his counsel in the administrative case filed against him by Ms. Gina Ang. The respondent judge disputed this, arguing that there was no administrative case yet when Atty. Dela Peña handled the case of the Sps. Cericos.

The charge of bias and partiality must, therefore, fail. Aside from the complainant's allegation of bias and partiality because the Sps. Cericos are represented by Atty. Meljohn Dela Peña, she failed to substantiate her claims.

The complainant, in her Reply dated 19 July 2006, accuses the respondent judge of grave abuse of discretion in granting the Petition for Relief from Judgment based on the Decision dated 23 June 2000 of the Court of Appeals, which granted the complainant's Petition for *Certiorari*. In the said Decision, the respondent's Orders dated 12 August 1999 and 20 December 1999 were annulled and set aside. Its findings read as follows:

> The petition for relief was filed out of time (on May 12, 1999). The 60-day period for its filing should be reckoned from the date of receipt by private respondents of the RTC decision. However, such material date does not appear in the record. But, even if the decision was received by private respondents on the date (March 2, 1999) of filing of their Motion for Reconsideration thereof, the petition was still filed out of time. It was presented on the 71st day counted from March 2, 1999.
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> The 60-day period was not suspended during the pendency of the motion for reconsideration. Thus, in *Meralco v. Domingo* (18 SCRA 961), the Supreme Court held:
>
>> The filing of the motion for reconsideration and a new trial, while it suspended the period for the finality of the judgment did not suspend the period provided for in Rule 38. It is error and grave abuse of discretion by the trial court to subtract from the sixty-day period the time when the motion for reconsideration and a new trial was pending because it has been constantly held that the periods fixed by Rule 38 are mandatory and non-extendible and are not subject to any condition or contingency, as the rule was itself devised to meet a condition or contingency.

> x x x x x x x x x
>
> The petition for relief is based mainly on the alleged verbal agreement between private respondents and Conrado whereby the former were allowed to build a house on the land and occupy the same for twenty-five years, upon expiration of which they would vacate the house and the ownership thereof would vest in Conrado.
>
> We disagree with respondent's ruling that it was the duty of petitioner to disclose the alleged verbal agreement during the trial. Said verbal agreement is a matter of defense which private respondent should have presented at the earliest opportunity.

Although there was no direct finding of grave abuse of discretion on the part of the respondent judge, the Court of Appeals found that the petition for relief was filed out of time counting from the date the Sps. Cericos received the adverse decision on the case presumably on 02 March 1999. The Petition for Relief was filed on the 71st day and was clearly beyond the 60-day reglementary period for the filing of a petition for relief. The respondent should not have entertained it as it makes him liable to the charge of gross ignorance of the law or procedure.

The Court has always emphasized that ignorance of the law or procedure is the mainspring of justice. For this reason, members of the bench are always reminded of their duty to be faithful to the law and to maintain professional competence. Judges are called upon to exhibit more than cursory acquaintance with statutes and procedural rules. Basic rules must be at the palms of their hands. Their inexcusable failure to observe the basic laws and rules will render them administratively liable. Where the law or procedure involved, as in this case, is simple and elementary, lack of conversance therewith constitutes gross ignorance of the law or procedure *(Abbariao vs. Judge Beltran, A.M. No. RTJ-04-1839, 31 August 2005).* In this case, the respondent judge was accused of grave abuse of discretion because he granted Sps. Cericos' Petition for Relief from Judgment which was filed out of time. The Court of Appeals' findings clearly stated that said petition was filed out of time. The law or procedure involved in this case is simple, hence, the respondent's act in granting the petition constituted gross ignorance of the law or procedure.

Under Section 8(9), Rule 140 of the Revised Rules of Court (as amended), gross ignorance of the law or procedure is classified as a

serious charge. Section 11A (3) of the same Rules states that the fine for such charge is more than ₱20,000.00, but not exceeding ₱40,000.00.

In the light of the prevailing facts of this case, a fine of ₱30,000.00 is commensurate under the circumstances.

RECOMMENDATION: In view of the foregoing, we respectfully submit for the consideration of the Honorable Court our recommendations:

(1) That the instant administrative complaint be **RE-DOCKETED** as a regular administrative matter;

(2) That respondent Judge Enrique C. Asis, Presiding Judge, Regional Trial Court (Branch 16), Naval, Biliran, be **ADJUDGED** administratively liable for gross ignorance of the procedural rules; and

(3) That Judge Asis be **FINED** in the amount of ₱30,000.00 and **WARNED** that a repetition of the same or similar act shall be dealt with more severely.

In her Verified Sur-Rejoinder[14] dated October 20, 2006, complainant alleged that the act of respondent Judge in granting the petition for relief with the entry of appearance of new counsel, Atty. De la Peña, was suspect for the following reasons: (1) the petition for relief was filed out of time and respondent Judge deliberately failed to indicate in his Order dated August 12, 1999 the timeliness of the petition; (2) the petition for relief was premised on an alleged verbal agreement between therein defendants and complainant's brother allowing defendants to occupy the lot, which respondent Judge had argued was the duty of complainant to disclose and, since complainant did not do so earlier, he granted relief to defendants. Complainant claimed that this was irregular because the issue presented by defendants was a new one and barred by estoppel, and; (3) respondent Judge deliberately overlooked the basic remedy of defendants which would have been to appeal the decision. Complainant also denied having entered respondent Judge's chambers.

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[14] *Id.* at 194-196.

In a Resolution[15] dated January 15, 2007, the Court re-docketed the instant administrative complaint as a regular administrative matter.

In a Resolution[16] dated March 26, 2007, the Court referred the case to CA Associate Justice Mario L. Guariña III for investigation, report and recommendation, or decision within ninety (90) days from notice.

On February 29, 2008, Justice Guariña submitted his Investigation, Report and Recommendation,[17] recommending that respondent be exonerated from the charges of bias and partiality. The Report contained the following findings:

x x x   x x x   x x x

The administrative complaint of Adelpha Malabed against Judge Enrique C. Asis is essentially that respondent Judge Asis was biased and partial in resolving two civil cases in favor of certain parties because their lawyer, Atty. Meljohn Dela Peña, was the respondent's counsel in an administrative case against him. The evidence submitted by the complainant is confined to the issuances of Judge Asis in these two cases. *Res ipsa* (sic) *Loquitor*. The Office of the Court Administrator had, on the basis of these records, made the recommendation that the respondent be held liable for gross ignorance of the procedural rules, which seems to imply that if the written acts of the respondent without more cannot show bias or partiality, he can be nailed down for gross ignorance.

The respondent Judge Asis is the presiding judge of the RTC of Naval, Biliran, Branch 16. The backdrop of the two cases coming before him is as follows: 1.) civil case B-1016 entitled *Adelpha Malabed vs. Spouses Ruben Cericos and Delia Cericos* was an appeal from the decision of the MCTC of Kawayan-Almeria Biliran in civil case 860 for ejectment entitled *Adelpha Malabed vs. Spouses Ruben Cericos and Delia Cericos*. The MCTC rendered a decision on July 11, 1997 causing the Cericos to appeal in B-1016. The respondent rendered a

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[15] *Id.* at 209.

[16] *Id.* at 215.

[17] Dated February 27, 2008.

judgment on January 25, 1999 affirming the MCTC decision. The MR of the Cericos dated March 2, 1999 was denied on March 4, 1999. But on May 12, 1999, the Cericos filed a petition for relief from judgment. The respondent, on August 12, 1999, issued an order granting the petition and ordering new trial. The motion for reconsideration of Malabed was denied on December 20, 1999. Malabed filed a petition for *certiorari* with the Court of Appeals in SP 56613 which resulted in a decision setting aside the respondent's orders of August 12, 1999 and December 20, 1999.

(2) B-1252 entitled *Perla Estreller Haverly vs. Rodolfo Catigbe, Juana Catigbe, Adriano Ampong and Composa Ampong* was an appeal from the decision of the MCTC Kawayan-Almeria in civil case 973 entitled *Perla Estreller Haverly vs. Rodolfo Catigbe, Juana Catigbe, Adriano Ampong and Composa Ampong* for recovery of possession. The MCTC rendered the decision on April 7, 2005 ordering the defendants to vacate the premises in favor of plaintiff Haverly. The defendants appealed to the RTC in B-1252 which resulted in a decision by the respondent on January 9, 2006 reversing the MCTC ruling.

In B-1016, Atty. Meljohn Dela Peña entered his appearance for the Cericos during the presentation of the relief from judgment obtaining the favorable order of August 12, 1999. He represented from the start the Catigbes, *etc*. in case 973/B-1252 obtaining from the respondent in B-1252 a reversal of the decision of the MCTC in case 973 in January 2006.

But we will observe that, as pointed out by the respondent in his comments which the complainant did not refute, the administrative case RTJ-00-1590 where Atty. Dela Peña represented the respondent was filed on April 7, 2000 – months after the respondent rendered the August 12, 1999 and December 20, 1999 orders in B-1016.

Hence, for the complainant to say that the respondent issued the August 12, 1999 and December 20, 1999 orders in B-1016 because of his attachment to Atty. Dela Peña who only became his lawyer in RTJ-00-1590 subsequent to the issuance of these orders, is very speculative. She is using the fact that the respondent engaged the services of Atty. Dela Peña to be his lawyer as evidence that he was partial towards the lawyer even before. The logic is not even valid. As stated in *Cea vs. Paguio*, 397 SCRA 494, bias cannot be presumed. There must be competent and direct evidence derived from the testimonies of witnesses to prove the charge. This is not the case here.

The complainant argues nonetheless that in SP 56613, the Court of Appeals found that the respondent committed grave abuse of discretion in issuing the August 12, 1999 and December 20, 1999 orders. The reversal of a judge's order by a superior court in a *certiorari* case is, in itself, not a ground for an administrative action against the judge. We must be careful in distinguishing the cause of action in a petition for *certiorari* from a cause of action in an administrative case. The fact that a judge's order is set aside on *certiorari* does not connote that he was biased or partial in favor of the party who was benefited by the order. There will hardly be any judge who can escape administrative action if the opposite view prevails. For who is the judge who can proudly say that he was never reversed on *certiorari*?

The complainant cites several errors in the respondent's order granting the petition for relief in B-1016 as proof of his bias or partiality. To repeat, the CA has found that the court erred in granting the petition for relief. But any ruling that holds a judge civilly or administratively liable for errors in his decision or order must have to reckon with the established doctrine of immunity of judges for official acts. The rule is expressly stated in In re Tayao, 229 SCRA 723, to the effect that a judge may not be administratively charged for error of judgment in the absence of showing of bad faith, malice or corrupt purpose. The error of the judgment must be so gross and patent as to justify inference of gross ignorance or bad faith; otherwise, a judge must be protected by the immunity of his office. As stated in *Zabala vs. Pamaran*, 39 SCRA 430, no one called upon to try facts or interpret the law in the process of administering justice can claim to be infallible in his judgment.

In this case, we cannot say that the respondent's errors were so gross and patent as to amount to evidence of bias or evasion of judicial duty.

As the CA has observed in SP 56613, the petition for relief was filed 11 days late on May 12, 1999. The Court came to this conclusion by way of a presumption since there was nothing on the record to show when the decision was actually received by the Cericos to make the 60-day period in Rule 38 begin to run. The CA presumed that the defendants must have already received the decision when they prepared the MR of the decision on March 2, 1999. Hence, the deadline for the filing of the petition should have been May 1, 1999. While it may be the case that the respondent judge was in error for entertaining a petition filed beyond the 60-day period, we cannot readily say that the error was gross and patent. The fact was that there was already

some amount of legal reasoning needed to arrive at this conclusion. The petition was also subject to another deadline which was the 6-month period from the date of decision, and the Cericos had apparently complied with this condition.

The Cericos argued that they could not be barred from filing a petition for relief, even if they failed to appeal. They attributed their failure to appeal to excusable negligence. They argued that they were in Manila when their lawyer received the March 4, 1999 order denying their motion for reconsideration. Hence, they could not have given him the proper instructions. The CA rejected this argument on the legal presumption that notice to counsel is notice to parties.

There also appeared to be a genuine clash over the issue of whether the fraud is extrinsic as it turns on the factual question of whether the defendants Cericos were actually aware of the alleged fraud committed by plaintiff (now complainant) Malabed.

It is our sense that the erroneous ruling of the respondent on the petition for relief cannot simply be a product of gross or plain ignorance, but results from a judge's failure to consider all the factors in the equation, legal and factual, a judicial error for which *certiorari* or appeal is the remedy.

The second case B-1252 was decided by the respondent subsequent to the administrative cases in which Atty. Dela Peña was his lawyer. In B-1252, the parties represented by Atty. Dela Peña won. Yet, until B-1252 was decided, there was no protest or opposition to the appearance of Atty. Dela Peña. That Atty. Dela Peña had represented respondent in the previous administrative cases was a matter of public record. If the plaintiff in B-1252, who is the sister of the complainant, had any cause to doubt the impartiality of the respondent, she should have moved for his inhibition. But she did not do this. She allowed the respondent judge to hear and terminate the case. It is too late in the day for her to complain.

B-1252 involves issues of fact and law which the undersigned cannot pass judgment upon at this point of time. The reason is that we are not the ones who are called upon to review the ruling of the respondent. We understand that the plaintiff in B-1252 had appealed the respondent's decision to the Court of Appeals in the Visayas. The proper doctrine to follow is that in case a party disagrees with a decision of the court, the remedy is not to file an administrative case but appeal the case to the superior court. This was done here. Only after the

case has been finally resolved on appeal can the question of whether the respondent was grossly ignorant in issuing his decision be ripe for analysis.

The case B-1118 is mentioned in the dispute in connection with a counter charge of the respondent against his accuser Malabed. It is not relevant to the issue in the administrative case and may be disregarded.

VII. Recommendation:

It is recommended that the respondent judge be exonerated.

RESPECTFULLY SUBMITTED.

Rule 1.02, Canon I of the Code of Judicial Conduct[18] provides that a judge should administer justice impartially and without delay. Partiality, or bias, has been defined as a predisposition to decide a cause or an issue in a certain way, which does not leave the mind perfectly open to conviction.[19] However, mere suspicion that respondent Judge is partial is not enough. Clear and convincing evidence to prove the charge is required. The burden to prove that respondent Judge committed the acts complained of rests on the complainant.[20]

Complainant alleged that respondent Judge, in granting a petition for relief from judgment in Civil Case No. B-1016, committed bias and partiality because the counsel for defendants therein was the same counsel who represented respondent Judge in administrative complaints filed against the latter. She likewise claimed that in another civil case in which her sister Haverly was plaintiff, respondent Judge reversed the ruling of the MCTC in favor of Haverly simply because the counsel for defendants therein was Atty. De la Peña. To support her allegations, complainant stated that the CA Decision dated June 23, 2000

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[18] Promulgated by the Supreme Court on September 5, 1989, which took effect October 20, 1989.

[19] *Black's Law Dictionary Abridged Fifth Ed.,* p. 84.

[20] *Fenina Santos v. Judge Erasto D. Tanciongco*, A.M. No. MTJ-06-1631, September 30, 2008.

found respondent Judge guilty of grave abuse of discretion, and that there were other administrative complaints filed against respondent Judge.

The OCA recommended that respondent Judge be fined in the amount of ₱30,000.00, while the Investigating Justice recommended that he be exonerated as the documentary evidence presented by the complainant during pre-trial failed to sufficiently establish bias and partiality on the part of respondent Judge. The Court, however, is not adopting the finding of the Investigating Justice, who probably was not aware of the past violations of respondent Judge for which he was previously disciplined. It, instead, holds that respondent Judge should be fined in the amount of ₱20,000.00, considering the frequency of administrative complaints that have been filed and sanctioned against him.

The administrative case docketed as RTJ-00-1590 in which Atty. Dela Peña represented respondent Judge, was filed on April 7, 2000, while the assailed Orders of respondent Judge in Civil Case No. B-1016 were rendered on August 12, 1999 and December 20, 1999. It is, at most, presumptuous on the part of complainant to allege that respondent Judge had been partial to defendants in the civil case, especially when he had not yet engaged the services of Atty. De la Peña to represent him in his administrative cases.

Equally tenuous is complainant's contention that the CA's finding of grave abuse of discretion on the part of respondent Judge proves the latter's bias and partiality. A finding of grave abuse of discretion does not necessarily prove that respondent Judge displayed a preference for one of the party-litigants. As aptly observed by the Investigating Justice, the reversal of a judge's order by a superior court in a *certiorari* case is, in itself, not a ground for an administrative action against the judge. Respondent Judge, by granting the petition for relief in Civil Case No. B-1016 on the ground that complainant failed to disclose a verbal agreement between her family and defendants therein, may have committed an error of judgment. However,

in the absence of bad faith, such erroneous judgment cannot be a ground for disciplinary action.[21]

In *Maylas, Jr. v. Judge Sese*,[22] respondent Judge was administratively charged because he granted a motion to quash based on a ground not raised by the accused, and the CA found that such act was tantamount to a grave abuse of discretion. The Court dismissed the complaint against respondent Judge, holding thus:

> x x x in the absence of fraud, dishonesty and corruption, the acts of a judge in his official capacity are not subject to disciplinary action. He cannot be subjected to liability – civil, criminal or administrative – for any of his official acts, no matter how erroneous as long as he acts in good faith. Only judicial errors tainted with fraud, dishonesty, gross ignorance, bad faith or deliberate intent to do an injustice will be administratively sanctioned. Settled is the rule that errors committed by a judge in the exercise of his adjudicative functions cannot be corrected through administrative proceedings, but should instead be assailed through judicial remedies.[23]

While the Investigating Justice may have cleared respondent Judge of administrative liability in the present case, the Court, nonetheless, takes into consideration that there have been several administrative complaints previously filed against respondent Judge.

In *Tabao v. Judge Asis*,[24] herein respondent Judge was found administratively liable for gross irregularity in the performance of his duties, violation of Supreme Court circulars and regulations, and abuse of authority and conduct unbecoming of a judge, and fined in the amount of ₱10,000.00.

In *Almendra v. Judge Asis*,[25] herein respondent Judge was found guilty of serious inefficiency, for which he was suspended

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[21] *Almendra v. Judge Asis*, 386 Phil. 264, 272 (2000).

[22] A.M. No. RTJ-06-2012, August 4, 2006, 497 SCRA 602.

[23] *Id.* at 605-606.

[24] 322 Phil. 630 (1996).

[25] *Supra* note 21.

for ten (10) days, fined ₱40,000.00 and warned that a repetition of the same or similar acts would be dealt with more severely.

In *Atty. Nenita Ceniza-Layese v. Judge Enrique C. Asis*,[26] respondent Judge was also found guilty of misconduct and dishonesty, for which he was fined ₱20,000.00.

On the other hand, the cases of *Ang v. Judge Asis*[27] and *Dadizon v. Judge Asis*[28] were both dismissed for lack of merit, although in the former, respondent Judge was reprimanded and made to pay a fine of ₱5,000.00, as well as admonished to be more circumspect and act with more dispatch in the performance of his official functions.

Respondent Judge must bear in mind that membership in the judiciary circumscribes one's personal conduct and imposes upon him certain restrictions, the faithful observance of which is the price one has to pay for holding such a distinguished position. A magistrate of the law must comport himself in a manner that his conduct must be free of a whiff of impropriety, not only with respect to the performance of his official duties, but also to his behavior outside of his sala and as a private individual. His conduct must be able to withstand the most searching public scrutiny, for the ethical principles and sense of propriety of a judge are essential to the preservation of the people's faith in the judicial system lest public confidence in the judiciary would be eroded by the incompetent, irresponsible and negligent conduct of judges.[29] In this case, respondent Judge should have been more cautious in his close associations with members of the Bar that led complainant to believe that the former had already been predisposed to the opposing party and, hence, renders his impartiality questionable.

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[26] A.M. No. RTJ-07-2034, October 15, 2008.

[27] 424 Phil. 105 (2002).

[28] 464 Phil. 571 (2004).

[29] *Aureo G. Bayaca v. Judge Tranquilino V. Ramos*, A.M. No. MTJ-07-1676, January 29, 2009.

WHEREFORE, respondent Judge Enrique C. Asis of the Regional Trial Court, Branch 16 of Naval, Biliran, is ordered to pay a *FINE* of ₱20,000.00, with a stern warning that a repetition of the same or similar acts in the future shall be dealt with more severely.

This Decision shall be immediately executory.

SO ORDERED.

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

THIRD DIVISION

[G.R. Nos. 130371 & 130855. August 4, 2009]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **FERDINAND R. MARCOS II and IMELDA R. MARCOS,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; AN APPEAL TAKEN TO EITHER THE SUPREME COURT OR COURT OF APPEALS BY THE WRONG MODE SHALL BE DISMISSED.—** A reading of Supreme Court Circular 2-90, in relation to Section 17 of the Judiciary Act of 1948, clearly shows that the subject matter of therein petition, that is, the propriety of granting letters testamentary to respondents, do not fall within any ground which can be the subject of a direct appeal to this Court. The CA was thus correct in declaring that the "issues raised by petitioner do not fall within the purview of Section 17 of the Judiciary Act of 1948 such that the Supreme Court should take cognizance of the instant case." Moreover, the Court's pronouncement in *Suarez v. Judge*

Villarama is instructive: **Section 4 of Circular No. 2-90, in effect at the time of the antecedents, provides that an appeal taken to either the Supreme Court or the Court of Appeals by the wrong mode or inappropriate mode shall be dismissed**. This rule is now incorporated in Section 5, Rule 56 of the 1997 Rules of Civil Procedure. **Moreover, the filing of the case directly with this Court runs afoul of the doctrine of hierarchy of courts. Pursuant to this doctrine, direct resort from the lower courts to the Supreme Court will not be entertained unless the appropriate remedy cannot be obtained in the lower tribunals**. This Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the Constitution and immemorial tradition. **Thus, a petition for review on *certiorari* assailing the decision involving both questions of fact and law must first be brought before the Court of Appeals**. Also, in *Southern Negros Development Bank v. Court of Appeals,* this Court ruled: It is incumbent upon private respondent *qua* appellants to utilize the correct mode of appeal of the decisions of trial courts to the appellate courts. In the mistaken choice of their remedy, they can blame no one but themselves. x x x **Pursuant to Section 4 of Circular No. 2-90, which provides that "[a]n appeal taken to either the Supreme Court or the Court of Appeals by the wrong mode or inappropriate mode shall be dismissed," the only course of action of the Court to which an erroneous appeal is made is to dismiss the same. There is no longer any justification for allowing transfers of erroneous appeals from one court to another**. Based on the foregoing, petitioner cannot deny that the determination of whether or not respondents should be disqualified to act as executors is a question of fact. Hence, the proper remedy was to appeal to the CA, not to this Court.

2. **ID.; SPECIAL PROCEEDINGS; APPEALS IN SPECIAL PROCEEDINGS; APPEAL UNDER RULE 109 OF THE RULES OF COURT; PROPER REMEDY IN CASE AT BAR.—** In the case at bar, as found by this Court in its February 5, 1997 Resolution, therein petition offered no important or special reason for the Court to take cognizance of it at the first instance. Petitioner offered no plausible reason why it went straight to this Court when an adequate and proper remedy was still available. The CA was thus correct that the remedy that

petitioner should have availed of was to file an appeal under Rule 109 of the Rules of Court which states: Section 1. *Orders of judgments from which appeals taken.* – **An interested person may appeal in special proceedings** from an order or judgment rendered by a Court of First Instance or a Juvenile and Domestic Relations Court, where such order or judgment: **allows** or disallows **a will** x x x .

3. **ID.; EVIDENCE; CREDIBILITY; FINDINGS OF THE PROBATE COURT IN THE MATTER OF REMOVAL OF AN EXECUTOR OR ADMINISTRATOR, NOT DISTURBED BY APPELLATE COURT UNLESS POSITIVE ERROR OR GROSS ABUSE OF DISCRETION IS SHOWN.—** [A]n appellate court is disinclined to interfere with the action taken by the probate court in the matter of removal of an executor or administrator unless positive error or gross abuse of discretion is shown. The Rules of Court gives the lower court the duty and discretion to determine whether in its opinion an individual is unfit to serve as an executor. The sufficiency of any ground for removal should thus be determined by the said court, whose sensibilities are, in the first place, affected by any act or omission on the part of the administrator not conformable to or in disregard of the rules of orders of the court. Hence, in order to reverse the findings of the RTC, this Court must evaluate the evidence presented or alleged by petitioner in support of its petition for disqualification. However, after a painstaking review of the records and evidence on hand, this Court finds that the RTC committed no error or gross abuse of discretion when it ruled that petitioner failed to substantiate its allegation.

4. **ID.; SPECIAL PROCEEDINGS; LETTERS TESTAMENTARY, TO WHOM ISSUED; PERSONS INCOMPETENT TO SERVE AS EXECUTORS; PERSONS CONVICTED OF AN OFFENSE INVOLVING MORAL TURPITUDE; MORAL TURPITUDE, DEFINED.—** In *Villaber v. Commission on Elections,* this Court held: As to the meaning of "moral turpitude," we have consistently adopted the definition in Black's Law Dictionary as "**an act of baseness, vileness, or depravity in the private duties which a man owes his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and woman, or conduct contrary to justice, honesty, modesty, or good morals**." In

In re Vinzon, the term "moral turpitude" is considered as encompassing "everything which is done contrary to justice, honesty, or good morals." x x x We, however, clarified in ***Dela Torre vs. Commission on Elections*** that "**not every criminal act involves moral turpitude**," and that "**as to what crime involves moral turpitude is for the Supreme Court to determine**." Moreover, In *De Jesus-Paras v. Vailoces*: Indeed, it is well-settled that "embezzlement, forgery, robbery, and swindling are crimes which denote moral turpitude and, **as a general rule, all crimes of which fraud is an element are looked on as involving moral turpitude**."

5. **ID.; ID.; ID.; ID.; ID.; FAILURE TO FILE AN INCOME TAX RETURN IS NOT A CRIME INVOLVING MORAL TURPITUDE BUT THE FILING OF A FRAUDULENT RETURN WITH INTENT TO EVADE TAX IS A CRIME INVOLVING MORAL TURPITUDE; ELUCIDATED; CASE AT BAR.—** The "failure to file an income tax return" is not a crime involving moral turpitude as the mere omission is already a violation regardless of the fraudulent intent or willfulness of the individual. This conclusion is supported by the provisions of the NIRC as well as previous Court decisions which show that with regard to the filing of an income tax return, the NIRC considers three distinct violations: (1) a false return, (2) a fraudulent return with intent to evade tax, and (3) failure to file a return. The same is illustrated in Section 51(b) of the NIRC which reads: (b) Assessment and payment of deficiency tax – x x x In case a **person fails to make and file a return or** list at the time prescribed by law, **or makes willfully or otherwise, false or fraudulent return** or list x x x Likewise, in *Aznar v. Court of Tax Appeals,* this Court observed: To our minds we can dispense with these controversial arguments on facts, although we do not deny that the findings of facts by the Court of Tax Appeals, supported as they are by very substantial evidence, carry great weight, by resorting to a proper interpretation of Section 332 of the NIRC. We believe that the proper and reasonable interpretation of said provision should be that in the three different cases of **(1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return***,* the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the **(1) falsity, (2) fraud, and (3) omission. Our stand that the law should**

be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situations into three different classes, namely, "falsity," "fraud" and "omission." Applying the foregoing considerations to the case at bar, the filing of a "fraudulent return with intent to evade tax" is a crime involving moral turpitude as it entails willfulness and fraudulent intent on the part of the individual. The same, however, cannot be said for "failure to file a return" where the mere omission already constitutes a violation. Thus, this Court holds that even if the conviction of respondent Marcos II is affirmed, the same not being a crime involving moral turpitude cannot serve as a ground for his disqualification.

6. **ID.; APPEALS; FINDINGS OF TRIAL COURT ARE RESPECTED ON APPEAL IN THE ABSENCE OF PALPABLE ERROR OR GROSS ABUSE OF DISCRETION; CASE AT BAR.—** Petitioner contends that respondents have strongly objected to the transfer to the Philippines of the Marcos assets deposited in the Swiss Banks and thus the same should serve as a ground for their disqualification to act as executors. This Court does not agree. In the first place, the same are mere allegations which, without proof, deserve scant consideration. Time and again, this Court has stressed that this Court is a court of law and not a court of public opinion. Moreover, petitioner had already raised the same argument in its motion for partial reconsideration before the RTC. Said court, however, still did not find the same as a sufficient ground to disqualify respondents. Again, in the absence of palpable error or gross abuse of discretion, this Court will not interfere with the RTC's discretion.

7. **ID.; EVIDENCE; BURDEN OF PROOF; ONE WHO ALLEGES A FACT HAS THE BURDEN OF PROVING IT; CASE AT BAR.—** [P]etitioner argues that the assailed RTC Orders were based solely on their own evidence and that respondents offered no evidence to show that they were qualified to serve as executors. It is basic that one who alleges a fact has the burden of proving it and a mere allegation is not evidence. Consequently, it was the burden of petitioner (not respondents) to substantiate the grounds upon which it claims that respondents

should be disqualified to serve as executors, and having failed in doing so, its petition must necessarily fail.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Marcos Ochoa Serapio & Tan Law Firm for Ferdinand R. Marcos II.

Ponce Enrile Reyes & Manalastas Law Offices for Imelda R. Marcos.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, seeking to set aside the March 13, 1997 Decision[2] and August 27, 1997 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 43450.

The facts of the case are as follows:

On January 11, 1996, the Regional Trial Court (RTC) of Pasig City Branch 156, acting as a probate court, in Special Proceeding No. 10279, issued an Order[4] granting letters testamentary *in solidum* to respondents Ferdinand R. Marcos II and Imelda Trinidad Romualdez-Marcos as executors of the last will and testament of the late Ferdinand E. Marcos.

The dispositive portion of the January 11, 1996 Order reads:

WHEREFORE, finding the Last Will and Testament of Ferdinand Edralin Marcos to have been duly executed in accordance with law, the same is hereby ALLOWED AND ADMITTED TO PROBATE.

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[1] *Rollo* (G.R. No. 130371), pp. 7-41.

[2] Penned by Associate Justice Ramon A. Barcelona, with Associate Justices Artemon D. Luna and Hilarion L. Aquino, concurring; *id.* at 45-50.

[3] *Id.* at 52-55.

[4] *Id.* at 56-65.

Upon the filing of a bond in the amount of ₱50,000.00, let letters testamentary be issued *in solidum* to Imelda Trinidad Romualdez-Marcos AND Ferdinand Romualdez Marcos II, named executors therein.

Pending the filing of said bond and their oath, Commissioner Liwayway Vinzons-Chato of the Bureau of Internal Revenue is hereby authorized to continue her functions as Special Administrator of the Estate of Ferdinand Edralin Marcos.

Let NOTICE be given to all known heirs and creditors of the decedent, and to any other persons having an interest in the estate for them to lay their claim against the Estate or forever hold their peace.

SO ORDERED.[5]

On January 15, 1996, the petitioner Republic of the Philippines filed a Motion for Partial Reconsideration[6] in so far as the January 11, 1996 RTC Order granted letters testamentary to respondents. On the other hand, respondent Imelda Marcos filed her own motion for reconsideration on the ground that the will is lost and that petitioner has not proven its existence and validity.

On February 5, 1996, respondent Ferdinand Marcos II filed a Compliance stating that he already filed a bond in the amount of ₱50,000.00 as directed by the January 11, 1996 RTC Order and that he took his oath as named executor of the will on January 30, 1996.

On March 13, 1996, the RTC issued Letters of Administration[7] to BIR Commissioner Liwayway Vinzons-Chato in accordance with an earlier Order dated September 9, 1994, appointing her as Special Administratrix of the Marcos Estate.

On April 1, 1996, respondent Ferdinand Marcos II filed a Motion to Revoke the Letters of Administration issued by the RTC to BIR Commissioner Vinzons-Chato.

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[5] *Id.* at 65. (Emphasis supplied.)

[6] *Id.* at 70-79.

[7] *Id.* at 80.

On April 26, 1996, the RTC issued an Order[8] denying the motion for partial reconsideration filed by petitioner as well as the motion for reconsideration filed by respondent Imelda Marcos, the penultimate portion of which reads:

Under the Rules, a decedent's testamentary privilege must be accorded utmost respect. Guided by this legal precept, therefore, in resolving the two (2) motions at hand, the Court is constrained to DENY both.

Examining the arguments poised by the movants, the Court observed that these are but a mere rehash of issues already raised and passed upon by the Court.

One has to review the previous orders issued by the Court in this case, *e.g.*, the orders dated September 9, 1994, November 25, 1994, as well as October 3, 1995, to see that even as far back then, the Court has considered the matter of competency of the oppositors and of Commissioner Liwayway Vinzons-Chato as having been settled.

It cannot be overstressed that the assailed January 11, 1996 Orders of the Court was arrived at only after extensive consideration of every legal facet available on the question of validity of the Will.

WHEREFORE, for lack of merit, the motion for reconsideration filed separately by petitioner Republic and oppositor Imelda R. Marcos are both DENIED.

SO ORDERED.[9]

On June 6, 1996, petitioner filed with this Court a Petition for Review on *Certiorari,* under Ruled 45 of the Rules of Court, questioning the aforementioned RTC Orders granting letters testamentary to respondents.

On February 5, 1997, the First Division of this Court issued a Resolution referring the petition to the CA, to wit:

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[8] *Id.* at 66-69.

[9] *Id.* at 69.

The special civil action for *certiorari* as well as all the other pleadings filed herein are **REFERRED to the Court of Appeals for consideration and adjudication on the merits <u>or</u> any other action as it may deem appropriate**, the latter having jurisdiction concurrent with this Court over the Case, and this Court having been cited to no special and important reason for it to take cognizance of said case in the first instance.[10] (Emphasis and Underscoring Supplied)

On March 13, 1997, the CA issued a Decision,[11] dismissing the referred petition for having taken the wrong mode of appeal, the pertinent portions of which reads:

Consequently, for having taken the wrong mode of appeal, the present petition should be dismissed in accordance with the same **Supreme Court Circular 2-90 which expressly provides that:**

> **4. Erroneous Appeals – An appeal taken to either the Supreme Court or the Court of Appeals by the wrong or inappropriate mode shall be dismissed.**

IN VIEW OF THE FOREGOING, the instant petition for review is hereby DISMISSED.

SO ORDERED.[12]

Petitioner filed a Motion for Reconsideration,[13] which was, however denied by the CA in a Resolution[14] dated August 27, 1997.

Hence, herein petition, with petitioner raising the following assignment of errors, to wit:

I.

THE COURT OF APPEALS GRAVELY ERRED IN DISMISSING THE PETITION ON TECHNICAL GROUNDS DESPITE THE

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[10] *Id.* at 89.

[11] *Id.* at 45-50.

[12] *Id.* at 50. (Emphasis supplied.)

[13] *Id.* at 84-92.

[14] *Id.* at 52-55.

SUPREME COURT RESOLUTION SPECIFICALLY REFERRING SAID PETITION FOR A DECISION ON THE MERITS.

II.

THE PROBATE COURT GRAVELY ERRED IN FAILING TO CONSIDER THAT RESPONDENTS IMELDA R. MARCOS AND FERDINAND R. MARCOS II SHOULD BE DISQUALIFIED TO ACT AND SERVE AS EXECUTORS**.**

III.

THE PROBATE COURT GRAVELY ERRED IN FAILING TO CONSIDER THAT SAID PRIVATE RESPONDENTS HAVE DENIED AND DISCLAIMED THE VERY EXISTENCE AND VALIDITY OF THE MARCOS WILL.

IV.

THE PROBATE COURT GRAVELY ERRED IN FAILING TO CONSIDER THAT ITS ORDER OF JANUARY 11, 1996, WHICH ADMITTED THE MARCOS WILL TO PROBATE AND WHICH DIRECTED THE ISSUANCE OF LETTERS TESTAMENTARY IN *SOLIDUM* TO PRIVATE RESPONDENTS AS EXECUTORS OF SAID MARCOS WILL, WAS BASED ON THE EVIDENCE OF THE REPUBLIC ALONE.

V.

THE PROBATE COURT GRAVELY ERRED IN FAILING TO CONSIDER THAT BOTH PRIVATE RESPONDENTS HAVE OBSTRUCTED THE TRANSFER TO THE PHILIPPINES OF THE MARCOS ASSETS DEPOSITED IN THE SWISS BANKS.[15]

In the meantime, on October 9, 2002, the RTC, acting on the pending unresolved motions before it, issued an Order[16] which reads:

WHEREFORE, the Court hereby appoints as **joint special administrators** of the estate of the late Ferdinand E. Marcos, the nominee of the Republic of the Philippines (the Undersecretary of

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[15] *Id.* at 15-16.

[16] *Id.* at 240-243. (Emphasis supplied)

the Department of Justice whom the Secretary of Justice will designate for this purpose) and Mrs. Imelda Romualdez Marcos and Mr. Ferdinand R. Marcos II, to serve as such until an executor is finally appointed.

SO ORDERED.

The petition is without merit.

When the assailed Orders granting letters testamentary in *solidum* to respondents were issued by the RTC, petitioner sought to question them by filing a petition for review on *certiorari* under Rule 45 of the Rules of Court.

Supreme Court Circular No. 2-90,[17] which was then in effect, reads:

> 2. Appeals from Regional Trial Courts to the Supreme Court. – Except in criminal cases where the penalty imposed is life imprisonment to *reclusion perpetua*, **judgments of regional trial courts may be appealed to the Supreme Court only by petition for review on *certiorari* in accordance with Rule 45 of the Rules of Court <u>in relation to Section 17 of the Judiciary Act of 1948</u>,** as amended, this being the clear intendment of the provision of the Interim Rules that "(a)ppeals to the Supreme Court shall be taken by petition for *certiorari* which shall be governed by Rule 45 of the Rules of Court. (Emphasis and Underscoring Supplied)

The pertinent portions of Section 17[18] of the Judiciary Act of 1948 read:

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[17] Guidelines to be observed in Appeals to the Court of Appeals and to the Supreme Court; March 9, 1990.

[18] SEC. 17. *Jurisdiction of the Supreme Court*. — The Supreme Court shall have original jurisdiction over cases affecting ambassadors, other public ministers, and consuls; and original and exclusive jurisdiction in petitions for the issuance of writs of *certiorari*, prohibition and *mandamus* against the Court of Appeals.

In the following cases, the Supreme Court shall exercise original and concurrent jurisdiction with the Court of First Instance:

1. In petitions for the issuance of writs of *certiorari,* prohibition, *mandamus*, *quo warranto*, and *habeas corpus*; and

2. In actions brought to prevent and restrain violations of law concerning monopolies and combinations in restraint of trade.

The Supreme Court shall further have exclusive jurisdiction to review, revise, reverse, modify or affirm on *certiorari* as the law or rules of court may provide, final judgments and decrees of inferior courts as herein provided, in –

(1) All cases in which the constitutionality or validity of any treaty, law, ordinance, or executive order or regulation is in question;

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

(3) All cases in which the jurisdiction of any inferior court is in issue;

(4) All other cases in which only errors or questions of law are involved: Provided, however, That if, in addition to constitutional, tax or jurisdictional questions, the cases mentioned in the three next preceding paragraphs also involve questions of fact or mixed questions of fact and law, the aggrieved party shall appeal to the Court of Appeals; and the final judgment or decision of the latter may be reviewed, revised, reversed, modified or affirmed by the Supreme Court on writ of *certiorari*; and

(5) Final awards, judgments, decision or orders of the Commission on Elections, Court of Tax Appeals, Court of Industrial Relations, the Public Service Commission, and the Workmen's Compensation Commission.

A reading of Supreme Court Circular 2-90, in relation to Section 17 of the Judiciary Act of 1948, clearly shows that the

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The Supreme Court shall have exclusive jurisdiction to review, revise, reverse, modify or affirm on appeal, *certiorari* or writ of error, as the law or rules of court may provide, final judgment and decrees of inferior courts as herein provided, in —

(1) All criminal cases involving offenses for which the penalty imposed is death or life imprisonment; and those involving other offenses which, although not so punished, arose out of the same occurrence or which may have been committed by the accused on the same occasion, as that giving rise to the more serious offense, regardless of whether the accused are charged as principals, accomplices, or accessories, or whether they have been tried jointly or separately;

(2) All cases involving petitions for naturalization or denaturalization; and

(3) All decisions of the Auditor General, if the appellant is a private person or entity.

subject matter of therein petition, that is, the propriety of granting letters testamentary to respondents, do not fall within any ground which can be the subject of a direct appeal to this Court. The CA was thus correct in declaring that the "issues raised by petitioner do not fall within the purview of Section 17 of the Judiciary Act of 1948 such that the Supreme Court should take cognizance of the instant case."[19]

Moreover, the Court's pronouncement in *Suarez v. Judge Villarama*[20] is instructive:

> **Section 4 of Circular No. 2-90, in effect at the time of the antecedents, provides that an appeal taken to either the Supreme Court or the Court of Appeals by the wrong mode or inappropriate mode shall be dismissed**. This rule is now incorporated in Section 5, Rule 56 of the 1997 Rules of Civil Procedure.
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> **Moreover, the filing of the case directly with this Court runs afoul of the doctrine of hierarchy of courts**. **Pursuant to this doctrine, direct resort from the lower courts to the Supreme Court will not be entertained unless the appropriate remedy cannot be obtained in the lower tribunals**. This Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the Constitution and immemorial tradition. **Thus, a petition for review on *certiorari* assailing the decision involving both questions of fact and law must first be brought before the Court of Appeals**.[21]

Also, in *Southern Negros Development Bank v. Court of Appeals,*[22] this Court ruled:

> It is incumbent upon private respondent *qua* appellants to utilize the correct mode of appeal of the decisions of trial courts to the appellate courts. In the mistaken choice of their remedy, they can blame no one but themselves (*Jocson v. Baguio*, 179 SCRA 550 [1989]; *Yucuanseh Drug Co. v. National Labor Union*, 101 Phil. 409 [1957]).

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[19] *Rollo* (G.R. No. 130371), p. 48.

[20] G.R. No. 124512, June 27, 2006, 493 SCRA 74.

[21] *Id.* at 81-82. (Emphasis supplied.)

[22] G.R. No. 112066, June 27, 1994, 233 SCRA 460.

x x x x x x x x x

Pursuant to Section 4 of Circular No. 2-90, which provides that "[a]n appeal taken to either the Supreme Court or the Court of Appeals by the wrong mode or inappropriate mode shall be dismissed," the only course of action of the Court to which an erroneous appeal is made is to dismiss the same. There is no longer any justification for allowing transfers of erroneous appeals from one court to another (*Quesada v. Court of Appeals*, G.R. No. 93869, November 12, 1990, First Division, Minute Resolution).[23]

Based on the foregoing, petitioner cannot deny that the determination of whether or not respondents should be disqualified to act as executors is a question of fact. Hence, the proper remedy was to appeal to the CA, not to this Court.

Petitioner is adamant, however, that notwithstanding the improper remedy, the CA should not have dismissed therein petition. Petitioner argues in the wise:

However, as can be seen in the Resolution of February 5, 1997, (Annex "H") this Honorable Court deemed it more proper to transmit the first Petition for Review to respondent appellate court for the reason that:

This Court having been cited to no special and important reason for it to take cognizance of said case in the first instance. x x x

It would appear then that even though this Honorable Court apparently considers the Republic's petition as deserving to be given due course, it deemed it in the best interest of the parties concerned if the Court of Appeals would first take cognizance of said case, thereby preserving its stance as a court of last resort.

Additionally, this Honorable Court itself plainly stated that the case under review is:

...REFERRED to the Court of Appeals for consideration and adjudication on the merits… The latter having jurisdiction concurrent with this Court over the case…[24]

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[23] *Id.* at 464-465.

[24] *Rollo* (G.R. No. 130371), pp. 17-18.

Petitioner's arguments are misplaced. To stress, the February 5, 1997 Resolution reads:

> The special civil action for *certiorari* as well as all the other pleadings filed herein are REFERRED to the Court of Appeals for consideration and adjudication on the merits **or any other action as it may deem appropriate**, the latter having jurisdiction concurrent with this Court over the Case, and this Court having been cited to no special and important reason for it to take cognizance of said case in the first instance.[25]

Based thereon, this Court agrees with the ruling of the CA that said resolution gave the CA discretion and latitude to decide the petition as it may deem proper. The resolution is clear that the petition was referred to the CA for consideration and adjudication on the merits **<u>or</u>** any other action as it may deem appropriate. Thus, no error can be attributed to the CA when the action it deemed appropriate was to dismiss the petition for having availed of an improper remedy. More importantly, the action of the CA was sanctioned under Section 4 of Supreme Court Circular 2-90 which provides that "an appeal taken to either the Supreme Court or the Court of Appeals by the wrong mode or inappropriate mode shall be dismissed."

Moreover, petitioner mistakenly relies in *Oriental Media, Inc. v. Court of Appeals*,[26] in which this Court made the following pronouncements:

> **In the case at bar, there was no urgency or need for Oriental to resort to the extraordinary remedy of *certiorari*** for when it learned of the case and the judgment against it on July 25, 1986, due to its receipt of a copy of the decision by default; no execution had as yet been ordered by the trial court. As aforementioned, Oriental had still the time and the opportunity to file a motion for reconsideration, as was actually done. **Upon the denial of its motion for reconsideration in the first case, or at the latest upon the denial of its petition for relief from judgment, Oriental should have**

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[25] *Id.* at 89. (Emphasis supplied)

[26] G.R.No. 80127, December 6, 1995, 250 SCRA 647.

appealed. Oriental should have followed the procedure set forth in the Rules of Court for —

> Rules of procedure are intended to ensure the orderly administration of justice and the protection of substantive rights in judicial and extrajudicial proceedings. It is a mistake to purpose that substantive law and adjective law are contradictory to each other or, as has often been suggested, that enforcement of procedural rules should never be permitted if it will result in prejudice to the substantive rights of the litigants. This is not exactly true; the concept is much misunderstood. As a matter of fact, the policy of the courts is to give effect to both kinds of law, as complementing each other, in the just and speedy resolution of the dispute between the parties. Observance of both substantive rights is equally guaranteed by due process whatever the source of such rights, be it the Constitution itself or only a statute or a rule of court.[27]

In the case at bar, as found by this Court in its February 5, 1997 Resolution, therein petition offered no important or special reason for the Court to take cognizance of it at the first instance. Petitioner offered no plausible reason why it went straight to this Court when an adequate and proper remedy was still available. The CA was thus correct that the remedy that petitioner should have availed of was to file an appeal under Rule 109 of the Rules of Court which states:

> Section 1. *Orders of judgments from which appeals taken.* – **An interested person may appeal in special proceedings** from an order or judgment rendered by a Court of First Instance or a Juvenile and Domestic Relations Court, where such order or judgment:
>
> **(a) allows** or disallows **a will**;

Because of the preceding discussion, herein petition must necessarily fail. However, even if this Court were to set aside petitioners' procedural lapses, a careful review of the records of the case reveal that herein petition is without merit.

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[27] *Id.* at 654.

At the crux of the controversy is a determination of whether or not respondents are incompetent to serve as executors of the will of Ferdinand Marcos.

Ozeata v. Pecson[28] is instructive:

The choice of his executor is a precious prerogative of a testator, a necessary concomitant of his right to dispose of his property in the manner he wishes. It is natural that the testator should desire to appoint one of his confidence, one who can be trusted to carry out his wishes in the disposal of the estate. The curtailment of this right may be considered as a curtailment of the right to dispose. And as the rights granted by will take effect from the time of death (Article 777, Civil Code of the Philippines), the management of his estate by the administrator of his choice should be made as soon as practicable, when no reasonable objection to his assumption of the trust can be interposed any longer. **It has been held that when a will has been admitted to probate, it is the duty of the court to issue letters testamentary to the person named as executor upon his application** (23 C.J. 1023).

x x x x x x x x x

The case of *In re Erlanger's Estate*, 242 N.Y.S. 249, also reiterates the same principle.

The courts have always respected the right to which a testator enjoys to determine who is most suitable to settle his testamentary affairs, and his solemn selection should not lightly be disregarded. **After the admission of a will to probate, the courts will not name a better executor for the testator nor disqualify, by a judicial veto, the widow or friend or other person selected in the will, except upon strict proof of the statutory grounds of incompetency**. Matter of Leland's Will, 219 N.Y. 387, 393, 114 N.E. 854. x x x[29]

Section 1(c), Rule 78 of the Rules of Court defines who are incompetent to serve as executors, to wit:

Section 1. *Who are incompetent to serve as executors or administrators.* – No person is competent to serve as executor or administrator who:

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[28] 93 Phil. 420 (1953).

[29] *Id.* at 420-422. (Emphasis supplied).

x x x x x x x x x

(c) **Is in the opinion of the court** unfit to execute the duties of trust by reason of drunkenness, improvidence, or **want of** understanding or **integrity**, or by reason of **conviction of an offense involving moral turpitude**. (Emphasis Supplied)

In the case at bar, petitioner anchored its opposition to the grant of letters testamentary to respondents, specifically on the following grounds: (1) want of integrity, and (2) conviction of an offense involving moral turpitude. Petitioner contends that respondents have been convicted of a number of cases[30]

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[30] *Rollo* (G.R. No. 130371) pp. 29-31; Some of the criminal convictions **against Imelda R. Marcos** are:

(1) **Criminal Case No. 17450 for Violation of R.A. 3019 (Anti-Graft Law), Sandiganbayan** – Decision promulgated on September 24, 1993 sentencing her to imprisonment for an indeterminate period of nine (9) years and one (1) day, as minimum, to twelve (12) years and ten (10) days, as maximum, and to suffer perpetual disqualification from public office.

(2) **Criminal Case No. 17453 for Violation of R.A. 3019 (Anti-Graft Law), Sandiganbayan** – Decision promulgated on September 24, 1993 sentencing her to imprisonment for an indeterminate period of nine (9) years and one (1) day, as minimum, to twelve (12) years and ten (10) days, as maximum, and to suffer perpetual disqualification from public office.

With regard to the criminal convictions rendered **against Ferdinand R. Marcos II**, some of them are:

(1) **Criminal Case No. Q-91-24390 for Violation of NIRC of 1977, RTC, Branch 105, Quezon City** – Decision rendered on July 27, 1995 sentencing accused to serve imprisonment of three (3) years and to pay a fine of ₱30,000.00.

(2) **Criminal Case No. Q-91-24391 for Violation of NIRC of 1977, RTC, Branch 105, Quezon City** – Decision rendered on July 27, 1996 sentencing accused to serve imprisonment of three (3) years and to pay a fine of ₱30,000.00.

(3) **Criminal Case No. Q-92-212 for Violation of NIRC of 1977, RTC, Branch 105, Quezon City** – Decision rendered on July 27, 1995 sentencing accused to serve imprisonment of six (6) months and to pay a fine of ₱2,000.00.

(4) **Criminal Case No. Q-91-29213 for Violation of NIRC of 1977, RTC, Branch 105, Quezon City** – Decision rendered on July 27, 1995 sentencing accused to imprisonment of six (6) months and to pay a fine of ₱2,000.00.

and, hence, should be characterized as one without integrity, or at the least, with questionable integrity.[31]

The RTC, however, in its January 11, 1996 Order, made the following findings:

> However, except for petitioner Republic's allegation of want of integrity on the part of Imelda Trinidad Romualdez-Marcos and Ferdinand Romualdez Marco II, named executors in the last will and testament, so as to render them "incompetent" to serve as executors, **the Court sees at this time, no evidence on record, oral or documentary, to substantiate and support the said allegation**. (Emphasis Supplied)

Based on the foregoing, this Court stresses that an appellate court is disinclined to interfere with the action taken by the probate court in the matter of removal of an executor or administrator unless positive error or gross abuse of discretion is shown.[32] The Rules of Court gives the lower court the duty and discretion to determine whether in its opinion an individual is unfit to serve as an executor. The sufficiency of any ground for removal should thus be determined by the said court, whose sensibilities are, in the first place, affected by any act or omission on the part of the administrator not conformable to or in disregard of the rules of orders of the court.[33]

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(5) **Criminal Case No. Q-91-29214 for Violation of NIRC of 1977, RTC, Branch 105, Quezon City** – Decision rendered on July 27, 1995 sentencing accused to imprisonment of six (6) months and to pay a fine of ₱2,000.00.
(6) **Criminal Case No. Q-91-29215 for Violation of NIRC of 1977, RTC, Branch 105, Quezon City** – Decision rendered on July 27, 1995 sentencing accused to imprisonment of six (6) months and to pay a fine of ₱2,000.00.
(7) **Criminal Case No. Q-91-29216 for Violation of NIRC of 1977, RTC, Branch 105, Quezon City** – Decision rendered on July 27, 1995 sentencing accused to imprisonment of six (6) months and to pay a fine of ₱2,000.00.
(8) Criminal Case No. Q-91-29217 for Violation of NIRC of 1977, RTC, Branch 105, Quezon City – Decision rendered on July 27, 1995, sentencing accused to imprisonment of six (6) months and to pay a fine of ₱2,000.00.

[31] *Rollo* (G.R. No. 130371), p. 31.

[32] *Borromeo v. Borromeo,* 97 Phil. 549, 554 (1955).

[33] *Matute v. Court of Appeals,* No. L- 26751, January 31, 1969, 26 SCRA 768, 784.

Hence, in order to reverse the findings of the RTC, this Court must evaluate the evidence presented or alleged by petitioner in support of its petition for disqualification. However, after a painstaking review of the records and evidence on hand, this Court finds that the RTC committed no error or gross abuse of discretion when it ruled that petitioner failed to substantiate its allegation.

Petitioner conveniently omits to state that the two cases against respondent Imelda Marcos have already been reversed by this Court. Her conviction in Criminal Case No. 17453 was reversed by this Court in *Dans, Jr. v. People.*[34] Likewise, her conviction in Criminal Case No. 17450 was reversed by this Court in *Marcos v. Sandiganbayan.*[35] Hence, the so-called "convictions" against respondent Imelda Marcos cannot serve as a ground for her disqualification to serve as an executor.

On the other hand, the eight cases filed against respondent Ferdinand Marcos II involve four charges for violation of Section 45 (failure to file income tax returns) and four charges for violation of Section 50 (non-payment of deficiency taxes) of the National Internal Revenue Code of 1977 (NIRC).

It is a matter of record, that in CA-G.R. CR No. 18569,[36] the CA acquitted respondent Ferdinand Marcos II of all the four charges for violation of Section 50 and sustained his conviction for all the four charges for violation of Section 45. It, however, bears to stress, that the CA only ordered respondent Marcos II to pay a fine for his failure to file his income tax return. Moreover, and as admitted by petitioner,[37] said decision is still pending appeal.

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[34] 349 Phil. 434 (1998).

[35] 357 Phil. 762 (1998).

[36] Penned by Associate Justice Gloria C. Paras, with Associate Justices Lourdes K. Tayao-Jaguros and Oswaldo D. Agcaoili concurring; Dated October 31, 1997.

[37] *Rollo* (G.R. No. 130371), p. 31.

Therefore, since respondent Ferdinand Marcos II has appealed his conviction relating to four violations of Section 45 of the NIRC, the same should not serve as a basis to disqualify him to be appointed as an executor of the will of his father. More importantly, even assuming *arguendo* that his conviction is later on affirmed, the same is still insufficient to disqualify him as the "failure to file an income tax return" is not a crime involving moral turpitude.

In *Villaber v. Commission on Elections,*[38] this Court held:

As to the meaning of "moral turpitude," we have consistently adopted the definition in Black's Law Dictionary as "**an act of baseness, vileness, or depravity in the private duties which a man owes his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and woman, or conduct contrary to justice, honesty, modesty, or good morals**."

In *In re Vinzon,* the term "moral turpitude" is considered as encompassing "everything which is done contrary to justice, honesty, or good morals."

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We, however, clarified in ***Dela Torre vs. Commission on Elections*** that "**not every criminal act involves moral turpitude**," and that "**as to what crime involves moral turpitude is for the Supreme Court to determine**."[39]

Moreover, In *De Jesus-Paras v. Vailoces*:[40]

Indeed, it is well-settled that "embezzlement, forgery, robbery, and swindling are crimes which denote moral turpitude and, **as a general rule, all crimes of which fraud is an element are looked on as involving moral turpitude**" (58 C.J.S., 1206).

The "failure to file an income tax return" is not a crime involving moral turpitude as the mere omission is already a

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[38] 420 Phil. 930 (2001).

[39] *Id.* at 937.

[40] 111 Phil. 569, 571 (1961).

violation regardless of the fraudulent intent or willfulness of the individual. This conclusion is supported by the provisions of the NIRC as well as previous Court decisions which show that with regard to the filing of an income tax return, the NIRC considers three distinct violations: (1) a false return, (2) a fraudulent return with intent to evade tax, and (3) failure to file a return.

The same is illustrated in Section 51(b) of the NIRC which reads:

> (b) Assessment and payment of deficiency tax – xxx
>
> In case a **person fails to make and file a return or** list at the time prescribed by law, **or makes willfully or otherwise, false or fraudulent return** or list x x x. (Emphasis Supplied)

Likewise, in *Aznar v. Court of Tax Appeals,*[41] this Court observed:

> To our minds we can dispense with these controversial arguments on facts, although we do not deny that the findings of facts by the Court of Tax Appeals, supported as they are by very substantial evidence, carry great weight, by resorting to a proper interpretation of Section 332 of the NIRC. We believe that the proper and reasonable interpretation of said provision should be that in the three different cases of **(1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return**, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the **(1) falsity, (2) fraud, and (3) omission**. **Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situations into three different classes, namely, "falsity," "fraud" and "omission."**[42] (Emphasis Supplied)

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[41] 157 Phil. 510 (1974).

[42] *Id.* at 523.

Applying the foregoing considerations to the case at bar, the filing of a "fraudulent return with intent to evade tax" is a crime involving moral turpitude as it entails willfulness and fraudulent intent on the part of the individual. The same, however, cannot be said for "failure to file a return" where the mere omission already constitutes a violation. Thus, this Court holds that even if the conviction of respondent Marcos II is affirmed, the same not being a crime involving moral turpitude cannot serve as a ground for his disqualification.

Anent the third error raised by petitioner, the same has no merit.

Petitioner contends that respondents denied the existence of the will, and are, therefore, *estopped* from claiming to be the rightful executors thereof. Petitioner further claims that said actions clearly show that respondents lack the competence and integrity to serve as officers of the court.

This Court does not agree with the posture taken by petitioner, and instead, accepts the explanation given by respondents, to wit:

> Respondents opposed the petition for probate not because they are disclaiming the existence of the will, but because of certain legal grounds, to wit: (a) petitioner does not have the requisite interest to institute it; (b) the original copy of the will was not attached to the petition for probate as required by the rules; and (c) the Commissioner of the Bureau of Internal Revenue is not qualified to be appointed as administrator of the estate.[43]

Based on the foregoing, considering the nature of their opposition, respondents cannot be held guilty of *estoppel* as they merely acted within their rights when they put in issue legal grounds in opposing the probate proceedings. More importantly, even if said grounds were later on overruled by the RTC, said court was still of opinion that respondents were fit to serve as executors notwithstanding their earlier opposition.

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[43] *Rollo* (G.R. No. 130371), p. 363. (Emphasis supplied.)

Again, in the absence of palpable error or gross abuse of discretion, this Court will not interfere with the RTC's discretion.

As for the remaining errors assigned by petitioner, the same are bereft of merit.

Petitioner contends that respondents have strongly objected to the transfer to the Philippines of the Marcos assets deposited in the Swiss Banks[44] and thus the same should serve as a ground for their disqualification to act as executors. This Court does not agree. In the first place, the same are mere allegations which, without proof, deserve scant consideration. Time and again, this Court has stressed that this Court is a court of law and not a court of public opinion. Moreover, petitioner had already raised the same argument in its motion for partial reconsideration before the RTC. Said court, however, still did not find the same as a sufficient ground to disqualify respondents. Again, in the absence of palpable error or gross abuse of discretion, this Court will not interfere with the RTC's discretion.

Lastly, petitioner argues that the assailed RTC Orders were based solely on their own evidence and that respondents offered no evidence to show that they were qualified to serve as executors.[45] It is basic that one who alleges a fact has the burden of proving it and a mere allegation is not evidence.[46] Consequently, it was the burden of petitioner (not respondents) to substantiate the grounds upon which it claims that respondents should be disqualified to serve as executors, and having failed in doing so, its petition must necessarily fail.

WHEREFORE, premises considered, the March 13, 1997 Decision and August 27, 1997 Resolution of the Court of Appeals in CA-G.R. SP No. 43450 are hereby *AFFIRMED*.

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[44] *Id.* at 37.

[45] *Id.* at 36.

[46] *P.T. Cerna Corporation v. Court of Appeals,* G.R. No. 91622, April 6, 1993, 221 SCRA 19, 25.

The Regional Trial Court of Pasig City, Branch 156, acting as a probate court in Special Proceeding No. 10279, is hereby *ORDERED* to issue letters testamentary, in *solidum,* to Imelda Romualdez-Marcos and Ferdinand Marcos II.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 152579. August 4, 2009]

SAMEER OVERSEAS PLACEMENT AGENCY, INC., *petitioner, vs.* **MILDRED R. SANTOS, in her official capacity as President of, and/or ASBT INTERNATIONAL MANAGEMENT SERVICE, INC., LORD NELSON SANTOS, DANILO BALCITA, NICSON CRUZ, PEPITO MANGLICMOT, and ALLAN ARANES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PARTS OF A PLEADING; SIGNATURE AND ADDRESS; THE RULE ALLOWS THE PLEADINGS TO BE SIGNED BY EITHER THE PARTY TO THE CASE OR THE COUNSEL REPRESENTING THAT PARTY; CASE AT BAR.—** Section 3, Rule 7 of the Rules of Civil Procedure provides— "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 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." Obviously, the rule allows the pleadings to be signed by either the party to the case or the counsel representing that party. In this case, ASBT, as petitioner, opted to sign its petition and its motion for reconsideration in its own behalf, through its corporate president, Mildred R. Santos, who was duly authorized by ASBT's Board of Directors to represent the company in prosecuting this case. Therefore, the said pleadings cannot be considered unsigned and without any legal effect.

2. **ID.; ID.; FORUM SHOPPING; DEFINED.—** Forum shopping is defined as an act of a party, against whom an adverse judgment or order has been rendered in one forum, of seeking and possibly getting a favorable opinion in another forum, other than by appeal or special civil action for *certiorari*. It may also be the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition.

3. **ID.; ID.; ID.; THERE IS FORUM SHOPPING WHERE THE ELEMENTS OF *LITIS PENDENTIA* ARE PRESENT.—** There is forum shopping where the elements of *litis pendentia* are present, namely: (a) there is identity of parties, or at least such parties as represent the same interest in both actions; (b) there is identity of rights asserted and relief prayed for, the relief being founded on the same set of facts; and (c) the identity of the two preceding particulars is such that any judgment rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other. It is expressly prohibited by this Court because it trifles with and abuses court processes, degrades the administration of justice, and congests court dockets. A willful and deliberate violation of the rule against forum shopping is a ground for summary dismissal of the case, and may also constitute direct contempt.

4. **ID.; ID.; ID.; A MOTION FOR RECONSIDERATION CANNOT BE TREATED AS A NEW PETITION TO MAKE**

IT FIT THE DEFINITION OF FORUM SHOPPING; CASE AT BAR.— In this case, there is clearly no forum shopping committed by ASBT. The July 5, 2001 motion it filed praying for reconsideration of the June 19, 2001 Resolution of the Court of Appeals, dismissing the petition on the technical ground of lack of proof of the authority of ASBT President Mildred R. Santos to bind the corporation in its appeal, is simply what it is, a motion for reconsideration. Sameer cannot insist that it be treated as a new petition just to make it fit the definition of forum shopping in an attempt to evade liability to pay the amounts awarded to Santos, *et al*.

5. **ID.; ID.; ID.; MERE DIVISIONS OF ONE AND THE SAME COURT OF APPEALS CANNOT BE CONSIDERED AS DIFFERENT FORA WITHIN THE AMBIT OF THE PROHIBITION AGAINST FORUM SHOPPING; CASE AT BAR.—** Nor was Sameer correct when it asseverated that the Seventh Division, that initially dismissed then reinstated ASBT's petition, and the Former Fourth Division, that rendered the questioned Decision and Resolution in favor of ASBT, can be considered as different fora within the ambit of the prohibition. They are mere divisions of one and the same Court of Appeals. And as explained by the appellate court, what actually happened was that after the Seventh Division issued its June 19, 2001 Resolution dismissing the case for failure of ASBT to show that Mildred R. Santos was authorized to sign and bind the corporation in the proceedings, ASBT complied and submitted the requisite proof of authority. The Seventh Division then issued a Resolution on August 14, 2001 reinstating the petition. After an internal reorganization, it was the Fourth Division which promulgated a decision on December 10, 2001. ASBT never filed a second petition.

APPEARANCES OF COUNSEL

Gaspar V. Tagalo for petitioner.
Floyd P. Lalwet for Lord Nelson Santos, *et al*.

DECISION

NACHURA, *J.*:

This is a petition[1] for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision[2] dated December 10, 2001 and the Resolution[3] dated March 12, 2002 of the Court of Appeals in CA-G.R. SP No. 65068 entitled *ASBT International Management Service Incorporated v. National Labor Relations Commission, Sameer Overseas Placement Agency, Incorporated, Lord Nelson Santos, et al.*

The antecedents are as follows:

On December 5, 1995, private respondents Lord Nelson Santos, Danilo Balcita, Nicson Cruz, Pepito Manglicmot, and Allan Aranes (Santos, *et al*.) were recruited by petitioner Sameer Overseas Placement Agency, Inc. (Sameer) as aluminum products manufacturer operators for Ensure Company Ltd. of Taiwan (Ensure), under a one-year employment contract with a basic monthly salary of NT$14,800.00.

Santos, *et al*. were deployed and were able to work for Ensure. However, they were repatriated even prior to the expiration of their contracts. Consequently, in July and August 1996, Santos, *et al*. filed complaints against Sameer before the National Labor Relations Commission (NLRC) for illegal dismissal, underpayment of salaries, and unauthorized salary deductions.

On November 3, 1997, Sameer filed a third party complaint against private respondent ASBT International Management Service, Inc. (ASBT). It claimed that the latter should be liable for all the contractual obligations of Ensure since Sameer's accreditation was transferred to ASBT on June 9, 1997.

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[1] Penned by Associate Justice Eliezer R. de los Santos (deceased) with Associate Justices Eubulo G. Verzola (deceased) and Rodrigo V. Cosico (retired), *concurring*; *rollo*, pp. 8-25.

[2] *Id.* at 34-43.

[3] *Id.* at 30-32.

On December 29, 1999, the Labor Arbiter rendered a Decision,[4] disposing as follows—

WHEREFORE, premises considered, SAMEER is hereby ordered to pay the complainants:

1. The amount of NT$156,120.00 to LORD NELSON SANTOS covering the underpayment of monthly salaries for the period of five (5) months, salaries for the unexpired portion of the contract and refund of the unauthorized salary deduction, Sixty Five Thousand (₱65,000.00) Pesos as refund of the placement fee and guaranty fee less Five Thousand (₱5,000.00) Pesos, and Six Thousand (₱6,000.00) Pesos as refund for the cost of his plane ticket;

2. The amount of NT$154,560.00 to DANILO BALCITA covering the underpayment of monthly salaries for the period of six (6) months, salaries for the unexpired portion of the contract and refund of the unauthorized salary deduction, Sixty Five Thousand (₱65,000.00) Pesos as refund of the placement fee and guaranty fee less Five Thousand (₱5,000.00) Pesos, and Six Thousand (₱6,000.00) Pesos as refund for the cost of his plane ticket;

3. The amount of NT$174,048.00 to EMMANUEL DEMILLO covering the underpayment of monthly salaries for the period of four (4) months, salaries for the unexpired portion of the contract and refund of the unauthorized salary deduction, Sixty Five Thousand (₱65,000.00) Pesos as refund of the placement fee and guaranty fee less Five Thousand (₱5,000.00) Pesos, and Six Thousand (₱6,000.00) Pesos as refund for the cost of his plane ticket;

4. The amount of NT$172,560.00 to NICZON (sic) CRUZ covering the underpayment of monthly salaries for the period of four (4) months, salaries for the unexpired portion of the contract and refund of the unauthorized salary deduction, Sixty Five Thousand (₱65,000.00) Pesos as refund for the placement fee and guaranty fee less Five Thousand (₱5,000.00) Pesos, and Six Thousand (₱6,000.00) Pesos as refund for the cost of his plane ticket;

5. The amount of NT$152,560.00 to PEPITO MANGLICMOT covering the underpayment of monthly salaries for the period of four (4) months, salaries for the unexpired portion of the contract and

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[4] *Id.* at 53-62.

refund of the unauthorized salary deduction, Sixty Five Thousand (₱65,000.00) Pesos as refund of the placement fee and guaranty fee less Five Thousand (₱5,000.00) Pesos, and Six Thousand (₱6,000.00) Pesos as refund for the cost of his plane ticket;

6. The amount of NT$65,280.00 to DANIEL DUMLAO covering the underpayment of monthly salaries for the period of four (4) months, salaries for the unexpired portion of the contract and refund of the unauthorized salary deduction, Sixty Five Thousand (₱65,000.00) Pesos as refund of the placement fee and guaranty fee less Five Thousand (₱5,000.00) Pesos, and Six Thousand (₱6,000.00) Pesos as refund for the cost of his plane ticket;

7. The amount of NT$156,120.00 to ALLAN ARANES covering the underpayment of monthly salaries for the period of four (4) months, salaries for the unexpired portion of the contract and refund of the unauthorized salary deduction, Sixty Five Thousand (₱65,000.00) Pesos as refund of the placement fee and guaranty fee less Five Thousand (₱5,000.00) Pesos, and Six Thousand (₱6,000.00) Pesos as refund for the cost of his plane ticket;

8. The amount of Fifty Thousand (₱50,000.00) Pesos each as moral damages;

9. Attorney's fees and litigation expenses equivalent to ten percent (10%) of the total monetary award.

SO ORDERED.[5]

Dissatisfied, Sameer appealed to the NLRC alleging, among others, that the Labor Arbiter committed grave abuse of discretion in failing to decide the third-party complaint, to its damage and prejudice, insisting that it should have been absolved of any and all liabilities pertaining to the claims of Santos, *et al*.

On January 24, 2001, the NLRC promulgated its Decision,[6] the dispositive portion of which reads—

WHEREFORE, premises considered, the appealed decision is hereby SET ASIDE and a new one entered absolving SAMEER Overseas

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[5] *Id.* at 60-62.

[6] *Id.* at 64-86.

Placement Agency, Inc. from its liabilities in view of the transfer of accreditation to ASBT Management Services, Inc. and ordering the latter to pay the following:

1. Danilo Balcita –

₱44,640.00	–	representing his salary for the unexpired portion of the contract
₱19,880.00	–	representing refund of his placement fee

2. Nicson Cruz

₱44,640.00	–	representing his salary for the unexpired portion of the contract
₱19,880.00	–	representing refund of his placement fee

3. Pepito Manglicmot

₱44,640.00	–	representing his salary for the unexpired portion of the contract
₱19,980.00	–	representing refund of his placement fee

4. Lord Nelson Santos

₱44,640.00	–	representing his salary for the unexpired portion of the contract
₱19,880.00	–	representing refund of his placement fee

All other claims are dismissed for want of legal and factual basis.

SO ORDERED.[7]

Aggrieved, ASBT moved for reconsideration. The NLRC denied the motion for lack of merit.

ASBT elevated the case to the Court of Appeals via a petition for *certiorari* under Rule 65 of the Rules of Court. However, in a Resolution[8] dated June 19, 2001, the Court of Appeals denied due course and dismissed ASBT's petition on the ground

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[7] *Id.* at 84-85.

[8] *Id.* at 45.

that the attached Verification and Certification of Non-Forum Shopping was signed by Mildred R. Santos as President of ASBT without any proof of authority to sign for and bind ASBT in the proceedings.

ASBT filed a motion for reconsideration of the June 19, 2001 Resolution, submitting therewith the necessary board resolution authorizing corporate president Mildred R. Santos to represent ASBT before the Court of Appeals. The appellate court granted the motion and reinstated the petition.

In its December 10, 2001 Decision, the Court of Appeals ruled in favor of ASBT. The decretal portion of the Decision reads—

> WHEREFORE, premises considered, the petition is **GRANTED**. The assailed decision and resolution of the public respondent NLRC are **SET ASIDE**. Sameer Overseas Placement Agency, Inc. is hereby ordered to pay the following to:
>
> 1. Danilo Balcita – a). ₱44,640.00, representing his salary for the unexpired portion of the contract; b). ₱19,880.00, representing refund of his placement.
> 2. Nicson Cruz – a). ₱44,640.00, representing his salary for the unexpired portion of the contract; b). ₱19,880.00, representing refund of his placement fee.
> 3. Pepito Manglicmot – a). ₱44,640.00, representing his salary for the unexpired portion of the contract; b). ₱19,880,00, representing refund of his placement fee.
> 4. Lord Nelson Santos – a). ₱44,640.00, representing his salary for the unexpired portion of the contract; b). ₱19,880.00, representing refund of his placement fee.
>
> All other claims are **DISMISSED** for want of legal and factual basis.
>
> SO ORDERED.[9]

In ruling against Sameer, the Court of Appeals considered the following factual circumstances: (1) Sameer admitted that

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

it hired and deployed Santos, *et al*. for and in behalf of Ensure for work in Taiwan; (2) Sameer received the placement fees for the processing of the documents of Santos, *et al*., without any showing that said fees inured to the benefit of ASBT in any way; (3) Santos, *et al*. were repatriated in 1996, prior to the supposed transfer of Sameer's accreditation to ASBT on June 9, 1997; (4) the August 1, 1997 letter from the Philippine Overseas Employment Administration (POEA) presented by Sameer pronouncing the transfer of accreditation of Yuan Fu Co. Ltd. to ASBT, upon Sameer's representation that Yuan Fu Co. Ltd. and Ensure were one and the same entity, indicated that such accreditation of ASBT had been cancelled; and (5) Sameer failed to present substantial proof that Ensure changed its business name to Yuan Fu.

Sameer, thus, moved to reconsider the December 10, 2001 Decision; but the Court of Appeals denied the same in its March 12, 2002 Resolution. Hence, this petition.

The petition should be denied for utter want of merit.

First. Sameer contends that both the June 6, 2001 Petition and the July 5, 2001 Motion for Reconsideration filed by ASBT before the Court of Appeals were signed by Mildred Santos, as corporate president, who is not a member of the Bar. As such, Sameer argues that both the Petition and the Motion for Reconsideration should be considered unsigned pleadings which produce no legal effect, pursuant to the last paragraph of Section 3, Rule 7 of the Rules of Civil Procedure.

We disagree. Section 3, Rule 7 of the Rules of Civil Procedure provides —

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 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. (*Emphasis supplied.*)

Obviously, the rule allows the pleadings to be signed by either the party to the case or the counsel representing that party. In this case, ASBT, as petitioner, opted to sign its petition and its motion for reconsideration in its own behalf, through its corporate president, Mildred R. Santos, who was duly authorized by ASBT's Board of Directors to represent the company in prosecuting this case. Therefore, the said pleadings cannot be considered unsigned and without any legal effect.

Second. Sameer also submits that ASBT violated the prohibition against forum shopping. It claims that the transfer of CA-G.R. SP No. 65068 from the Seventh Division of the Court of Appeals—which initially denied due course and dismissed the petition then reinstated the same (upon proof that Mildred R. Santos as duly authorized) in the Former Fourth Division, which gave due course to and granted the petition—was actually an act of forum shopping. Sameer posits that the grant of ASBT's July 5, 2001 motion for reconsideration by the Seventh Division, which reinstated the dismissed petition, in effect gave rise to a new petition.

The argument is sadly misplaced. Forum shopping is defined as an act of a party, against whom an adverse judgment or order has been rendered in one forum, of seeking and possibly getting a favorable opinion in another forum, other than by appeal or special civil action for *certiorari*. It may also be the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court

would make a favorable disposition.[10] There is forum shopping where the elements of *litis pendentia* are present, namely: (a) there is identity of parties, or at least such parties as represent the same interest in both actions; (b) there is identity of rights asserted and relief prayed for, the relief being founded on the same set of facts; and (c) the identity of the two preceding particulars is such that any judgment rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other.[11] It is expressly prohibited by this Court because it trifles with and abuses court processes, degrades the administration of justice, and congests court dockets. A willful and deliberate violation of the rule against forum shopping is a ground for summary dismissal of the case, and may also constitute direct contempt.[12]

In this case, there is clearly no forum shopping committed by ASBT. The July 5, 2001 motion it filed praying for reconsideration of the June 19, 2001 Resolution of the Court of Appeals, dismissing the petition on the technical ground of lack of proof of the authority of ASBT President Mildred R. Santos to bind the corporation in its appeal, is simply what it is, a motion for reconsideration. Sameer cannot insist that it be treated as a new petition just to make it fit the definition of forum shopping in an attempt to evade liability to pay the amounts awarded to Santos, *et al*. Nor was Sameer correct when it asseverated that the Seventh Division, that initially dismissed then reinstated ASBT's petition, and the Former Fourth Division, that rendered the questioned Decision and Resolution in favor of ASBT, can be considered as different fora within the ambit of the prohibition. They are mere divisions of one and the same

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[10] *Philippine Islands Corporation for Tourism Development, Inc. v. Victorias Milling Company, Inc.*, G.R. No. 167674, June 17, 2008, 554 SCRA 561, 569.

[11] *Tegimenta Chemical Phils. v. Buensalida*, G.R. No. 176466, June 17, 2008, 554 SCRA 670, 679.

[12] *Tapuz v. Del Rosario*, G.R. No. 182484, June 17, 2008, 554 SCRA 768, 782.

Court of Appeals. And as explained by the appellate court, what actually happened was that after the Seventh Division issued its June 19, 2001 Resolution dismissing the case for failure of ASBT to show that Mildred R. Santos was authorized to sign and bind the corporation in the proceedings, ASBT complied and submitted the requisite proof of authority. The Seventh Division then issued a Resolution on August 14, 2001 reinstating the petition. After an internal reorganization, it was the Fourth Division which promulgated a decision on December 10, 2001. ASBT never filed a second petition.

WHEREFORE, the petition is *DENIED* for lack of merit. The assailed December 10, 2001 Decision and the March 12, 2002 Resolution of the Court of Appeals are *AFFIRMED*. Costs against petitioner.

SO ORDERED.

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

SPECIAL THIRD DIVISION

[G.R. No. 153690. August 4, 2009]

DAVID LU, *petitioner, vs.* **PATERNO LU YM, SR., PATERNO LU YM, JR., VICTOR LU YM, *ET AL.* & LUYM DEVELOPMENT CORP.,** *respondents.*

[G.R. No. 157381. August 4, 2009]

PATERNO LU YM, SR., PATERNO LU YM, JR., VICTOR LU YM, JOHN LU YM, KELLY LU YM, and LUDO & LUYM DEVELOPMENT CORP., *petitioners, vs.* **DAVID LU,** *respondent.*

[G.R. No. 170889. August 4, 2009]

JOHN LU YM and LUDO & LUYM DEVELOPMENT CORPORATION, *petitioner, vs.* **THE HON. COURT OF APPEALS OF CEBU CITY (former Twentieth Division), DAVID LU, ROSA GO, SILVANO LUDO & CL CORPORATION,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; COMMENCEMENT OF ACTIONS; PAYMENT OF THE PRESCRIBED DOCKET FEES; REQUIRED FOR THE TRIAL COURT TO ACQUIRE JURISDICTION OVER THE ACTION FILED; CASE AT BAR.—** In our August 26, 2008 Decision, we declared that the subject matter of the complaint filed by David, *et al*., was one incapable of pecuniary estimation. Movants beg us to reconsider this position, pointing out that the case filed below by David, *et al.*, had for its objective the nullification of the issuance of 600,000 shares of stock of LLDC. The complaint itself contained the allegation that the "real value of these shares, based on underlying real estate values, was One Billion Eighty Seven Million Fifty Five Thousand One Hundred Five Pesos (₱1,087,055,105)." Upon deeper reflection, we find that the movants' claim has merit. The 600,000 shares of stock were, indeed, properties in litigation. They were the subject matter of the complaint, and the relief prayed for entailed the nullification of the transfer thereof and their return to LLDC. David, *et al*., are minority shareholders of the corporation who claim to have been prejudiced by the sale of the shares of stock to the Lu Ym father and sons. Thus, to the extent of the damage or injury they allegedly have suffered from this sale of the shares of stock, the action they filed can be characterized as one capable of pecuniary estimation. The shares of stock have a definite value, which was declared by plaintiffs themselves in their complaint. Accordingly, the docket fees should have been computed based on this amount. This is clear from the x x x version of Rule 141, Section 7, which was in effect at the time the complaint was filed x x x. We have earlier held that a court acquires jurisdiction over a case only upon the payment of the prescribed fees. Hence, without payment of the correct docket

fees, the trial court did not acquire jurisdiction over the action filed by David, *et al*.

2. **ID.; ID.; ID.; ID.; INTENT TO DEFRAUD THE GOVERNMENT IN AVOIDING TO PAY THE CORRECT DOCKET FEES, ESTABLISHED IN CASE AT BAR.—** Fraud is a "generic term embracing all multifarious means which human ingenuity can devise 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." Since fraud is a state of mind, its presence can only be determined by examining the attendant circumstances. x x x [I]t is clear that a notice of *lis pendens* is availed of mainly in real actions. Hence, when David, *et al.*, sought the annotation of notices of *lis pendens* on the titles of LLDC, they acknowledged that the complaint they had filed affected a title to or a right to possession of real properties. At the very least, they must have been fully aware that the docket fees would be based on the value of the realties involved. Their silence or inaction to point this out to the Clerk of Court who computed their docket fees, therefore, becomes highly suspect, and thus, sufficient for this Court to conclude that they have crossed beyond the threshold of good faith and into the area of fraud. Clearly, there was an effort to defraud the government in avoiding to pay the correct docket fees. Consequently, the trial court did not acquire jurisdiction over the case.

3. **ID.; ID.; FILING AND SERVICE OF PLEADINGS, JUDGMENTS AND OTHER PAPERS; NOTICE OF *LIS PENDENS*; DEFINED.—** A notice of *lis pendens* is an announcement to the whole world that a particular real property is in litigation, serving as a warning that one who acquires interest over said property does so at his own risk, or that he gambles on the result of the litigation over the said property. The filing of a notice of *lis pendens* charges all strangers with notice of the particular litigation referred to therein and, therefore, any right they may thereafter acquire over the property is subject to the eventuality of the suit. Such announcement is founded upon public policy and necessity, the purpose of which is to keep the properties in litigation within the power of the court until the litigation is terminated and to prevent the defeat of the judgment or decree by subsequent alienation.

4. **ID.; ID.; ID.; ID.; WHEN AVAILABLE.—** As a general rule, the only instances in which a notice of *lis pendens* may be availed of are as follows: (a) an action to recover possession of real estate; (b) an action for partition; and (c) any other court proceedings that directly affect the title to the land or the building thereon or the use or the occupation thereof. Additionally, this Court has held that resorting to *lis pendens* is not necessarily confined to cases that involve title to or possession of real property. This annotation also applies to suits seeking to establish a right to, or an equitable estate or interest in, a specific real property; or *to enforce a lien, a charge or an encumbrance against it*.

5. **ID.; ACTIONS; JURISDICTION; THE MATTER OF LACK OF JURISDICTION OF THE TRIAL COURT MAY BE RAISED AT ANY STAGE OF THE PROCEEDINGS; CASE AT BAR.—** We find that, in the circumstances, the Lu Ym father and sons are not estopped from challenging the jurisdiction of the trial court. They raised the insufficiency of the docket fees before the trial court rendered judgment and continuously maintained their position even on appeal to the CA. Although the manner of challenge was erroneous – they should have addressed this issue directly to the trial court instead of to the OCA – they should not be deemed to have waived their right to assail the jurisdiction of the trial court. The matter of lack of jurisdiction of the trial court is one that may be raised at any stage of the proceedings. More importantly, this Court may pass upon this issue *motu proprio.*

CARPIO MORALES, *J.: dissenting opinion*

1. **REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; ACTIONS INCAPABLE OF PECUNIARY ESTIMATION; TEST IN DETERMINING WHETHER AN ACTION IS INCAPABLE OF PECUNIARY ESTIMATION, ELUCIDATED.—** The main relief prayed for both in the original complaint and the amended complaint is the same, that is, to declare null and void the issuance of 600,000 unsubscribed and unissued shares to Lu Ym father and sons, *et al*., for a price of 1/18 of their real value, for being inequitable, having done in breach of director's fiduciary's duty to stockholders, in violation of the minority stockholders' rights, and with unjust enrichment.

As judiciously discussed in the Court's August 26, 2008 Decision, the test in determining whether the subject matter of an action is incapable of pecuniary estimation is by ascertaining the nature of the principal action or remedy sought. It explained: "x x x To be sure, the annulment of the shares, the dissolution of the corporation and the appointment of receivers/management committee are actions which **do not consist in the recovery** of a sum of money. If, in the end, a sum of money or real property would be recovered, it would simply be the consequence of such principal action. Therefore, the case before the RTC was *incapable of pecuniary estimation.*" Among the actions the Court has recognized as being incapable of pecuniary estimation include legality of conveyances. In a case involving an annulment of contract, the Court found it to be one which cannot be estimated x x x. "In *Lapitan* this Court, in an opinion by Justice J.B.L. Reyes, held: A review of the jurisprudence of this Court indicates that in determining whether an action is one the subject matter of which is not capable of pecuniary estimation, this Court has adopted the criterion of first ascertaining the nature of the principal action or remedy sought. If it is primarily for the recovery of a sum of money, the claim is considered capable of pecuniary estimation, and whether jurisdiction is in the municipal courts or in the courts of first instance would depend on the amount of the claim. However, where the basic issue is something other than the right to recover a sum of money, or where the money claim is purely incidental to, or a consequence of, the principal relief sought, like in suits to have the defendant perform his part of the contract (specific performance) and in actions for support, or for annulment of a judgment or to foreclose a mortgage, this Court has considered such actions as cases where the subject of the litigation may not be estimated in terms of money, and are cognizable exclusively by courts of first instance. **The rationale of the rule is plainly that the second class cases, besides the determination of damages, demand an inquiry into other factors which the law has deemed to be more within the competence of courts of first instance**, which were the lowest courts of record at the time that the first organic laws of the Judiciary were enacted allocating jurisdiction (Act 136 of the Philippine Commission of June 11, 1901). Actions for specific performance of contracts have been expressly pronounced to be exclusively cognizable by courts of first instance: *De Jesus vs. Judge Garcia*, L-26816,

February 28, 1967; *Manufacturer's Distributors, Inc. vs. Yu Siu Liong*, L-21285, April 29, 1966. And **no cogent reason appears, and none is here advanced by the parties, why an action for rescission (or resolution) should be differently treated, a "rescission" being a counterpart, so to speak, of 'specific performance.' In both cases, the court would certainly have to undertake an investigation into facts that would justify one act or the other. No award for damages may be had in an action for rescission without first conducting an inquiry into matters which would justify the setting aside of a contract**, in the same manner that courts of first instance would have to make findings of fact and law in actions not capable of pecuniary estimation expressly held to be so by this Court, arising from issues like those raised in *Arroz v. Alojado, et al.*, L-22153, March 31, 1967 (**the legality or illegality of the conveyance** sought for and the determination of the validity of the money deposit made); *De Ursua v. Pelayo*, L-13285, April 18, 1950 (validity of a judgment); *Bunayog v. Tunas*, L-12707, December 23, 1959 (validity of a mortgage); *Baito v. Sarmiento*, L-13105, August 25, 1960 (the relations of the parties, the right to support created by the relation, *etc*., in actions for support), *De Rivera, et al. v. Halili*, L-15159, September 30, 1963 (the validity or nullity of documents upon which claims are predicated). Issues of the same nature may be raised by a party against whom an action for rescission has been brought, or by the plaintiff himself. It is, therefore, difficult to see why a prayer for damages in an action for rescission should be taken as the basis for concluding such action as one capable of pecuniary estimation — a prayer which must be included in the main action if plaintiff is to be compensated for what he may have suffered as a result of the breach committed by defendant, and not later on precluded from recovering damages by the rule against splitting a cause of action and discouraging multiplicity of suits."

2. **ID.; ID.; ID.; A MERE INQUIRY FROM AN IMPROPER OFFICE CANNOT BE CONSIDERED AS AN ACT OF HAVING RAISED THE JURISDICTIONAL QUESTION PRIOR TO THE RENDITION OF THE TRIAL COURT'S DECISION; CASE AT BAR.—** Lu Ym father and sons did not raise the issue [of the insufficiency of the docket fees] before the trial court. The narration of facts shows that they inquired from the Clerk of Court on the amount of paid docket fees on January 23, 2004. Lu Ym father and sons, thereafter, still

"speculat[ed] on the fortune of litigation." Thirty-seven days later, the trial court rendered its decision, which happened to be adverse to Lu Ym father and sons. Meanwhile, they attempted to verify the matter of docket fees from the Office of the Court Administrator (OCA). In their Application for the issuance a writ of preliminary injunction filed with the Court of Appeals, they still failed to mention it. Finally, it was only in their Motion for Reconsideration of the denial of their application for injunctive writ that they raised such issue before the appellate court. Their further inquiry from the OCA cannot redeem them. **A mere inquiry from an improper office at that, could not, by any stretch, be considered as their act of having raised the jurisdictional question prior to the rendition of the trial court's decision**. x x x It is thus respectfully maintained that assuming *arguendo* that the docket fees were insufficiently paid, the doctrine of estoppel already applies. The inequity resulting from the abrogation of the whole proceedings at this late stage when the decision subsequently rendered was adverse to them is precisely the evil being avoided by the equitable principle of estoppel.

3. **ID.; ID.; COMMENCEMENT OF ACTIONS; PAYMENT OF THE PRESCRIBED DOCKET FEES; ERRONEOUS ANNOTATION OF A NOTICE OF *LIS PENDENS* IN CASE AT BAR DOES NOT PROVE INTENT TO DEFRAUD THE GOVERNMENT TO AVOID PAYMENT OF THE CORRECT DOCKET FEES.—** "x x x In *Sun Insurance Office, Ltd., (SIOL) v. Asuncion*, this Court ruled that the filing of the complaint or appropriate initiatory pleading and the payment of the prescribed docket fee vest a trial court with jurisdiction over the subject matter or nature of the action. If the amount of docket fees paid is insufficient considering the amount of the claim, the clerk of court of the lower court involved or his duly authorized deputy has the responsibility of making a deficiency assessment. The party filing the case will be required to pay the deficiency, but jurisdiction is not automatically lost." The *ponencia* finds that the doctrine does not apply since there was intent to defraud the government, citing one attendant circumstance– the annotation of notices of *lis pendens* on real properties owned by LLDC. x x x All findings of fraud should begin the exposition with the presumption of good faith. The question is not whether there was good faith on the part of David, *et al*., but whether there was bad faith on his part. In the present case, the erroneous annotation of a notice of *lis pendens* does

not negate good faith. The overzealousness of a party in protecting *pendente lite* his perceived interest, inchoate or otherwise, in the corporation's properties from depletion or dissipation, should not be lightly equated to bad faith. That notices of *lis pendens* were erroneously annotated on the titles does not have the effect of changing the nature of the action. The aggrieved party is not left without a remedy, for they can move to cancel the annotations. The *ponencia*, however, deemed such act as an acknowledgement that the case they filed was a real action, concerning as it indirectly does the corporate realties, the titles of which were allegedly annotated. This conclusion does not help much in ascertaining the filing fees because the value of these real properties and the value of the 600,000 shares of stock are different. Further, good faith can be gleaned from the series of amendments on the provisions on filing fees, that even prompted this Court to make a clarification.

4. **ID.; RULES OF COURT; LEGAL FEES; COMPUTATION OF FILING FEES IN INTRA-CORPORATE CASES; APPLICABLE RULE IN CASE AT BAR.—** The new Section 21(k) of Rule 141 of the Rules of Court, as amended by A.M. No. 04-2-04-SC (July 20, 2004), expressly provides that "[f]or petitions for insolvency or other cases involving intra-corporate controversies, the fees prescribed under Section 7(a) shall apply." *Notatu dignum* is that **paragraph (b) 1 & 3** of Section 7 thereof was **omitted** from the reference. Said paragraph refers to docket fees for filing "[a]ctions where the value of the subject matter cannot be estimated" and "all other actions not involving property." By referring the computation of such docket fees to **paragraph (a)** only, it denotes that an intra-corporate controversy always involves a property in litigation, the value of which is always the basis for computing the applicable filing fees. The latest amendments seem to imply that there can be no case of intra-corporate controversy where the value of the subject matter cannot be estimated. Even one for a mere inspection of corporate books. If the complaint was filed today, one could safely find refuge in the express phraseology of Section 21 (k) of Rule 141 that paragraph (a) alone applies. In this case, however, the original Complaint was filed on August 14, 2000, during which time Section 7, without qualification, was the applicable provision. Even the Amended Complaint was filed on March 31, 2003, during which time the applicable rule was that paragraphs (a) and (b) 1 & 3 shall be the basis for computing

the filing fees in intra-corporate cases, recognizing that there could be an intra-corporate controversy where the value of the subject matter cannot be estimated, such as an action for inspection of corporate books.

APPEARANCES OF COUNSEL

Calderon Davide Trinidad & Tolentino Law Offices, Sycip Salazar Hernandez & Gatmaitan, and *Alvarez Nuez Galang Espina and Lopez* for David Lu.

Lim Villanueva & Associates Law Offices for Kelly L. Luym, *et al*.

Pepito & Ventura Law Offices and *Antonio R. Bautista* for Ludo and Luym Development Corporation.

Gochan Gochan and Gochan Law Offices for John Luym.

R E S O L U T I O N

NACHURA, *J*.:

For resolution is the Motion for Reconsideration[1] filed by petitioners John Lu Ym and Ludo & LuYm Development Corporation (movants), praying that we reconsider our Decision[2] dated August 26, 2008, where we disposed of the three consolidated cases in this wise:

WHEREFORE, premises considered, the petitions in G.R. Nos. 153690 and 157381 are **DENIED** for being moot and academic; while the petition in G.R. No. 170889 is **DISMISSED** for lack of merit. Consequently, the *Status Quo* Order dated January 23, 2006 is hereby **LIFTED.**

The Court of Appeals is **DIRECTED** to proceed with CA-G.R. CV No. 81163 and to resolve the same with dispatch.

SO ORDERED.[3]

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[1] *Rollo* (G.R. No. 153690), pp. 1052-1108.

[2] *Id.* at 990-1014.

[3] *Id.* at 1012-1013.

In support of their motion, the movants advance the following arguments:

1. Private respondents are guilty of fraud in avoiding payment of the correct docket fees by not listing the real properties in their Complaint and Amended Complaint despite their admission that the real properties are the subject matter of the case and by their act of annotating notices of *lis pendens* on the properties of Ludo Dev.

2. The present action is not an intra-corporate controversy and therefore the RTC, being a special commercial court, has no jurisdiction over the subject matter of the case.

3. The RTC has no jurisdiction to order the dissolution of the Corporation.

However, should this Honorable Court decide that the foregoing grounds are not sufficient justification to warrant a dismissal of SRC-021 CEB, petitioners ask that the *Status Quo* Order of this Court be maintained during the appeal of the case or that a Writ of Injunction be issued to stop the immediate implementation of the March 1, 2004 decision based on the following grounds:

a) The March 1, 2004 decision of the RTC was null and void for denying petitioners' right to due process.

b) The Management Committee organized by the RTC in the March 1, 2004 decision was unlawfully constituted.

c) Supervening event has made the management committee *functus oficio*.[4]

To resolve the motion judiciously, it is necessary to restate, albeit briefly, the factual and procedural antecedents that gave rise to these consolidated petitions.

On August 14, 2000, David Lu, Rosa Go, Silvano Ludo and CL Corporation filed with the Regional Trial Court (RTC) of Cebu City a complaint against Paterno Lu Ym, Sr., Paterno Lu Ym, Jr., Victor Lu Ym, John Lu Ym, Kelly Lu Ym, and Ludo & Luym Development Corporation (LLDC) for *Declaration of Nullity of Share Issue, Receivership and Dissolution.* The

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[4] *Id.* at 1102-1103.

case was docketed as Civil Case No. CEB-25502. The plaintiffs, shareholders of LLDC, claimed that the Lu Ym father and sons, as members of the Board of Directors, caused the issuance to the latter of 600,000 of the corporation's unsubscribed and unissued shares for less than their actual value. They then prayed for the dissolution of the corporation and the appointment of a receiver during the pendency of the action.

The defendants therein moved to dismiss the complaint for non-compliance with the requirement of certification of non-forum shopping, and for failure of the plaintiffs to exert efforts towards a compromise. The trial court denied the motion and placed LLDC under receivership.

Defendants Lu Ym father and sons elevated the matter to the Court of Appeals through a petition for *certiorari*, docketed as CA-G.R. SP No. 64154. However, the same was dismissed for insufficient signatures on the verification and certification of non-forum shopping. Subsequently, they re-filed a petition, which was docketed as CA-G.R. SP No. 64523. On December 20, 2001, the CA granted the petition and ordered the dismissal of the complaint. Aggrieved, David Lu (David), *et al*., came to this Court via G.R. No. 153690.

Meanwhile, the Presiding Judge of Branch 6 of the RTC of Cebu City, where the case was initially raffled, inhibited himself on motion of the Lu Ym father and sons. The case was re-raffled to Branch 11. The Presiding Judge of the latter branch directed the parties to amend their respective pleadings in order to conform to the requirements of Republic Act No. 8799, and the case was re-docketed as SRC Case No. 021-CEB.

The Lu Ym father and sons then filed with the trial court a motion to lift the order of receivership over LLDC. Before the matter could be heard, David instituted a petition for *certiorari* and prohibition before the CA on the issue of the motion to lift order of receivership, docketed as CA-G.R. SP No. 73383. On February 27, 2003, the CA granted the petition and ruled that the proceedings on the receivership could not proceed without the parties amending their pleadings. The Lu Ym father and

sons thus filed a petition for review with this Court (G.R. No. 157381).

In the meantime, the Presiding Judge of Branch 11 also inhibited himself, and the case was transferred to Branch 12. On March 31, 2003, the plaintiffs therein filed a Motion to Admit Complaint to Conform to the Interim Rules Governing Intra-Corporate Controversies, which was admitted by the trial court.

On January 23, 2004, the Lu Ym father and sons inquired from the Clerk of Court as to the amount of docket fees paid by David, *et al*. John Lu Ym further inquired from the Office of the Court Administrator (OCA) on the correctness of the amount paid by David, *et al*. The OCA informed John Lu Ym that a query on the matter of docket fees should be addressed to the trial court and not to the OCA.

On March 1, 2004, the RTC decided the case on the merits. It annulled the issuance of LLDC's 600,000 shares of stock to the Lu Ym father and sons. It also ordered the dissolution of LLDC and the liquidation of its assets, and created a management committee to take over LLDC. The Lu Ym father and sons appealed to the CA, where the case was docketed as CA-G.R. CV No. 81163.

In view of the executory nature of the decision of the trial court, as mandated in the Interim Rules of Procedure for Intra-Corporate Controversies,[5] the Lu Ym father and sons moved for the issuance of a writ of preliminary injunction which, however, was denied by the CA. They filed a motion for reconsideration, wherein they further questioned the sufficiency of the docket fees paid by David, *et al.* in the RTC. On December 8, 2005, the CA denied the motion for reconsideration and stated that the matter should be raised in the appellants' brief to be

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[5] A.M. No. 01-2-04-SC, Sec. 4. *Executory nature of decisions and orders*. – All decisions and orders issued under these Rules shall immediately be executory. No appeal or petition taken therefrom shall stay the enforcement or implementation of the decision or order, unless restrained by an appellate court. Interlocutory orders shall not be subject to appeal.

threshed out in the appeal. Hence, the Lu Ym father and sons filed with this Court a special civil action for *certiorari* and prohibition (G.R. No. 170889).

On August 26, 2008, this Court rendered judgment as aforesaid. Lu Ym father and sons filed the instant Motion for Reconsideration. We required David, *et al*., to submit their Comment thereto. With our directive complied with, we now resolve the Motion for Reconsideration.

In our August 26, 2008 Decision, we declared that the subject matter of the complaint filed by David, *et al*., was one incapable of pecuniary estimation. Movants beg us to reconsider this position, pointing out that the case filed below by David, *et al*., had for its objective the nullification of the issuance of 600,000 shares of stock of LLDC. The complaint itself contained the allegation that the "real value of these shares, based on underlying real estate values, was One Billion Eighty Seven Million Fifty Five Thousand One Hundred Five Pesos (₱1,087,055,105)."[6]

Upon deeper reflection, we find that the movants' claim has merit. The 600,000 shares of stock were, indeed, properties in litigation. They were the subject matter of the complaint, and the relief prayed for entailed the nullification of the transfer thereof and their return to LLDC. David, *et al*., are minority shareholders of the corporation who claim to have been prejudiced by the sale of the shares of stock to the Lu Ym father and sons. Thus, to the extent of the damage or injury they allegedly have suffered from this sale of the shares of stock, the action they filed can be characterized as one capable of pecuniary estimation. The shares of stock have a definite value, which was declared by plaintiffs themselves in their complaint. Accordingly, the docket fees should have been computed based on this amount. This is clear from the following version of Rule 141, Section 7, which was in effect at the time the complaint was filed:

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[6] *Rollo* (G.R. No. 153690), p. 97.

SEC. 7. *Clerks of Regional Trial Courts*. –

(a) For filing an action or a permissive counterclaim or money claim against an estate not based on judgment, or for filing with leave of court a third-party, fourth-party, *etc*. complaint, or a complaint in intervention, and for all clerical services in the same, if the total sum claimed, exclusive of interest, or the stated value of the property in litigation, is:

x x x x x x x x x[7]

We have earlier held that a court acquires jurisdiction over a case only upon the payment of the prescribed fees.[8] Hence, without payment of the correct docket fees, the trial court did not acquire jurisdiction over the action filed by David, *et al*.

We also stated in our Decision that the earlier rule in *Manchester Development Corporation v. Court of Appeals*[9] has been relaxed. Subsequent decisions now uniformly hold that when insufficient filing fees are initially paid by the plaintiffs and there is no intention to defraud the government, the Manchester rule does not apply.[10]

Addressing this point, movants argue that David, *et al*., were guilty of fraud in that, while they did not mention any real property in their complaint, they were able to obtain the annotation of notices of *lis pendens* on various real properties of LLDC by alleging in their motion to conduct special raffle that there was an "imminent danger" that "properties subject matter of this case" might be disposed of. Moreover, David,

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[7] RULES OF COURT, Rule 141, Section 7, as amended by A.M. No. 00-2-01-SC (March 1, 2000).

[8] *Far East Bank and Trust Company v. Shemberg Marketing Corporation,* G.R. No. 163878, December 12, 2006, 510 SCRA 685, 700.

[9] No. 75919, May 7, 1987, 149 SCRA 562.

[10] *Intercontinental Broadcasting Corporation (IBC-13) v. Alonzo-Legasto,* G.R. No. 169108, April 18, 2006, 487 SCRA 339; *Heirs of Bertuldo Hinog v. Hon. Achilles Melicor,* G.R. No. 140954, April 12, 2005, 455 SCRA 460, 475; *Sun Insurance Office, Ltd. (SIOL) v. Asuncion,* G.R. Nos. 79937-38, February 13, 1989, 170 SCRA 274, 285.

et al., prayed for, among others, the liquidation and distribution of the assets of the corporation, so that they may receive their share therein. Among the assets of the corporation are real properties. Hence, the case was, in actuality, a real action that had for its objective the recovery of real property.

Fraud is a "generic term embracing all multifarious means which human ingenuity can devise 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."[11] Since fraud is a state of mind, its presence can only be determined by examining the attendant circumstances.[12]

It is true, as we held in our Decision, that David, *et al*., merely relied on the assessment made by the Clerk of Court and cannot be faulted for their payment of insufficient docket fees. However, movants now point out that when David Lu moved for the annotation of notices of *lis pendens* on real properties owned by LLDC, they in effect acknowledged that the case they filed was a real action.

A notice of *lis pendens* is governed by Rule 13, Section 14 of the Rules of Court, which states:

> Sec. 14. *Notice of lis pendens.* – In an action affecting the title or the right of possession of real property, the plaintiff and the defendant, when affirmative relief is claimed in his answer, may record in the office of the registry of deeds of the province in which the property is situated a notice of the pendency of the action. Said notice shall contain the names of the parties and the object of the action or defense, and a description of the property in that province affected thereby. Only from the time of filing such notice for record shall a purchaser, or encumbrancer of the property affected thereby, be deemed to have constructive notice of the pendency of the action, and only of its pendency against the parties designated by their real names.

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[11] *Yap-Sumndad v. Harrigan,* 430 Phil. 612 (2002).

[12] *Commissioner of Customs v. Court of Tax Appeals, et al*., G.R. Nos. 171516-17, February 13, 2009.

The notice of *lis pendens* hereinabove mentioned may be cancelled only upon order of the court, after proper showing that the notice is for the purpose of molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be recorded.[13]

A notice of *lis pendens* is an announcement to the whole world that a particular real property is in litigation, serving as a warning that one who acquires interest over said property does so at his own risk, or that he gambles on the result of the litigation over the said property. The filing of a notice of *lis pendens* charges all strangers with notice of the particular litigation referred to therein and, therefore, any right they may thereafter acquire over the property is subject to the eventuality of the suit. Such announcement is founded upon public policy and necessity, the purpose of which is to keep the properties in litigation within the power of the court until the litigation is terminated and to prevent the defeat of the judgment or decree by subsequent alienation.[14]

As a general rule, the only instances in which a notice of *lis pendens* may be availed of are as follows: (a) an action to recover possession of real estate; (b) an action for partition; and (c) any other court proceedings that directly affect the title to the land or the building thereon or the use or the occupation thereof. Additionally, this Court has held that resorting to *lis pendens* is not necessarily confined to cases that involve title to or possession of real property. This annotation also applies to suits seeking to establish a right to, or an equitable estate or interest in, a specific real property; or *to enforce a lien, a charge or an encumbrance against it*.[15]

From the foregoing, it is clear that a notice of *lis pendens* is availed of mainly in real actions. Hence, when David, *et*

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[13] RULES OF COURT, Rule 13, Section 14.

[14] *Cunanan v. Jumping Jap Trading Corp.,* G.R. No. 173834, April 24, 2009.

[15] *Atlantic Erectors, Inc. v. Herbal Cove Realty Corp.,* G.R. No. 148568, March 20, 2003, 399 SCRA 409.

al., sought the annotation of notices of *lis pendens* on the titles of LLDC, they acknowledged that the complaint they had filed affected a title to or a right to possession of real properties. At the very least, they must have been fully aware that the docket fees would be based on the value of the realties involved. Their silence or inaction to point this out to the Clerk of Court who computed their docket fees, therefore, becomes highly suspect, and thus, sufficient for this Court to conclude that they have crossed beyond the threshold of good faith and into the area of fraud. Clearly, there was an effort to defraud the government in avoiding to pay the correct docket fees. Consequently, the trial court did not acquire jurisdiction over the case.

Anent the issue of estoppel, we earlier ruled that the movants are barred from questioning the jurisdiction of the trial court because of their participation in the proceedings therein. In passing upon this issue, we take heed from the pronouncement of this Court in the recent case *Vargas v. Caminas:*[16]

> The Court finds that *Tijam* is not applicable in the present case. The general rule is that lack of jurisdiction of a court may be raised at any stage of the proceedings. In *Calimlim v. Ramirez*, the Court stated that *Tijam* is an **exception** to the general rule because of the presence of **laches**:
>
>> A rule that had been settled by unquestioned acceptance and upheld in decisions so numerous to cite is that the jurisdiction of a court over the subject matter of the action is a matter of law and may not be conferred by consent or agreement of the parties. The lack of jurisdiction of a court may be raised at any stage of the proceedings, even on appeal. This doctrine has been qualified by recent pronouncements which stemmed principally from the ruling in the cited case of [Tijam]. It is to be regretted, however, that the holding in said case had been applied to situations which were obviously not contemplated therein. The exceptional circumstance involved in [Tijam] which justified the departure from the accepted concept of non-

[16] G.R. Nos. 137869 & 137940, June 12, 2008, 554 SCRA 305.

> waivability of objection to jurisdiction has been ignored and, instead a blanket doctrine had been repeatedly upheld that rendered the supposed ruling in [Tijam] not as the exception, but rather the general rule, virtually overthrowing altogether the time-honored principle that the issue of jurisdiction is not lost by waiver or by *estoppel.*
>
> In *Tijam*, the lack of jurisdiction was raised for the first time in a motion to dismiss filed almost **fifteen (15) years** after the questioned ruling had been rendered. Hence, the Court ruled that the issue of jurisdiction may no longer be raised for being barred by laches.
>
> The circumstances of the present case are different from *Tijam.* Spouses Vargas raised the issue of jurisdiction before the trial court rendered its decision. They continued to raise the issue in their appeal before the Court of Appeals and this Court. Hence, it cannot be said that laches has set in. The exception in *Tijam* finds no application in this case and the general rule must apply, that the question of jurisdiction of a court may be raised at any stage of the proceedings. Spouses Vargas are therefore not estopped from questioning the jurisdiction of the trial court.[17]

The exhortations of this Court in the above-cited case have constrained us to look more closely into the nature of the participation of the movants in the proceedings, to determine whether the exceptional principle of estoppel may be applied against them. The records show that the very first pleading filed by the Lu Ym father and sons before the court *a quo* was a motion to dismiss, albeit anchored on the ground of insufficiency of the certificate of non-forum shopping and failure of the plaintiffs to exert efforts towards a compromise. When the trial court denied this, they went up to the CA on *certiorari,* where they were sustained and the appellate court ordered the dismissal of the complaint below.

Next, the Lu Ym father and sons filed a motion for the lifting of the receivership order, which the trial court had issued in the interim. David, *et al.*, brought the matter up to the CA even before the trial court could resolve the motion. Thereafter,

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[17] *Id.*, citations omitted.

David, *et al*., filed their Motion to Admit Complaint to Conform to the Interim Rules Governing Intra-Corporate Controversies. It was at this point that the Lu Ym father and sons raised the question of the amount of filing fees paid. They raised this point again in the CA when they appealed the trial court's decision in the case below.

We find that, in the circumstances, the Lu Ym father and sons are not estopped from challenging the jurisdiction of the trial court. They raised the insufficiency of the docket fees before the trial court rendered judgment and continuously maintained their position even on appeal to the CA. Although the manner of challenge was erroneous – they should have addressed this issue directly to the trial court instead of to the OCA – they should not be deemed to have waived their right to assail the jurisdiction of the trial court.

The matter of lack of jurisdiction of the trial court is one that may be raised at any stage of the proceedings. More importantly, this Court may pass upon this issue *motu proprio.*

Hence, notwithstanding that the petition in G.R. No. 170889 is a special civil action for *certiorari* and prohibition assailing an interlocutory resolution of the CA, we have the power to order the dismissal of the complaint filed in the court of origin and render all incidents herein moot and academic.

With the foregoing findings, there is no more need to discuss the other arguments raised in the Motion for Reconsideration.

In summary, the trial court did not acquire jurisdiction over the case for failure of David, *et al*. to pay the correct docket fees. Consequently, all interlocutory matters pending before this Court, specifically the incidents subject of these three consolidated petitions, must be denied for being moot and academic. With the dismissal of the main action, the ancillary motions have no more leg to stand on.

WHEREFORE, in view of the foregoing, the Motion for Reconsideration filed by John Lu Ym and Ludo & LuYm Development Corporation is *GRANTED*. The Decision of this Court dated August 26, 2008 is *RECONSIDERED and SET*

ASIDE. The complaint in SRC Case No. 021-CEB, now on appeal with the Court of Appeals in CA G.R. CV No. 81163, is *DISMISSED*.

All interlocutory matters challenged in these consolidated petitions are *DENIED* for being moot and academic.

SO ORDERED.

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

Carpio Morales,[**] *J.,* see dissenting opinion.

DISSENTING OPINION

CARPIO MORALES, *J.*:

I respectfully take exception to the grant by the *ponente* of the Motion for Reconsideration of Paterno Lu Ym, Sr.'s son, John Luym, and Ludo and Luym Development Corporation (LLDC) of the *ponente's* Decision of August 26, 2008 in light of the following:

The three consolidated cases stemmed from the complaint for "Declaration of Nullity of Share Issue, Receivership and Dissolution" filed on August 14, 2000 by David Lu, *et al.* (David, *et al.*) against Paterno Lu Ym, Sr. and sons (Lu Ym father and sons) and LLDC.

By Decision of March 1, 2004, the trial court ruled in favor of David, *et al.*, by annulling the issuance of the shares of stock subscribed and paid by Lu Ym father and sons at less than par value, and ordering the dissolution and asset liquidation of LLDC. The appeal of said Decision is presently pending with the appellate court in CA-G.R. CV No. 81163.

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[*] Additional member per Special Order No. 666 dated July 16, 2009.

[**] Designated member per Raffle dated July 30, 2008.

Meantime, several incidents arising from the complaint reached the Court through these three petitions, which the Court resolved in favor of David, *et al.* by Decision of August 26, 2008, the dispositive portion of which reads:

> WHEREFORE, premises considered, the petitions in G.R. Nos. 153690 and 157381 are **DENIED** for being moot and academic; while the petition in G.R. No. 170889 is **DISMISSED** for lack of merit. Consequently, the *Status Quo* Order dated January 23, 2006 is hereby **LIFTED.**
>
> The Court of Appeals is **DIRECTED** to proceed with CA-G.R. CV No. 81163 and to resolve the same with dispatch.
>
> SO ORDERED.[1] (Emphasis and underscoring in the original)

In **G.R. No. 153690** wherein David, *et al.*, assail the appellate court's resolutions dismissing their complaint for its incomplete signatory in the certificate of non-forum shopping and consequently annulling the placing of the subject corporation under receivership *pendente lite*, the Court found the same to be moot by the admission by the trial court of David, *et al.*'s Amended Complaint filed by them pursuant to the trial court's order to conform to the requirements of the Interim Rules of Procedure Governing Intra-Corporate Controversies. Since the amended pleading supersedes the pleading that it amends, the original complaint was deemed withdrawn from the records. The Court noted that <u>both parties admitted the mootness</u> of the issue and that the trial court already rendered a decision on the merits in said case. It added that <u>the Amended Complaint stands</u> since Lu Ym father and sons availed of an improper mode (via an Urgent Motion filed with this Court) to assail the admission of the Amended Complaint.

In **G.R. No. 157381** wherein Lu Ym father and sons challenge the appellate court's resolution restraining the trial court from proceeding with their motion to lift the receivership order which was filed during the pendency of G.R. No. 153690, the Court resolved that the propriety of such injunction was mooted by

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[1] G.R. No. 153690, August 26, 2008, 563 SCRA 255, 280-281.

the amendment of the complaint and by the trial court's decision on the merits. The motion having been filed ancillary to the main action, which main action was already decided on the merits by the trial court, there is thus nothing more to enjoin.

G.R. No. 170889 involves the denial of Lu Ym father and sons' application for a writ of preliminary injunction by the appellate court that is handling CA-G.R. CV No. 81163. In dismissing the petition, the Court found no merit on their claim of lack of jurisdiction for David, *et al.*'s non-payment of the correct docket fees. The Court utilized a three-tiered approach in slaying the argument of Lu Ym father and sons:

> In the instant case, however, we cannot grant the dismissal prayed for because of the following reasons: *First*, the case instituted before the RTC is one incapable of pecuniary estimation. Hence, **the correct docket fees were paid**. *Second*, John and LLDC are **estopped from questioning the jurisdiction** of the trial court because of their active participation in the proceedings below, and because the issue of payment of insufficient docket fees had been belatedly raised before the Court of Appeals, *i.e.*, only in their motion for reconsideration. *Lastly*, assuming that the docket fees paid were truly inadequate, **the mistake was committed by the Clerk of Court who assessed the same and not imputable to David**; and **as to the deficiency, if any, the same may instead be considered a lien on the judgment** that may thereafter be rendered.[2] (Italics in the original; emphasis and underscoring supplied)

In a turnaround, the present *ponencia* reconsiders its position on the matter of docket fees, *viz.*:

> In summary, the trial court did not acquire jurisdiction over the case for failure of David, *et al.* to pay the correct docket fees. Consequently, all interlocutory matters pending before this Court, specifically the incidents subject of these three consolidated petitions, must be denied for being moot and academic. With the dismissal of the main action, the ancillary motions have no more leg to stand on.
>
> WHEREFORE, in view of the foregoing, the Motion for Reconsideration filed by John Lu Ym and Ludo & Lu Ym Development

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[2] *Id.* at 274.

Corporation is **GRANTED**. The Decision of this Court dated August 26, 2008 is **RECONSIDERED and SET ASIDE**. The complaint in SRC Case No. 021-CEB, now on appeal with the Court of Appeals in CA G.R. CV No. 81163, is **DISMISSED**.

All interlocutory orders challenged in these consolidated petitions are **DENIED** for being moot and academic.

SO ORDERED.[3] (Emphasis in the original)

I. The Value of the Subject Matter Cannot be Estimated

On movants' claim that the complaint had for its objective the nullification of the issuance of 600,000 shares of stock of LLDC, the real value of which based on underlying real estate values, as alleged in the complaint, stands at ₱1,087,055,105, the *ponencia* states:

> Upon deeper reflection, we find that the movants' claim has merit. The 600,000 shares of stock were, indeed, properties in litigation. They were the subject matter of the complaint, and the relief prayed for entailed the nullification of the transfer thereof and their return to LLDC. David, *et al*., are minority shareholders of the corporation who claim to have been prejudiced by the sale of the shares of stock to the Lu Ym father and sons. Thus, to the extent of the damage or injury they allegedly have suffered from this sale of the shares of stock, the action they filed can be characterized as one capable of pecuniary estimation. The shares of stock have a definite value, which was declared by plaintiffs themselves in their complaint. Accordingly, the docket fees should have been computed based on this amount. This is clear from x x x Rule 141, Section 7, which was in effect at the time the complaint was filed[.][4] (Underscoring supplied)

The *ponencia* states that the value of the 600,000 shares of stock, which were the properties in litigation, should be the basis for the computation of the filing fees. It must be noted, however, that David, *et al.*, are not claiming to own these shares. They do not claim to be the owners thereof entitled to be the transferees of the shares of stock. The mention of the real value

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[3] *Ponencia*, pp. 11-12.

[4] *Ponencia*, p. 6.

of the shares of stock, **over which David, *et al. do not interpose a claim of right to recovery***, is merely narrative or descriptive in order to emphasize the inequitable price at which the transfer was effected.

The *ponencia* also states that "to the extent of the damage or injury they allegedly have suffered from this sale," the action "can be characterized as one capable of pecuniary estimation." The *ponente*, however, does not explore the value of the extent of the damage or injury. Could it be the *pro rata* decrease (*e.g.*, from 20% to 15%) of the percentage shareholding of David, *et al.* in relation to the whole?

Whatever property, real or personal, that would be distributed to the stockholders would be a mere consequence of the main action. In the end, in the event LLDC is dissolved, David, *et al.* would not be getting the value of the 600,000 shares, but only the value of their minority number of shares, which were theirs to begin with.

The action instituted by David, *et al.* was one for **declaration of nullity of the issuance** thereof. The main relief prayed for both in the original complaint and the amended complaint is the same, that is, to declare null and void the issuance of 600,000 unsubscribed and unissued shares to Lu Ym father and sons, *et al*., for a price of 1/18 of their real value, for being inequitable, having done in breach of director's fiduciary's duty to stockholders, in violation of the minority stockholders' rights, and with unjust enrichment.

As judiciously discussed in the Court's August 26, 2008 Decision, the test in determining whether the subject matter of an action is incapable of pecuniary estimation is by ascertaining the nature of the principal action or remedy sought. It explained:

> x x x To be sure, the annulment of the shares, the dissolution of the corporation and the appointment of receivers/management committee are actions which **do not consist in the recovery** of a sum of money. If, in the end, a sum of money or real property would be recovered, it would simply be the consequence of such principal

action. Therefore, the case before the RTC was *incapable of pecuniary estimation*.[5] (Italics in the original, emphasis and underscoring supplied)

Among the actions the Court has recognized as being incapable of pecuniary estimation include legality of conveyances. In a case involving an annulment of contract, the Court found it to be one which cannot be estimated:

Petitioners argue that an action for annulment or rescission of a contract of sale of real property is a real action and, therefore, the amount of the docket fees to be paid by private respondent should be based either on the assessed value of the property, subject matter of the action, or its estimated value as alleged in the complaint, pursuant to the last paragraph of §7(b) of Rule 141, as amended by the Resolution of the Court dated September 12, 1990. Since private respondents alleged that the land, in which they claimed an interest as heirs, had been sold for ₱4,378,000.00 to petitioners, this amount should be considered the estimated value of the land for the purpose of determining the docket fees.

On the other hand, private respondents counter that an action for annulment or rescission of a contract of sale of real property is incapable of pecuniary estimation and, so, the docket fees should be the fixed amount of ₱400.00 in Rule 141, §7(b)(1). In support of their argument, they cite the cases of *Lapitan v. Scandia, Inc.* and *Bautista v. Lim*. In *Lapitan* this Court, in an opinion by Justice J.B.L. Reyes, held:

> A review of the jurisprudence of this Court indicates that in determining whether an action is one the subject matter of which is not capable of pecuniary estimation, this Court has adopted the criterion of first ascertaining the nature of the principal action or remedy sought. If it is primarily for the recovery of a sum of money, the claim is considered capable of pecuniary estimation, and whether jurisdiction is in the municipal courts or in the courts of first instance would depend on the amount of the claim. However, where the basic issue is something other than the right to recover a sum of money, or where the money claim is purely incidental to, or a consequence of, the principal relief sought, like in suits to have the defendant perform his part of the contract (specific performance) and in actions for support, or for annulment

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[5] *Supra* note 1 at 275-276.

of a judgment or to foreclose a mortgage, this Court has considered such actions as cases where the subject of the litigation may not be estimated in terms of money, and are cognizable exclusively by courts of first instance. **The rationale of the rule is plainly that the second class cases, besides the determination of damages, demand an inquiry into other factors which the law has deemed to be more within the competence of courts of first instance**, which were the lowest courts of record at the time that the first organic laws of the Judiciary were enacted allocating jurisdiction (Act 136 of the Philippine Commission of June 11, 1901).

Actions for specific performance of contracts have been expressly pronounced to be exclusively cognizable by courts of first instance: *De Jesus vs. Judge Garcia*, L-26816, February 28, 1967; *Manufacturer's Distributors, Inc. vs. Yu Siu Liong*, L-21285, April 29, 1966. And **no cogent reason appears, and none is here advanced by the parties, why an action for rescission (or resolution) should be differently treated, a "rescission" being a counterpart, so to speak, of "specific performance." In both cases, the court would certainly have to undertake an investigation into facts that would justify one act or the other. No award for damages may be had in an action for rescission without first conducting an inquiry into matters which would justify the setting aside of a contract**, in the same manner that courts of first instance would have to make findings of fact and law in actions not capable of pecuniary estimation expressly held to be so by this Court, arising from issues like those raised in *Arroz v. Alojado, et al.*, L-22153, March 31, 1967 (**the legality or illegality of the conveyance** sought for and the determination of the validity of the money deposit made); *De Ursua v. Pelayo*, L-13285, April 18, 1950 (validity of a judgment); *Bunayog v. Tunas*, L-12707, December 23, 1959 (validity of a mortgage); *Baito v. Sarmiento*, L-13105, August 25, 1960 (the relations of the parties, the right to support created by the relation, *etc*., in actions for support), *De Rivera, et al. v. Halili*, L-15159, September 30, 1963 (the validity or nullity of documents upon which claims are predicated). Issues of the same nature may be raised by a party against whom an action for rescission has been brought, or by the plaintiff himself. It is, therefore, difficult to see why a prayer for damages in an action for rescission should be taken as the basis for concluding such action as one capable of pecuniary estimation — a prayer

> which must be included in the main action if plaintiff is to be compensated for what he may have suffered as a result of the breach committed by defendant, and not later on precluded from recovering damages by the rule against splitting a cause of action and discouraging multiplicity of suits.[6] (Emphasis and underscoring supplied)

It is thus respectfully maintained that the correct docket fees were paid.

II. Estoppel Has Set In

As to the issue of estoppel, the present *ponencia* cites *Vargas v. Caminas*[7] on the non-applicability of the *Tijam* doctrine where the issue of jurisdiction was, in fact, raised before the trial court rendered its decision. The *ponencia* continues:

> Next, the Lu Ym father and sons filed a motion for the lifting of the receivership order, which the trial court had issued in the interim. David, *et al.*, brought the matter up to the CA even before the trial court could resolve the motion. Thereafter, David, at al. (sic), filed their Motion to Admit Complaint to Conform to the Interim Rules Governing Intra-Corporate Controversies. It was at this point that the Lu Ym father and sons raised the question of the amount of filing fees paid. They also raised this point again in the CA when they appealed the trial court's decision in the case below.
>
> We find that, in the circumstances, the Lu Ym father and sons are not estopped from challenging the jurisdiction of the trial court. They raised the insufficiency of the docket fees before the trial court rendered judgment and continuously maintained their position even on appeal to the CA. Although the manner of challenge was erroneous – they should have addressed this issue directly to the trial court instead of the OCA – they should not be deemed to have waived their right to assail the jurisdiction of the trial court.[8] (Underscoring supplied)

Lu Ym father and sons did not raise the issue before the trial court. The narration of facts shows that they inquired from

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[6] *De Leon v. CA*, 350 Phil. 535, 540-542 (1998).

[7] G.R. Nos. 137869 & 137940, June 12, 2008, 554 SCRA 303.

[8] *Ponencia*, p. 11.

the Clerk of Court on the amount of paid docket fees on January 23, 2004. Lu Ym father and sons, thereafter, still "speculat[ed] on the fortune of litigation."[9] Thirty-seven days later, the trial court rendered its decision, which happened to be adverse to Lu Ym father and sons.

Meanwhile, they attempted to verify the matter of docket fees from the Office of the Court Administrator (OCA). In their Application for the issuance a writ of preliminary injunction filed with the Court of Appeals, they still failed to mention it. Finally, it was only in their Motion for Reconsideration of the denial of their application for injunctive writ that they raised such issue before the appellate court.[10]

Their further inquiry from the OCA cannot redeem them. **A mere inquiry from an <u>improper office</u> at that, could not, by any stretch, be considered as their act of having raised the jurisdictional question prior to the rendition of the trial court's decision**.

Here it is beyond dispute that respondents paid the full amount of docket fees as assessed by the Clerk of Court of the Regional Trial Court of Malolos, Bulacan, Branch 17, where they filed the complaint. <u>If petitioners believed that the assessment was incorrect, they should have questioned it before the trial court</u>. <u>Instead, petitioners belatedly question the alleged underpayment of docket fees through this petition,</u> **<u>attempting to support their position with the opinion and certification of the Clerk of Court of another judicial region</u>. <u>Needless to state, such certification has no bearing on the instant case</u>**.[11] (Italics in the original; emphasis and underscoring in the original)

It is thus respectfully maintained that assuming *arguendo* that the docket fees were insufficiently paid, the doctrine of

[9] *Supra* note 1 at 277.

[10] *Supra* note 3. In the August 26, 2008 Decision, the Court applied the doctrine of estoppel "because of their active participation in the proceedings below, and because the issue of payment of insufficient docket fees had been belatedly raised before the Court of Appeals, *i.e.*, only in their motion for reconsideration."

[11] *Rivera v. del Rosario,* 464 Phil. 783, 797 (2004).

estoppel already applies. The inequity resulting from the abrogation of the whole proceedings at this late stage when the decision subsequently rendered was adverse to them is precisely the evil being avoided by the equitable principle of estoppel.

III. No Intent to Defraud the Government

> x x x In *Sun Insurance Office, Ltd., (SIOL) v. Asuncion*, this Court ruled that the filing of the complaint or appropriate initiatory pleading and the payment of the prescribed docket fee vest a trial court with jurisdiction over the subject matter or nature of the action. If the amount of docket fees paid is insufficient considering the amount of the claim, the clerk of court of the lower court involved or his duly authorized deputy has the responsibility of making a deficiency assessment. The party filing the case will be required to pay the deficiency, but jurisdiction is not automatically lost.[12]

The *ponencia* finds that the doctrine does not apply since there was intent to defraud the government, citing one attendant circumstance – the annotation of notices of *lis pendens* on real properties owned by LLDC. It deduces:

> From the foregoing, it is clear that a notice of *lis pendens* is availed of mainly in real actions. Hence, when David, *et al*. sought the annotation of notices of *lis pendens* on the titles of LLDC, they acknowledged that the complaint they had filed affected a title to or a right to possession of real properties. At the very least, they must have been fully aware that the docket fees would be based on the value of the realties involved. Their silence and inaction to point this out to the Clerk of Court who computed their docket fees, therefore, becomes highly suspect, and thus, sufficient for this Court to conclude that they have crossed beyond the threshold of good faith and into the area of fraud. Clearly, there was an effort to defraud the government in avoiding to pay the correct docket fees. Consequently, the trial court did not acquire jurisdiction over the case.[13]

All findings of fraud should begin the exposition with the presumption of good faith. The question is not whether there

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[12] *Ibid.*

[13] *Ponencia*, p. 9.

was good faith on the part of David, *et al*., but whether there was bad faith on his part.

In the present case, the erroneous annotation of a notice of *lis pendens* does not negate good faith. The overzealousness of a party in protecting *pendente lite* his perceived interest, inchoate or otherwise, in the corporation's properties from depletion or dissipation, should not be lightly equated to bad faith.

That notices of *lis pendens* were erroneously annotated on the titles does not have the effect of changing the nature of the action. The aggrieved party is not left without a remedy, for they can move to cancel the annotations. The *ponencia*, however, deemed such act as an acknowledgement that the case they filed was a real action, concerning as it indirectly does the corporate realties, the titles of which were allegedly annotated. This conclusion does not help much in ascertaining the filing fees because the value of these real properties and the value of the 600,000 shares of stock are different.

Further, good faith can be gleaned from the series of amendments on the provisions on filing fees, that even prompted this Court to make a clarification.

When the present Complaint was filed on August 14, 2000 or five days after the effectivity of the Securities Regulation Code or Republic Act No. 8799,[14] then Section 7 of Rule 141 was the applicable provision, without restricting the reference to paragraphs (a) and (b) 1 & 3 ***or*** paragraph (a) alone. It reads:

SEC. 7. *Clerks of Regional Trial Courts.* –

(a) For filing an action or a permissive counterclaim or money claim against an estate not based on judgment, or for filing with leave of court a third-party, fourth-party, *etc*. complaint, or a complaint in intervention, and for all clerical services

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[14] The statute was issued on July 19, 2000 and took effect on August 9, 2000, pursuant to its Sec. 78; vide *International Broadcasting Corporation v. Jalandoon*, G.R. No. 148152, November 18, 2005, 475 SCRA 446.

in the same, **if the total sum claimed**, exclusive of interest, **or** the **stated value of the property in litigation**, is:

x x x x x x x x x

(b) For filing:

1. **Actions where the value of the subject matter cannot be estimated** .... x x x

2. Special civil actions except judicial foreclosure of mortgage which shall be governed by paragraph (a) above .... x x x

3. All other actions not involving property .... x x x

In a real action, the assessed value of the property, or if there is none, the estimated value thereof shall be alleged by the claimant and shall be the basis in computing the fees.

x x x x x x x x x[15] (Emphasis supplied)

Subsequently, the Court, by Resolution of September 4, 2001 in A. M. No. 00-8-10-SC,[16] clarified the matter of legal fees to be collected in cases formerly cognizable by the Securities and Exchange Commission (SEC) following their transfer to the Regional Trial Court (RTC).

Clarification has been sought on the legal fees to be collected and the period of appeal applicable in cases formerly cognizable by the Securities and Exchange Commission. It appears that the Interim Rules of Procedure on Corporate Rehabilitation and the Interim Rules of Procedure for Intra-Corporate Controversies do not provide the basis for the assessment of filing fees and the period of appeal in cases transferred from the Securities and Exchange Commission to particular Regional Trial Courts.

The nature of the above mentioned cases should first be ascertained. Section 3(a), Rule 1 of the 1997 Rules of Civil Procedure defines civil action as one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong. It

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[15] *Vide* A.M. No. 00-2-01-SC (March 1. 2000).

[16] Effective October 1, 2001.

further states that a civil action may either be ordinary or special, both being governed by the rules for ordinary civil actions subject to the special rules prescribed for special civil actions. Section 3(c) of the same Rule, defines a special proceeding as a remedy by which a party seeks to establish a status, a right, or a particular fact.

Applying these definitions, **the cases covered by the Interim Rules for Intra-Corporate Controversies should be considered as ordinary civil actions. These cases either seek the recovery of damages/property or specific performance of an act against a party for the violation or protection of a right**. These cases are:

(1) Devices or schemes employed by, or any act of, the board of directors, business associates, officers or partners, amounting to fraud or misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, or members of any corporation, partnership, or association;

(2) Controversies arising out of intra-corporate, partnership, or association relations, between and among stockholders, members or associates; and between, any or all of them and the corporation, partnership, or association of which they are stockholders, members or associates, respectively;

(3) Controversies in the election or appointment of directors, trustees, officers, or managers of corporations, partnerships, or associations;

(4) Derivative suits; and

(5) Inspection of corporate books.

On the other hand, a petition for rehabilitation, the procedure for which is provided in the Interim Rules of Procedure on Corporate Recovery, should be considered as a special proceeding. It is one that seeks to establish the status of a party or a particular fact. As provided in Section 1, Rule 4 of the Interim Rules on Corporate Recovery, the status or fact sought to be established is the inability of the corporate debtor to pay its debts when they fall due so that a rehabilitation plan, containing the formula for the successful recovery of the corporation, may be approved in the end. It does not seek a relief from an injury caused by another party.

Section 7 of Rule 141 (Legal Fees) of the Revised Rules of Court lays the amount of filing fees to be assessed for actions or proceedings filed with the Regional Trial Court. **Section 7(a) and (b) apply to ordinary civil actions** while 7(d) and (g) apply to special proceedings.

In fine, the basis for computing the filing fees in intra-corporate cases shall be <u>section 7(a) and (b) l & 3</u> of Rule 141. For petitions for rehabilitation, section 7(d) shall be applied. (Emphasis and underscoring supplied)

The new Section 21(k) of Rule 141 of the Rules of Court, as amended by **A.M. No. 04-2-04-SC**[17] **(July 20, 2004), <u>expressly provides</u>** that "[f]or petitions for insolvency or other <u>cases involving intra-corporate controversies</u>, the fees prescribed under <u>Section 7(a)</u> <u>shall apply</u>." *Notatu dignum* is that **<u>paragraph (b) 1 & 3</u>** <u>of Section 7 thereof was</u> **<u>omitted</u>** from the reference. Said paragraph[18] refers to docket fees for filing "[a]ctions where the value of the subject matter cannot be estimated" and "all other actions not involving property."

By referring the computation of such docket fees to **paragraph (a)** only, it denotes that an intra-corporate controversy always involves a property in litigation, the value of which is always the basis for computing the applicable filing fees. The latest amendments seem to imply that there can be no case of intra-corporate controversy where the value of the subject matter cannot be estimated. Even one for a mere inspection of corporate books.

If the complaint was filed today, one could safely find refuge in the express phraseology of Section 21 (k) of Rule 141 that paragraph (a) alone applies.

In this case, however, the original Complaint was filed on August 14, 2000, during which time Section 7, without qualification, was the applicable provision. Even the Amended

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[17] The amendments took effect on August 16, 2004.

[18] Sub-paragraphs (1) and (3) remain unchanged except for the increase in the amounts of fees.

Complaint was filed on March 31, 2003, during which time the applicable rule was that paragraphs (a) and (b) l & 3 shall be the basis for computing the filing fees in intra-corporate cases, recognizing that there could be an intra-corporate controversy where the value of the subject matter cannot be estimated, such as an action for inspection of corporate books.

The Court's earlier position that "assuming that the docket fees paid were truly inadequate, the mistake was committed by the Clerk of Court who assessed the same and not imputable to David; and as to the deficiency, if any, the same may instead be considered a lien on the judgment that may thereafter be rendered" is respectfully submitted to be maintained.

I, therefore, vote to DENY the Motion for Reconsideration for lack of merit.

THIRD DIVISION

[G.R. No. 155174. August 4, 2009]

D.M. CONSUNJI, INC., *petitioner, vs.* **DUVAZ CORPORATION,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; SUMMARY JUDGMENT; REQUISITES.—** In *Solidbank Corp. v. CA*, the Court, explaining when summary judgment may be allowed, wrote: "Summary judgment is a procedural device resorted to in order to avoid long drawn out litigations and useless delays. When the pleadings on file show that there are no genuine issues of fact to be tried, the Rules of Court allows a party to obtain immediate relief by way of summary judgment. That is, when the facts are not in dispute, the court is allowed to decide the case summarily by applying the law to the material facts.

Conversely, where the pleadings tender a genuine issue, summary judgment is not proper. A 'genuine issue' is such issue of fact which [requires] the presentation of evidence as distinguished from a sham, fictitious, contrived or false claim. Rule 34, Section 3 of the Rules of Court provides two (2) requisites for summary judgment to be proper: (1) there must be no genuine issue as to any material fact, except for the amount of damages; and (2) the party presenting the motion for summary judgment must be entitled to a judgment as a matter of law." x x x [I]t is clear that summary or accelerated judgment is proper only when, based on the pleadings, depositions, and admissions on file, and after hearing, it is shown that save as to the amount of damages, there is no veritable issue regarding any material fact in the action and the movant is entitled to judgment as a matter of law. Conversely, where the pleadings tender an issue, that is, an issue of fact the resolution of which calls for a presentation of evidence, as distinguished from an issue which is sham or contrived, summary judgment is not proper.

2. **ID.; ID.; ID.; CONCEPT OF GENUINE ISSUE; ELUCIDATED.—** Elaborating on the concept of a "genuine issue," we held in *Asian Construction and Development Corporation v. Philippine Commercial Industrial Bank*, as follows: "Under the Rules, summary judgment is appropriate when there are no genuine issues of fact which call for the presentation of evidence in a full-blown trial. Even if on their face the pleadings appear to raise issues, when the affidavits, depositions and admissions show that such issues are not genuine, then summary judgment as prescribed by the Rules must ensue as a matter of law. The determinative factor, therefore, in a motion for summary judgment, is the presence or absence of a genuine issue as to any material fact. A "genuine issue" is an issue of fact which requires the presentation of evidence as distinguished from a sham, fictitious, contrived or false claim. When the facts as pleaded appear uncontested or undisputed, then there is no real or genuine issue or question as to the facts, and summary judgment is called for. The party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact x x x. Trial courts have limited authority to render summary judgments and may do so only when there is clearly no genuine issue as to any material fact. When the facts as pleaded by the parties are disputed or

contested, proceedings for summary judgment cannot take the place of trial."

3. **ID.; ID.; ID.; LOWER COURTS, WHEN FACED WITH A MOTION FOR SUMMARY JUDGMENT, SHOULD RESOLVE DOUBTS IN FAVOR OF THE PARTY AGAINST WHOM IT IS DIRECTED; CASE AT BAR.—** Civil Case No. 99-1354 came after the proceedings in SEC Case No. 12-97-5850, and LRC Case No. M-3839 had finally been terminated. Be that as it may, the answer in Civil Case No. 99-1354 diluted any admission, if there were indeed admissions, made in the SEC and LRC cases and, as the CA put it, "engenders a cloud of doubt as to the certainty of the facts as alleged." Such doubt should be resolved against the grant of the motion for summary judgment. To paraphrase what we said in *Tan v. De la Vega*, lower courts, when faced with a motion for summary judgment, should resolve doubts in favor of the party against whom it is directed, giving such party the benefit of all favorable inferences.

4. **ID.; ID.; JUDGMENTS; PRINCIPLE OF *RES JUDICATA*; INAPPLICABLE WHERE THERE IS LACK OF IDENTITY OF RIGHTS ASSERTED OR CAUSES OF ACTION AND IDENTITY OF RELIEF SOUGHT; CASE AT BAR.—** DMCI's contention that the Makati City RTC's order in LRC Case No. M-3839 is, under the principle of *res judicata*, conclusive as between it and Duvaz as regards the contractor's claim for the unpaid balance against Duvaz strikes the Court as a bit incredulous. LRC Case No. M-3839, to stress, was an action to annotate a contractor's lien, not a collection suit where the purported debtor is expected to present its defenses and counterclaims, if there be any, to defeat the suitor's claim. At any rate, the order adverted to cannot be accorded the force of *res judicata vis-à-vis* the sum-of-money case at bench owing to the lack of identity of rights asserted or causes of action and identity of relief sought.

APPEARANCES OF COUNSEL

Romulo D. San Juan for petitioner.
Joseph Cohon for respondent.

DECISION

VELASCO, JR., *J.*:

The Case

This Petition for Review on *Certiorari* under Rule 45 seeks to reverse and set aside the Decision[1] dated May 28, 2002 of the Court of Appeals (CA) in CA-G.R. No. 67126 entitled *D.M. Consunji, Inc. v. Honorable Tranquil P. Salvador, Jr., presiding judge, Branch 63, Regional Trial Court, Makati City and DUVAZ Corporation*, and its Resolution[2] of September 12, 2002 denying petitioner's motion for reconsideration.

The Facts

On August 30, 1996, petitioner D.M. Consunji, Inc. (DMCI) and respondent Duvaz Corporation (Duvaz) entered into a contract, denominated as Construction Contract No. AP-CC-A-0007,[3] whereby DMCI undertook to construct, for Duvaz, the substructure/foundation of the *Alfaro's Peak* building project located on 106 Alfaro St., Salcedo Village, Makati City. Actual construction works on the project started in early 1997.

Immediately adjacent to the *Alfaro's Peak* site is a condominium building, called the *Peak*, which was constructed in 1990-1993, with DMCI as the general construction contractor. Ownership of the *Peak*––formerly developed by RDR Property Holdings, Inc., once a subsidiary of Duvaz—eventually became vested in the latter.

By virtue of a Certificate of Completion and Acceptance of Work[4] Duvaz issued, the foundation project was deemed

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[1] *Rollo*, pp. 46-55. Penned by Associate Justice Martin S. Villarama, Jr. and concurred in by Associate Justices Conchita Carpio Morales (now a member of this Court) and Mariano C. Del Castillo.

[2] *Id.* at 56.

[3] *Id.* at 58-60.

[4] *Id.* at 89.

completed on October 31, 1997 and, as stated in the certificate, the one-year defect liability period would end on October 31, 1998. As DMCI claimed, at the time of project completion, there was an unpaid balance on the contract price in the amount of PhP 29,209,735.85.

On December 22, 1997, Duvaz filed with the Securities and Exchange Commission (SEC) a petition[5] for the declaration of a state of suspension of payments, docketed as SEC Case No. 12-97-5850. In the petition in which DMCI was listed as "admitted creditor" for the amount of PhP 29,209,735.85, Duvaz claimed having more than sufficient assets to satisfy its debts but cannot answer its maturing obligations as they fall due. In due time, SEC granted the petition.

To protect its interest, DMCI filed on January 29, 1998 with the Regional Trial Court (RTC), Branch 66 in Makati City a petition[6] for the annotation of contractor's lien on TCT No. 200089 registered in the name of Duvaz, docketed as LRC No. M-3839. TCT No. 200089 covered the landsite of the *Alfaro's Peak*. In this petition, DMCI alleged that Duvaz's indebtedness, as of January 12, 1998, arising from the foundation project was in the amount of PhP 32,422,387.11, inclusive of interest, an allegation which Duvaz, in a Manifestation[7] dated September 23, 1998, controverted, albeit it admitted having "an account with [DMCI] in the amount of [PhP] 29,209,735.85." By Order dated October 28, 1998[8] the Makati City RTC directed the annotation of a contractor's lien on TCT No. 200089 in the amount of PhP 29,209,735.85.

Later, Duvaz withdrew its petition before the SEC, prompting DMCI to demand from Duvaz payment of the unpaid balance of the contract price. In one of those demand-letters,[9] the amount

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[5] *Id.* at 90-98.

[6] *Id.* at 102-104.

[7] *Id.* at 105.

[8] *Id.* at 107.

[9] *Id.* at 115. The demand letter was dated January 12, 1999.

of PhP 32,422,387.11 appeared as the outstanding unpaid balance.

In a letter of January 21, 1999[10] in reply to DMCI's demand-letter dated January 19, 1999, Duvaz, without indicating any specific amount representing its supposed indebtedness, proposed to pay DMCI PhP 1 million a year for at least next three years and larger payments afterwards. DMCI obviously found the settlement proposal unacceptable, for, on July 22, 1999, it filed a suit with the RTC in Makati City against respondent for a sum of money. In its complaint[11] docketed as Civil Case No. 99-1354 and raffled to Branch 63, DMCI prayed for the recovery of the sum of PhP 38,765,956.53 plus interests, attorneys' fees, and litigation expenses.

In its Answer with Compulsory Counterclaims,[12] Duvaz specifically denied DMCI's averment that it owes the latter PhP 38,765,956.53, as of June 1999. And by way of affirmative defenses to support its counterclaims, Duvaz alleged serious defects in the construction of the substructure of both the *Alfaro's Peak* and the *Peak* for which it prayed that DMCI be ordered to pay PhP 35 million, more or less, for rectification works; USD 226,600 and PhP 2,015,235 to answer for additional costs and charges claimed by the project engineer and others, as a result of rectification-related delays; and attorneys fees, without prejudice to other quantifiable claims. With respect to the defects adverted to needing rectification, Duvaz alleged, among others, the following:

(1) In the course of the substructure construction in 1997 at the *Alfaro's Peak* Project, it was discovered that significant portions of the substructure of the *Peak* were encroaching and abutting beyond and into the property line of *Alfaro's Peak*. Rectification works undertaken by DMCI, as the *Peak's* construction contractor, to address the effects of the protruding

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[10] *Id.* at 117.

[11] *Id.* at 118-126.

[12] *Id.* at 127-135.

substructure of the *Peak* resulted in the delay of the *Alfaro's Peak* Project;

(2) During the above rectification works, damages were incurred by the substructure and basement walls of the *Peak* that would require further rectification works; and

(3) The mal-execution of the construction works on the *Peak* and *Alfaro's Peak* and DMCI's substandard work practices created, among other things, underground water seepage problem and rendered necessary a determination of whether the substructures of the *Alfaro's Peak* also encroached into the adjacent vacant lot.

Thereafter, on September 23, 1999, DMCI, as plaintiff *a quo*, moved for summary judgment,[13] alleging that there is no valid defense to its complaint. As DMCI argued in the motion, Duvaz' counterclaims have already prescribed, the construction of the *Peak* having been finished in 1993 and the *Alfaro's Peak* in 1997; thus, the respective defects' liability periods for both projects had already lapsed.

To the above motion, Duvaz interposed an opposition, appending, as exhibits, documents and photographs bearing on matters asserted in its defense and counterclaims. An exchange of pleadings then followed.

On May 2, 2000, in Civil Case No. 99-1354, the RTC issued an Order[14] denying the motion for summary judgment, pertinently stating:

> After due consideration of plaintiff's motion for summary judgment together with defendant's opposition thereto and their respective pleadings that followed, this Court opts for a full-blown trial to determine the allegations of estoppels and warranty against hidden defects (relative to the subject construction contract) by plaintiff and defendant, respectively.

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[13] *Id.* at 136-142.

[14] *Id.* at 314.

Another Order dated August 28, 2001[15] denied DMCI's motion for reconsideration.

Therefrom, DMCI went to the CA via a petition for *certiorari*, docketed as CA-G.R. SP No. 67126, and asked for the nullification of the twin orders of the RTC on the following stated grounds:

a. Respondent Judge acted with grave abuse of discretion amounting to lack or in excess of jurisdiction in refusing to render a summary judgment despite the fact that on the basis of the pleadings, admissions, exhibits and documents extant on the records, there is no genuine issue as to any material fact and that petitioner is entitled to a summary judgment as a matter [of] law x x x.

On May 28, 2002, the CA issued the assailed decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the present petition is hereby DENIED DUE COURSE and accordingly DISMISSED, for lack of merit. Consequently, the assailed Orders dated May 2, 2000 and August 28, 2001 are hereby both AFFIRMED and REITERATED.

With costs against the petitioner.

SO ORDERED.

Subsequently, on September 12, 2002, the CA issued the assailed resolution denying DMCI's motion for reconsideration.

Hence, DMCI filed this petition.

The Issues

The Honorable [CA] committed serious errors of law in dismissing the Petition for *Certiorari* which in effect denied petitioner's Motion for Summary Judgment considering that:

I

Petitioner's principal claim under the complaint is admitted by the respondent or is already a settled issue under the principle

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[15] *Id.* at 388.

of *res judicata*, and therefore, can no longer be denied or controverted;

II

Respondent's defenses/counterclaims under the admitted facts and circumstances are sham, fictitious, or patently unsubstantial or speculative and/or were clearly contrived or concocted for purposes of delay only.

III

At any rate, even assuming *arguendo* that there was a defect in the work done, petitioner is not liable for such defect under the law and contract executed by the parties.

IV

The reasons cited by the Honorable [CA] for the dismissal of the Petition for *Certiorari* are untenable for being contrary to law and jurisprudence.[16]

The Ruling of the Court

The issue in this case is really whether summary judgment in accordance with the Rules of Court is proper. We rule in the negative and, thus, deny the instant petition.

Sections 1 and 3, Rule 35 of the Rules on summary judgment provide:

Section 1. *Summary judgment for claimant.* – A party seeking to recover upon a claim, counterclaim, or cross-claim x x x may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof.

Section 3. *Motion and proceedings thereon.* – The motion shall be served at least ten (10) days before the time specified for the hearing. The adverse party may serve opposing affidavits, depositions, or admissions at least three (3) days before the hearing. After the hearing, the judgment sought shall be rendered forthwith if the pleadings, supporting affidavits, depositions, and admissions on file, show that,

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[16] *Id.* at 12.

except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

In *Solidbank Corp. v. CA*,[17] the Court, explaining when summary judgment may be allowed, wrote:

> Summary judgment is a procedural device resorted to in order to avoid long drawn out litigations and useless delays. When the pleadings on file show that there are no genuine issues of fact to be tried, the Rules of Court allows a party to obtain immediate relief by way of summary judgment. That is, when the facts are not in dispute, the court is allowed to decide the case summarily by applying the law to the material facts.
>
> Conversely, where the pleadings tender a genuine issue, summary judgment is not proper. A "genuine issue" is such issue of fact which [requires] the presentation of evidence as distinguished from a sham, fictitious, contrived or false claim.
>
> Rule 34, Section 3 of the Rules of Court provides two (2) requisites for summary judgment to be proper: (1) there must be no genuine issue as to any material fact, except for the amount of damages; and (2) the party presenting the motion for summary judgment must be entitled to a judgment as a matter of law.

Elaborating on the concept of a "genuine issue," we held in *Asian Construction and Development Corporation v. Philippine Commercial Industrial Bank*,[18] as follows:

> Under the Rules, summary judgment is appropriate when there are no genuine issues of fact which call for the presentation of evidence in a full-blown trial. Even if on their face the pleadings appear to raise issues, when the affidavits, depositions and admissions show that such issues are not genuine, then summary judgment as prescribed by the Rules must ensue as a matter of law. The determinative factor, therefore, in a motion for summary judgment, is the presence or absence of a genuine issue as to any material fact.

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[17] G.R. No. 120010, October 3, 2002, 390 SCRA 241, 249.

[18] G.R. No. 153827, April 25, 2006, 488 SCRA 192, 203.

A "genuine issue" is an issue of fact which requires the presentation of evidence as distinguished from a sham, fictitious, contrived or false claim. When the facts as pleaded appear uncontested or undisputed, then there is no real or genuine issue or question as to the facts, and summary judgment is called for. The party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact x x x. Trial courts have limited authority to render summary judgments and may do so only when there is clearly no genuine issue as to any material fact. When the facts as pleaded by the parties are disputed or contested, proceedings for summary judgment cannot take the place of trial.

From the foregoing provisions and pronouncements, it is clear that summary or accelerated judgment is proper only when, based on the pleadings, depositions, and admissions on file, and after hearing, it is shown that save as to the amount of damages, there is no veritable issue regarding any material fact in the action and the movant is entitled to judgment as a matter of law. Conversely, where the pleadings tender an issue, that is, an issue of fact the resolution of which calls for a presentation of evidence, as distinguished from an issue which is sham or contrived, summary judgment is not proper.

In this case, we are convinced that genuine issues exist. DMCI anchors its case on the following premises: Its principal claim against Duvaz is undisputed as the latter is in fact estopped to deny it. According to DMCI, Duvaz had admitted—and, hence, can no longer be heard to disclaim—its liability in its Answer in Civil Case No. 991354 before the RTC; in the pleadings in SEC Case No. 12-97-5850; in the pleadings in LRC Case No. M-3839 before the Makati City RTC; and in its reply[19] to one of DMCI's demand letters. Pushing the point further, DMCI states that the order in LRC Case No. M-3839 has the effect of *res judicata*.

DMCI's posture on estoppel is untenable. Far from containing an admission of liability, Duvaz's Answer in Civil Case No. 991354 contained a specific denial of petitioner's claim, thus:

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[19] *Supra* note 10.

4. [Duvaz] specifically denies the allegations in paragraph 5 of the complaint to the effect that [Duvaz] owes [DMCI] ₱38,765,956.53 inclusive of interest as of 15 June 1999, the truth of the matter being: — (a) that [DMCI's] charging of interest thereon at the rate of 2% has no contractual or legal basis whatsoever, and (b) as stated in the Special and Affirmative Defenses and the Compulsory Counterclaims set forth below.

As may be noted, Civil Case No. 99-1354 came after the proceedings in SEC Case No. 12-97-5850, and LRC Case No. M-3839 had finally been terminated. Be that as it may, the answer in Civil Case No. 99-1354 diluted any admission, if there were indeed admissions, made in the SEC and LRC cases and, as the CA put it, "engenders a cloud of doubt as to the certainty of the facts as alleged." Such doubt should be resolved against the grant of the motion for summary judgment.[20] To paraphrase what we said in *Tan v. De la Vega*,[21] lower courts, when faced with a motion for summary judgment, should resolve doubts in favor of the party against whom it is directed, giving such party the benefit of all favorable inferences.

And lest it be overlooked, the Manifestation[22] Duvaz submitted in relation to LRC Case No. M-3839 was not a categorical admission of absolute liability to DMCI, Duvaz, as it were, limiting itself to saying that it has an account with DMCI in the amount of PhP 29,209,735.85.

DMCI's contention that the Makati City RTC's order in LRC Case No. M-3839 is, under the principle of *res judicata*, conclusive as between it and Duvaz as regards the contractor's claim for the unpaid balance against Duvaz strikes the Court as a bit incredulous. LRC Case No. M-3839, to stress, was an action to annotate a contractor's lien, not a collection suit where the purported debtor is expected to present its defenses and

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[20] *Excelsa Industries, Inc. v. Court of Appeals*, G.R. No. 105455, August 23, 1995, 247 SCRA 560, 569.

[21] G.R. No. 168809, March 10, 2006, 484 SCRA 538, 553-554.

[22] *Supra* note 7.

counterclaims, if there be any, to defeat the suitor's claim. At any rate, the order adverted to cannot be accorded the force of *res judicata vis-à-vis* the sum-of-money case at bench owing to the lack of identity of rights asserted or causes of action and identity of relief sought.

Finally, Duvaz's January 21, 1999 letter-reply wherein it offered to settle its account with DMCI does not necessarily mean that Duvaz had waived its right to question the principal amount of its obligation. For one, the said letter does not contain a specific amount of how much Duvaz owed DMCI. And for another, the phrase "WITHOUT PREJUDICE" was written on the letter, suggesting the conditional or tentative nature of the offer.

At any event, *assuming arguendo* that the principal amount of the petitioner's claim is now beyond question, its plea for a summary judgment would still not be proper in the light of the compulsory counterclaims that involve an even larger amount than the claim stated in the underlying complaint. For perspective, the counterclaims are premised mainly on consequential damages Duvaz suffered owing to DMCI's mal-execution of the construction works on the *Peak* which adversely affected the prosecution of the *Alfaro's Peak* project, such that rectification works had to be undertaken, *e.g.*, demolitions of abutments and re-alignment of protruding/encroaching bars. The rectification process in turn spawned other serious problems, such as cracks in the basement walls, water leakage, and flooding of the several portions of the basement,[23] not to mention the delay in the prosecution of the *Alfaro Peak* project.

Ironically, DMCI's attempt to depict the counterclaims as sham even in the face of documents and exhibits lending *prima facie* support to Duvaz's opposition to the motion for summary judgment tends to raise more factual questions rather than prove the absence of the counterclaims. To be sure, the trial court did not find the counterclaims to be false or contrived. We, too, are of a similar disposition.

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[23] *Rollo*, pp. 730-732.

DMCI's argument that Duvaz's counterclaims have already prescribed—the defects' liability periods for both project having elapsed, *i.e.*, in October 1998 for *Alfaro's Peak* and 1994 for the *Peak*––does not convince us. Suffice it to reiterate that one of Duvaz's claim is: the poor rectification works done by DMCI to address the abutments of the substructure of the *Peak* damaged the basement walls of the *Peak*, resulting in the worsening of the water seepage problem already existing. In other words, Duvaz appears to seek, by way of counterclaim, recovery not on the basis of the breach on the warranty against hidden defects but rather damage caused by DMCI to Duvaz's property in the construction of another project. The expiration of the defects' liability periods for the two projects is immaterial to this claim of Duvaz.

With the parties' conflicting postures on, among others, the issues of estoppel, prescription, and DMCI's liability and Duvaz's corollary right for damages arising from the alleged mal-execution of the construction works, the only way to ascertain whose position jibes with facts on the ground is obviously through the presentation of evidence by the parties in a full blown trial on the merits. This is as it should be for, as we indicated earlier, any doubt as to the propriety of the rendition of a summary judgment must be resolved against it.[24] With the tender of genuine issues before it, the RTC acted properly, and within its sound discretion, in denying petitioner's motion for summary judgment.

WHEREFORE, the instant petition is *DENIED*. The CA's May 28, 2002 Decision and September 12, 2002 Resolution in CA-G.R. SP No. 67126 are hereby *AFFIRMED*. This case is accordingly *REMANDED* to the trial court for trial on the merits.

Costs against petitioner.

SO ORDERED.

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

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[24] Regalado, *REMEDIAL LAW COMPENDIUM*, 399 (9th revised ed.).

THIRD DIVISION

[G.R. No. 160743. August 4, 2009]

CORNELIA BALADAD (Represented by Heinrich M. Angeles and Rex Aaron A. Baladad), *petitioner, vs.* **SERGIO A. RUBLICO and SPOUSES LAUREANO F. YUPANO,** *respondents.*

SYLLABUS

1. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; ELEMENTS; PRESENT IN CASE AT BAR.—** The Extrajudicial Settlement of Estate with Absolute Sale executed by Corazon and Epitacio through the latter's attorney-in-fact, Vicente Angeles, partakes of the nature of a contract. To be precise, the said document contains two contracts, to wit: the extrajudicial adjudication of the estate of Julian Angeles between Corazon and Epitacio as Julian's compulsory heirs, and the absolute sale of the adjudicated properties to Cornelia. While contained in one document, the two are severable and each can stand on its own. Hence, for its validity, each must comply with the requisites prescribed in Article 1318 of the Civil Code, namely (1) consent of the contracting parties; (2) object certain, which is the subject matter of the contract; and (3) cause of the obligation which is established.
2. **ID.; ID.; INTERPRETATION OF CONTRACTS; WHEN THE TERMS OF A CONTRACT ARE LAWFUL, CLEAR, AND UNAMBIGUOUS, FACIAL CHALLENGE CANNOT BE ALLOWED.—** When the terms of a contract are lawful, clear and unambiguous, facial challenge cannot be allowed. We should not go beyond the provisions of a clear and unambiguous contract to determine the intent of the parties thereto, because we will run the risk of substituting our own interpretation for the true intent of the parties.
3. **ID.; SALES; CONTRACT OF SALE; PERFECTED THE MOMENT THERE IS A MEETING OF THE MINDS UPON THE THING WHICH IS THE OBJECT OF THE CONTRACT AND UPON THE PRICE; CASE AT BAR.—** It is immaterial that Cornelia's signature does not appear on

the Extrajudicial Settlement of Estate with Absolute Sale. A contract of sale is perfected the moment there is a meeting of the minds upon the thing which is the object of the contract and upon the price. The fact that it was Cornelia herself who brought Atty. Francisco to Corazon's house to notarize the deed shows that she had previously given her consent to the sale of the two lots in her favor. Her subsequent act of exercising dominion over the subject properties further strengthens this assumption.

4. **ID.; ID.; ID.; THE RULE THAT THE PURCHASER IS NOT REQUIRED TO EXPLORE FURTHER WHAT THE CERTIFICATE INDICATES ON ITS FACE APPLIES ONLY TO INNOCENT PURCHASERS FOR VALUE AND GOOD FAITH; CASE AT BAR.—** The Yupanos, for their part, cannot feign ignorance of all these, and argue that Sergio's certificate of title was clean on its face. Even prior to May 31, 1988, when they bought the properties from Sergio, it had been widely known in the neighborhood and among the tenants residing on the said lots that ownership of the two parcels of land had been transferred to Cornelia as, in fact, it was Cornelia's brother, Vicente, who had been collecting rentals on the said properties. The Yupanos lived only a block away from the disputed lots. The husband, Laureano Yupano, was relatively close to Julian and to Epitacio and had known Cornelia before the latter left to live in the United States from 1979 to 1983. Before he bought the property from Sergio, Laureano himself verified that there were tenants who had been paying rentals to Vicente. All these should have alerted him to doubt the validity of Sergio's title over the said lots. Yet, the Yupanos chose to ignore these obvious indicators. In *Abad v. Guimba*, we explained: "[A]s a rule, the purchaser is not required to explore further than what the Certificate indicates on its face. This rule, however, applies *only* to innocent purchasers for value and in good faith; it excludes a purchaser who has knowledge of a defect in the title of the vendor, or of facts sufficient to induce a reasonable prudent man to inquire into the status of the property."

APPEARANCES OF COUNSEL

Jose Sonny G. Matula for petitioner.
Castro Villamor & Associates for respondents.

D E C I S I O N

NACHURA, *J*.:

Before us is a petition for review of the November 5, 2002 Decision[1] of the Court of Appeals (CA), as well as its November 10, 2003 Resolution[2] in CA-G.R. CV No. 34979, which reversed and set aside the September 9, 1991 Decision[3] of Branch 133 of the Regional Trial Court (RTC) of Makati City, in a complaint for annulment of sale, cancellation of title and damages[4] filed by petitioner Cornelia Baladad against herein respondents.

Below are the antecedent facts.

Two parcels of land located in what was then called the Municipality of Makati, Province of Rizal were registered in the name of Julian Angeles on December 20, 1965 under Transfer Certificate of Title (TCT) No. 155768.[5] On December 3, 1968, Julian and Corazon Rublico, after co-habiting for some time, got married. Julian was already 65 years old then, while Corazon was already 67.[6] At that time, Corazon already had a son, respondent Sergio A. Rublico, by Teofilo Rublico, who died sometime before the outbreak of the Second World War.[7] After Teofilo's death, Corazon cohabited with Panfilo de Jesus and then, later, with Julian. Julian died on February 2, 1969[8] leaving no compulsory heirs[9] except his wife and his brother, Epitacio.

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[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Ruben T. Reyes (later, Supreme Court Associate Justice) and Edgardo F. Sundiam, concurring; *rollo*, pp. 105-117.

[2] *Id.* at 143-145.

[3] *Id.* at 49-60.

[4] Records, pp. 1-8.

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

[6] *Id.* at 40.

[7] *Id.* at 26.

[8] *Id.* at 41.

[9] *Rollo*, p. 50.

On February 4, 1985, while on her death bed, Cornelia was surrounded by four individuals – her niece, petitioner Cornelia Baladad; her nephew, Vicente Angeles; a certain Rosie Francisco; and notary public Atty. Julio Francisco who had been called, accompanied by Cornelia herself to Corazon's house, to notarize a deed entitled Extrajudicial Settlement of Estate with Absolute Sale. In his testimony, Atty. Francisco said that Corazon imprinted her thumbmark on the document after he read and explained the contents thereof in *Tagalog* to her.[10] In the said document, Corazon and Epitacio adjudicated unto themselves the two lots registered in the name of Julian – with three-fourths (¾) of the property going to Corazon and the remaining one-fourth (¼) to Epitacio. The document also stated that both Corazon and Epitacio conveyed by way of absolute sale both their shares in the said lots in favor of Cornelia, Epitacio's daughter, in exchange for the amount of ₱107,750.00. Corazon's thumbmark was imprinted at the bottom of the said deed, while Vicente, Epitacio's son, signed in behalf of Epitacio by virtue of a power of attorney.[11] There was no signature of Cornelia on the said document.

Two days later, Corazon passed away.

Title over the said lots remained in the name of Julian, but on July 20, 1987, more than two years after Corazon's death, respondent Sergio executed an Affidavit of Adjudication by Sole Heir of Estate of Deceased Person[12] adjudicating unto himself the same parcels of land which had been subject of the deed of sale between Corazon and Cornelia. On October 27, 1987, Sergio filed a petition for reconstitution of the owner's copy of TCT No. 155768 averring that after the death of Corazon, he tried to locate the copy of the title but to no avail.[13] The

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[10] TSN, July 5, 1991, pp. 13-14.

[11] *Id.* at 203-204.

[12] *Id.* at 13.

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

petition was granted on January 11, 1988[14] and a new owner's duplicate title (TCT No. 155095) was issued in the name of Sergio on April 18, 1988.[15]

On May 31, 1988, Sergio sold the two lots to spouses Laureano and Felicidad Yupano for ₱100,000.00.[16] Sergio's certificate of title was cancelled and TCT No. 155338 was issued in favor of the Yupanos. On July 26, 1988, the said title was also cancelled and TCT Nos. 156312[17] and 156313[18] separately covering the two parcels of land were issued. On July 17, 1990, Cornelia caused the annotation on the said TCTs of her adverse claim over the said properties.

Meanwhile, there were seven families who occupied the lots and paid rentals to Julian and, later, to Corazon. After Corazon's death, they paid rentals to Cornelia through Pacifica Alvaro, and later to Cornelia's brother, Vicente, when Cornelia transferred her residence to the United States. When the Yupanos demanded payment of rentals from the tenants, the latter filed a complaint for interpleader on May 19, 1989. The case was docketed as Civil Case No. 89-3947. On September 3, 1990, Branch 148 of the Makati RTC rendered a Decision[19] declaring the Yupanos as the legal and lawful owners of the two lots.

On August 3, 1990, a month before the promulgation of the decision, Cornelia filed a complaint for annulment of sale, cancellation of title and damages, which is now the subject of this Rule 45 petition. Cornelia argued that Sergio knew of the sale made by Corazon in her favor and was even given part of the proceeds. Cornelia also averred that the Yupanos could not be considered as buyers in good faith, because they only lived

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

[15] *Id.* at 50.

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

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

[18] *Id.* at 215-217.

[19] *Id.* at 104-108 and *rollo*, p. 110.

a block from the disputed properties and had knowledge that the two lots had been sold to Cornelia prior to Corazon's death.[20]

For their part, respondents argued that the Extrajudicial Settlement with Absolute Sale dated February 4, 1985 could not have been executed because at the time, Corazon was already dying. Ignacio Rublico, Sergio's son, also testified that he saw Vicente Angeles holding the hand of Corazon to affix her thumbmark on a blank sheet of paper.[21] Sergio also argued that the property was originally bought by his mother, but was only registered in the name of Julian in keeping with the tradition at that time.[22]

After the trial, Branch 133 of the Makati RTC ruled in favor of Cornelia.[23] Upon appeal, the CA reversed the RTC ruling[24]

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[20] Records, pp. 1-4.

[21] TSN, May 21, 1991, pp. 20-23.

[22] *Rollo*, p. 110.

[23] The dispositive portion of decision of Branch 133 of the RTC of Makati dated September 9, 1991 reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants as follows:

(a) Declaring the affidavit of Self-Adjudication dated July 20, 1987 and the Affidavit of Extrajudicial Settlement of a Deceased Person dated February 16, 1988 of Sergio A. Rublico, null and void;

(b) Declaring the Deed of Absolute Sale of the litigated property by Sergio Rublico in favor of Laureano Yupano, null and void;

(c) Ordering the Register of Deeds of Makati to cancel Transfer Certificate of Title Nos. 156312 and 156313 in the name of Laureano Yupano and in lieu thereof to restore Transfer Certificate Title No. 155768 and issue a duplicate owner's certificate of title thereof in the name of Cornelia A. Baladad;

(d) Ordering defendants Sergio A. Rublico and Spouses Laureano F. Yupano to pay, jointly and severally, the amount of ₱10,000.00 as moral damages; and the amount of ₱10,000.00 as attorney's fees; and, to pay the costs.

SO ORDERED. (*Rollo*, pp. 59-60.)

[24] The *fallo* of the CA decision dated November 5, 2002 reads:

WHEREFORE, premises considered, the decision dated September 9, 1991 of the Regional Trial Court, Branch 133, Makati in Civil Case No.

prompting Cornelia to file a motion for reconsideration,[25] but the same was denied for lack of merit.[26] Hence, this petition.

The determinative issue is the validity of the Extrajudicial Settlement of Estate with Absolute Sale purportedly executed by Corazon prior to her death.

We find in favor of petitioner.

The Extrajudicial Settlement of Estate with Absolute Sale executed by Corazon and Epitacio through the latter's attorney-in-fact, Vicente Angeles, partakes of the nature of a contract. To be precise, the said document contains two contracts, to wit: the extrajudicial adjudication of the estate of Julian Angeles between Corazon and Epitacio as Julian's compulsory heirs, and the absolute sale of the adjudicated properties to Cornelia. While contained in one document, the two are severable and each can stand on its own. Hence, for its validity, each must comply with the requisites prescribed in Article 1318 of the Civil Code, namely (1) consent of the contracting parties; (2) object certain, which is the subject matter of the contract; and (3) cause of the obligation which is established.

During the trial, respondents argued that the document was not valid because at the time it was executed, Corazon was already weak and could not have voluntarily given her consent thereto. One of the witnesses for the defense even testified that it was Vicente who placed Corazon's thumbprint on a blank document, which later turned out to be the Extrajudicial

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90-2093 is hereby **REVERSED** and **SET ASIDE**, thus declaring: (1) the Deed of Extrajudicial Settlement with Absolute Sale in favor of plaintiff-appellee as null and void; (2) the Affidavit of Self-Adjudication executed by defendant-appellant Sergio Rublico as valid; and (3) defendants-appellants Yupanos as purchasers in good faith and lawful owners of the subject parcels of land.

SO ORDERED. (*Id.* at 116-117.)

[25] *Id.* at 118-141.

[26] *Id.* at 143-145.

Adjudication with Absolute Sale. We are, however, inclined to agree with the RTC's finding on this matter, *viz:*

> Ignacio is not a reliable witness. He was very certain the event took place on February 4, 1985 and Corazon was already dead. This was his testimony on cross-examination. He had forgotten that Corazon died on February 6, 1985 or two days after. So, when confronted with this contradiction, he had to change his stance and claim that Corazon was still alive when it happened.[27]

It is also noteworthy that in the course of the trial, respondents did not question Corazon's mental state at the time she executed the said document. Respondents only focused on her physical weakness, arguing that she could not have executed the deed because she was already dying and, thus, could not appear before a notary public.[28] Impliedly, therefore, respondents indulged the presumption that Corazon was still of sound and disposing mind when she agreed to adjudicate and sell the disputed properties on February 4, 1985.

Respondents also failed to refute the testimony of Atty. Francisco, who notarized the deed, that he personally read to Corazon the contents of the Extrajudicial Settlement of Estate with Absolute Sale, and even translated its contents to *Tagalog*.

And, most important of all is the fact that the subject deed is, on its face, unambiguous. When the terms of a contract are lawful, clear and unambiguous, facial challenge cannot be allowed. We should not go beyond the provisions of a clear and unambiguous contract to determine the intent of the parties thereto, because we will run the risk of substituting our own interpretation for the true intent of the parties.

It is immaterial that Cornelia's signature does not appear on the Extrajudicial Settlement of Estate with Absolute Sale. A contract of sale is perfected the moment there is a meeting

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[27] *Id.* at 54.

[28] *Id.* at 109.

of the minds upon the thing which is the object of the contract and upon the price.[29] The fact that it was Cornelia herself who brought Atty. Francisco to Corazon's house to notarize the deed shows that she had previously given her consent to the sale of the two lots in her favor. Her subsequent act of exercising dominion over the subject properties further strengthens this assumption.

Based on these findings, we are constrained to uphold the validity of the disputed deed. Accordingly, respondent Sergio Rublico never had the right to sell the subject properties to the Yupanos, because he never owned them to begin with. *Nemo dat quod non habet.* Even before he could inherit any share of the properties from his mother, Corazon, the latter had already sold them to Cornelia.

The Yupanos, for their part, cannot feign ignorance of all these, and argue that Sergio's certificate of title was clean on its face. Even prior to May 31, 1988, when they bought the properties from Sergio, it had been widely known in the neighborhood and among the tenants residing on the said lots that ownership of the two parcels of land had been transferred to Cornelia as, in fact, it was Cornelia's brother, Vicente, who had been collecting rentals on the said properties. The Yupanos lived only a block away from the disputed lots.[30] The husband, Laureano Yupano, was relatively close to Julian and to Epitacio and had known Cornelia before the latter left to live in the United States from 1979 to 1983.[31] Before he bought the property from Sergio, Laureano himself verified that there were tenants who had been paying rentals to Vicente.[32] All these should have alerted him to doubt the validity of Sergio's title over the said lots. Yet, the Yupanos chose to ignore these obvious indicators.

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[29] Article 1475, Civil Code.

[30] *Rollo*, p. 107.

[31] TSN, May 21, 1991, p. 42; and May 23, 1991, p. 18.

[32] TSN, May 23, 1991, p. 37.

In *Abad v. Guimba*,[33] we explained:

> [A]s a rule, the purchaser is not required to explore further than what the Certificate indicates on its face. This rule, however, applies *only* to innocent purchasers for value and in good faith; it excludes a purchaser who has knowledge of a defect in the title of the vendor, or of facts sufficient to induce a reasonable prudent man to inquire into the status of the property.[34]

We thus declare the Affidavit of Adjudication by Sole Heir of Estate of Deceased person executed by Sergio Rublico to be void and without any effect. The sale made by him to spouses Yupano is, likewise, declared null and void. Respondent Sergio Rublico is ordered to return the amount of ₱100,000.00 paid to him by spouses Laureano Yupano, less the amount spent on the acquisition of the invalid title procured by him with the acquiescence of the Yupanos.

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. CV No. 34979 dated November 5, 2002 is hereby *REVERSED* and *SET ASIDE*. Accordingly, the Decision of the Regional Trial Court of Makati dated September 9, 1991 is *REINSTATED with MODIFICATION* in that:

1. the Extrajudicial Adjudication of Estate with Absolute Sale dated February 4, 1985 as *VALID*;
2. the sale between respondent Sergio Rublico and Spouses Laureano Yupano is *NULL and VOID*. Respondent Sergio Rublico is ordered to return the ₱100,000.00 paid by the Yupanos, less the amount spent on the acquisition of the invalid title procured by him with the acquiescence of the Yupanos; and
3. the Register of Deeds of Makati is ordered to *CANCEL* Transfer Certificate of Title Nos. 156312 and 156313

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[33] G.R. No. 157002, July 29, 2005, 465 SCRA 356, 357.

[34] *Id.* at 367.

in the name of Laureano Yupano and, in lieu thereof, *RESTORE* Transfer Certificate No. 155768.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 165116. August 4, 2009]

MARIA SOLEDAD TOMIMBANG, *petitioner, vs.* **ATTY. JOSE TOMIMBANG,** *respondent.*

SYLLABUS

1. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; NOVATION; MODIFICATORY OR PARTIAL NOVATION; DULY ESTABLISHED IN CASE AT BAR.—** The evidence on record clearly shows that after renovation of seven out of the eight apartment units had been completed, petitioner and respondent agreed that the former shall already start making monthly payments on the loan even if renovation on the last unit (Unit A) was still pending. Genaro Tomimbang, the younger brother of herein parties, testified that a meeting was held among petitioner, respondent, himself and their eldest sister Maricion, sometime during the first or second quarter of 1997, wherein respondent demanded payment of the loan, and petitioner agreed to pay. Indeed, petitioner began to make monthly payments from June to October of 1997 totalling ₱93,500.00. In fact, petitioner even admitted in her Answer with Counterclaim that she had "**started to make payments to plaintiff [herein respondent] as the same was in accord with her commitment to pay whenever she was able**; x x x ." Evidently, by virtue of the subsequent agreement, the parties mutually dispensed

with the condition that petitioner shall only begin paying after the completion of all renovations. There was, in effect, a modificatory or partial novation, of petitioner's obligation. Article 1291 of the Civil Code provides, thus: "Art. 1291. Obligations may be modified by: (1) **Changing** their object or **principal conditions**; (2) Substituting the person of the debtor; (3) Subrogating a third person in the rights of the creditor."

2. **ID.; ID.; ID.; ID.; EXTINCTIVE AND PARTIAL NOVATION, DISTINGUISHED.—** In *Iloilo Traders Finance, Inc. v. Heirs of Sps. Soriano*, the Court expounded on the nature of novation, to wit: "**Novation may either be extinctive or modificatory**, much being dependent on the nature of the change and the intention of the parties. Extinctive novation is never presumed; there must be an express intention to novate; x x x. An extinctive novation would thus have the twin effects of, first, extinguishing an existing obligation and, second, creating a new one in its stead. This kind of novation presupposes a confluence of four essential requisites: (1) a previous valid obligation; (2) an agreement of all parties concerned to a new contract; (3) the extinguishment of the old obligation; and (4) the birth of a new valid obligation. **Novation is merely modificatory where the change brought about by any subsequent agreement is merely incidental to the main obligation (*e.g.*, a change in interest rates or an extension of time to pay); in this instance, the new agreement will not have the effect of extinguishing the first but would merely supplement it or supplant some but not all of its provisions**." In *Ong v. Bogñalbal*, the Court also stated, thus: "x x x **the effect of novation may be partial or total**. There is partial novation when there is only a modification or change in some principal conditions of the obligation. It is total, when the obligation is completely extinguished. Also, the term principal conditions in Article 1291 should be construed to include a change in the period to comply with the obligation. Such a change in the period would only be a partial novation since the period merely affects the performance, not the creation of the obligation." As can be gleaned from the foregoing, the aforementioned four essential elements and the requirement that there be total incompatibility between the old and new obligation, apply only to extinctive novation. In partial novation, only the terms and conditions of the obligation are altered, thus, the main obligation is not changed and it remains in force.

3. **ID.; ID.; ID.; ID.; THE OBLIGATION IN CASE AT BAR HAS BECOME DUE AND DEMANDABLE UNDER THE NOVATED AGREEMENT.—** Petitioner stated in her Answer with Counterclaim that she agreed and complied with respondent's demand for her to begin paying her loan, since she believed this was in accordance with her commitment to pay whenever she was able. Her partial performance of her obligation is unmistakable proof that indeed the original agreement between her and respondent had been novated by the deletion of the condition that payments shall be made only after completion of renovations. Hence, by her very own admission and partial performance of her obligation, there can be no other conclusion but that under the novated agreement, petitioner's obligation is already due and demandable.

4. **ID.; DAMAGES; ATTORNEY'S FEES; AWARD THEREOF REQUIRES FACTUAL, LEGAL OR EQUITABLE JUSTIFICATION.—** It is an oft-repeated rule that the trial court is required to state the factual, legal or equitable justification for awarding attorney's fees. The Court explained in *Buñing v. Santos*, to wit: "x x x While Article 2208 of the Civil Code allows attorney's fees to be awarded if the claimant is compelled to litigate with third persons or to incur expenses to protect his interest by reason of an unjustified act or omission of the party from whom it is sought, **there must be a showing that the losing party acted willfully or in bad faith and practically compelled the claimant to litigate and incur litigation expenses. In view of the declared policy of the law that awards of attorney's fees are the exception rather than the rule, it is necessary for the trial court to make express findings of facts and law that would bring the case within the exception and justify the grant of such award**. x x x. Thus, the matter of attorney's fees cannot be touched upon only in the dispositive portion of the decision. The text itself must state the reasons why attorney's fees are being awarded. x x x" In the above-quoted case, there was a finding that defendants therein had no intention of fulfilling their obligation in complete disregard of the plaintiff's right, and yet, the Court did not deem this as sufficient justification for the award of attorney's fees. Verily, in the present case, where it is understandable that some misunderstanding could arise as to when the obligation was indeed due and demandable, the Court must likewise disallow the award of attorney's fees.

5. ID.; ID.; RULE ON IMPOSITION OF INTEREST; ELUCIDATED.— In *Royal Cargo Corp. v. DFS Sports Unlimited, Inc.*, the Court reiterated the settled rule on imposition of interest, thus: "As to computation of legal interest, the seminal ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals* controls, to wit: x x x II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows: 1. When an obligation is breached, and it consists in the payment of a sum of money, *i.e.,* a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code. 2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged. 3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit." The foregoing rule on legal interest was explained in *Sunga-Chan v. Court of Appeals,* in this wise: "*Eastern Shipping Lines, Inc.* synthesized the rules on the imposition of interest, if proper, and the applicable rate, as follows: **The 12% per annum rate under CB Circular No. 416 shall apply only to loans or forbearance of money, goods,**

or credits, as well as to judgments involving such loan or forbearance of money, goods, or credit, while the 6% per annum under Art. 2209 of the Civil Code applies 'when the transaction involves the payment of indemnities in the concept of damage arising from the breach or a delay in the performance of obligations in general,' with the application of both rates reckoned 'from the time the complaint was filed until the [adjudged] amount is fully paid.' In either instance, the reckoning period for the commencement of the running of the legal interest shall be subject to the condition 'that the courts are vested with discretion, depending on the equities of each case, on the award of interest.'" In accordance with the above ruling, since the obligation in this case involves a loan and there is no stipulation in writing as to interest due, the rate of interest shall be 12% per annum computed from the date of extrajudicial demand.

APPEARANCES OF COUNSEL

Joaqun Adarlo and Caoile for petitioner.
Karaan and Karaan Law Office for respondent.

D E C I S I ON

PERALTA, *J*.:

This resolves the petition for review on *certiorari* under Rule 45 of the Rules of Court, praying that the Decision[1] dated July 1, 2004 and Resolution[2] dated August 31, 2004 promulgated by the Court of Appeals (CA), be reversed and set aside.

The antecedent facts are as follows.

Petitioner and respondent are siblings. Their parents donated to petitioner an eight-door apartment located at 149 Santolan Road, Murphy, Quezon City, with the condition that during

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[1] Penned by Associate Justice Japar B. Dimaampao, with Associate Justices Josefina Guevara-Salonga and Edgardo F. Sundiam (now deceased), concurring; *rollo,* pp. 27-36.

[2] *Id.* at 37-38.

the parents' lifetime, they shall retain control over the property and petitioner shall be the administrator thereof.

In 1995, petitioner applied for a loan from PAG-IBIG Fund to finance the renovations on Unit H, of said apartment which she intended to use as her residence. Petitioner failed to obtain a loan from PAG-IBIG Fund, hence, respondent offered to extend a credit line to petitioner on the following conditions: (1) petitioner shall keep a record of all the advances; (2) petitioner shall start paying the loan upon the completion of the renovation; (3) upon completion of the renovation, a loan and mortgage agreement based on the amount of the advances made shall be executed by petitioner and respondent; and (4) the loan agreement shall contain comfortable terms and conditions which petitioner could have obtained from PAG-IBIG.[3]

Petitioner accepted respondent's offer of a credit line and work on the apartment units began. Renovations on Units B to G were completed, and the work has just started on Unit A when an altercation broke out between herein parties. In view of said conflict, respondent and petitioner, along with some family members, held a meeting in the house of their brother Genaro sometime in the second quarter of 1997. Respondent and petitioner entered into a new agreement whereby petitioner was to start making monthly payments on her loan. Upon respondent's demand, petitioner turned over to respondent all the records of the cash advances for the renovations. Subsequently, or from June to October of 1997, petitioner made monthly payments of ₱18,700.00, or a total of ₱93,500.00. Petitioner never denied the fact that she started making such monthly payments.

In October of 1997, a quarrel also occurred between respondent and another sister, Maricion, who was then defending the actions of petitioner. Because of said incident, they had a hearing at the *Barangay*. At said hearing, respondent had the occasion to remind petitioner of her monthly payment. Petitioner allegedly answered, "*Kalimutan mo na ang pera mo wala tayong*

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[3] *Rollo,* pp. 136, 156.

pinirmahan. Hindi ako natatakot sa 'yo!" Thereafter, petitioner left Unit H and could no longer be found. Petitioner being the owner of the apartments, renovations on Unit A were discontinued when her whereabouts could not be located. She also stopped making monthly payments and ignored the demand letter dated December 2, 1997 sent by respondent's counsel.

On February 2, 1998, respondent filed a Complaint against petitioner, demanding the latter to pay the former the net amount of ₱3,989,802.25 plus interest of 12% per annum from date of default.

At the pre-trial conference, the issues were narrowed down as follows:

> 1. Whether or not a loan was duly constituted between the plaintiff and the defendant in connection with the improvements or renovations on apartment units A-H, which is in the name of the defendant [herein petitioner];
>
> 2. Assuming that such a loan was duly constituted in favor of plaintiff [herein respondent], whether or not the same is already due and payable;
>
> 3. Assuming that said loan is already due and demandable, whether or not it is to be paid out of the rental proceeds from the apartment units mentioned, presuming that such issue was raised in the Answer of the Defendant;
>
> 4. Assuming that the said loan was duly constituted in favor of plaintiff [herein respondent], whether or not it is in the amount of ₱3,909,802.20 and whether or not it will earn legal interest at the rate of 12% per annum, compounded, as provided in Article 2212 of the Civil Code of the Philippines, from the date of the extrajudicial demand; and
>
> 5. Whether or not the plaintiff [herein respondent] is entitled to the reliefs prayed for in his Complaint or whether or not it is the defendant [herein petitioner] who is entitled to the reliefs prayed for in her Answer with Counterclaim.[4]

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[4] Records, p. 153.

On November 15, 2002, the Regional Trial Court (RTC) of Quezon City, Branch 82, rendered a Decision,[5] the dispositive portion of which reads as follows:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendant ordering the latter to pay the former the following:

1. The sum of ₱3,989,802.25 with interest thereon at the legal rate of 12% per annum computed from the date of default until the whole obligation is fully paid;
2. The sum of ₱50,000.00 as and by way of attorney's fees; and
3. The cost of suit.

SO ORDERED.[6]

Petitioner appealed the foregoing RTC Decision to the CA, but on July 1, 2004, the Court of Appeals promulgated its Decision affirming *in toto* said RTC judgment. A motion for reconsideration of the CA Decision was denied per Resolution dated August 31, 2004.

Hence, this petition where petitioner alleges that:

I.

THE COURT OF APPEALS ACTED NOT IN ACCORD WITH LAW AND APPLICABLE JURISPRUDENCE OF THE SUPREME COURT WHEN IT AFFIRMED THE LOWER COURT'S FINDING THAT THE LOAN BETWEEN PETITIONER AND RESPONDENT IS ALREADY DUE AND DEMANDABLE.

II.

THE COURT OF APPEALS ERRED BY DEPARTING FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS – OF AFFIRMING THE DUE AND DEMANDABILITY OF THE LOAN CONTRARY TO THE EVIDENCE PRESENTED IN THE LOWER COURT – AND SANCTIONING SUCH DEPARTURE BY THE LOWER COURT IN THE INSTANT CASE.

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[5] *Rollo,* pp. 100-107.

[6] *Id.* at 107.

III.

THE COURT OF APPEALS ERRED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS – OF AFFIRMING THE AWARD OF ATTORNEY'S FEES TO THE RESPONDENT WITHOUT ANY BASIS – AND SANCTIONING SUCH DEPARTURE BY THE LOWER COURT IN THE INSTANT CASE.[7]

The main issues in this case boil down to (1) whether petitioner's obligation is due and demandable; (2) whether respondent is entitled to attorney's fees; and (3) whether interest should be imposed on petitioner's indebtedness and, if in the affirmative, at what rate.

Petitioner does not deny that she obtained a loan from respondent. She, however, contends that the loan is not yet due and demandable because the suspensive condition – the completion of the renovation of the apartment units — has not yet been fulfilled. She also assails the award of attorney's fees to respondent as baseless.

For his part, respondent admits that initially, they agreed that payment of the loan shall be made upon completion of the renovations. However, respondent claims that during their meeting with some family members in the house of their brother Genaro sometime in the second quarter of 1997, he and petitioner entered into a new agreement whereby petitioner was to start making monthly payments on her loan, which she did from June to October of 1997. In respondent's view, there was a novation of the original agreement, and under the terms of their new agreement, petitioner's obligation was already due and demandable.

Respondent also maintains that when petitioner disappeared from the family compound without leaving information as to where she could be found, making it impossible to continue the renovations, petitioner thereby prevented the fulfillment of said condition. He claims that Article 1186 of the Civil Code, which provides that "the condition shall be deemed fulfilled

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[7] *Id.* at 9-10.

when the obligor voluntarily prevents its fulfillment," is applicable to this case.

In his Comment to the present petition, respondent raised for the first time, the issue that the loan contract between him and petitioner is actually one with a period, not one with a suspensive condition. In his view, when petitioner began to make partial payments on the loan, the latter waived the benefit of the term, making the loan immediately demandable.

Respondent also believes that he is entitled to attorney's fees, as petitioner allegedly showed bad faith by absconding and compelling him to litigate.

The Court finds the petition unmeritorious.

It is undisputed that herein parties entered into a valid loan contract. The only question is, has petitioner's obligation become due and demandable? The Court resolves the question in the affirmative.

The evidence on record clearly shows that after renovation of seven out of the eight apartment units had been completed, petitioner and respondent agreed that the former shall already start making monthly payments on the loan even if renovation on the last unit (Unit A) was still pending. Genaro Tomimbang, the younger brother of herein parties, testified that a meeting was held among petitioner, respondent, himself and their eldest sister Maricion, sometime during the first or second quarter of 1997, wherein respondent demanded payment of the loan, and petitioner agreed to pay. Indeed, petitioner began to make monthly payments from June to October of 1997 totalling ₱93,500.00.[8] In fact, petitioner even admitted in her Answer with Counterclaim that she had "**started to make payments to plaintiff [herein respondent] as the same was in accord with her commitment to pay whenever she was able**; x x x ."[9]

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[8] TSN, August 17, 1999, pp. 18-20.

[9] Record, p. 109. (Emphasis supplied).

Evidently, by virtue of the subsequent agreement, the parties mutually dispensed with the condition that petitioner shall only begin paying after the completion of all renovations. There was, in effect, a modificatory or partial novation, of petitioner's obligation. Article 1291 of the Civil Code provides, thus:

Art. 1291. Obligations may be modified by:

(1) **Changing** their object or **principal conditions**;

(2) Substituting the person of the debtor;

(3) Subrogating a third person in the rights of the creditor. (Emphasis supplied)

In *Iloilo Traders Finance, Inc. v. Heirs of Sps. Soriano*,[10] the Court expounded on the nature of novation, to wit:

Novation may either be extinctive or modificatory, much being dependent on the nature of the change and the intention of the parties. Extinctive novation is never presumed; there must be an express intention to novate; x x x.

An extinctive novation would thus have the twin effects of, first, extinguishing an existing obligation and, second, creating a new one in its stead. This kind of novation presupposes a confluence of four essential requisites: (1) a previous valid obligation; (2) an agreement of all parties concerned to a new contract; (3) the extinguishment of the old obligation; and (4) the birth of a new valid obligation. **Novation is merely modificatory where the change brought about by any subsequent agreement is merely incidental to the main obligation (*e.g.,* a change in interest rates or an extension of time to pay); in this instance, the new agreement will not have the effect of extinguishing the first but would merely supplement it or supplant some but not all of its provisions.**[11]

In *Ong v. Bogñalbal*,[12] the Court also stated, thus:

x x x **the effect of novation may be partial or total.** There is partial novation when there is only a modification or change in some

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[10] 452 Phil. 82 (2003).

[11] *Id.* at 89-90. (Emphasis supplied.)

[12] G.R. No. 149140, September 12, 2006, 501 SCRA 490.

principal conditions of the obligation. It is total, when the obligation is completely extinguished. Also, the term principal conditions in Article 1291 should be construed to include a change in the period to comply with the obligation. Such a change in the period would only be a partial novation since the period merely affects the performance, not the creation of the obligation.[13]

As can be gleaned from the foregoing, the aforementioned four essential elements and the requirement that there be total incompatibility between the old and new obligation, apply only to extinctive novation. In partial novation, only the terms and conditions of the obligation are altered, thus, the main obligation is not changed and it remains in force.

Petitioner stated in her Answer with Counterclaim[14] that she agreed and complied with respondent's demand for her to begin paying her loan, since she believed this was in accordance with her commitment to pay whenever she was able. Her partial performance of her obligation is unmistakable proof that indeed the original agreement between her and respondent had been novated by the deletion of the condition that payments shall be made only after completion of renovations. Hence, by her very own admission and partial performance of her obligation, there can be no other conclusion but that under the novated agreement, petitioner's obligation is already due and demandable.

With the foregoing finding that petitioner's obligation is due and demandable, there is no longer any need to discuss whether petitioner's disappearance from the family compound prevented the fulfillment of the original condition, necessitating application of Article 1186 of the Civil Code, or whether the obligation is one with a condition or a period.

As to attorney's fees, however, the award therefor cannot be allowed by the Court. It is an oft-repeated rule that the trial court is required to state the factual, legal or equitable

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[13] *Id.* at 508. (Emphasis supplied.)

[14] See note 8.

justification for awarding attorney's fees.[15] The Court explained in *Buñing v. Santos*,[16] to wit:

> x x x While Article 2208 of the Civil Code allows attorney's fees to be awarded if the claimant is compelled to litigate with third persons or to incur expenses to protect his interest by reason of an unjustified act or omission of the party from whom it is sought, **there must be a showing that the losing party acted willfully or in bad faith and practically compelled the claimant to litigate and incur litigation expenses. In view of the declared policy of the law that awards of attorney's fees are the exception rather than the rule, it is necessary for the trial court to make express findings of facts and law that would bring the case within the exception and justify the grant of such award.** x x x.
>
> Thus, the matter of attorney's fees cannot be touched upon only in the dispositive portion of the decision. The text itself must state the reasons why attorney's fees are being awarded. x x x[17]

In the above-quoted case, there was a finding that defendants therein had no intention of fulfilling their obligation in complete disregard of the plaintiff's right, and yet, the Court did not deem this as sufficient justification for the award of attorney's fees. Verily, in the present case, where it is understandable that some misunderstanding could arise as to when the obligation was indeed due and demandable, the Court must likewise disallow the award of attorney's fees.

We now come to a discussion of whether interest should be imposed on petitioner's indebtedness. In *Royal Cargo Corp. v. DFS Sports Unlimited, Inc.*,[18] the Court reiterated the settled rule on imposition of interest, thus:

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[15] *Zacharias De los Santos v. Consuelo B. Papa*, *et al.*, G.R. No. 154427, May 8, 2009; *Sebastian Siga-an v. Alicia Villanueva*, G.R. No. 173227, January 20, 2009.

[16] G.R. No. 152544, September 19, 2006, 502 SCRA 315.

[17] *Id.* at 322-323. (Emphasis supplied.)

[18] G.R. No. 158621, December 10, 2008.

As to computation of legal interest, the seminal ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals* controls, to wit:

> x x x   x x x   x x x
>
> II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:
>
> 1. When an obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, *i.e.,* from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.
>
> 2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.
>
> 3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

The foregoing rule on legal interest was explained in *Sunga-Chan v. Court of Appeals,*[19] in this wise:

> *Eastern Shipping Lines, Inc.* synthesized the rules on the imposition of interest, if proper, and the applicable rate, as follows: **The 12% per annum rate under CB Circular No. 416 shall apply only to loans or forbearance of money, goods, or credits, as well as to judgments involving such loan or forbearance of money, goods, or credit**, while the 6% per annum under Art. 2209 of the Civil Code applies "when the transaction involves the payment of indemnities in the concept of damage arising from the breach or a delay in the performance of obligations in general," with the application of both rates reckoned "from the time the complaint was filed until the [adjudged] amount is fully paid." In either instance, the reckoning period for the commencement of the running of the legal interest shall be subject to the condition "that the courts are vested with discretion, depending on the equities of each case, on the award of interest."[20]

In accordance with the above ruling, since the obligation in this case involves a loan and there is no stipulation in writing as to interest due, the rate of interest shall be 12% per annum computed from the date of extrajudicial demand.

IN VIEW OF THE FOREGOING, the petition is *AFFIRMED* with the *MODIFICATION* that the award for attorney's fees is *DELETED*.

SO ORDERED.

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

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[19] G.R. No. 164401, June 25, 2008, 555 SCRA 275.

[20] *Id.* At 288.

THIRD DIVISION

[G.R. No. 165697. August 4, 2009]

ANTONIO NAVARRO, *petitioner, vs.* **METROPOLITAN BANK & TRUST COMPANY,** *respondent.*

[G.R. No. 166481. August 4, 2009]

CLARITA P. NAVARRO, *petitioner, vs.* **METROPOLITAN BANK & TRUST COMPANY,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; PRINCIPLE OF IMMUTABILITY OF JUDGMENT; APPLIED IN CASE AT BAR.—** While the Court agrees that an action to declare the nullity of contracts is not barred by the statute of limitations, the fact that Clarita was barred by laches from bringing such action at the first instance has already been settled by the Court of Appeals in CA-G.R. SP No. 55780. At this point in the proceedings, the Court can no longer rule on the applicability of the principle of laches *vis-à-vis* the imprescriptibility of Clarita's cause of action because the said decision is not the one on appeal before us. But more importantly, the Court takes notice that the decision rendered in that case had already become final without any motion for reconsideration being filed or an appeal being taken therefrom. Thus, we are left with no other recourse than to uphold the immutability of the said decision.
2. **ID.; ID.; ID.; ID.; PURPOSE.—** No other procedural law principle is indeed more settled than that once a judgment becomes final, it is no longer subject to change, revision, amendment or reversal, except only for correction of clerical errors, or the making of *nunc pro tunc* entries which cause no prejudice to any party, or where the judgment itself is void. The underlying reason for the rule is two-fold: (1) to avoid delay in the administration of justice and thus make orderly the discharge of judicial business, and (2) to put judicial controversies to an end, at the risk of occasional errors, inasmuch as controversies cannot be allowed

to drag on indefinitely and the rights and obligations of every litigant must not hang in suspense for an indefinite period of time. x x x Indeed, just as a losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his case by the execution and satisfaction of the judgment. Any attempt to thwart this rigid rule and deny the prevailing litigant his right to savor the fruit of his victory must immediately be struck down.

3. **ID.; ID.; DOCTRINE OF LACHES; DEFINED.—** [L]aches, or what is known as the doctrine of stale claim or demand, is the neglect or omission to assert a right, taken in conjunction with lapse of time and other circumstances causing prejudice to an adverse party, as will operate as a bar in equity. It is a delay in the assertion of a right which works disadvantage to another because of the inequity founded on some change in the condition of the property involved or in the relations of the parties. It is based on public policy which, for the peace of society, ordains that relief will be denied to a stale demand which otherwise could be a valid claim.

4. **ID.; ID.; MOTION TO DISMISS; THE BROAD PROVISION OF SECTION 1 OF RULE 16 OF THE RULES OF COURT INCLUDES THE DOCTRINE OF LACHES AS A GROUND FOR THE DISMISSAL OF A COMPLAINT.—** As a ground for the dismissal of a complaint, the doctrine of laches is embraced in the broad provision in Section 1 of Rule 16 of the Rules of Court, which enumerates the various grounds on which a motion to dismiss may be based. Paragraph (h) thereof states that the fact that the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished, may be raised in a motion to dismiss. The language of the rule, particularly on the relation of the words "abandoned" and "otherwise extinguished" to the phrase "claim or demand set forth in the plaintiff's pleading" is broad enough to include within its ambit the defense of bar by laches.

5. **ID.; ID.; ID.; EFFECT OF DISMISSAL; AN ORDER GRANTING A MOTION TO DISMISS BASED ON PARAGRAPHS (F), (H) AND (I) OF SECTION 1, RULE 16 OF THE RULES OF COURT CONSTITUTES *RES JUDICATA*.—** Section 5 of Rule 16 of the Rules of Court materially provides: "**Section 5.** ***Effect of dismissal***.—Subject

to the right of appeal, an order granting a motion to dismiss based on paragraphs (f), (h) and (i) of Section 1 hereof shall bar the refiling of the same action or claim." In *United Coconut Planters Bank v. Belus* and *Strongworld Construction Corporation v. Perello,* the Court held that where the complaint is dismissed on the ground that the cause of action is barred by a prior judgment or by the statute of limitations; or that the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished; or that the claim on which the action is founded is unenforceable under the provisions of the statute of frauds, such dismissal operates as one with prejudice and which therefore precludes the filing of another action based on the same claim. Hence, according to *Madrigal v. Transport, Inc. v. Lapanday Holdings Corporation*, such dismissal already constitutes *res judicata.*

6. **ID.; ID.; JUDGMENTS; PRINCIPLE OF *RES JUDICATA*; ELUCIDATED.—** The principle of *res judicata* denotes that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on all points and matters determined in their former suit. It obtains where a court of competent jurisdiction has rendered a final judgment or order on the merits of the case, which operates as an absolute bar against a subsequent action for the same cause. A substantial identity is necessary to warrant the application of the rule, and the addition or elimination of some parties or the difference in form and nature of the two actions would not alter the situation. In other words, when material facts or questions in issue in a former action were conclusively settled by a judgment rendered therein, such facts or questions constitute *res judicata* and may not be again litigated in a subsequent action between the same parties or their privies regardless of the form of the latter.

APPEARANCES OF COUNSEL

Nelson A. Loyola for Antonio Navarro.

Magno & Associates for Clarita P. Navarro.

Alfonso M. Cruz Law Offices for Metropolitan Bank & Trust Company.

DECISION

PERALTA, *J*.:

The tendency of the law must always be to narrow down the field of uncertainty. Judicial process was conceived in this light to bring about a just termination of legal disputes. Although various mechanisms are in place to realize this fundamental objective, all of them emanate from the essential precept of immutability of final judgments.

These two petitions for review on *certiorari* under Rule 45 separately filed by petitioners Antonio Navarro and Clarita Navarro, respectively docketed as G.R. No. 165697[1] and G.R. No. 166481,[2] assail the July 8, 2004 Decision[3] of the Court of Appeals in CA-G.R. SP No. 76872 which ordered the dismissal of the complaint filed by petitioner Clarita Navarro in Civil Case No. 02-079 — a case for declaration of nullity of title and for reconveyance and damages.

Petitioners Antonio Navarro and Clarita Navarro were married on December 7, 1968.[4] During their union, they acquired three parcels of land in Alabang, Muntinlupa City on which they built their home. These pieces of land were covered by Transfer Certificate of Title (TCT) Nos. 155256, 155257 and 155258 issued by the Register of Deeds of Makati City. The TCT's, however, are registered in the name of "Antonio N. Navarro… married to Belen B. Navarro."[5] Sometime in 1998, respondent Metropolitan Bank and Trust Company (MBTC) had caused the judicial foreclosure of the real estate mortgage which Antonio

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[1] *Rollo* (G.R. No. 165697), pp. 11-25.

[2] *Rollo* (G.R. No. 166481), pp. 13-34.

[3] Penned by Associate Justice Eloy R. Bello, Jr., with Associate Justices Regalado E. Maambong and Lucenito N. Tagle, concurring; *rollo* (G.R. No. 165697), pp. 31-31-35; *rollo* (G.R. No. 166481), pp. 38-42.

[4] Records, p. 8.

[5] *Id.* at 9-17.

had earlier constituted on the subject properties as security for a loan he allegedly obtained from MBTC. In December of that year, the properties were sold at public auction where MBTC, as the lone bidder,[6] was issued a certificate of sale.[7]

Clarita brought before the Regional Trial Court (RTC) of Muntinlupa City, Branch 256 an action for the declaration of nullity of the real estate mortgage and the foreclosure sale. The complaint, docketed as Civil Case No. 99-177, named as defendants Antonio, MBTC, the Sheriff of Makati City and the Register of Deeds of Makati City. In it, Clarita alleged that the properties involved belonged to her and Antonio's conjugal partnership property as the same were acquired during their marriage and that Antonio, with the connivance of a certain Belen G. Belen, had secured the registration thereof in their names without her knowledge. She pointed out that Antonio and Belen then mortgaged the properties to MBTC in 1993 likewise without her knowledge. She ascribed fault and negligence to MBTC because it failed to consider that the properties given to it as security belonged to her and Antonio's conjugal partnership property. Accordingly, she prayed for reconveyance as well as for payment of damages.[8]

MBTC filed a motion to dismiss the complaint on the ground, *inter alia,* of laches. With the denial of its motion, MBTC filed a petition for *certiorari* before the Court of Appeals which was docketed as CA-G.R. SP No. 55780. The Court of Appeals found merit in the petition and ordered the dismissal of the complaint on the ground that the same was already barred by laches, pointing out that it had taken Clarita 11 long years since the issuance of the TCTs on May 27, 1988 before she actually sought to annul the mortgage contract.[9] The decision had attained finality without a motion for reconsideration being filed or an appeal being taken therefrom.

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[6] Records, pp. 124-125.

[7] *Id.* at 108-110.

[8] Records, pp. 136-140.

[9] See the decision in CA-G.R. SP No. 55780, CA *rollo*, pp. 38-39.

Subsequently, on April 17, 2002, Clarita instituted another action also before the RTC of Muntinlupa City, Branch 256[10] but this time for the declaration of nullity of the TCTs covering the same properties and for reconveyance and damages. The complaint was docketed as Civil Case No. 02-079 and it impleaded Antonio, Belen, MBTC and the Registers of Deeds of Makati City and Muntinlupa City as defendants. This constitutes the root of the two petitions at bar.

The said complaint was basically a reiteration of Clarita's allegations in Civil Case No. 99-177. Specifically, it alleged that the conjugal properties involved were fraudulently registered in the name "Antonio N. Navarro…married to Belen B. Navarro" and that the mortgage on the properties were likewise fraudulently secured by Antonio and Belen to acquire a loan from MBTC the proceeds of which, however, did not inure to the benefit of the conjugal partnership. Accordingly, she prayed that at least her one-half conjugal share in the properties be reconveyed to her without prejudice to MBTC's rights against Antonio and Belen.[11]

MBTC moved to dismiss the complaint on the ground that it was already barred by the prior judgment in Civil Case No. 99-177, and that Clarita's claim had already been waived, abandoned and extinguished.[12] The trial court denied the motion to dismiss in its November 8, 2002 Order, noting that the dismissal of Civil Case No. 99-177 did not constitute *res judicata* because a dismissal on laches and failure to implead an indispensable party could never be a dismissal on the merits.[13] MBTC filed a motion for reconsideration, but it was denied for lack of merit in the trial court's April 21, 2002 Order.[14]

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[10] Presided by Judge Alberto L. Lerma.

[11] Records, pp. 1-6.

[12] *Id.* at 59.

[13] *Id.* at 213.

[14] Records, p. 90.

Aggrieved, MBTC elevated the case to the Court of Appeals via a petition for *certiorari* and prohibition with an application for temporary restraining order and writ of preliminary injunction, attributing grave abuse of discretion to the trial court in denying its motion to dismiss.[15]

In the meantime, a compromise agreement was executed by Antonio and Clarita in which the latter waived and condoned her claims against the former, who in turn acknowledged his wife's share in the properties subject of the case. Antonio likewise stipulated therein that he had not availed of any mortgage loan from MBTC and that it was the bank manager, Danilo Meneses, who facilitated the manipulation of his account with the bank which led to the constitution of the mortgage and the eventual foreclosure thereof.[16] The trial court approved the compromise on November 5, 2003,[17] thereby leaving the case to proceed against MBTC.

On July 8, 2004, the Court of Appeals, finding merit in MBTC's petition, rendered the assailed Decision.[18] It held that the dismissal of Civil Case No. 99-177 on the ground of laches should preclude the filing of Civil Case No. 02-079 because the former had the effect of an adjudication on the merits. Also, it pointed out that inasmuch as the two cases presented identical issues and causes of action and prayed for the same relief, the second complaint must likewise suffer the effect of laches. Citing Section 3,[19] Rule 17 of the Rules of Court, it emphasized Clarita's

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[15] CA *rollo*, pp. 2-27.

[16] Records, pp. 497-499.

[17] *Id.* at 500-501.

[18] CA *rollo*, pp. 140-144.

[19] **Section 3.** ***Dismissal due to fault of plaintiff***.—If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal

neglect to prosecute her claim since it took her another two years since the dismissal of Civil Case No. 99-177 to file Civil Case No. 02-079. In conclusion, it held that the trial court indeed gravely abused its discretion when it denied MBTC's motion to dismiss and, accordingly, it ordered the dismissal of the complaint as follows:

> WHEREFORE, the petition for *certiorari* and prohibition is hereby GRANTED. The assailed Order dated November 8, 2002 issued by the Regional Trial Court of Muntinlupa City, Branch 256 is REVERSED. Civil Case No. 02-079 is ordered DISMISSED.
>
> SO ORDERED.[20]

Antonio and Clarita are now before this Court assailing the adverse decision of the Court of Appeals. They believe that the Court of Appeals committed a reversible error in directing the dismissal of the complaint in Civil Case No. 02-079.

Both Antonio and Clarita advance that it was error for the Court of Appeals to direct the dismissal of the complaint in the present cases despite the fact that the prior dismissal of the complaint for declaration of nullity of mortgage and foreclosure in Civil Case No. 99-177 was predicated on Clarita's failure to implead Belen as an indispensable party therein which, in effect, amounted to the court's lack or jurisdiction to act on the parties present and absent.[21] Additionally, Clarita posits that the principle of laches is not applicable because an action to declare the nullity of a mortgage contract is imprescriptible.[22]

MBTC, for its part, argues that because the decision of the Court of Appeals in CA-G.R. SP No. 55780 ordering the dismissal of Civil Case No. 99-177 had already become final, then the same should bar the filing of Civil Case No. 02-079

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shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

[20] CA *rollo*, p. 538.

[21] *Rollo* (G.R. No. 165697), p. 17; *Rollo* (G.R. No. 166481), pp. 19-20.

[22] *Rollo* (G.R. No. 166481), pp. 19-20.

inasmuch as the two cases raised identical causes of action and issues and prayed for the same relief.[23] In particular, it also notes that Clarita had failed to timely file a motion for reconsideration of the assailed decision and that the motion for reconsideration filed by Antonio himself should not be considered to redound to Clarita's benefit since Antonio, in the complaint filed before the trial court, was impleaded as one of the defendants.[24]

The petitions are utterly unmeritorious.

A perusal of the Court of Appeals decision in CA-G.R. SP No. 55780, which ordered the dismissal of Civil Case No. 99-177, tells that the complaint therein was dismissed not on the ground of non-joinder of Belen as an indispensable party, but rather on the ground of laches. Indeed, what is clear from the said decision is that the dismissal of the case was due to Clarita's unjustifiable neglect to timely initiate the prosecution of her claim in court — a conduct that warranted the presumption that she, although entitled to assert a right, had resolved to abandon or declined to assert the same.[25]

While the Court agrees that an action to declare the nullity of contracts is not barred by the statute of limitations, the fact that Clarita was barred by laches from bringing such action at the first instance has already been settled by the Court of Appeals in CA-G.R. SP No. 55780. At this point in the proceedings, the Court can no longer rule on the applicability of the principle of laches *vis-à-vis* the imprescriptibility of Clarita's cause of action because the said decision is not the one on appeal before us. But more importantly, the Court takes notice that the decision rendered in that case had already become final without any motion for reconsideration being filed or an appeal being taken therefrom. Thus, we are left with no other recourse than to uphold the immutability of the said decision.

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[23] *Rollo* (G.R. No. 165697).

[24] *Rollo* (G.R. No. 166481), pp. 179-184.

[25] See *Vda. de Cabrera v. Court of Appeals*, 335 Phil. 19, 33-34 (1997).

No other procedural law principle is indeed more settled than that once a judgment becomes final, it is no longer subject to change, revision, amendment or reversal, except only for correction of clerical errors, or the making of *nunc pro tunc* entries which cause no prejudice to any party, or where the judgment itself is void.[26] The underlying reason for the rule is two-fold: (1) to avoid delay in the administration of justice and thus make orderly the discharge of judicial business, and (2) to put judicial controversies to an end, at the risk of occasional errors, inasmuch as controversies cannot be allowed to drag on indefinitely and the rights and obligations of every litigant must not hang in suspense for an indefinite period of time.[27] As the Court declared in *Yau v. Silverio,*[28]

> Litigation must end and terminate sometime and somewhere, and it is essential to an effective and efficient administration of justice that, once a judgment has become final, the winning party be, not through a mere subterfuge, deprived of the fruits of the verdict. Courts must therefore guard against any scheme calculated to bring about that result. Constituted as they are to put an end to controversies, courts should frown upon any attempt to prolong them.

Indeed, just as a losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his case by the execution and satisfaction of the judgment. Any attempt to thwart this rigid rule and deny the prevailing litigant his right to savor the fruit of his victory must immediately be struck down.[29] Thus, in *Heirs of Wenceslao Samper v. Reciproco-*

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[26] *Yau v. Silverio, Sr.*, G.R. No. 158848, February 4, 2008, 543 SCRA 520.

[27] *Social Security System v. Isip*, G.R. No. 165417, April 4, 2007, 520 SCRA 310.

[28] *Supra* note 26, at 531, citing *Lim v. Jabalde,* G.R. No. 36786, April 17, 1989, 172 SCRA 211 (1983).

[29] *Yau v. Silverio, Sr., supra* note 26, at 531, citing *Seven Brothers Shipping Corporation v. Oriental Assurance Corporation,* G.R. No. 140613. October 15, 2002.

Noble,[30] we had occasion to emphasize the significance of this rule, to wit:

> It is an important fundamental principle in our Judicial system that every litigation must come to an end x x x Access to the courts is guaranteed. But there must be a limit thereto. Once a litigant's rights have been adjudicated in a valid final judgment of a competent court, he should not be granted an unbridled license to come back for another try. The prevailing party should not be harassed by subsequent suits. For, if endless litigations were to be encouraged, then unscrupulous litigants will multiply in number to the detriment of the administration of justice.

Moreover, laches, or what is known as the doctrine of stale claim or demand, is the neglect or omission to assert a right, taken in conjunction with lapse of time and other circumstances causing prejudice to an adverse party, as will operate as a bar in equity. It is a delay in the assertion of a right which works disadvantage to another because of the inequity founded on some change in the condition of the property involved or in the relations of the parties.[31] It is based on public policy which, for the peace of society, ordains that relief will be denied to a stale demand which otherwise could be a valid claim.[32]

As a ground for the dismissal of a complaint, the doctrine of laches is embraced in the broad provision in Section 1[33] of

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[30] G.R. No. 142594 June 26, 2007, 525 SCRA 515, citing *Pacquing v. Court of Appeals,* 200 Phil. 516 (1982).

[31] *De Vera-Cruz v. Miguel*, G.R. No. 144103, August 31, 2005, 468 SCRA 506, 518.

[32] *Id.*

[33] **Section 1.** ***Grounds.—***Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

(a) That the court has no jurisdiction over the person of the defending party;

(b) That the court has no jurisdiction over the subject matter of the claim;

(c) That the venue is improperly laid;

(d) That the plaintiff has no legal capacity to sue;

Rule 16 of the Rules of Court, which enumerates the various grounds on which a motion to dismiss may be based. Paragraph (h) thereof states that the fact that the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished, may be raised in a motion to dismiss. The language of the rule, particularly on the relation of the words "abandoned" and "otherwise extinguished" to the phrase "claim or demand set forth in the plaintiff's pleading" is broad enough to include within its ambit the defense of bar by laches.[34]

Moreover, what is striking is that a reading of the two complaints filed by Clarita one after the dismissal of the other discloses that apart from the nature of the actions, the allegations in support of the claims and the reliefs prayed for in both complaints were but the same. In her complaint in Civil Case No. 99-177, denominated as an action for "declaration of nullity of mortgage and foreclosure and sale of real property and reconveyance with damages," Clarita principally demanded the reconveyance of at least her conjugal share in the subject property, while claiming that the registration of the properties as well as the mortgage thereof in favor of MBTC had been made without her knowledge and consent.[35] Yet in the complaint in Civil Case No. 02-079, denominated as one for "declaration of nullity of TCT Nos. 155256, 155257, 155258 and for reconveyance with damages," Clarita relied on the same

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(e) That there is another action pending between the same parties for the same cause;

(f) That the cause of action is barred by a prior judgment or by the statute of limitations;

(g) That the pleading asserting a claim states no cause of action;

(h) That the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished;

(i) That the claim on which the action is founded is unenforceable under the provisions of the statute of frauds; and

(j) That a condition precedent for filing the claim has been complied with.

[34] *Pineda v. Heirs of Guevarra.*

[35] See the Complaint in Civil Case No. 99-177, records, pp. 136-141.

allegations embodied in her first complaint and prayed for the same relief of reconveyance of at least her conjugal share in the property, while additionally seeking the declaration of nullity of the TCTs registered in the name of Antonio and Belen.[36]

Verily, we find no reason not to adhere to the finding of the Court of Appeals that inasmuch as the two cases successively instituted by Clarita were founded on the same claim and would have called for the same set of or similar evidence to support them, then Civil Case No. 02-079 which is the subject of the present petitions may well be deemed already barred by the dismissal of Civil Case No. 99-177.

Section 5 of Rule 16 of the Rules of Court materially provides:

> **Section 5. *Effect of dismissal.*—**Subject to the right of appeal, an order granting a motion to dismiss based on paragraphs (f), (h) and (i) of Section 1 hereof shall bar the refiling of the same action or claim.

In *United Coconut Planters Bank v. Belus*[37] and *Strongworld Construction Corporation v. Perello,*[38] the Court held that where the complaint is dismissed on the ground that the cause of action is barred by a prior judgment or by the statute of limitations; or that the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished; or that the claim on which the action is founded is unenforceable under the provisions of the statute of frauds, such dismissal operates as one with prejudice and which therefore precludes the filing of another action based on the same claim. Hence, according to *Madrigal v. Transport, Inc. v. Lapanday Holdings Corporation*,[39] such dismissal already constitutes *res judicata.*

The principle of *res judicata* denotes that a final judgment or decree on the merits by a court of competent jurisdiction is

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[36] See the Complaint in Civil Case No. 02-078, *id.* at 1-6.

[37] G.R. No. 159912, August 17, 2007, 530 SCRA 567, 602.

[38] G.R. No. 148026, July 27, 2006, 496 SCRA 700, 716.

[39] G.R. No. 156067, August 11, 2004, 436 SCRA 123, 138.

conclusive of the rights of the parties or their privies in all later suits on all points and matters determined in their former suit.[40] It obtains where a court of competent jurisdiction has rendered a final judgment or order on the merits of the case, which operates as an absolute bar against a subsequent action for the same cause.[41] A substantial identity is necessary to warrant the application of the rule, and the addition or elimination of some parties or the difference in form and nature of the two actions would not alter the situation.[42] In other words, when material facts or questions in issue in a former action were conclusively settled by a judgment rendered therein, such facts or questions constitute *res judicata* and may not be again litigated in a subsequent action between the same parties or their privies regardless of the form of the latter.[43]

Petitioners furthermore raise that the constitution of the mortgage was the result of the fraudulent act committed by MBTC's branch manager and Belen, and for that reason the proceeds derived from it did not redound to the benefit of their conjugal partnership.[44] But because this issue is factual in nature and hence, not appropriately cognizable in a Rule 45 petition where only questions of law may generally be raised, the Court is left with no other option than to decline to rule on the same. Anent the question raised by MBTC of whether Clarita had timely filed a motion for reconsideration of the assailed decision of the Court of Appeals, we find no necessity to expound on the matter since in view of the foregoing, the petitions at bar must be denied in any event.

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[40] *Taganas v. Emuslan*, G.R. No. 146980, September 2, 2003, 410 SCRA 237.

[41] *State Investment Trust, Inc. v. Delta Motors Corporation*, G.R. No. 144444, April 3, 2003, 400 SCRA 509; *Dela Rama v. Mendiola*, G.R. No. 135394, April 29, 2003, 401 SCRA 704.

[42] *Dela Rama v. Mendiola*, *supra* note 41.

[43] *Id.*

[44] *Rollo* (G.R. No. 165697), pp. 378-380; *Rollo* (G.R. No. 166481), pp. 21-25.

As a final word, it needs no elucidation that the solemn and deliberate sentence of the law, pronounced by its appointed organs, should be regarded as a final and conclusive determination of the question litigated, and should forever set the controversy at rest. Public policy and sound practice demand that, at the risk of occasional errors, judgments of courts should become final at some definite time fixed by law. For, after all, the very object for which courts were constituted was to put an end to controversies.[45]

All told, we find this basic rule decisive of the present controversy.

WHEREFORE, the petitions in G.R. Nos. 165697 and 166481 are *DENIED*. The Decision of the Court of Appeals in CA-G.R. SP No. 76872, which ordered the dismissal of Civil Case No. 02-079, is *AFFIRMED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 169870. August 4, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ELEGIO AN,** *appellant.*

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[45] *Mata v. Court of Appeals*, 376 Phil. 525(1999), citing *Legarda v. Savellano*, 158 SCRA 194 (1988).

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; GUIDING PRINCIPLES IN REVIEWING RAPE CASES.—** In reviewing rape cases, this Court has constantly been guided by three principles, to wit: (1) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the evidence for the defense. And as a result of these guiding principles, credibility of the complainant becomes the single most important issue. If the testimony of the victim is credible, convincing and consistent with human nature, and the normal course of things, the accused may be convicted solely on the basis thereof.

2. **ID.; ID.; CREDIBILITY OF WITNESSES; FINDINGS THEREON BY THE TRIAL COURT ARE GENERALLY BINDING ON THE REVIEWING COURT.—** [T]his Court has always been consistent in ruling that the duty to ascertain the competence and credibility of a witness rests primarily with the trial court, because it has the unique position of observing the witness's deportment on the stand while testifying. Absent any compelling reason to justify the reversal of the evaluations and conclusions of the trial court, the reviewing court is generally bound by the former's findings.

3. **ID.; ID.; ID.; NOT ADVERSELY AFFECTED BY INCONSISTENCIES IN THE TESTIMONIES OF WITNESSES WHICH REFER TO MINOR AND INSIGNIFICANT DETAILS.—** Inconsistencies in the testimonies of witnesses which refer to minor and insignificant details do not destroy their credibility. More so, the minor inconsistencies signified that the witness was neither coached nor lying on the witness stand. What is important is her complete and vivid narration of the rape itself, which the trial court herein found to be truthful and credible.

4. **ID.; ID.; VICTIM'S MENTAL RETARDATION IN RAPE CASES, HOW PROVED.—** Appellant further argues that the

trial court erred in finding that Conchita was a mental retardate. According to him, the prosecution was not able to prove beyond reasonable doubt the victim's mental retardation citing *People v. Dalandas*. The CA found the said argument meritorious, as with this Court. The CA thus ruled that: "However, the prosecution failed to present any clinical evidence to establish that private complainant was indeed a mental retardate. It merely relied on the testimony of Zenaida Andallon who stated that private complainant does not know how to read and write, does not know how to cook rice, does not respect anyone and acts like a child. While it is a settled rule that mental retardation can be proved by evidence other than clinical evidence, it is, however, an equally settled doctrine that clinical evidence is necessary in borderline cases when it is difficult to ascertain whether the victim is of a normal mind or is suffering from a mild mental retardation. To Our mind, such clinical evidence is indispensable in the present case considering that there is a difficulty in ascertaining the mental condition of private complainant. To be sure, the mere fact that private complainant does not know how to read and write, or to cook rice, or that she acts like a child are not conclusive indication that she is a mental retardate. There are people who manifest the same behavior despite being perfectly normal. In fact, even Dr. Artos recommended that private complainant be made to undergo further examination by a psychiatrist in order to come up with a better assessment of her mental condition. To reiterate, knowledge by the appellant of the fact that private complainant is a mental retardate would make him liable for qualified rape. Such being the case, the prosecution must likewise prove beyond reasonable doubt that (1) private complainant is a mental retardate, and (2) appellant knew of such mental condition. The failure of the prosecution to establish the first renders the second immaterial. Therefore, in the absence of sufficient evidence to prove that private complainant is a mental retardate, appellant cannot be convicted of qualified rape."

5. **ID.; ID.; DENIAL; AN INHERENTLY WEAK DEFENSE AS IT IS NEGATIVE AND SELF-SERVING.—** This Court has ruled in various cases that denial is inherently a weak defense as it is negative and self-serving.

6. **ID.; ID.; ALIBI; WHEN TO PROSPER AS A DEFENSE.—** [A]libi is the weakest of all defenses for it is easy to contrive

and difficult to prove. For alibi to prosper, it is not enough for the accused to prove that he was somewhere else when the crime was committed. He must likewise prove that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission. However, in this case, appellant was not able to prove that it was physically impossible for him to have been at the place of the crime at the time the latter took place. Appellant and his witnesses testified that *Barangay* Mansilay, the place where appellant claimed to have been at the time the crime took place is more or less nine (9) kilometers away from *Barangay* Bukal, the place where the incident occurred. According to them, the travel time from *Barangay* Bukal to *Barangay* Mansilay can be approximated to 1-2 hours by walking and 30 minutes by using a tricycle. Such a short distance is not demonstrative of the physical impossibility for the appellant to be at the place of commission of the crime as contemplated by this Court's past decisions. For alibi to prosper, it is not enough for the appellant to prove that he was somewhere else when the crime was committed; he must, likewise, demonstrate that it was physically impossible for him to have been at the scene of the crime at the time.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

PERALTA, *J*.:

This is an appeal from the Decision[1] dated August 15, 2005 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00223, affirming the Decision[2] dated January 7, 2004 of the Regional Trial Court (RTC) of Calauag, Branch 63, in Criminal Case

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[1] Penned by Associate Justice Martin S. Villarama, Jr., with Associate Justices Amelita G. Tolentino and Lucenito N. Tagle, concurring; *rollo,* pp. 3-18.

[2] Penned by Judge Mariano A. Morales, Jr.; CA *rollo,* pp. 70-83.

No. 3024-C, finding appellant Elegio An guilty beyond reasonable doubt of the crime of simple rape.

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

Around 5 o'clock in the afternoon of March 8, 1998, Conchita Maranan, a 21-year-old woman with no formal education, right after taking a bath in the river, saw appellant enter the house of her *Ate* Dominga. When Conchita entered her *Ate* Dominga's house, appellant pushed her towards a room. Thereafter, appellant started undressing Conchita before undressing himself. It was then that appellant placed himself on top of Conchita. Appellant proceeded to forcibly insert his penis into the vagina of Conchita causing the latter to feel an excruciating pain. After appellant succeeded in defiling Conchita, the former told the latter that he will do it again and that he will kill her should she divulge what just happened. Appellant left after the said incident.[3]

Immediately after appellant fled from the scene, Conchita went to her *Ate* Zenaida Andallon, who was at that time working in the ricefield. When her sister saw that Conchita was crying, the former asked the latter as to the reason. Instead of answering, Conchita asked her sister to be brought home in *Barangay* Munting Parang. Zenaida asked Conchita again as to why the latter was crying. It was then that Conchita told Zenaida that she felt pain in her body and was afraid to see appellant, to which Zenaida queried as to the reason why her sister was frightened of said appellant. Conchita confided to her sister that she was *inasawa* by appellant. This prompted Zenaida to ask what appellant did to her sister. Conchita told her sister that appellant kissed her lips, rolled up her dress, removed her bra and *sinusuhan* or sucked her breast, laid her forcibly, inserted his penis in her vagina and *niyugyugan* or made pumping motions. Zenaida then brought Conchita to Dominga's house, where she was able to see Conchita's bloodied underwear. A white spot was also present in the said underwear. When Zenaida looked at Conchita's vagina, she noticed that it was bleeding. Thereafter,

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[3] TSN, September 12, 2001, pp. 10-13.

Zenaida accompanied Conchita to the *Lupon ng Barangay* of Bukal and afterwards to *Barangay* Captain Celso Razon who looked for appellant. After finding appellant, *Barangay* Captain Razon brought him, Conchita and Zenaida to the municipal hall where an investigation was conducted. Upon the conclusion of the investigation, appellant was taken to the municipal jail, while Zenaida was given instructions to go back to said municipal hall the following day and have Conchita medically examined.[4]

The next day, Conchita went to the Municipal Health Office of Tagkawayan, Quezon and underwent a laboratory examination. She was examined by a medical technologist, Rodelo V. Teopy. The laboratory report showed that Conchita's vagina was positive for the presence of spermatozoa. Consequently, on March 12, 1998, the Municipal Health Officer of Tagkawayan, Quezon, Dr. Arnel I. Artos, examined Conchita and, later on, issued a Medico-Legal Certificate[5] containing the following findings:

x x x x x x x x x

Internal Examination:

1. Multiple lacerations noted with no discharged noticed at the time of examination.

2. Admits two (2) fingers with ease.

Please see attached Laboratory Result.

x x x x x x x x x

Upon securing the medico-legal certificate and the laboratory report, Conchita and Zenaida went back to the police station. Zenaida executed a *Sinumpaang Salaysay* and, subsequently, filed a criminal complaint with the Municipal Trial Court of Tagkawayan, Quezon, in behalf of Conchita.[6]

Consequently, an Information[7] was filed against appellant for the crime of rape, stating:

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[4] TSN, January 10, 2001, pp. 5-8.

[5] CA Decision, *rollo,* pp. 5-6.

[6] *Id.* at 6.

[7] Records, p. 2.

That on or about the 8th day of March 1998, at Barangay Bukal, in the Municipality of Tagkawayan, Province of Quezon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one Conchita Maranan, a mental retardate, against her will.

Contrary to law.

Appellant, assisted by counsel *de oficio,* pleaded not guilty during the arraignment[8] on February 2, 1999. Thereafter, trial on the merits ensued.

The prosecution presented the testimonies of Dr. Arnel Artos, Zenaida Andallon, Celso Razon, and Conchita Maranan. The said witnesses testified as to the facts narrated above.

The defense, on the other hand, presented the testimonies of Leoncio Zamora, Nilo de Torres and appellant. Appellant raised the defense of denial and alibi by stating that he did not rape Conchita and that he was at a baptismal celebration or *buhos tubig* when the incident occurred. According to him, on March 8, 1998, he and Leoncio Zamora went to *Barangay* Mansilay to attend the baptism of Nilo de Torres' son. Appellant narrated that he and Leoncio arrived at the said place at around 11 a.m. and helped in the slaughtering of the pig and in attending to the guests. He added that, after eating lunch, they proceeded to drink and then left the said place at around 8 p.m. They were able to reach *Barangay* Bukal at around 10 p.m., or approximately two hours after they left *Barangay* Mansilay. Shortly thereafter, appellant was arrested and accosted to the police station.[9] The said testimony of appellant was corroborated by Leoncio Zamora and Nilo de Torres.

The RTC found appellant guilty beyond reasonable doubt of the crime charged, the dispositive portion of which reads:

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[8] *Id.* at 28.

[9] TSN, September 18, 2002, pp. 3-5.

WHEREFORE, in view of the foregoing considerations, this Court hereby finds accused Elegio An GUILTY beyond reasonable doubt of the crime of RAPE and hereby sentences said accused to suffer the penalty of *RECLUSION PERPETUA* and to pay the private offended party Conchita Maranan the amount of FIFTY THOUSAND PESOS (₱50,000.00) as civil indemnity plus the amount of FIFTY THOUSAND PESOS (₱50,000.00) as moral damages.

SO ORDERED.

Due to the penalty imposed, which is *Reclusion Perpetua*, the case was elevated to this Court on appeal. However, per Resolution[10] of this Court dated September 6, 2004, the case was transferred to the CA in conformity with the Decision of this Court, dated July 7, 2004, in *People v. Mateo,*[11] modifying the pertinent provisions of the Revised Rules of Criminal Procedure, particularly Sections 3 and 10 of Rule 122, Section 13 of Rule 124, Section 3 of Rule 125, and any other rule insofar as they provide for direct appeals from the RTC to this Court in cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment, as well as the resolution of this Court *en banc,* dated September 19, 1995, in Internal Rules of the Supreme Court, in cases similarly involving death penalty, pursuant to this Court's power to promulgate rules of procedure in all courts under Section 5, Article VIII of the Constitution, and allowing an intermediate review by the CA before such cases are elevated to this Court.

The CA, in its Decision dated August 15, 2005, affirmed the conviction of appellant, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, the January 7, 2004 Decision of the Regional Trial Court of Calauag, Quezon, Branch 63, in Criminal Case No. 3024-C, finding appellant guilty beyond reasonable doubt of the crime of simple rape and sentencing him to suffer the penalty of *reclusion perpetua* is hereby AFFIRMED.

SO ORDERED.

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[10] *Rollo,* p. 49.

[11] G.R. Nos. 147678-87, 433 SCRA 640.

Appellant, in his Brief,[12] ascribed a lone assignment of error which reads:

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE.

Appellant questioned the credibility of Conchita due to inconsistencies in her testimony. He also assailed the finding of the trial court that Conchita was a mental retardate. He argued that the prosecution was not able to prove beyond reasonable doubt the fact of Conchita's mental retardation. Finally, appellant contended that due to the weakness of the prosecution's evidence, his defense of alibi should have been given more weight as it was corroborated by two disinterested witnesses.

The Office of the Solicitor General (OSG), in its Brief,[13] stated the following arguments:

I. THE RAPE VICTIM'S CATEGORICAL AND SPONTANEOUS TESTIMONY IS SUFFICIENT TO CONVICT APPELLANT OF THE CRIME CHARGED.

II. APPELLANT'S ALIBI AND DENIAL CANNOT PREVAIL OVER HIS POSITIVE IDENTIFICATION BY THE VICTIM.

According to the OSG, the trial court was correct in its observation that Conchita's testimony was credible as it was categorical, straightforward, spontaneous and frank. It stated that Conchita's narration of the incident was simple and direct, and that her testimony was able to withstand the rigorous cross-examination. The OSG also contended that appellant's defense of alibi was not strong because the element that there must be physical impossibility for the latter to be at the *situs criminis* at the time the incident took place was lacking. Finally, the OSG argued that Conchita could not have been mistaken in positively identifying appellant whom she knew since her

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[12] CA *rollo,* p. 57.

[13] *Id.* at 59.

childhood; hence, such positive identification must prevail over appellant's defense of denial and alibi.

The appeal is bereft of merit.

In reviewing rape cases, this Court has constantly been guided by three principles, to wit: (1) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the evidence for the defense. And as a result of these guiding principles, credibility of the complainant becomes the single most important issue. If the testimony of the victim is credible, convincing and consistent with human nature, and the normal course of things, the accused may be convicted solely on the basis thereof.[14]

In connection therewith, this Court has always been consistent in ruling that the duty to ascertain the competence and credibility of a witness rests primarily with the trial court,[15] because it has the unique position of observing the witness's deportment on the stand while testifying. Absent any compelling reason to justify the reversal of the evaluations and conclusions of the trial court, the reviewing court is generally bound by the former's findings.[16]

A review of the testimony of Conchita clearly shows its consistency and straightforwardness, a matter which the trial

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[14] *People v. Arnulfo Aure,* G.R. No. 180451, October 17, 2008, citing *People v. Mangitngit*, 502 SCRA 560, 572 (2006).

[15] *People v. Abulon*, G.R. No. 174473, August 17, 2007, 530 SCRA 675, 687, citing *People v. Biong*, 450 Phil. 432, 445 (2003), citing *People v. Tadeo*, 371 SCRA 303 (2001).

[16] *Id.,* citing *People v. Biong*, *id.*, citing *People v. Glabo*, 371 SCRA 567 (2001).

court correctly appreciated. In narrating the incident, Conchita said:

(Prosecutor Florido) Q Now, on March 8, 1998 while you were at your house at about 5:00 o'clock in the afternoon, do you recall what happened to you?

(Conchita) A Yes, sir.

Q What happened to you if you can recall?
A He pushed me to the floor, sir.

Q Who pushed you?
A Elegio An, sir.

Q The person you pointed to a while ago before this Hon. Court?
A Yes, sir.

Q And where were you then when he pushed you to the floor?
A From the river I took a bath, then he suddenly entered our house, sir.

Q And he pushed you inside your house or inside the room?
A In a room, sir.

Q When the accused Elegio An pushed you to the floor inside the room, what happened to you?
A *Ako po ay inasawa niya*.

Q What do you mean by *inasawa*?
A He removed his clothes in front of me, sir.

Q What about you, did he remove your clothes?

ATTY. FULLANTE:
Objection Your Honor, no basis.

PROS. FLORIDO:
If Your Honor please, at this juncture, we want to make of record that we be allowed to ask leading questions, because of the defect of the witness so we will make that kind of question.

COURT:
Witness may answer.

(Conchita) A The removing of my clothes came first, sir.
(Pros. Florido) Q After he removed his clothes, what did he do?
A *Inasawa po niya ako*.

Q When you said *inasawa*, he kissed you?
A Yes, sir.

Q After that what else?
A He put himself on top of me, sir.

Q What do you mean he put himself on top of you?
A *Inasawa niya ako*, sir.

Q Did he insert anything to . . .

ATTY. FULLANTE:
Objection Your Honor.

COURT:
What do you mean by *inasawa*?
(Conchita) A He removed his clothes in front of me, Your Honor.

Q When you said *inasawa*, what did you feel if you felt anything?
A He inserted his penis in my private part and it was painful, sir.

Q It is now clear when you said *inasawa* he inserted his penis to your private part or to your vagina?
A Yes, sir.

Q When he inserted his penis to your vagina, what did you feel if you felt anything?
A It was painful, sir.

Q Why?
A Because he inserted it *binigla*, sir.

PROS. FLORIDO:
Q What happened to your vagina, did you notice anything?
A Yes, sir.

Q When you said *inasawa*, did he say anything after while (sic) he was doing *inasawa ka*?
A Yes, sir.

Q What was that?
A That he will do it again and he told me not to tell anybody or else he will kill me, sir.

PROS. FLORIDO:
We want to make of record Your Honor that the witness is now crying and wiping her eye.

Q When he said to you that he will kill you if you reveal it to anybody, did you believe him?
A Yes, sir.

Q Did you fight back when you were *inaasawa*?
A I am a woman and I cannot fight him because he is stronger than me, sir.

Q And after that what happened?
A He left the place, sir.[17]

It is apparent from the above testimony that Conchita was able to narrate convincingly to the trial court the incident that happened. Hence, the trial court's assessment of Conchita's credibility must not be disturbed. As ruled by this Court in *People of the Philippines v. Nasario Castel*:[18]

Findings of facts and assessment of credibility of witnesses are matters best left to the trial court. What militates against the claim of appellant is the time-honored rule that the findings of facts and assessment of credibility of witnesses are matters best left to the trial court. The trial court has the unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts. Only the trial judge can observe the furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath – all of which are useful aids for an accurate determination of a witness' honesty and sincerity.[19]

Unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, the trial court's assessment must be respected, for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and to detect if they were lying.[20]

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[17] TSN, September 12, 2001, pp. 10-13.

[18] G.R. No. 171164, November 28, 2008.

[19] *People v. Dy,* 425 Phil. 608, 637 (2002), citing *People v. Abacia,* 359 SCRA 342 (2001).

[20] *Id.,* citing *People v. Belga*, 349 SCRA 678 (2001).

As to the contention of appellant that Conchita made inconsistent statements during cross-examination, this Court finds such inconsequential. If at all, the cross-examination brought out more details that would support Conchita's testimony during the direct examination. Thus, during cross-examination:

(ATTY. FULLANTE) Q What do you mean by *hindi naman ako pumayag*?
(CONCHITA) A He was embracing me and he was inviting me in the manggahan *at hindi ako pumayag*, sir.

Q Elegio An did not force you to go to manggahan?
A No, sir.

Q What happened after that Madam Witness?
A He touched my breast and my private part, several times, sir.

PROS. FLORIDO:
We want to make of record that the witness is again crying.

COURT:
Place on the record the observation of the prosecution.

ATTY. FULLANTE:
Q And where did this incident took (sic) place Madam Witness?
A In the house of Nanay Binyag, sir.

Q Was this Elegio An holding any weapon when he did that?
A None, sir.

Q Was he shouting Madam Witness?
A No, sir.

Q By what manner was it, Madam Witness?
A That he will kill me, sir.

x x x x x x x x x

Q Now Madam Witness, did you shout for help?
A I did not shout because his mouth was in my mouth.

x x x x x x x x x

Q And if you were shouting you will be heard by any person working in the field?
A Yes, sir, but I cannot shout because his mouth was in my mouth, sir.

Q You mean to say you were kissing each other?
A Yes, sir.

Q While he was kissing you, what did you do, Madam Witness?
A None, sir, I cannot move because my whole body was painful, sir.

x x x x x x x x x

Q How many minutes did he kiss you?
A I do not know how many minutes, sir.

Q What did you do while the accused was kissing you?
A *Iniipit po niya and (sic) paa ko, sir.*[21]

The above testimony does not diminish Conchita's credibility as a witness because the inconsistencies found by appellant were merely trivial and do not bear on the very fact that Conchita was raped through force and intimidation. Inconsistencies in the testimonies of witnesses which refer to minor and insignificant details do not destroy their credibility.[22] More so, the minor inconsistencies signified that the witness was neither coached nor lying on the witness stand. What is important is her complete and vivid narration of the rape itself, which the trial court herein found to be truthful and credible.[23]

Appellant further argues that the trial court erred in finding that Conchita was a mental retardate. According to him, the prosecution was not able to prove beyond reasonable doubt the victim's mental retardation citing *People v. Dalandas*.[24] The CA found the said argument meritorious, as with this Court. The CA thus ruled that:

However, the prosecution failed to present any clinical evidence to establish that private complainant was indeed a mental retardate. It merely relied on the testimony of Zenaida Andallon who stated

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[21] TSN, September 12, 2001, pp. 18-20.

[22] *People v. Espino, Jr.*, G.R. No. 176742, June 17, 2008, 554 SCRA 682, 699, citing *People v. Villadares*, 406 Phil. 530, 540 (2001).

[23] *Id.,* citing *People v. Santos*, 420 Phil. 620, 631 (2001).

[24] G.R. No. 140209, December 27, 2002, 394 SCRA 433.

that private complainant does not know how to read and write, does not know how to cook rice, does not respect anyone and acts like a child. While it is a settled rule that mental retardation can be proved by evidence other than clinical evidence,[25] it is, however, an equally settled doctrine that clinical evidence is necessary in borderline cases when it is difficult to ascertain whether the victim is of a normal mind or is suffering from a mild mental retardation.[26] To Our mind, such clinical evidence is indispensable in the present case considering that there is a difficulty in ascertaining the mental condition of private complainant. To be sure, the mere fact that private complainant does not know how to read and write, or to cook rice, or that she acts like a child are not conclusive indication that she is a mental retardate. There are people who manifest the same behavior despite being perfectly normal. In fact, even Dr. Artos recommended that private complainant be made to undergo further examination by a psychiatrist in order to come up with a better assessment of her mental condition.[27] To reiterate, knowledge by the appellant of the fact that private complainant is a mental retardate would make him liable for qualified rape. Such being the case, the prosecution must likewise prove beyond reasonable doubt that (1) private complainant is a mental retardate, and (2) appellant knew of such mental condition. The failure of the prosecution to establish the first renders the second immaterial. Therefore, in the absence of sufficient evidence to prove that private complainant is a mental retardate, appellant cannot be convicted of qualified rape.

Finally, appellant anchored his defense on denial and alibi. This Court has ruled in various cases that denial is inherently a weak defense as it is negative and self-serving. Corollarily, alibi is the weakest of all defenses for it is easy to contrive and difficult to prove. For alibi to prosper, it is not enough for the accused to prove that he was somewhere else when the crime was committed. He must likewise prove that it was physically

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[25] *People v. Almacin*, G.R. No. 113253, February 19, 1999, 303 SCRA 399 and *People v. Dumanon*, G.R. No. 123096, December 18, 2000, 348 SCRA 461 (2000).

[26] *People v. Dalandas*, *supra* note 24, at 441, citing *People v. Cartuano, Jr.*, 255 SCRA 403 (1996).

[27] TSN, May 16, 2001, p. 5.

impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission.[28] However, in this case, appellant was not able to prove that it was physically impossible for him to have been at the place of the crime at the time the latter took place. Appellant and his witnesses testified that *Barangay* Mansilay, the place where appellant claimed to have been at the time the crime took place is more or less nine (9) kilometers away from *Barangay* Bukal, the place where the incident occurred. According to them, the travel time from *Barangay* Bukal to *Barangay* Mansilay can be approximated to 1-2 hours by walking and 30 minutes by using a tricycle. Such a short distance is not demonstrative of the physical impossibility for the appellant to be at the place of commission of the crime as contemplated by this Court's past decisions. For alibi to prosper, it is not enough for the appellant to prove that he was somewhere else when the crime was committed; he must, likewise, demonstrate that it was physically impossible for him to have been at the scene of the crime at the time.[29]

WHEREFORE, the Decision dated August 15, 2005 of the Court of Appeals in CA-G.R. CR-H.C. No. 00223 finding appellant Elegio An guilty beyond reasonable doubt of the crime of simple rape is hereby AFFIRMED *in toto*.

SO ORDERED.

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

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[28] *People v. Aure, supra* note 14.

[29] *People of the Philippines v. Catalino Mingming*, G.R. No. 174195, December 10, 2008, citing *People v. Bon,* 506 SCRA 185-186 (2006).

THIRD DIVISION

[G.R. No. 171674. August 4, 2009]

DEPARTMENT OF AGRARIAN REFORM (DAR), represented by HON. NASSER C. PANGANDAMAN, in his capacity as DAR OIC-Secretary, *petitioner, vs.* **CARMEN S. TONGSON,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; REPUBLIC ACT NO. 6657 (THE COMPREHENSIVE AGRARIAN REFORM LAW OF 1988); APPLICABLE IN THE DETERMINATION OF JUST COMPENSATION IN CASE AT BAR.—** PD 27 and RA 6657 provide different factors for the computation of just compensation. The former uses average crop harvest as a consideration, whereas, the latter uses the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors as factors for consideration in determining just compensation. In the case at bar, it is undisputed by the parties that the lands were acquired under PD 27. Moreover, it is also undisputed that just compensation has not yet been settled prior to the passage of RA 6657. Thus, the issue to be determined is what law shall govern in the determination of just compensation. The issue, once the subject of a number of cases, has finally been settled by this Court in recent years. It has been ruled that, if just compensation was not settled prior to the passage of RA 6657, it should be computed in accordance with the said law, although the property was acquired under PD 27. x x x [S]ince the lands in dispute were taken under PD 27 and just compensation has not yet been settled prior to the passage of RA 6657, the latter law should be made applicable x x x .

2. **ID.; ID.; ID.; ID.; FOR PURPOSES OF COMPUTATION OF JUST COMPENSATION, THE DATE OF THE ISSUANCE OF EMANCIPATION PATENTS SHOULD SERVE AS THE RECKONING POINT.—** The last issue to be resolved then is when was their actual "taking"? The same has already been settled in *Domingo* where this Court ruled: "LBP's contention

that the property was taken on 21 October 1972, the date of effectivity of PD 27, thus just compensation should be computed based on the GSP in 1972, is erroneous. **The date of taking of the subject land for purposes of computing just compensation should be reckoned from the issuance dates of the emancipation patents**. An emancipation patent constitutes the conclusive authority for the issuance of a Transfer Certificate of Title in the name of the grantee. It is from the issuance of an emancipation patent that the grantee can acquire the vested right of ownership in the landholding, subject to the payment of just compensation to the landowner." Hence, it is the date of the issuance of emancipation patents that should serve as the reckoning point for purposes of computation of just compensation.

APPEARANCES OF COUNSEL

Delfin B. Samson for Department of Agrarian Reform.
Santos E. Torreña, Jr. for respondent.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking to set aside the August 30, 2005 Decision[2] and February 10, 2006 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 64176.

The facts of the case:

Respondent Carmen S. Tongson is the owner of four parcels of agricultural land located in Davao City. Three of these properties are located in Bayabas, Toril and the other located at Wangan, Calinan. Since the properties were primarily devoted to rice and corn under a system of lease-tenancy agreement, the same were brought under the coverage of Presidential Decree

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[1] *Rollo*, pp. 8-18.

[2] Penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justices Arturo G. Tayag and Normandie B. Pizarro concurring; *id.* at 20-32.

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

No. 27[4] (PD 27), otherwise known as Tenants Emancipation Decree.[5]

Sometime in 1988, the petitioner Department of Agrarian Reform offered to pay respondent ₱9,000.00 per hectare for her properties in Bayabas, Toril. Respondent, however, did not act on the offer as she was then leaving for the United States for her husband's medical treatment.[6]

In 1989, upon her return to Davao, respondent was surprised to learn that, except for the portions devoted to orchards and planted with coconuts, all her properties in Wangan, Calinan and in Bayabas, Toril were taken over by petitioner.[7]

Respondent alleged that petitioner summarily took her properties without any notice and had fixed the acquisition cost for the same at ₱1,500.00 per hectare for those located at Bayabas, Toril and ₱800.00 per hectare for the one located at Wangan, Calinan. Lastly, respondent alleged that petitioner subsequently issued Emancipation Patents to the farmer-beneficiaries.[8]

Petitioner denied the allegations and averred that the properties were placed under the coverage of the agrarian reform program; hence, not summarily taken. Likewise, petitioner claimed that respondent was notified of the proceedings when they made the initial offer to her. Lastly, petitioner claimed that the acquisition cost was arrived at based on PD 27 in relation to Executive Order No. 228[9] (EO 228), and that the subsequent

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[4] DECREEING THE EMANCIPATION OF TENANTS FROM THE BONDAGE OF THE SOIL TRANSFERRING TO THEM THE OWNERSHIP OF THE LAND THEY TILL AND PROVIDING THE INSTRUMENTS AND MECHANISM THEREFOR; October 21, 1972.

[5] *Rollo*, p. 21.

[6] *Id.* at 22.

[7] *Id.*

[8] *Id.*

[9] DECLARING FULL LAND OWNERSHIP TO QUALIFIED FARMER-BENEFICIARIES COVERED BY PRESIDENTIAL DECREE

issuance of Emancipation Patents was part of the implementation of the program.[10]

On October 25, 1993, respondent filed a Petition[11] for the determination of just compensation before the Special Agrarian Court (SAC), Branch 15, of the Regional Trial Court of Davao City. The same was docketed as Civil Case No. 22,408-93.

During the trial, the SAC formed a Board of Commissioners to appraise the value of the properties. Thereafter, the commissioners using the market-date approach submitted their Report.[12] Taking into consideration the value of the neighboring properties based on sale offerings and sale transactions, the Commissioners fixed the Bayabas properties at ₱75,000.00 per hectare and the Wangan property at ₱90,000.00 per hectare.[13]

On March 17, 1999, after due deliberation and on the basis of the Commissioner's Report, the SAC rendered a Decision[14] the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered ordering the respondent [herein petitioner] to pay the petitioner [herein respondent] the following sums:
>
> 1. Twenty-five thousand pesos per hectare for the thirty hectares in Bayabas, Toril the respondent got and distributed to beneficiaries, plus legal interest to compute from June 1, 1989 until fully paid.
>
> 2. Forty thousand pesos per hectare for the twenty hectares in Wangan, Calinan that the respondent got and distributed to

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NO. 27; DETERMINING THE VALUE OF THE REMANING UNVALUED RICE AND CORN LANDS SUBJECT OF P.D. 27; AND PROVIDING FOR THE MANNER OF PAYMENT BY THE FARMER-BENEFICIARY AND MODE OF COMPENSATION TO THE LAND OWNER.

[10] *Rollo,* pp. 23-24.

[11] Records, pp. 1-4.

[12] *Id.* at 141-144.

[13] *Rollo,* p. 24.

[14] CA *rollo*, pp. 32-38.

beneficiaries, plus legal interest to compute from June 1, 1989 until fully paid.

SO ORDERED.[15]

Petitioner then appealed to the CA *via* Rule 41 of the Rules of Court arguing in the main that the SAC erred in not applying the provisions of PD 27 and EO 228 in determining the value of the properties in dispute.[16]

On August 30, 2005, the CA rendered a Decision, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, the appeal is hereby DISMISSED subject to modification regarding the commissioners' fees, the assailed decision is hereby AFFIRMED.

SO ORDERED.[17]

The CA ruled that Republic Act No. 6657[18] (RA 6657), or the Comprehensive Agrarian Reform Law of 1988, was applicable in the determination of just compensation. It ruled that RA 6657 made all laws pertaining to the agrarian reform program to have suppletory application only.[19] Furthermore, the CA held that RA 6657 brought under its coverage all agricultural lands, including those where the process of agrarian reform coverage was started under PD 27 but was not completed under the decree.[20]

Petitioner filed a Motion for Reconsideration,[21] which was denied by the CA in the Resolution[22] dated February 10, 2006.

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[15] *Id.* at 38.

[16] *Rollo,* p. 24.

[17] *Id.* at 32.

[18] Effective June 15, 1988.

[19] *Rollo,* p. 26.

[20] *Id.* at 27.

[21] *Id*. at 41-45.

[22] *Supra* note 3.

Hence, herein appeal, with petitioner raising a lone assignment of error, to wit:

THE TRIAL COURT ERRED WHEN IT CONSIDERED FACTORS NOT THEN EXISTING AT THE TIME OF ITS TAKING, THUS, UNDULY AND TREMENDOUSLY INCREASED THE VALUATION AND, RESULTANTLY, THE AMOUNT, AS FIXED BELOW, WAS EXORBITANT, AN OVERPRICE, WHEN CONSIDERED IN THE LIGHT OF THE FACTS AND CIRCUMSTANCES THEN OCCURRING ON OCTOBER 21, 1972.[23]

The petition is bereft of merit.

Petitioner is adamant that for purposes of computation of just compensation the same should have been based on PD 27 in relation to EO 228.

The pertinent portions of PD 27 read:

x x x x x x x x x

For the purpose of determining the cost of the land to be transferred to the tenant-farmer pursuant to this Decree, **the value of the land shall be equivalent to two and one half (2-1/2) times the average harvest of three normal crop years immediately preceding the promulgation of this Decree**.

The total cost of the land, including interest at the rate of six (6) per centum per annum, shall be paid by the tenant in fifteen (15) years of fifteen (15) equal annual amortizations. (Emphasis supplied)

Implementing the formula under PD 27, EO 228 states:

x x x x x x x x x

SECTION 2. Henceforth, the valuation of rice and corn lands covered by P.D. No. 27 shall be based on the average gross production determined by the *Barangay* Committee on Land Production in accordance with Department Memorandum Circular No. 26, series of 1973 and related issuances and regulation of the Department of Agrarian Reform. **The average gross production per hectare shall**

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[23] *Rollo*, p. 14.

be multiplied by two and a half (2.5), the product of which shall be multiplied by Thirty-Five Pesos (₱35.00), the government support price for one cavan of 50 kilos of *palay* on October 21, 1972, or Thirty-One Pesos (₱31.00), the government support price for one cavan of 50 kilos of corn on October 21, 1972, **and the amount arrived at shall be the value of the rice and corn land, as the case may be, for the purpose of determining its cost to the farmer and compensation to the landowner**.

On the other hand, respondent contends that RA 6657 should be the basis for the computation of just compensation. Section 17 of which reads:

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 farm workers 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.[24]

Clearly, PD 27 and RA 6657 provide different factors for the computation of just compensation. The former uses average crop harvest as a consideration, whereas, the latter uses the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors as factors for consideration in determining just compensation.

In the case at bar, it is undisputed by the parties that the lands were acquired under PD 27. Moreover, it is also undisputed that just compensation has not yet been settled prior to the passage of RA 6657. Thus, the issue to be determined is what law shall govern in the determination of just compensation.

The issue, once the subject of a number of cases, has finally been settled by this Court in recent years. It has been ruled

[24] Emphasis supplied.

that, if just compensation was not settled prior to the passage of RA 6657, it should be computed in accordance with the said law, although the property was acquired under PD 27.[25]

In *Landbank of the Philippines v. Carolina B. Vda. de Abello, et al.,*[26] this Court ruled:

> Under the factual circumstances of the case, the agrarian reform process is still incomplete as the just compensation to be paid respondents has yet to be settled. **Considering the passage RA 6657 before the completion of this process, the just compensation should be determined and the process concluded under the said law**. Indeed, this Court has time and again upheld the applicability of RA 6657, with PD 27 and EO 228 having only suppletory effect, conformably with our ruling in *Paris v. Alfeche.*

Likewise, in *Land Bank of the Philippines vs. Heirs of Angel T. Domingo,*[27] this Court ruled:

> In *Land Bank v. Natividad*, **the Court held that the determination of just compensation "in accordance with RA 6657, and not PD 27 and EO 228, is especially imperative considering that just compensation should be the full and fair equivalent of the property taken from its owner by the expropriator, the equivalent being real, substantial, full and ample**." In this same case, this Court also had the occasion to discuss the just compensation for PD 27 lands, thus:
>
>> Land Bank's contention that the property was acquired for purposes of agrarian reform on October 21, 1972, the time of the effectivity of PD 27, ergo just compensation should be based on the value of the property as of that time and not at the time of possession in 1993, is likewise erroneous**. In *Office of the President, Malacañang, Manila v. Court of Appeals*, we ruled that the seizure of the landholding did not take place on the**

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[25] *Land Bank of the Philippines v. Josefina Dumlao, et al.,* G.R. No. 167809, November 27, 2008.

[26] G.R. No. 168631, April 7, 2009.

[27] G.R. No. 168533, February 4, 2008, 543 SCRA 627, 640. (Emphasis supplied.)

date of effectivity of PD 27 but would take effect on the payment of just compensation.

To be sure, the foregoing doctrine can also be found in *Landbank of the Philippines v. Josefina Dumlao et al.*[28] and *Meneses v. Secretary of Agrarian Reform.*[29]

In sum, since the lands in dispute were taken under PD 27 and just compensation has not yet been settled prior to the passage of RA 6657, the latter law should be made applicable in conformity with this Court's ruling in the abovementioned cases.

The last issue to be resolved then is when was their actual "taking"? The same has already been settled in *Domingo* where this Court ruled:

> LBP's contention that the property was taken on 21 October 1972, the date of effectivity of PD 27, thus just compensation should be computed based on the GSP in 1972, is erroneous. **The date of taking of the subject land for purposes of computing just compensation should be reckoned from the issuance dates of the emancipation patents**. An emancipation patent constitutes the conclusive authority for the issuance of a Transfer Certificate of Title in the name of the grantee. It is from the issuance of an emancipation patent that the grantee can acquire the vested right of ownership in the landholding, subject to the payment of just compensation to the landowner.[30]

Hence, it is the date of the issuance of emancipation patents that should serve as the reckoning point for purposes of computation of just compensation. Copies of the emancipation patents issued to the farmer-beneficiaries, however, have not been attached to the records of the case. Except in certain portions[31] of the RTC decision where one can infer that the emancipation patents were issued in 1989,

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[28] *Supra* note 25.

[29] G.R. No. 156304, October 23, 2006, 505 SCRA 90.

[30] *Supra* note 27, at 642. (Emphasis supplied.)

[31] 10. That from 1989 when the titles of the petitioners were cancelled and emancipation patents given to beneficiaries up to 1993 when this case

this Court is not certain of the exact date thereof. Hence, this Court is constrained to remand the case back to the SAC for receipt of evidence as to the date of the grant of the emancipation patents, which date shall serve as the reckoning point for the computation of just compensation due respondent.

WHEREFORE, premises considered, the August 30, 2005 Decision and February 10, 2006 Resolution of the Court of Appeals in CA-G.R. CV No. 64176 are hereby *AFFIRMED.* The records of the case is ordered *REMANDED* to the Special Agrarian Court, Branch 15, of the Regional Trial Court of Davao City, for further reception of evidence as to the date of the grant of the emancipation patents which shall serve as the basis for the computation of just compensation in accordance with the market-data approach pursuant to Republic Act No. 6657.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 176511. August 4, 2009]

SPOUSES OBDULIA H. ESPEJO and HILDELBERTO T. ESPEJO, *petitioners, vs.* **GERALDINE COLOMA ITO,** *respondent.*

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was filed, respondent did not even try to confer with the petitioner regarding just compensation.

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15. That the unjust taking of the petitioner's lands happened in 1989 hence the petitioner is entitled to legal interest from 1989 until respondent pays in full the purchase price. (CA *rollo*, pp. 35-36)

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 42 OF THE REVISED RULES OF COURT; REQUIREMENTS; NON-COMPLIANCE THEREWITH SHALL BE A GROUND FOR DISMISSAL OF THE PETITION.—** A decision of the RTC, rendered in its appellate jurisdiction, may be appealed to the Court of Appeals via a Petition for Review under Rule 42 of the Revised Rules of Court. Section 2 of Rule 42 prescribes the x x x requirements for a Petition for Review filed with the Court of Appeals x x x. Non-compliance with the requirements set forth in Section 2, Rule 42 of the Revised Rules of Court shall be a ground for dismissal of the Petition, pursuant to Section 3 of the same Rule x x x.

2. **ID.; ID.; ID.; RIGHT TO APPEAL; MERELY A STATUTORY PRIVILEGE AND MAY BE EXERCISED ONLY IN THE MANNER AND STRICTLY IN ACCORDANCE WITH THE PROVISIONS OF THE LAW.—** On the matter of appeal, the Court ruled on several occasions that the right to appeal is neither a natural right nor a part of due process. It is merely a statutory privilege and may be exercised only in the manner and strictly in accordance with the provisions of the law. The party who seeks to appeal must comply with the requirements of the rules. Failure to do so results in the loss of that right. The perfection of an appeal in the manner and within the period permitted by law is not only mandatory, but also jurisdictional.

3. **ID.; RULES OF PROCEDURE; MAY BE SUSPENDED IF THE APPLICATION WOULD TEND TO FRUSTRATE RATHER THAN PROMOTE JUSTICE.—** [I]t bears stressing that the rules of procedure are merely tools designed to facilitate the attainment of justice. They were conceived and promulgated to effectively aid the court in the dispensation of justice. Courts are not slaves to or robots of technical rules, shorn of judicial discretion. In rendering justice, courts have always been, as they ought to be, conscientiously guided by the norm that on the balance, technicalities take a backseat against substantive rights, and not the other way around. Thus, if the application of the Rules would tend to frustrate rather than promote justice, it is always within the power of the Court to suspend the rules, or except a particular case from its operation.

4. **ID.; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 42 OF THE REVISED RULES OF COURT; REQUIREMENT THAT RELEVANT DOCUMENTS BE SUBMITTED ALONG WITH THE PETITION, SUBSTANTIALLY COMPLIED WITH IN CASE AT BAR.—** It should be noted that in this case, petitioners immediately acted to rectify their earlier procedural lapse by submitting, together with their Motion for Reconsideration of the 19 December 2006 Resolution of the Court of Appeals, a Motion to Admit a copy of their Complaint for Unlawful Detainer. Submission of a document together with the motion for reconsideration constitutes substantial compliance with the requirement that relevant or pertinent documents be submitted along with the petition, and calls for the relaxation of procedural rules.

5. **ID.; REVISED INTERNAL RULES OF THE COURT OF APPEALS; COURT OF APPEALS; HAS THE AUTHORITY TO REQUIRE THE PARTIES TO SUBMIT ADDITIONAL DOCUMENTS AS MAY BE NECESSARY TO PROMOTE THE INTERESTS OF SUBSTANTIAL JUSTICE.—** [T]he Court held in *Spouses Lanaria v. Planta* that under Section 3(d), Rule 3 of the Revised Internal Rules of the Court of Appeals, the Court of Appeals is with authority to require the parties to submit additional documents as may be necessary to promote the interests of substantial justice. Therefore, the appellate court, instead of dismissing outright the Petition, could just as easily have required petitioners to submit the necessary document, *i.e.*, a copy of petitioners' Complaint for Unlawful Detainer filed with the MeTC.

APPEARANCES OF COUNSEL

Balgos and Perez for petitioners.
Salonga Hernandez Mendoza Law Offices for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before the Court is a Petition for Review on *Certiorari*, under Rule 45 of the Revised Rules of Court, in which petitioners,

spouses Obdulia H. Espejo (Obdulia) and Hildelberto T. Espejo (Hildelberto), seek the reversal of the Resolutions dated 19 December 2006[1] and 6 February 2007[2] of the Court of Appeals in CA-G.R. SP No. 97074. The appellate court dismissed petitioners' Petition for Review, under Rule 42 of the Revised Rules of Court, appealing the Decision[3] dated 6 November 2006 of the Regional Trial Court (RTC) of Makati City, Branch 58, in Civil Case No. 06-288, for failure of petitioners to attach to the dismissed Petition their Complaint for Unlawful Detainer[4] against respondent Geraldine Coloma Ito, filed with the Metropolitan Trial Court (MeTC) of Makati City, Branch 66, and docketed as Civil Case No. 85435.

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

Petitioners are claiming ownership of Lots 16 and 17, Catmon St., San Antonio Village, Makati City, covered by Transfer Certificates of Title (TCTs) No. 219266 and No. 219267 in petitioners' names, on which stood a seven-door apartment (collectively referred to as the Catmon Property), one of which, Apartment Unit No. 9197-B (subject property), is being occupied by respondent. The Catmon Property was previously owned by petitioner Obdulia's mother, the late Teodora Gana *Vda. de* Hemedes (Teodora), and was registered under TCTs No. 148461/T-1019 and No. 148462/T-1019 in Teodora's name. According to petitioners, they came to own the Catmon Property, among other properties, by virtue of a document, bearing the title *Donation of Real Property Inter Vivos*, executed by Teodora in their favor on 21 July 1981.

On 22 June 2004, petitioners filed a Complaint for Unlawful Detainer against respondent before the MeTC, docketed as Civil

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[1] Penned by Associate Justice Jose Catral Mendoza with Associate Justices Elvi John S. Asuncion and Sesinando E. Villon, concurring; *rollo*, pp. 26-30.

[2] *Id.* at 32.

[3] Penned by Judge Eugene C. Paras; *id.* at 181-184.

[4] *Id.* at 106-110.

Case No. 85435. Petitioners alleged in their Complaint that respondent was leasing and occupying the subject property; petitioners, through a letter dated 11 December 2002, informed respondent that, beginning the date of receipt thereof, respondent should pay monthly rentals for the subject property to petitioners; petitioners made several attempts to confer with respondent and to enter the subject property to inspect the same, but respondent refused; petitioners sent respondent a billing statement for ₱170,000.00, consisting of unpaid rentals for the period of January to May 2004 at ₱10,000.00 per month; by September 2004, the monthly rental for the subject property would increase to ₱15,000.00; and petitioners gave respondent a Final Demand and Notice dated 8 June 2004, yet respondent still failed and refused to pay the monthly rentals for the subject property. The end of petitioners' Complaint contained the following prayer:

P R A Y E R

WHEREFORE, [herein petitioners] pray this Honorable Court to render judgment in their favor and against the [herein respondent], as follows:

1. Ordering the [respondent] to vacate the premises in question and to restore possession thereof to the [petitioners];

2. Ordering the [respondent] to pay the [petitioners] the sum of **ONE HUNDRED AND SEVENTY THOUSAND PESOS (₱170,000.00)** representing the accrued rents on the premises covering the period from January, 2003 to May, 2004, inclusive, and **TEN THOUSAND PESOS (₱10,000.00)** per month from June, 2004 and thereafter;

3. Ordering the [respondent] to pay the [petitioners], beginning on the month of September, 2004, a rent of **FIFTEEN THOUSAND PESOS (₱15,000.00)** per month for the premises;

4. Ordering the [respondent] to pay [petitioners] expenses of litigation amounting to Five Thousand Pesos (₱5,000.00) and court costs of this suit;

Further [petitioners] pray this Honorable Court to grant them such other measures of relief as may be just and proper in the premises.[5]

In her Answer to the Complaint, respondent admitted to leasing the subject property, not from petitioners, but from petitioner Obdulia's brother, Rogelio G. Hemedes (Rogelio), who inherited the subject property, in accordance with the last will and testament of Teodora, who died on 7 February 1991. Respondent averred that she had been peacefully and continuously occupying the subject property since 1994. Rogelio, as lessor, and respondent, as lessee, just renewed their Contract of Lease over the subject property on 27 April 2004, which was valid until April 2005.[6] Respondent was thus surprised to receive a demand letter directing her to pay accrued rentals to petitioners. When consulted by respondent's counsel concerning petitioners' demands for monthly rental payments for the subject property, Rogelio's counsel, in a letter dated 31 March 2003, advised that respondent pay the same to the court-appointed Special Administrator of Teodora's estate, who was another of petitioner Obdulia's brothers, Diosdado G. Hemedes (Diosdado).

Respondent additionally argued that petitioners had no cause of action for unlawful detainer, since they were not the lessors of the subject property, and their ownership over the same was still being disputed in pending cases.[7] Respondent could not

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[5] *Id.* at 108-109.

[6] Respondent's Contract of Lease with Rogelio was effective only until April 2005. However, considering that petitioners are still pursuing before this Court their ejectment case against respondent, and respondent is still opposing the same, then the only logical conclusion is that respondent is still in possession of the subject property up to present time, although records do not show with whom respondent renewed her lease contract.

[7] Teodora's heirs, other than the petitioners, filed before the RTC of Biñan, Laguna, a petition for the probate of Teodora's last will and testament, docketed as SP Case No. B-1383. When petitioners presented their TCTs before the RTC, Diosdado, as the Administrator of Teodora's estate, filed an Omnibus Motion/Opposition, with prayer to annul said TCTs and to punish petitioners for contempt. Diosdado allged in said Motion that petitioners, despite knowing that the Catmon Property was part of Teodora's

have deprived petitioners of possession of the subject property through any of the means enumerated in Section 1, Rule 70 of the Revised Rules of Court since petitioners had never been in possession of said property.

During the preliminary conference in Civil Case No. 85435, the parties admitted the following facts before the MeTC:

1. That the lessor in the leased contract with the [herein respondent] are not the [herein petitioners] in this case;
2. That there are pending cases on the issue of ownership of the leased premises pending before various courts between the [petitioners] and the lessor;
3. That the [respondent] is not a party to the said cases between [petitioners] and the lessor before various courts;
4. That [petitioners] was (sic) actually aware of the existing cases regarding the ownership and possession over the leased premises when they filed this case;

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estate and subject of the pending probate proceedings, still withheld and refused to surrender the TCTs covering the said property to Diosdado, the court-appointed Administrator of Teodora's estate. Worse, petitioners had Teodora's TCTs for the Catmon Property cancelled and new ones issued in their names on the strength of the deed of donation. SP Case No. B-1383 has been submitted for decision by the RTC.

Diosdado, as Administrator of Teodora's estate, filed before the RTC of Makati, Branch 148, a Complaint for Quieting of Title and Annulment of Donation, Accounting with Injunction, against petitioners, docketed as Civil Case No. 04-704. Pursuant thereto, Diosdado registered an Affidavit of Adverse Claim and Notice of *Lis Pendens* on petitioners' TCTs for the Catmon Property. Civil Case No. 04-704 is still awaiting decision by the RTC.

Upon the complaints of Diosdado and two nephews, petitioners were criminally charged for estafa through falsification of public document (particularly, the *Donation of Real Property Inter Vivos*, which Teodora purportedly executed in petitioners' favor on 21 July 1981), before the RTC of Makati, Branch 66, docketed as Criminal Case No. 05-768. The RTC rendered a Decision dated 22 August 2007, convicting petitioners of the crime charged. Petitioners' appeal of their conviction is currently pending before the Court of Appeals.

5. That the lessor in the leased contract with the [respondent] are (sic) not the plaintiff in this case.[8]

After submission by the parties of their Position Papers, the MeTC rendered its Decision[9] on 4 August 2005. The MeTC ruled that petitioners were able to establish their right to possession of the subject property through evidence showing their ownership, particularly, (1) the TCTs, in their names, over the Catmon Property, on which the subject property stood; and (2) the Tax Declaration for the subject property. Hence, the MeTC decreed:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the [herein petitioners] Obdulia H. Espejo and Hildelberto T. Espejo and against [herein respondent] Geraldine Coloma Ito, to wit:

1. Ordering [respondent] and all persons claiming rights under them (sic) to vacate the subject property more particularly described as Apartment No. 9197-B, Catmon Street, San Antonio Village, Makati City;

2. Ordering [respondent] to pay [petitioners] the amount of TEN THOUSAND PESOS (₱10,000.00) per month from date of demand on June 08, 2004 until [respondent] vacates the subject premises as compensation for the use and occupancy of the subject premises, plus attorney's fees in the amount of ₱10,000.00 and costs of suit.[10]

Respondent filed an appeal with the RTC, which was docketed as Civil Case No. 06-288. In its Decision dated 6 November 2006, the RTC reversed the MeTC Decision dated 4 August 2005. The RTC declared that no unlawful detainer was committed, ratiocinating that:

The essence of the action for unlawful detainer is the existence of a contract, express or implied between the plaintiff and the defendant.

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[8] Order dated 20 April 2005, penned by Presiding Judge Perpetua Atal-Paño; *rollo*, p. 173.

[9] Penned by Pairing Judge Henry E. Laron; *id.* at 177-179.

[10] *Id.* at 179.

More so, the fact of lease and the expiration of its terms are the essential elements of an unlawful detainer case. In unlawful detainer, the unlawful withholding of possession is made after the expiration or termination of the right to hold the same under any contract express or implied.

A close scrutiny of the complaint reveals that [herein petitioners'] action is not one for unlawful detainer. True enough, there is no contract express or implied between the parties that will serve as basis for the determination of the start of the unlawful possession. [Petitioners] never shed light on how [herein respondent] came to be the lessee or tenant of the former although admittedly they sent demand letters to the latter for her to pay a much higher amount of rental. It was the latter herself who claimed that she contracted with the Court-appointed administrator of the property eight (8) years ago and before the case was filed in Court.

Was there therefore unlawful withholding of property in the instant case? This Court again answers in the negative. There is no valid cause for such an action as unlawful detainer and the jurisdictional requirement was not satisfied. How can something be determined when in the first place it was inexistent? It bears stressing that there was no lease agreement between the parties and that the demand to vacate by [petitioners] does not make [respondent] tenants (sic) of the former and this despite the allegation of ownership based on the muniments of title. It is a known maxim that regardless of actual condition of title to the property, the party in peaceable, direct possession shall not be turned out by a strong hand, violence or even terror. Thus, a party who can prove prior possession can recover the same even against the owner himself. Whatever may be the character of his prior possession, if he has in his favor priority of time, has the security that entitles him to remain in the property until he is lawfully ejected by a person having a better right by other remedies provided for by law for recovery.

Since the jurisdictional requirement to constitute a valid cause for unlawful detainer was not satisfied[,] the lower Court was indeed without jurisdiction to hear and decide this case.[11]

The dispositive portion of the RTC Decision reads:

WHEREFORE, the assailed Decision is REVERSED AND SET ASIDE.

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[11] *Id.* at 183-184.

The complaint before the court *a quo* is, for lack of jurisdiction, hereby DISMISSED.[12]

Petitioners, upon receipt of the RTC Decision dated 6 November 2006, at first, erroneously filed a Notice of Appeal with the RTC, which was accordingly dismissed by the said court for being the wrong mode of appeal, in an Order[13] dated 2 February 2007. Petitioners subsequently filed the appropriate Petition for Review with the Court of Appeals on 4 December 2006, which was docketed as CA-G.R. SP No. 97074.

On 19 December 2006, the Court of Appeals issued a Resolution dismissing outright the Petition in CA-G.R. SP No. 97074 for petitioners' failure to attach the Complaint for Unlawful Detainer which they filed before the MeTC, in violation of Section 2, Rule 42 of the Revised Rules of Court. According to the appellate court:

The case is dismissible outright.

The principal issue raised by the petitioners is the question of whether or not the Metropolitan Trial Court had jurisdiction over their complaint for unlawful detainer. They argue that jurisdiction of the court over the subject matter of the action is determined by the material allegations of the complaint. The petition is, however, not accompanied by the complaint for unlawful detatiner. Accordingly, the Court has no way of determining if indeed the MeTC had jurisdiction over the complaint.

Section 2 of Rule 42 of the 1997 Revised Code of Civil Procedure states that *"the petition shall x x x (d) be accompanied by clearly legible duplicate originals or true copies of the judgements 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 petitioner."*

Section 3 of the same rule reads:

Section 3. Effect of failure to comply with requirements. — The failure of the petitioner to comply with any of the foregoing

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[12] *Id.* at 184.

[13] Penned by Presiding Judge Eugene C. Paras; records, p. 509.

requirements regarding x x x the documents which should accompany the petition *shall be sufficient ground for the dismissal thereof.*[14]

Petitioners filed on 3 January 2007 with the Court of Appeals a Motion for Reconsideration of the 19 December 2006 Resolution with Motion to Admit,[15] as part of their Petition, a copy of the Complaint for Unlawful Detainer which they filed with the MeTC. Petitioners also maintained that their Petition deserved to be reinstated given the merits thereof, since the RTC erroneously ruled that the MeTC had no jurisdiction over petitioners' Complaint.

In its Resolution dated 6 February 2007, the Court of Appeals denied petitioners' Motion for Reconsideration, stating that:

After carefully considering the grounds raised in the subject motion, we find that the said reasons and the arguments in support thereof have been amply treated, discussed and passed upon in the subject resolution. x x x.[16]

Hence, this Petition with a single assignment of error, to wit:

THE COURT OF APPEALS, FORMER ELEVENTH DIVISION, MANILA, ERRED WHEN IT DISMISSED OUTRIGHTLY THE PETITION FOR REVIEW DATED 4 DECEMBER 2006 IN VIOLATION OF SECTION 2, RULE 42 OF THE RULES OF CIVIL PROCEDURE AND REFUSED TO RECONSIDER ITS RESOLUTION OF DISMISSAL DESPITE SUBSEQUENT RECTIFICATION OF THE DEFICIENCY TO PUT PREMIUM ON TECHNICALITIES AT THE EXPENSE OF SUBSTANTIAL JUSTICE.[17]

Petitioners assail the dismissal of their Petition for Review by the Court of Appeals despite their subsequent submission

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[14] *Rollo,* pp. 29-30.

[15] *Id.* at 101-104.

[16] *Id.* at 32.

[17] *Id.* at 10.

of a copy of their Complaint for Unlawful Detainer before the MeTC, in compliance with Sec. 2, Rule 42 of the Revised Rules of Court. Petitioners pray for the reversal of the Resolutions dated 19 December 2006 and 6 February 2007 and for a remand of the case to the Court of Appeals for resolution on the merits of their Petition.

In her Comment herein, respondent asserts that the procedural lapses committed by petitioners justify the dismissal of their case, and petitioners cannot invoke the liberal construction of the rules of procedure where said rules call for strict observance.

The Court finds merit in the instant Petition.

A decision of the RTC, rendered in its appellate jurisdiction, may be appealed to the Court of Appeals via a Petition for Review under Rule 42 of the Revised Rules of Court. Section 2 of Rule 42 prescribes the following requirements for a Petition for Review filed with the Court of Appeals:

SECTION 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**.

The petitioner shall also submit together with the petition a certification under oath that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme

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 (5) days therefrom. (Emphasis ours.)

Non-compliance with the requirements set forth in Section 2, Rule 42 of the Revised Rules of Court shall be a ground for dismissal of the Petition, pursuant to Section 3 of the same Rule, which reads:

SECTION 3. *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.

On the matter of appeal, the Court ruled on several occasions that the right to appeal is neither a natural right nor a part of due process. It is merely a statutory privilege and may be exercised only in the manner and strictly in accordance with the provisions of the law. The party who seeks to appeal must comply with the requirements of the rules. Failure to do so results in the loss of that right. The perfection of an appeal in the manner and within the period permitted by law is not only mandatory, but also jurisdictional.[18]

Nonetheless, it bears stressing that the rules of procedure are merely tools designed to facilitate the attainment of justice. They were conceived and promulgated to effectively aid the court in the dispensation of justice. Courts are not slaves to or robots of technical rules, shorn of judicial discretion. In rendering justice, courts have always been, as they ought to be, conscientiously guided by the norm that on the balance, technicalities take a backseat against substantive rights, and not the other way around. Thus, if the application of the Rules would tend to frustrate rather than promote justice, it is always

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[18] *R. Transport Corporation v. Philippine Hawk Transport Corporation*, G.R. No. 155737, 19 October 2005, 473 SCRA 342, 348.

within the power of the Court to suspend the rules, or except a particular case from its operation.[19]

As the Court further elucidated in *Peñoso v. Dona*[20]:

Technicalities, however, must be avoided. The law abhors technicalities that impede the cause of justice. The court's primary duty is to render or dispense justice. "A litigation is not a game of technicalities." "Lawsuits unlike duels are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts." Litigations must be decided on their merits and not on technicality. Every party litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the unacceptable plea of technicalities. **Thus, dismissal of appeals purely on technical grounds is frowned upon where the policy of the court is to encourage hearings of appeals on their merits and the rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override substantial justice. It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.** (Emphasis supplied.)

It should be noted that in this case, petitioners immediately acted to rectify their earlier procedural lapse by submitting, together with their Motion for Reconsideration of the 19 December 2006 Resolution of the Court of Appeals, a Motion to Admit a copy of their Complaint for Unlawful Detainer. Submission of a document together with the motion for reconsideration constitutes substantial compliance with the requirement that relevant or pertinent documents be submitted

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[19] *Coronel v. Desierto*, 448 Phil. 894, 903 (2003).

[20] G.R. No. 154018, 3 April 2007, 520 SCRA 232, 239-240.

along with the petition, and calls for the relaxation of procedural rules.[21]

Moreover, the Court held in *Spouses Lanaria v. Planta*[22] that under Section 3(d), Rule 3 of the Revised Internal Rules of the Court of Appeals,[23] the Court of Appeals is with authority to require the parties to submit additional documents as may be necessary to promote the interests of substantial justice. Therefore, the appellate court, instead of dismissing outright the Petition, could just as easily have required petitioners to submit the necessary document, *i.e.*, a copy of petitioners' Complaint for Unlawful Detainer filed with the MeTC.

As a final matter, respondent calls the attention of this Court to the Decision[24] dated 22 August 2007 of the RTC of Makati, Branch 66, in Criminal Case No. 05-768,[25] convicting petitioners of estafa through falsification of a public document, particularly, the *Donation of Real Property Inter Vivos* allegedly executed by Teodora in petitioners' favor on 21 July 1981. However, petitioners' appeal of their conviction is still pending before the Court of Appeals. Since the 22 August 2007 Decision of the RTC in Criminal Case No. 05-768 is not yet final and executory, it cannot, as of yet, bind this Court.

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[21] *Padilla, Jr. v. Alipio*, G.R. No. 156800, 25 November 2004, 444 SCRA 322, 327, which cited *Donato v. Court of Appeals*, 462 Phil. 676, 691 (2003), citing *Jaro v. Court of Appeals*, 427 Phil. 532, 547 (2002); *Piglas Kamao (Sari-Sari Chapter) v. National Labor Relations Commission*, 409 Phil. 735, 737 (2001); and *Uy v. Bureau of Internal Revenue*, 397 Phil. 892, 902 (2000).

[22] G.R. No. 172891, 22 November 2007, 538 SCRA 79.

[23] Section 3(d), Rule 3 reads: "When a petition does not have the complete annexes or the required number of copies, the Chief of the Judicial Records Division shall require the petitioner to complete the annexes or file the necessary number of copies of the petition before docketing the case. Pleadings improperly filed in court shall be returned to the sender by the Chief of the Judicial Records Division."

[24] Penned by Judge Joselito C. Villarosa; *rollo,* pp. 221-232.

[25] Upon the complaint of Diosdado and two nephews.

WHEREFORE, premises considered, the instant Petition is *GRANTED*. The Resolutions dated 19 December 2006 and 6 February 2007 of the Court of Appeals in CA-G.R. SP No. 97074 are *REVERSED* and *SET ASIDE*, and the present case is *REMANDED* to the Court of Appeals for resolution on the merits. No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 176906. August 4, 2009]

ANDREW B. NUDO, *petitioner, vs.* **HON. AMADO S. CAGUIOA, SPOUSES PETRONILO AND MARCELA NUDO, ATTY. REMEDIOS B. REYES, RUBEN ATIJERA and ROMEO FLORENDO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; ANNULMENT OF JUDGMENTS; NATURE.—** An action to annul a final judgment is an extraordinary remedy, which is not to be granted indiscriminately by the Court. It is a recourse equitable in character allowed only in exceptional cases. The reason for the restriction is to prevent this extraordinary action from being used by a losing party to make a complete farce of a duly promulgated decision that has long become final and executory.

2. **ID.; ID.; ID.; GROUNDS.—** Under Section 2, Rule 47 of the Rules of Civil Procedure, the only grounds for annulment of judgment are extrinsic fraud and lack of jurisdiction. Lack of jurisdiction as a ground for annulment of judgment refers to

either lack of jurisdiction over the person of the defending party or over the subject matter of the claim.

3. **ID.; ID.; PARTIES TO CIVIL ACTIONS; RULE ON SUBSTITUTION BY HEIRS; NOT A MATTER OF JURISDICTION, BUT A REQUIREMENT OF DUE PROCESS.—** Non-substitution of the heirs of a deceased party is not jurisdictional. The rule on substitution by heirs is not a matter of jurisdiction, but a requirement of 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. 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.

4. **ID.; ID.; ID.; ID.; COMPLIED WITH IN CASE AT BAR.—** We note that both parents of the petitioner were defendants in the case for partition. Hence, even after Gumersindo died, Zosima remained a party. And both defendants continued to be represented by counsel as, in fact, a notice of appeal was filed by their counsel before the CA. In this petition, petitioner gives the impression that his mother, Zosima Nudo, died while the appeal was still pending before the CA. The records, however, show that Zosima died on June 22, 2003, after the CA's resolution dismissing the appeal became final and executory. Therefore, at no time were the petitioner's parents deprived of any representative in the partition case, until the judgment therein became final and executory. Petitioner cannot therefore claim now that the judgment in the partition case is null and void for failure of the court to implead him, as the judgment became final and executory prior to the death of his mother. The judgment in the partition case is now enforceable against Gumersindo and Zosima's successor-in-interest, including herein petitioner, following Sec. 7(b), Rule 39 of the Rules of Civil Procedure, which provides: "Sec. 7. Execution in case of death of party. — In case of death of a party, execution may issue or be enforced in the following manner: x x x (b) In case of death of the judgment obligor, against his executor or administrator or successor in interest, if the judgment be for the recovery of real or personal property, or the enforcement of a lien thereon; x x x"

APPEARANCES OF COUNSEL

Manaois and Navarro Law Office for petitioner.
Law Firm of Rondez and Partners for private respondents.

D E C I S I O N

NACHURA, *J.*:

Assailed in this petition are the Court of Appeals Resolutions[1] dated June 8, 2006 and February 5, 2007 in CA-G.R. SP No. 94170, which dismissed outright the petition for annulment of judgment filed by herein petitioner.

The antecedents of the case are as follows:

On August 21, 1996, private respondents, spouses Petronilo and Marcela Nudo, filed a complaint for partition and damages against the spouses, Gumersindo and Zosima Nudo. Petronilo and Gumersindo are brothers and pro-indiviso co-owners of a parcel of land, with an area of 425 square meters, located at Regidor Street, Pacdal, Baguio City and covered by Transfer Certificate of Title (TCT) No. T-13496 of the Registry of Deeds of Baguio City.[2] Since 1990, Petronilo had requested Gumersindo to accede to the partition of the property, but the latter refused, thus forcing him to initiate the complaint. The case was docketed as Civil Case No. 3493.

During the pendency of the case, more specifically, on March 13, 2000, Gumersindo Nudo died.[3] No substitution was effected by the court.

On July 24, 2001, the RTC rendered judgment in favor of private respondents, thus:

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[1] Penned by Associate Justice Edgardo P. Cruz with Associate Justices Lucas P. Bersamin (now Associate Justice of this Court) and Ramon M. Bato, concurring; *rollo,* pp. 79-80.

[2] *Rollo,* pp. 30-31.

[3] *Id.* at 45.

WHEREFORE, from the foregoing, judgment is hereby rendered ordering the defendants spouses Gumersindo F. Nudo and Zosima B. Nudo to partition the property in question among themselves in accordance with Section 2, Rule 69 of the 1997 Rules of Civil Procedure and to submit to this Court their partition agreement within sixty (60) days after their partition.

SO ORDERED.[4]

Defendants' counsel brought the case to the CA on appeal. On November 21, 2002, the CA issued a resolution dismissing the appeal for failure to file appellants' brief.[5] It then issued an entry of judgment on November 21, 2002.

Thereafter, on June 22, 2003, Zosima Nudo died.[6]

On March 10, 2004, private respondents filed a motion for execution, which was granted by the court on July 14, 2004. Accordingly, a writ of execution was issued by the Clerk of Court on July 22, 2004.[7] On September 12, 2005, Sheriff Ruben L. Atijera returned the writ unenforced on the ground that Susana Nudo, daughter of Gumersindo and Zosima Nudo, promised to settle with private respondents and offer the purchase of their share in the subject property.[8]

On August 12, 2005, private respondents filed an *Ex-Parte* Motion for the Issuance of an *Alias* Writ of Execution, which the court granted.[9] An *Alias* Writ of Execution was issued, but the same was again returned unenforced on December 27, 2005. The Sheriff's Return stated that the defendants' house, which was being occupied by defendants' heirs, still encroached approximately 82 sq. m. of the portion allotted to the private

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[4] *Id.* at 49.

[5] *Id.* at 51.

[6] *Id.* at 59.

[7] *Id.* at 52-53.

[8] *Id.* at 54.

[9] *Id.* at 56.

respondents, and that Susana Nudo refused to accept private respondents' proposed partition.[10]

On April 21, 2006, petitioner, Andrew B. Nudo, son of Gumersindo and Zosima Nudo, filed a Petition for Annulment of Judgment, seeking to annul the RTC Decision in the partition case. Petitioner alleged therein that neither he nor the other heirs were substituted in place of their parents in the proceedings for partition before the trial court. This allegedly rendered the proceedings null and void.[11] Petitioner further alleged that he only found out about the case sometime in March 2006 when respondents, Sheriffs Romeo R. Florendo and Ruben L. Atijera, went to the office of Susana Nudo and showed her a blueprint of a subdivision plan.[12]

On June 8, 2006, the CA issued a Resolution dismissing outright the petition for annulment of judgment.[13] According to the CA, annulment of judgment could not be availed of since petitioner's predecessors-in-interest had availed themselves of the remedy of appeal. Petitioner's recourse should have been against the CA Resolution dated November 21, 2002, which dismissed the appeal.

On February 5, 2007, the CA denied petitioner's motion for reconsideration for lack of merit.[14]

Petitioner filed this petition, raising the issue of whether the judgment in Civil Case No. 3493-R could be annulled on the ground that he was not substituted for his deceased parents in the said case.

The petition has no merit.

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[10] *Id.* at 57.

[11] *Id.* at 61-62.

[12] *Id.* at 72.

[13] *Id.* at 79-80.

[14] *Id.* at 91.

An action to annul a final judgment is an extraordinary remedy, which is not to be granted indiscriminately by the Court. It is a recourse equitable in character allowed only in exceptional cases. The reason for the restriction is to prevent this extraordinary action from being used by a losing party to make a complete farce of a duly promulgated decision that has long become final and executory.[15] Under Section 2, Rule 47 of the Rules of Civil Procedure, the only grounds for annulment of judgment are extrinsic fraud and lack of jurisdiction. Lack of jurisdiction as a ground for annulment of judgment refers to either lack of jurisdiction over the person of the defending party or over the subject matter of the claim.[16]

Non-substitution of the heirs of a deceased party is not jurisdictional. The rule on substitution by heirs is not a matter of jurisdiction, but a requirement of 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.[17] 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.[18]

We note that both parents of the petitioner were defendants in the case for partition. Hence, even after Gumersindo died, Zosima remained a party. And both defendants continued to be represented by counsel as, in fact, a notice of appeal was filed by their counsel before the CA.

In this petition, petitioner gives the impression that his mother, Zosima Nudo, died while the appeal was still pending before

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[15] *Veneracion v. Mancilla,* G.R. No. 158238, July 20, 2006, 495 SCRA 712, 724.

[16] *Tolentino v. Leviste*, G.R. No. 156118, November 19, 2004, 443 SCRA 274, 284.

[17] *Napere v. Barbarona,* G.R. No. 160426, January 31, 2008, 543 SCRA 376, 382.

[18] *Id.*

the CA. The records, however, show that Zosima died on June 22, 2003, after the CA's resolution dismissing the appeal became final and executory. Therefore, at no time were the petitioner's parents deprived of any representative in the partition case, until the judgment therein became final and executory.

Petitioner cannot therefore claim now that the judgment in the partition case is null and void for failure of the court to implead him, as the judgment became final and executory prior to the death of his mother. The judgment in the partition case is now enforceable against Gumersindo and Zosima's successor-in-interest, including herein petitioner, following Sec. 7(b), Rule 39 of the Rules of Civil Procedure, which provides:

> Sec. 7. Execution in case of death of party. — In case of death of a party, execution may issue or be enforced in the following manner:
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> x x x x x x x x x
>
> (b) In case of death of the judgment obligor, against his executor or administrator or successor in interest, if the judgment be for the recovery of real or personal property, or the enforcement of a lien thereon;
>
> x x x x x x x x x

As a final note, we find difficult to believe petitioner's feigned ignorance of the case and his claim that he only found out about it in March 2006. The parties to this case are closely related, the petitioner being the nephew of private respondents. Certainly, the partition case, which could result in the petitioner being deprived of a portion of the property that he and the other heirs would inherit from their parents, would have been an important subject among the parties concerned. Moreover, the Sheriff's Return dated September 12, 2005 stated that Susana Nudo, petitioner's sister, refused the enforcement of the writ on the ground that she was negotiating with private respondents for the purchase of their share in the subject property; she was therefore already well aware of the judgment at that time. To allow the petitioner to avail himself of the annulment of judgment would amount to putting a premium on the inaction or negligence

of the heirs in pursuing the case that had been brought against their parents.

WHEREFORE, premises considered, the petition is *DENIED DUE COURSE*. The Resolutions of the Court of Appeals dated June 8, 2006 and February 5, 2007, respectively, are *AFFIRMED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 176917. August 4, 2009]

CONTINENTAL CEMENT CORP., *petitioner, vs.* **FILIPINAS (PREFAB) SYSTEMS, INC.,** *respondent.*

[G.R. No. 176919. August 4, 2009]

FILIPINAS (PREFAB) SYSTEMS, INC., *petitioner, vs.* **CONTINENTAL CEMENT CORP.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; COURTS; SUPREME COURT; NOT A TRIER OF FACTS; EXCEPTION.—** The resolution of these cases calls for a re-examination of facts. While generally, the Court is not a trier of facts, a recognized exception thereto is a situation where the findings of fact of the Court of Appeals and the trial court are conflicting.

2. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; INTERPRETATION OF CONTRACTS; THE LITERAL MEANING OF THE CONTRACT PROVISIONS SHALL CONTROL IF THE TERMS ARE CLEAR AND LEAVE**

NO DOUBT AS TO THE INTENTION OF THE CONTRACTING PARTIES.— [T]he most fundamental rule in the interpretation of contracts is that, if the terms are clear and leave no doubt as to the intention of the contracting parties, the literal meaning of the contract provisions shall control. However, where some ambiguity exists, in order to determine the intention of the parties, their contemporaneous and subsequent acts should be considered.

3. **ID.; ID.; DAMAGES; LIQUIDATED DAMAGES; AWARDED WHERE DEFAULT IS INCURRED; CASE AT BAR.—** We sustain the finding of the CA holding CCC to have incurred in default in its payments to FILSYSTEMS. Records show that CCC admitted it was in default. FILSYSTEMS had already completed 44% of the work at the time the parties entered into a Compromise Agreement. This means that, by the terms of the Construction Contract, FILSYSTEMS should have been paid ₱36,212,000.00. However, CCC admitted having paid only ₱27,006,028.04. Hence, it still owed FILSYSTEMS ₱9,205,971.96. CCC also admitted that it owed FILSYSTEMS ₱3.5 million in cement for accomplished change orders/additional works/construction bulletins. x x x [S]ince CCC is in default, FILSYSTEMS is entitled to liquidated damages, pursuant to Paragraph 9 of the Compromise Agreement x x x . However, we find that the CA erred in its computation of the liquidated damages CCC should pay FILSYSTEMS. In its Decision, the CA computed the liquidated damages as follows: "The original cost of the project is ₱82,300,000.00 while the additional works, as conceded by CCC' (sic) 31 August 1994 letter, is approximately 12% of the original project cost. Thus, the total project cost is PhP92,176,000.00. Considering that CCC was entitled to retain 10% of the first half of the construction cost, it was entitled to retain PhP4,608,800.00. Against the PhP10,420,161.17 CCC concededly owed FILSYSTEMS, the latter was underpaid by Php5,811,361.17 or by 6.3% of the total project cost. As such, CCC must be made to 6.3% of the full liquidated damages under the Compromise Agreement at Php12,345,000.00. Hence, CCC is liable to pay FILSYSTEMS liquidated damages in the amount of Php777,735.00." This computation has no basis. The Compromise Agreement clearly stated that any liquidated damages due will be "fifteen percent (15%) of the total original contract price of ₱82,300,000.00" regardless of any additional costs incurred by the parties. Thus, FILSYSTEMS is entitled to ₱12,345,000.00.

4. ID.; ID.; COMPROMISE AGREEMENT IN CASE AT BAR, CONSTRUED.— The right of FILSYSTEMS to stop work is recognized by CCC, as the Construction Contract provides: ARTICLE V PAYMENTS x x x "**Should the OWNER be delayed in the payment of the monthly billings beyond five (5) days after it is due, the work schedule or timetable shall be extended accordingly. If payment due is delayed for sixty (60) days, then the CONTRACTOR has the right to stop the work**." In addition, in the Compromise Agreement, the parties recognized that the 109 days left in the original time frame was "exclusive of contract time extensions for accomplished and future change orders, additional works and construction bulletins and whatever additional contract time extensions provided in this Agreement and/or already earned or allowed under the original Construction Contract, dated January 23, 1993." Paragraph 6.b of the Compromise Agreement is also instructive: "6.b Defendant, on a best efforts basis and without prejudice to paragraph 6 above, shall finish the construction zones referred to in the Construction Contract dated January 23, 1993 which shall be identified by the plaintiff as priority construction zones, taking into consideration plaintiff's schedule of arrival of machineries and installation thereof on said zones." The Compromise Agreement must be interpreted as a whole. Its provisions must be construed collectively, and the meaning imputed to them must give effect to all. x x x Thus, FILSYSTEMS must be accorded the time extensions it is entitled to under the Compromise Agreement. As the CA correctly held, it would go against the grain of equity and fair play to insist that FILSYSTEMS was limited to the non-extendible period of 109 days to complete the project, as erroneously found by the trial court. x x x We likewise sustain the CA's decision holding CCC liable for ₱3.5 million in accomplished change orders and additional works. Paragraph 7 of the Compromise Agreement reads in part: "x x x It is understood that should the parties fail to reconcile the accomplished change orders, additional works and construction bulletins within the 15-day period, just the same, plaintiff (CCC) shall immediately pay defendant the approximate amount of ₱3.5 Million in cement, subject to final reconciliation not later than thirty (30) days from signing of this Agreement. x x x" It is erroneous for CCC to claim that it is to pay the ₱3.5 million only after reconciliation. x x x CCC itself recognized that it was liable to pay this amount to

FILSYSTEMS in paragraph 1 (a) of the Compromise Agreement when it acknowledged the latter's accomplished change orders/ additional works and construction bulletins in the approximate amount of ₱3.5 million. Had it been the parties' intention to make the payment subject to reconciliation, it would have been unnecessary to put the above-quoted portion in paragraph 7 of the Compromise Agreement. The intent, to our mind, is simple, *i.e.*, that even if there is no reconciliation within 15 days, CCC will still pay – "just the same" – FILSYSTEMS ₱3.5 million in cement "subject to final reconciliation." The reconciliation will come after the payment and not before.

5. **ID.; ID.; TERMS OF CONTRACT, NOT VIOLATED IN CASE AT BAR.—** FILSYSTEMS next argues that the CA erred in interpreting the Construction Contract as a "turn key" agreement and not a regular type of construction agreement, where the owner is obligated to pay the contractor periodically based on percentage of completion, which, in this case, would be within 30 days from submission of each billing progress. x x x This denomination of the nature of the project notwithstanding, there is a specific provision in the agreement to the effect that the owner shall pay the contractor "on account of this contract thirty (30) days after submission of each progress billing in consideration of the work accomplished by the contractor less ten percent (10%) retention and Expanded Withholding Tax." Further, that same article in the contract provides that delay by CCC in the payment of the monthly billings beyond five days after they are due entitles FILSYSTEMS to an extension of the work schedule. If the delay in payment extends to 60 days, FILSYSTEMS may then exercise the right to stop the work. This was precisely what FILSYSTEMS did. Thus, it cannot be said to have violated the terms of the contract.

6. **ID.; ID.; EFFECT OF OBLIGATIONS; FAILURE TO PERFORM THE OBLIGATION INCUMBENT UPON A PARTY, EFFECT; CASE AT BAR.—** FILSYSTEMS has not shown that it was CCC's delay that caused the former to fail to complete the project. On the contrary, it appears that despite CCC's delays, FILSYSTEMS was able to accomplish 92.83% of the work. This proves that the completion of the project was not entirely dependent on CCC's payment – or *prompt* payment – of its obligation. FILSYSTEMS' failure to finish the project is, therefore, unjustified. Accordingly, it must be held liable

for the cost of completing the project. Article 1167 of the Civil Code provides: "Art. 1167. If a person obliged to do something fails to do it, the same shall be executed at his cost. This same rule shall be observed if he does it in contravention of the tenor of the obligation. Furthermore, it may be decreed that what has been poorly done be undone." We do not believe, however, that FILSYSTEMS should be made to pay the entire cost CCC paid to CE Construction, which finished the project. It has been shown that at the time FILSYSTEMS stopped work, the project was 92.83% finished, although such work was accomplished beyond the initial deadline of 23 January 1993. But x x x FILSYSTEMS was entitled to time extensions equivalent to the delay in the payment of its progress billings. Hence, FILSYSTEMS must be held liable only for the remaining 7.17% of the project. To make it answer for more would unjustly enrich CCC, which has already benefited from the former's work.

7. **ID.; DAMAGES; ATTORNEY'S FEES; CANNOT BE AWARDED WHEN BOTH PARTIES TO A CONTRACT FAILED TO COMPLY WITH THEIR OBLIGATIONS AS STIPULATED; CASE AT BAR.—** [T]he issue of attorney's fees. We sustain the CA's deletion of the trial court's award thereof, because both parties failed to comply with their obligations as stipulated in the Compromise Agreement.

APPEARANCES OF COUNSEL

Britanico Sarmiento & Franco Law Offices for Continental Cement Corporation.

Gonzales Batiller David Leabres & Reyes for Filipinas (PREFAB) Systems, Inc.

D E C I S I O N

NACHURA, *J*.:

Before this Court are two Petitions for Review on *Certiorari* assailing the Court of Appeals' Decision[1] dated October 20,

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[1] Penned by Justice Rosmari D. Carandang, with Justices Renato C. Dacudao and Estela M. Perlas-Bernabe, concurring, *Rollo* (G.R. No. 176917), pp. 8-31.

2006 and Resolution[2] dated March 6, 2007 in CA G.R. CV No. 71593.

The antecedents, as summarized by the Court of Appeals, are as follows:

x x x [P]laintiff-appellee Continental Cement Corporation (CCC) entered into a construction agreement with defendant-appellant Filipinas Systems, Inc. (FILSYSTEMS) for the civil works construction for its Cement Plant Expansion Project at Bo. Bigte, Norzagaray, Bulacan for and in consideration of ₱82,300,00.00 (sic). Under the contract, the period for the project's completion should be 300 days from 22 February 1993 or up to 18 December 1993. However, on 3 September 1993, CCC filed an action for Specific Performance with TRO and/ or Preliminary Mandatory Injunction against FILSYSTEMS to prevent the latter from pulling out its equipment from the site and stopping the construction of the project. While the suit was pending, the parties entered into a Compromise Agreement which was approved by the trial court on 14 October 1993. Among others, the said agreement provided for new terms and conditions of payment. Under Item No. 5 thereof, the civil works was to be paid in cash, cement, crushed aggregates (sic) as well as steel bars. The agreement, particularly Item No. 6, also admitted that FILSYSTEMS has 109 days [from 6 October 1993 or actual resumption of work, exclusive of contract time extensions for accomplished and future changes] to finish the project. And under item no. 7, the parties further agreed that all future change orders, additional works and construction bulletins shall be implemented by FILSYSTEMS only after CCC and its architect sign and the two agree on the price which will be billed separately. The change orders, additional works and construction bulletins already accomplished prior to the Compromise Agreement were supposed to be reconciled and paid immediately.

Thereafter, FILSYSTEMS and CCC filed their separate Motions for Execution based on the aforementioned Compromise Agreement on, (sic) 1 and 14 September 1994, respectively.

Banking on items no. 5 and 7 of the Compromise Agreement, FILSYSTEMS claimed that CCC failed to release the cement and crushed aggregates as per the agreed schedules annexed to the

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[2] Penned by Justice Rosmari D. Carandang, with Justices Renato C. Dacudao and Estela M. Perlas-Bernabe, concurring, *id.* at 32-33.

Compromise Agreement and to pay FILSYSTEMS' subsequent billings also in the form of cement. Aside from this claim, the latter also asked for the fifteen percent (15%) liquidated damages and five percent (5%) attorney's fees computed from the original price.

On the other hand, CCC advanced that FILSYSTEMS failed to finish the project after one hundred nine (109) days as provided in Item no. 6 of the same compromise agreement. As such, it similarly prays for the fifteen percent (15%) liquidated damages and five percent (5%) attorney's fees.[3]

After trial, the RTC issued a Decision,[4] the dispositive portion of which reads:

WHEREFORE, premises considered, finding that the defendant failed to perform its obligation under the Compromise Agreement dated October 4, 1993, without any justification, the plaintiff's expansion project on time or within the 109 calendar days, from October 6, 1993 to January 23, 1994, as agreed and without fault on plaintiff's part, this Court hereby orders said defendant to pay the plaintiff the following:

1. The sum of Twelve Million Three Hundred Forty Five Thousand Pesos (Php 12,345,000.00) in liquidated damages pursuant to the Compromise Agreement;
2. The sum of Fifty Million Three Hundred Thirty Eight Thousand Two Hundred Twenty One Pesos and Sixty One Centavos (Php 50,338,221.61) for the cost of finishing plaintiff's expansion cement plant, pursuant to Article 1167 of the Civil Code; and
3. Four Million One Hundred Fifteen Thousand Pesos (Php 4,115,000.00) for attorney's fees, as provided for in the Compromise Agreement.
4. Plus costs.

SO ORDERED.[5]

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[3] *Id.* at 58-60.

[4] Penned by Judge Fatima Gonzales-Asdala, *rollo* (G.R. No. 176919), pp. 129-142.

[5] *Id.* at 141-142.

FILSYSTEMS appealed the Decision to the Court of Appeals. On October 20, 2006, the CA issued the assailed Decision,[6] the dispositive portion of which reads:

WHEREFORE, the instant appeal is AFFIRMED with these MODIFICATIONS:

(1) Appellant FILSYSTEMS is hereby ordered to pay appellee CCC the following:

(a) The sum of Six Million One Hundred Seventy-Two Thousand Five Hundred Pesos (PhP6,172,500.00) as liquidated damages; and

(b) The sum of Six Million Six Hundred Thousand Seven Hundred Twenty-Three Pesos and Thirty-Six Centavos (PhP6,600,723.36) as the cost of finishing CCC's expansion cement plant;

and

(2) Appellee CCC is hereby ordered to pay appellant FILSYSTEMS the following:

(a) The sum of Ten Million Four Hundred Twenty Thousand One Hundred Sixty-One Pesos and Seventeen Centavos (PhP10,420,161.17) as the amount still due the latter based on the parties (sic) reconciliatory talks;

(b) The sum of Seven Hundred Seventy-Seven Thousand Seven Hundred Thirty-Five Pesos (PhP777,735.00) as liquidated damages.

SO ORDERED.[7]

The CA found CCC to have defaulted in the payment of its obligations. On the other hand, FILSYSTEMS not only incurred in delay in performing its obligation but, in fact, failed to finish the project.

The CA held that, under the Compromise Agreement, CCC was to pay FILSYSTEMS ₱3.5 million in cement for change

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[6] *Rollo* (G.R. No. 176917), pp. 57-80.

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

orders, additional works, and construction bulletins, even as the parties failed to reconcile their accounts.

The CA, likewise, held that, while FILSYSTEMS agreed that CCC would pay in kind, the payment was not to be made in advance. Under the Compromise Agreement, CCC was to deliver the delivery receipts only and not the cement. These delivery receipts were to be given in advance to allow FILSYSTEMS to withdraw cement from CCC's plants, but always against the value equivalent to the completed or accomplished work.

The CA also found that FILSYSTEMS was in fact lagging behind in its work schedule. It said that CCC's delay was not a sufficient excuse for FILSYSTEMS to incur in delay and not finish the project. According to the CA, FILSYSTEMS failed to explain how the delay in CCC's payment contributed to its own delay.

On the other hand, the CA upheld FILSYSTEMS' claim that it was entitled to time extension. However, it said that FILSYSTEMS could not unilaterally claim the time extension in order to excuse itself or justify the delay in the project. As such, FILSYSTEMS is still liable for the delay. Hence, the CA made a tempered application of the penalty clause of the Construction Contract. It reduced the liquidated damages awarded by the trial court by half, bringing down FILSYSTEMS' liability to ₱6,172,500.00.

The CA also found that FILSYSTEMS had completed 92.839% of the project, based on the testimony of CCC's own accounting manager,[8] and is, therefore, entitled to ₱10,420,161.17. This also proves, the CA said, that payments by CCC to FILSYSTEMS were also delayed. Hence, the CA held that CCC is liable to pay FILSYSTEMS ₱777,735.00 as liquidated damages.

The CA also modified the trial court's award of ₱50,338,221.61 in favor of CCC, which was allegedly the cost

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[8] *Id.* at 25.

incurred when CCC hired another contractor to finish the project. The CA said that the amount was glaringly disproportionate to the unfinished part of the project. Considering that the unfinished work is equivalent only to 7.161% of the project, the amount FILSYSTEMS should pay must be correspondingly reduced to ₱6,600,723.36.

CCC then filed the first of the two petitions at bar.[9] It assails the part of the CA's Decision holding that FILSYSTEMS is entitled to ₱3.5 million in cement. It claims that the payment of that amount is still subject to final reconciliation of accomplished change orders, additional works, and construction bulletins.[10]

It also argues that the CA erred in reducing the award of liquidated damages, stressing that time is of the essence in the Construction Contract, and that FILSYSTEMS' delay and total failure to complete the project is a clear breach of the Compromise Agreement and renders the essence of time under the Construction Contract moot.[11] Thus, CCC posits that it is entitled to the full amount of liquidated damages.[12]

CCC likewise disputes the finding that it incurred in delay in paying FILSYSTEMS. It avers that nowhere in the Compromise Agreement did it admit that it was in delay; that the Compromise Agreement stated, in fact, that the balance it is to pay FILSYSTEMS would be due only after the completion of the project, a condition never fulfilled because of the latter's breach.[13]

Then, CCC assails the CA's finding that FILSYSTEMS had finished 92.839% of the project, since no evidence was adduced to this effect before FILSYSTEMS was deemed in delay. Instead,

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[9] G.R. No. 176917.

[10] *Rollo* (G.R. No. 176917), p. 45.

[11] *Id.* at 45.

[12] *Id.* at 48.

[13] *Id.*

CCC claims that it was able to show that, because FILSYSTEMS was unable to finish the project, the former was compelled to contract C.E. Construction to complete the same.[14]

Lastly, CCC questions the deletion of the award of attorney's fees. It argues that the Compromise Agreement provided that attorney's fees equivalent to five percent of the total original contract price, plus change orders/additional works/construction bulletins, must be paid by the aggrieved party to the guilty party. Because FILSYSTEMS breached its obligation under the Compromise Agreement, CCC submits that the trial court correctly awarded it ₱4,115,000.00 in attorney's fees.[15]

Hence, CCC prays that this Court partially reverse the CA Decision and affirm the trial court's Decision *in toto*.[16]

Meanwhile, FILSYSTEMS filed its own Petition for Review[17] of the CA Decision.

FILSYSTEMS claims that the CA erroneously considered all infractions committed by CCC prior to the signing of the Compromise Agreement to have been set aside by the said agreement. It points to the CA's failure to appreciate that the former was authorized to suspend work in the event CCC defaulted in the payment of submitted progress billings;[18] thus, FILSYSTEMS was not in delay. On the contrary, it was CCC that was in delay in the payment of FILSYSTEMS' approved progress billings, prompting the latter to invoke its right to stop work in accordance with Article V of the Construction Agreement. According to FILSYSTEMS, CCC's delay totaled 77 days; but the CA refused to grant FILSYSTEMS the equivalent time extension, because the infraction occurred before the Compromise Agreement.[19]

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[14] *Id.* at 49-51.

[15] *Id.* at 52.

[16] *Id.* at 53.

[17] G.R. No. 176919.

[18] *Rollo* (G.R. No. 176919), p. 25.

[19] *Id.* at 27.

Next, FILSYSTEMS posits that the CA misconstrued the Construction Agreement to be on a "turn key" basis, which means that the contractor would initially finance the completion of the project. FILSYSTEMS argues that the agreement was the regular type of construction agreement, where the owner was obligated to pay the contractor periodically based on the percentage of completion of work.[20] FILSYSTEMS emphasized that its refusal to continue working was due to CCC's failure to promptly pay the former's submitted/approved progress billings.[21]

Thus, FILSYSTEMS prays for modification of the CA Decision and the deletion of all monetary awards in favor of CCC.[22]

The resolution of these cases calls for a re-examination of facts. While generally, the Court is not a trier of facts, a recognized exception thereto is a situation where the findings of fact of the Court of Appeals and the trial court are conflicting.[23]

Indeed, the most fundamental rule in the interpretation of contracts is that, if the terms are clear and leave no doubt as to the intention of the contracting parties, the literal meaning of the contract provisions shall control. However, where some ambiguity exists, in order to determine the intention of the parties, their contemporaneous and subsequent acts should be considered.[24]

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[20] *Id.* at 30-31.

[21] *Id.* at 33.

[22] *Id.*

[23] *Santos v. Lumbao*, G.R. No. 169129, March 28, 2007, 519 SCRA 408.

[24] *Agro Conglomerates, Inc. v. Court of Appeals*, 401 Phil. 645, 656 (2000) citing *Manila Surety & Fidelity Co., Inc. vs. Court of Appeals*, G.R. No 55466, December 3, 1990, 191 SCRA 805, 812; citing *Mercantile Ins. Co., Inc. vs. Felipe Ysmael, Jr. & Co. Inc.*, G.R. No. 43862, January 13, 1989, 169 SCRA 66, 74; *GSIS vs. Court of Appeals,* 229 Phil. 320 (1986); *Sy vs. Court of Appeals*, 216 Phil. 110 (1984).

Thus, to resolve the question of default by the parties, we must re-examine the terms of the Construction Contract and the Compromise Agreement.

We sustain the finding of the CA holding CCC to have incurred in default in its payments to FILSYSTEMS.

Records show that CCC admitted it was in default. FILSYSTEMS had already completed 44% of the work at the time the parties entered into a Compromise Agreement. This means that, by the terms of the Construction Contract, FILSYSTEMS should have been paid ₱36,212,000.00. However, CCC admitted having paid only ₱27,006,028.04. Hence, it still owed FILSYSTEMS ₱9,205,971.96. CCC also admitted that it owed FILSYSTEMS ₱3.5 million in cement for accomplished change orders/additional works/construction bulletins.

Conversely, CCC's contention that FILSYSTEMS was in default is bereft of merit.

The right of FILSYSTEMS to stop work is recognized by CCC, as the Construction Contract provides:

ARTICLE V
PAYMENTS

Upon signing of this Contract, the OWNER shall pay the CONTRACTOR a downpayment of twenty six and four over one hundred percent (26.4%) of the Contract Price. The downpayment shall be liquidated by the CONTRACTOR from his monthly progress billings.

Ten percent (10%) of each monthly progress payment shall be retained by the OWNER until fifty (50%) (sic) completion of the contract work. No additional retention shall be made.

The OWNER shall make payment to the CONTRACTOR on account of this Contract thirty (30) days after submission of each progress billing in consideration of the work accomplished by the CONTRACTOR less ten percent (10%) retention and Expanded Withholding Tax (One percent of the gross amount of accomplishment).

As required by Philippine Law, the Contractor's Expanded Withholding Tax withheld from each payment to the CONTRACTOR shall be

transmitted by the OWNER to the Bureau of Internal Revenue in favor of the CONTRACTOR'S TIN Account No. 391-412.

No payments shall be made unless payment requests are on the prescribed form and bear the approval of the Construction Manager of the OWNER and concurred in by the ARCHITECT.

Should the OWNER be delayed in the payment of the monthly billings beyond five (5) days after it is due, the work schedule or timetable shall be extended accordingly. If payment due is delayed for sixty (60) days, then the CONTRACTOR has the right to stop the work.[25]

In addition, in the Compromise Agreement, the parties recognized that the 109 days left in the original time frame was "exclusive of contract time extensions for accomplished and future change orders, additional works and construction bulletins and whatever additional contract time extensions provided in this Agreement and/or already earned or allowed under the original Construction Contract, dated January 23, 1993."[26]

Paragraph 6.b. of the Compromise Agreement is also instructive:

6.b. Defendant, on a best efforts basis and without prejudice to paragraph 6 above, shall finish the construction zones referred to in the Construction Contract dated January 23, 1993 which shall be identified by the plaintiff as priority construction zones, taking into consideration plaintiff's schedule of arrival of machineries and installation thereof on said zones.[27]

The Compromise Agreement must be interpreted as a whole. Its provisions must be construed collectively, and the meaning imputed to them must give effect to all. As this Court has previously pronounced:

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[25] *Rollo* (G.R. No. 176917), p. 108. (emphasis supplied)

[26] *Id.* at 143.

[27] *Id.* at 143-144.

The intention of the contracting parties should be ascertained by looking at the words used to project their intention, that is, *all the words*, not just a particular word or two or more words standing alone. The various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly. The parts and clauses must be interpreted in relation to one another to give effect to the whole. The legal effect of a contract is to be determined from the whole read together.[28]

Thus, FILSYSTEMS must be accorded the time extensions it is entitled to under the Compromise Agreement. As the CA correctly held, it would go against the grain of equity and fair play to insist that FILSYSTEMS was limited to the non-extendible period of 109 days to complete the project, as erroneously found by the trial court.[29]

Further, since CCC is in default, FILSYSTEMS is entitled to liquidated damages, pursuant to Paragraph 9 of the Compromise Agreement, which states:

9. Should any party fail to comply with its obligation(s) as stipulated in this Compromise Agreement and/or violate any provisions of the Construction Contract not otherwise amended, repealed and/or modified as aforestated, the aggrieved party shall be entitled to move for the issuance by this Honorable Court of a writ of execution to enforce the provisions of this Compromise Agreement and/or the Compromise Judgment to be rendered by the court based on this Compromise Agreement. In this connection, the guilty party hereby undertakes to pay the aggrieved party additional liquidated damages in the amount equivalent to fifteen percent (15%) of the total original contract price of ₱82,300,000.00 and attorney's fees equivalent to five percent (5%) of the total original contract price plus change orders/additional works/ construction bulletins.[30]

However, we find that the CA erred in its computation of the liquidated damages CCC should pay FILSYSTEMS. In

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[28] *Villamaria, Jr. v. Court of Appeals*, G.R. No. 165881, April 19, 2006, 487 SCRA 571, 593. (citations omitted)

[29] *Rollo* (G.R. No. 176917), p. 22.

[30] *Id.* at 145.

its Decision, the CA computed the liquidated damages as follows:

> The original cost of the project is Php82,300,000.00 while the additional works, as conceded by CCC' (sic) 31 August 1994 letter, is approximately 12% of the original project cost. Thus, the total project cost is PhP92,176,000.00. Considering that CCC was entitled to retain 10% of the first half of the construction cost, it was entitled to retain PhP4,608,800.00. Against the PhP10,420,161.17 CCC concededly owed FILSYSTEMS, the latter was underpaid by Php5,811,361.17 or by 6.3% of the total project cost. As such, CCC must be made to 6.3% of the full liquidated damages under the Compromise Agreement at PhP12,345,000.00. Hence, CCC is liable to pay FILSYSTEMS liquidated damages in the amount of PhP777,735.00.[31]

This computation has no basis. The Compromise Agreement clearly stated that any liquidated damages due will be "fifteen percent (15%) of the total original contract price of ₱82,300,000.00" regardless of any additional costs incurred by the parties. Thus, FILSYSTEMS is entitled to ₱12,345,000.00.

We likewise sustain the CA's decision holding CCC liable for ₱3.5 million in accomplished change orders and additional works.

Paragraph 7 of the Compromise Agreement reads in part:

> x x x It is understood that should the parties fail to reconcile the accomplished change orders, additional works and construction bulletins within the 15-day period, just the same, plaintiff (CCC) shall immediately pay defendant the approximate amount of ₱3.5 Million in cement, subject to final reconciliation not later than thirty (30) days from signing of this Agreement. x x x

It is erroneous for CCC to claim that it is to pay the ₱3.5 million only after reconciliation. As the CA aptly held:

> With this, CCC cannot simply dismiss the said ₱3.5 Million as being a mere "assigned value" for it is very clear that if the parties

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[31] *Id.* at 26.

fail to reconcile the accomplished additional works within fifteen (15) days from the signing of the Compromise Agreement, CCC must still pay the said amount, which is the determined value of the change orders admitted in paragraphs 1 (a) and 7 of the Compromise Agreement. Thus, it is incorrect for CCC to expect that it must first be billed and approved by CCC and CC Castro International before it can be required to pay for this procedure applies to the subsequent additional works done after the signing of the Compromise Agreement.[32]

CCC itself recognized that it was liable to pay this amount to FILSYSTEMS in paragraph 1 (a) of the Compromise Agreement when it acknowledged the latter's accomplished change orders/additional works and construction bulletins in the approximate amount of ₱3.5 million.

Had it been the parties' intention to make the payment subject to reconciliation, it would have been unnecessary to put the above-quoted portion in paragraph 7 of the Compromise Agreement. The intent, to our mind, is simple, *i.e.*, that even if there is no reconciliation within 15 days, CCC will still pay – "just the same" – FILSYSTEMS ₱3.5 million in cement "subject to final reconciliation." The reconciliation will come after the payment and not before.

FILSYSTEMS next argues that the CA erred in interpreting the Construction Contract as a "turn key" agreement[33] and not a regular type of construction agreement, where the owner is obligated to pay the contractor periodically based on percentage of completion, which, in this case, would be within 30 days from submission of each billing progress.[34]

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

[33] A *turnkey* (or *turn-key*) is defined as pertaining to, or resulting from, an arrangement under which a private contractor designs and constructs a project, building, *etc*., for sale when completely ready for occupancy or operation.<*http://dictionary.reference.com/browse/turn key*> (visited July 24, 2009).

[34] *Rollo* (G.R. No. 176919), p. 31.

The CA based its conclusion on Article 1 (Scope of Work) of the contract, which reads in part:

That the CONTRACTOR, for and in consideration of the payment to be made by the CONTRACTOR of the sum of money hereinafter stated, shall construct/perform and erect on a **turnkey basis** the following scope of work: x x x[35]

This denomination of the nature of the project notwithstanding, there is a specific provision in the agreement to the effect that the owner shall pay the contractor "on account of this contract thirty (30) days after submission of each progress billing in consideration of the work accomplished by the contractor less ten percent (10%) retention and Expanded Withholding Tax."[36] Further, that same article in the contract provides that delay by CCC in the payment of the monthly billings beyond five days after they are due entitles FILSYSTEMS to an extension of the work schedule. If the delay in payment extends to 60 days, FILSYSTEMS may then exercise the right to stop the work.[37] This was precisely what FILSYSTEMS did. Thus, it cannot be said to have violated the terms of the contract.

Still, FILSYSTEMS cannot fully escape liability. It is a fact – and FILSYSTEMS does not deny this – that it failed to finish the project, in contravention of its obligation under the Construction Contract and the Compromise Agreement.

The CA held that FILSYSTEMS failed to prove that the delay it incurred was attributable to CCC's failure to deliver the ₱3.5 million payment in cement.[38] It also held that FILSYSTEMS could not unilaterally declare or claim the time extensions in order to excuse itself or justify the delay in the project.[39]

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[35] *Rollo* (G.R. No. 176917), p. 105.

[36] *Rollo* (G.R. No. 176917), paragraph 3, Article V, Construction Contract, p. 108.

[37] *Id.*, paragraph 6, Article V, p. 108.

[38] *Id.* at 20.

[39] *Id.* at 24.

We agree with the CA.

FILSYSTEMS has not shown that it was CCC's delay that caused the former to fail to complete the project. On the contrary, it appears that despite CCC's delays, FILSYSTEMS was able to accomplish 92.83% of the work. This proves that the completion of the project was not entirely dependent on CCC's payment – or *prompt* payment – of its obligation. FILSYSTEMS' failure to finish the project is, therefore, unjustified. Accordingly, it must be held liable for the cost of completing the project. Article 1167 of the Civil Code provides:

> Art. 1167. If a person obliged to do something fails to do it, the same shall be executed at his cost.
>
> This same rule shall be observed if he does it in contravention of the tenor of the obligation. Furthermore, it may be decreed that what has been poorly done be undone.

We do not believe, however, that FILSYSTEMS should be made to pay the entire cost CCC paid to CE Construction, which finished the project.

It has been shown that at the time FILSYSTEMS stopped work, the project was 92.83% finished, although such work was accomplished beyond the initial deadline of 23 January 1993. But, as already discussed above, FILSYSTEMS was entitled to time extensions equivalent to the delay in the payment of its progress billings. Hence, FILSYSTEMS must be held liable only for the remaining 7.17% of the project. To make it answer for more would unjustly enrich CCC, which has already benefited from the former's work.

Finally, the issue of attorney's fees. We sustain the CA's deletion of the trial court's award thereof, because both parties failed to comply with their obligations as stipulated in the Compromise Agreement.[40]

In sum, we hold that CCC defaulted in the payment of its obligation to FILSYSTEMS under the Compromise Agreement.

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[40] *Id.*, paragraph 9, Compromise Agreement, p. 145.

On the other hand, FILSYSTEMS was not in default; however, considering that it failed to perform the obligation incumbent upon it under the Compromise Agreement, it must be held liable for the cost of completion of the unfinished portion of the project.

WHEREFORE, the foregoing premises considered, the Petition in G.R. No. 176917 is *DENIED* for lack of merit, while the Petition in G.R. No. 176919 is *PARTIALLY GRANTED*. Accordingly, the Court of Appeals' Decision dated October 20, 2006 in CA G.R. CV No. 71593 is hereby *PARTIALLY MODIFIED* to read:

WHEREFORE, the instant appeal is AFFIRMED with MODIFICATIONS:

(1) Appellant FILSYSTEMS is hereby ordered to pay appellee CCC the sum of six Million Six hundred Thousand Seven Hundred Twenty-Three Pesos and Thirty-Six Centavos (PhP6,600,723.36) as the cost of finishing CCC's expansion cement plant, plus legal interest at the rate of 6% per annum from the time of the filing of CCC's Motion for Execution of the Compromise Agreement before the trial court and, thereafter, at the rate of 12% from the finality of this Decision until the same is fully paid;

and

(2) Appellee CCC is hereby ordered to pay appellant FILSYSTEMS the following:

(a) The sum of Ten Million Four Hundred Twenty Thousand One Hundred Sixty-One Pesos and Seventeen Centavos (PhP10,420,161.17) as the amount still due the latter based on the parties' reconciliatory talks, plus legal interest at the rate of 6% per annum from the time of the filing of FILSYSTEMS' Motion for Execution of the Compromise Agreement before the trial court and, thereafter, at the rate of 12% from the finality of this Decision until the same is fully paid;

(b) The sum of Twelve Million Three Hundred Forty-Five Thousand Pesos (PhP12,345,000.00) as liquidated damages, plus legal interest at the rate of 6% per annum from the time of the filing of FILSYSTEMS' Motion for Execution of the

Compromise Agreement, before the trial court and, thereafter, at the rate of 12% from the finality of this Decision until the same is fully paid.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 178797. August 4, 2009]

METROPOLITAN BANK AND TRUST CO., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. **TAXATION; NATIONAL INTERNAL REVENUE CODE; DOCUMENTARY STAMP TAX (DST); DST ON CERTIFICATES OF DEPOSITS BEARING INTEREST; THE DECISION OF THE COURT IN *BANCO DE ORO UNIVERSAL BANK VS. COMMISSIONER OF INTERNAL REVENUE* IS AN AUTHORITATIVE PRECEDENT AND NOT A MERE *OBITER DICTUM*.—** The Court resolved the *BDO case* on **both** procedural and substantive grounds. The declaration of the Court in the *BDO case* – that the Petition therein should be denied because the CTA *en banc* committed no reversible error in rendering its assailed decision – was purposely and categorically made. An additional reason in a decision (or in this case, a resolution), brought forward after the case has been disposed of on one ground, is not to be regarded as *dicta*. So, also, where a case presents two or more points, any one of which is sufficient to determine the ultimate issue, but the court actually decides all such points, the case becomes an authoritative precedent as to every point decided; none of

such points can be regarded as having the status of a *dictum*, and one point should not be denied authority merely because another point was more dwelt on and more fully argued and considered; nor does a decision on one proposition make statements of the court regarding other propositions *dicta*. Hence, if according to the *BDO case*, the special savings account of BDO (*i.e.*, Investment Savings Account [ISA], covered by a passbook), is a certificate of deposit bearing interest, which is subject to DST under Section 180 of the NIRC; then the identical product of Metrobank (*i.e.*, UNISA) should likewise be subject to DST.

2. **ID.; ID.; ID.; ID.; ASSESSMENT OF THE COMMISSIONER OF INTERNAL REVENUE FOR DEFICIENCY DOCUMENTARY STAMP TAX AGAINST PETITIONER BANK IS PROPER; THE SUBJECT UNIVERSAL SAVINGS ACCOUNT (UNISA) OF PETITIONER BANK IS A CERTIFICATE OF DEPOSIT BEARING INTEREST SUBJECT TO DOCUMENTARY STAMP TAX.—** Given that the *IEB case* and the present case substantially involve the same facts and arguments, then the 4 April 2007 Decision in the former serves as a judicial precedent in the latter. The averment of Metrobank in the instant Petition that the judgment in the *IEB case* is still not final, since IEB filed a Motion for Reconsideration of the same, is no longer true. The Court denied with finality the Motion for Reconsideration of IEB in a Resolution dated 1 August 2007 and, accordingly, entry of judgment has been made in the *IEB case* on 15 January 2008. In a more recent case, *Philippine Banking Corporation (Now: Global Business Bank, Inc.) v. Commissioner of Internal Revenue* (*PBC case*), the Court again considered the Special/Super Savings Deposit Account (SSDA) of PBC, evidenced by a passbook, as a certificate of deposit bearing interest on which DST under Section 180 of the NIRC could be imposed, citing both the *BDO case* and the *IEB case*. In the absence of any compelling reason, the Court cannot depart from the foregoing jurisprudence. There can be no doubt that the UNISA – the special savings account of Metrobank, granting a higher tax rate to depositors able to maintain the required minimum deposit balance for the specified holding period, and evidenced by a passbook – is a certificate of deposit bearing interest, already subject to DST even under the then Section 180 of the NIRC. Hence, the assessment by

the CIR against Metrobank for deficiency DST on the UNISA for 1999 was only proper.

3. **ID.; ID.; REPUBLIC ACT NO. 9480 (TAX AMNESTY LAW OF 2007); TAX AMNESTY; EXPLAINED.—** A tax amnesty is a general pardon or the intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of violation of a tax law. It partakes of an **absolute waiver** by the government of its right to collect what is due it and to give tax evaders who wish to relent a chance to start with a clean slate. A tax amnesty, much like a tax exemption, is never favored or presumed in law. The grant of a tax amnesty, similar to a tax exemption, must be construed strictly against the taxpayer and liberally in favor of the taxing authority.

4. **ID.; ID.; RELIANCE OF THE COMMISSIONER OF INTERNAL REVENUE ON PARAGRAPHS (a) AND (f) OF SECTION 8 OF REPUBLIC ACT NO. 9480 TO OPPOSE THE AVAILMENT BY PETITIONER BANK OF THE TAX AMNESTY PROGRAM IS UNTENABLE.—** In his Comment on the Manifestation of Metrobank, the CIR asserts that: (1) Metrobank is merely a withholding agent for the depositors with respect to the DST on the UNISA, so it is disqualified from availing itself of the tax amnesty following Section 8(a) of Republic Act No. 9480; (2) the assessment against Metrobank for the deficiency DST for 1999 already attained finality, and it no longer qualifies for tax amnesty pursuant to Section 8(f) of Republic Act No. 9480; and (3) deficiency in DST is not covered by the tax amnesty under Republic Act No. 9480. The reliance by the CIR on paragraphs (a) and (f) of Section 8 of Republic Act No. 9480 to oppose the availment by Metrobank of the Tax Amnesty Program is untenable. This is the first time that the CIR has alleged that Metrobank is only a withholding agent for the DST on the UNISA. As pointed out by Metrobank, it was assessed by the CIR, not as a withholding agent that failed to withhold and/or remit the DST on the UNISA for 1999, but as one that was directly liable for the said tax and failed to pay the same. The CIR did not provide the basis, whether in law or administrative issuances, for its averment that Metrobank was a withholding agent for the DST on the UNISA. In contrast, it is clear from Section 3 of Revenue Regulations No. 9-2000 that a bank shall be responsible for the payment and remittance of the DST prescribed under Title VII of the NIRC; and unless

it is exempt from said tax, then it shall remit the same only as a collecting agent of the CIR. There has never been any allegation made in this case that Metrobank is exempt from the DST on the UNISA and, thus, it is tasked to remit the said tax only as a collecting agent. The standing presumption, therefore, is that Metrobank is directly liable for the payment and remittance of the DST on the UNISA.

5. **ID.; ID.; ID.; ID.; THE ASSESSMENT IS NOT YET FINAL AND EXECUTORY AND SUFFICIENT DOCUMENTS WERE SUBMITTED BY PETITIONER BANK TO ENABLE THE COMMISSIONER OF INTERNAL REVENUE TO RENDER A DECISION ON THE PROTEST.—** Neither is there any merit in the insistence of the CIR that Assessment No. DST-2-99-000022 is already final and executory in light of the failure of Metrobank, *firstly*, to submit all the relevant supporting documents within 60 days from filing of its protest with the CIR; and, *secondly*, to appeal to the CTA the inaction of the CIR on its protest within 30 days from the lapse of the 180-day period as provided in Section 228 of the NIRC. The Court cannot simply accept the allegation of the CIR that Metrobank failed to submit the relevant supporting documents within 60 days from the filing of its protest on 17 January 2003, when the CIR does not even identify what these documents are. If the Court does not know what particular documents Metrobank purportedly failed to submit in support of its protest, then the Court likewise cannot make a determination on the relevance of such documents. In addition, there appear to be sufficient documents submitted by Metrobank to the CIR to have enabled the latter to render on 2 March 2004 a Decision on the protest of the former.

6. **ID.; ID.; ID.; ID.; THE VERY FACT THAT THE INSTANT CASE IS SUBJECT OF THE PRESENT PROCEEDINGS IS PROOF ENOUGH THAT IT HAS NOT REACHED A FINAL AND EXECUTORY STAGE AS TO BE BARRED FROM THE TAX AMNESTY UNDER REPUBLIC ACT NO. 9680.—** Per the computation of the CIR, the 180-day period for the CIR to act on the protest of Metrobank ended on 13 September 2003, and the 30-day period for Metrobank to file an appeal with the CTA ended on 13 October 2003. If, indeed, Assessment No. DST-2-99-000022 became final and executory when the bank failed to file an appeal with the CTA by 13 October

2003, why then did the CIR even bother with resolving the protest of Metrobank against the said assessment and rendering a Decision thereon on 2 March 2004? That the CIR issued a Decision on 2 March 2004 denying the protest of Metrobank belies its own assertion herein that the assessment subject of the protest became final and executory after 13 October 2003. It also bears to stress that both the CTA Second Division and the CTA *en banc* took cognizance of the successive appeals of Metrobank, resolving both appeals on their merits without regard to the supposed finality of the appealed assessment. As argued by Metrobank, the very fact that the instant case is still subject of the present proceedings is proof enough that it has not reached a final and executory stage as to be barred from the tax amnesty under Republic Act No. 9480.

7. **ID.; ID.; ID.; ID.; THE ASSERTION OF THE COMMISSIONER OF INTERNAL REVENUE THAT DEFICIENCY DOCUMENTARY TAX IS NOT COVERED BY THE TAX AMNESTY PROGRAM UNDER REPUBLIC ACT NO. 9480 IS DOWNRIGHT SPECIOUS.—** The assertion of the CIR that deficiency DST is not covered by the Tax Amnesty Program under Republic Act No. 9480 is downright specious. To avail itself of the tax amnesty, Metrobank paid 5% of the resulting increase in its networth, following the amendment of its statement of assets and liabilities as of 31 December 2005, to include therein previously undeclared assets and/or liabilities. The submission of the CIR that the foregoing payment by Metrobank of the amnesty tax "relates only to a determination of [Metrobank]'s revised taxable income, and does not delve on its unrecognized documentary stamp tax liabilities" is rebuffed by the all-encompassing words of Republic Act No. 9480 that those who availed themselves of the tax amnesty, by paying the amnesty tax and complying with all of its conditions, "shall be immune from the payment of **taxes, as well as addition thereto**, and the appurtenant civil, criminal or administrative penalties under the National Internal Revenue Code of 1997, as amended, arising from the failure to pay **any and all internal revenue taxes for taxable year 2005 and prior years**." The Court has absolutely no basis to limit the immunity, resulting from the payment by Metrobank of the amnesty tax, only to income tax, and to exclude DST therefrom.

8. **ID.; ID.; ID.; ID.; THE APPLICATION FOR TAX AMNESTY OF PETITIONER BANK UNDER REPUBLIC ACT NO. 9480 COVERED ALL NATIONAL INTERNAL REVENUE TAXES FOR 2005 AND PRIOR YEARS; THE MERGER OF PETITIONER BANK AND *PHILIPPINE BANKING CORPORATION* (PBC) WITH PETITIONER AS THE SURVIVING ENTITY, RESULTED IN THE ABSORPTION OF THE TAX LIABILITIES OF PBC FOR 2005 AND PRIOR YEARS BY PETITIONER BANK AND ARE DEEMED INCLUDED IN THE APPLICATION OF THE SUBJECT TAX AMNESTY.—** Also worthy of note is the fact that this Court, in the *PBC case*, made its own determination that Metrobank was entitled to the tax amnesty under Republic Act No. 9480. PBC and Metrobank merged, with Metrobank as the surviving entity. The tax liabilities of PBC for 2005 and prior years were absorbed by Metrobank and were, thus, deemed included in the application for tax amnesty filed by Metrobank. The Court found in the *PBC case* that: **Records show that Metrobank, a qualified tax amnesty applicant, has duly complied with the requirements enumerated in RA 9480, as implemented by DO 29-07 and RMC 19-2008**. Considering that the completion of these requirements shall be deemed full compliance with the tax amnesty program, the law mandates that the taxpayer shall thereafter be immune from the payment of taxes, and additions thereto, as well as the appurtenant civil, criminal or administrative penalties under the NIRC of 1997, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years. Metrobank filed only one application for tax amnesty under Republic Act No. 9480, since it already covered all national internal revenue taxes for 2005 and prior years. Hence, the factual determination made by the CTA *en banc* in C.T.A. EB No. 269 and by this Court in the *PBC case* – that Metrobank had complied with the requirements for its application and was qualified for the tax amnesty under Republic Act No. 9480 – is binding on this Court, involving as it does the very same application for tax amnesty of Metrobank being invoked herein. Therefore, by virtue of the availment by Metrobank of the Tax Amnesty Program under Republic Act No. 9480, it is already immune from the payment of taxes, including the deficiency DST on the UNISA for 1999, as well as the addition thereto.

APPEARANCES OF COUNSEL

Law Firm of Conlu Yabut and Associates for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.:*

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court seeking the reversal and setting aside of the Decision[1] dated 21 May 2007 and Resolution[2] dated 9 July 2007 of the Court of Tax Appeals (CTA) *en banc* in C.T.A. E.B. No. 247. The CTA *en banc* affirmed the assessment by the Bureau of Internal Revenue (BIR) against petitioner Metropolitan Bank and Trust Co. (Metrobank) for deficiency Documentary Stamp Tax (DST) for taxable year 1999.

There is no dispute as to the antecedent facts of this case.

Metrobank is a domestic corporation and a duly licensed banking institution. It offers to the public a product called the Universal Savings Account (UNISA). UNISA is for a depositor able to maintain a savings deposit with Metrobank with substantial average daily balance. A depositor is entitled to a higher interest rate in a UNISA, than in a regular savings account. When a depositor opens a UNISA, he/she is issued a passbook by Metrobank. The depositor may withdraw from his/her UNISA anytime. However, to be entitled to the preferential interest rate, the depositor must be able to conform to the stated minimum deposit balance for the specified holding period for the UNISA, otherwise, his/her account will revert to a regular savings account.

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[1] Penned by Associate Justice Olga Palanca-Enriquez with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, and Caesar A. Casanova, concurring; *rollo*, pp. 74-91.

[2] *Id.* at 92-93.

Pursuant to Letter of Authority No. LOA 2000 00052501 dated 26 June 2001, the BIR investigated Metrobank for its Gross Receipts Tax (GRT), Final Withholding Tax (FWT), and DST liabilities for 1999. As a result of said investigation, respondent Commissioner of Internal Revenue (CIR), through Edwin R. Abella (Abella), Assistant Commissioner of the Large Taxpayers Service (ACIR-LTS) of the BIR, issued on 30 September 2002, a Pre-Assessment Notice (PAN)[3] assessing Metrobank for deficiency DST on its UNISA for 1999, based on Section 180 of the National Internal Revenue Code (NIRC). Said DST deficiency of Metrobank for 1999, together with surcharge and interest, amounted to ₱473,207,457.97, per the following calculation in the PAN:

Special Savings Account or UNISA		170,980,990,473.33
Rate of Tax (Sec. 180 NIRC)		0.15%
Basic DST Due		256,471,485.71
Add: Surcharge	64,117,871.43	
Interest until 12/31/02	152,618,100.54	216,735,971.97
TOTAL AMOUNT DUE		**473,207,457.97**

Metrobank filed with ACIR-LTS Abella on 11 December 2002 a protest to the PAN.[4] Metrobank argued that its UNISA should not be subject to DST and it should not be made liable for the 25% surcharge on its alleged deficiency DST for 1999.

On 7 January 2003, ACIR-LTS Abella issued Assessment No. DST-2-99-000022 and a Formal Letter of Demand[5] to Metrobank, requesting the latter to pay the deficiency DST on the UNISA for 1999, together with surcharge, interest, and compromise penalty, in the total amount of ₱477,588,959.62, computed as follows:

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[3] *Id.* at 165-167.

[4] *Id.* at 168-170.

[5] *Id.* at 171-173.

ASSESSMENT NO. DST-2-99-000022

Universal Savings Account (UNISA)			
(Gross Amount)			Php 170,980,990,473.33
Rate of Tax (Sec. 180 NIRC)			0.15%
Basic DST Due			256,471,485.71
Add:			
Surcharge	Php	64,117,871.42	
Interest (1/10/00-1/31/03)		156,974,602.49	
Compromise Penalty		25,000.00	221,117,473.91
Total DST Deficiency	**Php**		**477,588,959.62**

Metrobank filed with the CIR on 17 January 2003 a protest against Assessment No. DST-2-99-000022. Said protest was denied by the CIR in a Decision[6] dated 2 March 2004, the *fallo* of which reads:

WHEREFORE, predicated on all the foregoing, METROBANK's protest against Assessment Notice No. DST-2-99-000022 is hereby DENIED. Consequently, METROBANK is hereby ordered to pay the total amount of ₱477,588,959.62, as deficiency documentary stamp tax for the taxable year 1999, plus increments that have legally accrued thereon until the actual date of payment, to the Large Taxpayer's Service, BIR National Office Building, Diliman, Quezon City, within thirty (30) days from receipt hereof; otherwise, collection thereof will be effected through the summary remedies provided by law.

This constitutes the Final Decision of this Office on the matter.

Petitioner filed a Petition for Review with the CTA on 21 April 2004. The Petition was docketed as C.T.A. Case No. 6955, and raffled to the CTA Second Division. The CTA Second Division failed to find merit in the Petition of Metrobank and, thus, decreed in its Decision[7] dated 1 September 2006:

WHEREFORE, the Petition for Review is hereby **DISMISSED** for lack of merit. The Decision of the [CIR] dated March 2, 2004

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[6] *Id.* at 160-164.

[7] Penned by Associate Justice Erlinda P. Uy with Associate Justices Juanito C. Castañeda, Jr. and Olga Palanca-Enriquez, concurring; *id.* at 126-140.

is hereby **AFFIRMED** with modifications. The compromise penalty of ₱25,000.00 is hereby **CANCELLED** there being no mutual agreement arrived at between the parties.

Accordingly, [Metrobank] is **ORDERED TO PAY** the [CIR] the amount of ₱477,563,959.62 representing deficiency documentary stamp taxes for the taxable year 1999, computed as follows:

Basic Tax	₱ 256,471,485.71
Add: 25% Surcharge	64,117,871.42
Interest	156,974,602.49
	₱ 477,563,959.62

In addition, [Metrobank] is **ORDERED TO PAY** 20% delinquency interest on the amount of ₱477,563,959.62 computed from April 26, 2004 until full payment thereof, pursuant to Section 249(C) of the National Internal Revenue Code of 1997.

The Motion for Reconsideration of Metrobank was denied by the CTA Second Division in a Resolution[8] dated 3 January 2007.

Metrobank thereafter filed a Petition for Review with the CTA *en banc*, docketed as C.T.A. E.B. No. 247. In a Decision promulgated on 21 May 2007, the CTA *en banc* affirmed the Decision dated 1 September 2006 and Resolution dated 3 January 2007 of the CTA Second Division in C.T.A. Case No. 6955, and dismissed the Petition of Metrobank. According to the CTA *en banc*, the decisive issue of whether special savings accounts evidenced by passbooks, such as the UNISA of Metrobank, were subject to DST under Section 180 of the NIRC, had already been resolved in the affirmative by this Court in its Resolution dated 15 January 2007 in *Banco de Oro Universal Bank v. Commissioner of Internal Revenue* (*BDO case*)[9] and its Decision dated 4 April 2007 in *International Exchange Bank v. Commissioner of Internal Revenue* (*IEB case*).[10]

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[8] *Id.* at 141-146.

[9] G.R. No. 173602 (Resolution).

[10] G.R. No. 171266, 520 SCRA 688.

The CTA *en banc* denied the Motion for Reconsideration of Metrobank in a Resolution dated 9 July 2007.

Hence, Metrobank comes before this Court *via* the present Petition, raising the sole issue of whether the UNISA was subject to DST in 1999 under Section 180 of the NIRC, prior to the amendment thereof by Republic Act No. 9243, which took effect on 20 May 2004.

I

Prior to Republic Act No. 9243, Section 180 of the NIRC imposed DST on the following documents or instruments:

> SEC. 180. *Stamp Tax on all Bonds, Loan Agreements, Promissory Notes, Bills of Exchange, Drafts, Instruments and Securities Issued by the Government or Any of its Instrumentalities, Deposit Substitute Debt Instruments,* ***Certificates of Deposits Bearing Interest and Others Not Payable on Sight or Demand.*** – On all bonds, loan agreements, including those signed abroad, wherein the object of the contract is located or used in the Philippines, bills of exchange (between points within the Philippines), drafts, instruments and securities issued by the Government or any of its instrumentalities, deposit substitute debt instruments, **certificates of deposits drawing interest**, orders for the payment of any sum of money otherwise than at sight or on demand, on all promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of Thirty centavos (₱0.30) on each Two hundred pesos (₱200), or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit, or note: x x x (Emphases ours.)

It is beyond question that a certificate of deposit issued by a bank for a time deposit was subject to DST under Section 180 of the NIRC. The CIR treated the UNISA of Metrobank like a time deposit, although a passbook is issued for the former, rather than a certificate of deposit. The CIR pointed out that in order to be entitled to the premium rate for UNISA, the depositor, just like in a time deposit, must wait for the holding period to expire before making the withdrawal. This constitutes a restriction on the depositor's right to withdraw from his deposit prior to the expiration of the holding period. Although the

passbook issued by Metrobank for UNISA is not in the form of certificate nor is it labeled as such, it has a fixed maturity date and earns premium interest. Given the nature and substance of the passbook issued by Metrobank for UNISA, it is, for all intents and purposes, a certificate of deposit earning interest, which is subject to DST.

Metrobank opposes the assessment against it for deficiency DST on the UNISA for 1999 because the passbook issued for such an account was not among the documents subject to DST enumerated in Section 180 of the NIRC, prior to its amendment by Republic Act No. 9243. Section 180 of the NIRC imposed DST only on a certificate of deposit bearing interest that is **not** payable on sight or demand, such as the certificate issued by a bank for a time deposit.

Metrobank explains that a UNISA is not the same as a time deposit account. It is a new product developed by Metrobank after the removal of interest ceilings on both savings and time deposits. It offers the flexibility of a savings deposit account by doing away with the rigidity of a time deposit account, but with interest rate on par with the latter. A time deposit can be distinguished from a UNISA by the following features: (1) in a time deposit account, the depositor agrees that the bank shall keep the money for a fixed period; in a UNISA, the depositor can make withdrawals anytime, just like an ordinary savings account; to be entitled to the preferential interest rate for UNISA, however, the depositor must maintain the required minimum deposit balance within the specified holding period; (2) a time deposit account is evidenced by a certificate of deposit; on the other hand, a UNISA is covered by a passbook; (3) for renewal, the certificate issued for a time deposit has to be formally surrendered upon maturity, while the passbook issued for UNISA need not be renewed in the same manner; and (4) the withdrawal of the money from a time deposit account before the expiration of the fixed period would mean the pretermination of said account; in comparison, there can be no pretermination of a UNISA, since the account simply reverts to an ordinary savings account in case the depositor makes a withdrawal, which would

result in non-compliance with the required maintaining balance or holding period for UNISA.

Metrobank further insists that to be taxable under Section 180 of the NIRC, the certificate of deposit must be negotiable. It must be payable to the depositor, to his order, or to some other person or his order. A passbook, by all accounts, is not negotiable. It is merely a paper book issued by a bank or savings institution to a depositor to record deposits to, withdrawals from, and interest earned by a savings account.

Finally, Metrobank refers to the deliberations of both Houses of Congress on the precursor bills for Republic Act No. 9243. According to Metrobank, records of said deliberations reveal that the legislators acknowledged the existence of a loophole in Section 180 of the NIRC, as it was then worded, by virtue of which, banks offering special savings accounts, with high interest rates and specified holding periods, evidenced by passbooks instead of certificates of deposit, escape payment of DST. Thus, the legislators deemed it necessary to amend Section 180 of the NIRC through Republic Act No. 9243. Re-numbered as Section 179, the amended provision now reads:

SEC. 179. *Stamp Tax on All Debt Instruments.* – On every original issue of debt instruments, there shall be collected a documentary stamp tax on One peso (₱1.00) on each Two hundred pesos (₱200), or fractional part thereof, of the issue price of any such debt instruments: *Provided,* That for such debt instruments with terms of less than one (1) year, the documentary stamp tax to be collected shall be of a proportional amount in accordance with the ratio of its term in number of days to three hundred sixty-five (365) days: *Provided, further,* That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan.

For purposes of this section, the term debt instrument shall mean instruments representing borrowing and lending transactions including but not limited to debentures, certificates of indebtedness, due bills, bonds, loan agreements, including those signed abroad wherein the object of contract is located or used in the Philippines, instruments and securities issued by the government of any of its instrumentalities, deposit substitute debt instruments, **certificates or other evidences of deposits that are either drawing interest significantly higher**

than the regular savings deposit taking into consideration the size of the deposit and the risks involved or drawing interest and having a specific maturity date, orders for payment of any sum of money otherwise than at sight or on demand, promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation. (Emphasis ours.)

Metrobank posits that only after Republic Act No. 9243 amended the NIRC on 20 March 2004, did the UNISA of Metrobank become subject to DST under the aforequoted Section 179.

The Court agrees with the CTA *en banc* that the pivotal issue in this case had been squarely resolved in the *BDO case* and the *IEB case*, which involved assessments issued by the BIR against the banks BDO and IEB for DST on their respective special savings accounts, closely similar to the UNISA of Metrobank.

In the *BDO case*, this Court dismissed the Petition for Review on *Certiorari* of BDO for the latter's failure to submit a verified statement of the dates of receipt of the assailed judgment and filing of the motion for reconsideration, as required by Sections 4(b) and 5, Rule 45, in relation to Section 5(d), Rule 56, of the Revised Rules of Court. Yet, the Court also declared that even without the technical lapse of BDO, the Petition of said bank should still be denied, there being no reversible error committed by the CTA *en banc* when the latter ruled as follows:

On April 7, 2006[,] the CTA *en banc* rendered the herein challenged decision affirming the findings of its First Division that **petitioner's ISA is the equivalent of the certificate of deposit and which would make it subject to documentary stamp tax under Section 180 of the NIRC**.

The CTA *en banc* likewise declared [t]hat in practice, a time deposit transaction is covered by a certificate of deposit while petitioner's ISA transaction is through a passbook. **Despite the differences in the form of the documents, the CTA *en banc* ruled that a time deposit and ISA have essentially the same attributes and features.** It explained that like time deposit, ISA transactions bear a fixed term or maturity because the bank acknowledges receipt of a sum of money

on deposit which the bank promises to pay the depositor, bearer or to the order of a bearer on a specified period of time. Section 180 of the 1997 NIRC does not prescribed the form of a certificate of deposit. It may be any "written acknowledgement by a bank of the receipt of money on deposit." **The definition of a certificate of deposit is all encompassing to include a savings account deposit such as ISA.**

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Dedicated exclusively to the study and consideration of tax problems, the CTA has necessarily developed an expertise in the subject of taxation that this Court has recognized time and again. For this reason, the findings of fact of a division of the CTA, particularly when affirmed *en banc*, are generally conclusive on this Court absent grave abuse of discretion or palpable error, which are not present in this case.[11] (Emphases ours.)

Metrobank avers that the Petition in the *BDO case* was dismissed on a matter of procedure, and that the declaration made by the Court on the merits of the same constitutes *obiter dictum*,[12] which should not bind the Court in its resolution of the case at bar.

The Court is not persuaded. The Court resolved the *BDO case* on **both** procedural and substantive grounds. The declaration of the Court in the *BDO case* – that the Petition therein should be denied because the CTA *en banc* committed no reversible error in rendering its assailed decision – was purposely and categorically made. An additional reason in a decision (or in this case, a resolution), brought forward after the case has been disposed of on one ground, is not to be regarded as *dicta*. So,

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[11] *Banco de Oro Universal Bank v. Commissioner of Internal Revenue, supra* note 9.

[12] A *dictum* is an opinion of a judge that does not embody the resolution or determination of the court, and is made without argument or full consideration of the point, not the proffered, deliberate opinion of the judge himself. It is not necessarily limited to issues essential to the decision, but may also include expressions of opinion that are not necessary to support the decision reached by the court. Mere *dicta* are not binding under the doctrine of *stare decisis*. (*Ayala Corporation v. Rosa-Diana and Realty Development Corporation*, 400 Phil. 511, 523 [2000].)

also, where a case presents two or more points, any one of which is sufficient to determine the ultimate issue, but the court actually decides all such points, the case becomes an authoritative precedent as to every point decided; none of such points can be regarded as having the status of a *dictum*, and one point should not be denied authority merely because another point was more dwelt on and more fully argued and considered; nor does a decision on one proposition make statements of the court regarding other propositions *dicta*.[13]

Hence, if according to the *BDO case*, the special savings account of BDO (*i.e.*, Investment Savings Account [ISA], covered by a passbook), is a certificate of deposit bearing interest, which is subject to DST under Section 180 of the NIRC; then the identical product of Metrobank (*i.e.*, UNISA) should likewise be subject to DST.

The Court was able to more thoroughly consider and address in the *IEB case* the very same arguments raised herein by Metrobank.

Just as in the *BDO case*, the Court held in the *IEB case* that a passbook issued by a bank, representing an interest-earning deposit account, qualifies as a certificate of deposit drawing interest, which is subject to DST.[14]

The Court, in the *IEB case*, referred to the definition of a certificate of deposit in *Far East Bank and Trust Company v. Querimit*,[15] *viz*:

> A certificate of deposit is defined as a written acknowledgment by a bank or banker of the receipt of a sum of money on deposit which the bank or banker promises to pay to the depositor, to the order of the depositor, or to some other person or his order, whereby the relation of debtor and creditor between the bank and the depositor is created. x x x.

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[13] *Villanueva v. Court of Appeals*, 429 Phil. 194, 203-204 (2002).

[14] *International Exchange Bank v. Commissioner of Internal Revenue, supra* note 10.

[15] 424 Phil. 723, 730 (2002).

The Court then proceeded to elucidate even further in the *IEB case* on what constitutes a certificate of deposit:

A document to be deemed a certificate of deposit requires **no specific form** as long as there is some written memorandum that the bank accepted a deposit of a sum of money from a depositor. What is important and controlling is the **nature or meaning** conveyed by the passbook and not the particular label or nomenclature attached to it, inasmuch as **substance, not form,** is paramount.

Contrary to petitioner's claim, **not all certificates of deposit are negotiable**. A certificate of deposit may or may not be negotiable as gathered from the use of the conjunction **or**, instead of **and**, in its definition. A certificate of deposit may be payable to the depositor, to the order of the depositor, **or** to some other person or his order.

In any event, the **negotiable character** of any and all documents under Section 180 is **immaterial** for purposes of imposing DST.

Orders for the payment of sum of money payable at sight or on demand are of course explicitly exempted from the payment of DST. Thus, a regular savings account with a passbook which is withdrawable at any time is not subject to DST, unlike a time deposit which is payable on a fixed maturity date.[16]

The Court rejected the claim of IEB in the *IEB case* that its special savings account, *i.e.*, Fixed-Savings Deposit (FSD), was more akin to a regular savings account than a time deposit account, ratiocinating that:

The FSD, like a time deposit, provides for a higher interest rate when the deposit is not withdrawn within the required fixed period; otherwise, it earns interest pertaining to a regular savings deposit. Having a fixed term and the reduction of interest rates in case of pre-termination are essential features of a time deposit. Thus explains the CTA *En Banc*:

It is well-settled that certificates of time deposit are subject to the DST and that a certificate of time deposit is but a type of a certificate of deposit drawing interest. Thus, in resolving

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[16] *International Exchange Bank v. Commissioner of Internal Revenue, supra* note 10 at 697-698.

the issue before Us, it is necessary to determine whether petitioner's Savings Account-Fixed Savings Deposit (SA-FSD) has the same nature and characteristics as a time deposit. In this regard, the findings of fact stated in the assailed Decision [of the CTA Division] are as follows:

> "In this case, a depositor of a savings deposit-FSD is required to keep the money with the bank for at least thirty (30) days in order to yield a higher interest rate. Otherwise, the deposit earns interest pertaining only to a regular savings deposit.
>
> The same feature is present in a time deposit. A depositor is allowed to withdraw his time deposit even before its maturity subject to bank charges on its pre[-]termination and the depositor loses his entitlement to earn the interest rate corresponding to the time deposit. Instead, he earns interest pertaining only to a regular savings deposit. Thus, petitioner's argument that the savings deposit-FSD is withdrawable anytime as opposed to a time deposit which has a maturity date, is not tenable. In both cases, the deposit may be withdrawn anytime but the depositor gets to earn a lower rate of interest. The only difference lies on the evidence of deposit, a savings deposit-FSD is evidenced by a passbook, while a time deposit is evidenced by a certificate of time deposit."
>
> In order for a depositor to earn the agreed higher interest rate in a SA-FSD, the amount of deposit must be maintained for a fixed period. Such being the case, We agree with the finding that the SA-FSD is a deposit account with a fixed term. Withdrawal before the expiration of said fixed term results in the reduction of the interest rate. Having a fixed term and reduction of interest rate in case of pre-termination are *essentially* the features of a time deposit. Hence, this Court concurs with the conclusion reached in the assailed Decision that petitioner's SA-FSD and time deposit are substantially the same. . . . (Italics in the original; underscoring supplied)

The findings and conclusions reached by the CTA which, by the very nature of its function, is dedicated exclusively to the consideration of tax problems and has necessarily developed an expertise on the subject, and unless there has been an abuse or improvident exercise of authority, and none has been shown in the present case, deserves respect.

It bears emphasis that DST is levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments. It is an excise upon the privilege, opportunity or facility offered at exchanges for the transaction of the business.

While tax avoidance schemes and arrangements are not prohibited, tax laws cannot be circumvented in order to evade payment of just taxes. To claim that time deposits evidenced by passbooks should not be subject to DST is a clear evasion of the rule on equality and uniformity in taxation that requires the imposition of DST on documents evidencing transactions of the same kind, in this particular case, on all certificates of deposits drawing interest.[17]

The amendment of Section 180 of the NIRC and its re-numbering as Section 179 by Republic Act No. 9243 in 2004 do not mean that prior thereto, special savings deposits evidenced by passbooks were exempted from payment of DST. The Court determined in the *IEB case* that:

If at all, the further amendment was intended to eliminate precisely the scheme used by banks of issuing passbooks to "cloak" its time deposits as regular savings deposits. This is reflected from the following exchanges between Mr. Miguel Andaya of the Bankers Association of the Philippines and Senator Ralph Recto, Senate Chairman of the Committee on Ways and Means, during the deliberations on Senate Bill No. 2518 which eventually became R.A. 9243:

MR. MIGUEL ANDAYA (Bankers Association of the Philippines). Just to clarify. Savings deposit at the present time is not subject to DST.

THE CHAIRMAN. That's right.
MR. ANDAYA. Time deposit is subject. I agree with you in principle that if we are going to encourage deposits, whether savings or time…

THE CHAIRMAN. Uh-huh.

MR. ANDAYA. . .it's questionable whether we should tax it with DST at all, even the question of imposing final withholding tax has been raised as an issue.

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[17] *Id.* at 698-700.

THE CHAIRMAN. If I had it my way, I'll cut it by half.

MR. ANDAYA. Yeah, but I guess concerning the constraint of government revenue, even the industry itself right now is not pushing in that direction, but in the long term, when most of us in this room are gone, we hope that DST will disappear from the face of this earth, 'no.

Now, I think the move of the DOF to expand the coverage of or to add that phrase, "Other evidence of indebtedness," it just removed ambiguity. When we testified earlier in the House on this very same bill, we did not interpose any objections if only for the sake of avoiding further ambiguity in the implementation of DST on deposits. Because of what has happened so far is, we don't know whether the examiner is gonna come in and say, "This savings deposit is not savings but it's time deposit." So, I think what DOF has done is to eliminate any confusion. They said that a deposit that has a maturity. . .

THE CHAIRMAN. Uh-huh.

MR. ANDAYA. . . . which is time, in effect, regardless of what form it takes should be subject to DST.

THE CHAIRMAN. Would that include savings deposit now?

MR. ANDAYA. So that if we cloaked a deposit as savings deposit but it has got a fixed maturity . . .

THE CHAIRMAN. Uh-huh.

MR. ANDAYA. . . that would fall under the purview.[18] (Underscoring supplied.)

Given that the *IEB case* and the present case substantially involve the same facts and arguments, then the 4 April 2007 Decision in the former serves as a judicial precedent in the latter. The averment of Metrobank in the instant Petition that the judgment in the *IEB case* is still not final, since IEB filed a Motion for Reconsideration of the same, is no longer true. The Court denied with finality the Motion for Reconsideration of IEB in a Resolution dated 1 August 2007 and, accordingly,

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[18] *Id.* at 701-703.

entry of judgment has been made in the *IEB case* on 15 January 2008.

In a more recent case, *Philippine Banking Corporation (Now: Global Business Bank, Inc.) v. Commissioner of Internal Revenue* (*PBC case*),[19] the Court again considered the Special/Super Savings Deposit Account (SSDA) of PBC, evidenced by a passbook, as a certificate of deposit bearing interest on which DST under Section 180 of the NIRC could be imposed, citing both the *BDO case* and the *IEB case*.

In the absence of any compelling reason, the Court cannot depart from the foregoing jurisprudence. There can be no doubt that the UNISA – the special savings account of Metrobank, granting a higher tax rate to depositors able to maintain the required minimum deposit balance for the specified holding period, and evidenced by a passbook – is a certificate of deposit bearing interest, already subject to DST even under the then Section 180 of the NIRC. Hence, the assessment by the CIR against Metrobank for deficiency DST on the UNISA for 1999 was only proper.

II

Nevertheless, the Court takes note of an intervening event, which significantly affects its resolution of the Petition at bar.

On 17 April 2008, during the pendency of the present Petition, Metrobank filed a Manifestation before this Court. Metrobank manifested that it had availed itself of the Tax Amnesty Program under Republic Act No. 9480, which lapsed into law on 24 May 2007.[20] Metrobank claimed that it was qualified to avail itself of the Tax Amnesty Program, and that it had fully complied with the requirements for the same. As a result, it became entitled to immunity from the payment of any and all taxes due from it for the taxable year 2005 and prior years, including

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[19] G.R. No. 170574, 30 January 2009.

[20] An Act Enhancing Revenue Administration and Collection by Granting an Amnesty on All Unpaid Internal Revenue Taxes Imposed by the National Government for Taxable Year 2005 and Prior Years.

the deficiency DST on the UNISA for 1999. On the basis of the tax amnesty, Metrobank again prayed for the reversal and setting aside of the 21 May 2007 Decision and 9 July 2007 Resolution of the CTA *en banc* in C.T.A. E.B. No. 247, and the cancellation of Final Assessment No. DST-2-99-000022.

A tax amnesty is a general pardon or the intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of violation of a tax law. It partakes of an **absolute waiver** by the government of its right to collect what is due it and to give tax evaders who wish to relent a chance to start with a clean slate. A tax amnesty, much like a tax exemption, is never favored or presumed in law. The grant of a tax amnesty, similar to a tax exemption, must be construed strictly against the taxpayer and liberally in favor of the taxing authority.[21]

The coverage of Republic Act No. 9480 is laid down in Section 1 thereof:

SECTION 1. *Coverage*. — There is hereby authorized and granted a tax amnesty which shall cover **all national internal revenue taxes for the taxable year 2005 and prior years**, with or without assessments duly issued therefore, that have remained unpaid as of December 31, 2005: *Provided, however*, That the amnesty hereby authorized and granted **shall not cover persons or cases enumerated under Section 8 hereof**. (Emphases ours.)

Section 8 of Republic Act No. 9480 enumerates persons or cases which cannot be covered by the tax amnesty:

SEC. 8. *Exceptions.* — The tax amnesty provided in Section 5 hereof shall not extend to the following persons or cases existing as of the effectivity of this Act:

(a) Withholding agents with respect to their withholding tax liabilities;

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[21] *Philippine Banking Corporation (Now: Global Business Bank, Inc.) v. Commissioner of Internal Revenue, supra* note 19.

(b) Those with pending cases falling under the jurisdiction of the Presidential Commission on Good Government;

(c) Those with pending cases involving unexplained or unlawfully acquired wealth or under the Anti-Graft and Corrupt Practices Act;

(d) Those with pending cases filed in court involving violation of the Anti-Money Laundering Law;

(e) Those with pending criminal cases for tax evasion and other criminal offenses under Chapter II of Title X of the National Internal Revenue Code of 1997, as amended, and the felonies of frauds, illegal exactions and transactions, and malversation of public funds and property under Chapters III and IV of Title VII of the Revised Penal Code; and

(f) Tax cases subject of final and executory judgment by the courts. (Emphases supplied.)

In his Comment on the Manifestation of Metrobank, the CIR asserts that: (1) Metrobank is merely a withholding agent for the depositors with respect to the DST on the UNISA, so it is disqualified from availing itself of the tax amnesty following Section 8(a) of Republic Act No. 9480; (2) the assessment against Metrobank for the deficiency DST for 1999 already attained finality, and it no longer qualifies for tax amnesty pursuant to Section 8(f) of Republic Act No. 9480; and (3) deficiency in DST is not covered by the tax amnesty under Republic Act No. 9480.

The reliance by the CIR on paragraphs (a) and (f) of Section 8 of Republic Act No. 9480 to oppose the availment by Metrobank of the Tax Amnesty Program is untenable.

This is the first time that the CIR has alleged that Metrobank is only a withholding agent for the DST on the UNISA. As pointed out by Metrobank, it was assessed by the CIR, not as a withholding agent that failed to withhold and/or remit the DST on the UNISA for 1999, but as one that was directly liable for the said tax and failed to pay the same.

The CIR did not provide the basis, whether in law or administrative issuances, for its averment that Metrobank was a withholding agent for the DST on the UNISA. In contrast,

it is clear from Section 3 of Revenue Regulations No. 9-2000[22] that a bank shall be responsible for the payment and remittance of the DST prescribed under Title VII of the NIRC; and unless it is exempt from said tax, then it shall remit the same only as a collecting agent of the CIR. The pertinent provisions of Revenue Regulations No. 9-2000 are quoted hereunder:

SECTION 3. *Mode of Payment and Remittance of the Tax.* –

(a) *In general*. – Unless otherwise provided in these Regulations, any of the aforesaid **parties to the taxable transaction shall pay and remit** the full amount of the tax in accordance with the provisions of Section 200 of the Code.

(b) *Exceptions*. –

(1) If **one of the parties to the taxable transaction is exempt** from the tax, the other party who is not exempt shall be the one directly liable for the tax, in which case, the **tax shall be paid and remitted by the said non-exempt party**, unless otherwise provided in these Regulations.

(2) **If the said tax-exempt party is one of the persons enumerated in Section 3(c)(4) hereof, he shall be constituted as agent of the Commissioner for the collection of the tax**, in which case, he shall remit the tax so collected in the same manner and in accordance with the provisions of Section 200 of the Code: Provided, however, that if he fails to collect and remit the same as herein required, he shall be treated personally liable for the tax, in addition to the penalties prescribed under Title X of the Code for failure to pay the tax on time.

x x x x x x x x x

(c) *Persons liable to remit the DST*. – In general, the full amount of the tax imposed under Title VII of the Code may be remitted by any of the party or parties to the taxable transaction, except in the following cases:

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[22] Mode of Payment and/or Remittance of the Documentary Stamp Tax (DST) Under Certain Conditions.

(4) When one of the parties to the taxable document or transaction is included in any of the entities enumerated below, such **entity shall be responsible for the remittance of the stamp tax** prescribed under Title VII of the Code: Provided, however, that **if such entity is exempt** from the tax herein imposed, it shall **remit the tax as a collecting agent**, pursuant to the preceding paragraph Section 3(b)(2) hereof, any provision of these Regulations to the contrary notwithstanding:

(a) A **bank**, a quasi-bank or non-bank financial intermediary, a finance company, or an insurance, a surety, a fidelity, or annuity company. (Emphases ours.)

There has never been any allegation made in this case that Metrobank is exempt from the DST on the UNISA and, thus, it is tasked to remit the said tax only as a collecting agent. The standing presumption, therefore, is that Metrobank is directly liable for the payment and remittance of the DST on the UNISA.

Neither is there any merit in the insistence of the CIR that Assessment No. DST-2-99-000022 is already final and executory in light of the failure of Metrobank, *firstly*, to submit all the relevant supporting documents within 60 days from filing of its protest with the CIR; and, *secondly*, to appeal to the CTA the inaction of the CIR on its protest within 30 days from the lapse of the 180-day period as provided in Section 228 of the NIRC.[23]

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[23] SEC. 228. *Protesting of Assessment*. – x x x.

x x x x x x x x x

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

The Court cannot simply accept the allegation of the CIR that Metrobank failed to submit the relevant supporting documents within 60 days from the filing of its protest on 17 January 2003, when the CIR does not even identify what these documents are. If the Court does not know what particular documents Metrobank purportedly failed to submit in support of its protest, then the Court likewise cannot make a determination on the relevance of such documents. In addition, there appear to be sufficient documents submitted by Metrobank to the CIR to have enabled the latter to render on 2 March 2004 a Decision on the protest of the former.

This brings the Court to its next point. Per the computation of the CIR, the 180-day period for the CIR to act on the protest of Metrobank ended on 13 September 2003, and the 30-day period for Metrobank to file an appeal with the CTA ended on 13 October 2003. If, indeed, Assessment No. DST-2-99-000022 became final and executory when the bank failed to file an appeal with the CTA by 13 October 2003, why then did the CIR even bother with resolving the protest of Metrobank against the said assessment and rendering a Decision thereon on 2 March 2004? That the CIR issued a Decision on 2 March 2004 denying the protest of Metrobank belies its own assertion herein that the assessment subject of the protest became final and executory after 13 October 2003. It also bears to stress that both the CTA Second Division and the CTA *en banc* took cognizance of the successive appeals of Metrobank, resolving both appeals on their merits without regard to the supposed finality of the appealed assessment. As argued by Metrobank, the very fact that the instant case is still subject of the present proceedings is proof enough that it has not reached a final and executory stage as to be barred from the tax amnesty under Republic Act No. 9480.

The assertion of the CIR that deficiency DST is not covered by the Tax Amnesty Program under Republic Act No. 9480 is downright specious.

To avail itself of the tax amnesty, Metrobank paid 5% of the resulting increase in its networth, following the amendment

of its statement of assets and liabilities as of 31 December 2005, to include therein previously undeclared assets and/or liabilities.[24] The submission of the CIR that the foregoing payment by Metrobank of the amnesty tax "relates only to a determination of [Metrobank]'s revised taxable income, and does not delve on its unrecognized documentary stamp tax liabilities"[25] is rebuffed by the all-encompassing words of Republic Act No. 9480 that those who availed themselves of the tax amnesty, by paying the amnesty tax and complying with all of its conditions, "shall be immune from the payment of **taxes, as well as addition thereto**, and the appurtenant civil, criminal or administrative penalties under the National Internal Revenue Code of 1997, as amended, arising from the failure to pay **any and all internal revenue taxes for taxable year 2005 and prior years**."[26] The Court has absolutely no basis to limit the immunity, resulting from the payment by Metrobank of the amnesty tax, only to income tax, and to exclude DST therefrom.

Finally, the CIR never questioned or rebutted that Metrobank had fully complied with the requirements for tax amnesty under Republic Act No. 9480. Still, Metrobank calls the attention of this Court to the developments in another case before the CTA *en banc*, also between said bank and the CIR, docketed as C.T.A. EB No. 269, entitled *Metropolitan Bank and Trust Company v. Commissioner of Internal Revenue*.

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[24] In accordance with Section 5(d) of Republic Act No. 9480, which provides:

(d) Taxpayers who filed their balance sheet/SALN, together with their income tax returns for 2005, and who desire to avail of the tax amnesty under this Act shall amend such previously filed statements by including still undeclared assets and/or liabilities and pay an amnesty tax equal to five percent (5%) based on the resulting increase in networth: *Provided*, That such taxpayers shall likewise be categorized in accordance with, and subjected to the minimum amounts of amnesty tax prescribed under the provisions of this Section.

[25] *Rollo*, p. 329.

[26] Section 6(1) of Republic Act No. 9480.

C.T.A. EB No. 269 involved the assessment by the CIR against Metrobank for deficiency DST on the UNISA for 1995 to 1998, as well as on its Interbank Call Loans for 1998. The CTA *en banc* already promulgated on 30 March 2007 a Decision in C.T.A. EB No. 269 against Metrobank, prompting the latter to file a Motion to Suspend Collection of Taxes and/or Enjoin the Issuance of Warrant of Distraint, Garnishment and Levy and Motion for Waiver of Posting of Bond. While said Motions were pending before the CTA *en banc*, Metrobank applied for tax amnesty under Republic Act No. 9480. In its Resolution[27] dated 28 March 2008 in C.T.A. EB No. 269, the CTA *en banc* found that:

An examination of the records shows that being a qualified tax amnesty applicant, [Metrobank] duly complied with the requisites enumerated in R.A. No. 9480, as implemented by RMC No. 19-2008. The law mandates that a tax amnesty compliant applicant shall be exempt from the payment of taxes, including the civil, criminal, or administrative penalties under the Tax Code, pursuant to Section 6 of R.A. No. 9480 which states:

> Section 6. *Immunities and Privileges.* – Those who availed themselves of the tax amnesty under Section 5 hereof, and have fully complied with all its conditions shall be entitled to the following immunities and privileges:
>
> (a) The taxpayers shall be immune from the payment of taxes, as well as additions thereto, and the appurtenant civil, criminal or administrative penalties under the National Internal Revenue Code of 1997, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years.

Considering that the **[Metrobank] satisfied the requisites of the tax amnesty law, and is duly qualified tax amnesty applicant under R.A. No. 9480**, the Court sees no cogent reason to resolve [Metrobank]'s Motion to Suspend Collection of Taxes and/or Enjoin

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[27] Penned by Associate Justice Juanito C. Castañeda, Jr. with Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova and Olga Palanca-Enriquez, concurring; *rollo*, pp. 303-309.

the Issuance of Warrant of Distraint, Garnishment and Levy, and its Motion for Waiver of Posting of Bond, for being moot.

Given [Metrobank]'s compliance with the tax amnesty law, the subject tax deficiencies are extinguished.

WHEREFORE, premises considered, C.T.A. EB Case No. 269 is hereby considered **CLOSED and TERMINATED**. (Emphases ours.)

Also worthy of note is the fact that this Court, in the *PBC case*, made its own determination that Metrobank was entitled to the tax amnesty under Republic Act No. 9480. PBC and Metrobank merged, with Metrobank as the surviving entity. The tax liabilities of PBC for 2005 and prior years were absorbed by Metrobank and were, thus, deemed included in the application for tax amnesty filed by Metrobank. The Court found in the *PBC case* that:

Records show that Metrobank, a qualified tax amnesty applicant, has duly complied with the requirements enumerated in RA 9480, as implemented by DO 29-07 and RMC 19-2008. Considering that the completion of these requirements shall be deemed full compliance with the tax amnesty program, the law mandates that the taxpayer shall thereafter be immune from the payment of taxes, and additions thereto, as well as the appurtenant civil, criminal or administrative penalties under the NIRC of 1997, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years.[28]

Metrobank filed only one application for tax amnesty under Republic Act No. 9480, since it already covered all national internal revenue taxes for 2005 and prior years. Hence, the factual determination made by the CTA *en banc* in C.T.A. EB No. 269 and by this Court in the *PBC case* – that Metrobank had complied with the requirements for its application and was qualified for the tax amnesty under Republic Act No. 9480 – is binding on this Court, involving as it does the very same application for tax amnesty of Metrobank being invoked herein.

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[28] *Philippine Banking Corporation (Now: Global Business Bank, Inc.) v. Commissioner of Internal Revenue, supra* note 19.

Therefore, by virtue of the availment by Metrobank of the Tax Amnesty Program under Republic Act No. 9480, it is already immune from the payment of taxes, including the deficiency DST on the UNISA for 1999, as well as the addition thereto.

WHEREFORE, the instant Petition is *GRANTED*. The Decision dated 21 May 2007 and Resolution dated 9 July 2007 of the Court of Tax Appeals *en banc* in C.T.A. E.B. No. 247 is *REVERSED and SET ASIDE*, and Assessment No. DST-2-99-000022 is *CANCELLED*, solely in view of the availment by petitioner Metropolitan Bank and Trust Co. of the Tax Amnesty Program under Republic Act No. 9480.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 180357. August 4, 2009]

PIONEER INSURANCE AND SURETY CORPORATION, *petitioner, vs.* **HEIRS OF VICENTE CORONADO, MAURA CORONADO, SIMEON CORONADO, JULIAN CORONADO and CRUZ B. CARBON,** *respondents.*

SYLLABUS

1. **CIVIL LAW; PROPERTY; QUIETING OF TITLE; DOES NOT PRESCRIBE IF A PERSON CLAIMING TO BE THE OWNER IS IN ACTUAL POSSESSION OF THE PROPERTY.—** Jurisprudence abounds in holding that, if a person claiming to be the owner is in actual possession of the

property, the right to seek reconveyance, which in effect seeks to quiet title to the property, does not prescribe.

2. **REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF TRIAL COURT ARE ACCORDED NOT ONLY GREAT RESPECT BUT ALSO FINALITY AND ARE DEEMED BINDING UPON THE COURT.—** Factual findings are accorded not only great respect but also finality and are deemed binding upon the Court so long as they are supported by substantial evidence.

3. **CIVIL LAW; LAND REGISTRATION; CERTIFICATE OF TITLE; INDEFEASIBILITY.—** A certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein. The real purpose of the Torrens System of land registration is to quiet title to land and put stop forever to any question as to the legality of the title. It is true that both trial and appellate courts actually maintained the indefeasibility of the certificate of title and desisted from annulling or modifying the same.

APPEARANCES OF COUNSEL

Medialdea Ata Bello & Guevarra for petitioner.
Arlene Carbon for respondents.

D E C I S I O N

NACHURA, *J*.:

This is a petition for review on *certiorari* of the Court of Appeals (CA) Decision[1] dated June 27, 2007 and Resolution dated October 17, 2007. The petition stems from a complaint seeking the annulment of petitioner's certificate of title, which was dismissed for lack of cause of action on the ground that the said title covered a parcel of land different from the one being claimed by the plaintiffs (herein respondents). But petitioner, dissatisfied by the pronouncement of the trial court,

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[1] Penned by Associate Justice Fernanda Lampas Peralta with Associate Justices Edgardo P. Cruz (retired) and Normandie B. Pizarro, concurring; *rollo,* pp. 48-63.

filed this petition for review, praying that the complaint be dismissed simply for utter lack of merit, and the Court declare its property to be "located in the exact place described in its certificate of title."

The facts of the case

Respondents Vicente, Maura, Simeon and Julian, all surnamed Coronado, are the legal heirs of Doroteo Garcia. The Coronados, together with Cruz B. Carbon, filed with the Regional Trial Court (RTC), Antipolo, Rizal, a complaint for "Annulment of Title and/or Reconveyance" against petitioner, Pioneer Insurance and Surety Corporation, alleging that (i) Doroteo Garcia owned a parcel of land with an area of 23 hectares, a portion of which is located at Tugtugin, Barangay de la Paz, Antipolo City, while the other portion is located at Pinagbarilan, Barangay dela Paz, Antipolo City; (ii) the entire parcel of land was declared for taxation purposes in 1906 in the name of Doroteo Garcia under Tax Declaration No. 16495 (now Tax Declaration No. 03-6799-SJ387); (iii) Doroteo Garcia had been in possession of the land since Spanish time and, upon his death, his heirs, respondents Coronados, maintained possession of the land until the present; (iv) on December 29, 1970, respondents Coronados, together with Cruz B. Carbon who was given a portion of the parcel of land in consideration of legal services he rendered, executed a Deed of Extrajudicial Partition of Real Estate partitioning the property among themselves; (v) respondents later learned that a portion of the land was registered in the name of a certain Gaudencio T. Bocobo under Original Certificate of Title (OCT) No. 501 based on Free Patent No. 291532; (vi) Bocobo mortgaged the land covered by OCT No. 501 as security for a ₱500,000.00 loan from petitioner; and (vii) for failure of Bocobo to pay the loan, the mortgage was foreclosed and Transfer Certificate of Title (TCT) No. 19781 was issued in the name of petitioner. Respondents prayed, among others, that TCT No. 19781 be declared null and void and the subject property be reconveyed to them.[2]

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[2] *Rollo,* pp. 72-75.

In its Answer, petitioner averred that (i) in 1977, it issued a performance bond in favor of Gaudencio T. Bocobo which was secured by a real estate mortgage over a parcel of land covered by Free Patent No. 291532 with an area of 171,419 square meters located in Antipolo, Rizal; (ii) before petitioner conformed to the real estate mortgage, it verified and examined Bocobo's title, which it found to be free from any suspicion; (iii) when Bocobo failed to pay his obligations, petitioner foreclosed the mortgage on the property and TCT No. 19781 was issued in its favor; and (iv) from 1977 up to the time of petitioner's receipt of the summons in the present complaint, no other person had claimed interest over the property.[3]

On November 20, 1996, the trial court directed respondents' counsel to submit a copy of the report of the relocation survey, which the parties agreed to be conducted on the subject property.[4] Respondents filed an Urgent Motion for Investigation Survey,[5] praying that the court issue an order directing the Lands Management Bureau (LMB) to conduct the required investigation survey. Consequently, the trial court issued an Order[6] dated March 25, 1997 directing the LMB to conduct a survey of the subject property and submit a report indicating the boundaries and the exact location of the property.

Engr. Romulo G. Unciano, Chief of Party, Antipolo Cadastre, was tasked to conduct the survey. He used the following as references:

1. (LRC) Psd-221879 (TCT No. 478244) equivalent to Lot 1, Psu-159753 in the name of Alejandrina A. Tuzon;
2. Lot 2, Psu-159753, as amended, in the name of Damaso Inocencio and Doroteo Garcia;
3. Land Registration Decree No. 133611 covering Lot 1 & Lot 2, Psu-159755 in the name of Maximino Serranillo;

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[3] Records, pp. 25-27.

[4] *Id.* at 66.

[5] *Id.* at 75.

[6] *Id.* at 77.

4. Psu-153144 – Gaudencio T. Bocobo;
5. Psu-153145 – Marcos Olan;
6. Psu-153146 – Rodolfo Bautista;
7. (LRC) Psd-257194 (OCT No. 852); and
8. TCT No. N-19781 registered in the name of Pioneer Insurance and Surety Corp.[7]

The subject property being claimed by the respondents is that referred to as Lot 2 in Plan Psu-159753, while Lot 1 of the same survey plan [presently covered by Plan (LRC) Psd-221879] is in the name of Alejandrina A. Tuzon. Adjoining the subject property in the southeast are Lots 1 and 2 of Plan Psu-159755 in the name of Maximino Serranillo, *et al*., and in the southwest is the property of Julio Gatlabayan, covered by Plan F-53733 [(LRC) Psd-257194] and registered under OCT No. 852.[8]

On the other hand, Plan Psu-153144, in the name of Gaudencio T. Bocobo, covers the property as described in petitioner's title, TCT No. N-19781. Plans Psu-153145 and Psu-153146 are survey plans covering the alleged adjoining properties in the names of Marcos Olan and Rodolfo Bautista, respectively.[9]

In a Report on Relocation and Verification Survey[10] (hereinafter referred to as the Unciano Report) dated August 6, 1997, Engr. Unciano concluded that the property, described in Psu-153144 and TCT No. N-19781, is situated in Sitio Pinagbarilan, Barrio (Bo.) Malanday, San Mateo, Rizal and not in the vicinity of the subject property (Lot 2, Psu-159753), which is in Sitio Manungbian, Bo. San Juan, Antipolo.

After Engr. Unciano answered some clarificatory questions about the report, the parties agreed to constitute a commission of three geodetic engineers to conduct another ground verification of the property. Accordingly, the trial court issued an Order dated September 17, 1997, directing that such a commission

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[7] Records, p. 91.

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

[9] *Id.* at 94.

[10] *Id.* at 91-94.

be constituted to conduct a final ground verification survey, and appointing as its Chairman, Engr. Robert Pangyarihan, who was Chief of the Survey Division, Land Management Section, Department of Environment and Natural Resources.[11] The trial court likewise appointed Engr. Ponciano M. Miranda, representing respondents, and Engr. Rosario B. Mercado, representing the petitioner, as the other two geodetic engineers to comprise the commission.

In addition to the references used by Engr. Unciano, the commission used the following materials:

1. Joint Affidavit of Rodolfo Bautista and Marcos Olan, claimants of Psu-153146 and Psu-153145, respectively;
2. Plan F-53733 in the name of Julio Gatlabayan;
3. Lot 10257, Cad.29-Ext., Antipolo Cadastre;
4. Municipal Index Map of San Mateo, Rizal; and
5. Certification of location of Sapang Buaya by Brgy. Captain Simeon San Jose.[12]

In a Report on Verification Survey[13] (hereinafter referred to as the Pangyarihan Report) dated November 28, 1997 signed by Engr. Pangyarihan and Engr. Miranda, it likewise concluded that the property described in the petitioner's title is not located in the place where the subject property is located.

Engr. Rosario B. Mercado did not agree with the findings of his colleagues and opted to submit a separate survey report.[14] Using the tie lines indicated in the title, he concluded that a portion of the subject property overlapped the property described in petitioner's certificate of title.

On January 29, 2002, the RTC adopted the findings of the majority of the commission and rendered the following judgment:

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[11] *Id.* at 146.

[12] *Id.* at 162.

[13] *Id.* at 162-166.

[14] *Id.* at 188-189.

WHEREFORE, judgment is hereby rendered recognizing Julian Coronado, Vicente Coronado, Simeon Coronado and Maura Coronado to be the legal heirs of Doroteo Garcia and confirming their ownership of the parcel of land covered by PSU 159753 and Tax Declaration marked as Exhibit "S" containing an area of 11.65 hectares.

On the other hand, the Court finds no necessity to declare null and void TCT No. N-19781 registered in the name of the defendant but the court makes a finding and so holds that the parcel of land described therein is not the same parcel of land claimed and owned by the Coronados.

SO ORDERED.[15]

On June 27, 2007, the CA affirmed the RTC Decision.[16] The CA likewise denied the petitioner's motion for reconsideration for lack of merit in the Resolution dated October 17, 2007.[17]

The issues raised in the petition

Petitioner raises the following issues:

THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE TRIAL COURT'S DECISION.

5.1 The lower court committed grave abuse of discretion in not dismissing respondents' complaint and disregarding the indefeasibility of [petitioner]'s Torrens title.

5.2 The lower court gravely erred in ruling that the [petitioner's] property is not located in Antipolo City, despite the clear indication of its location on the face of the Torrens title.

5.3 The lower court erred in not ruling that respondents' claim was barred by prescription and laches.

5.4 The lower court erred in not awarding damages and attorney's fees to [petitioner], despite the clear absence of a cause of action against [petitioner].[18]

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[15] *Rollo,* p. 141.

[16] *Id.* at 63.

[17] *Id.* at 66.

[18] *Id.* at 24.

The Court's ruling

Initially, we confront the issue of whether the action has prescribed, considering that several years have already passed since TCT No. N-19781 was issued, and petitioner's title has already become indefeasible and incontrovertible. The contention apparently lacks merit. The records reveal that the respondents have been in possession of the subject property since 1938. Jurisprudence abounds in holding that, if a person claiming to be the owner is in actual possession of the property, the right to seek reconveyance, which in effect seeks to quiet title to the property, does not prescribe.[19]

On the merits, petitioner argues that the trial court and the CA disregarded the indefeasibility of TCT No. N-19781 when it declared that the property covered by such title is situated in another place, and not where the subject property is located. Petitioner maintains that such pronouncement materially impaired the technical description of the property covered by its title, in clear derogation of the indefeasibility of the certificate of title. According to the petitioner, the technical description in the certificate of title and the statement therein that the location of the property is in the "Municipality of Antipolo" are a conclusive and unassailable determination of the location of the property that falls within the mantle of protection afforded by a Torrens title.

Factual findings are accorded not only great respect but also finality and are deemed binding upon the Court so long as they are supported by substantial evidence.[20] Sadly, this is not true in this case. We find that the conclusion of the trial court, as affirmed by the CA, that the property described in TCT No. N-19781 is not located in the place where the subject property is located lacks adequate basis.

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[19] *David v. Malay*, 376 Phil. 825, 837 (1999).

[20] *Skippers United Pacific, Inc. v. National Labor Relations Commission,* G.R. No. 148893, July 12, 2006, 494 SCRA 661, 667.

Both the trial and appellate courts based their conclusions on the verification surveys finding that the property covered by the said title is located in another place. We note, however, that the surveys were conducted on the subject property only. Other than an ocular inspection, no survey was ever conducted on the area where the property covered by TCT No. N-19781 is allegedly located. Neither was there any effort to plot the tie lines indicated in its technical description. Consequently, the exact location of the property covered by the said certificate of title has not been established.

The verification reports show that the geodetic engineers, except for Engr. Mercado, concluded that the technical description in TCT No. N-19781 could not be plotted on the area where the subject property is located, on the ground that no reference points or corner monuments had been recovered from the purported adjoining properties. However, the fact that the property cannot be plotted on a certain area based on the technical description indicated in the certificate of title does not foreclose the possibility that there is simply an error in the technical description, or that it is only deficient. Unless the exact location of the property described in the certificate of title is determined, we cannot safely and definitively conclude that it is not located at a certain place.

Indubitably, a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein. The real purpose of the Torrens System of land registration is to quiet title to land and put stop forever to any question as to the legality of the title.[21]

It is true that both trial and appellate courts actually maintained the indefeasibility of the certificate of title and desisted from annulling or modifying the same. But by declaring that the property is not located in Antipolo City, the location stated in the certificate of title, they, in effect, modified the same to the prejudice of the petitioner. Worse, they did so based on

[21] *Heirs of Brusas v. Court of Appeals,* 372 Phil. 47, 54 (1999).

incomplete information. Notably, in *Odsigue v. Court of Appeals,*[22] this Court, indeed, held that a certificate of title is conclusive evidence not only of ownership but also the location of the property.

For these reasons, we remand the case to the trial court for the determination of the exact location of the petitioner's property.

WHEREFORE, premises considered, the Court of Appeals' Decision dated June 27, 2007 and Resolution dated October 17, 2007 are *SET ASIDE*. The case is *REMANDED* to the Regional Trial Court of Antipolo, Rizal, for further proceedings.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 180380. August 4, 2009]

RAYMUND MADALI and RODEL MADALI, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; MATTER OF ASSIGNING VALUES TO DECLARATIONS ON THE WITNESS STAND IS BEST DETERMINED BY THE TRIAL COURTS.— Well-

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[22] G.R. No. 111179, July 4, 1994, 233 SCRA 626.

[*] Additional Member vice Justice Diosdado M. Peralta per Raffle dated August 3, 2009.

entrenched is the rule that the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge who, unlike appellate magistrates, can weigh such testimonies in light of the declarant's demeanor, conduct and position to discriminate between truth and falsehood. This is especially true when the trial court's findings have been affirmed by the appellate court, because said findings are generally conclusive and binding upon this Court, unless it be manifestly shown that the lower courts had overlooked or disregarded arbitrarily the facts and circumstances of significance in the case.

2. **ID.; ID.; ID.; THE PROSECUTION ADEQUATELY ESTABLISHED IN GRAPHIC DETAIL, THROUGH EYEWITNESSES, THE CIRCUMSTANCES THAT TRANSPIRED BEFORE, DURING AND AFTER THE KILLING; TESTIMONY OF EYEWITNESS SUBSTANTIATED THE MEDICAL FINDINGS AND THE OTHER PIECES OF EVIDENCE FOUND IN THE SCENE OF THE CRIME.—** Jovencio saw at close range the incident as it was unfolding before his very eyes as he was there when it happened. He was in the company of the perpetrators and the victim. Thus, the incident could not have escaped his attention. The prosecution adequately established in graphic detail, through the eyewitness, the circumstances that transpired before, during and after the killing of AAA. At around 11:30 p.m. of 13 April 1999, Jovencio, together with the victim, as well as with Rodel, Raymund and Bernardino, went to a place near the Romblon National High School. Jovencio's earlier companion, Michael Manasan, did not go with the group, as he had already left a little earlier. As they reached their destination, the group ascended the stairs leading to a reservoir near the said school. AAA was ahead, followed by Rodel, Raymund, Bernardino and Jovencio. Upon reaching the top, Bernardino blindfolded the victim with a handkerchief and told the latter, "*Join the rugby boys*!" The victim responded, "*That's enough*!" Bernardino then hit the victim thrice, using a green and hard coconut frond. Unable to withstand the beatings, the victim hit the ground and was lifted to his feet by Bernardino, Raymund and Rodel. With the same coconut frond, Raymund hit the victim on his right thigh. Rodel followed by punching the body and the head of the victim with a brass knuckle (*llave inglesa*) wrapped around the former's right fist. Feeling for his cousin, Jovencio shouted "*Tama na! Tama na*!"

Bernardino responded, *"Yari na ini, ideretso na,"* (We have come this far, we have to finish it.) The victim's strength was no match to the injuries he received. He passed out. Raymund then tied a handkerchief around the victim's neck, fastened a dog chain to the ends of the said handkerchief and, with the aid of Raymund and Rodel, hoisted the victim's body to and hanged it from a nearby tree. Shocked at what was happening, Jovencio just watched the whole incident, failing to muster enough courage to help his dying cousin. The perpetrators warned Jovencio not to divulge to anyone what he saw, or he would be the next victim. Then they all left the place, leaving the victim's body hanging from a tree. The testimony of Jovencio was substantiated by the medical findings indicating that the victim was hit in the head by hard blows, causing his death. Other pieces of evidence such as the coconut frond, the dog chain and the handkerchief found in the scene also supported Jovencio's account.

3. **ID.; ID.; DEFENSE OF DENIAL; PETITIONERS' DENIAL WAS TOO FLACCID TO STAY FIRM AGAINST WEIGHTY EVIDENCE FOR THE PROSECUTION.—** Against the damning evidence adduced by the prosecution, petitioners Raymund and Rodel could only muster mere denial. Unfortunately for them, their defense was much too flaccid to stay firm against the weighty evidence for the prosecution. Denial, if unsubstantiated by clear and convincing evidence, is a negative and self-serving evidence that deserves no weight in law. It cannot be given greater evidentiary value than the testimony of a credible witness who testifies on affirmative matters. Between the self-serving testimonies of petitioners and the positive identification by the eyewitness, the latter deserves greater credence.

4. **ID.; ID.; DEFENSE OF ALIBI; PHYSICAL IMPOSSIBILITY FOR PETITIONERS TO BE AT THE SCENE OF THE CRIME AND TO BE PARTICIPANTS IN THE GRUESOME CRIME, NOT ESTABLISHED.—** Petitioners' alibi, which was supported by the testimonies of close relatives and friends, cannot overcome the convincing evidence adduced by the prosecution. Such corroborative testimonies of relatives and friends are viewed with suspicion and skepticism by the Court. Furthermore, for alibi to prosper, two elements must concur: (a) the accused was in another place at the time the crime was committed; and (b) it was physically impossible for him to be at the scene of the

crime at the time it was committed. In the case under consideration, Raymund was within a 5-kilometer distance from the scene, while Rodel was within a 14-kilometer distance. Even assuming *arguendo* that Raymund and Rodel's defense were true, still, it was not physically impossible for them to be at the crime scene and to be participants in the gruesome crime. It was not difficult for them to travel from where they allegedly were and arrive at the scene during the killing episode.

5. **ID.; ID.; ID.; AFFIDAVIT OF RECANTATION EXECUTED BY WITNESS IS OF NO MOMENT AS IT WAS EFFECTIVELY REPUDIATED.—** Petitioners made an issue of the affidavit of recantation repudiating the earlier one laying the blame on them. The affidavit of recantation executed by a witness prior to the trial cannot prevail over the testimony made during the trial. Jovencio effectively repudiated the contents of the affidavit of recantation. The recantation would hardly suffice to overturn the trial court's finding of guilt, which was based on a clear and convincing testimony given during a full-blown trial. As held by this Court, an affidavit of recantation, being usually taken *ex parte*, would be considered inferior to the testimony given in open court. A recantation is exceedingly unreliable, inasmuch as it is easily secured from a poor and ignorant witness, usually through intimidation or for monetary consideration. Considering the age, the social standing and the economic status of witness Jovencio, it is not far-fetched that the combination of these factors impelled him to affix his signature to the recanting affidavit. Besides, Jovencio explained why he executed the second affidavit or the affidavit of recantation, which supposedly exonerated petitioners. He had been threatened by a certain Wilson, who was a relative of petitioners.

6. **ID.; ID.; ID.; IMMATERIAL AND INSIGNIFICANT DETAILS DO NOT DISCREDIT A TESTIMONY ON THE VERY MATERIAL AND INSIGNIFICANT POINT BEARING ON THE VERY ACT OF THE ACCUSED-APPELLANTS.—** Petitioners also place much premium on the alleged contradiction between Jovencio's narrative — which claimed that Emerson de Asis and Michael Manasan saw the victim in the company of the malefactors immediately prior to the killing — and the testimonies of these two witnesses denying such allegation. Unfortunately, this is just a minor inconsistency. The common narration of Emerson de Asis and Michael Manasan that they

did not see the perpetrators with the victim prior to the killing are too insignificant, since their narration did not directly relate to the act of killing itself. Said inconsistency does not dilute the declarations of Jovencio. Given the natural frailties of the human mind and its incapacity to assimilate all material details of a given incident, slight inconsistencies and variances in the declarations of a witness hardly weaken their probative value. It is well settled that immaterial and insignificant details do not discredit a testimony on the very material and significant point bearing on the very act of accused-appellants. As long as the testimonies of the witnesses corroborate one another on material points, minor inconsistencies therein cannot destroy their credibility. Inconsistencies on minor details do not undermine the integrity of a prosecution witness. The minor inconsistencies and contradictions only serve to attest to the truthfulness of the witnesses and the fact that they had not been coached or rehearsed. The declaration of Michael Manasan — that he did not see the petitioners together with Jovencio and the victim immediately prior the incident — does not help a bit the cause of petitioners. As the Court of Appeals correctly pointed out, Michael could not have seen the malefactors in the company of the victim because according to Jovencio, Michael had gone home earlier that evening.

7. **CRIMINAL LAW; REPUBLIC ACT NO. 9344 (JUVENILE OFFENDERS ACT) A CHILD FIFTEEN (15) YEARS OF AGE OR UNDER AT THE TIME OF THE COMMISSION OF THE CRIME SHALL BE EXEMPT FROM CRIMINAL LIABILITY; CIVIL LIABILITY IS NOT EXTINGUISHED; CASE AT BAR.—** As to the criminal liability, Raymond is exempt. As correctly ruled by the Court of Appeals, Raymund, who was only 14 years of age at the time he committed the crime, should be exempt from criminal liability and should be released to the custody of his parents or guardian pursuant to Sections 6 and 20 of Republic Act No. 9344. Although the crime was committed on 13 April 1999 and Republic Act No. 9344 took effect only on 20 May 2006, the said law should be given retroactive effect in favor of Raymund who was not shown to be a habitual criminal. This is based on Article 22 of the Revised Penal Code which provides: Retroactive effect of penal laws. — Penal laws shall have a retroactive effect insofar as they favor the person guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code,

although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same. While Raymund is exempt from criminal liability, his civil liability is not extinguished pursuant to the second paragraph of Section 6, Republic Act No. 9344.

8. **ID.; ID.; A CHILD ABOVE FIFTEEN (15) BUT BELOW EIGHTEEN (18) YEARS OF AGE SHALL LIKEWISE BE EXEMPT FROM CRIMINAL LIABILITY UNLESS HE/ SHE ACTED WITH DISCERNMENT; CASE AT BAR.—** As to Rodel's situation, it must be borne in mind that he was 16 years old at the time of the commission of the crime. A determination of whether he acted with or without discernment is necessary pursuant to Section 6 of Republic Act No. 9344, *viz*: SEC. 6. *Minimum Age of Criminal Responsibility*. – x x x. A child above fifteen (15) years but below eighteen (18) years of age shall likewise be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act. Discernment is that mental capacity of a minor to fully appreciate the consequences of his unlawful act. Such capacity may be known and should be determined by taking into consideration all the facts and circumstances afforded by the records in each case. The Court of Appeals could not have been more accurate when it opined that Rodel acted with discernment. Rodel, together with his cohorts, warned Jovencio not to reveal their hideous act to anyone; otherwise, they would kill him. Rodel knew, therefore, that killing AAA was a condemnable act and should be kept in secrecy. He fully appreciated the consequences of his unlawful act.

APPEARANCES OF COUNSEL

Victoria Lim Law Office for petitioners.
The Solicitor General for respondent.

DECISION

CHICO-NAZARIO, *J*.:

In this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, petitioners Raymund Madali (Raymund) and Rodel Madali (Rodel) seek the reversal of the 29 August 2007 Decision[1] of the Court of Appeals in CA-G.R. CR No. 27757; and its 23 October 2007 Resolution,[2] affirming with modifications the 28 July 2003 Decision[3] of the Romblon, Romblon, Regional Trial Court (RTC), Branch 81, in Criminal Case No. 2179, finding petitioners guilty of homicide.

For the death of AAA,[4] Raymund, Rodel and a certain Bernardino "Jojo" Maestro (Bernardino) were charged before the RTC with the crime of Murder. The accusatory portion of the Information reads:

> That on or about the 13th day of April 1999, at around 11:00 o'clock in the evening, in the Barangay XXX, Municipality of Romblon, province of Romblon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, conspiring, confederating and mutually helping each other, did then and there by means of treachery and with evident premeditation, willfully, unlawfully and feloniously attack, assault, strike with a coconut frond and "*llave inglesa*" and strangle with a dog chain, one AAA, inflicting upon the latter mortal wounds in different parts of his body which caused his untimely death.[5]

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[1] Penned by Associate Justice Aurora Santiago-Lagman with Associate Justices Bienvenido L. Reyes and Apolinario D. Bruselas, Jr., concurring; CA *rollo,* pp. 248-264.

[2] *Id.* at 308-309.

[3] Penned by Executive Judge Vedasto B. Marco.

[4] Under Republic Act No. 9262 also known as "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim and those of her immediate family members are withheld and fictitious initials are instead used to protect the victim's privacy.

[5] Records, p. 1.

During the arraignment on 31 May 2000, the three accused, with the assistance of counsel, pleaded not guilty.[6]

On trial, the prosecution presented eight witnesses, namely: (1) Jovencio Musa (Jovencio), 16 years old, the victim's cousin and the alleged lone eyewitness to the killing; (2) Senior Police Officer (SPO) 3 Rogelio Madali, the designated Deputy Chief of Police of the Romblon Police Station; (3) Police Officer (PO) 3 Nicolas Molo, the police investigator assigned to the case; (4) BBB, the mother of the deceased victim; (5) Dr. Carmen Lita P. Calsado, Chief of the Romblon District Hospital, the physician who issued the death certificate of AAA; (6) Emerson de Asis, the alleged companion of witness Jovencio on the night in question, who later became a hostile witness; (7) Michael Manasan, also a companion of witness Jovencio before the killing of the victim occurred; (8) Dr. Floresto Arizala, Jr., a forensic expert from the National Bureau of Investigation (NBI), Manila, who conducted the examination of the corpse of the victim after the same was exhumed.

As documentary and object evidence, the prosecution offered the following: (1) Exhibit "A" – Affidavit of Jovencio executed on 22 April 1999, detailing the circumstances prior to, during and after the killing of the victim perpetrated by Raymund, Rodel and Bernardino; (2) Exhibit "B" – *Sinumpaang Salaysay* of Jovencio dated 8 May 1999, a recantation of the 22 April 1999 Affidavit; (3) Exhibit "C" – Amended Affidavit of Jovencio dated 28 May 1999, which was substantially the same on material points as the 22 April 1999 Affidavit; (4) Exhibit "D" – Undated Reply Affidavit of Jovencio insisting that the death of the victim was authored by Raymund, Rodel and Bernardino; (5) Exhibit "E" – Joint Affidavit of prosecution witnesses SPO3 Rogelio Madali and a certain SPO2 Teresito M. Sumadsad; (6) Exhibit "F" – the coconut frond recovered by the police officers from the scene of the incident; (7) Exhibit "G" – a dog chain used as part of a strap that was tied to the victim's neck while he was hanging from a tree; (8) Exhibit "H" – the handkerchief

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[6] *Id.* at 148.

that was tied around the victim's neck; (9) Exhibit "I" – empty bottles of gin; (10) Exhibit "J" – cellophanes with rugby; (10) Exhibit "K" – pictures taken from the crime scene including the picture of the body of the victim tied to a tree; (11) Exhibit "L" – Letter of Request for the NBI to conduct an examination of the body of the victim; (12) Exhibits "M" to "O" – NBI routing slips; (14) Exhibit "P" – Death Certificate issued by Dr. Carmen Lita P. Calsado; (15) Exhibit "Q" – Exhumation Report issued by Dr. Floresto P. Arizala, Jr.; (16) Exhibit "R" – the Autopsy Report submitted by Dr. Floresto P. Arizala, Jr.; (17) Exhibit "S" – Sketch of the head of the victim showing the injuries thereon; and (18) Exhibit "T" – handwritten draft of the exhumation report.

Taken together, the evidence offered by the prosecution shows that at around 5:30 in the afternoon of 13 April 1999, BBB, who made a living by selling goods aboard ships docked at the Romblon Pier, and who was constantly assisted by her 15-year-old son AAA, was on a ship plying her wares. AAA, together with Jovencio and Raymund, was there helping his mother.[7] Sometime later, Raymund and AAA left the ship. Jovencio stayed a little longer.[8]

At about 9:00 p.m. of the same day, Jovencio and another friend named Michael Manasan sat beside the Rizal monument in the Poblacion of Romblon, located between the Roman Catholic Church and Lover's Inn. Michael had just left Jovencio when Raymund, Rodel, Bernardino and the victim AAA arrived. After meandering around, the group proceeded to climb the stairs, atop of which was the reservoir just beside the Romblon National High School. The victim, AAA, ascended first; behind him were Rodel, Raymund, Bernardino and witness Jovencio. As soon as they reached the reservoir, Bernardino blindfolded AAA with the handkerchief of Raymund. Bernardino at once blurted out, "*Join the rugby boys.*" AAA replied, "*That's enough.*" Bernardino then struck AAA thrice with a fresh and

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[7] TSN, 26 October 1999, p. 14.

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

hard coconut frond. AAA lost his balance and was made to stand up by Raymund, Rodel and Bernardino. Raymund took his turn clobbering AAA at the back of his thighs with the same coconut frond. AAA wobbled. Before he could recover, he received punches to his head and body from Rodel, who was wearing brass knuckles. The punishments proved too much, as AAA lost consciousness.

Not satisfied, Raymund placed his handkerchief around the neck of AAA, with its ends tied to a dog chain. With the contraption, the three malefactors pulled the body up a tree.

Stunned at the sight of his cousin being ill-treated, Jovencio could only muster a faint voice saying "***Enough***" every single-time AAA received the painful blows. Bernardino, who seemed to suggest finishing off the victim, remarked, "*Since we're all here, let's get on with it*." Before leaving the scene, the three assailants warned Jovencio not to reveal the incident to anyone, or he would be next.

Tormented and torn between the desire to come clean and the fear for his life, Jovencio hardly slept that night. He did not divulge the incident to anyone for the next few days. BBB, the victim's mother, was worried when her son did not come home. She started asking relatives whether they had seen her son, but their reply was always in the negative.

It was three days later that a certain Eugenio Murchanto reported to the police authorities about a dead man found in Barangay ZZZ near the Romblon National High School. When the policemen went there, they found the cadaver emitting a foul odor, with maggots crawling all over, hanging from a tree with a handkerchief tied around the neck and a dog chain fastened to the handkerchief. Also found in the area were paraphernalia for inhaling rugby, as well as empty bottles of gin and a coconut frond.

The provincial hospital refused to conduct an autopsy, since AAA's corpse was already decomposing and stank so badly. It was through the intercession of the NBI that the body was eventually exhumed and examined by medico-legal experts.

Dr. Floresto P. Arizala, Jr., who conducted the examination, opined that the victim died due to head injuries and not to asphyxiation by hanging. He declared that the victim was already dead when he was tied to the tree, and that the variety of injuries sustained by the victim could be attributed to more than one assailant.

Upon investigation, Jovencio narrated the incident and pointed to Raymund, Rodel and Bernardino as the perpetrators of the crime. Thereafter, Jovencio executed his first affidavit, which was dated 22 April 1999. Because of the threat made on him by a certain Wilson, an uncle of Raymund and Rodel, Jovencio executed a second affidavit dated 8 May 1999, repudiating his first affidavit. On 28 May 1999, Jovencio made his third sworn statement substantially reverting to his first affidavit.

The accused, on the other hand, advanced the defense of denial and alibi. They claimed they had nothing to do with the death of AAA, and that they were nowhere near the *locus criminis* when the killing occurred.

According to Rodel, 16 years old, he was with his father Rodolfo Madali in the house of a friend named Noel Mindoro, located more or less 14 kilometers from the place where the victim was slain where they spent the whole evening until the following morning. Rodel's testimony was corroborated by his father and Noel Mindoro.

On their part, Raymund, 14 years of age, and Bernardino declared that they were in their respective houses on the night in question. Raymund's place was allegedly five kilometers away from the scene of the crime, while Bernardino's was one kilometer away. Bernardino's testimony was supported by his father Bernardino Maestro, Sr. and by his neighbor Diana Mendez. Raymund's friend, Pastor Mario Fajiculay backed up the former's alibi.

Convinced by the version of the prosecution, the RTC rendered a guilty verdict against the three accused. On account of the prosecution's failure to prove the qualifying circumstances of treachery and evident premeditation, they were only convicted

of homicide. The RTC observed that the incident was a sort of initiation, in which the victim voluntarily went along with the perpetrators, not totally unaware that he would be beaten. The RTC also appreciated the privileged mitigating circumstance of minority in favor of the three accused. The dispositive portion of the RTC decision reads:

WHEREFORE, finding the accused BERNARDO (sic) Jojo MAESTRO, JR., RODEL MADALI AND RAYMUND MADALI GUILTY beyond reasonable doubt of the crime of Homicide, they are hereby sentenced to suffer an indeterminate sentence of four (4) years, two (2) months and one (1) day to six (6) years and to indemnify the heirs of AAA jointly and severally the amount of PhP 50,000.00.[9]

On 6 August 2003, Bernardino applied for probation. Thus, only Raymund and Rodel elevated their convictions to the Court of Appeals.

In a Decision dated 29 August 2007, the Court of Appeals affirmed the findings of the RTC that Rodel and Raymund killed the victim. However, pursuant to Section 64 of Republic Act No. 9344, otherwise known as the "Juvenile Justice and Welfare Act of 2006," which exempts from criminal liability a minor fifteen (15) years or below at the time of the commission of the offense, Raymund's case was dismissed. Rodel's conviction was sustained, and he was sentenced to six months and one day of *prision correccional* to eight years and one day of *prision mayor*, but the imposition of said penalty was suspended pursuant to Republic Act No. 9344. The judgment provides:

WHEREFORE, the Decision dated July 28, 2003, rendered by the Regional Trial Court of Romblon, Romblon (Branch 81) is Criminal Case No. 2179, is affirmed with the following MODIFICATIONS:

1) Appellant Raymund Madali is declared EXEMPT from criminal liability and the case, insofar as he is concerned is hereby DISMISSED pursuant to R.A. No. 9344.

2) Appellant Rodel Madali is found guilty of homicide, the proper penalty for which is fixed at six (6) months and one (1) day

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[9] *Rollo,* p. 147.

of *prision correccional* to eight (8) years and one (1) day of *prision mayor*. Imposition of this penalty should, however, be SUSPENDED, also pursuant to R.A. No. 9344.

3) In addition to the civil indemnity imposed by the trial court in the amount of Fifty Thousand Pesos (₱50,000.00), moral damages in the amount of Fifty Thousand Pesos (₱50,000.00) is hereby awarded in favor of the heirs of the victim, AAA.

4) x x x x

5) Finally, this case is referred to the Department of Social Welfare and Development (DWSD) for further proceedings in accordance with R.A. No. 9344.[10]

Hence, the instant case.

Petitioners Raymund and Rodel assail both the RTC and the Court of Appeals' findings, which gave weight and credence to the account of the incident given by prosecution witness Jovencio, whose testimony according to them was replete with patent and substantial inconsistencies. First, petitioners set their sights on the conflicting affidavits executed by Jovencio. The first affidavit implicated the three accused in the death of AAA, which was controverted by the second affidavit where Jovencio denied having seen the three accused butcher the victim, while the third affidavit restated the material points in the first affidavit. Petitioners also pointed out the discrepancy between the first and the third affidavits, as the former stated that Jovencio was not seen by the three accused when they executed the victim; whereas in the latter affidavit, Jovencio stated he was with the three when the killing took place. Second, petitioners assert that the testimony of Jovencio relating to the alleged fact that his companions, Michael Manasan and Emerson de Asis, saw the three accused and the deceased during the night in question was debunked by the very testimonies of Michael Manasan and Emerson de Asis wherein they declared otherwise.

Moreover, petitioners contend that both the RTC and the Court of Appeals erred in disbelieving the defense of alibi they

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[10] *Id.* at 65.

interposed, considering that the prosecution failed to muster the required quantum of proof, and that said defense was corroborated by testimonies of the other defense witnesses.

The elemental question in this case is the credibility of the parties and their witnesses.

Well-entrenched is the rule that the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge who, unlike appellate magistrates, can weigh such testimonies in light of the declarant's demeanor, conduct and position to discriminate between truth and falsehood.[11] This is especially true when the trial court's findings have been affirmed by the appellate court, because said findings are generally conclusive and binding upon this Court, unless it be manifestly shown that the lower courts had overlooked or disregarded arbitrarily the facts and circumstances of significance in the case.[12]

The RTC and the Court of Appeals did not overlook any significant facts in the case.

This Court itself, in its effort to ferret out the truth based on the evidence on records has diligently pored over the transcripts of stenographic notes of this case and, like the RTC, finds the testimony of Jovencio credible. Subjected to the grueling examinations on the witness stand, Jovencio steadfastly pointed to Raymund, Rodel and Bernardino as the persons who slaughtered the victim. He testified as follows:

Q: Mr. Witness, will you tell us where were you on April 13, 1999?

x x x x x x x x x

A: I was at the Rizal standing by.

x x x x x x x x x

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[11] *People v. Matito*, 468 Phil. 14, 24 (2004).

[12] *People v. Castillo*, G.R. No. 118912, 28 May 2004, 430 SCRA 40, 50.

PROS. BENEDICTO continuing:

Q: While you were at Rizal on April 13, 1999 in the evening, [who was your companion]?

A: Only Michael.

Q: And what were you doing with Michael?

A: Only standing by there.

Q: Did anything happen while you were standing by with Michael?

A: None, sir.

Q: Did anyone arrive while you were there?

A: Yes, sir.

Q: Who?

A: Jojo [Bernardino] followed by Raymund then AAA, then Rodel.

Q: And what happened when they arrived?

A: They were also standing by there.

Q: How long did they stand by in that place?

A: I do not know how many hours?

Q: Then, what happened next?

A: Around 10:30 o'clock we went there.

Q: When you said we, to whom you are referring as your companions?

A: Jojo [Bernardino], Rodel, Raymund and AAA.

Q: What happened to Michael?

A: He went home.

Q: When you said you went there, to which place are you referring?

A: Near the high school at hagdan-hagdan.

Q: There are three (3) main streets in the Poblacion of Romblon, which street did you take in going to hagdan-hagdan near the high school?

A: In the middle.

Q: Did you climb the stairs?

A: Yes, sir.

Q: Who was ahead?

A: AAA.

Q: And who came next?

A: Rodel.

Q: Then, after Rodel, who?

A: Raymund.

Q: Then?

A: [Bernardino].

Q: [Bernardino] who?

A: Maestro.

Q: What is the relation of this Jojo Maestro to Bernardino Maestro you pointed a while ago?

A: That Jojo is his *alias*.

Q: Did you reach the top of the stairs?

A: Yes, sir.

Q: Upon reaching the top of the stairs, what did you do, if any?

A: [Bernardino] blindfolded AAA.

Q: With what?

A: Handkerchief.

Q: Where did he get that handkerchief?

A: From Raymund.

Q: After AAA, what is the family name of this AAA?

A: AAA.

Q: After AAA was blindfolded, what happened next?

A: Then [Bernardino] told him "Join the rugby boys!"

Q: Did AAA make any reply?

A: AAA said "That's enough."

Q: What happened after Jojo Maestro said you join the rugby boys?

A: AAA was struck by a coconut frond three (3) times.

Q: Who struck him with the coconut frond?

A: [Bernardino].

Q: What happened to AAA when he was struck three (3) times with the coconut fronds?

A: He was made to stand.

Q: After standing, what happened next?

A: AAA was again struck with the coconut frond byRaymund.

Q: Was AAA hit?

A: Yes, sir.

Q: Where?

A: Here (witness is pointing to the posterior aspect of his right thigh).

Q: What happened to AAA when he was hit by the coconut frond?

A: As if he became weak.

Q: How about Rodel, what did Rodel do, if any?

A: He boxed the body and the head.

Q: Of whom?

A: Of Rodel.

Q: Who was boxed by Rodel?

A: AAA.

Q: In Exhibit C you mentioned about *llave inglesa*, what is this *llave inglesa*?

A: Lead *llave inglesa*.

Q: And how does it look like?

A: I forgot already but it was a brass knuckle.

Q: Did Exh. C mention that Rodel punched him in different parts of his body with a *llave inglesa* causing him to fall to the ground, how did Rodel use this *llave inglesa*?

A: Worn in his hand (witness raising his right hand and motioning the left as if wearing something in his right hand), then punched him.

Q: When he was punched on different parts of his body by Rodel using *llave inglesa*, what happened to AAA?

A: He lost consciousness.

Q: When AAA lost consciousness, what did Bernardino Maestro, Raymund Madali and Rodel Madali do, if any?

A: Raymund used his handkerchief in tying the neck of my cousin.

Q: Who is this cousin of yours?

A: AAA.

Q: What is the family name?

A: AAA.

COURT:

How about Bernardino as part of the question?

PROS. BENEDICTO continuing:

Q: Bernardino, what did he do, if any?

A: The chain for the dog was tied to the handkerchief.

COURT:

How about Rodel?

A: They helped in lifting him and making him stand and hooked the tie to the tree.

Q: What is this tie which was hooked to the tree made of?

A: The chain.

Q: Referring to the dog chain?

A: Yes, sir.

Q: While all these things were happening, what was Jovencio Musa doing who is a cousin of AAA?

A: I got shock upon seeing it.

Q: Did Jovencio Musa utter anything or do something?

A: Everytime AAA was being struck I said "Enough!"

(*Tama na*!).

Q: How many times did you say that is enough?

A: Twice.

Q: How did the three (3) react to your saying "*Tama na, tama na*!"?

A: "It is already here so we will proceed."

COURT:

Translate that.

A: "*Yari na ini, idiretso na*."

x x x x x x x x x

Q: After tying the dog chain to the tree, what happened next?

A: I was told by the three (3) that if I would reveal I would be the next to be killed.

Q: After that, what happened?

A: No more, we went home already.[13]

Jovencio saw at close range the incident as it was unfolding before his very eyes as he was there when it happened. He was in the company of the perpetrators and the victim. Thus, the incident could not have escaped his attention. The prosecution adequately established in graphic detail, through the eyewitness, the circumstances that transpired before, during and after the killing of AAA. At around 11:30 p.m. of 13 April 1999, Jovencio, together with the victim, as well as with Rodel, Raymund and

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[13] TSN, 8 October 1999, pp. 8-17.

Bernardino, went to a place near the Romblon National High School. Jovencio's earlier companion, Michael Manasan, did not go with the group, as he had already left a little earlier. As they reached their destination, the group ascended the stairs leading to a reservoir near the said school. AAA was ahead, followed by Rodel, Raymund, Bernardino and Jovencio. Upon reaching the top, Bernardino blindfolded the victim with a handkerchief and told the latter, "*Join the rugby boys*!" The victim responded, "*That's enough*!" Bernardino then hit the victim thrice, using a green and hard coconut frond. Unable to withstand the beatings, the victim hit the ground and was lifted to his feet by Bernardino, Raymund and Rodel. With the same coconut frond, Raymund hit the victim on his right thigh. Rodel followed by punching the body and the head of the victim with a brass knuckle (*llave inglesa*) wrapped around the former's right fist. Feeling for his cousin, Jovencio shouted "*Tama na! Tama na*!" Bernardino responded, *"Yari na ini, ideretso na,"* (We have come this far, we have to finish it.) The victim's strength was no match to the injuries he received. He passed out. Raymund then tied a handkerchief around the victim's neck, fastened a dog chain to the ends of the said handkerchief and, with the aid of Raymund and Rodel, hoisted the victim's body to and hanged it from a nearby tree. Shocked at what was happening, Jovencio just watched the whole incident, failing to muster enough courage to help his dying cousin.

The perpetrators warned Jovencio not to divulge to anyone what he saw, or he would be the next victim. Then they all left the place, leaving the victim's body hanging from a tree.

The testimony of Jovencio was substantiated by the medical findings indicating that the victim was hit in the head by hard blows, causing his death. Other pieces of evidence such as the coconut frond, the dog chain and the handkerchief found in the scene also supported Jovencio's account.

Against the damning evidence adduced by the prosecution, petitioners Raymund and Rodel could only muster mere denial. Unfortunately for them, their defense was much too flaccid to stay firm against the weighty evidence for the prosecution.

Denial, if unsubstantiated by clear and convincing evidence, is a negative and self-serving evidence that deserves no weight in law. It cannot be given greater evidentiary value than the testimony of a credible witness who testifies on affirmative matters.[14] Between the self-serving testimonies of petitioners and the positive identification by the eyewitness, the latter deserves greater credence.[15]

Petitioners' alibi, which was supported by the testimonies of close relatives and friends, cannot overcome the convincing evidence adduced by the prosecution. Such corroborative testimonies of relatives and friends are viewed with suspicion and skepticism by the Court.[16]

Furthermore, for alibi to prosper, two elements must concur: (a) the accused was in another place at the time the crime was committed; and (b) it was physically impossible for him to be at the scene of the crime at the time it was committed. In the case under consideration, Raymund was within a 5-kilometer distance from the scene, while Rodel was within a 14-kilometer distance. Even assuming *arguendo* that Raymund and Rodel's defense were true, still, it was not physically impossible for them to be at the crime scene and to be participants in the gruesome crime. It was not difficult for them to travel from where they allegedly were and arrive at the scene during the killing episode.

Petitioners made an issue of the affidavit of recantation repudiating the earlier one laying the blame on them. The affidavit of recantation executed by a witness prior to the trial cannot prevail over the testimony made during the trial.[17] Jovencio effectively repudiated the contents of the affidavit of recantation. The recantation would hardly suffice to overturn

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[14] *People v. Morales*, 311 Phil. 279, 289 (1995).

[15] *People v. Baccay*, 348 Phil. 322, 327-328 (1998).

[16] *People v. Diaz*, 338 Phil. 219, 230 (1997).

[17] *Alejo v. People*, G.R. No. 173360, 28 March 2008, 550 SCRA 326, 345.

the trial court's finding of guilt, which was based on a clear and convincing testimony given during a full-blown trial. As held by this Court, an affidavit of recantation, being usually taken *ex parte*, would be considered inferior to the testimony given in open court.[18] A recantation is exceedingly unreliable, inasmuch as it is easily secured from a poor and ignorant witness, usually through intimidation or for monetary consideration.[19] Considering the age, the social standing and the economic status of witness Jovencio, it is not far-fetched that the combination of these factors impelled him to affix his signature to the recanting affidavit. Besides, Jovencio explained why he executed the second affidavit or the affidavit of recantation, which supposedly exonerated petitioners. He had been threatened by a certain Wilson, who was a relative of petitioners. Jovencio testified:

> Q: Alright, in Exh. C specifically C-1, you mentioned that, you said that somebody fetched me in the evening of May 7, 1999 who told me that Rey Andrade wanted to talk to me regarding the incident, who was that somebody who fetched you in the house?
>
> A: I do not know but he is known as Andrade.
>
> x x x x x x x x x
>
> Q: What was the subject of your conversation with Andrade?
>
> A: About the Nephew of Wilson.
>
> x x x x x x x x x
>
> Q: How about this Wilson you were referring to?
>
> A: Wilson all of a sudden arrived there.
>
> Q: Did Wilson say anything?
>
> A: Wilson said, if we will lose, all our expenses will be paid and if he wins I will be the next.[20]

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[18] *People v. Nardo*, 405 Phil. 826, 843 (2001).

[19] *Id.* at 842.

[20] TSN, 8 October 1999, pp. 19-20.

Petitioners also place much premium on the alleged contradiction between Jovencio's narrative — which claimed that Emerson de Asis and Michael Manasan saw the victim in the company of the malefactors immediately prior to the killing — and the testimonies of these two witnesses denying such allegation.

Unfortunately, this is just a minor inconsistency. The common narration of Emerson de Asis and Michael Manasan that they did not see the perpetrators with the victim prior to the killing are too insignificant, since their narration did not directly relate to the act of killing itself. Said inconsistency does not dilute the declarations of Jovencio. Given the natural frailties of the human mind and its incapacity to assimilate all material details of a given incident, slight inconsistencies and variances in the declarations of a witness hardly weaken their probative value. It is well settled that immaterial and insignificant details do not discredit a testimony on the very material and significant point bearing on the very act of accused-appellants.[21] As long as the testimonies of the witnesses corroborate one another on material points, minor inconsistencies therein cannot destroy their credibility. Inconsistencies on minor details do not undermine the integrity of a prosecution witness.[22] The minor inconsistencies and contradictions only serve to attest to the truthfulness of the witnesses and the fact that they had not been coached or rehearsed.[23]

The declaration of Michael Manasan — that he did not see the petitioners together with Jovencio and the victim immediately prior the incident — does not help a bit the cause of petitioners. As the Court of Appeals correctly pointed out, Michael could not have seen the malefactors in the company of the victim because according to Jovencio, Michael had gone home earlier that evening.

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[21] *People v. Emoy*, 395 Phil. 371, 383 (2000).

[22] *Id.*

[23] *Id.*

In fine, this Court defers to the findings of the trial court, which were affirmed by the Court of Appeals, there being no cogent reason to veer away from such findings.

As to the criminal liability, Raymond is exempt. As correctly ruled by the Court of Appeals, Raymund, who was only 14 years of age at the time he committed the crime, should be exempt from criminal liability and should be released to the custody of his parents or guardian pursuant to Sections 6 and 20 of Republic Act No. 9344, to wit:

SEC. 6. *Minimum Age of Criminal Responsibility*. — A child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability. However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act.

x x x x x x x x x

The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws.

SEC. 20. *Children Below the Age of Criminal Responsibility*. — If it has been determined that the child taken into custody is fifteen (15) years old or below, the authority which will have an initial contact with the child has the duty to immediately release the child to the custody of his/her parents or guardian, or in the absence thereof, the child's nearest relative. Said authority shall give notice to the local social welfare and development officer who will determine the appropriate programs in consultation with the child and to the person having custody over the child. If the parents, guardians or nearest relatives cannot be located, or if they refuse to take custody, the child may be released to any of the following: a duly registered nongovernmental or religious organization; *a barangay* official or a member of the Barangay Council for the Protection of Children (BCPC); a local social welfare and development officer; or, when and where appropriate, the DSWD. If the child referred to herein has been found by the Local Social Welfare and Development Office to be abandoned, neglected or abused by his parents, or in the event that the parents will not comply with the prevention program, the proper petition for involuntary commitment shall be filed by the DSWD or the Local Social Welfare and Development Office pursuant to Presidential

Decree No. 603, otherwise known as "The Child and Youth Welfare Code."

Although the crime was committed on 13 April 1999 and Republic Act No. 9344 took effect only on 20 May 2006, the said law should be given retroactive effect in favor of Raymund who was not shown to be a habitual criminal. This is based on Article 22 of the Revised Penal Code which provides:

> Retroactive effect of penal laws. — Penal laws shall have a retroactive effect insofar as they favor the person guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same.

While Raymund is exempt from criminal liability, his civil liability is not extinguished pursuant to the second paragraph of Section 6, Republic Act No. 9344.

As to Rodel's situation, it must be borne in mind that he was 16 years old at the time of the commission of the crime. A determination of whether he acted with or without discernment is necessary pursuant to Section 6 of Republic Act No. 9344, *viz*:

> SEC. 6. *Minimum Age of Criminal Responsibility*. – x x x.
>
> A child above fifteen (15) years but below eighteen (18) years of age shall likewise be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act.

Discernment is that mental capacity of a minor to fully appreciate the consequences of his unlawful act.[24] Such capacity may be known and should be determined by taking into consideration all the facts and circumstances afforded by the records in each case.

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[24] Rule on Juveniles in Conflict with the Law.

The Court of Appeals could not have been more accurate when it opined that Rodel acted with discernment. Rodel, together with his cohorts, warned Jovencio not to reveal their hideous act to anyone; otherwise, they would kill him. Rodel knew, therefore, that killing AAA was a condemnable act and should be kept in secrecy. He fully appreciated the consequences of his unlawful act.

Under Article 68 of the Revised Penal Code, the penalty to be imposed upon a person under 18 but above 15 shall be the penalty next lower than that prescribed by law, but always in the proper period.

The penalty for homicide under Article 249 of the Revised Penal Code is *reclusion temporal*. Pursuant to Article 68, the maximum penalty should be within *prision mayor*, which is a degree lower than *reclusion temporal*. Absent any aggravating or mitigating circumstance, the maximum penalty should be in the medium period of *prision mayor* or 8 years and 1 day to 10 years. Applying the Indeterminate Sentence Law, the minimum should be anywhere within the penalty next lower in degree, that is, *prision correccional*. Therefore, the penalty imposed by the Court of Appeals, which is 6 months and one day of *prision correccional* to 8 years and one day of *prision mayor,* is in order. However, the sentence to be imposed against Rodel should be suspended pursuant to Section 38 of Republic Act No. 9344, which states:

> SEC. 38. *Automatic Suspension of Sentence*. – Once the child who is under eighteen (18) years of age at the time of the commission of the offense is found guilty of the offense charged, the court shall determine and ascertain any civil liability which may have resulted from the offense committed. <u>However, instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence, without need of application</u>. *Provided, however*, That suspension of sentence shall still be applied even if the juvenile is already eighteen (18) years of age or more at the time of the pronouncement of his/her guilt.
>
> Upon suspension of sentence and after considering the various circumstances of the child, the court shall impose the appropriate

disposition measures as provided in the Supreme Court Rule on Juveniles in Conflict with the Law.

The Court of Appeals awarded ₱50,000.00 as civil indemnity and another ₱50,000.00 as moral damages in favor of the heirs of the victim. In addition, Rodel and Raymund are ordered to pay ₱25,000.00 as temperate damages in lieu of the actual damages for funeral expenses, which the prosecution claimed to have incurred but failed to support by receipts.

WHEREFORE, the petition is *DENIED.* The Decision of the Court of Appeals dated 29 August 2007 in CA-G.R. No. 27757, exempting Raymund Madali from criminal liability is hereby *AFFIRMED*. With respect to Rodel Madali, being a child in conflict with the law, this Court suspends the pronouncement of his sentence and *REMANDS* his case to the court *a quo* for further proceedings in accordance with Section 38 of Republic Act No. 9344. However, with respect to the civil liabilities, Rodel Madali and Raymund Madali are solidarily liable to pay the heirs of the victim the amount of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as temperate damages.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 181845. August 4, 2009]

THE CITY OF MANILA, LIBERTY M. TOLEDO, in her capacity as THE TREASURER OF MANILA and JOSEPH SANTIAGO, in his capacity as the CHIEF OF THE LICENSE DIVISION OF CITY OF MANILA, *petitioners, vs.* **COCA-COLA BOTTLERS PHILIPPINES, INC.,** *respondent.*

SYLLABUS

1. **TAXATION; COURT OF TAX APPEALS (CTA); REVISED RULES OF THE COURT OF TAX APPEALS; 30-DAY ORIGINAL PERIOD FOR FILING A PETITION FOR REVIEW WITH THE (CTA) UNDER SECTION 11 OF R.A. 9282, AS IMPLEMENTED BY SECTION 3(a), RULE 8 OF THE REVISED RULES OF THE CTA MAY BE EXTENDED FOR A PERIOD OF 15 DAYS FOLLOWING BY ANALOGY SECTION 1, RULE 42 OF THE REVISED RULES OF CIVIL PROCEDURE; NO FURTHER EXTENSION SHALL BE ALLOWED THEREAFTER EXCEPT ONLY FOR COMPELLING REASONS, IN WHICH CASE THE EXTENDED PERIOD SHALL NOT EXCEED 15 DAYS.—** The period to appeal the decision or ruling of the RTC to the CTA *via* a Petition for Review is specifically governed by Section 11 of Republic Act No. 9282, and Section 3(a), Rule 8 of the Revised Rules of the CTA. It is crystal clear from provisions that to appeal an adverse decision or ruling of the RTC to the CTA, the taxpayer must file a **Petition for Review** with the CTA **within 30 days** from receipt of said adverse decision or ruling of the RTC. It is also true that the same provisions are silent as to whether such 30-day period can be extended or not. However, Section 11 of Republic Act No. 9282 does state that the Petition for Review shall be filed with the CTA **following the procedure analogous to Rule 42 of the Revised Rules of Civil Procedure**. Section 1, Rule 42 of the Revised Rules of Civil Procedure provides that the Petition for Review of an adverse judgment or final order of the RTC must be filed with the Court of Appeals within: (1) the original 15-day period from

receipt of the judgment or final order to be appealed; (2) an extended period of 15 days from the lapse of the original period; and (3) only **for the most compelling reasons,** another extended period not to exceed 15 days from the lapse of the first extended period. Following by analogy Section 1, Rule 42 of the Revised Rules of Civil Procedure, the **30-day** original period for filing a Petition for Review with the CTA under Section 11 of Republic Act No. 9282, as implemented by Section 3(a), Rule 8 of the Revised Rules of the CTA, may be extended for a period of **15 days**. No further extension shall be allowed thereafter, except only for the most compelling reasons, in which case the extended period shall not exceed **15 days**.

2. **ID.; ID.; ID.; PETITION FOR REVIEW FILED WITHIN THE REGLEMENTARY PERIOD; THE COURT OF TAX APPEALS FIRST DIVISION SHOULD HAVE GRANTED THE FIRST MOTION FOR EXTENSION OF PETITIONERS AS IT WAS SANCTIONED BY THE RULES OF PROCEDURE.—** Even the CTA *en banc*, in its Decision dated 18 January 2008, recognizes that the 30-day period within which to file the Petition for Review with the CTA may, indeed, be extended, thus: Being suppletory to R.A. 9282, the 1997 Rules of Civil Procedure allow an additional period of fifteen (15) days for the movant to file a Petition for Review, upon Motion, and payment of the full amount of the docket fees. A further extension of fifteen (15) days may be granted on compelling reasons in accordance with the provision of Section 1, Rule 42 of the 1997 Rules of Civil Procedure x x x. In this case, the CTA First Division did indeed err in finding that petitioners failed to file their Petition for Review in C.T.A. AC No. 31 within the reglementary period. From **20 April 2007**, the date petitioners received a copy of the 4 April 2007 Order of the RTC, denying their Motion for Reconsideration of the 16 November 2006 Order, petitioners had 30 days, or until **20 May 2007**, within which to file their Petition for Review with the CTA. Hence, the Motion for Extension filed by petitioners on 4 May 2007 – grounded on their belief that the reglementary period for filing their Petition for Review with the CTA was to expire on 5 May 2007, thus, compelling them to seek an extension of 15 days, or until **20 May 2007**, to file said Petition – was unnecessary and superfluous. Even without said Motion for Extension, petitioners could file their Petition for Review until 20 May 2007, as it was still within the 30-day reglementary

period provided for under Section 11 of Republic Act No. 9282; and implemented by Section 3(a), Rule 8 of the Revised Rules of the CTA. The Motion for Extension filed by the petitioners on 18 May 2007, prior to the lapse of the 30-day reglementary period on 20 May 2007, in which they prayed for another extended period of 10 days, or until **30 May 2007**, to file their Petition for Review was, in reality, only the first Motion for Extension of petitioners. The CTA First Division should have granted the same, as it was sanctioned by the rules of procedure. In fact, petitioners were only praying for a 10-day extension, five days less than the 15-day extended period allowed by the rules. Thus, when petitioners filed *via* registered mail their Petition for Review in C.T.A. AC No. 31 on **30 May 2007,** they were able to comply with the reglementary period for filing such a petition.

3. **ID.; ID.; ID.; PETITIONERS FAILED TO CONFORM TO SECTION 4 OF RULE 5, AND SECTION 2 OF RULE 6 OF THE REVISED RULES OF THE COURT OF TAX APPEALS; RELAXATION OF THE RULES CANNOT BE APPLIED SINCE PETITIONERS NEVER OFFERED ANY EXPLANATION OR JUSTIFICATION FOR THEIR NON-COMPLIANCE.—** As found by the CTA First Division and affirmed by the CTA *en banc*, the Petition for Review filed by petitioners *via* registered mail on 30 May 2007 consisted only of one copy and all the attachments thereto, including the Decision dated 14 July 2006; and that the assailed Orders dated 16 November 2006 and 4 April 2007 of the RTC in Civil Case No. 03-107088 were mere machine copies. Evidently, petitioners did not comply at all with the requirements set forth under Section 4, Rule 5; or with Section 2, Rule 6 of the Revised Rules of the CTA. Although the Revised Rules of the CTA do not provide for the consequence of such non-compliance, Section 3, Rule 42 of the Rules of Court may be applied suppletorily, as allowed by Section 1, Rule 7 of the Revised Rules of the CTA. Section 3, Rule 42 of the Rules of Court reads: **SEC. 3.** *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. True, petitioners subsequently submitted certified copies of the Decision dated

14 July 2006 and assailed Orders dated 16 November 2006 and 4 April 2007 of the RTC in Civil Case No. 03-107088, but a closer examination of the stamp on said documents reveals that they were prepared and certified only on 14 August 2007, about two months and a half after the filing of the Petition for Review by petitioners. Petitioners never offered an explanation for their non-compliance with Section 4 of Rule 5, and Section 2 of Rule 6 of the Revised Rules of the CTA. Hence, although the Court had, in previous instances, relaxed the application of rules of procedure, it cannot do so in this case for lack of any justification.

4. **ID.; LOCAL TAXATION; RESPONDENT CANNOT BE TAXED AND ASSESSED UNDER TAX ORDINANCE NO. 7988 AND TAX ORDINANCE NO. 8011 WHICH WERE DECLARED NULL AND VOID AND WITHOUT ANY LEGAL EFFECT.—** Even assuming *arguendo* that the Petition for Review of petitioners in C.T.A. AC No. 31 should have been given due course by the CTA First Division, it is still dismissible for lack of merit. Contrary to the assertions of petitioners, the *Coca-Cola* case is indeed applicable to the instant case. The pivotal issue raised therein was whether Tax Ordinance No. 7988 and Tax Ordinance No. 8011 were null and void, which this Court resolved in the affirmative. Tax Ordinance No. 7988 was declared by the Secretary of the Department of Justice (DOJ) as null and void and without legal effect due to the failure of herein petitioner City of Manila to satisfy the requirement under the law that said ordinance be published for three consecutive days. Petitioner City of Manila never appealed said declaration of the DOJ Secretary; thus, it attained finality after the lapse of the period for appeal of the same. The passage of Tax Ordinance No. 8011, amending Tax Ordinance No. 7988, did not cure the defects of the latter, which, in any way, did not legally exist. By virtue of the *Coca-Cola* case, Tax Ordinance No. 7988 and Tax Ordinance No. 8011 are null and void and without any legal effect. Therefore, respondent cannot be taxed and assessed under the amendatory laws—Tax Ordinance No. 7988 and Tax Ordinance No. 8011.

5. **ID.; ID.; CONSIDERING THE NULLITY OF TAX ORDINANCE NO. 7988 AND TAX ORDINANCE NO. 8011, RESPONDENT SHOULD NOT HAVE BEEN SUBJECTED TO THE LOCAL BUSINESS TAX UNDER SECTION 21 OF TAX ORDINANCE NO. 7794 FOR THE THIRD AND**

FOURTH QUARTERS OF 2000, GIVEN ITS EXEMPTION THEREFROM SINCE IT WAS ALREADY PAYING THE LOCAL BUSINESS TAX UNDER SECTION 14 OF THE SAME ORDINANCE.— Emphasis must be given to the fact that prior to the passage of Tax Ordinance No. 7988 and Tax Ordinance No. 8011 by petitioner City of Manila, petitioners subjected and assessed respondent only for the local business tax under Section 14 of Tax Ordinance No. 7794, but never under Section 21 of the same. This was due to the clear and unambiguous *proviso* in Section 21 of Tax Ordinance No. 7794, which stated that "all registered business in the City of Manila that are already paying the aforementioned tax shall be exempted from payment thereof." The "aforementioned tax" referred to in said *proviso* refers to local business tax. Stated differently, Section 21 of Tax Ordinance No. 7794 exempts from the payment of the local business tax imposed by said section, businesses that are already paying such tax under other sections of the same tax ordinance. The said *proviso*, however, was deleted from Section 21 of Tax Ordinance No. 7794 by Tax Ordinances No. 7988 and No. 8011. Following this deletion, petitioners began assessing respondent for the local business tax under Section 21 of Tax Ordinance No. 7794, as amended. The Court easily infers from the foregoing circumstances that petitioners themselves believed that prior to Tax Ordinance No. 7988 and Tax Ordinance No. 8011, respondent was exempt from the local business tax under Section 21 of Tax Ordinance No. 7794. Hence, petitioners had to wait for the deletion of the exempting *proviso* in Section 21 of Tax Ordinance No. 7794 by Tax Ordinance No. 7988 and Tax Ordinance No. 8011 before they assessed respondent for the local business tax under said section. Yet, with the pronouncement by this Court in the *Coca-Cola* case that Tax Ordinance No. 7988 and Tax Ordinance No. 8011 were null and void and without legal effect, then Section 21 of Tax Ordinance No. 7794, as it has been previously worded, with its exempting *proviso*, is back in effect. Accordingly, respondent should not have been subjected to the local business tax under Section 21 of Tax Ordinance No. 7794 for the third and fourth quarters of 2000, given its exemption therefrom since it was already paying the local business tax under Section 14 of the same ordinance.

6. **ID.; DOUBLE TAXATION; PRESENT IN CASE AT BAR; EXEMPTING *PROVISO* IN SECTION 21 OF TAX**

ORDINANCE NO. 7794 WAS PRECISELY INCLUDED SO AS TO AVOID DOUBLE TAXATION.— Petitioners obstinately ignore the exempting *proviso* in Section 21 of Tax Ordinance No. 7794, to their own detriment. Said exempting *proviso* was precisely included in said section so as to avoid double taxation. Double taxation means taxing the same property twice when it should be taxed only once; that is, "taxing the same person twice by the same jurisdiction for the same thing." It is obnoxious when the taxpayer is taxed twice, when it should be but once. Otherwise described as "direct duplicate taxation," **the two taxes must be imposed on the same subject matter**, for the **same purpose**, by the **same taxing authority**, **within the same jurisdiction**, **during the same taxing period**; and the taxes must be **of the same kind or character**. Using the aforementioned test, the Court finds that there is indeed double taxation if respondent is subjected to the taxes under both Sections 14 and 21 of Tax Ordinance No. 7794, since these are being imposed: (1) on the same subject matter – the privilege of doing business in the City of Manila; (2) for the same purpose – to make persons conducting business within the City of Manila contribute to city revenues; (3) by the same taxing authority – petitioner City of Manila; (4) within the same taxing jurisdiction – within the territorial jurisdiction of the City of Manila; (5) for the same taxing periods – per calendar year; and (6) of the same kind or character – a local business tax imposed on gross sales or receipts of the business.

7. **ID.; ID.; THE DISTINCTION PETITIONERS ATTEMPT TO MAKE BETWEEN THE TAXES UNDER SECTIONS 14 AND 21 OF TAX ORDINANCE NO. 7794 IS SPECIOUS.—** The distinction petitioners attempt to make between the taxes under Sections 14 and 21 of Tax Ordinance No. 7794 is specious. The Court revisits Section 143 of the LGC, the very source of the power of municipalities and cities to impose a local business tax, and to which any local business tax imposed by petitioner City of Manila must conform. It is apparent from a perusal thereof that when a municipality or city has already imposed a business tax on manufacturers, *etc.* of liquors, distilled spirits, wines, and any other article of commerce, pursuant to Section 143(a) of the LGC, said municipality or city may no longer subject the same manufacturers, *etc.* to a business tax under Section 143(h) of the same Code. Section 143(h) may be imposed only on businesses that are subject to excise tax, VAT, or

percentage tax under the NIRC, and that are **"not otherwise specified in preceding paragraphs."** In the same way, businesses such as respondent's, already subject to a local business tax under Section 14 of Tax Ordinance No. 7794 [which is based on Section 143(a) of the LGC], can no longer be made liable for local business tax under Section 21 of the same Tax Ordinance [which is based on Section 143(h) of the LGC].

APPEARANCES OF COUNSEL

City Legal Counsel (Manila) for petitioners.
Salvador and Associates for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This case is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Civil Procedure seeking to review and reverse the Decision[1] dated 18 January 2008 and Resolution[2] dated 18 February 2008 of the Court of Tax Appeals *en banc* (CTA *en banc*) in C.T.A. EB No. 307. In its assailed Decision, the CTA *en banc* dismissed the Petition for Review of herein petitioners City of Manila, Liberty M. Toledo (Toledo), and Joseph Santiago (Santiago); and affirmed the Resolutions dated 24 May 2007,[3] 8 June 2007,[4] and 26 July 2007,[5] of the CTA First Division in C.T.A. AC No. 31, which, in turn, dismissed the Petition for Review of petitioners in said case for being

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[1] Penned by Associate Justice Juanito C. Castañeda, Jr. with Presiding Justice Ernesto D. Acosta, Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova and Olga Palanca-Enriquez, concurring, *rollo*, pp. 32-44.

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

[3] Signed by Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista and Caesar A. Casanova, *rollo*, pp. 106-107.

[4] *Id.* at 127-129.

[5] *Id.* at 130-133.

filed out of time. In its questioned Resolution, the CTA *en banc* denied the Motion for Reconsideration of petitioners.

Petitioner City of Manila is a public corporation empowered to collect and assess business taxes, revenue fees, and permit fees, through its officers, petitioners Toledo and Santiago, in their capacities as City Treasurer and Chief of the Licensing Division, respectively. On the other hand, respondent Coca-Cola Bottlers Philippines, Inc. is a corporation engaged in the business of manufacturing and selling beverages, and which maintains a sales office in the City of Manila.

The case stemmed from the following facts:

Prior to 25 February 2000, respondent had been paying the City of Manila local business tax only under Section 14 of Tax Ordinance No. 7794,[6] being expressly exempted from the business tax under Section 21 of the same tax ordinance. Pertinent provisions of Tax Ordinance No. 7794 provide:

Section 14. – Tax on Manufacturers, Assemblers and Other Processors. – There is hereby imposed a graduated tax on manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers, and compounders of liquors, distilled spirits, and wines or manufacturers of any article of commerce of whatever kind or nature, in accordance with any of the following schedule:

x x x x x x x x x

over ₱6,500,000.00 up to
₱25,000,000.00 - - - - - - - - - - - - - ₱36,000.00 plus 50% of 1%
in excess of ₱6,500,000.00

x x x x x x x x x

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[6] Otherwise known as "Revenue Code of the City of Manila." Tax Ordinance No. 7794, as referred to in this case, is deemed to have already incorporated the amendments previously introduced to it by Tax Ordinance No. 7807. The Court no longer highlights the fact of the previous amendment of Tax Ordinance No. 7794 by Tax Ordinance No. 7807, since it is not an issue in this case, and to avoid confusion with the subsequent amendment of the former by Tax Ordinances No. 7988 and No. 8011.

Section 21. – Tax on Businesses Subject to the Excise, Value-Added or Percentage Taxes under the NIRC. – On any of the following businesses and articles of commerce subject to excise, value-added or percentage taxes under the National Internal Revenue Code hereinafter referred to as NIRC, as amended, a tax of FIFTY PERCENT (50%) of ONE PERCENT (1%) per annum on the gross sales or receipts of the preceding calendar year is hereby imposed:

(A) On persons who sell goods and services in the course of trade or business; and those who import goods whether for business or otherwise; as provided for in Sections 100 to 103 of the NIRC as administered and determined by the Bureau of Internal Revenue pursuant to the pertinent provisions of the said Code.

x x x x x x x x x

(D) Excisable goods subject to VAT

(1) Distilled spirits

(2) Wines

x x x x x x x x x

(8) Coal and coke

(9) Fermented liquor, brewers' wholesale price, excluding the ad valorem tax

x x x x x x x x x

PROVIDED, that all registered businesses in the City of Manila that are already paying the aforementioned tax shall be exempted from payment thereof.

Petitioner City of Manila subsequently approved on 25 February 2000, Tax Ordinance No. 7988,[7] amending certain sections of Tax Ordinance No. 7794, particularly: (1) Section 14, by increasing the tax rates applicable to certain establishments operating within the territorial jurisdiction of the City of Manila; and (2) Section 21, by deleting the *proviso* found therein, which stated "that all registered businesses in the City of Manila that are already paying the aforementioned tax shall be exempted

[7] Otherwise known as "Revised Revenue Code of the City of Manila."

from payment thereof." Petitioner City of Manila approved only after a year, on 22 February 2001, another tax ordinance, Tax Ordinance No. 8011, amending Tax Ordinance No. 7988.

Tax Ordinances No. 7988 and No. 8011 were later declared by the Court null and void in *Coca-Cola Bottlers Philippines, Inc. v. City of Manila*[8] (*Coca-Cola* case) for the following reasons: (1) Tax Ordinance No. 7988 was enacted in contravention of the provisions of the Local Government Code (LGC) of 1991 and its implementing rules and regulations; and (2) Tax Ordinance No. 8011 could not cure the defects of Tax Ordinance No. 7988, which did not legally exist.

However, before the Court could declare Tax Ordinance No. 7988 and Tax Ordinance No. 8011 null and void, petitioner City of Manila assessed respondent on the basis of Section 21 of Tax Ordinance No. 7794, as amended by the aforementioned tax ordinances, for deficiency local business taxes, penalties, and interest, in the total amount of ₱18,583,932.04, for the third and fourth quarters of the year 2000. Respondent filed a protest with petitioner Toledo on the ground that the said assessment amounted to double taxation, as respondent was taxed twice, *i.e.*, under Sections 14 and 21 of Tax Ordinance No. 7794, as amended by Tax Ordinances No. 7988 and No. 8011. Petitioner Toledo did not respond to the protest of respondent.

Consequently, respondent filed with the Regional Trial Court (RTC) of Manila, Branch 47, an action for the cancellation of the assessment against respondent for business taxes, which was docketed as Civil Case No. 03-107088.

On 14 July 2006, the RTC rendered a Decision[9] dismissing Civil Case No. 03-107088. The RTC ruled that the business taxes imposed upon the respondent under Sections 14 and 21 of Tax Ordinance No. 7988, as amended, were not of the same kind or character; therefore, there was no double taxation. The

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[8] G.R. No. 156252, 27 June 2006, 493 SCRA 279.

[9] Penned by Presiding Judge Augusto T. Gutierrez, *rollo*, pp. 47-53.

RTC, though, in an Order[10] dated 16 November 2006, granted the Motion for Reconsideration of respondent, decreed the cancellation and withdrawal of the assessment against the latter, and barred petitioners from further imposing/assessing local business taxes against respondent under Section 21 of Tax Ordinance No. 7794, as amended by Tax Ordinance No. 7988 and Tax Ordinance No. 8011. The 16 November 2006 Decision of the RTC was in conformity with the ruling of this Court in the *Coca-Cola* case, in which Tax Ordinance No. 7988 and Tax Ordinance No. 8011 were declared null and void. The Motion for Reconsideration of petitioners was denied by the RTC in an Order[11] dated 4 April 2007. Petitioners received a copy of the 4 April 2007 Order of the RTC, denying their Motion for Reconsideration of the 16 November 2006 Order of the same court, on 20 April 2007.

On 4 May 2007, petitioners filed with the CTA a Motion for Extension of Time to File Petition for Review, praying for a 15-day extension or until 20 May 2007 within which to file their Petition. The Motion for Extension of petitioners was docketed as C.T.A. AC No. 31, raffled to the CTA First Division.

Again, on 18 May 2007, petitioners filed, through registered mail, a Second Motion for Extension of Time to File a Petition for Review, praying for another 10-day extension, or until 30 May 2007, within which to file their Petition.

On 24 May 2007, however, the CTA First Division already issued a Resolution dismissing C.T.A. AC No. 31 for failure of petitioners to timely file their Petition for Review on 20 May 2007.

Unaware of the 24 May 2007 Resolution of the CTA First Division, petitioners filed their Petition for Review therewith on 30 May 2007 *via* registered mail. On 8 June 2007, the CTA First Division issued another Resolution, reiterating the dismissal of the Petition for Review of petitioners.

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[10] *Id.* at 89-90.

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

Petitioners moved for the reconsideration of the foregoing Resolutions dated 24 May 2007 and 8 June 2007, but their motion was denied by the CTA First Division in a Resolution dated 26 July 2007. The CTA First Division reasoned that the Petition for Review of petitioners was not only filed out of time — it also failed to comply with the provisions of Section 4, Rule 5; and Sections 2 and 3, Rule 6, of the Revised Rules of the CTA.

Petitioners thereafter filed a Petition for Review before the CTA *en banc*, docketed as C.T.A. EB No. 307, arguing that the CTA First Division erred in dismissing their Petition for Review in C.T.A. AC No. 31 for being filed out of time, without considering the merits of their Petition.

The CTA *en banc* rendered its Decision on 18 January 2008, dismissing the Petition for Review of petitioners and affirming the Resolutions dated 24 May 2007, 8 June 2007, and 26 July 2007 of the CTA First Division. The CTA *en banc* similarly denied the Motion for Reconsideration of petitioners in a Resolution dated 18 February 2008.

Hence, the present Petition, where petitioners raise the following issues:

I. WHETHER OR NOT PETITIONERS SUBSTANTIALLY COMPLIED WITH THE REGLEMENTARY PERIOD TO TIMELY APPEAL THE CASE FOR REVIEW BEFORE THE [CTA DIVISION].

II. WHETHER OR NOT THE RULING OF THIS COURT IN THE EARLIER [*COCA-COLA CASE*] IS DOCTRINAL AND CONTROLLING IN THE INSTANT CASE.

III. WHETHER OR NOT PETITIONER CITY OF MANILA CAN STILL ASSESS TAXES UNDER [SECTIONS] 14 AND 21 OF [TAX ORDINANCE NO. 7794, AS AMENDED].

IV. WHETHER OR NOT THE ENFORCEMENT OF [SECTION] 21 OF THE [TAX ORDINANCE NO. 7794, AS AMENDED] CONSTITUTES DOUBLE TAXATION.

Petitioners assert that Section 1, Rule 7[12] of the Revised Rules of the CTA refers to certain provisions of the Rules of Court, such as Rule 42 of the latter, and makes them applicable to the tax court. Petitioners then cannot be faulted in relying on the provisions of Section 1, Rule 42[13] of the Rules of Court as regards the period for filing a Petition for Review with the CTA in division. Section 1, Rule 42 of the Rules of Court provides for a 15-day period, reckoned from receipt of the adverse decision of the trial court, within which to file a Petition for Review with the Court of Appeals. The same rule allows an additional 15-day period within which to file such a Petition; and, only for the most compelling reasons, another extension period not to exceed 15 days. Petitioners received on 20 April 2007 a copy of the 4 April 2007 Order of the RTC, denying their Motion for Reconsideration of the 16 November 2006 Order of the same court. On 4 May 2007, believing that they only had 15 days to file a Petition for Review with the CTA in division, petitioners moved for a 15-day extension, or until 20 May 2007, within which to file said Petition. Prior to the

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[12] **SEC. 1.** *Applicability of the Rules on procedure in the Court of Appeals, exception.* – The procedure in the Court *En Banc* or in Divisions in original and in appealed cases shall be the same as those in petitions for review and appeals before the Court of Appeals pursuant to the applicable provisions of Rules 42, 43, 44 and 46 of the Rules of Court, except as otherwise provided for in these Rules.

[13] **SEC. 1**. *How appeal taken; time for filing*. – A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, depositing the amount of ₱500.00 for costs, and furnishing the Regional Trial Court and the adverse party with a copy of the petition. The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment. Upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

lapse of their first extension period, or on 18 May 2007, petitioners again moved for a 10-day extension, or until 30 May 2007, within which to file their Petition for Review. Thus, when petitioners filed their Petition for Review with the CTA First Division on 30 May 2007, the same was filed well within the reglementary period for doing so.

Petitioners argue in the alternative that even assuming that Section 3(a), Rule 8[14] of the Revised Rules of the CTA governs the period for filing a Petition for Review with the CTA in division, still, their Petition for Review was filed within the reglementary period. Petitioners call attention to the fact that prior to the lapse of the 30-day period for filing a Petition for Review under Section 3(a), Rule 8 of the Revised Rules of the CTA, they had already moved for a 10-day extension, or until 30 May 2007, within which to file their Petition. Petitioners claim that there was sufficient justification in equity for the grant of the 10-day extension they requested, as the primordial consideration should be the substantive, and not the procedural, aspect of the case. Moreover, Section 3(a), Rule 8 of the Revised Rules of the CTA, is silent as to whether the 30-day period for filing a Petition for Review with the CTA in division may be extended or not.

Petitioners also contend that the *Coca-Cola* case is not determinative of the issues in the present case because the issue of nullity of Tax Ordinance No. 7988 and Tax Ordinance No.

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[14] **SEC. 3.** *Who may appeal; period to file petition.* – (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

8011 is not the *lis mota* herein. The *Coca-Cola* case is not doctrinal and cannot be considered as the law of the case.

Petitioners further insist that notwithstanding the declaration of nullity of Tax Ordinance No. 7988 and Tax Ordinance No. 8011, Tax Ordinance No. 7794 remains a valid piece of local legislation. The nullity of Tax Ordinance No. 7988 and Tax Ordinance No. 8011 does not effectively bar petitioners from imposing local business taxes upon respondent under Sections 14 and 21 of Tax Ordinance No. 7794, as they were read prior to their being amended by the foregoing null and void tax ordinances.

Petitioners finally maintain that imposing upon respondent local business taxes under both Sections 14 and 21 of Tax Ordinance No. 7794 does not constitute direct double taxation. Section 143 of the LGC gives municipal, as well as city governments, the power to impose business taxes, to wit:

SECTION 143. **Tax on Business**. – The municipality may impose taxes on the following businesses:

(a) On manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers, and compounders of liquors, distilled spirits, and wines or manufacturers of any article of commerce of whatever kind or nature, in accordance with the following schedule:

x x x x x x x x x

(b) On wholesalers, distributors, or dealers in any article of commerce of whatever kind or nature in accordance with the following schedule:

x x x x x x x x x

(c) On exporters, and on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities enumerated hereunder at a rate not exceeding one-half (1/2) of the rates prescribed under subsections (a), (b) and (d) of this Section:

x x x x x x x x x

Provided, however, That *barangays* shall have the exclusive power to levy taxes, as provided under Section 152 hereof, on gross sales or receipts of the preceding calendar year of Fifty thousand pesos

(₱50,000.00) or less, in the case of cities, and Thirty thousand pesos (₱30,000) or less, in the case of municipalities.

(e) On contractors and other independent contractors, in accordance with the following schedule:

x x x x x x x x x

(f) On banks and other financial institutions, at a rate not exceeding fifty percent (50%) of one percent (1%) on the gross receipts of the preceding calendar year derived from interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of property, insurance premium.

(g) On peddlers engaged in the sale of any merchandise or article of commerce, at a rate not exceeding Fifty pesos (₱50.00) per peddler annually.

(h) On any business, not otherwise specified in the preceding paragraphs, which the *sanggunian* concerned may deem proper to tax: *Provided*, That on any business subject to the excise, value-added or percentage tax under the National Internal Revenue Code, as amended, the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year.

Section 14 of Tax Ordinance No. 7794 imposes local business tax on manufacturers, *etc.* of liquors, distilled spirits, wines, and any other article of commerce, pursuant to Section 143(a) of the LGC. On the other hand, the local business tax under Section 21 of Tax Ordinance No. 7794 is imposed upon persons selling goods and services in the course of trade or business, and those importing goods for business or otherwise, who, pursuant to Section 143(h) of the LGC, are subject to excise tax, value-added tax (VAT), or percentage tax under the National Internal Revenue Code (NIRC). Thus, there can be no double taxation when respondent is being taxed under both Sections 14 and 21 of Tax Ordinance No. 7794, for under the first, it is being taxed as a manufacturer; while under the second, it is being taxed as a person selling goods in the course of trade or business subject to excise, VAT, or percentage tax.

The Court first addresses the issue raised by petitioners concerning the period within which to file with the CTA a Petition for Review from an adverse decision or ruling of the RTC.

The period to appeal the decision or ruling of the RTC to the CTA *via* a Petition for Review is specifically governed by Section 11 of Republic Act No. 9282,[15] and Section 3(a), Rule 8 of the Revised Rules of the CTA.

Section 11 of Republic Act No. 9282 provides:

SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the **Regional Trial Courts** may file an Appeal with the CTA within **thirty (30) days** after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

Appeal shall be made by filing a **petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure** with the CTA within **thirty (30) days** from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. x x x. (Emphasis supplied.)

Section 3(a), Rule 8 of the Revised Rules of the CTA states:

SEC 3. *Who may appeal; period to file petition.* – (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a **Regional Trial Court** in the exercise of its original jurisdiction may appeal to

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[15] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals and for Other Purposes.

the Court by **petition for review** filed within **thirty days** after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. x x x. (Emphasis supplied.)

It is crystal clear from the afore-quoted provisions that to appeal an adverse decision or ruling of the RTC to the CTA, the taxpayer must file a **Petition for Review** with the CTA **within 30 days** from receipt of said adverse decision or ruling of the RTC.

It is also true that the same provisions are silent as to whether such 30-day period can be extended or not. However, Section 11 of Republic Act No. 9282 does state that the Petition for Review shall be filed with the CTA **following the procedure analogous to Rule 42 of the Revised Rules of Civil Procedure**. Section 1, Rule 42[16] of the Revised Rules of Civil Procedure provides that the Petition for Review of an adverse judgment or final order of the RTC must be filed with the Court of Appeals within: (1) the original 15-day period from receipt of the judgment or final order to be appealed; (2) an extended period of 15 days from the lapse of the original period; and (3) only **for the most compelling reasons,** another extended period not to exceed 15 days from the lapse of the first extended period.

Following by analogy Section 1, Rule 42 of the Revised Rules of Civil Procedure, the **30-day** original period for filing a Petition for Review with the CTA under Section 11 of Republic Act No. 9282, as implemented by Section 3(a), Rule 8 of the Revised Rules of the CTA, may be extended for a period of **15 days**.

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[16] Section 1. *How appeal taken; time for filing*. – x x x The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment. Upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

No further extension shall be allowed thereafter, except only for the most compelling reasons, in which case the extended period shall not exceed **15 days**.

Even the CTA *en banc*, in its Decision dated 18 January 2008, recognizes that the 30-day period within which to file the Petition for Review with the CTA may, indeed, be extended, thus:

> Being suppletory to R.A. 9282, the 1997 Rules of Civil Procedure allow an additional period of fifteen (15) days for the movant to file a Petition for Review, upon Motion, and payment of the full amount of the docket fees. A further extension of fifteen (15) days may be granted on compelling reasons in accordance with the provision of Section 1, Rule 42 of the 1997 Rules of Civil Procedure x x x.[17]

In this case, the CTA First Division did indeed err in finding that petitioners failed to file their Petition for Review in C.T.A. AC No. 31 within the reglementary period.

From **20 April 2007**, the date petitioners received a copy of the 4 April 2007 Order of the RTC, denying their Motion for Reconsideration of the 16 November 2006 Order, petitioners had 30 days, or until **20 May 2007**, within which to file their Petition for Review with the CTA. Hence, the Motion for Extension filed by petitioners on 4 May 2007 – grounded on their belief that the reglementary period for filing their Petition for Review with the CTA was to expire on 5 May 2007, thus, compelling them to seek an extension of 15 days, or until **20 May 2007**, to file said Petition – was unnecessary and superfluous. Even without said Motion for Extension, petitioners could file their Petition for Review until 20 May 2007, as it was still within the 30-day reglementary period provided for under Section 11 of Republic Act No. 9282; and implemented by Section 3(a), Rule 8 of the Revised Rules of the CTA.

The Motion for Extension filed by the petitioners on 18 May 2007, prior to the lapse of the 30-day reglementary period on

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[17] *Rollo*, p. 40.

20 May 2007, in which they prayed for another extended period of 10 days, or until **30 May 2007**, to file their Petition for Review was, in reality, only the first Motion for Extension of petitioners. The CTA First Division should have granted the same, as it was sanctioned by the rules of procedure. In fact, petitioners were only praying for a 10-day extension, five days less than the 15-day extended period allowed by the rules. Thus, when petitioners filed *via* registered mail their Petition for Review in C.T.A. AC No. 31 on **30 May 2007,** they were able to comply with the reglementary period for filing such a petition.

Nevertheless, there were other reasons for which the CTA First Division dismissed the Petition for Review of petitioners in C.T.A. AC No. 31; *i.e.*, petitioners failed to conform to Section 4 of Rule 5, and Section 2 of Rule 6 of the Revised Rules of the CTA. The Court sustains the CTA First Division in this regard.

Section 4, Rule 5 of the Revised Rules of the CTA requires that:

> **SEC. 4.** *Number of copies.* – The parties shall file eleven signed copies of every paper for cases before the Court *en banc* and **six signed copies for cases before a Division of the Court in addition to the signed original copy**, except as otherwise directed by the Court. Papers to be filed in more than one case shall include one additional copy for each additional case. (Emphasis supplied.)

Section 2, Rule 6 of the Revised Rules of the CTA further necessitates that:

> **SEC. 2.** *Petition for review; contents*. – The petition for review shall contain allegations showing the jurisdiction of the Court, a concise statement of the complete facts and a summary statement of the issues involved in the case, as well as the reasons relied upon for the review of the challenged decision. The petition shall be verified and must contain a certification against forum shopping as provided in Section 3, Rule 46 of the Rules of Court. **A clearly legible duplicate original or certified true copy of the decision appealed from shall be attached to the petition**. (Emphasis supplied.)

The aforesaid provisions should be read in conjunction with Section 1, Rule 7 of the Revised Rules of the CTA, which provides:

> **SECTION 1**. *Applicability of the Rules of Court on procedure in the Court of Appeals, exception*. – The procedure in the Court *en banc* or in Divisions in original or in appealed cases shall be the **same** as those in petitions for review and appeals before the Court of Appeals pursuant to the applicable provisions of **Rules 42, 43, 44, and 46 of the Rules of Court, except as otherwise provided for in these Rules**. (Emphasis supplied.)

As found by the CTA First Division and affirmed by the CTA *en banc*, the Petition for Review filed by petitioners *via* registered mail on 30 May 2007 consisted only of one copy and all the attachments thereto, including the Decision dated 14 July 2006; and that the assailed Orders dated 16 November 2006 and 4 April 2007 of the RTC in Civil Case No. 03-107088 were mere machine copies. Evidently, petitioners did not comply at all with the requirements set forth under Section 4, Rule 5; or with Section 2, Rule 6 of the Revised Rules of the CTA. Although the Revised Rules of the CTA do not provide for the consequence of such non-compliance, Section 3, Rule 42 of the Rules of Court may be applied suppletorily, as allowed by Section 1, Rule 7 of the Revised Rules of the CTA. Section 3, Rule 42 of the Rules of Court reads:

> **SEC. 3.** *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. (Emphasis supplied.)

True, petitioners subsequently submitted certified copies of the Decision dated 14 July 2006 and assailed Orders dated 16 November 2006 and 4 April 2007 of the RTC in Civil Case No. 03-107088, but a closer examination of the stamp on said documents reveals that they were prepared and certified only

on 14 August 2007, about two months and a half after the filing of the Petition for Review by petitioners.

Petitioners never offered an explanation for their non-compliance with Section 4 of Rule 5, and Section 2 of Rule 6 of the Revised Rules of the CTA. Hence, although the Court had, in previous instances, relaxed the application of rules of procedure, it cannot do so in this case for lack of any justification.

Even assuming *arguendo* that the Petition for Review of petitioners in C.T.A. AC No. 31 should have been given due course by the CTA First Division, it is still dismissible for lack of merit.

Contrary to the assertions of petitioners, the *Coca-Cola* case is indeed applicable to the instant case. The pivotal issue raised therein was whether Tax Ordinance No. 7988 and Tax Ordinance No. 8011 were null and void, which this Court resolved in the affirmative. Tax Ordinance No. 7988 was declared by the Secretary of the Department of Justice (DOJ) as null and void and without legal effect due to the failure of herein petitioner City of Manila to satisfy the requirement under the law that said ordinance be published for three consecutive days. Petitioner City of Manila never appealed said declaration of the DOJ Secretary; thus, it attained finality after the lapse of the period for appeal of the same. The passage of Tax Ordinance No. 8011, amending Tax Ordinance No. 7988, did not cure the defects of the latter, which, in any way, did not legally exist.

By virtue of the *Coca-Cola* case, Tax Ordinance No. 7988 and Tax Ordinance No. 8011 are null and void and without any legal effect. Therefore, respondent cannot be taxed and assessed under the amendatory laws—Tax Ordinance No. 7988 and Tax Ordinance No. 8011.

Petitioners insist that even with the declaration of nullity of Tax Ordinance No. 7988 and Tax Ordinance No. 8011, respondent could still be made liable for local business taxes under both Sections 14 and 21 of Tax Ordinance No. 7944 as they were originally read, without the amendment by the null and void tax ordinances.

Emphasis must be given to the fact that prior to the passage of Tax Ordinance No. 7988 and Tax Ordinance No. 8011 by petitioner City of Manila, petitioners subjected and assessed respondent only for the local business tax under Section 14 of Tax Ordinance No. 7794, but never under Section 21 of the same. This was due to the clear and unambiguous *proviso* in Section 21 of Tax Ordinance No. 7794, which stated that "all registered business in the City of Manila that are already paying the aforementioned tax shall be exempted from payment thereof." The "aforementioned tax" referred to in said *proviso* refers to local business tax. Stated differently, Section 21 of Tax Ordinance No. 7794 exempts from the payment of the local business tax imposed by said section, businesses that are already paying such tax under other sections of the same tax ordinance. The said *proviso*, however, was deleted from Section 21 of Tax Ordinance No. 7794 by Tax Ordinances No. 7988 and No. 8011. Following this deletion, petitioners began assessing respondent for the local business tax under Section 21 of Tax Ordinance No. 7794, as amended.

The Court easily infers from the foregoing circumstances that petitioners themselves believed that prior to Tax Ordinance No. 7988 and Tax Ordinance No. 8011, respondent was exempt from the local business tax under Section 21 of Tax Ordinance No. 7794. Hence, petitioners had to wait for the deletion of the exempting *proviso* in Section 21 of Tax Ordinance No. 7794 by Tax Ordinance No. 7988 and Tax Ordinance No. 8011 before they assessed respondent for the local business tax under said section. Yet, with the pronouncement by this Court in the *Coca-Cola* case that Tax Ordinance No. 7988 and Tax Ordinance No. 8011 were null and void and without legal effect, then Section 21 of Tax Ordinance No. 7794, as it has been previously worded, with its exempting *proviso*, is back in effect. Accordingly, respondent should not have been subjected to the local business tax under Section 21 of Tax Ordinance No. 7794 for the third and fourth quarters of 2000, given its exemption therefrom since it was already paying the local business tax under Section 14 of the same ordinance.

Petitioners obstinately ignore the exempting *proviso* in Section 21 of Tax Ordinance No. 7794, to their own detriment. Said exempting *proviso* was precisely included in said section so as to avoid double taxation.

Double taxation means taxing the same property twice when it should be taxed only once; that is, "taxing the same person twice by the same jurisdiction for the same thing." It is obnoxious when the taxpayer is taxed twice, when it should be but once. Otherwise described as "direct duplicate taxation," **the two taxes must be imposed on the same subject matter**, for the **same purpose**, by the **same taxing authority**, **within the same jurisdiction**, **during the same taxing period**; and the taxes must be **of the same kind or character**.[18]

Using the aforementioned test, the Court finds that there is indeed double taxation if respondent is subjected to the taxes under both Sections 14 and 21 of Tax Ordinance No. 7794, since these are being imposed: (1) on the same subject matter – the privilege of doing business in the City of Manila; (2) for the same purpose – to make persons conducting business within the City of Manila contribute to city revenues; (3) by the same taxing authority – petitioner City of Manila; (4) within the same taxing jurisdiction – within the territorial jurisdiction of the City of Manila; (5) for the same taxing periods – per calendar year; and (6) of the same kind or character – a local business tax imposed on gross sales or receipts of the business.

The distinction petitioners attempt to make between the taxes under Sections 14 and 21 of Tax Ordinance No. 7794 is specious. The Court revisits Section 143 of the LGC, the very source of the power of municipalities and cities to impose a local business tax, and to which any local business tax imposed by petitioner City of Manila must conform. It is apparent from a perusal thereof that when a municipality or city has already imposed a business tax on manufacturers, *etc.* of liquors, distilled spirits, wines, and any other article of commerce, pursuant to Section

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[18] *Commissioner of Internal Revenue v. Bank of Commerce*, G.R. No. 149636, 8 June 2005, 459 SCRA 638, 655.

143(a) of the LGC, said municipality or city may no longer subject the same manufacturers, *etc.* to a business tax under Section 143(h) of the same Code. Section 143(h) may be imposed only on businesses that are subject to excise tax, VAT, or percentage tax under the NIRC, and that are **"not otherwise specified in preceding paragraphs."** In the same way, businesses such as respondent's, already subject to a local business tax under Section 14 of Tax Ordinance No. 7794 [which is based on Section 143(a) of the LGC], can no longer be made liable for local business tax under Section 21 of the same Tax Ordinance [which is based on Section 143(h) of the LGC].

WHEREFORE, premises considered, the instant Petition for Review on *Certiorari* is hereby *DENIED*. No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 184005. August 4, 2009]

TOP ART SHIRT MANUFACTURING, INCORPORATED, MAXIMO AREJOLA and TAN SIU KHENG, *petitioners, vs.* **METROPOLITAN BANK AND TRUST COMPANY and THE COURT OF APPEALS,** *respondents.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; SALES; EXTRA-JUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE; WRIT OF POSSESSION; UPON THE

PURCHASER'S FILING OF THE *EX PARTE* PETITION AND POSTING OF THE APPROPRIATE BOND, THE TRIAL COURT SHALL, AS A MATTER OF COURSE, ORDER THE ISSUANCE OF THE WRIT OF POSSESSION.— The procedure for extrajudicial foreclosure of real estate mortgage is governed by Act No. 3135, as amended, entitled "An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real Estate Mortgages." Sec. 7 of Act No. 3135, as amended, provides that the purchaser at the public auction sale of an extrajudicially foreclosed real property may seek possession thereof. Sec. 7 of Act No. 3135, as amended, refers to a situation wherein the purchaser seeks possession of the foreclosed property during the 12-month period for redemption. Upon the purchaser's filing of the *ex parte* petition and posting of the appropriate bond, the RTC shall, as a matter of course, order the issuance of the writ of possession in the purchaser's favor.

2. **ID.; ID.; ID.; ID.; ID.; A WRIT OF POSSESSION WILL ISSUE AS A MATTER OF COURSE, EVEN WITHOUT THE FILING AND APPROVAL OF A BOND, AFTER CONSOLIDATION OF OWNERSHIP AND THE ISSUANCE OF A NEW TRANSFER CERTIFICATE OF TITLE IN THE NAME OF THE PURCHASER.—** But equally well settled is the rule that a writ of possession will issue as a matter of course, even without the filing and approval of a bond, after consolidation of ownership and the issuance of a new TCT in the name of the purchaser. In *IFC Service Leasing and Acceptance Corporation v. Nera*, We reasoned that if under Sec. 7 of Act No. 3135, as amended, the RTC has the power during the period of redemption to issue a writ of possession on the *ex parte* application of the purchaser, there is no reason why it should not also have the same power after the expiration of the redemption period, especially where a new title had already been issued in the name of the purchaser. Put simply, a purchaser seeking possession of the foreclosed property he bought at the public auction sale, after the redemption period expired without redemption having been made, may still avail itself of the procedure under Sec. 7 of Act No. 3135, as amended; this time, without any more need for the purchaser to furnish a bond.

3. **ID.; ID.; ID.; ID.; ID.; GENERAL RULE IS THAT UPON PROPER APPLICATION AND PROOF OF TITLE, THE**

ISSUANCE OF THE WRIT OF POSSESSION TO THE PURCHASER OF THE FORECLOSED PROPERTY AT A PUBLIC AUCTION SALE BECOMES A MINISTERIAL DUTY OF THE COURT.— Possession of the foreclosed real property, purchased at a public auction sale, becomes the absolute right of the purchaser upon the consolidation of his title when no timely redemption of the said property had been made because: It is settled that upon receipt of the definitive deed in an execution sale, legal title over the property sold is perfected (33 *C. J. S.* 554). And this court has also [said] and that the land bought by him and described in the deed deemed (sic) within the period allowed for that purpose, its ownership becomes consolidated in the purchaser, and the latter, "as absolute owner . . . is entitled to its possession and to receive the rents and fruits thereof." Hence, the general rule is that upon proper application and proof of title, the issuance of the writ of possession to the purchaser of the foreclosed property at a public auction sale becomes a ministerial duty of the court.

4. **ID.; ID.; ID.; ID.; ID.; EXCEPTION TO THE RULE; WHEN A THIRD PARTY IS ACTUALLY HOLDING THE PROPERTY ADVERSELY TO THE JUDGMENT DEBTOR.—** As in all general rules, there is an exception. In *Roxas v. Buan*, we explained thus: In the extrajudicial foreclosure of real estate mortgages, possession of the property may be awarded to the purchaser at the foreclosure sale during the pendency of the period of redemption under the terms provided in Sec. 6 of Act 3135, as amended (An Act to Regulate the Sale of Property Under Special Powers Inserted In or Annexed to Real Estate Mortgages), or after the lapse of the redemption period, without need of a separate and independent action. This is founded on his right of ownership over the property which he purchased at the auction sale and his consequent right to be placed in possession thereof. ***This rule is, however, not without exception. Under Sec. 35, Rule 39 of the Revised Rules of Court, which was made applicable to the extrajudicial foreclosure of real estate mortgages by Sec. 6 Act No. 3135, the possession of the mortgaged property may be awarded to a purchaser in extrajudicial foreclosures "unless a third party is actually holding the property adversely to the judgment debtor."***

5. ID.; ID.; ID.; ID.; ID.; PETITIONER IS NOT A THIRD PARTY ACTUALLY HOLDING THE SUBJECT PROPERTY ADVERSE TO THE OBLIGOR, IT CANNOT SEEK QUASHAL OR PREVENT THE IMPLEMENTATION OF THE WRIT OF POSSESSION ISSUED *EX PARTE* TO RESPONDENT BANK.— In an extrajudicial foreclosure of real property, when the foreclosed property is in the possession of a third party holding the same adversely to the defaulting debtor/mortgagor, the issuance by the RTC of a writ of possession in favor of the purchaser of the said real property ceases to be ministerial and may no longer be done *ex parte*. But, for the exception to apply, the property must be possessed by a third party; and such possession must be adverse to the debtor/ mortgagor. In the case at bar, is Top Art a third party, in possession of the subject property, claiming a right adverse to the mortgagors Spouses Arejola; which would give rise to the exception rather than the general rule, and bar Metrobank from acquiring possession of the subject property despite its consolidated title? The facts of the case are simple and We can only answer no. Top Art is not alleging that it is the one in possession of the subject property. It is invoking the possession of Santillan, who is purportedly leasing the subject property from Maximo Arejola. Additionally, although Top Art was not the owner of the subject property, it was actually the debtor of Metrobank. The Spouses Arejola executed mortgages over their real properties, including the subject property, only to secure the dollar-denominated loans of Top Art with Metrobank. The subject property was foreclosed due to the failure of Top Art to pay its loans. Therefore, Top Art cannot claim to be a third party to the loan transactions that led to the foreclosure of the subject property, it being, in fact, a principal party thereto. Moreover, Top Art does not assert any right to the subject property adverse to the Spouses Arejola. It can even be said that Top Art and the Spouses Arejola, being the debtor and mortgagors, respectively, share exactly the same rights as against Metrobank insofar as the subject property is concerned. And, inasmuch as Top Art is not a third party actually holding the subject property adversely to the obligor, it cannot seek the quashal or prevent the implementation of the writ of possession issued *ex parte* to Metrobank. Surprisingly, Top Art and the Spouses Arejola allege in their *Reply* to the *Comment* of Metrobank in this case that Top Art is leasing the subject property from the Spouses Arejola.

Not only is this allegation belatedly made, it is contradictory to the averments of Top Art in its Motion to Quash before the RTC that the lessee of the subject property is Santillan. Even granting that Top Art is indeed the lessee of the subject property, it will not affect the ruling of this Court, since Top Art still cannot be deemed a third party. It will not change the fact that Top Art is a party to the loan transactions that ended in the foreclosure of the subject property.

6. **ID.; ID.; ID.; ID.; ID.; BETWEEN PETITIONER AND THE ALLEGED THIRD PARTY, THE LESSEE, THE LATTER IS THE PROPER PARTY TO QUESTION THE *EX PARTE* ISSUANCE AND ENFORCEMENT OF THE WRIT OF POSSESSION FOR THE SUBJECT PROPERTY; REMEDIES AVAILABLE TO THE PARTY IN POSSESSION OF THE SUBJECT PROPERTY.—** The Court cannot give much credence to the allegation by Top Art in its Motion to Quash that the subject property is presently in the possession of Santillan as lessee. The basic rule is that mere allegation is not evidence and is not equivalent to proof. To be sure, Santillan, the alleged lessee whose physical possession was being threatened by the writ of possession issued in favor of Metrobank, did not even intervene in LRC Case No. Q-17996 (04). Between Top Art and Santillan, the latter was the proper party to question the *ex parte* issuance and enforcement of the writ of possession for the subject property. Even assuming *arguendo* that the subject real property is actually being held adversely by Santillan, a third party, he is not without remedy. The third party can file (1) a *terceria* to determine whether the Sheriff had rightly or wrongly taken hold of the property not belonging to the judgment debtor or obligor; and (2) an independent "separate action" to vindicate his claim of ownership and/or possession over the foreclosed property.

7. **ID.; ID.; ID.; ID.; ID.; THE GENERAL RULE AND NOT THE EXCEPTION APPLIES IN CASE AT BAR; PETITIONER CANNOT BE CONSIDERED AS A THIRD PARTY HOLDING THE SUBJECT REAL PROPERTY ADVERSELY TO ITSELF, AS DEBTOR, AND NEITHER CAN THE ALLEGED LESSEE BE DEEMED AS SUCH THIRD PARTY SINCE HIS POSSESSION AS LESSEE OF THE SUBJECT PROPERTY HAS NOT BEEN ADEQUATELY PROVED.—** We find no justifiable reason

to disturb the assailed Decision and Resolution of the Court of Appeals. Verily, Top Art cannot be considered a third party holding the subject real property adversely to itself, as debtor; or the Spouses Arejola, the mortgagors. Neither can Santillan be deemed such a third party, since his alleged possession as lessee of the subject real property has not been adequately proved. Resultantly, the general rule, and not the exception, applies to the instant Petition. It is the mandatory and ministerial duty of the Quezon City RTC, Branch 222, to grant the *ex parte* petition of Metrobank for the issuance of a writ of possession, following the consolidation of title to the subject property and issuance of a new certificate of title in the name of the said bank.

APPEARANCES OF COUNSEL

Rogelio V. Garcia for petitioners.

Corpuz Ejercito Macasaet Rivera & Corpuz Law Offices for private respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This Petition for Review on *Certiorari*[1] under Rule 45 of the Revised Rules of Court seeks the review of the *Decision*[2] dated 29 April 2008 and *Resolution*[3] dated 31 July 2008 of the Court of Appeals in CA-G.R. SP No. 98617, entitled "*Metropolitan Bank and Trust Company v. Hon. Rogelio M. Pizarro in his capacity as the Presiding Judge, Branch 22, RTC-Quezon City, Spouses Maximo Arejola and Tan Shiu Kheng, and Top Art Manufacturing, Inc.*," which issued the writ of *certiorari* annulling and setting aside the *Orders* dated 9 November 2006 and 2 February 2007 of the Regional Trial

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[1] *Rollo*, pp. 41-84.

[2] Penned by Court of Appeals Associate Justice Apolinario D. Bruselas, Jr. with Associate Justices Rebecca de Guia-Salvador and Vicente S.E. Veloso concurring; *rollo,* pp. 86-97.

[3] *Id.* at 99.

Court (RTC), Branch 222, Quezon City, in LRC Case No. Q17996 (04) entitled "*In re: Issuance of Writ of Possession, Metropolitan Bank and Trust Company*."

As culled from the record of the present petition, the facts of the case are as follows:

On 21 April 2004, respondent Metropolitan Bank and Trust Company (Metrobank) filed before the RTC a Petition for Issuance of a Writ of Possession of a 480-square-meter real property (subject property) located at Mayon Street, Quezon City, which was covered by Transfer Certificate of Title (TCT) No. RT-105885 (243642) registered in the names of petitioner-spouses Maximo Arejola and Tan Siu Kheng (Spouses Arejola). The Petition was docketed as **LRC Case No. Q17996 (04)**. Said Petition was anchored on the allegations that on 26 March 2000, petitioner Top Art Shirt Manufacturing, Inc. (Top Art) obtained two (2) U.S. dollar-denominated loans from Metrobank in the amounts of US$1,411,000.00 and US$536,000.00; that both amounts of indebtedness were collectively secured by several real estate mortgages executed by Maximo Arejola, as President of Top Art, and his wife, Tan Siu Kheng, over their real properties; that one of the real properties mortgaged to secure the indebtedness of Top Art was the subject property; that despite repeated demands from Metrobank, Top Art failed to settle its loan obligations with the bank; that, as a consequence, Metrobank instituted extrajudicial foreclosure proceedings over the subject property; that the subject property was sold at a public auction on 15 May 2001, to Metrobank, the highest bidder; that a *Certificate of Sale* was issued to Metrobank on 15 May 2001, the date of the auction, and it was duly registered on 11 September 2001; that the fact of sale was annotated at the back of TCT No. RT-105885 (243642), covering the subject property; that the Spouses Arejola failed to redeem the foreclosed property within the statutory period for the mortgagor to exercise his/her right of redemption; and that title over the same was eventually consolidated and a new certificate of title, TCT No. N-266564, was issued in the name of Metrobank.

In a Decision dated 25 May 2005, the RTC granted the Petition of Metrobank and ordered the issuance of a writ of possession in the latter's favor, to wit:

> WHEREFORE, premises considered, the instant petition is hereby GRANTED. Accordingly, let a Writ of Possession issue in favor of [herein respondent] bank and the Sheriff IV of this Branch or his duly authorized deputy is directed to cause the eviction of Spouses Maximo Arejola and Tan Siu Kheng and all persons claiming rights under them from the subject property TCT No. N-266564 of the Registry of Deeds of Quezon City and forthwith place [respondent] bank in possession of the said subject premises.[4]

Accordingly, a writ of possession was issued on 3 April 2006, commanding the RTC Sheriff to place Metrobank "in possession of the subject property covered by TCT No. N-266564 x x x and to eject therefrom all adverse occupants."[5]

On 19 May 2006, Top Art filed with the RTC a *Motion to Quash Writ of Possession*[6] praying for the recall of the writ of possession earlier issued. Top Art alleged that Metrobank violated Section 5, Rule 7 of the Rules of Court by failing to inform the RTC that there was a civil case pending before another court, *i.e.*, **Civil Case No. Q-04-52965**, filed by one Walter Santillan (Santillan) against Maximo Arejola and Metrobank, also over the subject property. Civil Case No. Q-04-52965 involves a complaint for *Specific Performance with Application for Temporary Restraining Order and/or Preliminary Injunction* to compel Metrobank to recognize the 10-year lease of the subject property executed between the Spouses Arejola, as lessors, and Santillan, as lessee. In its *Supplemental Arguments to Motion to Quash Writ of Possession*, Top Art further argued that the failure of Metrobank to post a bond as required in Act No. 3135 tainted the validity of the writ of possession issued by the RTC in LRC Case No. Q17996 (04).

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[4] *Id.* at 118.

[5] *Id.* at 119-120.

[6] *Id.* at 121-126.

In an Order dated 9 November 2006, the RTC cancelled and set aside the writ of possession it earlier issued and directed the Sheriff "to immediately restore within a reasonable period of ten (10) days herefrom the movant Top Art x x x and/or Walter Santillan in possession of the subject property."[7]

Metrobank moved for the reconsideration of the aforequoted Order arguing that (1) "the manner by which the Writ of Possession was cancelled or set aside was not in accordance with Section 8 of Act No. 3135, as amended, which provides that a petition or complaint, not a mere motion, should be filed in order to have the Writ of Possession cancelled"; and (2) "Walter Santillan, the purported lessee [of the subject property], not Top Art x x x is the proper party who should have questioned the issuance of [the] Writ of Possession as he is the one supposedly adversely affected by the Writ of Possession." Moreover, it clarified that Top Art was not the lessor of the subject property, as the lease contract was executed between Maximo Arejola and Walter Santillan; hence, Top Art had "no interest whatsoever in the subject property." And Metrobank insisted that "[t]here is simply no factual and legal basis to even restore possession [thereof] to Top Art x x x when it had never acquired possession of the subject property at any time by lease or in whatever manner."[8]

The Motion for Reconsideration of Metrobank was subsequently denied by the RTC in an *Order*[9] dated 2 February 2007.

Aggrieved, Metrobank filed a Petition for *Certiorari* with the Court of Appeals imputing grave abuse of discretion, amounting to lack or excess of jurisdiction, to Hon. Rogelio M. Pizarro, the Presiding Judge of the RTC, Branch 222, Quezon City, for recalling and setting aside, in his Orders dated 9 November 2006 and 2 February 2007 in LRC Case No. Q17996 (04), the writ of

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[7] *Id.* at 137-138.

[8] *Id.* at 140.

[9] *Id.* at 160.

possession he earlier directed to be issued in the said case. The Petition was docketed as CA-G.R. SP No. 98617.

In a Decision promulgated on 29 April 2008, the Court of Appeals granted the Petition by issuing the writ of *certiorari* Metrobank prayed for. Consequently, the assailed Orders were annulled and set aside for having been issued in grave abuse of discretion amounting to lack or excess of jurisdiction and the RTC Decision dated 25 May 2005 was reinstated. The appellate court reasoned thus:

> The trial court exceeded its jurisdiction in entertaining Top Art's motion to quash, considering that the same was neither formally a verified petition not a stranger's complaint-in-intervention. The trial court simply closed its eyes and neglected to address the fact that Top Art, while being a loan beneficiary of Metrobank, was not a redemptioner nor the debtor-mortgagor contemplated by Section 8 who, having a direct interest (possessory and otherwise) in the realty, may cause the annulment of the writ of possession, under any of only two specified circumstances – (1) because the mortgage (contract) was not violated, or (2) the sale was not made in accordance with the provisions of Art. 3135. It is well to note that in here, the trial court anomalously authorized Top Art's ground for cancellation of an already-implemented, a *fait accompli* no less, grant of possession: failure to disclose the pendency of a subsequently-filed action for specific performance.
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> x x x x x x x x x
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> Coming now to the question of Metrobank's alleged awareness of an existing lease between the spouses-mortgagors and Walter Santillan, it was erroneous for the trial court to attribute knowledge to Metrobank allegedly due to the latter's failure to deny the statements contained in the *Complaint* in Civil Case No. Q-04-52965 x x x [because] Top Art is not a party to the said case, x x x [and] the trial court may not take judicial notice of the records or the proceedings in another case, unless the parties themselves agree thereto (citation omitted).[10]

The Court of Appeals did not fault Metrobank for not declaring in the Certification against Forum Shopping, appended to its

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[10] *Id.* at 91-96.

Petition in LRC Case No. Q17996 (04), the existence of Civil Case No. Q-04-52965, finding that:

Metrobank could not have stated in its *Certification against Forum shopping* (*sic*) the fact of another pending case related to its petition for a writ of possession, because the said petition was filed ahead of Civil Case No. Q-04-52965.[11]

All in all, the Court of Appeals concluded that:

In sum, the trial court gravely abused its discretion and exceeded its jurisdiction in issuing the twin orders assailed through this petition.[12]

The *fallo* of the Decision of the Court of Appeals reads:

WHEREFORE, in view of the foregoing, the petition is GRANTED, and the assailed Orders of the trial court dated 9 November 2006 and 2 February 2007, are ANNULLED and SET ASIDE and in lieu thereof, the previous Decision dated 25 May 2005 which granted the writ of possession in favor of Metrobank is hereby reinstated.[13]

Top Art and the Spouses Arejola's Motion for Reconsideration was denied by the Court of Appeals in a *Resolution* dated 31 July 2008.

Hence, this Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court based on the following assignment of errors:

I.

THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE ERROR IN NOT HOLDING THAT PETITIONER TOP ART MANUFACTURING, INC. HAS THE LEGAL STANDING TO QUASH THE WRIT OF POSSESSION;

II.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT SUSTAINING AND AFFIRMING THE ASSAILED ORDERS

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[11] *Id.* at 96.

[12] *Id.* at 97.

[13] *Id.*

OF THE TRIAL COURT (RTC-QUEZON CITY, BRANCH 222) WHICH QUASHED AND SET ASIDE THE PREVIOUSLY ISSUED WRIT OF POSSESSION CONSIDERING THAT PRIVATE RESPONDENT METROBANK HAD PRIOR KNOWLEDGE OF THE SUBSISTING LEASE OVER THE MORTGAGED PROPERTY; and

III

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT THE TRIAL COURT (RTC-QUEZON CITY, BRANCH 222) MISAPPLIED THE DOCTRINE ENUNCIATED BY THE SUPREME COURT IN THE CASES OF *IBASCO VS. CAGUIOA* (143 SCRA 538) [AND] *CASTRO, JR. VS. COURT OF APPEALS* (250 SCRA 661).

Top Art and the Spouses Arejola insist that Top Art has "legal standing to question and/or to quash the writ of possession earlier issued by the trial court in favor of Metrobank"[14] for the simple reason that its Motion to Quash "also included its co-petitioners, the Spouses Maximo Arejola and Tan Siu Kheng, the registered owners of the 480-sq.m. real property. Petitioner Maximo Arejola was the one who entered in the subject lease contract with Walter Santillan over the subject property."[15]

On the other hand, Metrobank maintains that Sec. 8 of Act No. 3135, as amended, is clear in that a writ of possession may be set aside only through the filing of a complaint or petition for that purpose and not by mere unverified motion. Likewise, it persistently disputes the contention that Top Art was joined in its Motion to Quash Writ of Possession by the Spouses Arejola. Metrobank submits that "[a] simple reading of all the pleadings filed by Top Art x x x shows that they were filed solely on behalf of Top Art x x x." The bank contends as well that "[t]he issue of whether or not Metrobank had prior knowledge of the lease contract, which was purportedly raised by Walter Santillan in the separate civil action x x x is one properly left to the

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[14] Petition, p. 26; *rollo*, p. 66.

[15] *Id.*

Regional Trial Court before which the said civil case [Civil Case No. Q-04-52965] was filed to resolve, not the Trial Court Judge in LRC Case No. Q17996 (04) before whom Walter Santillan has not even appeared as an oppositor."

Considering all the foregoing, We determine that the basic issue to be resolved in the present Petition is whether the Presiding Judge of the RTC, Branch 222, Quezon City, erred in recalling the writ of possession earlier issued in favor of Metrobank on the basis of the Motion to Quash filed by Top Art.

We rule in the affirmative.

The procedure for extrajudicial foreclosure of real estate mortgage is governed by Act No. 3135, as amended, entitled "An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real Estate Mortgages." Sec. 7 of Act No. 3135, as amended, provides that the purchaser at the public auction sale of an extrajudicially foreclosed real property may seek possession thereof, thus:

SEC. 7. In any sale made under the provisions of this Act, the ***purchaser may petition*** the Court of First Instance of the province or place where the property or any part thereof is situated, ***to give him possession*** thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. ***Such petition shall be made under oath and filed in form or 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 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. (Emphases supplied.)

In *De Gracia v. San Jose*,[16] We expounded on the application of the preceding provision, as follows:

> As may be seen, the law expressly authorizes the purchaser to petition for a writ of possession during the redemption period by filing an *ex parte* motion under oath for that purpose in the corresponding registration or cadastral proceeding in the case of property with Torrens title; and upon the filing of such motion 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. Under the legal provisions above copied, the order for a writ of possession issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond. ***No discretion is left to the court.*** And any question regarding the regularity and validity of the sale (and the consequent cancellation of the writ) is left to be determined in a subsequent proceeding as outlined in section 8. Such question is not to be raised as a justification for opposing the issuance of the writ of possession, since, under the Act, the proceeding for this is *ex parte*. (Emphasis supplied.)

Sec. 7 of Act No. 3135, as amended, refers to a situation wherein the purchaser seeks possession of the foreclosed property during the 12-month period for redemption. Upon the purchaser's filing of the *ex parte* petition and posting of the appropriate bond, the RTC shall, as a matter of course, order the issuance of the writ of possession in the purchaser's favor.

But equally well settled is the rule that a writ of possession will issue as a matter of course, even without the filing and approval of a bond, after consolidation of ownership and the issuance of a new TCT in the name of the purchaser.[17] In *IFC Service Leasing and Acceptance Corporation v. Nera*,[18] We reasoned that if under Sec. 7 of Act No. 3135, as amended, the

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[16] 94 Phil. 623, 625-626 (1954).

[17] *Sps. Ong v. Court of Appeals*, 388 Phil. 857, 865-866 (2000).

[18] 125 Phil. 595 (1967).

RTC has the power during the period of redemption to issue a writ of possession on the *ex parte* application of the purchaser, there is no reason why it should not also have the same power after the expiration of the redemption period, especially where a new title had already been issued in the name of the purchaser. Put simply, a purchaser seeking possession of the foreclosed property he bought at the public auction sale, after the redemption period expired without redemption having been made, may still avail itself of the procedure under Sec. 7 of Act No. 3135, as amended; this time, without any more need for the purchaser to furnish a bond.

Possession of the foreclosed real property, purchased at a public auction sale, becomes the absolute right of the purchaser upon the consolidation of his title when no timely redemption of the said property had been made because:

> It is settled that upon receipt of the definitive deed in an execution sale, legal title over the property sold is perfected (33 *C. J. S.* 554). And this court has also [said] and that the land bought by him and described in the deed deemed (sic) within the period allowed for that purpose, its ownership becomes consolidated in the purchaser, and the latter, "as absolute owner . . . is entitled to its possession and to receive the rents and fruits thereof." (*Powell v. Philippine National Bank*, 54 Phil., 54, 63.) x x x.[19]

Hence, the general rule is that upon proper application and proof of title, the issuance of the writ of possession to the purchaser of the foreclosed property at a public auction sale becomes a ministerial duty of the court.[20]

However, as in all general rules, there is an exception. In *Roxas v. Buan*,[21] we explained thus:

> In the extrajudicial foreclosure of real estate mortgages, possession of the property may be awarded to the purchaser at the foreclosure

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[19] *Belleza v. Zandaga,* 98 Phil. 702, 703 (1956).

[20] *F. David Enterprises v. Insular Bank of Asia and America,* G.R. No. 78714, 21 November 1990, 191 SCRA 516, 523.

[21] G.R. No. 53798, 8 November 1988, 167 SCRA 43, 48-49.

sale during the pendency of the period of redemption under the terms provided in Sec. 6 of Act 3135, as amended (An Act to Regulate the Sale of Property Under Special Powers Inserted In or Annexed to Real Estate Mortgages), or after the lapse of the redemption period, without need of a separate and independent action [*IFC Service Leasing and Acceptance Corp. v. Nera*, G.R. No. L-21720, January 30, 1967, 19 SCRA 181). This is founded on his right of ownership over the property which he purchased at the auction sale and his consequent right to be placed in possession thereof.

This rule is, however, not without exception. Under Sec. 35, Rule 39 of the Revised Rules of Court, which was made applicable to the extrajudicial foreclosure of real estate mortgages by Sec. 6 Act No. 3135, the possession of the mortgaged property may be awarded to a purchaser in extrajudicial foreclosures "unless a third party is actually holding the property adversely to the judgment debtor." [Emphasis supplied.] (*Clapano v. Gapultos*, G.R. Nos. 51574-77, September 30, 1984, 132 SCRA 429, 434; *Philippine National Bank v. Adil*, G.R. No. 52823, November 2, 1982, 118 SCRA 110; *IFC Service Leasing and Acceptance Corp. v. Nera*, *supra*.) As explained by the Court in *IFC Service Leasing and Acceptance Corp. v. Nera*, *supra*:

> x x x The applicable provision of Act No. 3135 is Section 6 which provides that, in cases in which an extrajudicial sale is made, "redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure in so far as these are not inconsistent with the provisions of this Act." Sections 464-466 of the Code of Civil Procedure were superseded by Sections 25-27 and Section 31 of Rule 39 of the Rules of Court which in turn were replaced by Sections 29-31 and Section 35 of Rule 39 of the Revised Rules of Court. Section 35 of the Revised Rules of Court expressly states that "If no redemption be made within twelve (12) months after the sale, the purchaser, or his assignee, is entitled to a conveyance and possession of the property x x x." The possession of the property shall be given to the purchaser or last redemptioner by the officer unless a party is actually holding the property adversely to the judgment debtor. (*Id*. at 184-185; Emphasis in the original.)

Sec. 35 of Rule 39 of the Revised Rules of Court referred to above had been further revised, and is now Sec. 33 of the same Rule, which reads:

SEC. 33. *Deed and possession to be given at expiration of redemption period; by whom executed or given.* – If no redemption be made within one (1) year from the date of the registration of the certificate of sale, the purchaser is entitled to a conveyance and possession of the property; x x x.

Upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy. The possession of the property shall be given to the purchaser or last redemptioner by the same officer ***unless a third party is actually holding the property adversely to the judgment obligor***. (Emphasis supplied.)

In an extrajudicial foreclosure of real property, when the foreclosed property is in the possession of a third party holding the same adversely to the defaulting debtor/mortgagor, the issuance by the RTC of a writ of possession in favor of the purchaser of the said real property ceases to be ministerial and may no longer be done *ex parte*. But, for the exception to apply, the property must be possessed by a third party; and such possession must be adverse to the debtor/mortgagor.

In the case at bar, is Top Art a third party, in possession of the subject property, claiming a right adverse to the mortgagors Spouses Arejola; which would give rise to the exception rather than the general rule, and bar Metrobank from acquiring possession of the subject property despite its consolidated title?

The facts of the case are simple and We can only answer no.

Top Art is not alleging that it is the one in possession of the subject property. It is invoking the possession of Santillan, who is purportedly leasing the subject property from Maximo Arejola. Additionally, although Top Art was not the owner of the subject property, it was actually the debtor of Metrobank. The Spouses Arejola executed mortgages over their real properties, including the subject property, only to secure the dollar-denominated loans of Top Art with Metrobank. The subject property was foreclosed due to the failure of Top Art to pay its loans. Therefore, Top Art cannot claim to be a third

party to the loan transactions that led to the foreclosure of the subject property, it being, in fact, a principal party thereto. Moreover, Top Art does not assert any right to the subject property adverse to the Spouses Arejola. It can even be said that Top Art and the Spouses Arejola, being the debtor and mortgagors, respectively, share exactly the same rights as against Metrobank insofar as the subject property is concerned. And, inasmuch as Top Art is not a third party actually holding the subject property adversely to the obligor, it cannot seek the quashal or prevent the implementation of the writ of possession issued *ex parte* to Metrobank.

Surprisingly, Top Art and the Spouses Arejola allege in their *Reply* to the *Comment* of Metrobank in this case that Top Art is leasing the subject property from the Spouses Arejola.[22] Not only is this allegation belatedly made, it is contradictory to the averments of Top Art in its Motion to Quash before the RTC that the lessee of the subject property is Santillan. Even granting that Top Art is indeed the lessee of the subject property, it will not affect the ruling of this Court, since Top Art still cannot be deemed a third party. It will not change the fact that Top Art is a party to the loan transactions that ended in the foreclosure of the subject property.

The Court cannot give much credence to the allegation by Top Art in its Motion to Quash that the subject property is presently in the possession of Santillan as lessee. The basic rule is that mere allegation is not evidence and is not equivalent to proof.[23] To be sure, Santillan, the alleged lessee whose physical possession was being threatened by the writ of possession issued in favor of Metrobank, did not even intervene in LRC Case No. Q-17996 (04). Between Top Art and Santillan, the latter was the proper party to question the *ex parte* issuance and enforcement of the writ of possession for the subject property.

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[22] Reply, pp. 5-6; *rollo*, pp. 358-359.

[23] *Philippine National Bank v. Court of Appeals,* 334 Phil. 120, 122 (1997).

Even assuming *arguendo* that the subject real property is actually being held adversely by Santillan, a third party, he is not without remedy. The third party can file (1) a *terceria* to determine whether the Sheriff had rightly or wrongly taken hold of the property not belonging to the judgment debtor or obligor; and (2) an independent "separate action" to vindicate his claim of ownership and/or possession over the foreclosed property.

Given the foregoing, We find no justifiable reason to disturb the assailed Decision and Resolution of the Court of Appeals. Verily, Top Art cannot be considered a third party holding the subject real property adversely to itself, as debtor; or the Spouses Arejola, the mortgagors. Neither can Santillan be deemed such a third party, since his alleged possession as lessee of the subject real property has not been adequately proved. Resultantly, the general rule, and not the exception, applies to the instant Petition. It is the mandatory and ministerial duty of the Quezon City RTC, Branch 222, to grant the *ex parte* petition of Metrobank for the issuance of a writ of possession, following the consolidation of title to the subject property and issuance of a new certificate of title in the name of the said bank. As We held in *St. Dominic Corp. v. The Intermediate Appellate Court*[24]:

> The right of the respondent to the possession of the property is clearly unassailable. It is founded on the right of ownership. As the purchaser of the properties in the foreclosure sale, and to which the respective titles thereto have already been issued, the petitioner's rights over the property has become absolute, vesting upon it the right of possession of the property which the court must aid in affecting its delivery. After such delivery, the purchaser becomes the absolute owner of the property. As we said in *Tan Soo Huat v. Ongwico* (63 Phil., 746), the deed of conveyance entitled the purchaser to have and to hold the purchased property. This means, that the purchaser is entitled to go immediately upon the real property, and that it is the sheriff's inescapable duty to place him in such possession. (*Philippine National Bank v. Adil,* 118 SCRA 110).

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[24] G.R. No. 70623, 30 June 1987, 151 SCRA 577, 590.

WHEREFORE, premises considered, the instant Petition is *DENIED*. The assailed *Decision* dated 29 April 2008 and *Resolution* dated 31 July 2008 of the Court of Appeals in CA-G.R. SP No. 98617 are *AFFIRMED*. Cost against petitioners Top Art Shirt Manufacturing, Inc. and Spouses Maximo Arejola and Tan Shiu Kheng.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 185712. August 4, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LILIO U. ACHAS,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; RAPE; ELEMENTS; NATURE OF RAPE CASES; GUIDING PRINCIPLES IN REVIEWING RAPE CASES.—** For conviction in the crime of rape, the following elements must be proved: 1. that the accused had carnal knowledge of a woman; 2. that said act was accomplished 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; or 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. By the distinctive nature of rape cases, conviction usually rests solely on the basis of the testimony of the victim, provided that such testimony is credible, natural, convincing, and consistent with human nature and the normal course of things. Accordingly,

the Court has consistently adhered to the following guiding principles in the review of similar cases, to wit: (1) an accusation for rape can be made with facility; while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that, in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.

2. **ID.; ID.; ID.; PHYSICAL RESISTANCE NEED NOT BE ESTABLISHED WHEN INTIMIDATION IS BROUGHT TO BEAR ON THE VICTIM AND THE LATTER SUBMITS HERSELF OF OUT OF FEAR; CASE AT BAR.—** AAA may perhaps have not cried for help while being taken forcibly by Achas to the store adjoining their house or during the actual penile insertion itself. This imputed omission, however, does not necessarily diminish the plausibility of AAA's story, let alone destroy her credibility. AAA was a young country girl of eight during the period material. It was easy to intimidate her then into silence. She was with her stepfather who enjoyed moral authority over her and the only people around were her two younger—and doubtless undiscerning—half-brothers whom she was looking after. Could the two toddlers be expected to understand what their father was about to do or was doing then to AAA and come to their half-sister's succor? Physical resistance need not be established when intimidation is brought to bear on the victim and the latter submits herself out of fear. As has been held, the failure to shout or offer tenuous resistance does not make voluntary the victim's submission to the criminal acts of the accused. Intimidation is addressed to the mind of the victim and is, therefore, subjective. AAA's credibility should, thus, not be undercut just because she did not cry out, if this really be the case, for help. Rape is subjective and not everyone responds in the same way to an attack by a sexual fiend. There is no stereotypical form of reaction for a woman when facing a traumatic experience, such as a sexual assault. When a girl, especially a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed.

3. **ID.; ID.; ID.; HYMENAL LACERATION IS NOT AN ELEMENT OF THE CRIME OF RAPE.—** Achas has made

much of the absence of medical traces of hymenal laceration on AAA. Given the unwavering testimony of AAA as to her ordeal in the hands of Achas, however, the Court cannot accord merit to the argument that the lack of physical manifestation of rape weakens the case against Achas. The medical report on AAA is only corroborative of the finding of rape. The absence of external signs or physical injuries on the complainant's body does not necessarily negate the commission of rape. This is because hymenal laceration is not an element of the crime of rape, albeit a healed or fresh laceration is a compelling proof of defloration. What is more, the foremost consideration in the prosecution for rape is the victim's testimony and not the findings of the medico-legal officer. In fact, a medical examination of the victim is not indispensable in a prosecution for rape; the victim's testimony alone, if credible, is sufficient to convict.

4. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; SINGLE MOST IMPORTANT ISSUE IN PROSECUTION FOR RAPE; VICTIM'S TESTIMONY ON THE FACT OF MOLESTATION WAS POSITIVE AND CREDIBLE.—** Complementing principles is the rule that the credibility of the victim is always the single most important issue in prosecution for rape; that in passing upon the credibility of witnesses, the highest degree of respect must be afforded to the findings of the trial court. AAA had pointed to Achas as the person who forced himself on her on at least two occasions and who caused her pain when he entered her. As determined by the trial court, AAA's testimony on the fact of molestation was positive and credible. The trial court wrote: Based on the demeanor of the private complainant when she testified, and after an assessment of the testimonies of the prosecution witnesses, this Court believes and concludes that the prosecution witnesses and their testimonies are credible. These witnesses testified positively, directly, and in a candid manner. There is neither cause nor reason for this Court to withhold credence on the testimonies of the prosecution witnesses. And citing this Court's ruling on an analogous case involving a girl-child, the trial court added: x x x [I]t is unbelievable for a ten-year old virgin to publicly disclose that she had been sexually abused, then undergo the trouble and humiliation of a public trial if her motive were other than to protect her honor and bring to justice the person who unleashed his lust on her. Just like the CA, the Court loathes to disturb the trial court's assessment of AAA's

credibility, having had the opportunity to observe her demeanor in the witness box. When the offended party 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.

5. **ID.; ID.; DEFENSES OF ALIBI AND DENIAL; INHERENTLY WEAK EVEN WEAKER IN THE FACE OF THE UNQUALIFIED AND POSITIVE IDENTIFICATION OF APPELLANT AS COMPLAINANT'S RAPIST.—** Achas' claim of being in Bukidnon, a province adjoining Misamis Oriental, during the commission of the sexual assaults stands uncorroborated and cannot be given much consideration to support his alibi. He was not able to show the physical impossibility of his being with AAA at the time the incidents occurred. For alibi to prosper, the accused must show being somewhere else during the actual commission of the crime and that it was physically impossible for him to have been at the crime scene. Alibi must fail where, owing to the short distance as well as the facility of access between the two places involved, there is least chance for the accused to be present at the crime scene. But just to put things in the proper perspective, what Achas testified to, as noted by the trial court, was that he went to Don Carlos, Bukidnon in May 1999 and left that municipality in October 1999, a plausible alibi for the July 1999 rape incident only. Denial, just like alibi, if not substantiated by clear and convincing evidence, is inherently weak, being self-serving negative evidence undeserving of weight in law. To be sure, either gratuitous defense cannot be accorded greater evidentiary weight than the positive declaration of credible witnesses. Put a bit differently, the defense of denial or alibi becomes even weaker in the face of an unqualified and positive identification of Achas as complainant's rapist.

6. **ID.; ID.; THE VICTIM'S ACCOUNT TAXES CREDULITY FOR IT IS HIGHLY UNUSUAL FOR HER TO ACCUSE HER OWN STEPFATHER OF RAPE WHILE LETTING THE REAL CULPRITS GO UNPUNISHED.—** CCC's uncorroborated testimony in the defense of Achas also deserves scant consideration, it being but natural for a son to testify for his father. CCC's version of events, moreover, requires a considerable stretch of the imagination to be believed. His story

has his aunt, EEE, cooking up an elaborate frame-up of Achas only because she did not like him. CCC's aunt allegedly coached him to say it was their two neighbors who committed the crime against his half-sister. CCC's account taxes credulity, for it is highly unusual for AAA to accuse her own stepfather of rape, while letting the real culprits go unpunished. At any event, her having been sexually assaulted by someone else does not foreclose the possibility of Achas having raped her also. As it were, CCC was not present when Achas—to satisfy his lust, at least the second time around—dragged AAA into the adjoining store. In other words, CCC did not, as he could not, testify on the physical impossibility of the crime having being committed by his father. We go back to the oft-cited jurisprudential gem that a young girl will not have the courage and strength to concoct a tale of defloration against a stepfather and relate in public all its horrifying were she not in fact sexually violated. The Court cannot bring its mind to a rest that a girl of tender age—like AAA, who has not been shown to have ill motive to falsely testify against her stepfather—would allow herself to go through the humiliation of a public trial if not to pursue justice for what has happened. As to the testimony of CCC, we have previously held that when the denial of the accused is tended to be established only by himself, his relatives, or friends, his denial of culpability should be accorded the strictest scrutiny; their testimonies are necessarily suspect and cannot prevail over the testimonies of the more credible witnesses for the prosecution. So it must be here.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellant.
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 May 19, 2008 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00480, affirming the Decision dated March 11, 2004 of the Regional Trial Court (RTC), Branch 37 in Cagayan de Oro City. The

RTC adjudged accused-appellant Lilio U. Achas guilty of two (2) counts of the crime of rape.

In two (2) separate informations filed before the RTC, docketed as Crim. Case Nos. 2000-045 and 2001-143, Achas was charged with two counts of rape, allegedly committed as follows:

Crim. Case No. 2000-045

Sometime in the month of June, 1998, on a Sunday noon, or thereabout at x x x, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being the common-law husband of the mother, [BBB], of the victim, [AAA],[1] with lewd design, and by means of force and intimidation poked a knife on said eight (8) year old minor victim, [AAA], did then and there willfully, unlawfully and feloniously have carnal knowledge with the said victim against her will.

CONTRARY TO and in violation of Article 266-A in relation to Article 266-B of the Revised Penal Code as amended by RA 8353.

Crim. Case No. 2001-143

Sometime in the month of July, 1999, on [a] Sunday morning, in the mountain of x x x, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being the common-law husband of the mother of the eight (8) year old minor-victim, [AAA], with lewd design, and by means of force, intimidation and grave abuse of authority, did then and there, willfully, unlawfully and feloniously have carnal knowledge with the said victim [AAA] against her will.

The commission by the accused is further aggravated by his knowledge that he is afflicted by [a] sexually transmissible disease and the disease [was] transmitted to the aforesaid victim.

CONTRARY TO and in violation of Article 266-A in relation to Article 266-B of the Revised Penal Code, as amended by RA 8353.[2]

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[1] The name and personal circumstances of the victim and her immediate family are withheld per Republic Act No. (RA) 7610 or *The Special Protection of Children Against Child Abuse, Exploitation, and Discrimination Act* (1992) and RA 9262 or the *Anti-Violence Against Women and Their Children Act* (2004).

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

The antecedent facts, as summarized in the decision under review, are as follows:

In 1998, AAA, then barely eight years old, was staying with her mother, BBB, and her common-law spouse, Achas, in Misamis Oriental. One Sunday in June of that year, AAA, while watching over her two half-brothers, CCC and DDD, in their home, was grabbed by Achas and led to their adjoining store. Once inside the store, Achas removed AAA's short pants and underwear. He then mounted her and succeeded in inserting his penis into her vagina, causing her excruciating pain.

Sometime in March 1999, EEE, BBB's sister, saw a very pale AAA and asked what the matter was. For a reply, AAA only placed her arms around her aunt, shivering. Sensing that something was amiss, EEE lost no time in having AAA examined at the Northern Mindanao Medical Center where AAA was found to be afflicted with gonorrhea.[3]

The beastly act that occurred in June 1998 was to be repeated in the same place sometime in July 1999, while BBB was out gathering firewood. This time around, Achas covered AAA's mouth with a towel to prevent her from making any noise. And pointing a knife at the left side of AAA's neck before and after the sexual abuse, Achas warned her that he would kill her mother should she tell on him.[4]

Achas denied the accusations hurled against him by one who he allegedly loved like a daughter, claiming, in the same breath, to be in another province in June 1998 and July 1999. He tagged EEE, who disliked him and wanted her sister to leave him, as having masterminded the filing of the fabricated charges.[5]

CCC, AAA's half-brother and Achas' son, testified that it was not his father but two young boys who sexually molested his sister. According to CCC, AAA no less told him about Achas'

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[3] *Id.* at 10.

[4] *Id.* at 11.

[5] *Id.* at 12.

virtual innocence. Pushing his point, CCC testified to being told by EEE to keep quiet about AAA not having been raped by Achas. EEE's instructions, per CCC, allegedly came when Achas was already in jail.[6]

On March 11, 2004, the RTC rendered judgment finding Achas guilty beyond reasonable doubt of rape on two counts and sentencing him to death for each crime. The dispositive portion of the RTC Decision reads:

> WHEREFORE, premises considered, this Court finds accused Lilio U. Achas guilty beyond reasonable doubt of two (2) counts or crimes of rape committed against the minor offended party, and said accused is hereby sentenced to die for each of the two counts or crimes of rape said penalty of death to be carried out in accordance with the procedure and method enforced by the appropriate authorities of the Executive Department. Moreover, the accused is sentenced to pay the minor offended party in each of the two counts or crimes of rape the sum of ₱75,000.00 by way of civil indemnity x x x and the sum of ₱50,000.000 by way of moral damages.
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> x x x x x x x x x
>
> SO ORDERED.[7]

The RTC forthwith elevated the records of the case to this Court for automatic review in light of the penalty imposed. In accordance, however, with the *People v. Mateo*[8] ruling, the Court, per Resolution of June 6, 2006, ordered the transfer of the case records to the CA for intermediate review.

On May 19, 2008, the CA rendered a Decision affirming that of the trial court. The appellate court, however, reduced the penalty of death for each count of rape to *reclusion perpetua* without eligibility for parole in light of Republic Act No. (RA)

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[6] TSN, February 14, 2002, pp. 8-13.

[7] CA *rollo*, pp. 28-29. Penned by Judge Jose L. Escobido.

[8] G.R. Nos. 147678-87, July 2004, 433 SCRA 640.

9346[9] prohibiting the imposition of the death penalty. The dispositive portion of the CA's decision reads:

WHEREFORE, premises considered, the assailed Decision of the Regional Trial Court (RTC), 10th Judicial Region, Branch 37, Cagayan de Oro City, in Criminal Cases Nos. 2000-045 and 2001-143, convicting appellant, Lilio U. Achas of two (2) counts of rape is hereby AFFIRMED, with the modification in that appellant is only meted the penalty of *reclusion perpetua* instead of death for each count of rape and that AAA is awarded ₱75,000.00 as moral damages, ₱75,000.00 as civil indemnity and ₱25,000.00 as exemplary damages for each count of rape.

SO ORDERED.[10]

On June 24, 2008, Achas filed his Notice of Appeal of the CA Decision.

In response to the Resolution of the Court for them to submit supplemental briefs, if they so desired, the parties manifested their willingness to have the case resolved on the basis of the records and pleadings already on file.

The issue before us is:

WHETHER THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT

Achas' defense is predicated on alibi and denial. He denies having committed the crimes imputed against him, being, in the first place, in Bukidnon on the dates the supposed rape incidents occurred. How could he, he protests, do something

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[9] RA 9346, Sec. 3 provides that "persons convicted of offenses punished with *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act. No. 4103, otherwise known as the Indeterminate Sentence Law, as amended."

[10] CA *rollo*, p. 20. Penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Edgardo A. Camello and Edgardo T. Lloren.

dastardly on one who he loved and treated like his own child? His son, CCC, when called on the witness stand, belied AAA's inculpatory allegations against his father.

Achas brands AAA's account as to his guilt as incredulous and inconsistent with human experience and the natural course of things. He likewise maintains that the physical evidence ran counter to AAA's testimonial evidence. In particular, he asserts that AAA was not alone in the house when the alleged June 1998 rape happened; yet, contrary to human nature, AAA did not cry out for help. He also belies committing the second rape charged, for, in July 1999, EEE already had custody of AAA.

Setting his focus on another angle, Achas maintains that if AAA's allegations of rape were true, then hymenal lacerations and external physical injuries would have been observed by the examining physician and so indicated, but was not, in the medical records.

The People, through the Office of the Solicitor General (OSG), would have the Court discredit the proffered defenses of denial and alibi, describing them as the favorite sanctuary of felons. And for reasons detailed in its Brief,[11] the OSG, citing jurisprudence, urges that Achas' assault on AAA's credibility be rejected.

The Court resolves to affirm the CA decision.

For conviction in the crime of rape,[12] the following elements must be proved:

1. that the accused had carnal knowledge of a woman;
2. that said act was accomplished under any of the following circumstances—
    a. through force, threat or intimidation;

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[11] *Id.* at 83-97.

[12] Penile or organ rape.

b. when the offended party is deprived of reason or is otherwise unconscious;

c. by means of fraudulent machination or grave abuse of authority; or

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.[13]

By the distinctive nature of rape cases, conviction usually rests solely on the basis of the testimony of the victim, provided that such testimony is credible, natural, convincing, and consistent with human nature and the normal course of things.[14] Accordingly, the Court has consistently adhered to the following guiding principles in the review of similar cases, to wit: (1) an accusation for rape can be made with facility; while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that, in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[15]

Complementing the foregoing principles is the rule that the credibility of the victim is always the single most important issue in prosecution for rape;[16] that in passing upon the credibility

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[13] REVISED PENAL CODE, Art. 266-A; *People v. Barangan*, G.R. No. 175480, October 2, 2007, 534 SCRA 570, 591-592.

[14] *People v. Corpuz*, G.R. No. 168101, February 13, 2006, 482 SCRA 435, 444.

[15] *Id.*; *People v. Bidoc*, G.R. No. 169430, October 21, 2006, 506 SCRA 481, 495; *People v. Arsayo*, G.R. No. 166546, September 26, 2006, 503 SCRA 275, 284; *People v. Quiachon*, G.R. No. 170236, August 31, 2006, 500 SCRA 704, 714.

[16] *People v. Ceballos, Jr.*, G.R. No. 169642, September 14, 2007, 533 SCRA 493, 508.

of witnesses, the highest degree of respect must be afforded to the findings of the trial court.[17]

AAA had pointed to Achas as the person who forced himself on her on at least two occasions and who caused her pain when he entered her. As determined by the trial court, AAA's testimony on the fact of molestation was positive and credible. The trial court wrote:

> Based on the demeanor of the private complainant when she testified, and after an assessment of the testimonies of the prosecution witnesses, this Court believes and concludes that the prosecution witnesses and their testimonies are credible. These witnesses testified positively, directly, and in a candid manner. There is neither cause nor reason for this Court to withhold credence on the testimonies of the prosecution witnesses.[18]

And citing this Court's ruling on an analogous case involving a girl-child, the trial court added:

> x x x [I]t is unbelievable for a ten-year old virgin to publicly disclose that she had been sexually abused, then undergo the trouble and humiliation of a public trial if her motive were other than to protect her honor and bring to justice the person who unleashed his lust on her.[19]

Just like the CA, the Court loathes to disturb the trial court's assessment of AAA's credibility, having had the opportunity to observe her demeanor in the witness box. When the offended party 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.[20]

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[17] *People v. Balonzo*, G.R. No. 176153, September 14, 2007, 533 SCRA 760, 768.

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

[19] *Id.*; citing *People v. Buyok*, G.R. No. 109771, August 25, 1994, 235 SCRA 622.

[20] *People v. Candaza*, G.R. No. 170474, June 16, 2006, 491 SCRA 280, 295-296.

AAA may perhaps have not cried for help while being taken forcibly by Achas to the store adjoining their house or during the actual penile insertion itself. This imputed omission, however, does not necessarily diminish the plausibility of AAA's story, let alone destroy her credibility. AAA was a young country girl of eight during the period material. It was easy to intimidate her then into silence. She was with her stepfather who enjoyed moral authority over her and the only people around were her two younger—and doubtless undiscerning—half-brothers whom she was looking after. Could the two toddlers be expected to understand what their father was about to do or was doing then to AAA and come to their half-sister's succor?

Physical resistance need not be established when intimidation is brought to bear on the victim and the latter submits herself out of fear. As has been held, the failure to shout or offer tenuous resistance does not make voluntary the victim's submission to the criminal acts of the accused.[21] Intimidation is addressed to the mind of the victim and is, therefore, subjective.[22] AAA's credibility should, thus, not be undercut just because she did not cry out, if this really be the case, for help. Rape is subjective and not everyone responds in the same way to an attack by a sexual fiend. There is no stereotypical form of reaction for a woman when facing a traumatic experience, such as a sexual assault.[23] When a girl, especially a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed.[24]

Achas has made much of the absence of medical traces of hymenal laceration on AAA. Given the unwavering testimony of AAA as to her ordeal in the hands of Achas, however, the

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[21] *People v. San Antonio, Jr.*, G.R. No. 176633, September 5, 2007, 532 SCRA 411, 428.

[22] *People v. Castro*, G.R. No. 172691, August 10, 2007, 529 SCRA 800, 809-810; citing *People v. Ilao*, G.R. Nos. 152683-84, December 11, 2003, 418 SCRA 391.

[23] *San Antonio, Jr.*, *supra* note 21.

[24] *Bidoc*, *supra* note 15; *Corpuz*, *supra* note 14, at 448.

Court cannot accord merit to the argument that the lack of physical manifestation of rape weakens the case against Achas. The medical report on AAA is only corroborative of the finding of rape. The absence of external signs or physical injuries on the complainant's body does not necessarily negate the commission of rape.[25] This is because hymenal laceration is not an element of the crime of rape,[26] albeit a healed or fresh laceration is a compelling proof of defloration.[27] What is more, the foremost consideration in the prosecution for rape is the victim's testimony and not the findings of the medico-legal officer. In fact, a medical examination of the victim is not indispensable in a prosecution for rape; the victim's testimony alone, if credible, is sufficient to convict.[28]

Achas' claim of being in Bukidnon, a province adjoining Misamis Oriental, during the commission of the sexual assaults stands uncorroborated and cannot be given much consideration to support his alibi. He was not able to show the physical impossibility of his being with AAA at the time the incidents occurred. For alibi to prosper, the accused must show being somewhere else during the actual commission of the crime and that it was physically impossible for him to have been at the crime scene. Alibi must fail where, owing to the short distance as well as the facility of access between the two places involved, there is least chance for the accused to be present at the crime scene.[29] But just to put things in the proper perspective, what Achas testified to, as noted by the trial court, was that he went to Don Carlos, Bukidnon in May 1999 and left that municipality

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[25] *People v. Espino, Jr.*, G.R. No. 176742, June 17, 2008, 554 SCRA 682, 700.

[26] *Id.*; citing *People v. Esteves*, 438 Phil. 687, 699 (2002).

[27] *People v. Sambrano*, G.R. No. 143708, February 24, 2003, 398 SCRA 106, 113.

[28] *Espino, Jr.*, *supra* note 25, at 700-701; citing *People v. Logmao*, 414 Phil. 378, 387 (2001).

[29] *People v. dela Cruz*, G.R. No. 168173, December 24, 2008.

in October 1999,[30] a plausible alibi for the July 1999 rape incident only.

Denial, just like alibi, if not substantiated by clear and convincing evidence, is inherently weak, being self-serving negative evidence undeserving of weight in law.[31] To be sure, either gratuitous defense cannot be accorded greater evidentiary weight than the positive declaration of credible witnesses.[32] Put a bit differently, the defense of denial or alibi becomes even weaker in the face of an unqualified and positive identification of Achas as complainant's rapist.[33]

CCC's uncorroborated testimony in the defense of Achas also deserves scant consideration, it being but natural for a son to testify for his father. CCC's version of events, moreover, requires a considerable stretch of the imagination to be believed. His story has his aunt, EEE, cooking up an elaborate frame-up of Achas only because she did not like him. CCC's aunt allegedly coached him to say it was their two neighbors who committed the crime against his half-sister. CCC's account taxes credulity, for it is highly unusual for AAA to accuse her own stepfather of rape, while letting the real culprits go unpunished.

At any event, her having been sexually assaulted by someone else does not foreclose the possibility of Achas having raped her also. As it were, CCC was not present when Achas—to satisfy his lust, at least the second time around—dragged AAA into the adjoining store. In other words, CCC did not, as he could not, testify on the physical impossibility of the crime having being committed by his father. We go back to the oft-

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[30] CA *rollo*, pp. 23-24.

[31] *People v. Lizano*, G.R. No. 174470, April 27, 2007, 522 SCRA 803, 811.

[32] *People v. Robles*, G.R. No. 177770, March 28, 2008, 550 SCRA 463, 475.

[33] *People v. Resuma*, G.R. No. 179189, February 26, 2008, 546 SCRA 728, 741; citing *People v. Gonzales*, G.R. No. 141599, June 29, 2004, 433 SCRA 102, 116.

cited jurisprudential gem that a young girl will not have the courage and strength to concoct a tale of defloration against a stepfather and relate in public all its horrifying were she not in fact sexually violated. The Court cannot bring its mind to a rest that a girl of tender age—like AAA, who has not been shown to have ill motive to falsely testify against her stepfather—would allow herself to go through the humiliation of a public trial if not to pursue justice for what has happened.[34] As to the testimony of CCC, we have previously held that when the denial of the accused is tended to be established only by himself, his relatives, or friends, his denial of culpability should be accorded the strictest scrutiny; their testimonies are necessarily suspect and cannot prevail over the testimonies of the more credible witnesses for the prosecution.[35] So it must be here.

On pecuniary liability, we affirm the amount of damages awarded by the appellate court. Civil indemnity for statutory rape is currently pegged at PhP 75,000, while moral damages, which are awarded without need of proof of mental suffering or anguish other than the fact of statutory rape, was properly awarded in the amount of PhP 75,000.[36] The award of exemplary damages in the amount of PhP 25,000 is increased to PhP 30,000 pursuant to prevailing jurisprudence.[37]

While RA 9346 prohibited the imposition of the death penalty and the penalty is reduced to *reclusion perpetua*, the accused is, however, no longer eligible for parole.

WHEREFORE, the CA Decision dated May 19, 2008 in CA-G.R. CR-H.C. No. 00480 finding accused-appellant Lilio U. Achas guilty of two (2) counts of rape is hereby *AFFIRMED*

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[34] *People v. Nazareno*, G.R. No. 167756, April 9, 2008, 551 SCRA 46, 41.

[35] *People v. De Guzman*, G.R. No. 173197, April 24, 2007, 522 SCRA 207, 217.

[36] *People v. Ramos*, G.R. No. 179030, June 12, 2008; citing *Bidoc*, *supra* note 15.

[37] *People v. Sia*, G.R. No. 174059, February 27, 2009.

with the *MODIFICATION* that he is ordered to pay *PhP 30,000* as exemplary damages and that he is ineligible for parole.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 185723. August 4, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDWIN MEJIA,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; RAPE; GUIDING PRINCIPLES IN RESOLVING RAPE CASES.—** In resolving rape cases, this Court is guided by the following principles: (a) an accusation for rape can be made with facility; it is difficult to prove but even more difficult for the accused, though innocent, to disprove; (b) in view of the intrinsic nature of the crime where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; (c) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense; and (d) the evaluation of the trial court judges regarding the credibility of witnesses deserves utmost respect on the ground that they are in the best position to observe the demeanor, act, conduct, and attitude of the witnesses in court while testifying. In light of these principles and considering the gravity of the offense charged and the severity of the penalty that may be imposed, this Court has meticulously evaluated the entire records and transcript of stenographic notes, and find no reason to deviate from the appellate court’s findings.

2. **ID.; ID.; THE TWIN CIRCUMSTANCES OF MINORITY OF THE VICTIM AND HER RELATIONSHIP TO THE OFFENDER MUST CONCUR TO QUALIFY THE CRIME OF RAPE.—** Although the qualifying circumstances of minority and relationship were appreciated by the trial court, the Court of Appeals correctly disregarded them. These qualifying circumstances cannot be considered in fixing the penalty because minority, though proved, was not alleged in the information. As regards relationship, the same was alleged and proved. Pursuant, however, to Section 266-B of the Revised Penal Code, in order to fall within subparagraph 1 of said provision, both circumstances of minority and relationship must be alleged in the information and proved during trial. The twin circumstances of minority of the victim and her relationship to the offender must concur to qualify the crime of rape. In the instant case, only relationship was duly alleged and proved. As amended, and effective 1 December 2000, Secs. 8 and 9, Rule 110 of the Revised Rules on Criminal Procedure now provide that aggravating as well as qualifying circumstances must be alleged in the information and proven during trial; otherwise they cannot be considered against the accused. Proof of the age of the victim cannot consist merely of testimony. Neither can a stipulation of the parties with respect to the victim's age be considered sufficient proof of minority. Thus, the same cannot be used to impose the higher penalty of capital punishment on the accused-appellant.

3. **ID.; ID.; DAMAGES AWARDED.—** Anent the award of damages, civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape, while moral damages are awarded upon such finding without need of further proof, because it is assumed that a rape victim has actually suffered moral injuries entitling the victim to such award. The Court of Appeals correctly awarded (a) ₱50,000.00 as civil indemnity and (b) ₱50,000.00 as moral damages to the victim, pursuant to prevailing jurisprudence. Exemplary damages are not awarded in light of the absence of proven aggravating circumstances.

4. **ID.; ID.; CRIME OF RAPE DOWNGRADED TO ACTS OF LASCIVIOUSNESS; THE MERE ACT OF LYING ON TOP OF THE ALLEGED VICTIM, EVEN IF NAKED, DOES NOT CONSTITUTE RAPE.—** With respect to Criminal Case No. SCC-4080, we are in full agreement with the trial court

and Court of Appeals in downgrading the crime from rape to acts of lasciviousness inasmuch as carnal knowledge was not established. The mere act of lying on top of the alleged victim, even if naked, does not constitute rape. Instead, the Court finds accused-appellant guilty beyond reasonable doubt of Acts of Lasciviousness under Article 336 of the Revised Penal Code. The felony of acts of lasciviousness, a crime included in rape, is defined and penalized by Article 336 of the Revised Penal Code, as amended, thus: ART. 336. *Acts of lasciviousness*. — Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by *prision correccional*. Its elements are as follows: 1. That the offender commits any act of lasciviousness or lewdness. 2. That it is done under any of the following circumstances: a. By using force or intimidation; or b. When the offended party is deprived of reason or otherwise unconscious; or c. When the offended party is under 12 years of age. 3. That the offended party is another person of either sex. The Court finds accused-appellant guilty beyond reasonable doubt of the lesser offense of acts of lasciviousness with the presence of the foregoing elements, specifically: (1) the acts of lasciviousness or lewdness and (2) the fact that these were done by using force or intimidation.

5. **ID.; ID.; ID.; PENALTY FOR ACTS OF LASCIVIOUSNESS.—** The penalty for the felony of acts of lasciviousness is *prision correccional* in its full range. Reducing the penalty by one degree to determine the minimum of the indeterminate penalty, such penalty is *arresto mayor,* which has a range of one (1) month and one (1) day to six (6) months. The minimum of the indeterminate penalty shall be taken from the full range of *arresto mayor*. Absent any modifying circumstances attendant to the crime, the maximum of the indeterminate penalty shall be taken from the medium period of *prision correccional*. Accordingly, accused-appellant is hereby meted an indeterminate penalty of six months of *arresto mayor*, as minimum, to three years of *prision correccional*, as maximum in Criminal Case No. SCC-4080. Moreover, the amount of ₱30,000.00 as moral damages is awarded to the victim.

6. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; LONE TESTIMONY OF RAPE VICTIM, IF**

CREDIBLE, IS SUFFICIENT TO SUSTAIN A CONVICTION.— At the heart of almost all rape cases is the issue of credibility of witnesses, where conviction or acquittal of the accused may depend entirely on the credibility of the victim's testimony, as only the participants therein can testify to its occurrence. By the nature of rape, the only evidence that oftentimes is available is the victim's own declaration. The rule is clear that the lone testimony of the victim in the crime of rape, if credible, is sufficient to sustain a conviction.

7. **ID.; ID.; ID.; ASSESSMENT OF TRIAL COURT REGARDING CREDIBILITY OF WITNESSES IS GENERALLY GIVEN THE HIGHEST DEGREE OF RESPECT, IF NOT FINALITY.—** In challenging the credibility of AAA's accusations against him, accused-appellant points out the confusion in her testimony as to the exact time of the alleged rape to show that AAA was concocting the charges. He claims that AAA was moved by hatred, as accused-appellant often hurt AAA's mother BBB. However, time and again, this Court has emphasized that the manner of assigning values to declarations of witnesses on the witness stand is best and most competently performed by the trial judge who has the unique and unmatched opportunity to observe the witnesses and assess their credibility. In essence, when the question arises as to which of the conflicting versions of the prosecution and the defense is worthy of belief, the assessment of the trial court is generally given the highest degree of respect, if not finality. The assessment made by the trial court is even more enhanced when the Court of Appeals affirms the same, as in this case.

8. **ID.; ID.; ID.; CONFUSION AS TO THE TIME OF RAPE IS A MINOR DETAIL WHICH CANNOT AFFECT THE CREDIBILITY OF A TESTIMONY AS A WHOLE; LUST IS NO RESPECTER OF TIME AND PLACE.—** Although AAA's testimony was allegedly marred by confusion as to the time of the rape, the supposed inconsistency refers to a minor detail, which cannot affect the credibility of the testimony as a whole. On accused-appellant's claim — that he could not have raped AAA since 2 March 2003 was a Sunday; thus, his five children were home — is of no merit, as lust is no respecter of time and place. This Court has repeatedly held that rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, and even inside a

house where there are other occupants or where other members of the family are also sleeping. Thus, it is an accepted rule in criminal law that rape may be committed even when the rapist and the victim are not alone. The fact is, rape may even be committed in the same room while the rapist's spouse is asleep, or in a small room where other family members also sleep.

9. **ID.; ID.; DEFENSE OF ALIBI; PHYSICAL IMPOSSIBILITY OF PRESENCE AT THE SCENE OF THE CRIME, NOT ESTABLISHED.—** Accused-appellant relies on his averment that he was harvesting mangoes in Casantiagoan, Pangasinan when the incidents occurred. For alibi to succeed as a defense, the accused must establish by clear and convincing evidence (a) his presence at another place at the time of the perpetration of the offense and (b) the physical impossibility of his presence at the scene of the crime. No other principle in criminal law jurisprudence is more settled than that alibi is the frailest of all defenses as it is prone to fabrication. The defense failed to prove the physical impossibility of his presence at the scene of the crime. As testified to by accused-appellant, the distance from Casantiagoan, Pangasinan to the house of BBB in XXX town, which was the scene of the crime, can be traversed by ordinary commute in a span of one hour. It was thus not physically impossible for him to have been at the *locus criminis*.

10. **ID.; ID.; DEFENSE OF DENIAL; INHERENTLY A WEAK DEFENSE AND CANNOT PREVAIL OVER AFFIRMATIVE TESTIMONY.—** Accused-appellant's defense of denial is inherently weak. Jurisprudence has established that the defense of denial assumes significance only when the prosecution's evidence is such that it does not prove guilt beyond reasonable doubt. Mere denial, unsubstantiated by clear and convincing evidence, is negative, self-serving evidence, which cannot be given greater evidentiary weight than the testimony of the complaining witness who testified on affirmative matters. While accused-appellant claimed to be in the company of a group of men during those times, the defense could not present even a single corroborative testimony. Appellant's denial and alibi cannot prevail over the affirmative testimony of AAA, more so when the records lack any suggestion that AAA's testimony should be seen in a suspicious light.

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 14 July 2008 of the Court of Appeals in CA-G.R. CR-HC No. 02533, entitled *People of the Philippines v. Edwin Mejia*, affirming, with modification, the Decision[2] rendered by the Regional Trial Court (RTC) of San Carlos City, Pangasinan, Branch 57 in Criminal Cases No. SCC-4080-4081, finding accused-appellant Edwin Mejia guilty beyond reasonable doubt of the crimes of Rape and Acts of Lasciviousness.

On 2 March 2003, private complainant's (AAA's)[3] womanhood was allegedly violated by a man cohabiting with her mother (BBB) as common-law-spouse. BBB was already living separately from AAA's father at the time the crime were committed at BBB's and accused-appellant's residence. This dastardly act led to AAA's pregnancy.

Out of fear and shame, it took some time before AAA had the courage to report the incident to her relatives.

On 9 October 2003, after appropriate proceedings, the Office of the Provincial Prosecutor of Pangasinan filed, with the RTC of San Carlos City in Pangasinan, two separate informations

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[1] Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Juan Q. Enriquez, Jr. and Isaias P. Dicdican concurring; *rollo*, pp. 2-18.

[2] CA *rollo*, pp. 11-16.

[3] Private complainant is referred to as AAA. 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 the Anti-violence Against Women and Their Children Act of 2004.

for Rape under Article 266-A of the Revised Penal Code, docketed as Criminal Cases No. SCC-4080 and No. SCC-4081. The informations charging accused-appellant Edwin Mejia read:

CRIMINAL CASE NO. SCC-4080

That on or about 3:00 o'clock in the afternoon of March 2, 2003, in Barangay XXX, XXX City, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, intimidation or violence, and with lewd designs, did then and there, willfully, unlawfully and feloniously, has (sic) carnal knowledge with his step-daughter AAA, against her will and consent.

Contrary to Article 266-A of the Revised Penal Code.[4]

CRIMINAL CASE NO. SCC-4081

That on or about 8:00 o'clock in the morning of March 2, 2003, in Barangay XXX, XXX City, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, intimidation or violence, and with lewd design, did then and there, willfully, unlawfully and feloniously, has (sic) carnal knowledge with his step-daughter AAA, against her will and consent.

Contrary to Article 266-A of the Revised Penal Code.[5]

Both criminal cases were raffled to Branch 57, presided by Judge Anthony Sison, and thereafter consolidated and jointly tried. On arraignment, the Informations were read to accused-appellant in a dialect known to, and understood by him; and with the assistance of his counsel, accused-appellant pleaded NOT GUILTY to both charges.[6]

Pre-trial was conducted on 23 April 2004 but only the identities of the parties to the case were admitted therein.[7] Thereafter, trial on the merits commenced.

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[4] Records, Volume I, pp. 1-2.

[5] Records, Volume I-A, pp. 1-2.

[6] *Id.* at 18.

[7] Records, Volume I, p. 43; Records, Volume I-A, p. 28.

Two witnesses testified. Private complainant AAA testified for the prosecution. Accused-appellant Edwin Mejia testified for the defense.

AAA, 18 years old, single and a resident of Barangay XXX, XXX City in Pangasinan, testified that on 2 March 2003, she, who was less than 18 years old at that time, was fetched by her mother BBB from her grandmother's house where she lives. She was to take care of her two- month-old brother at BBB's house in Barangay XXX, XXX City, Pangasinan. Accused-appellant was BBB's live-in partner, who resided in the same house as BBB. BBB left for Dagupan City, where she sold vegetables at the market.

While AAA was babysitting her brother, accused-appellant, who was armed with a bolo, forcibly held her, laid her on the living room floor (sala) and with the use of threats, undressed her and removed her panty. He then removed his short pants and brief and placed himself on top of AAA. Appellant inserted his penis into AAA's vagina, and as he did, she felt pain. Satisfying his sexual desire after about three minutes of inserting his penis inside AAA's vagina, accused-appellant removed it from AAA's vagina and dressed up. Accused-appellant threatened to kill AAA and her mother should she leave the house and/or report the incident. Because she was afraid of the threat, AAA stayed inside the bedroom for several hours.

At 3:00 o'clock in the afternoon of the same day, accused-appellant went inside the bedroom where AAA was babysitting her brother. He pulled her hair and placed himself on top of her, but failed to insert his penis into her private part. Accused-appellant warned her not to tell anyone about the incident. AAA went back to her grandparents' house in XXX.

AAA did not inform her grandparents about the abominable act accused-appellant committed upon her person out of fear due to his threats. However, she told her aunt with whom she lived in XXX about her pregnancy, for she could no longer hide the change in her physical appearance. After telling her aunt, private complainant reported the incident to the police

station, where she executed her sworn statement. AAA also underwent medical examination.

On cross-examination, AAA stated that BBB and accused-appellant started living as husband and wife in XXX, XXX City, Pangasinan when she was 16 years old. Her father (FFF) and her mother BBB had been living separately. Private complainant disclosed that she was under the care of her maternal grandparents and did not live with her mother BBB and accused-appellant.

Upon AAA's arrival at the house of BBB and accused-appellant, accused-appellant was out of town harvesting mangoes. Accused-appellant arrived after the harvest was done. She was taking some time to rest after doing household chores, and after the children of BBB with accused-appellant had already left for school. AAA said that when she arrived at the house of her mother, accused-appellant was still talking to Noel Soriano who just lived nearby.

The defense presented accused-appellant Edwin Mejia. Accused-appellant declared that at around 8:00 o'clock in the morning of 2 March 2003, he was not in their home in XXX. Accused-appellant insisted he was harvesting mango fruits in Barangay Casantiagoan in Manaoag, Pangasinan, from 1 March 2003 to 3 March 2003. He claimed it was impossible for him to have raped AAA, because he was in Manaoag, Pangasinan from 1 March 2003 at around 5:00 o'clock in the morning, with a certain Bong Estrada, and returned home only on 3 March 2003 at around 6:00 o'clock in the evening. He said he did not live with AAA, as the latter stayed in the house of his brother-in-law in XXX town.

Accused-appellant explained that AAA was the daughter of his live-in partner/common-law-wife BBB by her husband. When AAA was only 10 years old, accused-appellant and BBB started to cohabit. He had five children with BBB, and they resided in XXX, XXX City, Pangasinan. Accused-appellant described his relationship with AAA as cold and aloof, primarily due to the fact that AAA hated him for hurting her mother because of his

vicious lifestyle. He said that he had a good relationship with BBB despite the fact that her family and AAA disliked him.

Accused-appellant claimed the rape charges AAA filed against him were fabricated because he was in Manaoag, Pangasinan, harvesting mangoes at the time of the alleged incident. He, however, said that the distance from Manaoag, Pangasinan to XXX City, Pangasinan could be traveled for more or less one hour, using the same elf truck they used going to Manaoag and back to XXX City.

On 18 September 2006, the trial court[8] found accused-appellant guilty beyond reasonable doubt of the crimes of (a) Rape in Criminal Case No. SCC-4081; and (b) Acts of Lasciviousness in Criminal Case No. SCC-4080, ruling in this wise:

> WHEREFORE, the Court finds accused Edwin Mejia, GUILTY beyond reasonable doubt for the crime of Rape as charged under Article 266-A of the Revised Penal Code in Criminal Case No. SCC-4081, and is hereby sentenced to suffer the penalty of *Reclusion Perpetua*. Accused is directed to pay the victim ₱50,000.00 as indemnity.
>
> However, as to Criminal Case No. SCC-4080, it is settled that each charge of rape is a separate and distinct crime and each must be proven beyond reasonable doubt. Mere laying on top of the alleged victim even if naked does not constitute rape. The prosecution therefore failed to prove the essential elements of rape, but the Court finds accused GUILTY beyond reasonable doubt of the lesser offense of Acts of Lasciviousness under Article 336 of the Revised Penal Code and is hereby sentenced to suffer the indeterminate penalty of 6 months of *arresto mayor*, as minimum to 3 years of *prision correctional*, (sic) as maximum.

The court *a quo* gave more credence to the testimony of private complainant AAA, who charged accused-appellant with committing the bestial act resulting in her pregnancy. The trial court applied the principle that an affirmative testimony

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[8] CA *rollo,* pp. 11-16.

carries more weight than a mere denial. Accused-appellant's denial was found to be unsubstantiated and merely self-serving, *vis-à-vis* the positive declaration of AAA and the frank manner in which she recounted her ordeal. In fact, the defense of alibi put up by accused-appellant was uncorroborated. Finally, the element of hate was not given much weight by the trial court. It stated that, assuming this element was present, it did not detract from AAA's credibility.

The trial court appreciated the qualifying circumstance of minority and relationship, so that under Article 266-B of Republic Act No. 8353, the penalty would have been death. With the suspension of the death penalty due to the enactment of Republic Act No. 9346, the RTC imposed *reclusion perpetua*.

Insisting on his innocence and invoking the twin defenses of denial and alibi, accused-appellant elevated the case to the Court of Appeals *via* a notice of appeal.

Thus, on 14 July 2008, the Court of Appeals affirmed accused-appellant's guilt in the two cases, but modified the decision of the court *a quo* by disregarding the qualifying circumstance of minority and awarding moral damages, to wit:

WHEREFORE, the decision of the trial court in Crim Case No. 6295 is hereby AFFIRMED with MODIFICATION, to wit:

(1) In Criminal Case No. SCC-4081, appellant Edwin Mejia is hereby found guilty of simple rape and is sentenced to suffer the penalty of *reclusion perpetua*. Appellant is further ORDERED to indemnify AAA in the amount of ₱50,000 as civil indemnity and ₱50,000 as moral damages.

(2) In Criminal Case No. SCC-4080, appellant Edwin Mejia is guilty beyond reasonable doubt of the crime of Acts of Lasciviousness under Article 336 of the Revised Penal Code and is hereby sentenced to suffer the indeterminate penalty of Six (6) months of *arresto mayor*, as minimum to three (3) years of *prision correctional*, (sic) as maximum.[9]

[9] *Id.* at 141.

The Court of Appeals was not persuaded by accused-appellant's contention that hatred caused AAA to concoct rape charges against him. This attempt to discredit AAA failed. The Court of Appeals ruled that the hate element was too petty a cause for the victim's family to fabricate allegations of rape. Motive is not necessary when the identity of the wrongdoer is positively identified by the victim herself. In giving full credit to AAA's testimony, the appellate court affirmed the *dictum* that the assessment of trial courts is generally viewed as correct and entitled to great weight.

The Court of Appeals opposed the trial court's appreciation of the qualifying circumstance of minority of the victim in view of the information's failure to allege such circumstance and the prosecution's failure to adduce proof as to the age of AAA at the time the alleged rape took place. The qualifying circumstance of minority was not sufficiently established by independent proof during trial. Thus, the qualifying circumstances of minority and relationship were not appreciated by the Court of Appeals.

Hence, this appeal before this Court.

On 4 February 2009, the Court required the parties to simultaneously submit their respective supplemental briefs, if they so desired.[10] Both defense and prosecution manifested that they would adopt their briefs filed before the Court of Appeals in order to avoid repetition of the arguments and to expedite the resolution of the instant case.[11] The case was thereafter deemed submitted for decision.

Asking for his acquittal, accused-appellant raises the following assignment of errors:

I.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

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[10] *Rollo*, p. 24.

[11] *Id.* at 25-29.

II.

THE TRIAL COURT GRAVELY ERRED IN CONSIDERING THE QUALIFYING CIRCUMSTANCE OF MINORITY OF THE VICTIM ALTHOUGH THE INFORMATION DOES NOT ALLEGE SUCH CIRCUMSTANCE AND THAT THE PROSECUTION INTRODUCED NO PROOF AS TO THE AGE OF THE VICTIM AT THE TIME THE ALLEGED RAPE INCIDENT HAPPENED.

The defense argues that it was impossible for accused-appellant to have raped AAA, for two reasons. First, he and AAA did not reside at the same place. Second, at the time the alleged rape incident took place, accused-appellant was harvesting mangoes in Casantiagoan, Pangasinan. Accused-appellant attempts to discredit AAA by showing that AAA was actuated by ill motives. Accused-appellant asserts that AAA had a very strong motive against him, elucidating that AAA and BBB's family hated him because he hurt BBB. The defense also questions the trial court's appreciation of the qualifying circumstance of minority when the information failed to allege such circumstance and the prosecution did not present proof pertaining to the age of the victim at the time the alleged rape took place.

On the side of the prosecution, the Office of the Solicitor General (OSG) supports accused-appellant's conviction. However, it agrees that accused-appellant should only be convicted of Simple Rape in Criminal Case No. SCC-4081, because the qualifying circumstance of minority was neither alleged in the information nor proved in the trial.

The appeal fails.

The Informations charge accused-appellant with the crime of Rape, defined and penalized under the provisions of Article 266-A of the Revised Penal Code, *viz*:

ART. 266-A. *Rape, When and How Committed*. – Rape is committed –

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a. Through force, threat or intimidation.

The prosecution must be able to establish the following essential elements under Article 266-A(1)(a) of the Revised Penal Code, as amended, namely: (a) that the offender had carnal knowledge of a woman; and (b) that the same was committed by using force and intimidation.

Accused-appellant anchors his claim of innocence on two defenses, denial and alibi. At the same time, accused-appellant impugns the credibility of AAA.

In resolving rape cases, this Court is guided by the following principles: (a) an accusation for rape can be made with facility; it is difficult to prove but even more difficult for the accused, though innocent, to disprove; (b) in view of the intrinsic nature of the crime where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; (c) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense; and (d) the evaluation of the trial court judges regarding the credibility of witnesses deserves utmost respect on the ground that they are in the best position to observe the demeanor, act, conduct, and attitude of the witnesses in court while testifying.[12]

In light of these principles and considering the gravity of the offense charged and the severity of the penalty that may be imposed, this Court has meticulously evaluated the entire records and transcript of stenographic notes, and find no reason to deviate from the appellate court's findings.

AAA's testimony, quoted hereunder, indubitably shows that accused-appellant had carnal knowledge of her by using force and intimidation, thus:

Pros. Taminaya

Q. Do you know accused Edwin Mejia?

A. Yes, sir.

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[12] *People v. Miñon*, G.R. Nos. 148397-400, 7 July 2004, 433 SCRA 671, 680.

Q. Why do you know Edwin Mejia?

A. He is my stepfather, sir.

Q, Is he in the Court room now?

A. Yes, sir.

Q. Will you kindly point to him?

Interpreter

Witness pointed to a man wearing blue green t-shirt and he (sic) respondent that he is Edwin Mejia when he was asked of his name.

Pros. Taminaya

Q. Some time on March 2, 2003 at 8:00 o'clock in the morning, where were you?

A. I was at the house of my mother, sir.

Q. Where is the house of your mother located?

A. In XXX, XXX, Pangasinan, sir.

Q. Why were you there in the house of your mother?

A. I was asked to take care of my younger brother, sir.

Q. What is the name of your brother?

A. CCC, sir.

Q. How old is CCC you are taking cared of?

A. More than two (2) months, sir.

Q. While you were taking care of your younger brother in the morning of March 2, 2003 at 8:00 o'clock in the morning in the house of your mother, was there any unusual incident that happened?

A. Yes, sir.

Q. What is that unusual incident?

A. He threatened me with a bolo, sir. (*Inangatan to ak na barang*)

Q. Who threatened you with a bolo?

A. Edwin, sir.

Q. After he threatened you with a bolo, what did he do to you?

A. He laid me down, sir.

Q. What part of the house were you laid down?

A. In the sala, sir.

Q. Where was your mother?

A. She was selling, sir.

Q. After he forced you down, what did Edwin Mejia do?

A. He undressed me and removed my panty, sir.

Q. After Edwin Mejia removed your dress and your panty, what did he do next?

A. He removed his short pants and brief and he went on top of me, sir.

Q. When he was on top of you, what did he do?

A. That I will never go down and went out or else he will kill me, sir.

Q. While on top, what happened to you?

A. Painful, sir.

Q. What is painful to you?

A. My vagina, sir.

Q. Why is your vagina painful?

A. Very painful, sir.

Q. Why, what did you feel to (sic) your vagina that caused the pain?

A. He forcefully inserted his penis on (sic) my vagina sir.

Q. How long did he enter his penis into your vagina.

A. He inserted it very well, sir.

Q. How long?

A. About three (3) minutes, sir.

Q. What did he do while his penis was inside your vagina for 3 minutes?

A. After that he removed it, sir.

Q. When he removed his penis, what did he tell you?

A. That I will not go down from the house because he will kill me and he will kill my mother sir.

x x x x x x x x x

Q. At around 3:00 o'clock in the afternoon of the same date, March 2, 2003 while you were with your brother CCC, was there any unusual incident that happened to you again?

A. Yes, sir.

Q. What is that unusual incident?

A. He pulled my hair, sir.

Q. Who pulled your hair?

A. Edwin Mejia, sir.

x x x x x x x x x

Q. After pulling your hair, what did Edwin Mejia do?

A. He laid me down and then he raped me, sir.

Q. After laiding (*sic*) you down, what did Edwin Mejia do?

A. He removed my dress and my panty, sir.

Q. After Edwin Mejia removed your dress and your panty, what did he do next?

A. He went on top of me again, sir.

Q. Was he able to insert again his penis into your vagina?

A. Not anymore, sir.

Q. After that what transpired next?

A. He told me not to report, sir.

Q. Were you able to wait for your mother that afternoon of March 2, 2003?

A. No, sir.

Q. Where did you go?

A. In our house, sir.

Q. Where is your house located?

A. In XXX, Pangasinan.

Q. Whose house is that?

A. My grandparents, sir.

Q. When you reached your grandparents' house that afternoon, did you tell to (*sic*) your grandparents what happened to you?

A. No, sir.

Q. Why did you not tell your grandparents of what happened to you?

A. Because he threatened me with a bolo, sir.

Q. How about to your mother, were you able to tell the incident to your mother?

A. Yes, sir.

Q. When did you tell your mother what happened to you?

A. When I was already pregnant, sir.[13]

Indeed, at the heart of almost all rape cases is the issue of credibility of witnesses, where conviction or acquittal of the accused may depend entirely on the credibility of the victim's testimony, as only the participants therein can testify to its occurrence. By the nature of rape, the only evidence that oftentimes is available is the victim's own declaration. The rule is clear that the lone testimony of the victim in the crime of rape, if credible, is sufficient to sustain a conviction.

In challenging the credibility of AAA's accusations against him, accused-appellant points out the confusion in her testimony as to the exact time of the alleged rape to show that AAA was concocting the charges. He claims that AAA was moved by hatred, as accused-appellant often hurt AAA's mother BBB.

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[13] TSN, 12 July 2004, pp. 3-7.

However, time and again, this Court has emphasized that the manner of assigning values to declarations of witnesses on the witness stand is best and most competently performed by the trial judge who has the unique and unmatched opportunity to observe the witnesses and assess their credibility. In essence, when the question arises as to which of the conflicting versions of the prosecution and the defense is worthy of belief, the assessment of the trial court is generally given the highest degree of respect, if not finality. The assessment made by the trial court is even more enhanced when the Court of Appeals affirms the same, as in this case.

Moreover, although AAA's testimony was allegedly marred by confusion as to the time of the rape, the supposed inconsistency refers to a minor detail, which cannot affect the credibility of the testimony as a whole.

On accused-appellant's claim — that he could not have raped AAA since 2 March 2003 was a Sunday; thus, his five children were home — is of no merit, as lust is no respecter of time and place. This Court has repeatedly held that rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, and even inside a house where there are other occupants or where other members of the family are also sleeping. Thus, it is an accepted rule in criminal law that rape may be committed even when the rapist and the victim are not alone. The fact is, rape may even be committed in the same room while the rapist's spouse is asleep, or in a small room where other family members also sleep.[14]

Accused-appellant relies on his averment that he was harvesting mangoes in Casantiagoan, Pangasinan when the incidents occurred. For alibi to succeed as a defense, the accused must establish by clear and convincing evidence (a) his presence at another place at the time of the perpetration of the offense and (b) the physical impossibility of his presence at the scene

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[14] *People v. Castel*, G.R. No. 171164, 18 November 2008, citing *People v. Evina*, 453 Phil. 25, 41 (2003), citing *People v. Perez,* 357 Phil. 17, 29 (1998).

of the crime.[15] No other principle in criminal law jurisprudence is more settled than that alibi is the frailest of all defenses as it is prone to fabrication.

The defense failed to prove the physical impossibility of his presence at the scene of the crime. As testified to by accused-appellant, the distance from Casantiagoan, Pangasinan to the house of BBB in XXX town, which was the scene of the crime, can be traversed by ordinary commute in a span of one hour.[16] It was thus not physically impossible for him to have been at the *locus criminis*.

Accused-appellant's defense of denial is inherently weak. Jurisprudence has established that the defense of denial assumes significance only when the prosecution's evidence is such that it does not prove guilt beyond reasonable doubt. Mere denial, unsubstantiated by clear and convincing evidence, is negative, self-serving evidence, which cannot be given greater evidentiary weight than the testimony of the complaining witness who testified on affirmative matters. While accused-appellant claimed to be in the company of a group of men during those times, the defense could not present even a single corroborative testimony. Appellant's denial and alibi cannot prevail over the affirmative testimony of AAA, more so when the records lack any suggestion that AAA's testimony should be seen in a suspicious light.

In all, the totality of the evidence presented by the prosecution proves beyond reasonable doubt that accused-appellant is guilty of Rape in Criminal Case No. SCC-4081.

Simple rape is punished under Article 266-A of the Revised Penal Code by the single indivisible penalty of *reclusion perpetua*. Article 266-B of the Revised Penal Code mandates that the death penalty shall be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

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[15] *People v. Gonzales*, G.R. No. 141599, 29 June 2004, 433 SCRA 102, 116.

[16] TSN, 15 August 2005, p. 9.

(1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

Although the qualifying circumstances of minority and relationship were appreciated by the trial court, the Court of Appeals correctly disregarded them. These qualifying circumstances cannot be considered in fixing the penalty because minority, though proved, was not alleged in the information. As regards relationship, the same was alleged and proved. Pursuant, however, to Section 266-B of the Revised Penal Code, in order to fall within subparagraph 1 of said provision, both circumstances of minority and relationship must be alleged in the information and proved during trial. In *People v. Tabanggay*,[17] we held:

Jurisprudence dictates that when the law specifies certain circumstances that will qualify an offense and thus attach to it a greater degree of penalty, such circumstances must be both alleged and proven in order to justify the imposition of the graver penalty. Recent rulings of the Court relative to the rape of minors invariably state that in order to justify the imposition of death, there must be independent evidence proving the age of the victim, other than the testimonies of prosecution witnesses and the absence of denial by the accused. A duly certified certificate of live birth accurately showing the complainant's age, or some other official document or record such as a school record, has been recognized as competent evidence.

In the instant case, we find insufficient the bare testimony of private complainants and their mother as to their ages as well as their kinship to the appellant. x x x [We] cannot agree with the solicitor general that appellant's admission of his relationship with his victims would suffice. Elementary is the doctrine that the prosecution bears the burden of proving all the elements of a crime, including the qualifying circumstances. In sum, the death penalty cannot be imposed upon appellant.[18]

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[17] 390 Phil. 67 (2000).

[18] *Id.* at 91-92.

The twin circumstances of minority of the victim and her relationship to the offender must concur to qualify the crime of rape.[19] In the instant case, only relationship was duly alleged and proved.

As amended, and effective 1 December 2000, Secs. 8 and 9, Rule 110 of the Revised Rules on Criminal Procedure now provide that aggravating as well as qualifying circumstances must be alleged in the information and proven during trial; otherwise they cannot be considered against the accused. Proof of the age of the victim cannot consist merely of testimony. Neither can a stipulation of the parties with respect to the victim's age be considered sufficient proof of minority.[20] Thus, the same cannot be used to impose the higher penalty of capital punishment on the accused-appellant.

Anent the award of damages, civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape, while moral damages are awarded upon such finding without need of further proof, because it is assumed that a rape victim has actually suffered moral injuries entitling the victim to such award.[21] The Court of Appeals correctly awarded (a) ₱50,000.00 as civil indemnity and (b) ₱50,000.00 as moral damages to the victim, pursuant to prevailing jurisprudence.[22] Exemplary damages are not awarded in light of the absence of proven aggravating circumstances.

With respect to Criminal Case No. SCC-4080, we are in full agreement with the trial court and Court of Appeals in downgrading the crime from rape to acts of lasciviousness inasmuch as carnal knowledge was not established. The mere

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[19] *People v. Espino, Jr.,* G.R. No. 176742, 17 June 2008, 554 SCRA 682, 704.

[20] *People v. Lopit,* G.R. No. 177742, 17 December 2008.

[21] *People v. Sabardan*, G.R. No.132135, 21 May 2004, 429 SCRA 9, 28-29.

[22] *People v. Corpuz*, G.R. No. 175836, 30 January 2009; *People v. Lopit*, *supra* note 20.

act of lying on top of the alleged victim, even if naked, does not constitute rape.

Instead, the Court finds accused-appellant guilty beyond reasonable doubt of Acts of Lasciviousness under Article 336 of the Revised Penal Code. The felony of acts of lasciviousness, a crime included in rape, is defined and penalized by Article 336 of the Revised Penal Code, as amended, thus:

> ART. 336. *Acts of lasciviousness*. — Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by *prision correccional*.

Its elements are as follows:

1. That the offender commits any act of lasciviousness or lewdness.
2. That it is done under any of the following circumstances:
    a. By using force or intimidation; or
    b. When the offended party is deprived of reason or otherwise unconscious; or
    c. When the offended party is under 12 years of age.
3. That the offended party is another person of either sex.[23]

The Court finds accused-appellant guilty beyond reasonable doubt of the lesser offense of acts of lasciviousness with the presence of the foregoing elements, specifically: (1) the acts of lasciviousness or lewdness and (2) the fact that these were done by using force or intimidation.

The penalty for the felony of acts of lasciviousness is *prision correccional* in its full range. Reducing the penalty by one degree to determine the minimum of the indeterminate penalty, such penalty is *arresto mayor,* which has a range of one (1) month and one (1) day to six (6) months. The minimum of the indeterminate penalty shall be taken from the full range of *arresto*

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[23] *Amployo v. People*, G.R. No. 157718, 26 April 2005, 457 SCRA 282, 291-292.

mayor. Absent any modifying circumstances attendant to the crime, the maximum of the indeterminate penalty shall be taken from the medium period of *prision correccional*. Accordingly, accused-appellant is hereby meted an indeterminate penalty of six months of *arresto mayor*, as minimum, to three years of *prision correccional*, as maximum in Criminal Case No. SCC-4080. Moreover, the amount of ₱30,000.00 as moral damages is awarded to the victim.[24]

WHEREFORE, premises considered, the decision of the Court of Appeals finding accused-appellant Edwin Mejia, *GUILTY* beyond reasonable doubt of the crime of Simple Rape and Acts of Lasciviousness is hereby *AFFIRMED* with the *MODIFICATION* that in Criminal Case No. SCC-4080, the amount of ₱30,000 is awarded to the victim as moral damages. No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Velasco, Jr., Nachura, and *Leonardo-de Castro,*[*] *JJ.,* concur.

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[24] *People v. Ceballos, Jr.,* G.R. No. 169642, 14 September 2007, 533 SCRA 493, 514; *People v. Abulon,* G.R. No. 174473, 17 August 2007, 530 SCRA 675, 705.

[*] Associate Justice Teresita J. Leonardo-de Castro was designated to sit as additional member replacing Associate Justice Diosdado M. Peralta per Raffle dated 28 July 2009.

THIRD DIVISION

[G.R. No. 185841. August 4, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ISMAEL DIAZ @ Maeng and RODOLFO DIAZ @ Nanding,** *accused-appellants.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF WITNESSES CLEARLY POINTS TO APPELLANTS AS THE ASSAILANTS.—** It is clear that after the people in the dance hall were invited to dance, the song Dayang-Dayang was played and some firecrackers were exploded. It was at this moment that Ismael Diaz, using a .45 caliber pistol, shot Councilor Quinto from the back hitting him on the head. When SPO1 Dalioan was about to draw his weapon, Rodolfo Diaz shot him with an armalite rifle inflicting on him multiple gunshot wounds. As explained by the trial court, though the tables of appellants and Councilor Quinto were situated 20-25 meters away, it was not impossible for the appellants to have gone to the place where the victims were located by slipping under the bamboo strand of the fence surrounding the dance hall, and going to the stage from behind, towards the place where Councilor Quinto's table was located. The statement of the trial court that "Ernesto Decano could not have seen him (Ismael Diaz) go near Elmer Quinto since everybody's attention was focused on the audience and he (Ernesto Decano) could have only seen him (Ismael Diaz) as the said accused was retreating backward from his target" does not mean that appellant Ismael Diaz was not the one who shot Councilor Quinto. The fact that Ernesto Decano saw Ismael Diaz holding a .45 caliber pistol, whether retreating or not, bolsters the declaration of Arnel Quinto that it was Ismael Diaz whom he saw shoot Councilor Quinto with a .45 caliber pistol.

2. **ID.; ID.; ID.; WITNESSING A CRIME IS AN UNUSUAL EXPERIENCE WHICH ELICITS DIFFERENT REACTIONS FROM WITNESSES FOR WHICH NO CLEAR-CUT STANDARD FORM OF BEHAVIOR CAN BE DRAWN.—** We agree with the Court of Appeals when it said that the

credibility of said witnesses was not affected because it is well-settled that different people react differently to a given situation or type of situation, and there is no standard form of human behavioral response when one is confronted with a strange or startling or frightful experience. Witnessing a crime is an unusual experience which elicits different reactions from the witnesses and for which no clear-cut standard form of behavior can be drawn. As Arnel Quinto explained, he failed to call the attention of Councilor Quinto or SPO1 Dalioan because he did not know the intention of the appellants, and the incident happened very quickly, giving him no opportunity to give any warning to the councilor and to his security escort. Moreover, he was scared that he might get hit if he called the victims' attention.

3. **ID.; ID.; DEFENSE OF DENIAL; WHEN UNSUBSTANTIATED BY ANY CREDIBLE EVIDENCE, DESERVES NO WEIGHT IN LAW.—** Having been positively identified by prosecution witnesses as the assailants, all that appellants can offer for their exoneration is the defense of denial. Appellants admitted that they were present in the dance hall where the victims were gunned down, but claimed that they were not the assailants. To be believed, denial must be buttressed by strong evidence of non-culpability. Otherwise, it is purely self-serving and without merit. Greater weight is given to the categorical identification of the accused by the prosecution witnesses than to the accused's plain denial of participation in the commission of the crime. In the instant case, appellants failed to adduce strong and credible evidence to overcome the testimonies of the prosecution's eyewitnesses. The testimonies of the defense witnesses (Josue de Vera, Imelda Quinto and Ricardo Avelino), who alleged that appellants were with them and were not holding firearms when the victims were gunned down, were not given credence by both the trial court and the Court of Appeals. These witnesses were not credible witnesses. Thus, denial, unsubstantiated by any credible evidence, deserves no weight in law.

4. **ID.; ID.; CREDIBILITY IS BEST ASSESSED BY TRIAL COURTS.—** 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. It is to be noted that the Court of Appeals affirmed the findings of the RTC. In this regard, the settled rule is that when the trial court's findings have been affirmed by the appellate court, said findings are generally conclusive and binding upon this Court. We find no compelling reason to deviate from their findings.

5. **ID.; ID.; FLIGHT OF AN ACCUSED, WHEN UNEXPLAINED, IS COMPETENT EVIDENCE OF GUILT.—** Appellants' flight is further evidence of their guilt. It is well-established that the flight of an accused is competent evidence to indicate his guilt; and flight, when unexplained, is a circumstance from which an inference of guilt may be drawn. In the case before us, appellants were apprehended only on 2 June 2000, or almost two years after the informations were filed in court on 17 July 1998. We find their claim, that they did not resort to flight because they were not aware that warrants for their arrest were issued, to be untenable. As testified to by SPO2 Ramon Valencerina, he went to the respective residences of the appellants to serve the warrants for their arrest, but they were not there. SPO1 Pepito Ventura, another Warrant Officer of the Dagupan City Police Station, tried to serve the duplicate copy of the warrants to no avail. We are likewise not persuaded by appellants' claim that they had remained in their *barangay* or had returned thereto for a considerable length of time. Such claim was belied by the declaration of Consolacion Quinto, mother of Councilor Quinto, that her people had been looking for the appellants in their *barangay,* and that it was impossible for her people not to find the appellants if they were indeed staying there.

6. **CRIMINAL LAW; MURDER; WHILE MOTIVE IS NOT INDISPENSABLE FOR CONVICTION, IT ASSUMES TRUE SIGNIFICANCE WHEN THERE IS NO SHOWING OF WHO THE TRUE PERPETRATOR OF A CRIME MIGHT HAVE BEEN.—** The Court has consistently adhered to the principle that proof of motive is not indispensable for a conviction, particularly where the accused is positively identified by an eyewitness, and his participation is adequately established. Motive assumes true significance only when there is no showing of who the perpetrator of a crime might have been. In this case, not only were the appellants positively identified as the killers, it was shown that they had a motive to kill the victims.

As shown by the evidence, appellants Ismael Diaz and Rodolfo Diaz are the son and cousin, respectively, of the late Pablo Diaz, the political opponent of Consolacion Quinto, who is the mother of Councilor Quinto. Councilor Quinto is suspected of having masterminded the killing of Pablo Diaz.

7. **ID.; ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; PRESENT WHERE THE ATTACK WAS UNEXPECTED AND SWIFT GIVING THE VICTIMS NO OPPORTUNITY TO DEFEND THEMSELVES; CASE AT BAR.—** Both the trial court and the Court of Appeals correctly found the appellants guilty of two counts of murder in view of the presence of treachery. There is treachery when the means, methods, and forms of execution employed gave the person attacked no opportunity to defend himself or to retaliate; and such means, methods, and forms of execution were deliberately and consciously adopted by the accused without danger to his person. In the case under consideration, the attack was unexpected and swift. Appellants attacked from behind, catching both victims defenseless. Both victims had no opportunity to defend themselves, and the appellants were not exposed to any danger in view of the unexpected attack. It is likewise apparent that appellants consciously and deliberately adopted their mode of attack – the use of high-powered weapons like a .45 caliber pistol and an armalite rifle — making sure that the victims would have no chance to defend themselves by reason of the surprise attack.

8. **ID.; ID.; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; CONSPIRACY; SHOWN BY THE CONCERTED ACTIONS OF APPELLANTS IN BRINGING ABOUT THEIR CRIMINAL DESIGN.—** Both conspiracy and treachery were present in the commission of the killings. We agree with the Court of Appeals when it said: There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Although there is no direct proof of conspiracy, the same may still be deduced from the mode, method and manner by which the offense was perpetrated or it can be inferred from the acts of the appellants themselves when such acts point to a joint purpose and design, concerted action and community of interest. In the present case, appellant Ismael Diaz was behind Councilor Quinto while appellant Rodolfo Diaz positioned himself behind SPO1 Dalioan, the security aide of Councilor

Quinto. When Ismael Diaz shot Councilor Quinto, SPO1 Dalioan tried to pull out his gun but appellant Rodolfo Diaz shot him. Thereafter, the two escaped going to Sitio Tococ. Both appellants were apprehended only on June 2, 2000 inside a car on the road going to Dagupan in Urdaneta City. The possession of arms by both appellants, their strategic positions before the incident and their simultaneous firing of guns ineluctably show their concerted action to kill Councilor Quinto, including the latter's aide. Their actions were so closely connected showing that they mutually aided one another in bringing about their criminal design.

9. **ID.; CIVIL LIABILITY; CIVIL INDEMNITY IS MANDATORY AND GRANTED TO THE HEIRS OF THE VICTIM WITHOUT NEED OF PROOF OTHER THAN THE COMMISSION OF THE CRIME.—** Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime. The trial court properly awarded the amount of ₱50,000.00 to each of the heirs of the victims as civil indemnity. The amount of ₱75,000.00 as civil indemnity is awarded only if the crime is qualified by circumstances that warrant the imposition of the death penalty.

10. **ID.; ID.; TEMPERATE DAMAGES *IN LIEU* OF ACTUAL DAMAGES, AWARDED.—** As to actual damages, the heirs of the victims are not entitled thereto, because said damages were not duly proved with a reasonable degree of certainty. However, the award of ₱25,000.00 in temperate damages in homicide or murder cases is proper when no evidence of burial and funeral expenses is presented in the trial court. Under Article 2224 of the Civil Code, temperate damages may be recovered, as it cannot be denied that the heirs of the victims suffered pecuniary loss, although the exact amount was not proved. Thus, the award of temperate damages to the heirs of Councilor Quinto is reduced to ₱25,000.00, while that granted to the heirs of SPO1 Dalioan is retained.

11. **ID.; ID.; EXEMPLARY DAMAGES; SHOULD HAVE BEEN AWARDED SINCE THE QUALIFYING CIRCUMSTANCE OF TREACHERY WAS FIRMLY ESTABLISHED.—** Both lower courts did not award exemplary damages. The heirs of the victims are entitled to exemplary damages since the qualifying circumstance of treachery was firmly established. Under Article 2230 of the Civil Code, exemplary damages as part of the civil

liability may be imposed when the crime was committed with one or more aggravating circumstances. The term aggravating circumstances as used therein is to be understood in its broad or generic sense, since the law does not specify otherwise. Consistent with prevailing jurisprudence, we award the amount of ₱25,000.00 as exemplary damages to each of the heirs of the victims.

12. **ID.; ID.; UNEARNED INCOME DUE TO UNTIMELY DEATH; AWARDED TO THE HEIRS OF THE VICTIM.—** The trial court awarded the amounts of ₱2,474,736.00 and ₱874,380.00 as lost earnings to the heirs of Councilor Quinto and SPO1 Dalioan, respectively. The monthly income of Councilor Quinto was ₱18,749.00 or a gross annual income of ₱224,988.00. He was 47 years old at the time of his death. On the other hand, SPO1 Dalioan was 40 years old when he was killed and was earning ₱5,600.00 a month or a total of ₱67,200.00 gross annual income. The unearned income or lost income awarded to the heirs of Councilor Quinto and SPO1 Dalioan must respectively be increased to ₱2,474,868.00 and ₱896,000.00.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

CHICO-NAZARIO, *J.*:

For review is the Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 01606 dated 5 June 2008 which affirmed *in toto* the Joint Decision[2] of the Regional Trial Court (RTC) of Dagupan City, Branch 42, in Criminal Cases No. 98-02261-D

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[1] Penned by Associate Justice Agustin S. Dizon with Associate Justices Regalado E. Maambong and Celia C. Librea-Leagogo, concurring; CA *rollo*, pp. 231-246.

[2] CA *rollo,* pp. 38-62.

and No. 98-02262-D, finding appellants Ismael and Rodolfo Diaz guilty of two counts of Murder.

For the deaths of Elmer Quinto and Senior Police Officer (SPO) 1 Richard Dalioan, appellants Ismael, Rodolfo Diaz and one Domingo Doe were charged before the RTC of Dagupan with Murder and Assault Upon An Agent in Authority with Murder. The informations, which were filed on 17 July 1998, read:

Criminal Case No. 98-02261-D

That on or about the 15th day of April, 1998, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, ISMAEL DIAZ @ Maeng, RODOLFO DIAZ @ Nanding and DOMINGO DOE, being then armed with a gun and Armalite rifle, with treachery, evident premeditation and with intent to kill one ELMER QUINTO, confederating together, acting jointly and helping one another, did then and there, wilfully, unlawfully and criminally, attack, assault and use personal violence upon the latter by shooting him, hitting him on the head, thereby causing his death shortly thereafter due to "Hypovolemic Shock, Gunshot Wound" as per Autopsy Report issued by Dr. Benjamin Marcial Bautista, of the City Health Office, this City, to the damage and prejudice of the legal heirs of said deceased, ELMER QUINTO, in the amount of not less than FIFTY THOUSAND PESOS (₱50,000.00) Philippine currency, and other consequential damages.[3]

Criminal Case No. 98-02262-D

That on or about the 15th day of April, 1998, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, ISMAEL DIAZ @ Maeng, RODOLFO DIAZ @ Nanding and DOMINGO DOE, being then armed with a gun and Armalite rifle, with treachery, evident premeditation and with intent to kill one SPO1 RICHARD DALIOAN, a member of the Philippine National Police, qualified and appointed as such, confederating together, acting jointly and helping one another, did then and there, wilfully, unlawfully and criminally, attack, assault and use personal violence upon the latter by shooting and hitting him several times on

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[3] *Id.* at 11.

vital parts of his body, while said SPO1 RICHARD DALIOAN was then engaged in the performance of his official duties or on occasion thereof, thereby causing his death shortly thereafter due to "Hypovolemic Shock, Multiple Gunshot Wound" as per Autopsy Report issued by Dr. Benjamin Marcial Bautista, of the City Health Office, this City, to the damage and prejudice of the legal heirs of said deceased, SPO1 RICHARD DALIOAN, in the amount of not less than FIFTY THOUSAND PESOS (₱50,000.00) Philippine currency, and other consequential damages.[4]

In view of the arrest of the appellants, the trial court, on 5 June 2000, ordered the revival of the cases and the retrieval of the records of the cases from the archives.[5]

When arraigned on 9 June 2000, appellants, assisted by counsel *de parte*, pleaded not guilty to the crimes charged.[6]

The pre-trial conference was held on 14 June 2000 and the following admissions were made by the parties:

1. That the two cases will be tried jointly since they happened during the same incident;

2. The identity of the two accused in the sense that they were the accused who were charged and who were arraigned in these two cases;

3. Both accused knew personally the late Elmer Quinto, both as private citizen and as a city councilor. As a matter of fact, he is addressed as a grandfather by the accused Ismael Diaz; likewise, co-accused knew personally Richard Dalioan, both as a private citizen and as a policeman of Dagupan City;

4. That on the night of April 14, 1998 there was an occasion in Lucao, Dagupan City where trophies were awarded to winners of a basketball game until dawn of the next day, April 15, 1998; the affair was a Victory Ball and both accused, Ismael Diaz and Rodolfo Diaz, were in attendance.

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[4] *Id.* at 13.

[5] Records, Vol. 1, p. 56.

[6] *Id.* at 61.

5. That deceased Elmer Quinto is married to one Teresita Quinto, the private complainant in CR-98-02261;

6. That one Rosa Dalioan is also the wife of SPO1 Richard Dalioan, the victim in CR-98-02262.[7]

Thereafter, trial on the merits ensued.

The prosecution presented the following witnesses, namely: (1) SPO1 Salvino Junio;[8] (2) Dr. Benjamin Marcial O. Bautista;[9] (3) Ernesto Decano;[10] (4) Arnel Quinto;[11] (5) Consolacion Quinto;[12] (6) Pedro Urbano;[13] (7) Rosa Dalioan;[14] (8) Dr. Ronald Bandonill;[15] (9) SPO2 Ramon Valencerina;[16] (10) Police Officer (PO) 3 Marlon Decano;[17] and (11) SPO4 Onofre Madrid.[18] Their collective testimonies established the following:

On the evening of 14 April 1998, there was a "victory ball" in Sitio Nibaliw, Lucao District, Dagupan City involving the recently concluded sports tournament conducted in said *barangay*. Said event was part of the celebration of the *barangay fiesta*. The main event of the program was the awarding of trophies to the winners of the various ball games held. Aside from the awarding of prizes, there were political speeches and public dancing. Firecrackers were likewise exploded during

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[7] *Id.* at 65.

[8] TSN, 3 July 2000.

[9] TSN, 17 July 2000.

[10] TSN, 19 July 2000.

[11] TSN, 20 July 2000.

[12] TSN, 27 July 2000, 7 February 2001 (Rebuttal).

[13] TSN, 3 August 2000.

[14] TSN, 8 August 2000.

[15] TSN, 6 September 2000.

[16] TSN, 11 October 2000.

[17] TSN, 1 February 2001 (Rebuttal).

[18] TSN, 7 February 2001 (Rebuttal).

the program. Present therein were politicians who donated the trophies to be awarded and who were invited to deliver campaign speeches for the upcoming May 1998 local elections. Among the politicians present were City Councilors Elmer Quinto, Hermenio Casilang and Rico Melendrez.

Councilor Quinto was seated in front of the stage facing the audience. He was seated at the left portion of the stage between Councilors Casilang and Melendez. Appellant Ismael Diaz was at the left side at the back of the stage. SPO1 Richard Dalioan, the security escort of Councilor Quinto, was also at the left side behind the stage, seated on a bench. Behind SPO1 Dalioan on the right was appellant Rodolfo Diaz. Ernesto Decano, a cousin of Councilor Quinto, was sitting on the left side of a fence about three meters from SPO1 Dalioan, while Arnel Quinto, the driver of Councilor Quinto, was about six meters away from the latter.

The program lasted until dawn of the following day, 15 April 1998. At around 3:00 a.m., the people were invited to dance. While the dancing was going on, firecrackers were exploded. Suddenly, appellant Ismael Diaz shot Councilor Quinto from behind with a .45 caliber pistol. Upon seeing that Councilor Quinto was shot, SPO2 Dalioan drew his gun and was about to fire. It was at this moment that appellant Rodolfo Diaz fired his M16 armalite rifle, hitting SPO1 Dalioan on different parts of his body. Thereafter, Ismael Diaz and Rodolfo Diaz fled towards Sitio Tococ.

Councilor Quinto died on the spot. Ernesto Decano and Arnel Quinto rushed SPO1 Dalioan to the Trauma Center Hosptial, Lucao District, Dagupan City where he died an hour after. Ernesto Decano and Arnel Quinto informed Councilor Quinto's wife of what happened to her husband.

Dr. Benjamin Marcial O. Bautista, Rural Health Physician of the City Health Office, Dagupan City, conducted autopsy on the bodies of Councilor Quinto and SPO1 Dalioan. Councilor Quinto suffered a fatal gunshot wound above the left ear. The point of entry was 1 centimeter in diameter, left superior pinna, with lacerated wound and gunpowder tattooing, less dense

through and through the temporal bone, at the level of the left superior pinna, gunpowder tattooing with abrasion collar, inverted edges, direction slightly upward, antero-lateral. The cause of his death was Hypovolemic Shock.[19] On the other hand, SPO1 Dalioan sustained multiple injuries and gunshot wounds on different parts of his body. The cause of his death was Hypovolemic Shock due to multiple gunshot wounds.[20]

Ernesto Decano testified that when the shooting happened, he saw Ismael Diaz at the back of the stage holding a .45 cal. pistol. He then saw SPO1 Dalioan, who was about to pull out a revolver, get shot many times by Rodolfo Diaz using an M16 armalite rifle.[21] Next, he saw the two flee towards Sitio Tococ.

Arnel Quinto disclosed that after seeing Ismael Diaz shoot Councilor Quinto, he then saw Rodolfo Diaz gun down SPO1 Dalioan with an armalite rifle. The two then took off to Sitio Tococ.

SPO1 Salvino Junio was the Desk Officer of the night shift at the Dagupan City Police Station when SPO2 Romeo Esquillo reported to him in the early morning of 15 April 1998 the shooting incident. He recorded the report in the Police Blotter as Entry No. 2075[22] under the date 15 April 1998. A team headed by Senior Police Inspector Nelson Vidal was dispatched to investigate the incident. SPO1 Junio recorded the result of the investigation in the Police Blotter under Entry No. 2076.[23]

SPO1 Pedro Urbano of the Dagupan City Police Station narrated, among others, how they surveyed the place where the incident happened and how the empty shells of a .45 cal pistol and M16 armalite rifle were recovered. He disclosed that he recovered five empty shells of a .45 caliber pistol, more

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[19] Exh. F, Folder of Exhibits, p. 4.

[20] Exh. G, *id.* at 6.

[21] TSN, 19 July 2000, pp. 3-4.

[22] Exh. A, Folder of Exhibits, p. 1.

[23] Exh. B, *id.*

or less, three and one-half (3½) meters away from the cadaver of Councilor Quinto. As to the empty shells of the armalite rifle, he found 15 of them beside Renato Cuison's house, which was situated six meters away from the back of the stage.

Rosa Dalioan, widow of SPO1 Dalioan, said her husband was 40 years old and was earning a monthly salary of ₱5,600.00.[24] Her husband's death was very painful, for he was the sole breadwinner of the family. Because of his death, their four children were farmed out to their relatives.

Consolacion Quinto, mother of Councilor Quinto, was at the crime scene when the incident happened. She was 2 to 2½ meters away from her son when the guns were fired. She tried to dive to the ground, but was not able to do so. She bent low towards the ground where she saw her son lying on the ground with plenty of blood on his head. She heard people shouting, "It was Maeng and Nanding who did it." She identified Maeng as Ismael Diaz and Nanding as Rodolfo Diaz, both of whom she personally knows.

Consolacion Quinto disclosed that his son, Elmer Quinto, was 47 years old when he died[25] and was a member of the City Council of Dagupan City, by virtue of his being the President of the *Liga ng mga Barangay* in Dagupan City, and was receiving a monthly salary of ₱18,749.00.[26] She added that Elmer had six children with his wife, and that his children were traumatized by the incident. Losing her son caused her sufferings. She said her husband was likewise affected. As a result, he became very weak and sickly until he eventually died. Not only did she lose a son, she also lost her husband.

Dr. Ronald Bandonill, Medico Legal Officer, National Bureau of Investigation (NBI), testified that on 24 April 1998, he was directed by the officer-in-charge of the NBI, Dagupan City, to proceed to the NBI Dagupan District and to conduct an autopsy

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[24] PNP Certification, Exh. U, *id.* at 29.

[25] Birth Certificate, Exh. L, *id.* at 14.

[26] Certificate issued by City Council Secretary, Exh. M, *id.* at 15.

on the cadaver of Elmer Quinto. The autopsy was requested by Teresita Quinto, wife of Elmer Quinto.[27] He explained that Elmer Quinto suffered a fatal gunshot wound on the head, the point of entry of which was at the left side of the back of the head above the left ear, while the point of exit was at the right temple. He added that the trajectory of the bullet was from the back going forward and going upward. From the gunshot wound entrance, he estimated that the firearm used was either a .45 caliber or a 9 mm., and that the tip of the barrel of the gun was within six inches from the head of the victim. His findings were reduced into writing.[28]

SPO2 Ramon Valencerina, Warrant Officer of the Dagupan City Police Station, testified that he tried to serve warrants and *alias* warrants of arrest issued in the names of Ismael Diaz and Rodolfo Diaz, but the same were returned unserved, because the subjects thereof could not be found in their respective residences.[29]

PO3 Marlon Decano testified that his only participation in the arrest of Alfredo Diaz, the brother of the appellant Rodolfo Diaz, was to point to him because his co-police officers did not know him. Subsequently, Alfredo was invited for questioning.

SPO4 Onofre Madrid testified that on 2 June 2000, he was assigned as Chief Investigator at the Philippine National Police (PNP) Criminal Investigation and Detection Group (CIDG), Lingayen, Pangasinan. On said date, he was told by an informant that Ismael Diaz and Rodolfo Diaz were sighted at Barangay Barangobong, Villasis, Pangasinan. He relayed the information to Major Franklin Mabanag, his provincial officer. He then informed his companions *via* text messaging that they would

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[27] Certificate of Identification and Consent for Autopsy, Exh. W, *id.* at 31.

[28] Autopsy Report No. 98-08-P, Exh. Y, *id.* at 32.

[29] The testimony of Police Inspector (P/Insp.) Franklin Moises Mabanag was dispensed with when the defense admitted that the trial court had been informed, per return of a subpoena, that the arrest of Ismael Diaz and Rodolfo Diaz had been effected. (TSN, 11 October 2000, pp. 8-9.)

conduct an operation to arrest Ismael Diaz and Rodolfo Diaz on the strength of the warrants of arrest issued by the trial court. Upon being informed that the group of Ismael Diaz was already leaving the *barangay*, he, together with one agent and the owner of a borrowed car, proceeded to the highway in Barangay Bacag in Villasis, Pangasinan where he met his other companions. Upon seeing the car bearing the accused, they gave chase. Upon reaching the intersection at Urdaneta Proper, SPO4 Madrid got down from the car and positioned himself at the back of the accused's car. The accused tried to escape, but their vehicle was stopped by the Urdaneta Police, which SPO4 Madrid had already alerted. Ismael Diaz and Rodolfo Diaz surrendered peacefully and were brought to the Urdaneta Police Station where they were fingerprinted, interviewed and photographed. Major Mabanag arrived and talked to the Police Chief of Urdaneta. Thereafter, the accused were brought to the Sacred Heart Hospital for medical check-up before being brought to the CIDG office in Lingayen, Pangasinan. He added that the accused were never manhandled and were not about to be salvaged. He had no knowledge of the accused's allegation that they (the police officers) had accused the Diazes of being carnappers. The medical certificates[30] issued by one Dr. Norberto Felix, Medical Director of the Sacred Heart Hospital, stated: "Injuries sustained – no physical injuries noted."

For the defense, the following took the witness stand: (1) Imelda Quinto,[31] (2) Josue de Vera,[32] (3) Ricardo Avelino,[33] (4) Rhodora Jose,[34] (5) Lolita Velasco,[35] (6) Ismael Diaz,[36] (7)

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[30] Exhs. II and JJ, Folder of Exhibits, pp. 50-51.

[31] TSN, 18 October 2000.

[32] TSN, 25 October 2000.

[33] TSN, 30 October 2000.

[34] TSN, 7 November 2000.

[35] *Id.*

[36] TSN, 14-15 November 2000 and 6 December 2000.

Rodolfo Diaz,[37] (8) Santiago Marcella, Jr.,[38] and (9) Alfredo Diaz.[39] Their testimonies disclosed the defense's version of the incident.

Appellants Ismael Diaz and Rodolfo Diaz denied shooting Councilor Elmer Quinto and SPO1 Dalioan. They, however, admitted that they were present in the dance hall where the shooting happened. They were there as players of a softball team, which was to receive the runner-up trophy. They said their table was 20 to 25 meters away from the table, where the guests who included Councilor Quinto sat. They alleged that when the shooting occurred, they saw the people in the dance hall stoop. They likewise crouched to prevent being hit. When the people began to run, they (appellants) stood up and heard the people say that somebody was shot. Appellants Ismael Diaz and Rodolfo Diaz then ran together with Imelda Quinto, Jayho Villanueva, Ricky Velasco and some others.

Ismael Diaz and Rodolfo Diaz did not return to the dance hall to know what really happened. They remained in their respective houses until armed men began to look for them on 17 or 18 April 1998. Ismael Diaz was brought to Project 6, Quezon City by his mother. On the other hand, Rodolfo Diaz, after being shot at and chased by four armed men, went to Bongabong, Nueva Ecija, the place of Guillermo Lictaoa, his brother-in-law, and stayed there for one month. They left because they were afraid that they might be killed by the armed men who were looking for them.

Ismael Diaz said he returned to Sitio Nibaliw, Lucao District, Dagupan City after a month to look after his fishpond. When armed men looked for him anew for the death of one Leopoldo Calulut, and his house was raided on 9 January 1999, he went to Baguio City to hide. After a few weeks, he returned again to take care of his fishpond. He even became the manager of

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[37] TSN, 11 and 20 December 2000.

[38] TSN, 12 January 2001.

[39] TSN, 31 January 2001.

a basketball team, which took part in a school sportsfest at Sitio Eskuelahan. This, he claimed, was known to Consolacion Quinto. Aside from these, he even became a sponsor in a wedding and in a baptism. He wanted to surrender to the police, but was afraid he might be killed because the policemen were the ones accusing him.

On the day he and Rodolfo Diaz were arrested at Urdaneta City, they were attending a baptismal and birthday party of one of their relatives. They were badly beaten by the police officers who arrested them, and they were even tagged as carnappers. They were forced to admit all the accusations being imputed to them.

Rodolfo Diaz, despite knowing that he was being held responsible for the deaths of Councilor Quinto and SPO1 Richard Dalioan, did not surrender to the authorities because he feared that he might be killed.

Imelda Quinto, a resident of Lucao District, Dagupan City testified that she was at the victory ball and was seated behind the table of the appellants. She was watching the people dance to the tune of "Dayang-Dayang" when she suddenly heard gunshots. She stooped because she did not want to be hit. She saw the appellants, who were on their seats, bend down to hide. When the people started to run, the appellants also ran and so did she. She said appellants could not have done the shooting because she did not notice them carrying any firearm, and they were still seated when she heard the gunshots.

Josue de Vera was a resident of Lucao District, Dagupan City and relative of both the appellants and Councilor Quinto. When the incident happened, he alleged that he was on the same table as that of the appellants. When the tune of "Dayang-Dayang" was played, he heard a firecracker-like sound and saw the people running and stooping. He and the appellants also stooped to avoid being hit. He denied the accusation against the appellants, explaining that they were still seated with him when the shooting happened.

Ricardo Avelino declared that he was at the victory ball when the killings took place. Upon his arrival there, Ismael Diaz escorted him to the presidential table, he being a candidate for city councilor. He revealed that he did not see the actual shooting of the victims, because he was sleeping on one of the tables. When he heard the gunshots, he stood up and looked for his wife and son. He saw Ismael Diaz who was 2½ meters away from him. He said Ismael Diaz did not shoot Councilor Quinto because Diaz was not holding a gun when he saw him, and that they were 15-20 meters from the place where Councilor Quinto was shot.

Lolita Velasco disclosed that she was the aunt of Ismael Diaz and cousin of Rodolfo Diaz. She testified that at around midnight of 17 April 1998, four armed men went to her house looking for the appellants. The men searched her house and even poked a gun at her sleeping son. Not finding the appellants, the armed men left. She immediately left and informed Ismael Diaz of what happened. She advised her nephew to hide.

Rhodora Jose, a neighbor of Lolita Velasco, testified that at around midnight of 17 April 1998, four men armed with long firearms came to her house looking for appellants. One of the armed men searched her house. Since the appellants were not there, these men left, saying that they would kill the appellants if they saw them. She told her husband what happened and the latter told her to inform Florita Diaz, mother of Ismael Diaz, about what happened, which she did.

Santiago Marcella, 3rd Assistant City Prosecutor of Dagupan City, testified that he handled two cases for attempted homicide filed by Salvador Alabasco and Lanecita Arenas against appellants. The said cases were dismissed on account of the affidavits of desistance filed by said complainants.

Alfredo Diaz, a brother of Rodolfo Diaz, testified that he was at the victory ball when the shooting happened. He was at the gate watching when he heard a loud sound which he thought was a *trianggulo* exploding. When he saw people running and heard someone shouting that somebody got shot, he also

ran. Thereafter, he was arrested by the police officers, one of whom was Marlon Decano. Several hours later, he was released.

On 18 April 2001, the trial court promulgated its Joint Decision finding appellants guilty beyond reasonable doubt of two counts of Murder committed in conspiracy with one another. The dispositive portion of the decision states:

WHEREFORE, premises considered, both the accused ISMAEL DIAZ and RODOLFO DIAZ are hereby found guilty beyond reasonable doubt for having committed in conspiracy with one another two (2) counts of MURDER as defined by Article 248 of the Revised Penal Code and as penalized by RA 7659, and since neither aggravating nor mitigating circumstance was attendant to the commission of the offense, each accused is hereby sentenced to suffer the penalty of *RECLUSION PERPETUA* in each of the herein cases. Also in each of the two cases, both should jointly and severally indemnify the death of ELMER QUINTO and RICHARD DALIOAN each in the amount of ₱50,000.00. They should likewise pay jointly and severally the heirs of Elmer Quinto the amount of ₱2,474,736.00 as lost earnings which would have been received by his heirs as support had he been alive, ₱30,000.00 as moderate or temperate damages, and ₱25,000.00 as moral damages, as well as to the heirs of SPO1 Richard Dalioan the amount of ₱874,380.00 as lost earnings which would have been received by his heirs as support had the said victim been alive, ₱20,000.00 as moderate or temperate damages, and ₱25,000.00 as moral damages, and to pay the costs.[40]

The trial court gave credence to the testimonies of Ernesto Decano and Arnel Quinto, who pointed to the appellants as the assailants. It ruled that Ismael Diaz had a strong motive to kill Councilor Quinto, because the latter was the principal suspect in the killing of the former's father (Pablo Diaz) who was the political opponent of Consolacion Quinto. It likewise found the shooting of SPO1 Richard Dalioan connected with the shooting of Councilor Quinto. The almost simultaneous shooting of the two, the trial court said, was enough proof that the appellants conspired with each other.

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[40] CA *rollo,* pp. 61-62.

On the other hand, the trial court was not convinced by the denial offered by the appellants. Not only did appellants admit they were present in the place where the incident took place, they were positively identified by eyewitnesses. The trial court did not find credible the defense witnesses (Josue de Vera, Imelda Quinto and Ricardo Avelino) who alleged that appellants were with them and were not holding any firearm when the victims were gunned down. It found that appellants had a motive to kill Councilor Quinto and considered their flight in arriving at its decision.

On 2 May 2001, appellants filed a Notice of Appeal informing the trial court that they were appealing the Joint Decision to the Supreme Court.[41]

In its Order dated 3 May 2001, the trial court, finding the notice of appeal to have been filed in time, directed the records of the cases to be forwarded to the Supreme Court.[42] However, pursuant to our ruling in *People v. Mateo*,[43] the case was transferred to the Court of Appeals for appropriate action and disposition.[44]

On 5 June 2008, the Court of Appeals affirmed *in toto* the Joint Decision of the RTC.

On 19 June 2008, the appellants filed their notice of appeal.[45]

In a Resolution dated 19 June 2008, the Court of Appeals elevated the records of the case to the Supreme Court.[46] Thereafter, in our resolution dated 18 February 2009, this Court noted the elevation of the records of the case, accepted the appeal and required the parties to submit supplemental briefs,

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[41] Records, Vol. 1, p. 313.

[42] *Id.* at 314.

[43] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.

[44] CA *rollo*, p. 123.

[45] *Id.* at 247.

[46] *Id.* at 254.

if they so desired, within 30 days from notice.[47] The parties opted not to file supplemental briefs on the ground that they had fully argued their positions in their respective briefs.[48]

Appellants make the following assignment of errors:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT, WHEN THEIR GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF THE PROSECUTION'S EYEWITNESSES.

III

THE TRIAL COURT GRAVELY ERRED WHEN IT RULED THAT CONSPIRACY AND TREACHERY ATTENDED THE COMMISSION OF THE CRIME.[49]

It is appellants' contention that there was no proof that the prosecution witnesses saw the actual shooting. They argue that this is supported by the trial court's finding that Ernesto Decano could have seen Ismael Diaz when the latter was retreating backward. They add that Decano's testimony that he heard the gunshots and saw how Councilor Quinto was shot is doubtful considering that music was being played and firecrackers were being exploded and that he took cover behind the fence to hide. As to Arnel Quinto, appellants tried to discredit him by asking how he could have seen the actual shooting of the victims when he admittedly hid or took cover. Moreover, they maintain that it was unnatural for Arnel Quinto not to have warned Councilor Quinto when he saw appellants approaching and holding guns. With all these major

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[47] *Rollo*, p. 24.

[48] *Id.* at 26-32.

[49] CA *rollo*, p. 138.

inconsistencies, appellants assert that the conviction of the appellants was not justified.

After meticulously going over the testimonies of both Ernesto Decano and Arnel Quinto, we are convinced that appellant Ismael Diaz shot Councilor Elmer Quinto, while appellant Rodolfo Diaz shot SPO1 Richard Dalioan.

The testimony of Arnel Quinto, the driver of Councilor Quinto, clearly points to the appellants as the assailants. His testimony as to the actual shooting of the victims goes this way:

Q. Did anything unusual happen in the early morning of April 15, 1998 at Sitio Nibaliw, Lucao, Dagupan City?

A. Yes sir, there was.

Q. What was that unusual event that happened?

A. There was a shooting incident that took place, sir.

Q. Who was shot on that incident?

A. Councilor Quinto and SPO1 Dalioan, sir.

Q. Did you personally see who shot Kgd. Elmer Quinto and SPO1 Richard Dalioan?

A. Yes, sir.

Q. Who shot Kgd. Elmer Quinto?

A. A certain Maeng Diaz, sir.

x x x x x x x x x

Q. Who shot SPO1 Dalioan?

A. It was Nanding Diaz, sir.

x x x x x x x x x

Q. Please narrate to the Court the sequence of events that occurred during this shooting incident?

A. There was an announcement for the public for dance for all, sir.

Q. And after that announcement, what happened, Mr. Witness?

A. Firecrackers burst out, sir.

Q. And while the firecrackers were being burst, what happened, if any?

A. I heard gun burst shots, sir.

Q. What happened after you heard gun burst shots?

A. I saw Kgd. Elmer Quinto fell down, sir.

Q. Was Kgd. Elmer Quinto shot?

A. Yes, sir.

Q. Where was Councilor Quinto when he was shot?

A. He was in front of the stage a little left side, sir.

Q. Who shot Councilor Quinto?

A. It was Maeng Diaz, sir.

Q. Where was Maeng Diaz when he shot Councilor Elmer Quinto?

A. He was on the left side of the stage behind, sir.

x x x x x x x x x

Q. After Councilor Elmer Quinto was shot, what happened, if any?

A. I saw SPO1 Dalioan who was also shot down, sir.

Q. Who shot SPO1 Dailioan?

A. It was Nanding Diaz, sir.

Q. What did Nanding Diaz use to shoot SPO1 Dalioan?

A. An armalite, sir.

Q. After Nanding Diaz shot SPO1 Dalioan, what happened next, if any?

A. Maeng and Nanding ran away towards Tocok, sir.[50]

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[50] TSN, 20 July 2000, pp. 4-7.

Arnel Quinto's account of the incident was substantially corroborated by Ernesto Decano in this wise:

Q. Was there anything unusual happen in the early morning of April 15, 1998 at Sitio Nibaliw, Lucao, Dagupan City?

A. Yes, sir.

Q. What was this unusual event that happened?

A. Councilor Quinto and SPO1 Dalioan were shot and killed, sir.

x x x x x x x x x

Q. Who shot Elmer Quinto?

A. Maeng Diaz, sir.

x x x x x x x x x

Q. And who shot SPO1 Dalioan?

A. Nanding Diaz, sir.

x x x x x x x x x

Q. Please relate to the Court the unusual event that occurred during the shooting incident?

A. Councilor Quinto was sitting in front of the makeshift stage, sir.

Q. And then what happened, Mr. Witness?

A. The public was told to dance and they play the song Dayang-Dayang, sir.

Q. While the song Dayang-Dayang was played what happened?

A. While the song Dayang-Dayang was played some firecrackers were being burst, sir.

Q. What happened when a firecracker was being burst, if any, Mr. Witness?

A. Then suddenly I heard some gunshots, sir.

Q. What happened after the firing of the gunshots?

A. I saw Maeng Diaz at the back of the stage holding a .45 caliber pistol, sir.

Q. What happened after that, if any?

A. SPO1 Dalioan was about to pull out the .22 revolver but he was shot many times by Nanding Diaz with M16 Armalite Rifle, sir.[51]

From the foregoing declarations, it is clear that after the people in the dance hall were invited to dance, the song Dayang-Dayang was played and some firecrackers were exploded. It was at this moment that Ismael Diaz, using a .45 caliber pistol, shot Councilor Quinto from the back hitting him on the head. When SPO1 Dalioan was about to draw his weapon, Rodolfo Diaz shot him with an armalite rifle inflicting on him multiple gunshot wounds. As explained by the trial court, though the tables of appellants and Councilor Quinto were situated 20-25 meters away, it was not impossible for the appellants to have gone to the place where the victims were located by slipping under the bamboo strand of the fence surrounding the dance hall, and going to the stage from behind, towards the place where Councilor Quinto's table was located.

The statement of the trial court that "Ernesto Decano could not have seen him (Ismael Diaz) go near Elmer Quinto since everybody's attention was focused on the audience and he (Ernesto Decano) could have only seen him (Ismael Diaz) as the said accused was retreating backward from his target" does not mean that appellant Ismael Diaz was not the one who shot Councilor Quinto. The fact that Ernesto Decano saw Ismael Diaz holding a .45 caliber pistol, whether retreating or not, bolsters the declaration of Arnel Quinto that it was Ismael Diaz whom he saw shoot Councilor Quinto with a .45 caliber pistol.

Appellants' argument that both Ernesto Decano and Arnel Quinto could not have witnessed the shooting because they admitted that they hid or took cover during the shooting incident does not have a leg to stand on. Both witnesses emphatically stated that the shooting happened so fast that they were able to hide or take cover when the shooting had almost ended.

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[51] TSN, 19 July 2000, pp. 3-4.

Arnel Quinto explained:

Q. Were you standing near the sound system during the shooting incident?

A. No, sir.

Q. What did you do?

A. I hid because I might be hit by the bullets, sir.

Q. Could you still see what happened from your position?

ATTY. CABRERA:

We would object to that, Your Honor, please, how could he see that? He has already hidden himself.

ATTY. JAVELLANA:

That is why we were asking him, your Honor.

COURT:

Q. How did you hide yourself?

A. Because before I hid, the shooting incident has almost ended, because as what I have said, the incident happened so fast, sir.

x x x x x x x x x

COURT:

Q. You said that when the dance was going on you were looking from place to place watching Kgd. Elmer Quinto, is that correct?

A. Yes, sir.

Q. Why do you need to watch Kgd. Quinto?

A. Because I was then his driver, your Honor.

Q. But your duty as a driver was to drive him and not to watch him, is that correct?

A. I was watching over him, Your Honor, because of instances that he might be asking me to do something for him so that he can easily tell me through signal.

Q. So the court understands that you are watching him because there was possible harm that may occur to him, is that correct?

A. Yes, sir.

Q. Now, of course, when you go from one place to another within the premises of the dancing hall, you noticed the presence of Rodolfo Diaz and Maeng Diaz behind the stage?

A. Not yet, sir.

Q. What moment did you notice the presence of Ismael Diaz and Rodolfo Diaz in relation to the gun report?

A. During the gun burst, Your Honor.

Q. But you did not tell that you went somewhere else to hide yourself?

A. Your Honor, it was when the gun burst was about to end when I hid myself.[52]

Ernesto Decano made it clear that he saw what happened, thus:

Q. Now, from your position when you took cover, Mr. Witness, could you still see what was happening?

A. Yes, sir.

Q. Why?

A. The sight is almost finish[ed] when I was able to take cover because it is very fast, sir.[53]

Appellant further tries to discredit Arnel Quinto by claiming that it is highly unnatural for the latter not to have warned either Councilor Quinto or SPO1 Dalioan when he saw Ismael Diaz and Rodolfo Diaz holding firearms.

Arnel Quinto testified on how he acted under the situation in this manner:

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[52] TSN, 20 July 2000, pp. 9-21.

[53] TSN, 19 July 2000, p. 8.

Q. Will you tell us the reason why you did not call the attention of either Kgd. Elmer Quinto or SPO1 Dalioan despite the fact that you have seen these two accused already holding a firearm before the firing took place?

A. Because I was not aware of their intention, Your Honor.

Q. Did you not know that SPO1 Dalioan was there to secure the safety of Kgd. Elmer Quinto because of previous grudge with people?

A. I do not know, Your Honor.

REDIRECT EXAMINATION

BY ATTY.JAVELLANA

Q. You said that you saw Maeng Diaz and Nanding Diaz before the shooting incident, could you tell us how long before the shooting incident that you saw Maeng Diaz and Nanding Diaz?

A. About a minute, sir.

Q. Is that the reason why you were not able to inform SPO1 Dalioan and Councilor Quinto?

ATTY. CABRERA

Misleading, we object, Your Honor, please.

COURT

Q. Did you know that the family of Diazes and the family of Quintos were not exactly in good terms because of previous incident that happened between them?

A. I know, your Honor.

Q. And yet, you know that very well but you did not call the attention of either Police Officer Dalioan and your boss Elmer Quinto about the presence of Ismael Diaz and Rodolfo Diaz holding their respective firearms?

A. I was far from them, your Honor.

Q. You claim to be 6 meters away from them, you consider that too far?

A. Of course, I did not tell them anymore or get near them because if I have done it, I might be even one of those who were hit, Your Honor.[54]

We agree with the Court of Appeals when it said that the credibility of said witnesses was not affected because it is well-settled that different people react differently to a given situation or type of situation, and there is no standard form of human behavioral response when one is confronted with a strange or startling or frightful experience. Witnessing a crime is an unusual experience which elicits different reactions from the witnesses and for which no clear-cut standard form of behavior can be drawn.[55] As Arnel Quinto explained, he failed to call the attention of Councilor Quinto or SPO1 Dalioan because he did not know the intention of the appellants, and the incident happened very quickly, giving him no opportunity to give any warning to the councilor and to his security escort. Moreover, he was scared that he might get hit if he called the victims' attention.

Having been positively identified by prosecution witnesses as the assailants, all that appellants can offer for their exoneration is the defense of denial. Appellants admitted that they were present in the dance hall where the victims were gunned down, but claimed that they were not the assailants.

To be believed, denial must be buttressed by strong evidence of non-culpability. Otherwise, it is purely self-serving and without merit.[56] Greater weight is given to the categorical identification of the accused by the prosecution witnesses than to the accused's plain denial of participation in the commission of the crime.[57] In the instant case, appellants failed to adduce strong and credible evidence to overcome the testimonies of the prosecution's eyewitnesses. The testimonies of the defense witnesses (Josue de Vera, Imelda Quinto and Ricardo Avelino),

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[54] TSN, 20 July 2000, pp. 22-24.

[55] *People v. Baniega*, 427 Phil. 405, 415 (2002).

[56] *Belonghilot v. Hon. Angeles*, 450 Phil. 265, 293 (2003).

[57] *People v. Baccay*, 348 Phil. 322, 327-328 (1998).

who alleged that appellants were with them and were not holding firearms when the victims were gunned down, were not given credence by both the trial court and the Court of Appeals. These witnesses were not credible witnesses. Thus, denial, unsubstantiated by any credible evidence, deserves no weight in law.

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.[58]

It is to be noted that the Court of Appeals affirmed the findings of the RTC. In this regard, the settled rule is that when the trial court's findings have been affirmed by the appellate court, said findings are generally conclusive and binding upon this Court.[59] We find no compelling reason to deviate from their findings.

The Court has consistently adhered to the principle that proof of motive is not indispensable for a conviction, particularly where the accused is positively identified by an eyewitness, and his participation is adequately established. Motive assumes true significance only when there is no showing of who the perpetrator of a crime might have been.[60] In this case, not only were the appellants positively identified as the killers, it was shown that they had a motive to kill the victims. As shown by the evidence, appellants Ismael Diaz and Rodolfo Diaz are the son and cousin, respectively, of the late Pablo Diaz, the

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[58] *People v. Escultor*, G.R. Nos. 149366-67, 27 May 2004, 429 SCRA 651, 661.

[59] *People v. Tolentino*, G.R. No. 176385, 26 February 2008, 546 SCRA 671, 689.

[60] *People v. Lozada*, 390 Phil. 93, 114 (2000).

political opponent of Consolacion Quinto, who is the mother of Councilor Quinto. Councilor Quinto is suspected of having masterminded the killing of Pablo Diaz.

Appellants' flight is further evidence of their guilt. It is well-established that the flight of an accused is competent evidence to indicate his guilt; and flight, when unexplained, is a circumstance from which an inference of guilt may be drawn.[61] In the case before us, appellants were apprehended only on 2 June 2000, or almost two years after the informations were filed in court on 17 July 1998. We find their claim, that they did not resort to flight because they were not aware that warrants for their arrest were issued, to be untenable. As testified to by SPO2 Ramon Valencerina, he went to the respective residences of the appellants to serve the warrants[62] for their arrest, but they were not there. SPO1 Pepito Ventura, another Warrant Officer of the Dagupan City Police Station, tried to serve the duplicate copy of the warrants to no avail. We are likewise not persuaded by appellants' claim that they had remained in their *barangay* or had returned thereto for a considerable length of time. Such claim was belied by the declaration of Consolacion Quinto, mother of Councilor Quinto, that her people had been looking for the appellants in their *barangay,* and that it was impossible for her people not to find the appellants if they were indeed staying there.

Appellants assert that neither conspiracy nor treachery attended the killings.

We disagree. Both conspiracy and treachery were present in the commission of the killings.

We agree with the Court of Appeals when it said:

> There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.

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[61] *People v. Castillo*, G.R. No. 172695, 29 June 2007, 526 SCRA 215, 224.

[62] Exh. BB-1, Folder of Exhibits, p. 39.

Although there is no direct proof of conspiracy, the same may still be deduced from the mode, method and manner by which the offense was perpetrated or it can be inferred from the acts of the appellants themselves when such acts point to a joint purpose and design, concerted action and community of interest.

In the present case, appellant Ismael Diaz was behind Councilor Quinto while appellant Rodolfo Diaz positioned himself behind SPO1 Dalioan, the security aide of Councilor Quinto. When Ismael Diaz shot Councilor Quinto, SPO1 Dalioan tried to pull out his gun but appellant Rodolfo Diaz shot him. Thereafter, the two escaped going to Sitio Tococ. Both appellants were apprehended only on June 2, 2000 inside a car on the road going to Dagupan in Urdaneta City.

The possession of arms by both appellants, their strategic positions before the incident and their simultaneous firing of guns ineluctably show their concerted action to kill Councilor Quinto, including the latter's aide. Their actions were so closely connected showing that they mutually aided one another in bringing about their criminal design.[63]

Both the trial court and the Court of Appeals correctly found the appellants guilty of two counts of murder in view of the presence of treachery. There is treachery when the means, methods, and forms of execution employed gave the person attacked no opportunity to defend himself or to retaliate; and such means, methods, and forms of execution were deliberately and consciously adopted by the accused without danger to his person.[64]

In the case under consideration, the attack was unexpected and swift. Appellants attacked from behind, catching both victims defenseless. Both victims had no opportunity to defend themselves, and the appellants were not exposed to any danger in view of the unexpected attack. It is likewise apparent that appellants consciously and deliberately adopted their mode of attack – the use of high-powered weapons like a .45 caliber pistol and an armalite rifle — making sure that the victims

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

[64] *People v. Ave*, 439 Phil. 829, 853 (2002).

would have no chance to defend themselves by reason of the surprise attack.

We now go to the penalties to be imposed on appellants.

Under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659,[65] murder is punishable by *reclusion perpetua* to death. There being neither mitigating nor aggravating circumstance in the commission of the felony, appellants should, in each case, be sentenced to *reclusion perpetua*, conformably to Article 63(2) of the Revised Penal Code.

We now go to the award of damages. When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.[66]

Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime.[67] The trial court properly awarded the amount of ₱50,000.00 to each of the heirs of the victims as civil indemnity. The amount of ₱75,000.00 as civil indemnity is awarded only if the crime is qualified by circumstances that warrant the imposition of the death penalty.[68]

As to actual damages, the heirs of the victims are not entitled thereto, because said damages were not duly proved with a reasonable degree of certainty.[69] However, the award of

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[65] An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for That Purpose the Revised Penal Code, as amended, Other Special Laws, and for Other Purposes. Took effect on 31 December 1993.

[66] *People v. Beltran*, *Jr.*, G.R. No. 168051, 27 September 2006, 503 SCRA 715, 740.

[67] *People v. Tubongbanua*, G.R. No. 171271, 31 August 2006, 500 SCRA 727, 742.

[68] *People v. Barcena*, G.R. No. 168737, 16 February 2006, 482 SCRA 543, 561.

[69] *People v. Tubongbanua*, *supra* note 67.

₱25,000.00 in temperate damages in homicide or murder cases is proper when no evidence of burial and funeral expenses is presented in the trial court.[70] Under Article 2224 of the Civil Code, temperate damages may be recovered, as it cannot be denied that the heirs of the victims suffered pecuniary loss, although the exact amount was not proved.[71] Thus, the award of temperate damages to the heirs of Councilor Quinto is reduced to ₱25,000.00, while that granted to the heirs of SPO1 Dalioan is retained.

Anent moral damages, the same is mandatory in cases of murder and homicide, without need of allegation and proof other than the death of the victim.[72] The trial court awarded ₱25,000.00 as moral damages in each case. The same must be increased to ₱50,000.00 to conform with current jurisprudence.[73]

Both lower courts did not award exemplary damages. The heirs of the victims are entitled to exemplary damages since the qualifying circumstance of treachery was firmly established.[74] Under Article 2230 of the Civil Code, exemplary damages as part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. The term aggravating circumstances as used therein is to be understood in its broad or generic sense, since the law does not specify otherwise.[75] Consistent with prevailing jurisprudence, we award the amount of ₱25,000.00 as exemplary damages to each of the heirs of the victims.[76]

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[70] *People v. Dacillo*, 471 Phil. 497, 510 (2004).

[71] *People v. Surongon*, G.R. No. 173478, 12 July 2007, 527 SCRA 577, 588.

[72] *People v. Bajar*, 460 Phil. 683, 700 (2003).

[73] *People v. Dela Cruz*, G.R. No. 171272, 7 June 2007, 523 SCRA 433, 453.

[74] *People v. Beltran, Jr.*, *supra* note 66.

[75] *People v. Abolidor*, 467 Phil. 709, 721 (2004).

[76] *People v. Daleba, Jr.*, G.R. No. 168100, 20 November 2007, 537 SCRA 708, 713.

The trial court awarded the amounts of ₱2,474,736.00 and ₱874,380.00 as lost earnings to the heirs of Councilor Quinto and SPO1 Dalioan, respectively.

The monthly income of Councilor Quinto was ₱18,749.00 or a gross annual income of ₱224,988.00. He was 47 years old at the time of his death. On the other hand, SPO1 Dalioan was 40 years old when he was killed and was earning ₱5,600.00 a month or a total of ₱67,200.00 gross annual income. The formula[77] for unearned income is as follows:

Life expectancy x [Gross Annual Income (G.A.I.) less Living expenses (50% G.A.I.)]

where life expectancy = 2/3 x (80 - age of the deceased)

The unearned income of Councilor Quinto is computed as follows:

Unearned Income = 2/3 (80-47)(₱224,988.00-₱112,494.00)
= 2/3 (33)(₱112,494.00)
= ₱2,474,868.00

The unearned income of SPO1 Dalioan is computed as follows:

Unearned Income = 2/3 (80-40)(₱67,200.00-₱33,600.00)
= 2/3 (40)(₱33,600.00)
= ₱896,000.00

The unearned income or lost income awarded to the heirs of Councilor Quinto and SPO1 Dalioan must respectively be increased to ₱2,474,868.00 and ₱896,000.00.

WHEREFORE, premises considered, the decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01606 dated 5 June

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[77] *People v. Jabiniao, Jr.,* G.R. No. 179499, 30 April 2008, 553 SCRA 769, 787.

2008 is hereby *AFFIRMED* with the *MODIFICATION* that the award of temperate damages to the heirs of Councilor Quinto is reduced to ₱25,000.00; the award of moral damages to each of the heirs of the victims is increased to ₱50,000.00; the award of unearned income to the heirs of Councilor Quinto and SPO1 Dalioan is increased to ₱2,474,868.00 and ₱896,000.00, respectively. Exemplary damages in the amount of ₱25,000.00 are awarded to the heirs of each of the victims. Cost against the appellants.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 186129. August 4, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JESUS PARAGAS CRUZ,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; RAPE; PRINCIPLES IN DECIDING RAPE CASES.—** Courts use the following principles in deciding rape cases: (1) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) due to the nature of the crime of rape in which only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense. Due to the nature of this crime, conviction for rape may be solely based on the complainant's testimony provided it is credible, natural,

convincing, and consistent with human nature and the normal course of things.

2. **ID.; ID.; HYMENAL LACERATIONS IS NOT AN ELEMENT OF RAPE; RAPE IS COMMITTED SO LONG AS THERE IS ENOUGH PROOF OF ENTRY OF THE MALE ORGAN INTO THE LABIA OF THE *PUDENDUM* OF THE FEMALE ORGAN.—** We find the prosecution's evidence sufficient for a conviction. The claim that AAA's hymenal lacerations could have been caused by something other than sexual congress is distinctly speculative and does not throw any doubt as to the fact of rape. What is more, proof of hymenal laceration is not even an element of rape so long as there is enough proof of entry of the male organ into the labia of the *pudendum* of the female organ.

3. **ID.; ID.; IMPOTENCY AS A DEFENSE; A PHYSICAL AND MEDICAL QUESTION THAT SHOULD BE SATISFACTORILY ESTABLISHED WITH THE AID OF AN EXPERT AND COMPETENT TESTIMONY; IN RAPE CASES, IT MUST BE PROVED WITH CERTAINTY TO OVERCOME THE PRESUMPTION IN FAVOR OF POTENCY.—** As a defense, impotence is both a physical and medical question that should be satisfactorily established with the aid of an expert and competent testimony. Impotency as a defense in rape cases must likewise be proved with certainty to overcome the presumption in favor of potency. While Cruz was indeed diagnosed as suffering from erectile dysfunction, this does not preclude the possibility of his having sexual intercourse with AAA. As the CA observed accurately, AAA was raped in 1998 while the medical examination of Cruz was conducted in 2001. A good three years had already lapsed since AAA had been sexually abused. The diagnosis on Cruz in 2001 is, therefore, useless to disprove his sexual potency at the time of the rape incident. It merely corroborates his assertion that he is currently sexually impotent, and not that he has been so since 1995. Cruz was not able to adduce hard evidence to demonstrate his impotency prior to or on June 6, 1998 when the crime of rape was committed. Moreover, assuming *arguendo* that he was indeed impotent since 1995, it does not discount the possibility that his erection was cured by drugs like *Viagra* or *Ciales*. There was simply no proof of his alleged impotency on June 6, 1998 when the beastly act of rape was committed against AAA.

4. **ID.; ID.; ERECTILE DYSFUNCTION CAN BE A TOTAL INABILITY TO ACHIEVE ERECTION, AN INCONSISTENT ABILITY TO DO SO, OR A TENDENCY TO SUSTAIN A BRIEF ERECTION; SINCE THE DOCTOR WHO EXAMINED APPELLANT IN 2001 DID NOT SPECIFY WHAT KIND OF DYSFUNCTION APPELLANT IS SUFFERING FROM, HIS IMPOTENCY CANNOT, THEREFORE, BE CONSIDERED AS COMPLETELY ELIMINATING POSSIBILITY OF SEXUAL INTERCOURSE.—** We find the testimony of Cruz's wife Melinda more harmful than helpful to the theory of the defense. It can be recalled that she testified as to having infrequent sexual intercourse with her husband after 1995 because he had become impotent. This contradicts Cruz's claim that it was impossible for him to have raped AAA because of his medical condition. Apparently his alleged impotence, which started in 1995, did not completely stop him from engaging in sexual intercourse over the years. Erectile dysfunction or ED can be a total inability to achieve erection, an inconsistent ability to do so, or a tendency to sustain only brief erections. These variations make defining ED and estimating its incidence difficult. The testimony of the doctor who examined Cruz in 2001 did not specify what kind of ED Cruz was suffering from. Cruz's impotency cannot, therefore, be considered as completely eliminating the possibility of sexual intercourse.

5. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; CREDIBLE AND STRAIGHTFORWARD TESTIMONY OF VICTIM SUFFICIENT TO HOLD APPELLANT LIABLE FOR RAPE.—** We have gleaned from the records a credible and straightforward account of the rape from the victim herself. She was unflinching both during her direct and cross-examinations and was categorical in identifying Cruz as the rapist. We, thus, concur with both the trial and appellate courts in holding that AAA's testimony is enough to hold Cruz liable. Most important in a prosecution for statutory rape is to prove the following elements: (1) that the accused had carnal knowledge of a woman; and (2) that the woman was below 12 years of age. Sexual congress with a girl under 12 years old is always rape. These elements were sufficiently established during trial and were not rebutted by the defense with any solid evidence to the contrary. As the trial court was in a better position to observe the candor and demeanor of the

witnesses, we respect its findings of fact especially as these were sustained by the CA.

6. **ID.; DEFENSE OF ALIBI; REJECTED; PHYSICAL IMPOSSIBILITY FOR APPELLANT TO BE PRESENT AT THE SCENE OF THE CRIME AT THE TIME OF ITS COMMISSION, NOT ESTABLISHED.—** Cruz's final argument likewise fails to convince this Court. He relies on as alibi his presence in Multinational Village in Parañaque City conducting a land survey at the time of the rape incident. To sustain such an alibi, the defense must establish the physical impossibility for the accused to be present at the scene of the crime at the time of its commission. True it is that his story was corroborated by additional witnesses. These testimonies, however, did not show the physical impossibility of Cruz to be present at AAA's home when she was raped. Even if Cruz conducted the land survey on the same day, he could have very easily committed the rape as he was in the same city as AAA.

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 of the Court of Appeals (CA) dated May 30, 2008 in CA-G.R. CR-H.C. No. 01760, which affirmed the August 12, 2002 Decision in Criminal Case No. 99-329 of the Regional Trial Court (RTC), Branch 259 in Parañaque City.

Accused-appellant Jesus Paragas Cruz was convicted of one (1) count of rape or violation of paragraph 1(a), Article 266-A of the Revised Penal Code, as amended. He was sentenced to suffer the penalty of *reclusion perpetua*.

The Facts

The Information dated February 23, 1999 against Cruz alleged the following:

That on or about the 6th day of June 1998 in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with one [AAA],[1] a minor, 9 years old, against her will.

CONTRARY TO LAW.[2]

Upon arraignment on July 8, 1999, Cruz pleaded not guilty.

The prosecution offered the testimony of the following witnesses: PO3 Maria Bautista; Dr. Winston Tan; the victim's mother, BBB; and Emiliano Mariano, the *barangay tanod* of San Dionisio, Parañaque City. Apart from Cruz, the defense presented as witnesses his wife, Melinda Cruz; Antonio Gonzales; Benjamin Gudal; Jesus Cruz; Dr. Darius Mariano; and Dr. Winston Tan.

Version of the Prosecution

On June 6, 1998, AAA, then a nine-year old, was at her house watching television with her cousin Jady. It was past three in the afternoon when Jady left to go to her grandmother's house. Upon her departure, Cruz abruptly entered the house and turned off the television. He closed the windows and told AAA to remove her shorts. She did as instructed. Cruz later kissed AAA and touched her vagina. She felt pain as he inserted his penis into her vagina. She did not do anything, however, as she was fearful of Cruz. To intimidate her further, Cruz threatened to kill her should she report what had just happened. He then left in a hurry and closed the door of the house.[3]

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[1] The real name and the personal circumstances of the victim and her immediate relatives are withheld per R.A. No. 7610 (*Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*) and R.A. No. 9262 (*Anti-Violence Against Women and Their Children Act*). See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 425-426.

[2] *Rollo*, p. 3.

[3] *Id.* at 4-5.

AAA tried her best to keep the rape a secret as she was terrified that Cruz would come back and kill her. Nevertheless, she told her mother BBB what happened to her a few months later. BBB subsequently told Cruz's wife of what she had just discovered. Thereafter, BBB took her daughter to the *barangay* hall and then to the police station to report the matter to the authorities.[4]

A medical examination was conducted on AAA by Dr. Winston Tan. His report showed that AAA had two (2) hymenal lacerations. One was a deep-healed laceration at the 3 o'clock position and another one a shallow healed laceration at the 5 o'clock position.[5]

Version of the Defense

Maintaining his innocence, Cruz claimed that at the time of the rape he was with Antonio Gonzales in Multinational Village, Parañaque City. Gonzales later testified that they met from 11 o'clock in the morning to about 5:30 in the afternoon. Cruz conducted a survey of Gonzales' land to prepare it for a prospective buyer. A couple of months later or on September 28, 1998, his wife told him of AAA's allegation of rape. Policemen subsequently arrested him and brought him to the police station where he was informed that he was being charged of rape. To further establish his defense, Cruz maintained that it was impossible for him to commit rape as he had been sexually impotent since 1995. He pointed to a land dispute he had with the victim's family as a possible reason for the fabricated charge.[6]

Cruz's wife Melinda corroborated his story by saying that they seldom had sexual intercourse after 1995 as he had become impotent. Dr. Darius Mariano, meanwhile, diagnosed Cruz in 2001 as suffering from erectile dysfunction.[7]

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[4] *Id.* at 5.

[5] *Id.*

[6] *Id.* at 6.

[7] *Id.*

The Ruling of the Trial Court

The RTC found Cruz guilty for the crime charged. It found Cruz's defense too shallow in light of his positive identification as the perpetrator of the rape. The dispositive portion of the RTC Decision reads:

> WHEREFORE, PREMISES CONSIDERED, finding accused Jesus Paragas Cruz GUILTY beyond reasonable doubt for the crime of Rape as defined and penalized under par. 1(c) Art. 266-A RA 8353 in relation to Sec. 5(b) RA 7610; this Court hereby sentences him to *reclusion perpetua* and to suffer the accessory penalties provided by law, particularly Art. 41 of the Revised Penal Code. For the civil liability, he is further condemned to pay the amount of ₱100,000.00 as actual and moral damages.
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> x x x x x x x x x
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> SO ORDERED.[8]

On June 25, 2008, Cruz filed his Notice of Appeal of the RTC Decision.

The Ruling of the CA

Cruz, in arguing that the trial court erred in convicting him, alleged that AAA's hymenal lacerations could have been caused by means other than sexual intercourse. He furthermore submitted that his erectile dysfunction raised doubts as to his culpability. Additionally, he claimed that the corroboration of his alibi by two other witnesses should not have been disregarded.

The CA found Cruz's assertions without merit. It ruled that his impotency was not proved with certainty. The appellate court pointed out that the medical finding of erectile dysfunction was based on an examination more than three years after the rape occurred; thus, no categorical conclusion could be made that Cruz was impotent when the rape was committed.

Following jurisprudence on the subject matter, the appellate court held that it was hard to believe AAA's mother would

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[8] CA *rollo,* p. 103. Penned by Judge Zosimo V. Escano.

file rape charges against Cruz because of a land dispute, seeing as it would cause AAA embarrassment and subject her to a lifelong stigma. As to Cruz's alibi, the CA opined that he was not able to prove the physical impossibility of his having committed the crime.

The *fallo* of the CA Decision reads:

WHEREFORE, the Decision appealed from is hereby AFFIRMED with the MODIFICATIONS that accused-appellant JESUS PARAGAS CRUZ is ordered to pay private complainant ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages, and exemplary damages in the amount of ₱25,000.00. The awarded amount of ₱100,000.00 is DELETED. The Decision stands in all other respects.

SO ORDERED.[9]

On March 11, 2009, 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 Issue

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE

Cruz reiterates his previous assertions, *i.e.*, that (1) the victim's hymenal lacerations could have been caused by a non-sexual act; (2) Cruz's erectile dysfunction made it impossible for him to commit rape; and (3) his alibi that he was elsewhere at the time of the rape deserves more weight as it was corroborated by two other witnesses.

Non-Sexual Cause of Hymenal Lacerations

Courts use the following principles in deciding rape cases: (1) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though

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[9] *Rollo*, p. 18. Penned by Associate Justice Edgardo F. Sundiam.

innocent, to disprove; (2) due to the nature of the crime of rape in which only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense. Due to the nature of this crime, conviction for rape may be solely based on the complainant's testimony provided it is credible, natural, convincing, and consistent with human nature and the normal course of things.[10]

Bearing the aforementioned principles in mind, we find the prosecution's evidence sufficient for a conviction. The claim that AAA's hymenal lacerations could have been caused by something other than sexual congress is distinctly speculative and does not throw any doubt as to the fact of rape. What is more, proof of hymenal laceration is not even an element of rape so long as there is enough proof of entry of the male organ into the labia of the *pudendum* of the female organ.[11]

We have gleaned from the records a credible and straightforward account of the rape from the victim herself. She was unflinching both during her direct and cross-examinations and was categorical in identifying Cruz as the rapist. We, thus, concur with both the trial and appellate courts in holding that AAA's testimony is enough to hold Cruz liable. Most important in a prosecution for statutory rape is to prove the following elements: (1) that the accused had carnal knowledge of a woman; and (2) that the woman was below 12 years of age. Sexual congress with a girl under 12 years old is always rape.[12] These elements were sufficiently established during trial and were not rebutted by the defense with any solid evidence

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[10] *People v. Lagarde*, G.R. No. 182549, January 20, 2009; citing *People v. Nazareno*, G.R. No. 167756, April 9, 2008, 551 SCRA 16, 31.

[11] *People v. Jumawid*, G.R. No. 184756, June 5, 2009; citing *People v. Borromeo*, G.R. No. 150501, June 3, 2004, 430 SCRA 533.

[12] *People v. Marcos*, G.R. No. 185380, June 18, 2009.

to the contrary. As the trial court was in a better position to observe the candor and demeanor of the witnesses, we respect its findings of fact especially as these were sustained by the CA.[13]

Impotence as a Defense

As a defense, impotence is both a physical and medical question that should be satisfactorily established with the aid of an expert and competent testimony.[14] Impotency as a defense in rape cases must likewise be proved with certainty to overcome the presumption in favor of potency.[15] While Cruz was indeed diagnosed as suffering from erectile dysfunction, this does not preclude the possibility of his having sexual intercourse with AAA. As the CA observed accurately, AAA was raped in 1998 while the medical examination of Cruz was conducted in 2001. A good three years had already lapsed since AAA had been sexually abused. The diagnosis on Cruz in 2001 is, therefore, useless to disprove his sexual potency at the time of the rape incident. It merely corroborates his assertion that he is currently sexually impotent, and not that he has been so since 1995. Cruz was not able to adduce hard evidence to demonstrate his impotency prior to or on June 6, 1998 when the crime of rape was committed. Moreover, assuming *arguendo* that he was indeed impotent since 1995, it does not discount the possibility that his erection was cured by drugs like *Viagra* or *Ciales*. There was simply no proof of his alleged impotency on June 6, 1998 when the beastly act of rape was committed against AAA.

Furthermore, we find the testimony of Cruz's wife Melinda more harmful than helpful to the theory of the defense. It can be recalled that she testified as to having infrequent sexual

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[13] See *People v. Mahinay*, G.R. No. 179190, January 20, 2009.

[14] *People v. Alcartado*, G.R. Nos. 132379-82, June 29, 2000, 334 SCRA 701, 715.

[15] *People v. De Villa*, G.R. No. 124639, February 1, 2001, 351 SCRA 25, 30.

intercourse with her husband after 1995 because he had become impotent. This contradicts Cruz's claim that it was impossible for him to have raped AAA because of his medical condition. Apparently his alleged impotence, which started in 1995, did not completely stop him from engaging in sexual intercourse over the years.

Erectile dysfunction or ED can be a total inability to achieve erection, an inconsistent ability to do so, or a tendency to sustain only brief erections. These variations make defining ED and estimating its incidence difficult.[16] The testimony of the doctor who examined Cruz in 2001 did not specify what kind of ED Cruz was suffering from. Cruz's impotency cannot, therefore, be considered as completely eliminating the possibility of sexual intercourse.

Defense of Alibi

Cruz's final argument likewise fails to convince this Court. He relies on as alibi his presence in Multinational Village in Parañaque City conducting a land survey at the time of the rape incident. To sustain such an alibi, the defense must establish the physical impossibility for the accused to be present at the scene of the crime at the time of its commission.[17] True it is that his story was corroborated by additional witnesses. These testimonies, however, did not show the physical impossibility of Cruz to be present at AAA's home when she was raped. Even if Cruz conducted the land survey on the same day, he could have very easily committed the rape as he was in the same city as AAA.

Penalty Imposed

The award of civil indemnity of PhP 50,000 in simple rape cases without need of pleading or proof is correct.[18] In addition,

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[16] *Erectile Dysfunction* <http://kidney.niddk.nih.gov/kudiseases/pubs/impotence/>.

[17] *People v. Malate*, G.R. No. 185724, June 5, 2009.

[18] *People v. Corpuz*, G.R. No. 175836, January 30, 2009.

moral damages of PhP 50,000 were also correctly awarded.[19] These are automatically granted in rape cases without need of proof other than the commission of the crime.[20] Exemplary damages were appropriately awarded by way of public example and to protect the young from sexual predators. We, however, increase the award to PhP 30,000 in accordance with prevailing jurisprudence.[21]

WHEREFORE, the appeal is *DENIED*. The CA Decision in CA-G.R. CR-H.C. No. 01760 finding accused-appellant Jesus Paragas Cruz guilty of statutory rape is *AFFIRMED* with the *MODIFICATION* that the award of exemplary damages is increased to PhP 30,000.

SO ORDERED.

Ynares-Santiago (Chairperson), Corona,[*] *Chico-Nazario,* and *Peralta, JJ.,* concur.

EN BANC

[A.M. No. RTJ-08-2138. August 5, 2009]

OLGA M. SAMSON, *complainant, vs.* **JUDGE VIRGILIO G. CABALLERO,** *respondent.*

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[19] See *Mahinay*, *supra* note 13.

[20] *People v. Abay*, G.R. No. 177752, February 24, 2009.

[21] See *People v. Anguac*, G.R. No. 176744, June 5, 2009, *People v. Layco, Sr.*, G.R. No. 182191, May 8, 2009.

[*] Additional member as per August 3, 2009 raffle.

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; JUDGE'S ACT OF MAKING AN OBVIOUSLY FALSE STATEMENT IN HIS PERSONAL DATA SHEET (PDS) WAS REPREHENSIBLE AND AN ACT OF DISHONESTY.—** We have no way of knowing whether respondent withheld information from the JBC, as both he and complainant never backed their respective allegations with concrete evidence. Thus, no probative value can be given either to the charges or to the defenses. However, respondent is not to be exonerated on the basis of the foregoing alone. Regardless of whether he disclosed his pending cases during his interviews, the fact remains that he committed dishonesty when he checked the box indicating "No" to the question "Have you ever been formally charged?" in his March 21, 2006 PDS filed in the OAS-OCA RTC Personnel. Respondent's act of making an obviously false statement in his PDS was reprehensible, to say the least. It was not mere inadvertence on his part when he answered "No" to that very simple question posed in the PDS. He knew exactly what the question called for and what it meant, and that he was committing an act of dishonesty but proceeded to do it anyway. To make matters worse, he even sought to wriggle his way out of his predicament by insisting that the charges against him were already dismissed, thus, his negative answer in the PDS. However, whether or not the charges were already dismissed was immaterial, given the phraseology of the question "Have you ever been formally charged?," meaning, charged at anytime in the past or present.

2. **ID.; ID.; JUDGE'S DISHONESTY MISLED THE JUDICIAL AND BAR COUNCIL (JBC) AND TARNISHED THE IMAGE OF THE JUDICIARY.—** Respondent, a judge, knows (or should have known) fully well that the making of a false statement in his PDS could subject him to dismissal. This Court will not allow him to evade the consequences of his dishonesty. Being a former public prosecutor and a judge now, it is his duty to ensure that all the laws and rules of the land are followed to the letter. His being a judge makes it all the more unacceptable. There was an obvious lack of integrity, the most fundamental qualification of a member of the judiciary. Time and again, we have emphasized that a judge should conduct himself in a manner

which merits the respect and confidence of the people at all times, for he is the visible representation of the law. Regrettably, we are convinced of respondent's capacity to lie and evade the truth. His dishonesty misled the JBC and tarnished the image of the judiciary. He does not even seem remorseful for what he did as he sees nothing wrong with it.

3. **ID.; ID.; PRESENT ADMINISTRATIVE CASE CONSIDERED AS A DISCIPLINARY PROCEEDING AGAINST RESPONDENT JUDGE AS A MEMBER OF THE BAR IN ACCORDANCE WITH A.M. NO. 02-9-02-SC.—** He deserves the harsh penalty of dismissal from the service. This administrative case against respondent shall also be considered as a disciplinary proceeding against him as a member of the Bar, in accordance with AM. No. 02-9-02-SC. xxx Before the Court approved this resolution, administrative and disbarment cases against members of the bar who were likewise members of the court were treated separately. However, pursuant to the new rule, entitled "Re: Automatic Conversion of Some Administrative Cases Against Justices of the Court of Appeals and the Sandiganbayan; Judges of Regular and Special Courts; and Court Officials Who are Lawyers as Disciplinary Proceedings Against Them Both as Such Officials and as Members of the Philippine Bar," an administrative case against a judge of a regular court based on grounds which are also grounds for the disciplinary action against members of the Bar shall be automatically considered as disciplinary proceedings against such judge as a member of the Bar. This must be so as violation of the fundamental tenets of judicial conduct embodied in the new Code of Judicial Conduct for the Philippine Judiciary, the Code of Judicial Conduct and the Canons of Judicial Ethics constitutes a breach of the following Canons of the Code of Professional Responsibility (CPR).

4. **ID.; ID.; A JUDGE WHO DISOBEYS THE BASIC RULES OF JUDICIAL CONDUCT ALSO VIOLATES HIS OATH AS A LAWYER; RESPONDENT'S DISHONEST ACT IS AGAINST THE LAWYER'S OATH "TO DO NO FALSEHOOD, NOR CONSENT TO THE DOING OF ANY IN COURT".—** Since membership in the bar is an integral qualification for membership in the bench, the moral fitness of a judge also reflects his moral fitness as a lawyer. A judge who disobeys the basic rules of judicial conduct also violates his

oath as a lawyer. In this particular case, respondent's dishonest act was against the lawyer's oath to "do no falsehood, nor consent to the doing of any in court." Respondent's misconduct likewise constituted a contravention of Section 27, Rule 138 of the Rules of Court, which strictly enjoins a lawyer from committing acts of deceit, otherwise, he may be suspended or disbarred.

5. **ID.; ID.; FAIR AND REASONABLE MEANING OF "AUTOMATIC CONVERSION" OF ADMINISTRATIVE CASES AGAINST JUSTICES AND JUDGES TO DISCIPLINARY PROCEEDINGS AGAINST THEM AS A LAWYER.—** Pursuant to A.M. No. 02-9-02-SC, we deemed respondent Judge Suerte's administrative case as disciplinary proceedings for disbarment as well, and proceeded to strip him of his membership in the Integrated Bar of the Philippines. Under the same rule, a respondent "may forthwith be required to comment on the complaint and show cause why he should not also be suspended, disbarred or otherwise disciplinary sanctioned as member of the Bar." The rule does not make it mandatory, before respondent may be held liable as a member of the bar, that respondent be required to comment on and show cause why he should not be disciplinarily sanctioned as a lawyer **separately** from the order for him to comment on why he should not be held administratively liable as a member of the bench. In other words, an order to comment on the complaint is an order to give an explanation on why he should not be held administratively liable not only as a member of the bench but also as a member of the bar. This is the fair and reasonable meaning of **"automatic conversion"** of administrative cases against justices and judges to disciplinary proceedings against them as lawyers.

6. **ID.; ID.; DISBARMENT; GOOD MORAL CHARACTER AS A CONTINUING REQUIREMENT TO THE PRACTICE OF LAW, WHICH IS OF MUCH GREATER IMPORT, AS FAR AS THE PUBLIC IS CONCERNED, THAN THE POSSESSION OF LEGAL LEARNING.—** It cannot be denied that respondent's dishonesty did not only affect the image of the judiciary, it also put his moral character in serious doubt and rendered him unfit to continue in the practice of law. Possession of good moral character is not only a prerequisite to admission to the bar but also a continuing requirement to the practice of law. If the practice of law is to remain an honorable profession and attain its basic ideals, those counted within its

ranks should not only master its tenets and principles but should also accord continuing fidelity to them. **The requirement of good moral character is of much greater import, as far as the general public is concerned, than the possession of legal learning.**

7. **ID.; ID.; THE STANDARD OF INTEGRITY IMPOSED ON JUDGES AND JUSTICES SHOULD BE HIGHER THAN THAT OF AN AVERAGE PERSON FOR IT IS THEIR INTEGRITY THAT GIVES THEM THE RIGHT TO JUDGE.—** The first step towards the successful implementation of the Court's relentless drive to purge the judiciary of morally unfit members, officials and personnel necessitates the imposition of a rigid set of rules of conduct on judges. The Court is extraordinarily strict with judges because, being the visible representation of the law, they should set a good example to the bench, bar and students of the law. The standard of integrity imposed on them is – and should be – higher than that of the average person for it is their integrity that gives them the right to judge.

R E S O L U T I O N

***PER CURIAM*:**

This is an administrative complaint for dishonesty and falsification of a public document against respondent Judge Virgilio G. Caballero, Regional Trial Court (RTC), Branch 30, Cabanatuan City, Nueva Ecija.

In her complaint,[1] complainant Olga M. Samson alleged that respondent Judge Virgilio G. Caballero should not have been appointed to the judiciary for lack of the constitutional qualifications of proven competence, integrity, probity and independence[2], and for violating the Rules of the Judicial and

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[1] Dated July 18, 2006. *Rollo*, pp. 11-15.

[2] Section 7, Article VIII of the Constitution provides:

SEC. 7. (1) No person shall be appointed member of the Supreme Court or any lower collegiate court unless he is a natural-born citizen of the

Bar Council (JBC) which disqualifies from nomination any applicant for judgeship with a pending administrative case.[3]

According to the complainant, respondent, during his JBC interviews, deliberately concealed the fact that he had pending administrative charges against him.

She disclosed that, on behalf of Community Rural Bank of Guimba (Nueva Ecija), Inc., she had filed criminal and administrative charges for grave abuse of authority, conduct prejudicial to the best interest of the service and violation of Article 208 of the Revised Penal Code against respondent in the Office of the Ombudsman on July 23, 2003.

At that time a public prosecutor, respondent allegedly committed certain improprieties[4] and exceeded his powers by overruling the Secretary of Justice in a reinvestigation he conducted.

Philippines. A member of the Supreme Court must be at least forty years of age, and must have been for fifteen years or more a judge of a lower court or engaged in the practice of law in the Philippines.

(2) The Congress shall prescribe the qualifications of judges of lower courts, but no person may be appointed judge thereof unless he is a citizen of the Philippines and a member of the Philippine Bar.

(3) **A member of the judiciary must be a person of proven competence, integrity, probity and independence.** (Emphasis supplied)

[3] Section 5, Rule 4 of the Rules of the Judicial and Bar Council provides:

SEC. 5. *Disqualification*. — **The following are disqualified from being nominated or appointment to *any* judicial post** or as Ombudsman or Deputy Ombudsman:

1. **Those with pending criminal or regular administrative cases;**
2. Those with pending criminal cases in foreign courts or tribunals; and
3. Those who have been convicted in any criminal case; or in an administrative case, where the penalty imposed is at least a fine of more than ₱10,000, unless he has been granted judicial clemency. (Emphasis supplied)

[4] Complainant averred that respondent violated therein petitioner's constitutional right to due process when he (a) conducted the reinvestigation without informing petitioner; (b) did not give the petitioner a chance to file a motion for reconsideration as he immediately filed a motion to dismiss in

On March 24, 2004, the Ombudsman dismissed the charges.[5] It also denied the complainant's motion for reconsideration.[6]

Thereafter, the complainant filed a petition for review[7] on October 28, 2004 in the Court of Appeals (CA). In a decision[8] dated November 25, 2005, the appellate court held that it could not take cognizance of the criminal charges against respondent on the ground that all appeals from the decisions of the Office of the Ombudsman pertaining to criminal cases should be taken to the Supreme Court by way of a petition for *certiorari*.[9] As to the administrative aspect, the CA reversed and set aside the decision and joint order of the Ombudsman dismissing the charges against respondent. The CA then directed Ombudsman to file and prosecute the administrative charges against respondent.

While the complainant's petition was pending in the CA, respondent was interviewed several times in the JBC from February 2005 to August 2005 for the position of RTC judge. On August 25, 2005, he was appointed to the RTC, Branch 30, Cabanatuan City, Nueva Ecija. The complainant charged that respondent never informed the JBC of his pending cases. This, she said, made it possible for him to be nominated and, subsequently, appointed.

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the trial court on the very same day he (respondent) rendered a joint resolution; and (c) filed the motion to dismiss without notifying petitioner and setting it for hearing.

[5] Annex A. Decision penned by Graft Investigation and Prevention Officer Ismaela B. Boco and approved by Deputy Ombudsman for Luzon Victor C. Fernandez. *Rollo*, pp. 87-90.

[6] Joint order dated September 30, 2004.

[7] Under Rule 43 of the Rules of Court.

[8] Annex C. Penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Jose C. Mendoza and Arturo G. Tayag of the Sixteenth Division of the Court of Appeals; *Rollo*, pp. 133-152.

[9] Under Rule 65 of the Rules of Court.

In his comment,[10] respondent admitted that complainant had lodged criminal and administrative cases against him in the Ombudsman. He, however, insisted that these were already dismissed by virtue of the immediately effective and executory March 24, 2004 decision of the Ombudsman. Thus, there were actually no more pending cases against him during his interviews in the JBC from February to August 2005. Accordingly, there was no impediment to his nomination to and assumption of the position of judge. However, he insisted that he informed the JBC of the said cases.

The complainant filed a reply,[11] stating that the March 24, 2004 decision of the Ombudsman was not yet final and executory as it was timely appealed by way of a petition for review filed on October 28, 2004 in the CA. In fact, the petition was even granted.

To further support her charge of dishonesty against respondent, complainant pointed to the Personal Data Sheet (PDS) filed by respondent on March 21, 2006 in the Office of Administrative Services-Office of the Court Administrator (OAS-OCA) RTC Personnel Division.[12] According to her, respondent **categorically denied ever having been charged formally** with any infraction.

On the basis of the pleadings and documents presented by both parties, the OCA found respondent administratively liable for dishonesty and falsification of an official document for his false statement in his PDS. It recommended respondent's dismissal from the service with forfeiture of retirement benefits, except accrued leave credits, and with prejudice to re-employment in the government service.

We agree with the findings of the OCA that respondent is guilty of dishonesty and falsification of an official document.

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[10] Dated November 15, 2006. *Rollo*, pp. 42-44.

[11] Dated January 29, 2007. *Id.*, pp. 77-86.

[12] Complainant mistakenly referred to the PDS as the one filed by respondent in the JBC. *Id.*, pp. 7-9.

We have no way of knowing whether respondent withheld information from the JBC, as both he and complainant never backed their respective allegations with concrete evidence.[13] Thus, no probative value can be given either to the charges or to the defenses.

However, respondent is not to be exonerated on the basis of the foregoing alone. Regardless of whether he disclosed his pending cases during his interviews, the fact remains that he committed dishonesty when he checked the box indicating "No" to the question "Have you ever been formally charged?" in his March 21, 2006 PDS filed in the OAS-OCA RTC Personnel.[14]

Respondent's act of making an obviously false statement in his PDS was reprehensible, to say the least. It was not mere inadvertence on his part when he answered "No" to that very simple question posed in the PDS. He knew exactly what the question called for and what it meant, and that he was committing an act of dishonesty but proceeded to do it anyway. To make matters worse, he even sought to wriggle his way out of his predicament by insisting that the charges against him were already dismissed, thus, his negative answer in the PDS. However, whether or not the charges were already dismissed was immaterial, given the phraseology of the question "Have you ever been formally charged?," meaning, charged at anytime in the past or present.

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[13] In his comment, respondent merely stated: " x x x [I]t could be said that he did not keep secret from the Judicial and Bar Council that he had [a]dministrative and [c]riminal cases before the Ombudsman because he showed the copy of the [r]esolution by the Ombudsman dismissing both said cases during his [p]anel [i]nterview with the Judicial and Bar Council sometime in February 2005." *Id.*, p. 43.

To this, respondent replied, "Allegations must be proved, not simply averred. x x x There must be evidence presented by Judge Caballero before this Honorable Office to support his allegation x x x." *Id.*, p. 81.

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

In *Ratti v. Mendoza-De Castro*,[15] we held that the making of untruthful statements in the PDS amounts to dishonesty and falsification of an official document. Dishonesty, being in the nature of a grave offense, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and perpetual disqualification from reemployment in the government service.

Respondent, a judge, knows (or should have known) fully well that the making of a false statement in his PDS could subject him to dismissal. This Court will not allow him to evade the consequences of his dishonesty. Being a former public prosecutor and a judge now, it is his duty to ensure that all the laws and rules of the land are followed to the letter. His being a judge makes it all the more unacceptable. There was an obvious lack of integrity, the most fundamental qualification of a member of the judiciary.

Time and again, we have emphasized that a judge should conduct himself in a manner which merits the respect and confidence of the people at all times, for he is the visible representation of the law.[16] Regrettably, we are convinced of respondent's capacity to lie and evade the truth. His dishonesty misled the JBC and tarnished the image of the judiciary. He does not even seem remorseful for what he did as he sees nothing wrong with it.

He deserves the harsh penalty of dismissal from the service.

This administrative case against respondent shall also be considered as a disciplinary proceeding against him as a member

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[15] A.M. No. P-04-1844, 23 July 2004, 435 SCRA 11. In this case, respondent-court stenographer answered "No" to the questions: "Have you ever been convicted for violating any law, decree, ordinance or regulations by any court or tribunal?..." and "Do you have any pending administrative/ criminal cases? If you have any, give particulars." See also *Judge Jose S. Sañez v. Carlos B. Rabina*, 458 Phil. 68 (2003), where a utility worker was dismissed under similar circumstances.

[16] *Cañada v. Suerte*, A.M. No. RTJ-04-1884, 22 February 2008, 546 SCRA 414, 425.

of the Bar, in accordance with A.M. No. 02-9-02-SC.[17] This resolution, entitled "Re: Automatic Conversion of Some Administrative Cases Against Justices of the Court of Appeals and the Sandiganbayan; Judges of Regular and Special Courts; and Court Officials Who are Lawyers as Disciplinary Proceedings Against Them Both as Such Officials and as Members of the Philippine Bar," provides:

> **Some administrative cases against** Justices of the Court of Appeals and the Sandiganbayan; **judges of regular and special courts**; and the court officials who are lawyers **are based on grounds which are likewise grounds for the disciplinary action of members of the Bar** for violation of the Lawyer's Oath, the Code of Professional Responsibility, and the Canons of Professional Ethics, or for such other forms of breaches of conduct that have been traditionally recognized as grounds for the discipline of lawyers.
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> **In any of the foregoing instances, the administrative case shall also be considered a disciplinary action against the respondent** justice, **judge** or court official concerned **as a member of the Bar.** The respondent may forthwith be required to comment on the complaint and show cause why he should not also be suspended, disbarred or otherwise disciplinary (sic) sanctioned as a member of the Bar. **Judgment in both respects may be incorporated in one decision or resolution.** (Emphasis supplied)

Before the Court approved this resolution, administrative and disbarment cases against members of the bar who were likewise members of the court were treated separately.[18] However, pursuant to the new rule, an administrative case against a judge of a regular court based on grounds which are also grounds for the disciplinary action against members of the Bar shall be automatically considered as disciplinary proceedings against such judge as a member of the Bar.[19]

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[17] Resolution dated 17 September 2002. It took effect on 1 October 2002.

[18] *Heck v. Santos*, 467 Phil. 798, 813.

[19] *Cañada v. Suerte*, *supra* note 16, at 426, citing *Maddela v . Gallong-Galicinao*, 490 Phil. 437, 442.

This must be so as violation of the fundamental tenets of judicial conduct embodied in the new Code of Judicial Conduct for the Philippine Judiciary, the Code of Judicial Conduct and the Canons of Judicial Ethics constitutes a breach of the following Canons of the Code of Professional Responsibility (CPR):[20]

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

Rule 1.01 - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful act.

CANON 7 – A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION…

CANON 10 – A LAWYER OWES CANDOR, FAIRNESS AND GOOD FAITH TO THE COURT.

Rule 10.01 - a lawyer shall not do any falsehood, nor consent to the doing of any in court; nor shall he mislead or allow the court to be misled by any artifice.

CANON 11 – A LAWYER SHALL OBSERVE AND MAINTAIN THE RESPECT DUE TO THE COURTS AND TO JUDICIAL OFFICERS AND SHOULD INSIST ON SIMILAR CONDUCT BY OTHERS.

Since membership in the bar is an integral qualification for membership in the bench, the moral fitness of a judge also reflects his moral fitness as a lawyer. A judge who disobeys the basic rules of judicial conduct also violates his oath as a lawyer.[21] In this particular case, respondent's dishonest act

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[20] *Cañada v. Suerte*, *supra* note 16, at 426-427, citing *Juan dela Cruz v. Carretas*, A.M. No. RTJ-07-2043, 5 September 2007, 532 SCRA 218, 232.

[21] **I, ___________ do solemnly swear that** I will maintain allegiance to the Republic of the Philippines; I will support its Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein; **I will do no falsehood, nor consent to the doing of any in court;** I will not wittingly or unwittingly promote or sue any groundless, false or unlawful suit, nor give aid nor consent to the same; I will delay no man for money or malice, and will conduct myself as a lawyer according to the best of my

was against the lawyer's oath to "do no falsehood, nor consent to the doing of any in court."

Respondent's misconduct likewise constituted a contravention of Section 27, Rule 138 of the Rules of Court, which strictly enjoins a lawyer from committing acts of deceit, otherwise, he may be suspended or disbarred. Thus:

> SEC. 27. *Disbarment and suspension of attorneys by Supreme Court, grounds therefor*. – **A member of the bar may be disbarred** or suspended from his office as attorney by the Supreme Court **for any deceit**, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, **or for any violation of the oath** which he is required to take before admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice. (Emphasis supplied)

This Court did not hesitate to apply the provisions of A.M. No. 02-9-02-SC in a plethora of cases.[22] Of particular importance to this case is our decision in *Cañada v. Suerte*[23] where we applied the rule to its fullest extent: automatic disbarment.

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knowledge and discretion, with all good fidelity as well to the courts as to my clients; and I impose upon myself this voluntary obligation without any mental reservation or purpose of evasion. So help me God. (Emphasis supplied)

[22] See *Mariano v. Nacional*, A.M. No. MTJ-07-1688, 10 February 2009; *Heirs of Olorga v. Beldia and Villanueva*, A.M. No. RTJ-08-2137, 10 February 2009; *Ogka Benito v. Balindong*, A.M. No. RTJ-08-2103, 23 February 2009; *Chuan and Sons, Inc. v. Peralta*, A.M. No. RTJ-05-1917, 16 April 2009; *Juan dela Cruz v. Carretas*, *supra* note 20; *Dela Cruz v. Luna*, A.M. Nos. P-04-1821 and P-05-2018, 2 August 2007, 529 SCRA 34; *Re: Absence Without Official Leave of Atty. Marilyn B. Joyas*, A.M. No. 06-5-286-RTC, 2 August 2007, 529 SCRA 28; and *Avanceña v. Liwanag*, 454 Phil. 20.

[23] *Supra* note 16.

Cañada v. Suerte is not the only case where we automatically disbarred a member of the judiciary or a court official or personnel as a consequence of his dismissal from the service (also see *Dela Cruz v. Luna* and *Avanceña*

In *Cañada v. Suerte*, complainant charged respondent Judge Suerte with grave abuse of authority, grave misconduct, grave coercion, dishonesty, harassment, oppression and violation of Article 215 of the Revised Penal Code (RPC) and the Canons of Judicial Ethics. The complaint alleged, among others, that respondent tried to sell a dilapidated cargo pick-up truck and Daewoo car to complainant. The latter refused. Their friendship later on turned sour when they failed to reach an agreement on the commission respondent was supposed to receive as agent-broker for the contemplated sale of complainant's beach lot. The complainant voiced out his fear that respondent would use his judicial power to persecute him for what respondent may have perceived as complainant's infractions against him.

In his comment, respondent denied offering to sell the vehicles to complainant since, according to him, he never owned a dilapidated cargo pick-up truck nor could he recall if he had a Daewoo car in 1998.

However, a perusal of respondent's Statements of Assets and Liabilities for the years 1998-2001 revealed that among his personal properties were a Daewoo car acquired in 1996 and an L-200 double cab acquired in 1998. Accordingly, we found respondent guilty of dishonesty for having falsely denied that he ever owned the aforementioned vehicles. For his infraction, respondent judge was fined in the amount of ₱40,000. He would have been dismissed from the service were it not for the fact that he had already been dismissed therefrom because of an earlier case.[24]

Significantly, pursuant to A.M. No. 02-9-02-SC, we deemed respondent Judge Suerte's administrative case as disciplinary

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v. Liwanag, *supra*). However, we chose to cite and discuss *Cañada* as its factual milieu is closest to that of the facts of this case.

[24] See *Re: Report on the Judicial Audit Conducted in the RTC, Branch 60, Barili, Cebu*, 488 Phil. 250 (2004). In that case, we found Judge Suerte guilty of gross misconduct, gross ignorance of the law and incompetence for gross violations of the express directive of the Court embodied in A.O. No. 36-2004. The Court likewise held that the special interest shown by Judge Suerte in several cases filed before him constitutes grave misconduct.

proceedings for disbarment as well, and proceeded to strip him of his membership in the Integrated Bar of the Philippines.

Under the same rule, a respondent "may forthwith be required to comment on the complaint and show cause why he should not also be suspended, disbarred or otherwise disciplinary sanctioned as member of the Bar." The rule does not make it mandatory, before respondent may be held liable as a member of the bar, that respondent be required to comment on and show cause why he should not be disciplinarily sanctioned as a lawyer **separately** from the order for him to comment on why he should not be held administratively liable as a member of the bench.[25] In other words, an order to comment on the complaint is an order to give an explanation on why he should not be held administratively liable not only as a member of the bench but also as a member of the bar. This is the fair and reasonable meaning of **"automatic conversion"** of administrative cases against justices and judges[26] to disciplinary proceedings against them as lawyers. This will also serve the purpose of A.M. No. 02-9-02-SC to avoid the duplication or unnecessary replication of actions by treating an administrative complaint filed against a member of the bench[27] **also** as a disciplinary proceeding against him as a lawyer by mere operation of the rule. Thus, a disciplinary proceeding as a member of the bar is **impliedly instituted** with the filing of an administrative case against a justice of the Sandiganbayan, Court of Appeals and Court of Tax Appeals or a judge of a first or second-level court.[28]

It cannot be denied that respondent's dishonesty did not only affect the image of the judiciary, it also put his moral character in serious doubt and rendered him unfit to continue in the practice of law. Possession of good moral character is not only a prerequisite to admission to the bar but also a continuing

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[25] Or as a court official or employee.

[26] And court officials and employees who are lawyers.

[27] As well as a court official or employee who is also a lawyer.

[28] Or a court official or employee who is also a lawyer.

requirement to the practice of law.[29] If the practice of law is to remain an honorable profession and attain its basic ideals, those counted within its ranks should not only master its tenets and principles but should also accord continuing fidelity to them. **The requirement of good moral character is of much greater import, as far as the general public is concerned, than the possession of legal learning.**[30]

A parting word.

The first step towards the successful implementation of the Court's relentless drive to purge the judiciary of morally unfit members, officials and personnel necessitates the imposition of a rigid set of rules of conduct on judges. The Court is extraordinarily strict with judges because, being the visible representation of the law, they should set a good example to the bench, bar and students of the law. The standard of integrity imposed on them is – and should be – higher than that of the average person for it is their integrity that gives them the right to judge.

WHEREFORE, we find respondent Judge Virgilio G. Caballero of the Regional Trial Court, Branch 30, Cabanatuan City, *GUILTY* of dishonesty and falsification of an official document. He is ordered *DISMISSED* from the service, with forfeiture of all benefits and privileges, except accrued leave credits, if any, with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations.

Respondent is likewise *DISBARRED* for violation of Canons 1 and 11 and Rules 1.01 and 10.01 of the Code of Professional Responsibility and his name *STRICKEN* from the Roll of Attorneys.

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[29] *Dela Cruz v. Luna*, *supra* note 22, at 45, citing *Heck v. Santos, supra* note 18, at 823.

[30] *Id.*, citing *Ferancullo v. Ferancullo*, A.C. No. 2714, 30 November 2006, 509 SCRA 1, 16.

Let a copy of this resolution be entered into respondent's records in the Office of the Bar Confidant 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., Ynares-Santiago, Carpio, Corona, Carpio Morales, Chico-Nazario, Nachura, Leonardo-de Castro, Brion, Peralta, and *Bersamin, JJ.,* concur.

Quisumbing, J., on official leave.

Velasco, Jr., J., no part due to prior action in OCA.

EN BANC

[G.R. No. 168982. August 5, 2009]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **DIR. GEN. CESAR P. NAZARENO, DIR. EVERLINO NARTATEZ, DIR. NICASIO MA. S. CUSTODIO, and THE SANDIGANBAYAN (FIFTH DIVISION),** *respondents.*

SYLLABUS

1. **POLITICAL LAW; BILL OF RIGHTS; RIGHTS OF THE ACCUSED; RIGHT AGAINST DOUBLE JEOPARDY; WHEN DOUBLE JEOPARDY EXISTS.—** Section 21, Article III of the Constitution provides that *"no person shall be twice put in jeopardy of punishment for the same offense."* Section 7, Rule 117 of the Rules of Court, which implements this particular constitutional right. Double jeopardy exists when the following requisites are present: (1) a first jeopardy attached prior to the

second; (2) the first jeopardy has been validly terminated; and (3) a second jeopardy is for the same offense as in the first. A first jeopardy attaches only (a) after a valid indictment; (b) before a competent court; (c) after arraignment; (d) when a valid plea has been entered; and (e) when the accused was acquitted or convicted, or the case was dismissed or otherwise terminated without his express consent.

2. **ID.; ID.; ID.; ID.; A JUDGMENT OF ACQUITTAL IS FINAL AND NO LONGER REVIEWABLE; IT IS ALSO IMMEDIATELY EXECUTORY AND THE STATE MAY NOT SEEK ITS REVIEW WITHOUT PLACING THE ACCUSED IN DOUBLE JEOPARDY.—** A judgment of acquittal is final and is no longer reviewable. It is also immediately executory and the State may not seek its review without placing the accused in double jeopardy. We had occasion to fully explain the reason behind the double jeopardy rule in *People v. Velasco*: The fundamental philosophy highlighting the finality of an acquittal by the trial court cuts deep into "the humanity of the laws and in a jealous watchfulness over the rights of the citizen, when brought in unequal contest with the State x x x." Thus *Green* expressed the concern that "(t)he underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent, he may be found guilty." It is axiomatic that on the basis of humanity, fairness and justice, an acquitted defendant is entitled to the right of repose as a direct consequence of the finality of his acquittal. The philosophy underlying this rule establishing the absolute nature of acquittals is "part of the paramount importance criminal justice system attaches to the protection of the innocent against wrongful conviction." The interest in the finality-of-acquittal rule, confined exclusively to verdicts of not guilty, is easy to understand: it is a need for "repose," a desire to know the exact extent of one's liability. With this right of repose, the criminal justice system has built in a protection to insure that the innocent, even those whose innocence rests upon a jury's leniency, will not be found guilty in a subsequent proceeding.

3. **ID.; ID.; ID.; RATIONALE BEHIND THE CONSTITUTIONAL POLICY AGAINST DOUBLE JEOPARDY.—** The Constitution has expressly adopted the double jeopardy policy and thus **bars multiple criminal trials**, thereby conclusively presuming that a second trial would be unfair if the innocence of the accused has been confirmed by a previous final judgment. **Further prosecution *via* an appeal** from a judgment of acquittal is likewise barred because the government has already been afforded a complete opportunity to prove the criminal defendant's culpability; after failing to persuade the court to enter a final judgment of conviction, the underlying reasons supporting the constitutional ban on multiple trials applies and becomes compelling. The reason is not only the defendant's already established innocence at the first trial where he had been placed in peril of conviction, but also the same untoward and prejudicial consequences of a second trial initiated by a government who has at its disposal all the powers and resources of the State. Unfairness and prejudice would necessarily result, as the government would then be allowed another opportunity to persuade a second trier of the defendant's guilt while strengthening any weaknesses that had attended the first trial, all in a process where the government's power and resources are once again employed against the defendant's individual means. That the second opportunity comes *via* an appeal does not make the effects any less prejudicial by the standards of reason, justice and conscience. Thus, the absolute and inflexible rule is that the State is proscribed from appealing the judgment of acquittal through either a regular appeal under Rule 41 of the Rules of Court, or an appeal by *certiorari* on pure questions of law under Rule 45 of the same Rules.

4. **ID.; ID.; ID.; PRESENT RULE 45 PETITION MUST NECESSARILY FAIL; EVEN UNDER THE MOST LIBERAL READING, THE COURT CANNOT TREAT THE PETITION AS A RULE 65, AS IT RAISES NO JURISDICTIONAL ERROR THAT CAN INVALIDATE A VERDICT OF ACQUITTAL.—** An instance when the State can challenge a judgment of acquittal is pursuant to the exercise of our judicial power "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government," as implemented through the extraordinary

writ of *certiorari* under Rule 65 of the Rules of Court. In such instance, however, no review of facts and law on the merits, in the manner done in an appeal, actually takes place; the focus of the review is on whether the judgment is *per se* void on jurisdictional grounds, *i.e.*, whether the verdict was rendered by a court that had no jurisdiction; or where the court has appropriate jurisdiction, whether it acted with grave abuse of discretion amounting to lack or excess of jurisdiction. In other words, the review is on the question of whether there has been a validly rendered decision, not on the question of the decision's error or correctness. Under the exceptional nature of a Rule 65 petition, the burden – a very heavy one – is on the shoulders of the party asking for the review to show the presence of a whimsical or capricious exercise of judgment equivalent to lack of jurisdiction; or of a patent and gross abuse of discretion amounting to an evasion of a positive duty or a virtual refusal to perform a duty imposed by law or to act in contemplation of law; or to an exercise of power in an arbitrary and despotic manner by reason of passion and hostility. **Applying all these principles, the present Rule 45 petition must necessarily fail. Even under our most liberal reading, we cannot treat the petition as a Rule 65 petition, as it raises no jurisdictional error that can invalidate a verdict of acquittal.**

5. **ID.; ID.; ID.; THE RULE 45 PETITION'S CLEAR AND UNEQUIVOCAL INTENTION IS TO SEEK A REVIEW ON THE MERITS OF THE SANDIGANBAYAN JUDGMENT OF ACQUITTAL WHICH PUTS IT ON A DIRECT COLLISION COURSE WITH THE CONSTITUTIONAL PROSCRIPTION ON DOUBLE JEOPARDY.—** The petition itself states that it was formally filed under Rule 45 of the Rules of Court and **seeks** to **reverse and set aside** the decision of the Sandiganbayan. Thus, the petition's clear and unequivocal intention to seek a review on the merits of the Sandiganbayan judgment of acquittal puts it on a direct collision course with the constitutional proscription on double jeopardy. This is more than enough reason to deny the petition. Additionally, a Rule 45 petition can only address pure questions of law, not factual errors, committed by the tribunal below. In this petition, the People raise factual errors, or to be exact, "appreciation of evidence" errors that the descriptive term "gravely erred" cannot convert into jurisdictional errors. Specifically, the petition alleges: (1) that the Sandiganbayan

gravely erred in taking judicial notice of the alleged laws of the US; (2) that the Sandiganbayan gravely erred in relying solely on the testimonies of the defense witnesses as to the existence and effectivity of the laws of the US; and (3) that the Sandiganbayan gravely erred in not appreciating the prosecution's presented evidence on the guilt of the respondents.

6. **ID.; ID.; ID.; ANY ERROR THAT THE SANDIGANBAYAN MIGHT HAVE COMMITTED IN APPRECIATING THE EVIDENCE PRESENTED AT THE TRIAL ARE MERE ERRORS OF JUDGMENT AND DO NOT RISE TO THE LEVEL OF JURISDICTIONAL ERRORS.—** We add that any error that the Sandiganbayan might have committed in appreciating the evidence presented at the trial are mere errors of judgment and do not rise to the level of jurisdictional errors despite the allegation that the Sandiganbayan had "gravely erred" in appreciating the evidence. Misapplication of facts and evidence, and erroneous conclusions based on evidence do not, by the mere fact that errors were committed, rise to the level of grave abuse of discretion. That an abuse itself must be "grave" must be amply demonstrated since the jurisdiction of the court, no less, will be affected. The mere fact, too, that a court erroneously decides a case does not necessarily deprive it of jurisdiction. We have consistently ruled that a Rule 65 *certiorari* does not involve the correction of errors of judgment: *Certiorari* is a remedy designed for the correction of errors of jurisdiction, not errors of judgment. *In Pure Foods Corporation v. NLRC,* we explained the simple reason for the rule in this light: When a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error is committed. If it did, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. This cannot be allowed. The administration of justice would not survive such a rule. Consequently, an error of judgment that the court may commit in the exercise of its jurisdiction is not correct[a]ble through the original civil action of *certiorari*. The supervisory jurisdiction of a court over the issuance of a writ of *certiorari* cannot be exercised for the purpose of reviewing the intrinsic correctness of a judgment of the lower court – on the basis either of the law or the facts of the case, or of the wisdom or legal soundness of the decision. Even if the findings of the court are incorrect, as long as it has jurisdiction over the case, such correction is normally

beyond the province of *certiorari*. Where the error is not one of jurisdiction, but of an error of law or fact – a mistake of judgment – appeal is the remedy. In this case, the Sandiganbayan's jurisdiction over the *nature of the case* is not disputed, nor was its jurisdiction *over the respondents* ever brought into question. Neither does the petition substantively and effectively impute any error based on the Sandiganbayan's grave abuse of discretion in the *exercise* of its jurisdiction. In other words, the petition, styled as a Rule 45 petition, is not even one that we can liberally treat as a Rule 65 *certiorari* petition that may permit a review of a verdict of acquittal.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Medialdea Ata Bello & Guevarra for Nicasio Ma. S. Custodio.
Jose Ventura Aspiras for Cesar P. Nazareno & Everlino P. Nartatez.

D E C I S I O N

BRION, *J*.:

The People of the Philippines seeks, through this petition for review on *certiorari*,[1] the reversal of the decision of the Sandiganbayan (Fifth Division) in *People of the Philippines v. Dir. Gen. Cesar P. Nazareno (Ret.), Dir. Gen Everlino Nartatez (Ret.), and Dir. Gen. Nicasio Ma. S. Custodio (Ret.)*, CRIM. CASE No. 23030. The Sandiganbayan acquitted the respondents Cesar Nazareno, Everlino Nartatez and Nicasio Ma. Custodio (collectively, *the respondents*) of the charge of violating Section 3(g) of Republic Act No. 3019 (*RA 3019*) or the Anti-Graft and Corrupt Practices Act.

THE ANTECEDENTS

Three (3) separate but related contracts – between the Philippine National Police (*PNP*) and Beltra Industries, for the

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

purchase and delivery of Caliber .45 Thompson Brand pistols – spawned the filing of the criminal charge against the respondents. The first of the contracts, covered by Purchase Order (*PO*) No. 081190-654 dated November 8, 1990, was for the purchase and delivery of 2,822 units at ₱18,550.30 each, for the total amount of ₱52,348,946.60. The second was covered by PO No. 0-240-492-185 dated April 24, 1992 for the purchase of 1,617 units for ₱29,995,835.10. The third was under PO No. 0-050-582-153 dated May 5, 1992, for the purchase of 1,242 units at a total price of ₱23,039,472.60. The purchase orders were signed by then Director General Nazareno and then Director Nartatez, while the corresponding checks were signed by then Director Custodio.

Allegations of irregularity or overpricing surrounded the procurement, leading then President Fidel V. Ramos to order the creation of a tri-agency investigating committee composed of lawyers from the PNP's Inspector General's Office, the National Police Commission, and the Office of the President. This committee found no overpricing; neither did it find collusion among the officers of the PNP participating in the transactions.

The Commission on Audit, for its part, created a special audit team to look into the same allegations of overpricing. After an investigation that compared the AFP Logistics Command (*LOGCOM*) purchase price of **₱10,587.25 per unit** for the same brand and the PNP's purchase of 5,681 units at **₱18,550.30 per unit,** the audit team found that the PNP procurement appeared to have been overpriced; the PNP purchases, if made at the AFP LOGCOM unit price, would have cost ₱45 Million less.

After due proceedings and based on the report of the special audit team, the Office of the Special Prosecutor filed an information against the respondents with the Sandiganbayan. The information reads:

That on or about January 1, 1991 and May 29, 1992, and for sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the accused Cesar

P. Nazareno, then Director General, Philippine National Police (PNP) and Everlino P. Nartatez and Nicasio Ma. S. Custodio, then directors of PNP Logistics Support Command, successively while in the performance of their official functions, taking advantage of their positions and committing the crimes in relation to their offices, did then and there willfully, unlawfully and criminally conspiring with one another, enter in behalf of the said PNP Contract/Document with Beltra Industries, Inc. a private enterprise at PILAND Building, Javier cor. Santillan Street, Makati for the supply of Five Thousand Six Hundred Eighty-One (5,681.00) units of Caliber .45 Pistol in the amount of One Hundred Five Million Three Hundred Eighty Four Thousand Three (sic) Hundred Fifty four Pesos and Seventy Centavos (105,384,254.70), under terms and conditions manifestly and grossly disadvantageous to the government.

The respondents pleaded not guilty to the charge.

At the trial, the People presented the members of the special audit team to testify on the overpricing that the team found. Among others, a member of the special audit team testified that there was a big difference between the AFP price and the PNP's; as shown by documents obtained from the Philippine Navy, the AFP purchased the pistols at a unit cost of ₱10,578.25. The People then presented the documents related to the various contracts and the documents the members of the audit team mentioned in their testimonies.

The Sandiganbayan, in its Decision,[2] graphically presented the claimed price difference as follows:

PNP PO No.	Qty.	Unit Cost	Amount	LOGCOM U/C	Amount	Price Difference
081190-854	2822	₱18,550.30	₱52,348,946.60	₱10,578.25	₱29,851,821.50	₱22,497,125.10
240492-185	1617	₱18,550.30	₱29,995,835.10	₱10,578.25	₱17,105,030.25	₱12,890,804.85
050592-153	1242	₱18,550.30	₱23,039,472.60	₱10,578.25	₱13,138,186.50	₱ 9,901,286.10
			₱105,384,254.30		**₱60,095,038.25**	**₱45,289,216.05**

In their defense, the respondents took the basic position that the AFP's unit price could not be the basis for a comparison to support the conclusion that the PNP purchase was overpriced.

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[2] *Rollo*, pp. 80-109.

They presented witnesses[3] who commonly testified that the AFP purchases were made under a foreign military assistance program – the Foreign Military Sales (*FMS*) program – extended by the United States of America (*US*) to the Philippines pursuant to the Mutual Defense Treaty and the Military Assistance Agreement of 1953. The FMS program, one of the witnesses testified, was a security assistance program that allowed eligible countries to purchase defense articles, defense services and training from the US government; it was "non-appropriated," which meant that a foreign military financing program was available for loan grants to eligible countries. US laws (specifically, the Arms Export Control Act [*AECA*]), however, imposed certain limitations, one of which was that the PNP, as a police organization, was not entitled to FMS benefits. Evidence of this (duly marked and presented) was the US JUSMAG Chief's letter to then AFP Chief of Staff Lisandro Abadia. Another witness also claimed that a comparison showed a big difference between the cost of articles acquired through FMS and those through direct commercial sales; a local purchase was 2 to 3 times more expensive than a purchase through FMS, although local procurement was faster than FMS. Still another witness echoed this statement through the declaration that the AFP could not have purchased pistols in the local market at a price or cost similar to the FMS price.

The respondents also presented some of the members of the tri-agency team that investigated the alleged overpricing;[4] all of them testified that they found no irregularity in the procurement of the pistols. The respondents completed their

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[3] The witnesses were: (1) Wilfredo Ona, former Chief of the International Logistics Division Office of the Defense Directorate Logistics J-4, General Headquarters, Camp Aguinaldo (see summary of his testimony at pp. 91-93 of the *rollo*); and (2) Commodore Daniel Trinidad Delgado, former Deputy Chief of Staff for Logistics of the Chief of Staff of the Armed Forces of the Philippines (see summary of his testimony at pp. 95-97 of the *rollo*).

[4] The following members of the tri-agency team testified: (1) Benjamin Fajardo Valento, then Inspector General of the PNP (see the summary of his testimony at pp. 88-90 of the *rollo*); (2) Atty. Alexis Canonizado, representative of the National Police Commission (see the summary of his

case with the presentation of their documentary evidence, including those identified or touched upon in the testimonies of their witnesses.

The Verdict of Acquittal

The Sandiganbayan agreed with the respondents' submissions and acquitted the respondents after trial. It concluded that *the AFP prices did not offer sufficient basis for comparison to be able to establish firmly the alleged overpricing in the purchase of the subject firearms by the PNP*. The Sandiganbayan based this conclusion on the testimonies of the respondents' witnesses whose competence on the matters they testified on was never questioned or disputed by the prosecution.

The Sandiganbayan further observed that the audit team followed a flawed procedure in reaching its overpricing conclusion. The audit team merely relied on the AFP Supply Issuance and did not conduct any actual canvass of the gun prices. *Thus,* to the Sandiganbayan*, the comparison made between the PNP price and the AFP quoted cost was substantially deficient under the prevailing rules that indispensably required an actual canvass done on different and identified suppliers to show exactly the variances in the prices of similar articles to firm up, for evidentiary purposes and to a reliable degree of certainty, a finding of overpricing.* The requirement of actual canvass, according to the Sandiganbayan, was settled law as applied by this Court in *Arriola v. Commission on Audit*[5] and in *National Center for Mental Health Management v. COA.*[6] The Sandiganbayan added that Commission on Audit Memorandum No. 97-012 dated March 31, 1997 imposed stricter requirements on the process of evidence-gathering to support any audit finding of overpricing; it now required that the initial findings be supported by canvass sheets and/or price quotations

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testimony at pp. 90-91 of the *rollo*) and Retired Colonel Rafael Ivia Jayme of the Office of the Inspector General (see the summary of his testimony at pp. 93-95 of the *rollo*).

[5] G.R. No. 90364, September 30, 1991, 202 SCRA 147.

[6] G.R. No. 114864, December 6, 1996, 265 SCRA 390.

indicating: (1) the identities/names of the suppliers or sellers; (2) the availability of stock sufficient in quantity to meet the requirements of the procuring agency; (3) the specifications of the items that should match those involved in the overpricing; and (4) the purchase/contract terms and conditions that should be the same as those of the questioned transaction. The Sandiganbayan cited in this regard our ruling in *Sajul v. Sandiganbayan*[7] where we ruled that a basis for comparison had to be established to support a conclusion of overpricing; otherwise, the conclusion would be unfair.

Despite its clearly negative conclusion on the overpricing charge, the Sandiganbayan still proceeded to discuss and reject the allegation of conspiracy between and among the respondents. Noting the respondents' individual participation in the questioned transactions (*i.e.*, the necessity of the respondents' individual signatures in the documents for the purchase of the pistols) and the evidentiary requirement that *conspiracy must be proved by evidence of a chain of circumstances and may be inferred from the acts of the accused before, during and after the commission of the crime which indubitably point to and are indicative of a joint purpose, concert of action and community of interest*, the Sandiganbayan rejected allegation of conspiracy with the statement that —

> x x x the Court finds that the evidence presented by the prosecution, which focused more on documents to prove the alleged overpricing, failed to show that the three accused indeed conspired with one another in entering into the subject supply contracts and in effecting the purchase of firearms through the execution of the purchase orders and the supply contracts.

<u>THE PETITION AND THE RESPONDENTS' COMMENTS</u>

The People filed the present petition under Rule 45 of the Rules of Court, and raised the following **ISSUES:**

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[7] G.R. No. 135294, November 20, 2000, 345 SCRA 248.

I.

WHETHER OR NOT THE COURT *A QUO* GRAVELY ERRED IN TAKING JUDICIAL NOTICE OF THE ALLEGED LAWS OF THE UNITED STATES OF AMERICA AND IN APPLYING THE SAME TO THE CASE AT BAR

II.

WHETHER OR NOT THE COURT *A QUO* GRAVELY ERRED IN RELYING SOLELY ON THE TESTIMONIES OF DEFENSE WITNESSES AS TO THE EXISTENCE AND EFFECTIVITY OF THE LAWS OF THE UNITED STATES

III.

WHETHER OR NOT THE COURT *A QUO* GRAVELY ERRED IN NOT APPRECIATING THE EVIDENCE OF THE PROSECUTION WHICH PROVED BEYOND REASONABLE DOUBT THAT THE PNP PURCHASED THE 5,681 UNITS OF PISTOLS AT AN OVERPRICED AMOUNT OF ₱18,550.30 PER UNIT

IV.

WHETHER OR NOT DOUBLE JEOPARDY HAS ALREADY ATTACHED TO HEREIN RESPONDENTS AND THUS PROSCRIBES THE RESOLUTION OF THE ISSUES RAISED BY PETITIONER.

Expectedly, the respondents object to the petition mainly because the review sought violates their constitutional right against double jeopardy.[8] They assert that the petition is essentially an appeal from a judgment of acquittal or a review of alleged errors in judgment that throws the case wide open, placing the respondents in danger of being punished twice for the same offense. They also posit that a judgment of acquittal can only be challenged through a petition for *certiorari* under Rule 65 of the Rules of Court, citing our ruling in *People v. Sandiganbayan*[9] that *only a clear showing of grave abuse of*

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[8] See: (1) Respondents Nazareno and Nartatez' joint comment; *rollo*, pp. 171-178, and (2) Respondent Custodio's Comment/Opposition; *id.*, pp. 135-155.

[9] G.R. No. 152532, August 16, 2005, 467 SCRA 137.

discretion or denial of due process to the State can justify a review of a judgment of acquittal through a petition for certiorari. The present petition, according to the respondents, is a Rule 45 appeal that raises errors of judgment, not errors of jurisdiction. On the merits, the respondents claim that the Sandiganbayan did not commit grave abuse of discretion in acquitting them of the criminal charge.

OUR RULING

We resolve to dismiss the petition on the basis of the double jeopardy clause of the Constitution.

Section 21, Article III of the Constitution provides that *"no person shall be twice put in jeopardy of punishment for the same offense."* Section 7, Rule 117 of the Rules of Court, which implements this particular constitutional right, reads:

> SEC. 7. *Former conviction or acquittal; double jeopardy*. — When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

Double jeopardy exists when the following requisites are present: (1) a first jeopardy attached prior to the second; (2) the first jeopardy has been validly terminated; and (3) a second jeopardy is for the same offense as in the first. A first jeopardy attaches only (a) after a valid indictment; (b) before a competent court; (c) after arraignment; (d) when a valid plea has been entered; and (e) when the accused was acquitted or convicted, or the case was dismissed or otherwise terminated without his express consent.[10]

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[10] *Pacoy v. Cajigal*, G.R. No. 157472, September 28, 2007, 534 SCRA 338.

A judgment of acquittal is final and is no longer reviewable.[11] It is also immediately executory and the State may not seek its review without placing the accused in double jeopardy.[12] We had occasion to fully explain the reason behind the double jeopardy rule in *People v. Velasco*[13]:

> The fundamental philosophy highlighting the finality of an acquittal by the trial court cuts deep into "the humanity of the laws and in a jealous watchfulness over the rights of the citizen, when brought in unequal contest with the State x x x." Thus *Green* expressed the concern that "(t)he underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent, he may be found guilty."
>
> It is axiomatic that on the basis of humanity, fairness and justice, an acquitted defendant is entitled to the right of repose as a direct consequence of the finality of his acquittal. The philosophy underlying this rule establishing the absolute nature of acquittals is "part of the paramount importance criminal justice system attaches to the protection of the innocent against wrongful conviction." The interest in the finality-of-acquittal rule, confined exclusively to verdicts of not guilty, is easy to understand: it is a need for "repose," a desire to know the exact extent of one's liability. With this right of repose, the criminal justice system has built in a protection to insure that the innocent, even those whose innocence rests upon a jury's leniency, will not be found guilty in a subsequent proceeding.

The Constitution has expressly adopted the double jeopardy policy and thus **bars multiple criminal trials**, thereby conclusively presuming that a second trial would be unfair if the innocence of the accused has been confirmed by a previous

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[11] *People v. Terrado*, G.R. No. 148226, July 14, 2008.

[12] *People v. Sandiganbayan*, G.R. No. 168188-89, June 16, 2006, 491 SCRA 185.

[13] G.R. No. 127444, September 13, 2000, 340 SCRA 207.

final judgment.[14] **Further prosecution *via* an appeal** from a judgment of acquittal is likewise barred because the government has already been afforded a complete opportunity to prove the criminal defendant's culpability; after failing to persuade the court to enter a final judgment of conviction, the underlying reasons supporting the constitutional ban on multiple trials applies and becomes compelling.[15] The reason is not only the defendant's already established innocence at the first trial where he had been placed in peril of conviction, but also the same untoward and prejudicial consequences of a second trial initiated by a government who has at its disposal all the powers and resources of the State. Unfairness and prejudice would necessarily result, as the government would then be allowed another opportunity to persuade a second trier of the defendant's guilt while strengthening any weaknesses that had attended the first trial, all in a process where the government's power and resources are once again employed against the defendant's individual means. That the second opportunity comes *via* an appeal does not make the effects any less prejudicial by the standards of reason, justice and conscience.

Thus, the absolute and inflexible rule is that the State is proscribed from appealing the judgment of acquittal through either a regular appeal under Rule 41 of the Rules of Court, or an appeal by *certiorari* on pure questions of law under Rule 45 of the same Rules.

An instance when the State can challenge a judgment of acquittal is pursuant to the exercise of our judicial power "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government,"[16] as implemented through the extraordinary writ of *certiorari* under Rule 65 of the Rules of Court. In such instance, however, no review of facts and law on the merits, in the manner done

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[14] *People v. Sandiganbayan*, *supra* note 12.

[15] *Ibid.*

[16] CONSTITUTION, Article VIII, Section 1, par. 2.

in an appeal, actually takes place; the focus of the review is on whether the judgment is *per se* void on jurisdictional grounds, *i.e.*, whether the verdict was rendered by a court that had no jurisdiction; or where the court has appropriate jurisdiction, whether it acted with grave abuse of discretion amounting to lack or excess of jurisdiction. In other words, the review is on the question of whether there has been a validly rendered decision, not on the question of the decision's error or correctness. Under the exceptional nature of a Rule 65 petition, the burden – a very heavy one – is on the shoulders of the party asking for the review to show the presence of a whimsical or capricious exercise of judgment equivalent to lack of jurisdiction; or of a patent and gross abuse of discretion amounting to an evasion of a positive duty or a virtual refusal to perform a duty imposed by law or to act in contemplation of law; or to an exercise of power in an arbitrary and despotic manner by reason of passion and hostility.[17]

Applying all these principles, the present Rule 45 petition must necessarily fail. Even under our most liberal reading, we cannot treat the petition as a Rule 65 petition, as it raises no jurisdictional error that can invalidate a verdict of acquittal.

The petition itself states that it was formally filed under Rule 45 of the Rules of Court and **seeks** to **reverse and set aside** the decision of the Sandiganbayan.[18] Thus, the petition's clear and unequivocal intention to seek a review on the merits of the Sandiganbayan judgment of acquittal puts it on a direct collision course with the constitutional proscription on double jeopardy. This is more than enough reason to deny the petition.

Additionally, a Rule 45 petition can only address pure questions of law, not factual errors, committed by the tribunal below. In this petition, the People raise factual errors, or to be

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[17] This is how grave abuse of discretion has been defined in jurisprudence; see, for instance, *People v. Sandiganbayan*, *supra* note 12.

[18] *Rollo*, pp. 47, 73.

exact, "appreciation of evidence" errors that the descriptive term "gravely erred" cannot convert into jurisdictional errors. Specifically, the petition alleges: (1) that the Sandiganbayan gravely erred in taking judicial notice of the alleged laws of the US; (2) that the Sandiganbayan gravely erred in relying solely on the testimonies of the defense witnesses as to the existence and effectivity of the laws of the US; and (3) that the Sandiganbayan gravely erred in not appreciating the prosecution's presented evidence on the guilt of the respondents.

We add that any error that the Sandiganbayan might have committed in appreciating the evidence presented at the trial are mere errors of judgment and do not rise to the level of jurisdictional errors despite the allegation that the Sandiganbayan had "gravely erred" in appreciating the evidence. Misapplication of facts and evidence, and erroneous conclusions based on evidence do not, by the mere fact that errors were committed, rise to the level of grave abuse of discretion.[19] That an abuse itself must be "grave" must be amply demonstrated since the jurisdiction of the court, no less, will be affected.[20] The mere fact, too, that a court erroneously decides a case does not necessarily deprive it of jurisdiction.[21]

We have consistently ruled that a Rule 65 *certiorari* does not involve the correction of errors of judgment:

> *Certiorari* is a remedy designed for the correction of errors of jurisdiction, not errors of judgment. *In Pure Foods Corporation v. NLRC,* we explained the simple reason for the rule in this light:
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>> When a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error is committed. If it did, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. This cannot

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[19] *Supra* note 12.

[20] See *Office of the Ombudsman v. Magno*, G.R. No. 178923, November 27, 2008.

[21] *Supra* note 11.

> be allowed. The administration of justice would not survive such a rule. Consequently, an error of judgment that the court may commit in the exercise of its jurisdiction is not correct[a]ble through the original civil action of *certiorari*.

The supervisory jurisdiction of a court over the issuance of a writ of *certiorari* cannot be exercised for the purpose of reviewing the intrinsic correctness of a judgment of the lower court – on the basis either of the law or the facts of the case, or of the wisdom or legal soundness of the decision. Even if the findings of the court are incorrect, as long as it has jurisdiction over the case, such correction is normally beyond the province of *certiorari*. Where the error is not one of jurisdiction, but of an error of law or fact – a mistake of judgment – appeal is the remedy.[22]

In this case, the Sandiganbayan's jurisdiction over the *nature of the case* is not disputed, nor was its jurisdiction *over the respondents* ever brought into question. Neither does the petition substantively and effectively impute any error based on the Sandiganbayan's grave abuse of discretion in the *exercise* of its jurisdiction. In other words, the petition, styled as a Rule 45 petition, is not even one that we can liberally treat as a Rule 65 *certiorari* petition that may permit a review of a verdict of acquittal.[23]

WHEREFORE, premises considered, the petition is hereby *DENIED* for lack of merit.

SO ORDERED.

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

Quisumbing, J., on official leave.

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[22] See *Tagle v. Equitable PCI Bank*, G.R. No. 172299, April 22, 2008, 552 SCRA 424.

[23] See *People v. Terrado* and *People v. Sandiganbayan*, *supra* notes 11 and 12, respectively.

FIRST DIVISION

[A.M. No. P-06-2282. August 7, 2009]

LOLITA S. REGIR, *petitioner, vs.* **JOEL T. REGIR,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; BARE DENIALS CANNOT PREVAIL OVER POSITIVE TESTIMONIES OF WITNESSES.—** Well-settled is the rule that bare denials cannot prevail over the positive testimonies of the witnesses. Positive and forthright declarations of witnesses are often held to be worthier of credence than the self-serving denial of an accused. Denial, if unsubstantiated by clear and convincing evidence, is a self-serving assertion that deserves no weight in law.
2. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; SUBSTANTIAL EVIDENCE; SATISFIED WHEN THERE IS REASONABLE GROUND TO BELIEVE THAT THE PERSON INDICTED WAS RESPONSIBLE FOR ALLEGED WRONGDOING OR MISCONDUCT.—** The evidence presented is enough to hold respondent guilty of the charge of immorality or disgraceful and immoral conduct. It is elementary that administrative proceedings are governed by the substantial evidence rule. Substantial evidence is such amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion. The standard of substantial evidence is satisfied when there is reasonable ground to believe that the person indicted was responsible for the alleged wrongdoing or misconduct.
3. **ID.; ID.; COURT PERSONNEL; DISGRACEFUL AND IMMORAL CONDUCT; IMMORALITY IS NOT BASED ALONE ON ILLICIT SEXUAL INTERCOURSE.—** The acts imputed against respondent, a married man, consist of his cohabitation with a woman other than his legal wife and there is a strong likelihood that respondent fathered a child with the said woman. It is morally reprehensible for a married man or woman to maintain intimate relations with a person other than

his or her spouse. Moreover, immorality is not based alone on illicit sexual intercourse. It is not confined to sexual matters, but includes conducts inconsistent with rectitude, or indicative of corruption, indecency, depravity, and dissoluteness; or is willful, flagrant or shameless conduct showing moral indifference to opinions of respectable members of the community, and an inconsiderate attitude toward good order and public welfare.

4. **ID.; ID.; ID.; IT IS OF NO MOMENT THAT RESPONDENT'S IMMORAL ACTS WERE COMMITTED OUTSIDE THE CONFINES OF HIS WORK AS AN EMPLOYEE OF THE JUDICIARY.—** It is of no moment that respondent's immoral acts were committed outside the confines of his work as an employee of the judiciary. This Court has previously ruled that the conduct of all court personnel must be free from any whiff of impropriety not only with respect to their duties in the judicial branch but also as to their behavior outside the court as private individuals. The Court likewise finds unpersuasive Judge Domael's opinion that since respondent is new in the civil service and unfamiliar with the norms of conduct for public servants, and taking into account that this is the first time he is charged with immorality, a lighter penalty may be imposed upon him with a stern warning for a heavier penalty should he commit the same or similar offense.

5. **ID.; ID.; ID.; THE EXACTING STANDARD OF ETHICS AND MORALITY UPON COURT EMPLOYEES ARE REQUIRED TO MAINTAIN THE PEOPLE'S FAITH IN THE COURTS AS DISPENSERS OF JUSTICE, AND WHOSE IMAGE IS MIRRORED IN THEIR ACTUATIONS.—** The exacting standards of ethics and morality upon court employees are required to maintain the people's faith in the courts as dispensers of justice, and whose image is mirrored by their actuations. Thus, this Court has no other recourse but to follow the strict letter of the law in disciplining errant court personnel. Under civil service rules, disgraceful and immoral conduct is a grave offense for which a penalty of suspension for six (6) months and one (1) day to one (1) year shall be imposed for the 1st offense while the penalty of dismissal is imposed for the 2nd offense. Since this is respondent's first offense, the proper penalty is suspension in its minimum period.

R E S O L U T I O N

LEONARDO-DE CASTRO, *J.*:

This is an administrative complaint filed by Lolita S. Regir against Joel T. Regir, Process Server, Regional Trial Court (RTC), Branch 37, Caibiran, Biliran, charging the latter with immorality.

This case was commenced by a Complaint[1] dated November 16, 2004 filed by Lolita S. Regir with the Office of the Court Administrator (OCA). Complainant alleges that, while being lawfully married to her, respondent carried on an illicit relationship with another woman, Vilma Sabinay, with whom he begot a child. Complainant further alleges that respondent now lives openly with Sabinay in Barangay Larrazabal, Naval, Biliran and has stopped giving her and their children financial support.

In his Comment[2] dated May 10, 2005, respondent dismisses these allegations as purely the result of unfounded jealousy on the part of his wife. He further avers that he rents a house in Sto. Niño, Naval, Biliran since Calubian, Leyte is quite far from RTC, Caibiran, Biliran, where he presently works. He goes home to Calubian, Leyte only during weekends and remits all his salary to his wife. Vilma Sabinay is just his friend and he has not sired a child with her. He insists that the Affidavit[3] executed by Modesto Pascubillo, Jr. and Bernardo Belciña, his co-employees in the RTC, Caibiran, Biliran, in support of his wife's complaint, is an act of retaliation towards him due to a misunderstanding with them.

The Resolution[4] dated December 7, 2005 of this Court's Third Division referred the instant administrative complaint to Judge

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[1] *Rollo*, pp. 15-21.

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

[3] *Id.* at 2-3.

[4] *Id.* at 29.

Pepe P. Domael, RTC, Branch 37, Caibiran, Biliran for investigation, report and recommendation within sixty (60) days from receipt of the case records.

Pursuant to the above Resolution, an investigation was conducted by Judge Domael. Thereafter, an Investigation Report[5] dated February 28, 2006 was submitted by the said Investigating Judge to the OCA.

According to the Report, the evidence adduced during the investigation yielded the following set of facts:

"The complainant Lolita Regir is the lawful wife of the respondent Joel T. Regir. Their marriage was solemnized on August 28, 1995 per certified true xerox copy of a Certificate of Marriage. During this marriage, they begot three (3) children, namely: Joely Santuele Regir, born on November 25, 1991; Joel, Jr. Santuele Regir, born July 3, 1993; and Jude Santuele Regir, born on December 15, 2000. This couple established their residence at Brgy. Don Luis, Calubian, Leyte.

Sometime in 1998, Joel T. Regir was appointed Process Server, Regional Trial Court, Branch 37, Caibiran, Biliran stationed at Naval, Biliran. Considering that his residence at Calubian, Leyte is quite far from his place of work at Naval, Biliran, he stays in the latter's place during working days by renting a house or a room and goes home only on weekends.

In 1999, when Lolita Regir went to Naval, Biliran to visit her husband Joel T. Regir, she saw Vilma Sabinay Agujar in the room of the boarding house of her husband. When accosted, Vilma admitted that she had a relation with Bebet (Joel T. Regir). This is in the boarding house of a certain Divina.

In another occasion, in the boarding house of Amado Dangel, also in Naval, where her husband Joel boarded, Lolita Regir saw again the two – Joel T. Regir and Vilma Sabinay Agujar, living together. Lolita and Vilma quarreled noisily.

Not only in these named boarding houses did Lolita find and see the two living together. The two also lived together in another boarding

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[5] *Id.* at 35-38.

house owned by one Mona located at Vicentillo Extension, Naval, Biliran. Presently, they are now living at Brby. (sic) Larrazabal, Naval, Biliran.

Modesto P. Pascubillo, Jr., a Court Sheriff of the Regional Trial Court, Branch 37, Caibiran, Biliran, testified that he also is a resident of Brgy. Larrazabal. During his jogging exercises in the morning, he used to pass by the house where Joel T. Regir and Vilma Sabinay are living also located in the same *barangay*. This only confirms the statement of Lolita Regir that her husband Joel and Vilma are now living in the said *barangay* where this Court is also located. However, when the case records of this administrative matter was received and the same was scheduled for investigation, Vilma Sabinay left temporarily this place.

On November 7, 2004, Vilma Sabinay gave birth to a baby girl at the Biliran Provincial Hospital. The patient's name is registered as Sabinay. Bb Girl. The space for the father's name is a question mark, and that for the mother's name is only Gina.

A record of admission and discharge with the patient's name **SABINAY, GINA F.** is also presented. Although, the first name appears to be Gina but she is the same woman seen and identified by Bernardo Belciña, Isabella Belciña and Lolita Regir inside the private room in that hospital to be Vilma Sabinay delivering a baby. As noted the space for the spouse' name is also a question mark.

Sometime after November 7, 2004, or days after Vilma Sabinay gave birth to a baby girl, Lolita Regir, Isabella Belciña, and the latter's husband, Bernardo Belciña, a Court Interpreter of this Court, went to the hospital. They proceeded to the room where the said Vilma Sabinay delivered a baby. At the door of that private room was posted a name Gina Sabinay. To verify the identity of the woman who delivered a baby, Mr. Belciña opened a little bit the door and peeped inside. He saw Vilma Sabinay in the patient's bed. When Mr. Belciña had a talk with the medical staff in the nurse station, she registered as Gina Sabinay. In the PhilHealth Card she submitted, her name is Lolita Agujar which is the real name of Vilma Sabinay. Agujar is the family name of her deceased husband. Vilma, Gina or Lolita is therefore a widow.

Likewise, during one of the visits of Lolita Regir and Isabella Belciña, after November 7, 2004, they saw Joel T. Regir in the hospital. But when he saw them he immediately ran away. Bernardo Belciña

who was only on the ground floor sitting on his motorcycle was only informed by the two.

In one of the PACE seminar of court employees held in Mandaue City, Joel T. Regir, a Process Server, and Bernardo Belciña, a Court Interpreter attended. While on their way together, Joel informed Belciña that his girlfriend Vilma Sabinay is waiting for him at St. Joseph Church, Mandaue City and that he will be lodging at the boarding house of his girlfriend. In going home from the seminar, Vilma Sabinay was together with them on board M/V Cagayan Princess. She was introduced to him as Joel's girlfriend.

In Naval, Joel and Vilma stayed in different places or boarding houses. First, they stayed in the boarding house of Divina at Inocentes St., then to Dr. Niza Lumbab at Vicentillo St. They again transferred to Josep's place along Garcia St. From there they transferred to Amado Dangel's boarding house at Trece St., then to Mona's place at Vicentillo Extension, and presently at Brgy. Larrazabal.

Respondent Joel T. Regir when asked to refute the allegations of complainant-wife Lolita Regir and her witnesses denied all. In fact, he doesn't even know who is this woman named Vilma Sabinay. From the time he stayed in Naval, Biliran occasioned by his employment as Process Server of the Regional Trial Court, Branch 37, he only stayed up to the present in the house of William Lima located at Sitio Tagumpay, Brgy. Sto. Niño, Naval, Biliran.

As to the allegation of the complainant and her witnesses that Vilma Sabinay delivered a baby girl at the Biliran Provincial Hospital, Naval, Biliran on November 7, 2004, he likewise denied. Of course, this may be correct if indeed he doesn't know a woman by the name of Vilma Sabinay. But, who is this woman then so mentioned and identified by the complainant and her witnesses? Is she a non-existent person?

Respondent's son and witness Joely Regir even mentioned the name of Vilma albeit without her surname as the name of the woman she heard when his father and mother had a quarrel. She is the woman whom he said his father is living with in Naval.

As further stated by this witness Joely Regir, while his father usually gives money consisting of his salaries and other benefits received as a court employee, however, since the year 2001, he stopped giving money but only gives rice, sugar and milk for the youngest child. His father also gives them (Joely and Joel, Jr.) money for their studies

in high school. They are residing in their grandparent's house at Calubian, Leyte. [citations omitted][6]

In the same Report, Judge Domael indicated his observation that the issue of immorality has not been refuted by the respondent since his defense does not go beyond a mere complete and bare denial of the charge hurled against him. The Investigating Judge also came to the conclusion that the witnesses against respondent were not shown to have been motivated by improper motives. Thus, he made the following recommendation:

WHEREFORE, it is respectfully RECOMMENDED that a two (2) months suspension without pay be imposed upon the respondent Joel T. Regir.[7]

We agree with the Investigating Judge's finding of guilt. However, the recommended penalty is lower than what the law requires and, therefore, should be modified.

A careful perusal of the evidence, consisting of the affidavits of witnesses,[8] the Investigation Report,[9] and the transcripts of hearings,[10] reveals that, for his defense, respondent merely denied the allegations of immoral conduct against him. Without any other evidence, respondent's bare denial necessary fails in light of the positive testimony of complainant and her witnesses.

Well-settled is the rule that bare denials cannot prevail over the positive testimonies of the witnesses.[11] Positive and forthright declarations of witnesses are often held to be worthier of credence

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[6] *Id.* at 35-37.

[7] *Id.* at 38.

[8] *Id.* at 2-4.

[9] *Supra* note 5.

[10] *Rollo*, pp. 61-224.

[11] *People v. Sanchez*, G.R. No. 172467, July 30, 2007, 528 SCRA 594, 601; *People v. Tuazon*, G.R. No. 175783, September 3, 2007, 532 SCRA 152, 166; *People v. Aguilar*, G.R. No. 177749, December 17, 2007, 540 SCRA 509, 526.

than the self-serving denial of an accused.[12] Denial, if unsubstantiated by clear and convincing evidence, is a self-serving assertion that deserves no weight in law.[13]

The evidence presented is enough to hold respondent guilty of the charge of immorality or disgraceful and immoral conduct. It is elementary that administrative proceedings are governed by the substantial evidence rule.[14] Substantial evidence is such amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion.[15] The standard of substantial evidence is satisfied when there is reasonable ground to believe that the person indicted was responsible for the alleged wrongdoing or misconduct.[16]

The acts imputed against respondent, a married man, consist of his cohabitation with a woman other than his legal wife and there is a strong likelihood that respondent fathered a child with the said woman. It is morally reprehensible for a married man or woman to maintain intimate relations with a person other than his or her spouse.[17] Moreover, immorality is not based alone on illicit sexual intercourse. It is not confined to

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[12] *Anilao v. People*, G.R. No. 149681, October 15, 2007, 536 SCRA 98, 104.

[13] *Navarrete v. People*, G.R. No. 147913, January 31, 2007, 513 SCRA 509, 523-524; *People v. Padua*, G.R. No. 169075, February 23, 2007, 516 SCRA 590, 606; *People v. Gregorio, Jr.*, G.R. No. 174474, May 25, 2007, 523 SCRA 216, 230.

[14] *Dadulo v. Court of Appeals*, G.R. No. 175451, April 13, 2007, 521 SCRA 357, 362.

[15] *Portuguez v. GSIS Family Bank (Comsavings Bank)*, G.R. No. 169570, March 2, 2007, 517 SCRA 309, 323; *Bautista v. Sula*, A.M. No. P-04-1920, August 17, 2007, 530 SCRA 406, 416-417; *ePacific Global Contact Center, Inc. v. Cabansay*, G.R. No. 167345, November 23, 2007, 538 SCRA 498, 511-512.

[16] *Alfonso v. Office of the President*, G.R. No. 150091, April 2, 2007, 520 SCRA 64, 77.

[17] *Sealana-Abbu v. Laurenciana-Huraño*, A.M. No. P-05-2091, August 28, 2007, 531 SCRA 289, 297.

sexual matters, but includes conducts inconsistent with rectitude, or indicative of corruption, indecency, depravity, and dissoluteness; or is willful, flagrant or shameless conduct showing moral indifference to opinions of respectable members of the community, and an inconsiderate attitude toward good order and public welfare.[18]

It is of no moment that respondent's immoral acts were committed outside the confines of his work as an employee of the judiciary. This Court has previously ruled that the conduct of all court personnel must be free from any whiff of impropriety not only with respect to their duties in the judicial branch but also as to their behavior outside the court as private individuals.[19] The Court likewise finds unpersuasive Judge Domael's opinion that since respondent is new in the civil service and unfamiliar with the norms of conduct for public servants, and taking into account that this is the first time he is charged with immorality, a lighter penalty may be imposed upon him with a stern warning for a heavier penalty should he commit the same or similar offense.[20]

The exacting standards of ethics and morality upon court employees are required to maintain the people's faith in the courts as dispensers of justice, and whose image is mirrored by their actuations.[21] Thus, this Court has no other recourse but to follow the strict letter of the law in disciplining errant court personnel. Under civil service rules, disgraceful and immoral conduct is a grave offense for which a penalty of suspension for six (6) months and one (1) day to one (1) year shall be imposed for the 1st offense while the penalty of dismissal

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[18] *Court Employees of the MCTC, Ramon Magsaysay, Zamboanga del Sur v. Sy*, A.M. No. P-93-808, November 25, 2005, 476 SCRA 127, 137-138.

[19] *Supra* note 17 at p. 296.

[20] *Rollo*, p. 38.

[21] *Valdez v. Dabon*, A.M. No. CA-07-21-P, June 22, 2007, 525 SCRA 348, 357.

is imposed for the 2nd offense.[22] Since this is respondent's first offense, the proper penalty is suspension in its minimum period.

WHEREFORE, Joel T. Regir, Process Server, Regional Trial Court, Branch 37, Caibiran, Biliran, is hereby found *GUILTY* of disgraceful and immoral conduct. He is *SUSPENDED* for six (6) months without pay. He is also *STERNLY WARNED* of the possibility of dismissal from the service should he persist in continuing with his illegitimate and immoral relationship.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Corona, and *Bersamin, JJ.,* concur.

FIRST DIVISION

[G.R. No. 166470. August 7, 2009]

CECILIO C. HERNANDEZ, MA. VICTORIA C. HERNANDEZ-SAGUN, TERESA C. HERNANDEZ-VILLA ABRILLE[1] and NATIVIDAD CRUZ-HERNANDEZ, *petitioners, vs.* **JOVITA SAN JUAN-SANTOS,** *respondent.*

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[22] Section 52 A(15), Uniform Rules on Administrative Cases in the Civil Service.

[1] "Ma. Teresa Hernandez-Villa Abrille" in some parts of the records.

[G.R. No. 169217. August 7, 2009]

CECILIO C. HERNANDEZ, MA. VICTORIA C. HERNANDEZ-SAGUN and TERESA C. HERNANDEZ-VILLA ABRILLE, *petitioners, vs.* **JOVITA SAN JUAN-SANTOS,**[2] *respondent.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; OPINION RULE; OPINION OF ORDINARY WITNESSES; AN ORDINARY WITNESS MAY GIVE HIS OPINION ON THE MENTAL SANITY OF A PERSON WITH WHOM HE IS SUFFICIENTLY ACQUAINTED.—** Under Section 50, Rule 130 of the Rules of Court, an ordinary witness may give his opinion on the mental sanity of a person with whom he is sufficiently acquainted. Lulu's attending physicians spoke and interacted with her. Such occasions allowed them to thoroughly observe her behavior and conclude that her intelligence level was below average and her mental stage below normal. Their opinions were admissible in evidence.

2. **ID.; ID.; ID.; WHERE THE SANITY OF A PERSON IS AT ISSUE, EXPERT OPINION IS NOT NECESSARY; THE OBSERVATIONS OF THE TRIAL JUDGE COUPLED WITH EVIDENCE ESTABLISHING THE PERSON'S STATE OF MIND WILL SUFFICE.—** Where the sanity of a person is at issue, expert opinion is not necessary. The observations of the trial judge coupled with evidence establishing the person's state of mental sanity will suffice. Here, the trial judge was given ample opportunity to observe Lulu personally when she testified before the RTC.

3. **ID.; CIVIL PROCEDURE; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; THE DETERMINATION OF WHETHER OR NOT A PERSON IS INCOMPETENT IS UNDOUBTEDLY A QUESTION OF FACT SINCE IT WOULD REQUIRE A REEXAMINATION OF THE**

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[2] The Court of Appeals was impleaded as respondent but was excluded as party in these cases pursuant to Section 4, Rule 45 of the Rules of Court.

EVIDENCE PRESENTED BEFORE THE COURTS *A QUO*; ONLY QUESTIONS OF LAW ARE RESOLVED IN A PETITION FOR REVIEW AND THE EXCEPTIONAL CIRCUMSTANCES WHERE QUESTIONS OF FACT MAY BE ALLOWED ARE NOT PRESENT IN CASE AT BAR.— Under Section 2, Rule 92 of the Rules of Court, persons who, though of sound mind but by reason of age, disease, weak mind or other similar causes are incapable of taking care of themselves and their property without outside aid, are considered as incompetents who may properly be placed under guardianship. The RTC and the CA both found that Lulu was incapable of taking care of herself and her properties without outside aid due to her ailments and weak mind. Thus, since determining whether or not Lulu is in fact an incompetent would require a reexamination of the evidence presented in the courts *a quo,* it undoubtedly involves questions of fact. As a general rule, this Court only resolves questions of law in a petition for review. We only take cognizance of questions of fact in exceptional circumstances, none of which is present in this case. We thus adopt the factual findings of the RTC as affirmed by the CA.

4. **ID.; SPECIAL PROCEEDINGS; GUARDIANSHIP; *HABEAS CORPUS*; SINCE RESPONDENT'S APPOINTMENT AS JUDICIAL GUARDIAN IS PROPER, THE ISSUANCE OF A WRIT OF *HABEAS CORPUS* IN HER FAVOR IS ALSO IN ORDER AFTER SHE WAS UNDULY DEPRIVED OF THE RIGHTFUL CUSTODY OF HER WARD.—** We see no compelling reason to reverse the trial and appellate courts' finding as to the propriety of respondent's appointment as the judicial guardian of Lulu. We therefore affirm her appointment as such. Consequently, respondent is tasked to care for and take full custody of Lulu, and manage her estate as well. Inasmuch as respondent's appointment as the judicial guardian of Lulu was proper, the issuance of a writ of *habeas corpus* in her favor was also in order. A writ of *habeas corpus* extends to all cases of illegal confinement or detention or by which the rightful custody of person is withheld from the one entitled thereto. Respondent, as the judicial guardian of Lulu, was duty-bound to care for and protect her ward. For her to perform her obligation, respondent must have custody of Lulu. Thus, she was entitled to a writ of *habeas corpus* after she was unduly deprived of the custody of her ward.

APPEARANCES OF COUNSEL

Soo Gutierrez Leogardo & Lee for petitioners in G.R. No. 169217.

Gutierrez Nitura Zulueta Law Offices for petitioners in G.R. No. 166470.

E.G. Ferry Law Offices for respondent.

D E C I S I O N

CORONA, *J.*:

Maria Lourdes San Juan Hernandez (or Lulu) was born on February 14, 1947 to the spouses Felix Hernandez and Maria San Juan Hernandez. Unfortunately, the latter died due to complications during childbirth. After Maria's death, Felix left Lulu in the care of her maternal uncle, Sotero C. San Juan.

On December 16, 1951, Felix married Natividad Cruz. The union produced three children, petitioners Cecilio C. Hernandez, Ma. Victoria C. Hernandez-Sagun and Teresa C. Hernandez-Villa Abrille.

Meanwhile, as the only child of Maria and the sole testate heir of Sotero, Lulu inherited valuable real properties from the San Juan family (conservatively estimated at ₱50 million in 1997).

Sometime in 1957, Lulu went to live with her father and his new family. She was then 10 years old and studying at La Consolacion College. However, due to her "violent personality," Lulu stopped schooling when she reached Grade 5.

In 1968, upon reaching the age of majority, Lulu was given full control of her estate.[3] Nevertheless, because Lulu did not even finish her elementary education, Felix continued to exercise actual administration of Lulu's properties. Upon Felix's death

[3] Order dated July 31, 1968 in SP No. 1127 penned by Judge Andres Reyes of the Court of First Instance of Pasig, Rizal, Branch VI. *Rollo* (G.R. No. 166470), p. 128.

in 1993, petitioners took over the task of administering Lulu's properties.

During the period of their informal administration (from 1968 until 1993), Felix and petitioners undertook various "projects" involving Lulu's real properties. In 1974, Felix allegedly purchased one of Lulu's properties for an undisclosed amount to develop the Marilou Subdivision.[4] In 1995, Ma. Victoria informed Lulu that her 11-hectare Montalban, Rizal property[5] was under litigation. Thus, Lulu signed a special power of attorney[6] (SPA) believing that she was authorizing Ma. Victoria to appear in court on her behalf when she was in fact unknowingly authorizing her half-sister to sell the said property to the Manila Electric Company for ₱18,206,400.[7] Thereafter, Cecilio asked Lulu to authorize him to lease her 45-hectare property in Montalban, Rizal to Oxford Concrete Aggregates for ₱58,500 per month so that she could have a car and driver at her disposal.

In September 1998, Lulu sought the assistance of her maternal first cousin, respondent Jovita San Juan-Santos, after learning that petitioners had been dissipating her estate. She confided to Jovita that she was made to live in the basement of petitioners' Montalban, Rizal home and was receiving a measly daily allowance of ₱400 for her food and medication.

Respondent was appalled as Lulu was severely overweight, unkempt and smelled of urine. She later found out that Lulu was occupying a cramped room lit by a single fluorescent lamp without running water. Since she had not been given a proper toilet, Lulu urinated and defecated in the garden. Due to Lulu's poor hygiene, respondent brought her to several physicians for medical examination. Lulu was found to be afflicted with

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[4] Referred to as Marylou Subdivision or Marilou Village Subdivision in some parts of the records.

[5] Covered by TCT No. 248784. *Rollo* (G.R. No. 166470), p. 109.

[6] *Id.*, pp. 110-111.

[7] Deed of Sale. *Id.*, pp. 112-115.

tuberculosis, rheumatism and diabetes from which she was suffering several complications.[8]

Thereafter, the San Juan family demanded an inventory and accounting of Lulu's estate from petitioners.[9] However, the demand was ignored.

On October 2, 1998, respondent filed a petition for guardianship[10] in the Regional Trial Court (RTC) of San Mateo, Rizal, Branch 76. She alleged that Lulu was incapable of taking care of herself and managing her estate because she was of weak mind.

Subsequently, petitioners moved to intervene in the proceedings to oppose the same.

Natividad denied that Marilou Subdivision belonged to Lulu. Since she and her late husband were the registered owners of the said property, it was allegedly part of their conjugal partnership.

Cecilio, Teresa and Ma. Victoria, for their part, claimed that the issue of Lulu's competency had been settled in 1968 (upon her emancipation) when the court ordered her legal guardian and maternal uncle, Ciriaco San Juan, to deliver the properties for her to manage.

They likewise asserted that Lulu was literate and, for that reason, aware of the consequences of executing an SPA. Furthermore, whether or not Cecilio and Ma. Victoria acted within the scope of their respective authorities could not be determined in a guardianship proceeding, such matter being the proper subject of an ordinary civil action.

Petitioners also admitted that the property developed into the Marilou Subdivision was among those parcels of land Lulu inherited from the San Juan family. However, because the "sale"

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[8] Medical report dated September 18, 1998. *Id.*, pp. 118-121.

[9] Letter dated September 20, 1998. *Id.*, pp. 116-117.

[10] Docketed as Sp. Proc. No. 250. *Id.*, pp. 99-102.

between Felix and Lulu had taken place in 1974, questions regarding its legality were already barred by the statute of limitations. Thus, its validity could no longer be impugned, or so they claimed.

During the hearing, Lulu was presented and asked to testify on her genealogy and experiences with the San Juan and Hernandez families. Lulu identified and described her parents, stepmother, half-siblings and maternal relatives. She claimed inheriting tracts of land from the San Juan family. However, these properties were dissipated by the Hernandez family as they lived a "luxurious" lifestyle. When asked to explain this allegation, Lulu said that her stepmother and half-siblings rode in cars while she was made to ride a tricycle.

Medical specialists testified to explain the results of Lulu's examinations which revealed the alarming state of her health.[11] Not only was Lulu severely afflicted with diabetes mellitus and suffering from its complications,[12] she also had an existing artheroselorotic cardiovascular disease (which was aggravated by her obesity). Furthermore, they unanimously opined that in view of Lulu's intelligence level (which was below average) and fragile mental state, she would not be able to care for herself and self-administer her medications.

In a decision dated September 25, 2001,[13] the RTC concluded that, due to her weak physical and mental condition, there was a need to appoint a legal guardian over the person and property of Lulu. Thus, it declared Lulu an incompetent and appointed respondent as guardian over the person and property of Lulu on a ₱1 million bond.

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[11] Lulu was examined by cardiologist-internist Perfecto Palafox, diabetologist-internist Rosa Allyn Sy and general practitioner Eliza Mei Perez. Surgeon Jacinto Bautista removed a mass from Lulu's ear lobe and skin.

[12] Lulu was nearly blind due to cataract and suspected to have gallstones in her kidneys.

[13] Penned by Judge Jose C. Reyes, Jr. *Rollo*, pp. 87-98.

Petitioners moved for reconsideration asserting that the ₱1 million bond was grossly insufficient to secure Lulu's ₱50-million estate against fraudulent loss or dissipation.[14] The motion, however, was denied.[15]

On July 2, 2002, petitioners appealed the September 25, 2001 decision of the RTC to the Court of Appeals (CA).[16] The appeal was docketed as CA-G.R. CV No. 75760.

On December 29, 2004, the CA issued a decision affirming the September 25, 2001 decision of the RTC (in the petition for guardianship) *in toto*.[17] It held that respondent presented sufficient evidence to prove that Lulu, because of her illnesses and low educational attainment, needed assistance in taking care of herself and managing her affairs considering the extent of her estate. With regard to the respondent's appointment as the legal guardian, the CA found that, since Lulu did not trust petitioners, none of them was qualified to be her legal guardian. Because guardianship was a trust relationship, the RTC was bound to appoint someone Lulu clearly trusted.

Petitioners now assail the December 29, 2004 decision of the CA in this Court in a petition for review on *certiorari* docketed as G.R. No. 166470.[18]

Meanwhile, Lulu moved into 8 R. Santos St., Marikina City (Marikina apartment) and was provided with two housemaids tasked to care for her. Sometime in November 2003, Lulu was abducted from her Marikina apartment. Jovita immediately sought the assistance of the Police Anti-Crime Emergency Response (PACER) division of the Philippine National Police.

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[14] *Id.*, pp. 143-147.

[15] Order dated April 26, 2002. *Id.*, pp. 154-155.

[16] Docketed as CA-G.R. CV No. 75760.

[17] Penned by Associate Justice Delilah Vidallon-Magtolis (retired) and concurred in by Associate Justices Eliezer R. de los Santos (retired) and Monina Arevalo-Zeñarosa of the Special Fourth Division of the Court of Appeals. Dated December 29, 2004. *Rollo* (G.R. No. 166470), pp. 61-86.

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

The PACER subsequently discovered that petitioners were keeping Lulu somewhere in Rodriguez, Rizal. Despite their initial hostility to the investigation, Ma. Victoria and Cecilio subsequently contacted the PACER to inform them that Lulu voluntarily left with Natividad because her guardian had allegedly been maltreating her.[19]

On December 15, 2003, respondent filed a petition for *habeas corpus*[20] in the CA alleging that petitioners abducted Lulu and were holding her captive in an undisclosed location in Rodriguez, Rizal.

On April 26, 2005, the CA granted the petition for *habeas corpus,* ruling that Jovita, as her legal guardian, was entitled to her custody.[21]

Petitioners moved for the reconsideration of the said decision but it was denied in a resolution dated July 12, 2005.[22] Aggrieved, they filed this petition for review on *certiorari* docketed as G.R. No. 169217. This was consolidated with G.R. No. 166470.

The basic issue in petitions of this nature is whether the person is an incompetent who requires the appointment of a judicial guardian over her person and property.

Petitioners claim that the opinions of Lulu's attending physicians[23] regarding her mental state were inadmissible in evidence as they were not experts in psychiatry. Respondent therefore failed to prove that Lulu's illnesses rendered her an incompetent. She should have been presumed to be of sound mind and/or in full possession of her mental capacity. For this

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[19] Signed by Police Superintendent Nicolas M. Gregorio. *Rollo* (G.R. No. 169217), pp. 81-82.

[20] *Id.*, pp. 58-63.

[21] Penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Roberto A. Barrios and Vicente S.E. Veloso of the Ninth Division of the Court of Appeals. *Id.*, pp. 39-54.

[22] *Id.*, pp. 56-57.

[23] *Supra* note 11.

reason, Lulu should be allowed to live with them since under Articles 194 to 196 of the Family Code,[24] legitimate brothers and sisters, whether half-blood or full-blood are required to support each other fully.

Respondent, on the other hand, reiterated her arguments before the courts *a quo.* She disclosed that Lulu had been confined in Recovery.com, a psychosocial rehabilitation center and convalescent home care facility in Quezon City, since 2004 due to violent and destructive behavior. She also had delusions of being physically and sexually abused by "Boy Negro" and imaginary pets she called "Michael" and "Madonna."[25] The November 21, 2005 medical report[26] stated Lulu had unspecified

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[24] FAMILY CODE, Arts. 194, 195 and 196 provide:

Article 194. Support compromises everything indispensable for sustenance, dwelling, clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family.

The education of the person entitled to be supported referred to in the preceding paragraph shall include his schooling or training for some profession, trade or vocation, even beyond the age of majority. Transportation shall include expenses in going to and from school, or to and from place of work.

Article 195. Subject to the provisions of the succeeding articles, the following are obliged to support each other to the whole extent set forth in the preceding article:

1. The spouses;
2. Legitimate ascendants and descendants;
3. Parents and their legitimate children and the legitimate and illegitimate children of the latter;
4. Parents and their illegitimate children and the legitimate and illegitimate children of the latter; and
5. Legitimate brothers and sisters, whether of full or half-blood.

Article 196. Brothers and sisters not legitimately related, whether of the full or half-blood, are likewise bound to support each other to the full extent set forth in Article 194, except only when the need for support of the brother or sister, being of age, is due to a cause imputable to the claimant's fault or negligence.

[25] Report [the Court of Appeals] on the Condition of the Ward, Ma. Lourdes S.J. Fernandez, Annex "A". *Rollo* (G.R. No. 166470), pp. 248-249.

[26] Prepared by attending physician Edison C. Galindez, pp. 250-254.

mental retardation with psychosis but claimed significant improvements in her behavior.

We find the petition to be without merit.

Under Section 50, Rule 130 of the Rules of Court, an ordinary witness may give his opinion on the mental sanity of a person with whom he is sufficiently acquainted.[27] Lulu's attending physicians spoke and interacted with her. Such occasions allowed them to thoroughly observe her behavior and conclude that her intelligence level was below average and her mental stage below normal. Their opinions were admissible in evidence.

Furthermore, where the sanity of a person is at issue, expert opinion is not necessary.[28] The observations of the trial judge coupled with evidence[29] establishing the person's state of mental sanity will suffice.[30] Here, the trial judge was given ample opportunity to observe Lulu personally when she testified before the RTC.

Under Section 2, Rule 92 of the Rules of Court,[31] persons who, though of sound mind but by reason of age, disease, weak

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[27] Section 50, Rule 130, RULES OF COURT, provides:

Section 50. *Opinion of an Ordinary Witness.* – The opinion of a witness for which proper basis is given shall be received in evidence regarding—

(a) The identity of a person about whom he has adequate knowledge;

(b) A handwriting with which he has sufficient familiarity; and

(c) **The mental sanity of a person with whom he is sufficiently acquainted**.

The witness may also testify on his impression of the emotion, behavior, condition or appearance of a person. (emphasis supplied)

[28] *People v. Bacaling,* 447 Phil. 197, 204 (2003). (citations omitted)

[29] The opinions of Lulu's attending physicians have been verified by the 2001 medical report of Recovery.com which diagnosed Lulu's condition as unspecified mental retardation with psychoses.

[30] *People v. Bacaling, supra* note 28.

[31] Section 2, Rule 92, RULES OF COURT, provides:

Section 2. *Meaning of word* "*incompetent.*" — Under this rule, the word "incompetent" includes persons suffering the penalty of civil interdiction

mind or other similar causes are incapable of taking care of themselves and their property without outside aid, are considered as incompetents who may properly be placed under guardianship. The RTC and the CA both found that Lulu was incapable of taking care of herself and her properties without outside aid due to her ailments and weak mind. Thus, since determining whether or not Lulu is in fact an incompetent would require a reexamination of the evidence presented in the courts *a quo,* it undoubtedly involves questions of fact.

As a general rule, this Court only resolves questions of law in a petition for review. We only take cognizance of questions of fact in exceptional circumstances, none of which is present in this case.[32] We thus adopt the factual findings of the RTC as affirmed by the CA.

Similarly, we see no compelling reason to reverse the trial and appellate courts' finding as to the propriety of respondent's appointment as the judicial guardian of Lulu.[33] We therefore affirm her appointment as such. Consequently, respondent is tasked to care for and take full custody of Lulu, and manage her estate as well.[34]

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or who are hospitalized lepers, prodigals, deaf and dumb who are unable to read and write, those who are of unsound mind, even though they have lucid intervals, and persons not being of unsound mind, but by reason of age, disease, weak mind, and other similar causes, cannot, without outside aid, take care of themselves and manage their property, becoming thereby an easy prey for deceit and exploitation.

[32] *Goyena v. Ledesma-Gustilo,* 443 Phil. 150, 158-160 (2003). (citations omitted)

[33] *See* RULES OF COURT, Rule 93 for the qualifications of a judicial guardian.

[34] Section 1, Rule 96, RULES OF COURT, provides:

Section 1. *To what guardianship shall extend.* — **A guardian appointed shall have care and custody of the person of his ward, and the management of his estate, or the management of his estate only, as the case may be**. The guardian of the estate of a nonresident shall have the management of all the estate of the ward within the Philippines, and no court other than that in which such guardian was appointed shall have jurisdiction over the guardianship. (emphasis supplied)

Inasmuch as respondent's appointment as the judicial guardian of Lulu was proper, the issuance of a writ of *habeas corpus* in her favor was also in order.

A writ of *habeas corpus* extends to all cases of illegal confinement or detention or by which the rightful custody of person is withheld from the one entitled thereto.[35] Respondent, as the judicial guardian of Lulu, was duty-bound to care for and protect her ward. For her to perform her obligation, respondent must have custody of Lulu. Thus, she was entitled to a writ of *habeas corpus* after she was unduly deprived of the custody of her ward.[36]

WHEREFORE, the petitions are hereby *DENIED*.

Petitioners are furthermore ordered to render to respondent, Lulu's legal guardian, an accurate and faithful accounting of all the properties and funds they unlawfully appropriated for themselves from the estate of Maria Lourdes San Juan Hernandez, within thirty (30) days from receipt of this decision. If warranted, the proper complaints should also be filed against them for any criminal liability in connection with the dissipation of Maria Lourdes San Juan Hernandez's estate and her unlawful abduction from the custody of her legal guardian.

Treble costs against petitioners.

SO ORDERED.

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

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[35] *Ilusorio v. Bildner,* 387 Phil. 915, 922 (2000).

[36] *See Tijing v. Court of Appeals,* 406 Phil. 449 (2001).

EN BANC

[G.R. No. 177508. August 7, 2009]

BARANGAY ASSOCIATION FOR NATIONAL ADVANCEMENT AND TRANSPARENCY (BANAT) PARTY-LIST, represented by SALVADOR B. BRITANICO, *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONALITY OF STATUTES; EVERY STATUTE IS PRESUMED TO BE CONSTITUTIONAL; PETITIONER FAILED TO JUSTIFY WHY RA 9369 AND THE ASSAILED PROVISIONS SHOULD BE DECLARED UNCONSTITUTIONAL.—** It is settled that every statute is presumed to be constitutional. The presumption is that the legislature intended to enact a valid, sensible and just law. Those who petition the Court to declare a law unconstitutional must show that there is a clear and unequivocal breach of the Constitution, not merely a doubtful, speculative or argumentative one; otherwise, the petition must fail. In this case, petitioner failed to justify why RA 9369 and the assailed provisions should be declared unconstitutional.

2. **ID.; ID.; CONSTITUTIONAL REQUIREMENT THAT "EVERY BILL PASSED BY CONGRESS SHALL EMBRACE ONLY ONE SUBJECT WHICH SHALL BE EXPRESSED IN THE TITLE THEREOF"; ALWAYS GIVEN A PRACTICAL CONSIDERATION RATHER THAN A TECHNICAL CONSTRUCTION AND IS SATISFIED IF THE TITLE IS COMPREHENSIVE ENOUGH TO INCLUDE SUBJECTS RELATED TO THE GENERAL PURPOSE WHICH THE STATUTE SEEKS TO ACHIEVE.—** The constitutional requirement that "every bill passed by the Congress shall embrace only one subject which shall be expressed in the title thereof" has always been given a practical rather than a technical construction. The requirement is satisfied if the title is comprehensive enough to include subjects related to the general purpose which the statute seeks to achieve. The title of a law does not have to be an index of its contents

and will suffice if the matters embodied in the text are relevant to each other and may be inferred from the title.

3. **ID.; ID.; ASSAILED PROVISIONS ARE GERMANE TO THE SUBJECT MATTER OF R.A. 9369 WHICH IS TO AMEND RA 7166 AND BP 881; A TITLE WHICH DECLARES A STATUTE TO BE AN ACT TO AMEND A SPECIFIED CODE IS SUFFICIENT AND THE PRECISE NATURE OF THE AMENDATORY ACT NEED NOT BE FURTHER STATED.—** A title which declares a statute to be an act to amend a specified code is sufficient and the precise nature of the amendatory act need not be further stated. RA 9369 is an amendatory act entitled "An Act Amending Republic Act No. 8436, Entitled 'An Act Authorizing the Commission on Elections to Use an Automated Election System in the May 11, 1998 National or Local Elections and in Subsequent National and Local Electoral Exercises, to Encourage Transparency, Credibility, Fairness and Accuracy of Elections, Amending for the Purpose Batas Pambansa Blg. 881, as Amended, Republic Act No. 7166 and Other Related Election Laws, Providing Funds Therefor and For Other Purposes.'" Clearly, the subject matter of RA 9369 covers the amendments to RA 8436, Batas Pambansa Blg. 881 (BP 881), Republic Act No. 7166 (RA 7166), and other related election laws to achieve its purpose of promoting transparency, credibility, fairness, and accuracy in the elections. The provisions of RA 9369 assailed by petitioner deal with amendments to specific provisions of RA 7166 and BP 881, specifically: (1) Sections 34, 37 and 38 amend Sections 26, 30 and 15 of RA 7166, respectively; and (2) Section 43 of RA 9369 amends Section 265 of BP 881. Therefore, the assailed provisions are germane to the subject matter of RA 9369 which is to amend RA 7166 and BP 881, among others.

4. **ID.; ID.; CONGRESS AND THE COMMISSION ON ELECTIONS *EN BANC* DO NOT ENCROACH UPON THE JURISDICTION OF THE PRESIDENTIAL ELECTORAL TRIBUNAL AND THE SENATE ELECTORAL TRIBUNAL; NO CONFLICT OF JURISDICTION SINCE THE POWERS OF CONGRESS AND THE COMMISSION ON ELECTIONS *EN BANC*, ON ONE HAND, AND THE PRESIDENTIAL ELECTORAL TRIBUNAL AND SENATE ELECTORAL, ON THE OTHER, ARE EXERCISED ON**

DIFFERENT OCCASIONS AND FOR DIFFERENT PURPOSES.— Congress and the COMELEC *en banc* do not encroach upon the jurisdiction of the PET and the SET. There is no conflict of jurisdiction since the powers of Congress and the COMELEC *en banc*, on one hand, and the PET and the SET, on the other, are exercised on different occasions and for different purposes. The PET is the sole judge of all contests relating to the election, returns and qualifications of the President or Vice President. The SET is the sole judge of all contests relating to the election, returns, and qualifications of members of the Senate. The jurisdiction of the PET and the SET can only be invoked once the winning presidential, vice presidential or senatorial candidates have been proclaimed. On the other hand, under Section 37, Congress and the COMELEC *en banc* shall determine only the authenticity and due execution of the certificates of canvass. Congress and the COMELEC *en banc* shall exercise this power before the proclamation of the winning presidential, vice presidential, and senatorial candidates.

5. **ID.; ID.; THE CONSTITUTION DID NOT GIVE THE COMMISSION ON ELECTIONS THE "EXCLUSIVE POWER" TO INVESTIGATE AND PROSECUTE CASES OF VIOLATIONS OF ELECTION LAWS; THE PHRASE "WHERE APPROPRIATE" IN SECTION 2 (6), ARTICLE IX-C OF THE CONSTITUTION LEAVES TO THE LEGISLATURE THE POWER TO DETERMINE THE KIND OF ELECTION OFFENSES THAT THE COMMISSION SHALL PROSECUTE EXCLUSIVELY OR CONCURRENTLY WITH OTHER PROSECUTING ARMS OF THE GOVERNMENT.—** We do not agree with petitioner and the COMELEC that the Constitution gave the COMELEC the "exclusive power" to investigate and prosecute cases of violations of election laws. Section 2(6), Article IX-C of the Constitution vests in the COMELEC the power to "investigate and, **where appropriate**, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices." This was an important innovation introduced by the Constitution because this provision was not in the 1935 or 1973 Constitutions. The phrase "[w]here appropriate" leaves to the legislature the power to determine the kind of election offenses that the COMELEC shall prosecute exclusively or concurrently with other prosecuting arms of the government. The grant of the "exclusive power" to the COMELEC

can be found in Section 265 of BP 881, which provides: Sec. 265. *Prosecution*. — The Commission shall, through its duly authorized legal officers, have the exclusive power to conduct preliminary investigation of all election offenses punishable under this Code, and to prosecute the same. The Commission may avail of the assistance of other prosecuting arms of the government: Provided, however, That in the event that the Commission fails to act on any complaint within four months from his filing, the complainant may file the complaint with the office of the fiscal or with the Ministry of Justice for proper investigation and prosecution, if warranted. This was also an innovation introduced by BP 881. The history of election laws shows that prior to BP 881, no such "exclusive power" was ever bestowed on the COMELEC.

6. **ID.; ID.; IF THE INTENTION OF THE FRAMERS OF THE CONSTITUTION WERE TO GIVE THE COMMISSION ON ELECTIONS THE "EXCLUSIVE POWER" TO INVESTIGATE AND PROSECUTE ELECTION OFFENSES, THE FRAMERS WOULD HAVE EXPRESSLY SO STATED IN THE CONSTITUTION.—** We also note that while Section 265 of BP 881 vests in the COMELEC the "exclusive power" to conduct preliminary investigations and prosecute election offenses, it likewise authorizes the COMELEC to avail itself of the assistance of other prosecuting arms of the government. In the 1993 COMELEC Rules of Procedure, the authority of the COMELEC was subsequently qualified and explained. The 1993 COMELEC Rules of Procedure provides: Rule 34 — Prosecution of Election Offenses Sec. 1. *Authority of the Commission to Prosecute Election Offenses.* — The Commission shall have the exclusive power to conduct preliminary investigation of all election offenses punishable under the election laws and to prosecute the same, **except as may otherwise be provided by law**. It is clear that the grant of the "exclusive power" to investigate and prosecute election offenses to the COMELEC was not by virtue of the Constitution but by BP 881, a legislative enactment. If the intention of the framers of the Constitution were to give the COMELEC the "exclusive power" to investigate and prosecute election offenses, the framers would have expressly so stated in the Constitution. They did not. In *People v. Basilla*, we acknowledged that without the assistance of provincial and city fiscals and their assistants and staff members, and of the state prosecutors of the Department

of Justice, the prompt and fair investigation and prosecution of election offenses committed before or in the course of nationwide elections would simply not be possible. In *COMELEC v. Español*, we also stated that enfeebled by lack of funds and the magnitude of its workload, the COMELEC did not have a sufficient number of legal officers to conduct such investigation and to prosecute such cases. The prompt investigation, prosecution, and disposition of election offenses constitute an indispensable part of the task of securing free, orderly, honest, peaceful, and credible elections. Thus, given the plenary power of the legislature to amend or repeal laws, if Congress passes a law amending Section 265 of BP 881, such law does not violate the Constitution.

7. **ID.; ID.; NO VIOLATION OF THE NON-IMPAIRMENT CLAUSE; THERE IS NO EXISTING CONTRACT AND, THEREFORE, NO ENFORCEABLE RIGHT OR DEMANDABLE OBLIGATION THAT WILL BE IMPAIRED.—** There is no violation of the non-impairment clause. First, the non-impairment clause is limited in application to laws that derogate from prior acts or contracts by enlarging, abridging or in any manner changing the intention of the parties. There is impairment if a subsequent law changes the terms of a contract between the parties, imposes new conditions, dispenses with those agreed upon or withdraws remedies for the enforcement of the rights of the parties. As observed by the OSG, there is no existing contract yet and, therefore, no enforceable right or demandable obligation will be impaired. RA 9369 was enacted more than three months prior to the 14 May 2007 elections. Hence, when the dominant majority and minority parties hired their respective poll watchers for the 14 May 2007 elections, they were deemed to have incorporated in their contracts all the provisions of RA 9369.

8. **ID.; ID.; POLICE POWER IS SUPERIOR TO THE NON-IMPAIRMENT CLAUSE; IMPORTANT ROLE PLAYED BY POLL WATCHERS IN THE ELECTIONS, CONSIDERED.—** It is settled that police power is superior to the non-impairment clause. The constitutional guaranty of non-impairment of contracts is limited by the exercise of the police power of the State, in the interest of public health, safety, morals, and general welfare of the community. Section 8 of COMELEC Resolution No. 1405 specifies the rights and duties of poll watchers: The watchers shall have the right to stay in the space reserved for them inside

the polling place. They shall have the right to witness and inform themselves of the proceedings of the board; to take notes of what they may see or hear, to take photographs of the proceedings and incidents, if any, during the counting of votes, as well as the election returns, tally board and ballot boxes; to file a protest against any irregularity or violation of law which they believe may have been committed by the board or by any of its members or by any person; to obtain from the board a certificate as to the filing of such protest and/or of the resolution thereon; to read the ballots after they shall have been read by the chairman, as well as the election returns after they shall have been completed and signed by the members of the board without touching them, but they shall not speak to any member of the board, or to any voter, or among themselves, in such a manner as would disturb the proceedings of the board; and to be furnished, upon request, with a certificate of votes for the candidates, duly signed and thumbmarked by the chairman and all the members of the board of election inspectors. Additionally, the poll watchers of the dominant majority and minority parties in a precinct shall, if available, affix their signatures and thumbmarks on the election returns for that precinct. The dominant majority and minority parties shall also be given a copy of the certificates of canvass and election returns through their respective poll watchers. Clearly, poll watchers play an important role in the elections.

9. **ID.; ID.; ASSUMING THAT THERE WERE EXISTING CONTRACTS, SECTION 34 WOULD STILL BE CONSTITUTIONAL BECAUSE THE LAW WAS ENACTED IN THE EXERCISE OF THE POLICE POWER OF THE STATE.—** While the contracting parties may establish such stipulations, clauses, terms, and conditions as they may deem convenient, such stipulations should not be contrary to law, morals, good customs, public order, or public policy. In *Beltran v. Secretary of Health*, we said: Furthermore, **the freedom to contract is not absolute**; all contracts and all rights are subject to the police power of the State and not only may regulations which affect them be established by the State, but all such regulations must be subject to change from time to time, as the general well-being of the community may require, or as the circumstances may change, or as experience may demonstrate the necessity. Therefore, assuming there were existing contracts, Section 34 would still be constitutional because the law was enacted in the exercise of the police power of the State to promote

the general welfare of the people. We agree with the COMELEC that the role of poll watchers is invested with public interest. In fact, even petitioner concedes that poll watchers not only guard the votes of their respective candidates or political parties but also ensure that all the votes are properly counted. Ultimately, poll watchers aid in fair and honest elections. Poll watchers help ensure that the elections are transparent, credible, fair, and accurate. The regulation of the per diem of the poll watchers of the dominant majority and minority parties promotes the general welfare of the community and is a valid exercise of police power.

APPEARANCES OF COUNSEL

The Solicitor General for public respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for prohibition[1] with a prayer for the issuance of a temporary restraining order or a writ of preliminary injunction[2] filed by petitioner Barangay Association for National Advancement and Transparency (BANAT) Party List (petitioner) assailing the constitutionality of Republic Act No. 9369 (RA 9369)[3] and enjoining respondent Commission on Elections (COMELEC) from implementing the statute.

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

[2] In petitioner's Consolidated Reply dated 24 September 2007, petitioner withdrew the request for a writ of preliminary injunction since the 14 May 2007 elections had already been concluded.

[3] An Act Amending Republic Act No. 8436, Entitled "An Act Authorizing The Commission On Elections To Use An Automated Election System In The May 11, 1998 National Or Local Elections And In Subsequent National And Local Electoral Exercises, To Encourage Transparency, Credibility, Fairness And Accuracy Of Elections, Amending For The Purpose Batas Pambansa Blg. 881, As Amended, Republic Act No. 7166 And Other Related

RA 9369 is a consolidation of Senate Bill No. 2231 and House Bill No. 5352 passed by the Senate on 7 December 2006 and the House of Representatives on 19 December 2006. On 23 January 2007, less than four months before the 14 May 2007 local elections, the President signed RA 9369. Two newspapers of general circulation, Malaya and Business Mirror, published RA 9369 on 26 January 2007. RA 9369 thus took effect on 10 February 2007.

On 7 May 2007, petitioner, a duly accredited multi-sectoral organization, filed this petition for prohibition alleging that RA 9369 violated Section 26(1), Article VI of the Constitution.[4] Petitioner also assails the constitutionality of Sections 34, 37, 38, and 43 of RA 9369. According to petitioner, these provisions are of questionable application and doubtful validity for failing to comply with the provisions of the Constitution.

The COMELEC and the Office of the Solicitor General (OSG) filed their respective Comments. At the outset, both maintain that RA 9369 enjoys the presumption of constitutionality, save for the prayer of the COMELEC to declare Section 43 as unconstitutional.

The Assailed Provisions of RA 9369

Petitioner assails the following provisions of RA 9369:

1. Section 34 which provides:

> SEC. 34. Sec. 26 of Republic Act No. 7166 is hereby amended to read as follows:
>
> "SEC. 26. *Official Watchers*. — Every registered political party or coalition of political parties, and every candidate shall each be entitled to one watcher in every polling place and canvassing center: *Provided* That, candidates for the Sangguniang Panlalawigan,

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Election Laws, Providing Funds Therefor And For Other Purposes." Approved on 23 January 2007.

[4] Section 26(1), Article VI of the Constitution provides:

Sec. 26. (1) Every bill passed by the Congress shall embrace only one subject which shall be expressed in the title thereof.

Sangguniang Panlunsod, or Sangguniang Bayan belonging to the same slate or ticket shall collectively be entitled to only one watcher.

"The dominant majority party and dominant minority party, which the Commission shall determine in accordance with law, shall each be entitled to one official watcher who shall be paid a fixed per *diem* of four hundred pesos (400.00).

"There shall also recognized six principal watchers, representing the six accredited major political parties excluding the dominant majority and minority parties, who shall be designated by the Commission upon nomination of the said parties. These political parties shall be determined by the Commission upon notice and hearing on the basis of the following circumstances:

"(a) The established record of the said parties, coalition of groups that now composed them, taking into account, among other things, their showing in past election;

"(b) The number of incumbent elective officials belonging to them ninety (90) days before the date of election;

"c) Their identifiable political organizations and strengths as evidenced by their organized/chapters;

"(d) The ability to fill a complete slate of candidates from the municipal level to the position of President; and

"(e) Other analogous circumstances that may determine their relative organizations and strengths."

2. Section 37 which provides:

SEC. 37. Section 30 of Republic Act No. 7166 is hereby amended to read as follows:

"SEC. 30. *Congress as the National Board of Canvassers for the Election of President and Vice President: The Commission en banc as the National Board of Canvassers for the election of senators: Determination of Authenticity and Due Execution of Certificates of Canvass*. – Congress and the Commission *en banc* shall determine the authenticity and due execution of the certificate of canvass for president and vice president and senators, respectively, as accomplished and transmitted to it by the local boards of canvassers, on a showing that: (1) each certificate of canvass was executed, signed and thumbmarked by the chairman and members

of the board of canvassers and transmitted or caused to be transmitted to Congress by them; (2) each certificate of canvass contains the names of all of the candidates for president and vice president or senator, as the case may be, and their corresponding votes in words and their corresponding votes in words and in figures; (3) there exists no discrepancy in other authentic copies of the certificates of canvass or any of its supporting documents such as statement of votes by city/municipality/by precinct or discrepancy in the votes of any candidate in words and figures in the certificate; and (4) there exists no discrepancy in the votes of any candidate in words and figures in the certificates of canvass against the aggregate number of votes appearing in the election returns of precincts covered by the certificate of canvass: *Provided*, That certified print copies of election returns or certificates of canvass may be used for the purpose of verifying the existence of the discrepancy.

"When the certificate of canvass, duly certified by the board of canvassers of each province, city of district, appears to be incomplete, the Senate President or the Chairman of the Commission, as the case may be, shall require the board of canvassers concerned to transmit by personal delivery, the election returns form polling places that were not included in the certificate of canvass and supporting statements. Said election returns shall be submitted by personal delivery within two (2) days from receipt of notice.

"When it appears that any certificate of canvass or supporting statement of votes by city/municipality or by precinct bears erasures or alteration which may cast doubt as to the veracity of the number of votes stated herein and may affect the result of the election, upon requested of the presidential, vice presidential or senatorial candidate concerned or his party, Congress or the Commission *en banc*, as the case may be shall, for the sole purpose of verifying the actual number of votes cast for president, vice president or senator, count the votes as they appear in the copies of the election returns submitted to it.

"In case of any discrepancy, incompleteness, erasure or alteration as mentioned above, the procedure on pre-proclamation controversies shall be adopted and applied as provided in Section 17, 18, 19 and 20.

"Any person who present in evidence a simulated copy of an election return, certificate of canvass or statement of votes, or a printed copy of an election return, certificate of canvass or statement

of votes bearing a simulated certification or a simulated image, shall be guilty of an election offense shall be penalized in accordance with Batas Pambansa Blg. 881."

3. Section 38 which provides:

SEC. 38. Section 15 of Republic Act No. 7166 is hereby amended to read as follows:

"SEC. 15. *Pre-proclamation Cases in Elections for President, Vice President, Senator, and Member of the House of Representatives*. — For purposes of the elections for president, vice president, senator, and member of the House of Representatives, no pre-proclamation cases shall be allowed on matters relating to the preparation, transmission, receipt, custody and appreciation of election returns or the certificates of canvass, as the case may be, except as provided for in Section 30 hereof. However, this does not preclude the authority of the appropriate canvassing body *motu proprio* or upon written complaint of an interested person to correct manifest errors in the certificate of canvass or election returns before it.

"Questions affecting the composition or proceedings of the board of canvassers may be initiated in the board or directly with the Commission in accordance with Section 19 hereof.

"Any objection on the election returns before the city or municipal board of canvassers, or on the municipal certificates of canvass before the provincial board of canvassers or district board of canvassers in Metro Manila Area, shall be specifically noticed in the minutes of the respective proceedings."

4. Section 43 which provides:

SEC. 43. Section 265 of Batas Pambansa Blg. 881 is hereby amended to read as follows:

"SEC. 265. *Prosecution*. – The Commission shall, through its duly authorized legal officers, have the power, concurrent with the other prosecuting arms of the government, to conduct preliminary investigation of all election offenses punishable under this Code, and to prosecute the same."

The Issues

Petitioner raises the following issues:

1. Whether RA 9369 violates Section 26(1), Article VI of the Constitution;
2. Whether Sections 37 and 38 violate Section 17, Article VI[5] and Paragraph 7, Section 4, Article VII[6] of the Constitution;
3. Whether Section 43 violates Section 2(6), Article IX-C of the Constitution;[7] and
4. Whether Section 34 violates Section 10, Article III of the Constitution.[8]

The Court's Ruling

The petition has no merit.

It is settled that every statute is presumed to be constitutional.[9] The presumption is that the legislature intended to enact a valid,

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[5] Section 17, Article VI of the Constitution provides:

Section 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. x x x

[6] Paragraph 7, Section 4, Article VII of the Constitution provides:

Section 4. x x x The Supreme Court, sitting *en banc*, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for the purpose. x x x

[7] Section 2(6) of the 1987 Constitution provides:

Section 2. The Commission on Elections shall exercise the following powers and functions: x x x

(6) File, upon a verified complaint, or on its own initiative, petitions in court for inclusion or exclusion of voters; investigate and, where appropriate, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices.

[8] Section 10, Article III of the Constitution provides:

Section 10. No law impairing the obligation of contracts shall be passed.

[9] *Lacson v. Executive Secretary,* 361 Phil. 251 (1999); *Alvarez v. Guingona, Jr.,* 322 Phil. 774 (1996); *Basco v. Philippine Amusements and*

sensible and just law. Those who petition the Court to declare a law unconstitutional must show that there is a clear and unequivocal breach of the Constitution, not merely a doubtful, speculative or argumentative one; otherwise, the petition must fail.[10]

In this case, petitioner failed to justify why RA 9369 and the assailed provisions should be declared unconstitutional.

RA 9369 does not violate Section 26(1), Article VI of the Constitution

Petitioner alleges that the title of RA 9369 is misleading because it speaks of poll automation but contains substantial provisions dealing with the manual canvassing of election returns. Petitioner also alleges that Sections 34, 37, 38, and 43 are neither embraced in the title nor germane to the subject matter of RA 9369.

Both the COMELEC and the OSG maintain that the title of RA 9369 is broad enough to encompass topics which deal not only with the automation process but with everything related to its purpose encouraging a transparent, credible, fair, and accurate elections.

The constitutional requirement that "every bill passed by the Congress shall embrace only one subject which shall be expressed in the title thereof" has always been given a practical rather than a technical construction.[11] The requirement is satisfied if the title is comprehensive enough to include subjects related to the general purpose which the statute seeks to achieve.[12] The title of a law does not have to be an index of its contents

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Gaming Corp., 274 Phil. 323 (1991); *Abbas v. COMELEC,* G.R. No. 89651, 10 November 1989, 179 SCRA 287; *Peralta v. COMELEC,* 172 Phil. 31 (1978); *Salas v. Jarencio,* 150-B Phil. 670 (1972); *Yu Cong Eng v. Trinidad,* 47 Phil. 385 (1925).

[10] *Arceta v. Mangrobang,* 476 Phil. 106 (2004); *Lacson v. Executive Secretary, supra.*

[11] *Chiongbian v. Orbos*, 315 Phil. 251 (1995).

[12] *Tio v. Videogram Regulatory Board*, 235 Phil. 198 (1987).

and will suffice if the matters embodied in the text are relevant to each other and may be inferred from the title.[13] Moreover, a title which declares a statute to be an act to amend a specified code is sufficient and the precise nature of the amendatory act need not be further stated.[14]

RA 9369 is an amendatory act entitled "An Act Amending Republic Act No. 8436, Entitled 'An Act Authorizing the Commission on Elections to Use an Automated Election System in the May 11, 1998 National or Local Elections and in Subsequent National and Local Electoral Exercises, to Encourage Transparency, Credibility, Fairness and Accuracy of Elections, Amending for the Purpose Batas Pambansa Blg. 881, as Amended, Republic Act No. 7166 and Other Related Election Laws, Providing Funds Therefor and For Other Purposes.'" Clearly, the subject matter of RA 9369 covers the amendments to RA 8436, Batas Pambansa Blg. 881 (BP 881),[15] Republic Act No. 7166 (RA 7166),[16] and other related election laws to achieve its purpose of promoting transparency, credibility, fairness, and accuracy in the elections. The provisions of RA 9369 assailed by petitioner deal with amendments to specific provisions of RA 7166 and BP 881, specifically: (1) Sections 34, 37 and 38 amend Sections 26, 30 and 15 of RA 7166, respectively; and (2) Section 43 of RA 9369 amends Section 265 of BP 881. Therefore, the assailed provisions are germane to the subject matter of RA 9369 which is to amend RA 7166 and BP 881, among others.

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[13] *Association of Small Landowners in the Phils., Inc. v. Secretary of Agrarian Reform*, G.R. No. 78742, 14 July 1989, 175 SCRA 343.

[14] *Manila Trading & Supply Co. v. Reyes*, 62 Phil. 461 (1935).

[15] Entitled "Omnibus Election Code Of The Philippines." Approved on 3 December 1985.

[16] Entitled "An Act Providing For Synchronized National and Local Elections And For Electoral Reforms, Authorizing Appropriations Therefor And For Other Purposes." Approved on 26 November 1991.

Sections 37 and 38 do not violate Section 17, Article VI and Paragraph 7, Section 4, Article VII of the Constitution

Petitioner argues that Sections 37 and 38 violate the Constitution by impairing the powers of the Presidential Electoral Tribunal (PET) and the Senate Electoral Tribunal (SET). According to petitioner, under the amended provisions, Congress as the National Board of Canvassers for the election of President and Vice President (Congress), and the COMELEC *en banc* as the National Board of Canvassers (COMELEC *en banc*), for the election of Senators may now entertain pre-proclamation cases in the election of the President, Vice President, and Senators. Petitioner concludes that in entertaining pre-proclamation cases, Congress and the COMELEC *en banc* undermine the independence and encroach upon the jurisdiction of the PET and the SET.

The COMELEC maintains that the amendments introduced by Section 37 pertain only to the adoption and application of the procedures on pre-proclamation controversies in case of any discrepancy, incompleteness, erasure or alteration in the certificates of canvass. The COMELEC adds that Section 37 does not provide that Congress and the COMELEC *en banc* may now entertain pre-proclamation cases for national elective posts.

The OSG argues that the Constitution does not prohibit pre-proclamation cases involving national elective posts. According to the OSG, only Section 15 of RA 7166[17] expressly disallows pre-proclamation cases involving national elective posts but this provision was subsequently amended by Section 38 of RA 9369.

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[17] Section 15 of RA 7166 provides:

SEC. 15. *Pre-proclamation Cases Not Allowed in Elections for President, Vice President, Senator, and Member of the House of Representatives*. — For purposes of the election for President, Vice President, Senator and Member of the House of Representatives, no pre-proclamation cases shall be allowed on matters relating to the preparation, transmission, receipt, custody and appreciation of the election returns or the certificates

In *Pimentel III v. COMELEC*,[18] we already discussed the implications of the amendments introduced by Sections 37 and 38 to Sections 15 and 30[19] of RA 7166, respectively and we declared:

Indeed, this Court recognizes that by virtue of the amendments introduced by Republic Act No. 9369 to Sections 15 and 30 of Republic

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of canvass, as the case may be. However, this does not preclude the authority of the appropriate canvassing body *motu proprio* or upon written complaint of an interested person to correct manifest errors in the certificate of canvass or election returns before it.

Questions affecting the composition or proceedings of the board of canvassers may be initiated in the board or directly with the Commission in accordance with Section 19 hereof.

Any objection on the election returns before the city or municipal board of canvassers, or on the municipal certificates of canvass before the provincial board of canvassers or district board of canvassers in Metro Manila Area, shall be specifically noticed in the minutes of their respective proceedings.

[18] G.R. No. 178413, 13 March 2008, 548 SCRA 169.

[19] Section 30 of RA 7166 provides:

SEC. 30. *Congress as the National Board of Canvassers for the Election of President and Vice President; Determination of Authenticity and Due Execution of Certificates of Canvass*. — Congress shall determine the authenticity and due execution of the certificates of canvass for President and Vice President as accomplished and transmitted to it by the local board of canvassers, on a showing that: (1) each certificate of canvass was executed, signed and thumbmarked by the chairman and members of the board of canvassers and transmitted or caused to be transmitted to Congress by them; (2) each certificate of canvass contains the name of all of the candidates for President and Vice President and their corresponding votes in words and in figures; and (3) there exists no discrepancies in other authentic copies of the certificate of canvass or discrepancy in the votes of any candidate in words and figures in the same certificate.

When the certificate of canvass, duly certified by the board of canvassers of each province, city or district, appears to be incomplete, the Senate President shall require the board of canvassers concerned to transmit by personal delivery, the election returns from polling places that were not included in the certificate of canvass and supporting statements. Said election returns shall be submitted by personal delivery within two days from receipt of notice.

Act No. 7166, pre-proclamation cases involving the authenticity and due execution of certificates of canvass are now allowed in elections for President, Vice-President, and Senators. The intention of Congress to treat a case falling under Section 30 of Republic Act No. 7166, as amended by Republic Act No. 9369, as a pre-proclamation case is apparent in the fourth paragraph of the said provision which adopts and applies to such a case the same procedure provided under Sections 17, 18, 19 and 20 of Republic Act No. 7166 on pre-proclamation controversies.

In sum, in [the] elections for President, Vice-President, Senators and Members of the House of Representatives, the general rule is still that pre-proclamation cases on matters relating to the preparation, transmission, receipt, custody and appreciation of election returns or certificates of canvass are still prohibited. As with other general rules, there are recognized exceptions to the prohibition, namely: (1) correction of manifest errors; (2) questions affecting the composition or proceeding of the board of canvassers; and (3) determination of the authenticity and due execution of certificates of canvass as provided in Section 30 of Republic Act No. 7166, as amended by Republic Act No. 9369.[20]

In the present case, Congress and the COMELEC *en banc* do not encroach upon the jurisdiction of the PET and the SET. There is no conflict of jurisdiction since the powers of Congress and the COMELEC *en banc*, on one hand, and the PET and the SET, on the other, are exercised on different occasions and for different purposes. The PET is the sole judge of all contests relating to the election, returns and qualifications of the President or Vice President. The SET is the sole judge of all contests relating to the election, returns, and qualifications

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When it appears that any certificate of canvass or supporting statement of votes by precinct bears erasures or alterations which may cast doubt as to the veracity of the number of votes stated therein and may affect the result of the election, upon request of the Presidential or Vice Presidential candidate concerned or his party, Congress shall, for the sole purpose of verifying the actual number of votes cast for President and Vice President, count the votes as they appear in the copies of the election returns submitted to it.

[20] *Pimentel III v. COMELEC*, *supra* 189-191.

of members of the Senate. The jurisdiction of the PET and the SET can only be invoked once the winning presidential, vice presidential or senatorial candidates have been proclaimed. On the other hand, under Section 37, Congress and the COMELEC *en banc* shall determine only the authenticity and due execution of the certificates of canvass. Congress and the COMELEC *en banc* shall exercise this power before the proclamation of the winning presidential, vice presidential, and senatorial candidates.

Section 43 does not violate Section 2(6), Article IX-C of the Constitution

Both petitioner and the COMELEC argue that the Constitution vests in the COMELEC the "exclusive power" to investigate and prosecute cases of violations of election laws. Petitioner and the COMELEC allege that Section 43 is unconstitutional because it gives the other prosecuting arms of the government concurrent power with the COMELEC to investigate and prosecute election offenses.[21]

We do not agree with petitioner and the COMELEC that the Constitution gave the COMELEC the "exclusive power" to investigate and prosecute cases of violations of election laws.

Section 2(6), Article IX-C of the Constitution vests in the COMELEC the power to "investigate and, **where appropriate**, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices." This was an important innovation introduced by the Constitution because this provision was not in the 1935[22]

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[21] The OSG did not comment on the issue.

[22] Section 2, Article X of the 1935 Constitution provides:

SECTION 2. The Commission on Elections shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections and shall exercise all other functions which may be conferred upon it by law. It shall decide, save those involving the right to vote, all administrative questions affecting elections, including the determination of the number and location of polling places, and the appointment of election inspectors and of other election officials. All law-enforcement agencies and instrumentalities of the Government, when so required by the Commission,

or 1973[23] Constitutions.[24] The phrase "[w]here appropriate" leaves to the legislature the power to determine the kind of election offenses that the COMELEC shall prosecute exclusively or concurrently with other prosecuting arms of the government.

The grant of the "exclusive power" to the COMELEC can be found in Section 265 of BP 881, which provides:

Sec. 265. *Prosecution*. — The Commission shall, through its duly authorized legal officers, have the exclusive power to conduct

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shall act as its deputies for the purpose of insuring free, orderly, and honest election. The decisions, orders, and rulings of the Commission shall be subject to review by the Supreme Court.

No pardon, parole, or suspension of sentence for the violation of any election law may be granted without the favorable recommendation of the Commission.

[23] Section 2, Article XII-C of the 1973 Constitution provides:

SEC. 2. The Commission on Elections shall have the following powers and functions:

(1) Enforce and administer all laws relative to the conduct of elections.

(2) Be the sole judge of all contests relating to the elections, returns, and qualifications of all Members of the Batasang Pambansa and elective provincial and city officials.

(3) Decide, save those involving the right to vote, administrative questions affecting elections, including the determination of the number and location of polling places, the appointment of election officials and inspectors, and the registration of voters.

(4) Deputize, with the consent or at the instance of the President, law enforcement agencies and instrumentalities of the Government, including the armed forces of the Philippines, for the purpose of ensuring free, orderly, and honest elections.

(5) Register and accredit political parties subject to the provisions of Section eight hereof.

(6) Recommend to the Batasang Pambansa effective measures to minimize election expenses and prohibit all forms of election frauds and malpractices, political opportunism, guest or nuisance candidacy, or other similar acts.

(7) Submit to the President, the Prime Minister, and the Batasang Pambansa a report on the conduct and manner of each election.

(8) Perform such other functions as may be provided by law.

[24] RECORD, CONSTITUTIONAL COMMISSION No. 106 (12 October 1986).

preliminary investigation of all election offenses punishable under this Code, and to prosecute the same. The Commission may avail of the assistance of other prosecuting arms of the government: Provided, however, That in the event that the Commission fails to act on any complaint within four months from his filing, the complainant may file the complaint with the office of the fiscal or with the Ministry of Justice for proper investigation and prosecution, if warranted. (Emphasis supplied)

This was also an innovation introduced by BP 881. The history of election laws shows that prior to BP 881, no such "exclusive power" was ever bestowed on the COMELEC.[25]

We also note that while Section 265 of BP 881 vests in the COMELEC the "exclusive power" to conduct preliminary investigations and prosecute election offenses, it likewise authorizes the COMELEC to avail itself of the assistance of other prosecuting arms of the government. In the 1993 COMELEC Rules of Procedure, the authority of the COMELEC was subsequently qualified and explained.[26] The 1993 COMELEC Rules of Procedure provides:

Rule 34 - Prosecution of Election Offenses

Sec. 1. *Authority of the Commission to Prosecute Election Offenses*. — The Commission shall have the exclusive power to

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[25] Republic Act No. 6388, also known as the Election Code of 1971, provides:

Section 236. *Prosecution of Election Offenses.* — The Commission shall, through its duly authorized legal officers, have the power to investigate and prosecute before the Court of First Instance on preliminary investigation all election offenses. Approved on 2 September 1971.

Presidential Decree No. 1296, also known as the 1978 Election Code, provides:

Section 182. *Prosecution.* The Commission shall, through its duly authorized legal officers, have the power to conduct preliminary investigation of all election offenses punishable under this Code, and to prosecute the same. The Commission may avail of the assistance of other prosecuting arms of the Government. Approved on 7 February 1978.

[26] *Margarejo v. Escoses*, 417 Phil. 506 (2001).

conduct preliminary investigation of all election offenses punishable under the election laws and to prosecute the same, **except as may otherwise be provided by law**. (Emphasis supplied)

It is clear that the grant of the "exclusive power" to investigate and prosecute election offenses to the COMELEC was not by virtue of the Constitution but by BP 881, a legislative enactment. If the intention of the framers of the Constitution were to give the COMELEC the "exclusive power" to investigate and prosecute election offenses, the framers would have expressly so stated in the Constitution. They did not.

In *People v. Basilla*,[27] we acknowledged that without the assistance of provincial and city fiscals and their assistants and staff members, and of the state prosecutors of the Department of Justice, the prompt and fair investigation and prosecution of election offenses committed before or in the course of nationwide elections would simply not be possible.[28] In *COMELEC v. Español*,[29] we also stated that enfeebled by lack of funds and the magnitude of its workload, the COMELEC did not have a sufficient number of legal officers to conduct such investigation and to prosecute such cases.[30] The prompt investigation, prosecution, and disposition of election offenses constitute an indispensable part of the task of securing free, orderly, honest, peaceful, and credible elections.[31] Thus, given the plenary power of the legislature to amend or repeal laws, if Congress passes a law amending Section 265 of BP 881, such law does not violate the Constitution.

Section 34 does not violate Section 10, Article III of the Constitution

Petitioner assails the constitutionality of the provision which fixes the per diem of poll watchers of the dominant majority

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[27] G.R. Nos. 83938-40, 6 November 1989, 179 SCRA 87.

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

[29] 463 Phil. 240 (2003).

[30] *Id.* at 254.

[31] *People v. Basilla*, *supra* note 27.

and dominant minority parties at ₱400 on election day. Petitioner argues that this violates the freedom of the parties to contract and their right to fix the terms and conditions of the contract they see as fair, equitable and just. Petitioner adds that this is a purely private contract using private funds which cannot be regulated by law.

The OSG argues that petitioner erroneously invoked the non-impairment clause because this only applies to previously perfected contracts. In this case, there is no perfected contact and, therefore, no obligation will be impaired.

Both the COMELEC and the OSG argue that the law is a proper exercise of police power and it will prevail over a contract. According to the COMELEC, poll watching is not just an ordinary contract but is an agreement with the solemn duty to ensure the sanctity of votes. The role of poll watchers is vested with public interest which can be regulated by Congress in the exercise of its police power. The OSG further argues that the assurance that the poll watchers will receive fair and equitable compensation promotes the general welfare. The OSG also states that this was a reasonable regulation considering that the dominant majority and minority parties will secure a copy of the election returns and are given the right to assign poll watchers inside the polling precincts.

There is no violation of the non-impairment clause. First, the non-impairment clause is limited in application to laws that derogate from prior acts or contracts by enlarging, abridging or in any manner changing the intention of the parties.[32] There is impairment if a subsequent law changes the terms of a contract between the parties, imposes new conditions, dispenses with those agreed upon or withdraws remedies for the enforcement of the rights of the parties.[33]

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[32] *Serrano v. Gallant Maritime Services, Inc.*, G.R. No. 167614, 24 March 2009.

[33] *Clemons v. Nolting*, 42 Phil. 702 (1922).

As observed by the OSG, there is no existing contract yet and, therefore, no enforceable right or demandable obligation will be impaired. RA 9369 was enacted more than three months prior to the 14 May 2007 elections. Hence, when the dominant majority and minority parties hired their respective poll watchers for the 14 May 2007 elections, they were deemed to have incorporated in their contracts all the provisions of RA 9369.

Second, it is settled that police power is superior to the non-impairment clause.[34] The constitutional guaranty of non-impairment of contracts is limited by the exercise of the police power of the State, in the interest of public health, safety, morals, and general welfare of the community.

Section 8 of COMELEC Resolution No. 1405[35] specifies the rights and duties of poll watchers:

> The watchers shall have the right to stay in the space reserved for them inside the polling place. They shall have the right to witness and inform themselves of the proceedings of the board; to take notes of what they may see or hear, to take photographs of the proceedings and incidents, if any, during the counting of votes, as well as the election returns, tally board and ballot boxes; to file a protest against any irregularity or violation of law which they believe may have been committed by the board or by any of its members or by any person; to obtain from the board a certificate as to the filing of such protest and/or of the resolution thereon; to read the ballots after they shall have been read by the chairman, as well as the election returns after they shall have been completed and signed by the members of the board without touching them, but they shall not speak to any member of the board, or to any voter, or among themselves, in such a manner as would disturb the proceedings of the board; and to be furnished, upon request, with a certificate of votes for the candidates, duly signed and thumbmarked by the chairman and all the members of the board of election inspectors.

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[34] *Philippine National Bank v. Remigio*, G.R. No. 78508, 21 March 1994, 231 SCRA 362; *Anglo-Fil Trading Corporation v. Lazaro*, 209 Phil. 400 (1983); *Ortigas & Co., Ltd. Partnership v. Feati Bank and Trust Co.,* 183 Phil. 176 (1979).

[35] Dated 30 March 1992.

Additionally, the poll watchers of the dominant majority and minority parties in a precinct shall, if available, affix their signatures and thumbmarks on the election returns for that precinct.[36] The dominant majority and minority parties shall also be given a copy of the certificates of canvass[37] and election returns[38] through their respective poll watchers. Clearly, poll watchers play an important role in the elections.

Moreover, while the contracting parties may establish such stipulations, clauses, terms, and conditions as they may deem convenient, such stipulations should not be contrary to law, morals, good customs, public order, or public policy.[39]

In *Beltran v. Secretary of Health*,[40] we said:

> Furthermore, **the freedom to contract is not absolute**; all contracts and all rights are subject to the police power of the State and not only may regulations which affect them be established by the State, but all such regulations must be subject to change from time to time, as the general well-being of the community may require, or as the circumstances may change, or as experience may demonstrate the necessity.[41] (Emphasis supplied)

Therefore, assuming there were existing contracts, Section 34 would still be constitutional because the law was enacted in the exercise of the police power of the State to promote the general welfare of the people. We agree with the COMELEC that the role of poll watchers is invested with public interest. In fact, even petitioner concedes that poll watchers not only

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[36] Section 12 of Republic Act No. 6646 entitled "An Act Introducing Additional Reforms in the Electoral System and For Other Purposes." Approved on 5 January 1988.

[37] Section 21 of RA 9369.

[38] Section 33 of RA 9369.

[39] CIVIL CODE, Article 1306.

[40] G.R. Nos. 133640, 133661 and 139147, 25 November 2005, 476 SCRA 168.

[41] *Id.* at 198.

guard the votes of their respective candidates or political parties but also ensure that all the votes are properly counted. Ultimately, poll watchers aid in fair and honest elections. Poll watchers help ensure that the elections are transparent, credible, fair, and accurate. The regulation of the per diem of the poll watchers of the dominant majority and minority parties promotes the general welfare of the community and is a valid exercise of police power.

WHEREFORE, we *DISMISS* the petition for lack of merit.

SO ORDERED.

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

Quisumbing, J., on official leave.

FIRST DIVISION

[G.R. No. 184337. August 7, 2009]

HEIRS OF FEDERICO C. DELGADO and ANNALISA PESICO, *petitioners, vs.* **LUISITO Q. GONZALEZ and ANTONIO T. BUENAFLOR,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987; REQUIRES THE OFFICE OF THE SOLICITOR GENERAL TO REPRESENT THE GOVERNMENT IN THE SUPREME COURT IN ALL CRIMINAL PROCEEDINGS BEFORE THE COURT.—** Section 35, Chapter 12, Title III, Book IV of the Administrative Code of 1987 states that the **Office of the Solicitor General shall represent the Government** of the Philippines, its agencies

and instrumentalities and **its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers**. Likewise, the Solicitor General shall represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings. The law clearly requires the Office of the Solicitor General to represent the Government in the Supreme Court **in all criminal proceedings** before this Court. As in every case of statutory construction, we begin our analysis by looking at the plain and literal language of the term "criminal proceeding." Criminal proceeding is defined as "a proceeding instituted to determine a person's guilt or innocence or to set a convicted person's punishment." Proceeding is defined as "any procedural means for seeking redress from a tribunal or agency. It is the business conducted by a court or other official body."

2. **ID.; ID.; ID.; TWO (2) ESTABLISHED EXCEPTIONS WHERE A PRIVATE COMPLAINANT OR OFFENDED PARTY IN A CRIMINAL CASE MAY FILE DIRECTLY WITH THE SUPREME COURT.—** We have ruled in a number of cases that only the Solicitor General may bring or defend actions in behalf of the Republic of the Philippines, or represent the People or State in criminal proceedings before the Supreme Court and the Court of Appeals. However, jurisprudence lays down two exceptions where a private complainant or offended party in a criminal case may file a petition directly with this Court. The two exceptions are: (1) when there is denial of due process of law to the prosecution and the State or its agents refuse to act on the case to the prejudice of the State and the private offended party, and (2) when the private offended party questions the civil aspect of a decision of a lower court. The first exception contemplates a situation where the State and the offended party are deprived of due process because the prosecution is remiss in its duty to protect the interest of the State and the offended party. This Court recognizes the right of the offended party to appeal an order of the trial court which denied him and the State of due process of law. In the second exception, it is assumed that a decision on the merits had already been rendered by the lower court and it is the civil aspect of the case which the offended party is appealing. The offended party, who is not satisfied with the outcome of the case, may question the amount of the grant or denial of damages made by the court below even without the participation of the Solicitor General.

3. **ID.; ID.; ID.; THE FIRST EXCEPTION DOES NOT APPLY BECAUSE PETITIONERS DO NOT CLAIM, AND NEITHER IS THERE ANY SHOWING IN THE RECORDS, THAT THE STATE AND THE PETITIONERS HAVE BEEN DENIED DUE PROCESS IN THE PROSECUTION OF THE CRIMINAL CASES.—** Petitioners do not claim that the failure of the Solicitor General to appeal the Court of Appeals' decision before this Court resulted in the denial of due process to the State and the petitioners. Petitioners do not assert that the prosecution and the Solicitor General were remiss in their duty to protect the interest of the State and the offended party. Neither do petitioners claim that the Solicitor General is guilty of blatant error or abuse of discretion in not appealing the Court of Appeals' decision. The Solicitor General did not manifest to adopt petitioners' appeal before this Court. On the contrary, the Solicitor General manifested on 3 December 2008 its refusal to participate in the oral arguments of this case held on 10 December 2008. This Court cannot take cognizance of the petition because there is clearly no denial of due process to the State and the petitioners. In short, the first exception does not apply because petitioners do not claim, and neither is there any showing in the records, that the State and the petitioners have been denied due process in the prosecution of the criminal cases. The Solicitor General, on 19 September 2008, had filed before this Court a Motion for Extension of Time to file a Petition for Review under Rule 45, docketed as G.R. No. 184507. However, the 30-day extension given had lapsed without the filing of the petition. Consequently, this Court, in a Resolution dated 8 December 2008, declared G.R. No. 184507 closed and terminated.

4. **ID.; ID.; ID.; THE SECOND EXCEPTION LIKEWISE DOES NOT APPLY SINCE THERE IS NO DECISION PROMULGATED ON THE MERITS BY THE TRIAL COURT AND THE INFORMATIONS HAD BEEN QUASHED, PETITIONERS HAVE NOTHING TO APPEAL ON THE CIVIL ASPECT THAT IS DEEMED IMPLIEDLY INSTITUTED WITH THE CRIMINAL CASE.—** Petitioners are also not appealing the civil aspect of the criminal case since the lower courts had not yet decided the merits of the case. In *People v. Santiago*, this Court explained that in criminal cases where the offended party is the State, the interest of the private offended party is limited to the civil liability. If a criminal

case is dismissed by the trial court or if there is an acquittal, an appeal from the criminal aspect may be undertaken only by the State through the Solicitor General. Only the Solicitor General may represent the People of the Philippines on appeal. The private complainant or offended party may not appeal the criminal, but only the civil aspect of the case. Here, since there was no decision promulgated on the merits by the lower court and the Informations had been quashed, petitioners have nothing to appeal on the civil aspect that is deemed impliedly instituted with the criminal cases. There is no longer any criminal case on which a civil case can be impliedly instituted. Petitioners' recourse is to file an independent civil action on their own.

5. **ID.; ID.; ID.; THE SOLICITOR GENERAL'S NON-FILING OF A PETITION WITHIN THE REGLEMENTARY PERIOD BEFORE THE COURT RENDERED THE ASSAILED DECISION OF THE COURT OF APPEALS FINAL AND EXECUTORY WITH RESPECT TO THE CRIMINAL ASPECT OF THE CASE.—** We reiterate that it is only the Solicitor General who may bring or defend actions on behalf of the State in all criminal proceedings before the appellate courts. Hence, the Solicitor General's non-filing of a petition within the reglementary period before this Court rendered the assailed decision of the Court of Appeals final and executory with respect to the criminal aspect of the case. The Solicitor General cannot trifle with court proceedings by refusing to file a petition for review only to subsequently, after the lapse of the reglementary period and finality of the Amended Decision, file a comment. In view of our holding that petitioners have no standing to file the present petition, we shall no longer discuss the other issues raised in this petition.

VELASCO, *J.*, *dissenting opinion:*

1. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987; AS A GENERAL RULE, ONLY THE SOLICITOR GENERAL MAY BRING AND DEFEND ACTIONS IN BEHALF OF THE REPUBLIC OF THE PHILIPPINES OR REPRESENT THE STATE IN CRIMINAL ACTIONS BEFORE THE COURT; TWO (2) ESTABLISHED EXCEPTIONS TO THE GENERAL RULE.—** It is conceded that only the Solicitor General may

bring and defend actions in behalf of the Republic of the Philippines or represent the State in criminal actions before this Court. As stated in the *ponencia*, this general rule admits of two exceptions: (1) when there is denial of due process of law to the prosecution and the State or its agents refuse to act on the case to the prejudice of the State and the private offended party; and (2) when the private offended party questions the civil aspect of a decision of the lower court. I submit that the instant petition falls under the first exception wherein there was negation of due process which prejudiced the State and the private offended party when the Office of the Solicitor General (OSG) failed for unexplained reasons to file the petition for the State within the extended period. As an equitable gesture, the OSG could have simply filed a manifestation adopting the instant petition and requesting that petitioners' initiatory pleading before this Court be treated as if filed by said office.

2. **ID.; ID.; ID.; THERE IS DENIAL OF DUE PROCESS TO THE STATE AND THE PRIVATE OFFENDED PARTY IN CASE AT BAR.—**It is submitted that there was denial of due process to the State and the private offended party. It is settled in this jurisdiction that due process means a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial. We held that "[d]ue process contemplates notice and opportunity to be heard before that "[d]ue process contemplates notice and opportunity to be heard before judgment is rendered, affecting one's person or property. **It is designed to secure justice as a living reality; not to sacrifice it by paying undue homage to formality. For substance must prevail over form**." Clearly, the essence of due process is the opportunity to be heard. Moreover, it has been explained in *Santiago v. Alikpala* that due process is "responsiveness to the supremacy of reason" and "obedience to the dictates of justice." Opportunity to be heard must be granted to a party to prevent arbitrariness and avoid unfairness. To satisfy the due process requirement official action must not outrun the bounds of reason and result in sheer oppression. **Due process is thus hostile to any official action marred by lack of reasonableness. It has been identified as freedom from the arbitrariness. It is the embodiment of the sporting idea of fair play**. It exacts fealty to those strivings for justice and judges the act of officialdom of whatever branch in the light of reason

drawn from considerations of fairness that reflect democratic traditions of legal and political thought.

3. **ID.; ID.; ID.; THE FAILURE OF THE OFFICE OF THE SOLICITOR GENERAL TO FILE THE PETITION CERTAINLY PREJUDICED THE STATE AND THE PRIVATE OFFENDED PARTIES TO DUE PROCESS OF LAW.—**When the OSG failed to file the petition in G.R. 184507 to question the August 29, 2008 CA Amended Decision and even declined to adopt the petition of petitioners in G.R. No. 184337, the State and the private offended parties, herein petitioners, were deprived of their opportunity to be heard on the flip-flopping posture of the CA on the issue of probable cause. It was expected that the OSG will pursue the position it has taken before the CA that probable cause exists and should have proceeded to assail the August 29, 2008 CA Amended Decision since it overruled said OSG's postulation. With the inability of OSG to file the petition in question, the State and petitioners were unfairly deprived of their right to have the August 29, 2008 decision reviewed by this Court. Moreover, the OSG's position before the CA was the same ruling made by the then Acting Justice Secretary, who was also the Solicitor General, that indeed probable cause exists to indict respondents. More importantly, in view of the conflicting CA decisions, it would be to the best interests of the State and the parties to have the conflicting decisions reviewed by this Court to settle once and for all the correctness of the ruling on the determination of probable cause against respondents. The failure of OSG to file the petition in G.R. No. 184507 certainly prejudiced the rights of the State and the private offended parties to due process of law. In this light, I find that the petition should have been entertained by this Court to accommodate a judgment on the merits.

4. **ID.; ID.; ID.; INSTANT PETITION SHOULD HAVE BEEN GIVEN DUE COURSE AS THE COURT CAN SUSPEND THE RULES TO PREVENT A MISCARRIAGE OF JUSTICE; IN THE INTEREST OF JUSTICE, THE UNIQUE ANTECEDENTS AND FACTS OF THE CASE JUSTIFY THE GRANT OF DUE COURSE TO THE PETITION.—** Even granting *arguendo* that the factual setting of this petition does not fall under any of the two (2) exceptions adverted to, the instant petition should have been given due course as the

Court can suspend the rules to prevent a miscarriage of justice. The facts reveal that there is an eyewitness to the killing, Annalisa Pesico. Settled jurisprudence is to the effect that positive identification is preferred over alibi and denial. With this in mind, the best course of action to take is to direct the trial court to proceed with the trial and decide the case after full presentation and reception of evidence. What is required in a preliminary investigation is only the finding of probable cause and not the determination of guilt beyond a reasonable doubt. This is the better course of action to take since the case is already pending before the RTC Manila. The CA, in its assailed August 29, 2008 Amended Decision, has veritably ruled on the merits of the criminal case. This is not the proper course of action to take. What was before the CA was solely the issue of probable cause and not an appeal to review the merits of the criminal case which has not yet taken off the ground. In the interest of fairness, I submit that the unique antecedents and facts of the case justify the grant of due course to the instant petition.

5\. **ID.; ID.; ID.; THE ASSAILED COURT OF APPEALS DECISION OF AUGUST 29, 2008 DIRECTLY NULLIFIED THE INFORMATIONS PENDING BEFORE THE MANILA REGIONAL TRIAL COURT, BRANCH 32 WHICH IS A BLATANT BREACH OF THE *CRESPO* RULING, AS FORTIFIED BY *ROBERTS, JR.,* WHICH HAS REMAINED THE ESTABLISHED DOCTRINE FOR MORE THAN 20 YEARS AND HAS NOT SINCE BEEN MODIFIED OR ABANDONED.—** Even if the petition filed by petitioners should be denied, still, the *fallo* of the August 29, 2008 Amended Decision should be corrected. The CA should not have dismissed the informations, but should have simply ruled that no probable cause exists against respondents and then directed the trial prosecutor to move for the dismissal of the criminal cases before the trial court, following *Crespo v. Mogul* and *Roberts, Jr. v. CA.* Be it remembered that CA-G.R. SP No. 101196 was a petition for *certiorari* and prohibition not to assail any order of the Manila RTC, but to nullify the resolutions of the Acting Justice Secretary Devanadera, finding, contrary to the earlier determination of the investigating prosecutor, a probable cause to charge respondents with murder and serious physical injuries, and directing the filing of the necessary informations. The assailed CA Amended Decision of August 29, 2008 directly nullified the informations now pending before the Manila RTC, Branch

32, and was a blatant breach of the *Crespo* ruling, as fortified by *Roberts, Jr.,* which has remained the established doctrine for more than 20 years and has not since been modified or abandoned. The August 29, 2008 CA Amended Decision should be set aside.

APPEARANCES OF COUNSEL

Manalo Puno Jocson and Guerzon Law Offices for petitioners.
Law Firm of Anacleto M. Diaz & Associates, Estelito Mendoza and Hyacinth E. Rafael and *Jose Flaminiano* for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review on *certiorari*[1] assailing the Amended Decision[2] dated 29 August 2008 of the Court of Appeals' Former Special Seventh Division, which reversed the Original Decision[3] dated 18 March 2008 of the Court of Appeals' Seventh Division, in CA-G.R. SP No. 101196.

The Antecedent Facts

On 11 March 2007, the police found the dead body of Federico C. Delgado (Delgado) at his residence in Mayflower Building, 2515 Leon Guinto corner Estrada Streets, Malate, Manila. The police was alerted by Annalisa D. Pesico (Pesico), who allegedly was present at the time of the commission of the crime and was likewise injured in the incident.[4]

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

[2] *Rollo*, pp. 80-102. Penned by Justice Remedios A. Salazar-Fernando, with Justices Rosalinda Asuncion-Vicente and Teresita Dy-Liacco Flores, concurring.

[3] *Id.* at 62-78. Penned by Justice Enrico A. Lanzanas, with Justices Remedios Salazar-Fernando and Rosalinda Asuncion-Vicente, concurring.

[4] *Id.* at 9.

On 1 June 2007, on behalf of Pesico and the heirs of Delgado (petitioners),[5] the Manila Police District (MPD), represented by Alejandro B. Yanquiling Jr., Chief of the Homicide Section, filed a complaint-affidavit[6] with the Office of the City Prosecutor of Manila. The MPD charged respondents Luisito Q. Gonzalez (Gonzalez) and Antonio T. Buenaflor (Buenaflor) with the murder of Delgado and frustrated murder of Pesico. Gonzalez is the stepbrother of the deceased and Buenaflor was a former driver for 15 years of Citadel Corporation, owned by the Delgado family.

Together with the complaint-affidavit, the police presented the following documents:

1. Sworn Statement ("*Sinumpaang Salaysay*") of Pesico dated 11 March 2007;[7]
2. Supplemental Sworn Statement ("*Karagdagang Sinumpaang Salaysay*") of Pesico dated 15 March 2007;[8] and
3. Crime and Progress Reports of Senior Police Officer 2 (SPO2) Virgo Ban Villareal dated 23 March 2007.[9]

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[5] *Id.* at 400. Affidavit of Consent dated 21 March 2007 given by Jose Mari C. Delgado, brother of the deceased, in behalf of his siblings.

[6] *Id.* at 396.

[7] *Id.* at 397. **Pesico stated in her first statement that she was Delgado's friend** and was picked up by Delgado before ten o'clock in the evening of 10 March 2007 at Burgos St. near Makati Ave., Makati City: "x x x *Mga bandang 9:45 ay sinundo ako ni Rico sa may* Burgos St., *sa* Makati Ave. *at sumakay ako sa kanyang kotse papuntang bahay niya sa* Leon Guinto. x x x" (Emphasis supplied)

[8] *Id.* at 398-399. **In her second statement, Pesico called Delgado as her boyfriend**: "x x x *Ako po ang nagbigay ng kaukulang impormasyon para maiguhit ng* cartographer *ang mukha ng lalaki na isa sa pumatay sa aking nobyo na si* Federico Delgado *noong gabi ng ika-10 ng Marso* 2007 *sa gusali ng* May Flower. x x x" (Emphasis supplied)

[9] *Id.* at 401-403.

At petitioners' request, the case was transferred to the Department of Justice (DOJ) for preliminary investigation.[10] On 20 June 2007, the MPD filed a Supplemental Complaint-Affidavit[11] and attached the following additional documents:

1. Scene of the Crime Operation (SOCO) Report dated 11 March 2007;[12]
2. Medical Certificate of Pesico from the Ospital ng Maynila dated 7 June 2007;[13]
3. Cartographic Sketch of one of the suspects dated 13 March 2007, drawn by an artist sketcher of the MPD, as described by Pesico;[14]
4. Photographs of criminals and Delgado's family members, relatives, friends and employees, shown to Pesico, where she recognized Gonzalez and Buenaflor as the ones who mauled her and murdered Delgado;[15]
5. Affidavit of SPO2 Virgo Ban Villareal dated 15 June 2007 attesting to the identification made by Pesico after viewing said photographs;[16]
6. Affidavit of Retired Police Superintendent Leonito Manipol Cantollas, the forensic document examiner who analyzed the questioned handwritten word "FRANCO," the inscription on a wall found at the crime scene;[17]

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[10] *Id.* at 168.

[11] *Id.* at 404-411.

[12] *Id.* at 412-421.

[13] *Id.* at 422.

[14] *Id.* at 423.

[15] *Id.* at 424-443.

[16] *Id.* at 444.

[17] *Id.* at 445-446.

7. Questioned Document Examination Report No. 004-07 of Leonito Manipol Cantollas;[18]

8. Curriculum Vitae of Leonito Manipol Cantollas;[19]

9. Complaint-Affidavit for Robbery filed by Jose Mari C. Delgado, stepbrother of Gonzalez, against Ruby Q. Gonzalez-Meyer, sister of Gonzalez;[20]

10. Letter via electronic mail dated 4 July 2003 written by Ruby Q. Gonzalez-Meyer to her and Gonzalez's mother, Vicky Quirino Gonzalez-Delgado;[21]

11. Newspaper clipping taken from the Philippine Daily Inquirer dated 26 March 2007, where Gonzalez's wife, Kuh Ledesma, talked about him, their relationship and the accusations that her husband was facing;[22]

12. Newspaper clipping taken from the Philippine Daily Inquirer dated 22 March 2007, referring to the family feud between the Delgado and Gonzalez siblings;[23] and

13. Police Blotter dated 16 March 2007 reported by Atty. Augusto M. Perez, Jr., lawyer of Francisco "Franco" Delgado III, regarding a threatening phone call by an unknown caller made on 15 March 2007 at the latter's residence.[24]

Gonzalez and Buenaflor filed their Counter-Affidavits, respectively.[25] Together with his counter-affidavit, Gonzalez

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[18] *Id.* at 447-449.

[19] *Id.* at 450-455.

[20] *Id.* at 456-459.

[21] *Id.* at 460.

[22] *Id.* at 461-462.

[23] *Id.* at 463-465.

[24] *Id.* at 466.

[25] *Id.* at 467-550 and 616-647.

attached relevant documents[26] establishing his confinement at the Neuro-Psychiatric Unit of the Makati Medical Center from 7 March 2007 until 18 March 2007 and the corroborative affidavits of 29 impartial and independent witnesses composed of physicians, nurses and personnel of said hospital.[27] On the other hand, Buenaflor presented the affidavit of his employer, who attested that Buenaflor was on duty and driving for him at the time of Delgado's death.[28]

Acting City Prosecutor of Manila Cielitolindo A. Luyun (Investigating Prosecutor) conducted the preliminary investigation and evaluated the evidence submitted by the MPD, as well as respondents' Counter-Affidavits, corroborating affidavits of 29 witnesses, and supporting documentary evidence. In a Resolution dated 10 September 2007, the Investigating Prosecutor dismissed the complaint for lack of probable cause that respondents committed the crimes of murder and frustrated murder.[29]

On 18 September 2007, petitioners filed a Petition for Review with the Secretary of Justice. On 15 October 2007, then Acting Secretary of Justice Agnes VST Devanadera (Acting Secretary Devanadera) reversed the finding of the Investigating Prosecutor and directed the filing of separate informations for murder and less serious physical injuries against respondents.[30]

On 18 October 2007, respondents filed a Motion for Reconsideration which was denied by Acting Secretary Devanadera in a Resolution dated 26 October 2007.[31]

On 30 October 2007, the corresponding Informations were filed. The charge for the crime of murder was filed before the

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[26] *Id.* at 551-615.

[27] *Id.* at 652-760.

[28] *Id.* at 648-650.

[29] *Id.* at 68-72 and 169-170.

[30] *Id.* at 103-110.

[31] *Id.* at 171.

Regional Trial Court (RTC) of Manila, Branch 32, docketed as Criminal Case No. 07-257487. The charge of less serious physical injuries was filed before the Metropolitan Trial Court of Manila, Branch 9, docketed as Criminal Case No. 441878.[32]

Thereafter, respondents filed with the Court of Appeals a petition for *certiorari* and prohibition under Rule 65, docketed as CA-G.R. SP No. 101196, assailing the Resolutions of Acting Secretary Devanadera dated 15 October 2007 and 26 October 2007.[33]

The Ruling of the Court of Appeals

On 18 March 2008, the Court of Appeals, in its Original Decision, dismissed the petition and denied respondents' application for preliminary and/or permanent injunctive writ. The appellate court found no grave abuse of discretion on the part of Acting Secretary Devanadera in issuing the Resolutions dated 15 October 2007 and 26 October 2007. It affirmed the existence of probable cause when Pesico, the lone eyewitness of the commission of the crime, positively identified respondents as the perpetrators. The relevant portion of the Original Decision states:

> As held by public respondent, probable cause was met, and rightly so, when Pesico, the lone eyewitness of the commission of the crime positively identified petitioners as the authors of the bestial act. To cast doubt on Pesico's positive identification of petitioners, the latter pointed to the alleged inconsistencies in the two affidavits that the former has executed and such other circumstances surrounding the commission of the crime showing the improbability of identification. But as correctly ruled by public respondent, these are minor inconsistencies and matters which are not enough, at that stage in time, to overthrow the possibility and credibility of identification.

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[32] *Id.*

[33] *Id.* at 172.

On the one hand are the following facts, established by the complaints: (1) That Pesico, who was likewise injured, witnessed the commission of the crime; (2) Her condition, despite the injury caused by the blunt object that was used to maul her, with swollen eyes, tied in the arms and legs, does not totally forestall the possibility that she could have seen and identified the assailants; (3) Pesico identified petitioners as the authors of the complained acts; and (4) No evidence to show that Pesico and petitioners know each other as to entertain any possibility that her identification may have been prompted by ill-motive. On the other, are petitioners' defense of alibi and denial which they assert were not considered by public respondent.

In order to overthrow the jurisprudential injunction of giving superior regard to positive identification over the defenses of alibi and denial, these defenses should be clearly established and must not leave any room for doubt as to its plausibility and verity. It (alibi) cannot prevail over the positive testimonies of the prosecution witnesses who have no motive to testify falsely against the accused.

The burden of evidence, thus, shifts on the respondents to show that their defenses of alibi and denial are strong enough to defeat probable cause, which was engendered by the prosecution's alleged eyewitness' positive identification of them as the assailants to the crime under investigation. Moreover, for alibi to prosper, there must be proof that it was physically impossible for the accused to be at the scene of the crime at the time it was committed. At this juncture, We note the undisputed fact, concerning the accessibility of the distance between the crime scene and the hospital where petitioner Gonzale[z] alleged to have been detailed/admitted. The same is true with petitioner Buenaflor who was only in the vicinity of Roxas Boulevard. Considering the distance of the *locus criminis* and the places petitioners alleged they were at the time of the commission of the crime, neither their arguments nor the affidavits of their witnesses draw out the possibility, nay create physical impossibility, that they may have been at the scene of the crime when it was committed.

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IN VIEW OF THE FOREGOING, We find no grave abuse of discretion on the part of the Acting Secretary of Justice in issuing the Resolutions dated 15 October 2007 and 26 October 2007.

ACCORDINGLY, the present Petition is hereby DISMISSED and petitioners' application for preliminary (and/or permanent) injunctive writ is necessarily denied.

SO ORDERED.[34]

Respondents then filed a Motion for Reconsideration with the Court of Appeals on 27 March 2008.[35]

Meanwhile, on 3 July 2008, the RTC ordered that warrants of arrest be issued against respondents.[36] On 16 and 21 July 2008, Gonzalez and Buenaflor, respectively, surrendered voluntarily to the police.[37] On 28 July 2008, respondents filed with the RTC a Motion for Reconsideration (of the Order dated 3 July 2008).

To address the motion for reconsideration filed by respondents, the Court of Appeals held oral arguments on 17 July 2008. After said hearing, the appellate court issued an Amended Decision dated 29 August 2008. In the Amended Decision, the Court of Appeals granted the motion for reconsideration and ordered that the Informations charging petitioners with murder and less serious physical injuries be quashed and dismissed. The relevant portion of the Amended Decision states:

This Court has carefully evaluated the evidence of the parties once more, and its reassessment of the evidence compels it to reconsider its previous affirmation of public respondent Acting Secretary of Justice's finding of probably (sic) cause. The Court's incisive scrutiny of the evidence led it to the conclusion that there was really insufficient evidence to support public respondent Acting Secretary of Justice's finding of probable cause. It is significant to stress at this point that while "probable guilt" and "evidence less than sufficient for conviction" is the threshold in probable cause determinations, it is also important nay indispensable that there be sufficient and credible evidence to demonstrate the existence of probable cause.

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[34] *Id.* at 72-77.

[35] *Id.* at 172.

[36] *Id.* at 113-114.

[37] *Id.* at 820 and 835.

x x x x x x x x x

Public respondent Acting Secretary of Justice's finding of probable cause against the petitioners is based solely on the account of the prosecution's lone eyewitness, private respondent Annalisa Pesico. x x x

It is once apparent that public respondent Acting Secretary of Justice did not really dwell on the essential facts of the case, much less dig through the crucial details of private respondent Pesico's account. Curiously, a close reading of public respondent Acting Secretary of Justice's assailed resolution reveals that except for the rather sweeping finding that private respondent Pesico "positively identified" the petitioners, most of it were re-statements, without more, of broad principles and presumptions in criminal law, such as the doctrines on alibi, denial, and positive identification. Such disposition utterly falls short of the admonitions enunciated in *Salonga* and reiterated in *Allado*. Indeed, while probable cause should be determined in a summary manner, there is a need to examine the evidence with care to prevent material damage to a potential accused's constitutional right to liberty and the guarantees of freedom and fair play, and to protect the State from the burden of unnecessary expenses in prosecuting alleged offenses and holding trials arising from false, fraudulent or groundless charges. x x x

The pivotal question then is, was there really positive identification of the petitioners?

In *People vs. Teehankee, Jr.*, the Supreme Court explained the procedure for out-of-court identification and the test to determine the admissibility of such identification, thus:

> "x x x Out-of-court identification is conducted by the police in various ways. It is done thru *show-ups* where the suspect alone is brought face to face with the witness for identification. It is done thru *mug shots* where photographs are shown to the witness to identify the suspect. It is also done thru *line-up*s where a witness identifies the suspect from a group of persons lined up for the purpose. Since corruption of *out-of-court* identification contaminates the integrity of *in-court* identification during the trial of the case, courts have fashioned out rules to assure its fairness and its compliance with the requirements of constitutional due process. In resolving the admissibility of and relying on out-of-court identification of suspects, courts

have adopted the *totality of circumstances test* where they consider the following factors, *viz*: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and (6) the suggestiveness of the identification procedure."

Taking into consideration the foregoing test, this Court finds sufficient reasons to seriously doubt the identification made by private respondent Pesico pointing to the petitioners as the culprits.

First, a careful analysis of private respondent Pesico's account would reveal that she did not really have sufficient opportunity to view the assailants at the time of the commission of the crime. By her own account, private respondent Pesico narrated that as they were about to enter Federico's room, two (2) men suddenly came out from the room and immediately stabbed Federico, while she was also hit with a hard object on her head and body. Considering the suddenness of the attack plus the fact that the assailants had "covers" or masks on their faces, it was certainly not possible, at that instance, that she could have seen their faces. In a later statement which she executed four (4) days after, she nonetheless repaired her account by explaining that while petitioners had "covers" on their faces and while her own face was covered with towel and some pieces of clothing, she nevertheless, can still see through them, as in fact, she saw the face of petitioner Luisito Gonzale[z] when the latter allegedly removed the cover in his face because of the humidity inside the room. At this point, private respondent Pesico was obviously referring at that particular instance when she was lying down on the floor inside the dressing room. This Court entertains nagging doubts in this respect.
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Second, private respondent Pesico utterly missed out important details in her first narration of the events that transpired during the commission of the crime. Significant details such as the "covers" or masks on the faces of the assailants, the strong Visayan accent of one of the assailant, that the television was turned "on", that the assailants removed their masks because of the heat in the room, that her face was covered with towel and some pieces of clothing, *etc*., were entirely lacking in her first sworn statement, and were only supplied later in her second sworn statement. While her first sworn statement

undoubtedly counts as a "fresh account" of the incident, there are valid reasons to suspect that the second sworn statement could have been tainted, if not supplied or suggested, considering the intervening time between the execution of the first and second statements.

Third, there was little certainty in private respondent Pesico's identification. There was no mention at all of any distinguishing characteristics like the height, weight, built, complexion, hair, moles, mustache, *etc*. of the assailants, not to mention the attire or the color of their clothing, individual mannerisms or gestures, accessories, if any, that could perhaps specifically identify the petitioners as the assailants. There was of course private respondent Pesico's account that one of the assailants had a strong Visayan accent, fierce eyes and pointed face but such was rather too general a description to discriminate petitioners against a thousand and one suspects who would similarly possess such description. Furthermore, while private respondent Pesico claimed to have seen the faces of both the assailant, there was only one cartographic sketch of one suspect. Oddly enough, the cartographic sketch does not even strike any close resemblance to the facial features of anyone of the petitioners.

Fourth, there was sufficient lapse of time between the time of the commission of the crimes when private respondent Pesico allegedly saw the assailants and the time she made her identification. The intervening period, *i.e.*, four (4) days to be exact, was more than sufficient to have exposed what was otherwise accurate and honest perception of the assailants to "extraneous influences," which more or less leads this Court to conclude that private respondent Pesico's identification of the petitioners could not have been uncontaminated. This, in light of the fact that prior to the identification, private respondent Pesico was part of the joint inspection of the crime scene conducted by the police investigators with the members of the Delgado family, who, at that time floated the "family feud" theory of the case.

Fifth, this Court finds the "photo line-up" identification conducted by the police investigators to be totally unreliable and particularly dangerous, the same being impermissibly suggestive. The pictures shown to private respondent Pesico consisted mainly of the members of the Delgado family, employees and close associates, let alone the fact that in the particular picture from which petitioner Luisito Gonzale[z] was identified by private respondent Pesico as one of the assailants, he was the only male individual. Juxtaposed with the "family feud" angle of the case, there is compelling reason to believe that petitioner Luisito Gonzale[z] was isolated and suggested, wittingly

or unwittingly, by the police investigators as a prime suspect in the case.

In sum, this Court is of the view that petitioner Luisito Gonzale[z]'s identification was less than trustworthy and could not have been positive but merely derivative.

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In light of the significant improbabilities, uncertainties and inconsistencies in private respondent Pesico's account, as well as the total unreliability of the identification she made, the petitioners' alibi and denial thus assume commensurate strength. Their alibi and denial assume particular importance in this case as the same are corroborated by no less than twenty-nine (29) impartial and disinterested witnesses. x x x Thus taking into account these 29 sworn statements, it was certainly impossible for the petitioners to have been at the *locus criminis*. x x x Alibi is not always undeserving of credit, for there are times when the accused has no other possible defense for what could really be the truth as to his whereabouts at the crucial time, and such defense may in fact tilt the scales of justice in his favor.[38]

The Solicitor General, who is now Agnes VST Devanadera, did not appeal the appellate court's Amended Decision which reversed her Resolutions of 15 October 2007 and 26 October 2007 when she was Acting Secretary of Justice. In G.R. No. 184507, the Solicitor General filed a Motion for Extension of Time to file a Petition for Review under Rule 45 before this Court. However, the 30 day extension given had lapsed without the filing of said petition. Thus, the Court, in a Resolution dated 8 December 2008, declared G.R. No. 184507 closed and terminated.

On 10 September 2008, respondents filed with the Court of Appeals an Urgent Motion to Order the Amended Decision dated 29 August 2008 as Immediately Executory.[39]

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[38] *Id.* at 90-101.

[39] *Id.* at 121-132.

On 18 September 2008, petitioners filed a Petition for Review under Rule 45 before this Court.[40] Respondents, in connection with the Petition for Review, filed a "Motion for the Release (On Bond, If Required)."

On 2 October 2008, the Court of Appeals issued a Resolution denying the motion filed on 10 September 2008.[41] Thereafter, respondents filed a Motion for Reconsideration.

Meanwhile, on 7 October 2008, the RTC issued an Order suspending the proceedings in Criminal Case No. 07-257487 and effectively deferred the resolution of respondents' Motion for Reconsideration (of the Order dated 3 July 2008) pending a decision by this Court on the Petition for Review filed by petitioners. The RTC also ordered that both respondents remain in custody.[42]

On 5 November 2008, the Court of Appeals issued another Resolution denying the motion for reconsideration of its 2 October 2008 Resolution, stating that with due deference to the Supreme Court as the final arbiter of all controversies, the Court of Appeals forbids itself from declaring the 29 August 2008 Amended Decision as immediately executory. It held further that since an appeal by *certiorari* to the Supreme Court had already been filed by petitioners, any motion for execution pending appeal should now be filed with the Supreme Court.[43]

Hence, this petition.

On 10 December 2008, this Court conducted oral arguments to hear the respective parties' sides. In a Resolution dated 17 December 2008, this Court, acting upon the "Motion for the Release (On Bond, If Required)" filed by respondents, ordered the RTC of Manila, Branch 32, to hear respondents' application

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[40] *Id.* at 3-54.

[41] *Id.* at 839.

[42] *Id.* at 389-395.

[43] *Id.* at 839-841.

for bail with deliberate dispatch, since this Court is not in a position to grant bail to respondents as such grant requires evidentiary hearing that should be conducted by the trial court where the murder case is pending.

On 5 January 2009, respondents filed a Motion for Reconsideration of this Court's Resolution dated 17 December 2008. On 16 March 2009, this Court denied the motion for reconsideration and directed the RTC of Manila, Branch 32, to conduct a summary hearing on bail and to resolve the same within thirty (30) days from receipt of the resolution.

The RTC of Manila, Branch 32, issued an Order dated 27 March 2009 setting a hearing on bail on 2 April 2009. On 7 April 2009, respondents filed with this Court a Manifestation Waiving the "Motion for the Release (On Bond, If Required)" dated 17 November 2008. Respondents manifested that they waive and abandon their motion for bail.

The Issues

Petitioners submit the following issues for our consideration:

1. Whether petitioners possess the legal standing to sue and whether petitioners can be considered as the real parties in interest; that the DOJ Secretary as represented by the Solicitor General is a mere nominal party; that the "People" as represented by the City Prosecutor of Manila was not an impleaded party before the Court of Appeals; that, unnotified of, and unserved with the amended decision of the Court of Appeals, the "People" is not bound thereby; and that, therefore, neither the Secretary of Justice nor the "People" were called upon to appeal to the Supreme Court.[44]

2. Whether the amended decision of the Court of Appeals is final and can be the subject of execution pending appeal.[45]

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[44] *Id.* at 958.

[45] *Id.* at 971.

3. Whether the Court of Appeals committed reversible and whimsical errors of law in the amended decision warranting reversal of the same[46] in view of the following reasons:

   a. There were plain, speedy and adequate remedies available to respondents prior to their filing of *certiorari* before the Court of Appeals.[47]

   b. The Secretary of Justice did not commit grave abuse of discretion in her determination of probable cause.[48]

   c. The Court of Appeals strayed from the determination of grave abuse of discretion and instead evaluated the evidence *de novo*, and erroneously increased the quantum of evidence required for determining probable cause.[49]

   d. The Court of Appeals erroneously substituted its judgment for the Secretary of Justice.[50]

   e. The Court of Appeals undermined the jurisdiction of the RTC over the criminal proceedings by virtue of the filing of the Information therein.[51]

The Court's Ruling

On petitioners' standing to file the petition and the finality of the Amended Decision

Petitioners contend that the parties impleaded in the Petition for *Certiorari* filed by respondents before the Court of Appeals in CA-G.R. SP No. 101196 were Acting Secretary Devanadera, Heirs of Federico C. Delgado and Annalisa D. Pesico. The "People of the Philippines" was never made as one of the parties and neither was it notified through the City Prosecutor of

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[46] *Id.* at 976.

[47] *Id.*

[48] *Id.* at 980.

[49] *Id.* at 985.

[50] *Id.* at 991.

[51] *Id.* at 997.

Manila.[52] Petitioners claim that in criminal proceedings where the only issue is probable cause or grave abuse of discretion in relation thereto, the private complainant and the private respondent are the parties. In such proceedings, the "People of the Philippines" is not yet involved as it becomes a party to the main criminal proceedings only when the Information is filed with the trial court.[53]

Petitioners allege that although Informations were filed before the lower courts after respondents filed a Petition for Review with the Court of Appeals, it does not change the reality that all the proceedings before the DOJ, Court of Appeals and this Court involve only the issues on (1) probable cause, (2) the alleged grave abuse of discretion by the Acting Secretary of Justice, and (3) the reversible errors of law and grave abuse of discretion on the part of the Court of Appeals in promulgating the assailed Amended Decision.

It is petitioners' contention that while the Acting Secretary of Justice is a public respondent, she is at best a nominal or *pro forma* party. Hence, the Solicitor General had no obligation to appeal the case to this Court to represent the Secretary of Justice as a nominal party.[54] Further, the Solicitor General's non-participation in this case is not a fatal defect that jeopardizes petitioners' legal standing as complainants in the preliminary investigation proceedings, appellants before the Secretary of Justice, respondents in the Court of Appeals and petitioners before this Court.[55]

Petitioners state that they are the real parties in interest who can naturally be expected to file a case for the death of their brother. Citing *Narciso v. Sta. Romana-Cruz*,[56] petitioners claim

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[52] *Id.* at 965.

[53] *Id.* at 959-960.

[54] *Id.* at 960-961.

[55] *Id.* at 964-965.

[56] 385 Phil. 208, 224 (2000).

that a sister of the deceased is a proper party-litigant who is akin to the offended party.

Respondents argue that petitioners cannot claim that the instant proceeding is not part of the criminal case proper because the preliminary investigation has already been concluded.[57] Quoting Section 9 of the 2000 National Prosecution Service Rule on Appeal,[58] respondents claim that an information may be filed even if the review of the resolution by the Secretary of Justice is still available. The preliminary investigation, having been concluded, the private offended parties no longer have the personality to participate by themselves in the succeeding proceedings. Respondents insist that when petitioners asserted their right to prosecute a person for a crime, through the filing of an information, the State, through its prosecutorial arm, is from that point on, the only real party in interest.[59]

Respondents maintain that only the Solicitor General may represent the State in appellate proceedings of a criminal case.[60] The Acting Secretary of Justice cannot be properly characterized as a nominal party because it is the real party in interest, whose right to prosecute offenses is at stake. The Acting Secretary of Justice, in issuing a resolution that there is probable cause to charge a person with an offense, asserts the right of the State to prosecute a person for the commission of a crime.[61] Thus, the participation of the private offended parties before the Court of Appeals is not necessary for complete relief to be had, and it is certainly not indispensable for a final determination of the case.[62]

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[57] *Rollo*, p. 1022.

[58] Department of Justice Circular No. 70 dated 1 September 2000.

Section 9. *Effect of an appeal.* Unless the Secretary of Justice directs otherwise, the appeal shall not hold the filing of the corresponding information in court on the basis of the finding of probable cause in the appealed resolution.

[59] *Rollo*, pp. 1024-1025.

[60] *Id.* at 1029.

[61] *Id.* at 1030.

[62] *Id.* at 1037.

Section 35, Chapter 12, Title III, Book IV of the Administrative Code of 1987 states that the **Office of the Solicitor General shall represent the Government** of the Philippines, its agencies and instrumentalities and **its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers**. Likewise, the Solicitor General shall represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings, thus:

> Section 35. Powers and Functions. — The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. When authorized by the President or head of the office concerned, it shall also represent government owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of lawyers. It shall have the following specific powers and functions:
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> **(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings**; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party. (Emphasis supplied)

The law clearly requires the Office of the Solicitor General to represent the Government in the Supreme Court **in all criminal proceedings** before this Court. As in every case of statutory construction, we begin our analysis by looking at the plain and literal language of the term "criminal proceeding." Criminal proceeding is defined as "a proceeding instituted to determine a person's guilt or innocence or to set a convicted person's punishment."[63] Proceeding is defined as "any procedural means for seeking redress from a tribunal or agency. It is the business conducted by a court or other official body."[64]

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[63] *Black's Law Dictionary*, 7th ed., 1999.

[64] *Id.*

Section 1(a) of Rule 110 of the Rules of Court provides:

Section 1. *Institution of criminal actions*. — Criminal actions shall be instituted as follows:

(a) For offenses where a preliminary investigation is required pursuant to section 1 of Rule 112, by filing the complaint with the proper officer for the purpose of conducting the requisite preliminary investigation.

It should be observed that a criminal action shall be instituted by filing the complaint with the proper officer for the purpose of conducting the preliminary investigation. In this case, the criminal action was instituted when Alejandro Yanquiling, Jr., Chief of the Homicide Section of the MPD filed the Complaint-Affidavit with the Office of the City Prosecutor of Manila.[65] The Complaint-Affidavit was supported by Pesico's sworn statement, affidavit of consent from the heirs of Delgado, crime report, progress report, SOCO report, and cartographic sketch.[66]

Preliminary investigation, although an executive function, is part of a criminal proceeding. In fact, no criminal proceeding under the jurisdiction of the Regional Trial Court is brought to trial unless a preliminary investigation is conducted. We explained, thus:

'[T]he right to have a preliminary investigation conducted before being bound over for trial for a criminal offense, and hence formally at risk of incarceration or some other penalty, is not a mere formal or technical right; it is a substantive right.' A preliminary investigation should therefore be scrupulously conducted so that the constitutional right to liberty of a potential accused can be protected from any material damage.[67]

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[65] *Rollo*, p. 396.

[66] *Id.* at 397-423.

[67] *Webb v. Hon. De Leon*, 317 Phil. 758, 803 (1995).

In *Ricafort v. Fernan*,[68] this Court had the occasion to rule:

> As stated by counsel for the respondents, the petition herein is an offshoot, an incident of said criminal case for qualified theft. For all purposes, therefore, it is a continuation of that case and partakes of the nature of a criminal proceeding. This being so, the party defeated by the order of the respondent Judge dismissing the information in Criminal Case No. 2819 of the Court of First Instance of Davao must be the People of the Philippines and not the petitioner, the complaining witness. Consequently, the proper party to bring this petition is the State and the proper legal representation should be the Solicitor General and not the attorney for the complaining witness who was the private prosecutor in said Criminal Case No. 2819. It is true that under the Rules of Court the offended party may take part in the prosecution of criminal cases and even appeal in certain instances from the order or judgment of the courts, but this is only so in cases where the party injured has to protect his pecuniary interest in connection with the civil liability of the accused. Petitioner did not institute the case at bar for the purpose of protecting his pecuniary interest as supposed offended party of the crime charged in the information that was dismissed, but to cause the restoration of the case and to have it tried as if nothing had happened. This, certainly, falls within the province of the representative of the People who in this case has not appealed nor joined the private prosecutor in bringing this case before Us.

Based on the above discussion, the term criminal proceeding includes preliminary investigation. In any event, this issue is academic because on 30 October 2007, the Informations against respondents were filed with the trial court. Petitioners admit that the "People of the Philippines" becomes a party in interest in a criminal proceeding when an information is filed with the trial court.

We have ruled in a number of cases[69] that only the Solicitor General may bring or defend actions in behalf of the Republic of the Philippines, or represent the People or State in criminal

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[68] 101 Phil. 575, 579-580 (1957).

[69] *Cariño v. De Castro,* G.R. No. 176084, 30 April 2008, 553 SCRA 688; *Perez v. Hagonoy Rural Bank, Inc*., 384 Phil. 322 (2000); *Columbia Pictures Entertainment, Inc. v. Court of Appeals*, G.R. No. 111267, 20

proceedings before the Supreme Court and the Court of Appeals. However, jurisprudence lays down two exceptions where a private complainant or offended party in a criminal case may file a petition directly with this Court. The two exceptions are: (1) when there is denial of due process of law to the prosecution and the State or its agents refuse to act on the case to the prejudice of the State and the private offended party,[70] and (2) when the private offended party questions the civil aspect of a decision of a lower court.[71]

The first exception contemplates a situation where the State and the offended party are deprived of due process because the prosecution is remiss in its duty to protect the interest of the State and the offended party. This Court recognizes the right of the offended party to appeal an order of the trial court which denied him and the State of due process of law.

In *Merciales v. Court of Appeals*,[72] this Court granted the petition of the offended party and ruled as invalid the dismissal of the case in the trial court for lack of a fundamental prerequisite, that is, due process. The public prosecutor who handled the case deliberately failed to present an available witness which led the trial court to declare that the prosecution had rested its case. In this sense, the public prosecutor was remiss in his duty to protect the interest of the offended party. As a result, the public prosecutor was found guilty of blatant error and abuse of discretion, causing prejudice to the offended party. The trial court was likewise found guilty for serious nonfeasance for passively watching the public prosecutor bungle the case

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September 1996, 262 SCRA 219; *People v. Mendoza,* G.R. No. 80845, 14 March 1994, 231 SCRA 264; *People v. Nano,* G.R. No. 94639, 13 January 1992, 205 SCRA 155; *People v. Calo*, *Jr.*, G.R. No. 88531, 18 June 1990, 186 SCRA 620; *People v. Eduarte*, G.R. No. 88232, 26 February 1990, 182 SCRA 750.

[70] *Cariño v. De Castro*, G.R. No. 176084, 30 April 2008, 553 SCRA 688, 696.

[71] *People v. Santiago*, G.R. No. 80788, 20 June 1989, 174 SCRA 143.

[72] 429 Phil. 70 (2002).

notwithstanding its knowledge that the evidence for the prosecution was insufficient to convict and it could have, *motu proprio*, called for additional witnesses. Thus, petitioner, who was the mother of the private offended party in the criminal cases for rape with homicide, had been deprived of her day in court. She could do nothing during the proceedings, having entrusted the conduct of the case in the hands of the public prosecutor. All she could do was helplessly watch as the public prosecutor, who was under legal obligation to pursue the action on the family's behalf, renege on that obligation and refuse to perform his sworn duty. This Court explained that it is not only the State, but also the offended party, that is entitled to **due process** in criminal cases. The issue on whether private complainant can bring an action was, however, rendered moot when the Solicitor General, in representation of the People, changed his position and joined the cause of petitioner, thus fulfilling the requirement that all criminal actions shall be prosecuted under the direction and control of the public prosecutor.

Likewise, in *People v. Nano*,[73] this Court took cognizance of the offended party's petition because of the gravity of the error committed by the judge against the prosecution **resulting in denial of due process.** Aside from the denial of due process, the Solicitor General also manifested to adopt the petition as if filed by his office. Thus, we ruled in *Nano*:

> The petition being defective in form, the Court could have summarily dismissed the case for having been filed merely by private counsel for the offended parties, though with the conformity of the provincial prosecutor, and not by the Solicitor General. While it is the public prosecutor who represents the People in criminal cases before the trial courts, it is only the Solicitor General that is authorized to bring or defend actions in behalf of the People or Republic of the Philippines once the case is brought up before this Court or the Court of Appeals (*People v. Calo*, 186 SCRA 620 [1990]; citing *Republic v. Partisala*, 118 SCRA 320 [1982]; *City Fiscal of Tacloban v. Espina*, 166 SCRA 614 [1988]). **Defective as it is, the Court, nevertheless, took**

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[73] G.R. No. 94639, 13 January 1992, 205 SCRA 155, 159.

cognizance of the petition in view of the gravity of the error allegedly committed by the respondent judge against the prosecution – denial of due process – as well as the manifestation and motion filed by the Office of the Solicitor General praying that the instant petition be treated as if filed by the said office. In view thereof, We now consider the People as the sole petitioner in the case duly represented by the Solicitor General. Payment of legal fees is therefore no longer necessary in accordance with Sec. 16, Rule 141 of the Rules of Court. (Emphasis supplied)

In the second exception, it is assumed that a decision on the merits had already been rendered by the lower court and it is the civil aspect of the case which the offended party is appealing. The offended party, who is not satisfied with the outcome of the case, may question the amount of the grant or denial of damages made by the court below even without the participation of the Solicitor General.

In *Mobilia Products, Inc. v. Umezawa*,[74] we ruled that in criminal cases, the State is the offended party. Private complainant's interest is limited to the civil liability arising therefrom. We explained:

Hence, if a criminal case is dismissed by the trial court or if there is an acquittal, a reconsideration of the order of dismissal or acquittal may be undertaken, whenever legally feasible, insofar as the criminal aspect thereof is concerned and may be made only by the public prosecutor; or in the case of an appeal, by the State only, through the OSG. The private complainant or offended party may not undertake such motion for reconsideration or appeal on the criminal aspect of the case. However, the offended party or private complainant may file a motion for reconsideration of such dismissal or acquittal or appeal therefrom but only insofar as the civil aspect thereof is concerned.

In *De la Rosa v. Court of Appeals*,[75] citing *People v. Santiago*,[76] we held:

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[74] 493 Phil. 85, 108 (2005).

[75] 323 Phil. 596, 605 (1996).

[76] *Supra* note 71.

In a special civil action for *certiorari* filed under Section 1, Rule 65 of the Rules of Court wherein it is alleged that the trial court committed a grave abuse of discretion amounting to lack of jurisdiction or on other jurisdictional grounds, the rules state that the petition may be filed by the person aggrieved. In such case, the aggrieved parties are the State and the private offended party or complainant. The complainant has an interest in the civil aspect of the case so he may file such special civil action questioning the decision or action of the respondent court on jurisdictional grounds. In so doing, complainant should not bring the action in the name of the People of the Philippines. The action may be prosecuted in (the) name of said complainant.

These two exceptions do not apply in this case.

In the Memorandum, petitioners allege that the Court of Appeals committed reversible and whimsical errors of law in the Amended Decision. Petitioners raised the following errors:

> a. There were plain, speedy and adequate remedies available to respondents prior to their filing of *certiorari* before the Court of Appeals.[77]
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> b. The Secretary of Justice did not commit grave abuse of discretion in her determination of probable cause.[78]
>
> c. The Court of Appeals strayed from the determination of grave abuse of discretion and instead evaluated the evidence *de novo*, and erroneously increased the quantum of evidence required for determining probable cause.[79]
>
> d. The Court of Appeals erroneously substituted its judgment for the Secretary of Justice.[80]

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[77] *Rollo*, p. 976.

[78] *Id.* at 980.

[79] *Id.* at 985.

[80] *Id.* at 991.

e. The Court of Appeals undermined the jurisdiction of the RTC over the criminal proceedings by virtue of the filing of the Information therein.[81]

Petitioners do not claim that the failure of the Solicitor General to appeal the Court of Appeals' decision before this Court resulted in the denial of due process to the State and the petitioners. Petitioners do not assert that the prosecution and the Solicitor General were remiss in their duty to protect the interest of the State and the offended party. Neither do petitioners claim that the Solicitor General is guilty of blatant error or abuse of discretion in not appealing the Court of Appeals' decision.

The Solicitor General did not manifest to adopt petitioners' appeal before this Court. On the contrary, the Solicitor General manifested on 3 December 2008 its refusal to participate in the oral arguments of this case held on 10 December 2008. This Court cannot take cognizance of the petition because there is clearly no denial of due process to the State and the petitioners. In short, the first exception does not apply because petitioners do not claim, and neither is there any showing in the records, that the State and the petitioners have been denied due process in the prosecution of the criminal cases.

The Solicitor General, on 19 September 2008, had filed before this Court a Motion for Extension of Time to file a Petition for Review under Rule 45, docketed as G.R. No. 184507. However, the 30-day extension given had lapsed without the filing of the petition.[82] Consequently, this Court, in a Resolution dated 8 December 2008, declared G.R. No. 184507 closed and terminated.

Petitioners are also not appealing the civil aspect of the criminal case since the lower courts had not yet decided the merits of the case. In *People v. Santiago*,[83] this Court explained

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[81] *Id.* at 997.

[82] The extended period expired on 19 October 2008.

[83] *Supra* note 71.

that in criminal cases where the offended party is the State, the interest of the private offended party is limited to the civil liability. If a criminal case is dismissed by the trial court or if there is an acquittal, an appeal from the criminal aspect may be undertaken only by the State through the Solicitor General. Only the Solicitor General may represent the People of the Philippines on appeal. The private complainant or offended party may not appeal the criminal, but only the civil, aspect of the case.

Here, since there was no decision promulgated on the merits by the lower court and the Informations had been quashed, petitioners have nothing to appeal on the civil aspect that is deemed impliedly instituted with the criminal cases. There is no longer any criminal case on which a civil case can be impliedly instituted. Petitioners' recourse is to file an independent civil action on their own.

On 31 March 2009, the Solicitor General filed a Motion for Leave to Admit Attached Comment in G.R. No. 184337.[84] The Solicitor General reasoned that she opted not to file a petition for review in G.R. No. 184507 because she learned that a similar petition was filed before she could prepare the intended petition for review. In her comment, the Solicitor General stated that she is not a direct party to the case. However, the Solicitor General alleged that she would file a comment as it is undeniable that she issued the Resolutions of the Department of Justice at the time she held the position of Acting Secretary of Justice concurrent with her being the Solicitor General. The Solicitor General submitted that her position on the issue of probable cause should be heard.

On 17 April 2009, respondents filed an Opposition and Motion to Strike "Motion for Leave to Admit Attached Comment" and "Comment." Respondents contended that the Solicitor General is not a party to the case and has no personality to participate in any manner. Respondents claimed that the Solicitor General failed to file a Petition for Review on *Certiorari* within the

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[84] *Rollo*, pp. 1100-1104.

prescribed period and she cannot now use a "Comment" as a substitute for a lapsed appeal.

In a Resolution dated 1 June 2009, this Court expunged from the records the motion for leave to admit attached comment and the aforesaid comment filed by the Solicitor General. The Court ruled that the Solicitor General is not a party in G.R. No. 184337.

We reiterate that it is only the Solicitor General who may bring or defend actions on behalf of the State in all criminal proceedings before the appellate courts. Hence, the Solicitor General's non-filing of a petition within the reglementary period before this Court rendered the assailed decision of the Court of Appeals final and executory with respect to the criminal aspect of the case. The Solicitor General cannot trifle with court proceedings by refusing to file a petition for review only to subsequently, after the lapse of the reglementary period and finality of the Amended Decision, file a comment.

In view of our holding that petitioners have no standing to file the present petition, we shall no longer discuss the other issues raised in this petition.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 29 August 2008 Amended Decision of the Court of Appeals in CA-G.R. SP No. 101196. No pronouncement as to costs.

SO ORDERED.

Carpio Morales,[*] *Leonardo-de Castro,* and *Bersamin, JJ.,* concur.

Velasco, Jr.,[**] *J.,* dissents. See dissenting opinion.

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[*] Designated additional member per Special Order No. 667.

[**] Designated additional member per Raffle dated 29 September 2008.

DISSENTING OPINION

VELASCO, JR., *J*.:

I register my dissent to the majority opinion on the main ground that the Court should have entertained and resolved the petition on the merits.

It is conceded that only the Solicitor General may bring and defend actions in behalf of the Republic of the Philippines or represent the State in criminal actions before this Court.[1] As stated in the *ponencia*, this general rule admits of two exceptions: (1) when there is denial of due process of law to the prosecution and the State or its agents refuse to act on the case to the prejudice of the State and the private offended party;[2] and (2) when the private offended party questions the civil aspect of a decision of the lower court.[3]

I submit that the instant petition falls under the first exception wherein there was negation of due process which prejudiced the State and the private offended party when the Office of the Solicitor General (OSG) failed for unexplained reasons to file the petition for the State within the extended period. As an equitable gesture, the OSG could have simply filed a manifestation adopting the instant petition and requesting that petitioners' initiatory pleading before this Court be treated as if filed by said office.

The instant petition has unique and special circumstances that justify adjudication on the merits. The antecedents reveal that Investigating Prosecutor Cielitolindo A. Layun dismissed the complaint for lack of probable cause. On September 18, 2007, Acting Justice Secretary Agnes VST Devanadera who was concurrently the Solicitor General reversed the finding of

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[1] *Cariño v. De Castro*, G.R. No. 176084, April 30, 2008, 553 SCRA 688.

[2] *Id*.

[3] *People v. Santiago*, G.R. No. 80778, June 20, 1989, 174 SCRA 143.

the Investigating Prosecutor and directed the filing of separate informations for murder and less serious physical injuries against respondents. The plea for reconsideration was denied on October 18, 2007.

On October 30, 2007, the informations were filed with the Regional Trial Court of Manila, Branch 32.

The Court of Appeals (CA), acting on the petition of respondents under Rule 65 in CA-G.R. SP No. 101196, found no grave abuse of discretion on the part of the Acting Justice Secretary and dismissed the petition on March 18, 2008. On August 29, 2008, however, the CA, in an Amended Decision, granted the Motion for Reconsideration of respondents and ordered that the informations against them be quashed and dismissed.

The OSG did not appeal the August 29, 2008 CA Amended Decision which reversed Acting Secretary Devanadera's Resolutions of October 15, 2007 and October 26, 2007. In G.R. No. 184507, the OSG moved for an extension of 30 days within which to file a petition for review but no petition was filed within the 30-day extension. On the other hand, petitioner filed a petition under Rule 45 with this Court on September 18, 2008, without any conformity of the OSG. Neither did the OSG adopt the instant petition filed by petitioners.

In this factual milieu, it is submitted that there was denial of due process to the State and the private offended party. It is settled in this jurisdiction that due process means a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial. We held that "[d]ue process contemplates notice and opportunity to be heard before judgment is rendered, affecting one's person or property. **It is designed to secure justice as a living reality; not to sacrifice it by paying undue homage to formality. For substance must prevail over form**."[4]

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[4] *Albert v. CFI of Manila*, No. L-26364, May 29, 1968, 23 SCRA 948.

Clearly, the essence of due process is the opportunity to be heard.

Moreover, it has been explained in *Santiago v. Alikpala*[5] that due process is "responsiveness to the supremacy of reason" and "obedience to the dictates of justice." Opportunity to be heard must be granted to a party to prevent arbitrariness and avoid unfairness.

The Court in *Santiago* ratiocinated this way:

> To satisfy the due process requirement official action must not outrun the bounds of reason and result in sheer oppression. **Due process is thus hostile to any official action marred by lack of reasonableness. It has been identified as freedom from the arbitrariness. It is the embodiment of the sporting idea of fair play**. It exacts fealty to those strivings for justice and judges the act of officialdom of whatever branch in the light of reason drawn from considerations of fairness that reflect democratic traditions of legal and political thought.

When the OSG failed to file the petition in G.R. 184507 to question the August 29, 2008 CA Amended Decision and even declined to adopt the petition of petitioners in G.R. No. 184337, the State and the private offended parties, herein petitioners, were deprived of their opportunity to be heard on the flip-flopping posture of the CA on the issue of probable cause. It was expected that the OSG will pursue the position it has taken before the CA that probable cause exists and should have proceeded to assail the August 29, 2008 CA Amended Decision since it overruled said OSG's postulation. With the inability of OSG to file the petition in question, the State and petitioners were unfairly deprived of their right to have the August 29, 2008 decision reviewed by this Court. Moreover, the OSG's position before the CA was the same ruling made by the then Acting Justice Secretary, who was also the Solicitor General, that indeed probable cause exists to indict respondents.

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[5] No. L-25133, September 28, 1968, 25 SCRA 356.

More importantly, in view of the conflicting CA decisions, it would be to the best interests of the State and the parties to have the conflicting decisions reviewed by this Court to settle once and for all the correctness of the ruling on the determination of probable cause against respondents. The failure of OSG to file the petition in G.R. No. 184507 certainly prejudiced the rights of the State and the private offended parties to due process of law. In this light, I find that the petition should have been entertained by this Court to accommodate a judgment on the merits.

Even granting *arguendo* that the factual setting of this petition does not fall under any of the two (2) exceptions adverted to, the instant petition should have been given due course as the Court can suspend the rules to prevent a miscarriage of justice. The facts reveal that there is an eyewitness to the killing, Annalisa Pesico. Settled jurisprudence is to the effect that positive identification is preferred over alibi and denial. With this in mind, the best course of action to take is to direct the trial court to proceed with the trial and decide the case after full presentation and reception of evidence. What is required in a preliminary investigation is only the finding of probable cause and not the determination of guilt beyond a reasonable doubt. This is the better course of action to take since the case is already pending before the RTC Manila. The CA, in its assailed August 29, 2008 Amended Decision, has veritably ruled on the merits of the criminal case. This is not the proper course of action to take. What was before the CA was solely the issue of probable cause and not an appeal to review the merits of the criminal case which has not yet taken off the ground. In the interest of fairness, I submit that the unique antecedents and facts of the case justify the grant of due course to the instant petition.

Even if the petition filed by petitioners should be denied, still, the *fallo* of the August 29, 2008 Amended Decision should be corrected. The CA should not have dismissed the informations, but should have simply ruled that no probable cause exists against respondents and then directed the trial prosecutor to move for the dismissal of the criminal cases before the trial court, following

Crespo v. Mogul[6] and *Roberts, Jr. v. CA*.[7] Be it remembered that CA-G.R. SP No. 101196 was a petition for *certiorari* and prohibition not to assail any order of the Manila RTC, but to nullify the resolutions of the Acting Justice Secretary Devanadera, finding, contrary to the earlier determination of the investigating prosecutor, a probable cause to charge respondents with murder and serious physical injuries, and directing the filing of the necessary informations.

The eminent Justice Emilio A. Gancayco, in the celebrated case of *Crespo*, explained the exercise of a court's jurisdiction over a criminal case once the information is filed:

> However, the action of the fiscal or prosecutor is not without any limitation or control. The same is subject to the approval of the provincial or city fiscal or the chief state prosecutor as the case maybe (sic) and it maybe (sic) elevated for review to the Secretary of Justice who has the power to affirm, modify or reverse the action or opinion of the fiscal. Consequently the Secretary of Justice may direct that a motion to dismiss the case be filed in Court or otherwise, that an information be filed in Court.
>
> **The filing of a complaint or information in Court initiates a criminal action. The court thereby acquires jurisdiction over the case, which is the authority to hear and determine the case**. When after the filing of the complaint or information a warrant for the arrest of the accused is issued by the trial court and the accused either voluntarily submitted himself to the Court or was duly arrested, the Court thereby acquired jurisdiction over the person of the accused.
>
> The preliminary investigation conducted by the fiscal for the purpose of determining whether a *prima facie* case exists warranting the prosecution of the accused is terminated upon the filing of the information in the proper court. In turn, as above stated, the filing of said information sets in motion the criminal action against the accused in Court. Should the fiscal find it proper to conduct a reinvestigation of the case, at such stage, the permission of the Court must be secured. After such reinvestigation the findings and recommendations of the

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[6] No. 53373, June 30, 1987, 151 SCRA 462.

[7] G.R. No. 113930, March 5, 1996, 254 SCRA 307.

fiscal should be submitted to the Court for appropriate action. **While it is true that the fiscal has the *quasi judicial* discretion to determine whether or not a criminal case should be filed in the court or not, once the case had already been brought to Court whatever disposition the fiscal may feel should be proper in the case thereafter should be addressed for the consideration of the Court**. The only qualification is that the action of the Court must not impair the substantial rights of the accused or the right of the People to due process of law.

Whether the accused had been arraigned or not and whether it was due to a reinvestigation by the fiscal or a review by the Secretary of Justice whereby a motion to dismiss was submitted to the Court, the Court in the exercise of its discretion may grant the motion or deny it and require that the trial on the merits proceed for the proper determination of the case.[8] (Emphasis supplied.)

Roberts, Jr. reinforced *Crespo* this way:

This case is already pending in this Court for trial. To follow whatever opinion the Secretary of Justice may have on the matter would undermine the independence and integrity of this Court. This Court is still capable of administering justice.

The real and ultimate test of the independence and integrity of his court is not the filing of the aforementioned motions at that stage of the proceedings but the filing of a motion to dismiss or to withdraw the information of the basis of a resolution of the petition for review reversing the Joint Resolution of the investigating prosecutor. Before that time, the following pronouncement in *Crespo* did not yet truly become relevant or applicable:

> **The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the court**. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in court he cannot impose his opinion on the trial court. The court is the best and sole judge on what to do with the case before it. The determination

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[8] *Supra* note 6.

> of the case is within its exclusive jurisdiction and competence. **A motion to dismiss the case filed by the fiscal should be addressed to the Court [which] has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation**.

However, once a motion to dismiss or withdraw the information is filed the trial judge may grant or deny it, not out of subservience to the Secretary of Justice, but in faithful exercise of judicial prerogative. This Court pertinently stated so in *Martinez vs. Court of Appeals*:

> Whether to approve or disapprove the stand taken by the prosecution is not the exercise of discretion required in cases like this. **The trial judge must himself be convinced that there was indeed no sufficient evidence against the accused, and this conclusion can be arrived at only after an assessment of the evidence in the possession of the prosecution. What was imperatively required was the trial judge's own assessment of such evidence, it not being sufficient for the valid and proper exercise of judicial discretion merely to accept the prosecution's word for its supposed insufficiency**.
>
> As aptly observed the Office of the Solicitor General, in failing to make an independent finding of the merits of the case and merely anchoring the dismissal on the revised position of the prosecution, the trial judge relinquished the discretion he was duty bound to exercise. In effect, it was the prosecution, through the Department of Justice which decided what to do and not the court which was reduced to a mere rubber stamp in violation of the ruling in *Crespo vs. Mogul*.[9] (Emphasis supplied.)

The assailed CA Amended Decision of August 29, 2008 directly nullified the informations now pending before the Manila RTC, Branch 32, and was a blatant breach of the *Crespo* ruling, as fortified by *Roberts, Jr.*, which has remained the established doctrine for more than 20 years and has not since been modified

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[9] *Supra* note 7, at 333.

or abandoned. The August 29, 2008 CA Amended Decision should be set aside.

For the above reasons, I vote to give due course to the petition.

EN BANC

[A.M. No. P-09-2610. August 13, 2009]
(Formerly A.M. OCA IPI No. 09-3072-P)

ATTY. HECTOR P. TEODOSIO, *complainant, vs.* **ROLANDO R. SOMOSA, EDGAR CORDERO, and RODOLFO HARO, Sheriffs, Municipal Trial Court in Cities (MTCC), Iloilo City, and GANI LACATAN and CAMILO DIVINAGRACIA, JR., Sheriffs, Regional Trial Court (RTC), Iloilo City,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHERIFFS; MUST DISCHARGE THEIR DUTIES WITH DUE CARE AND UTMOST DILIGENCE.—** Sheriffs are ministerial officers. They are agents of the law and not agents of the parties, neither of the creditor nor of the purchaser at a sale conducted by either of them. As such, sheriffs and deputy sheriffs must discharge their duties with due care and utmost diligence, because in serving the court's writs and processes and in implementing the orders of the court, they cannot afford to err without affecting the efficiency of the process of the administration of justice. Sheriffs play an important role in the administration of justice and as agents of the law, high standards are expected of them.

2. **ID.; ID.; ID.; ID.; REQUIRED TO STRICTLY COMPLY WITH THE WRIT OF EXECUTION; PROPERTIES**

BELONGING TO A THIRD PARTY TO A CASE AND NOT NAMED IN THE WRIT CANNOT BE LEVIED UPON.— The procedure for the implementation of a writ of execution of judgment is provided for under Section 9, Rule 39 of the Rules of Court, which states: **SEC. 9.** *Execution of judgments for money, how enforced. — (a) Immediate payment on demand.* – xxx In the present case, it was clearly shown that respondents failed to follow the above-cited procedure. Instead of demanding payment from accused Ng, the judgment obligor and therein defendant, as to the civil aspect in Criminal Case Nos. 03-6-5516 to 03-6-5542, 03-9-6218 to 03-9-6270, 03-10-6498 to 03-10-6549, respondents served the writ of execution on Dr. Donglal, an officer of Nueva Swine. Respondents claimed that they tried to contact accused Ng through Dr. Donglal although the latter did not mention such incident in his affidavit. However, respondents failed to establish that they exerted all means to look for accused Ng, who should have been given the option as to which of her personal properties could be levied. They merely proceeded to demand payment from Dr. Donglal who was not even a party to the said criminal case. Worse, they levied the property of Nueva Swine. In the execution of a money judgment, the sheriff must first make a demand on the obligor for payment of the full amount stated in the writ of execution. Property belonging to third persons cannot be levied upon. Accused Ng was the judgment obligor as stated in said writ, and not Nueva Swine, although she was the President and CEO of the said company. She has a personality which is separate and distinct from that of the corporation and, likewise, her properties cannot be considered as properties of the corporation. Even assuming that accused Ng owned a majority of the stocks of Nueva Swine, respondents could have, at most, proceeded against her shares of stock, but not levy the hogs of Nueva Swine. Although the legal fiction that a corporation has a personality separate and distinct from that of stockholders and members may be disregarded, this exception should not be applied if it is used as a means to perpetrate fraud or an illegal act; or as a vehicle to evade an existing obligation, to circumvent statutes, or to confuse legitimate issues. Therefore, when respondents levied the properties of the corporation, a third party to the case and not named in the writ, they exceeded their authority to strictly comply with the writ of execution.

3. **ID.; ID.; ID.; ID.; CANNOT APPROPRIATE LEVIED PROPERTY FOR THEMSELVES.—** Moreover, respondents committed grave abuse of authority when they forcibly took the swine despite the explanation of Dr. Donglal that the properties being levied did not belong to accused Ng. They continued to load the hogs into their cargo trucks even after having been informed of the TRO. Respondents' taking was aggravated by the fact that they slaughtered one of the hogs, a fact that they expressly admitted and even stated in the Sheriffs' Return of Service dated June 28, 2007. The slaughtered pig was then cooked into *lechon* (roasted pig), and respondents feasted on it while still in the premises of Nueva Swine. While respondents maintain that it was Dr. Donglal who proposed that the pig be slaughtered as food for them, such excuse is unacceptable because sheriffs cannot appropriate levied property for themselves, even though the same be purportedly upon the instance of Dr. Donglal. Sheriffs are enjoined to keep levied properties securely in their custody, and file a return of the writ of execution.

4. **ID.; ID.; COURT PERSONNEL; CODE OF CONDUCT FOR COURT PERSONNEL; COURT PERSONNEL SHOULD EXPEDITIOUSLY ENFORCE RULES AND IMPLEMENT ORDERS OF THE COURT WITHIN THE LIMITS OF THEIR AUTHORITY.—** Such conduct of respondents evidently falls short of the standard established by the pertinent provisions of the Code of Conduct for Court Personnel, specifically Section 2, which states that court personnel shall carry out their responsibilities as public servants in as courteous a manner as possible; and Section 6, which states that court personnel shall expeditiously enforce rules and implement orders of the court within the limits of their authority.

5. **ID.; ID.; ID.; SHERIFFS; FORCIBLE LEVYING AND TAKING AWAY OF PROPERTIES BELONGING TO ANOTHER AND APPROPRIATING THE LEVIED PROPERTY FOR THEMSELVES CONSTITUTE GRAVE ABUSE OF AUTHORITY AMOUNTING TO GROSS MISCONDUCT; IMPOSABLE PENALTY.—** Respondents became administratively liable for grave abuse of authority when they forcibly levied and took away properties belonging to a third person and, thereafter, appropriated the levied property for themselves. Respondents' grave abuse of authority amounted to gross misconduct, which under the Uniform Rules on

Administrative Cases in the Civil Service, Rule IV, Section 52 A (3) thereof, is a grave offense punishable by dismissal even for the first offense.

6. **ID.; ID.; ID.; ID.; APPROPRIATION OF THE LEVIED PROPERTY IS A GRAVE OFFENSE PUNISHABLE BY DISMISSAL EVEN FOR THE FIRST OFFENSE.—** The recommendations of both the Investigating Judge and the OCA that respondents be suspended from the service for six (6) months without pay are not commensurate to the gross misconduct committed. Although respondents are first-time offenders, the Court takes into consideration the seriousness of their offense. They did not only implement a writ of execution in excess of their authority, but appropriated a part of the levied property for themselves. Their act of appropriation is a grave offense that may even subject them to criminal prosecution. xxx In view of the gravity of respondents' offense, and bolstered by established jurisprudence, the Court finds respondents guilty of grave abuse of authority amounting to grave misconduct, and is constrained to impose a penalty of dismissal from the service with forfeiture of all benefits and privileges, except accrued leave credits, if any, and with prejudice to re-employment in any branch or agency of the government, including government-owned or controlled corporations. The penalty of dismissal even for the slightest breach of duty by, and the slightest irregularity in the conduct of, said officers and employees, is warranted.

D E C I S I O N

***PER CURIAM*:**

Before this Court is a letter-complaint[1] dated July 3, 2007 filed by complainant Atty. Hector P. Teodosio against respondent Sheriffs Gani Lacatan and Camilo Divinagracia, Jr., Deputy Sheriffs of the Regional Trial Court (RTC) of Iloilo City, and respondents Sheriffs Rolando Somosa, Edgardo Cordero and Rodolfo Haro, Deputy Sheriffs of the Municipal Trial Court in Cities (MTCC) of Iloilo City, with the Office of the Court

[1] *Rollo*, pp. 3-4.

Administrator (OCA) relative to the irregular manner of implementing the writ of execution issued by the MTCC, Branch 2, Bacolod City, Negros Occidental in Criminal Case Nos. 03-6-5516 to 03-6-5542, 03-9-6218 to 03-9-6270, 03-10-6498 to 03-10-6549, entitled *People of the Philippines v. Mary Ann Ng*.

The antecedent facts are as follows:

On August 27, 2004, the MTCC, Branch 2, Bacolod City, Negros Occidental, rendered a Decision[2] on the civil aspect of Criminal Case Nos. 03-6-5516 to 03-6-5542, 03-9-6218 to 03-9-6270, 03-10-6498 to 03-10-6549, entitled *People of the Philippines v. Mary Ann Ng*, for violation of *Batas Pambansa Bilang* 22 filed by therein private complainant Lita Gamboa against therein accused Mary Ann Ng, President and Chief Executive Officer (CEO) of Nueva Swine Valley, Inc. (Nueva Swine). Said decision was based on an amicable settlement entered into between accused Ng and Keylargo Commodities Trading (Keylargo), represented by therein private complainant Lita Gamboa, wherein the former agreed to pay on installment basis her civil liability in the form of post dated checks she will issue, for and in behalf of Nueva Swine.

When therein accused Ng failed to comply with the terms and conditions of the judgment, therein private complainant, through her counsel, moved for the execution of the decision. On August 4, 2006, the MTCC issued a Writ of Execution,[3] which reads in part:

> NOW THEREFORE, you are hereby commanded to cause the execution of the aforesaid judgment on the civil aspect of the cases; to levy the goods and chattels of the accused, except those which are exempt from execution and to make the sale thereof in accordance with the procedure outlined by Rule 39, Revised Rules of Court, and in such cases made and provided together with all your lawful fees for the service of this Writ.

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[2] *Id.* at 58-59.

[3] *Id.* at 61.

In case sufficient personal property of the accused cannot be found whereof to satisfy the amount of the said judgment, you are hereby directed to levy the real property of said accused and to sell the same or so much thereof in the manner provided for by law for the satisfaction of the said judgment. You shall only sell so much of the personal or real property as is sufficient to satisfy the judgment and lawful fees, and make a report to this Court every thirty (30) days on the proceedings taken until the judgment is satisfied in full, or its effectivity expires.

On January 22, 2007, Judge Ma. Lorna Demonteverde, Presiding Judge of the MTCC, Branch 2 of Bacolod City, issued an Order[4] directing the City Sheriff and/or the Provincial Sheriff of Iloilo to serve a copy of the writ on therein accused Ng.

On May 30, 2007, Nicolasito Solas, *Ex-Officio* Sheriff and Clerk of Court of the MTCC, Iloilo City directed herein respondents, Sheriffs Johnny Tugado, Rolando Somosa, Edgardo Cordero, and Rodolfo Haro, to implement the writ.[5] Co-respondents, Sheriffs Gani Lacatan and Camilo Divinagracia, Jr., both Deputy Sheriffs of the Province of Iloilo, were also approached by Juanito Gamboa, President of Keylargo, to implement said writ.

On May 31, 2007, respondents proceeded to Nueva Swine's hog farm at Barangay Talokgangan, Banate, Iloilo to implement the writ. Upon reaching the place, they introduced themselves and explained to the officer-in-charge (OIC) their purpose, as accused Ng was not around. They then served upon the OIC a copy of the writ, together with the decision, and demanded the money judgment. When the OIC failed to produce the money, respondents levied and took away 675 pigs and, thereafter, delivered them to Keylargo for safekeeping. A Notice of Levy on Execution[6] was issued on the same day to accused Ng.

On June 1, 2007, complainant sought a 72-hour Temporary Restraining Order (TRO) with the RTC, Branch 66 of Barotac

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[4] *Id.* at 60.

[5] *Id.* at 65.

[6] *Id.* at 66.

Viejo, Iloilo, which the latter granted,[7] enjoining respondents, their agents and other persons acting for and on their behalf, from removing, transferring, disposing of and selling the swine in the hog farm of Nueva Swine in Brgy. Talokgangan, Banate, and in Nueva Invencion, Barotac Viejo, Iloilo, and from selling or disposing the swine already taken, which would be preserved and maintained in its present location under supervision of the sheriff of the court. Despite the TRO, respondent sheriffs issued a Sheriff's Notice of Sale on Execution,[8] setting the auction sale of the pigs levied on June 5, 2007, 10:00 a.m., at the Victorias Milling Corporation Farm Site in Victorias City, Negros Occidental.

On June 3, 2007, complainant Atty. Hector Teodosio, counsel for Nueva Swine, wrote Judge Roger Patricio, Executive Judge of the RTC of Iloilo City and Sheriff Gerry Sumaculub, Clerk of Court and *Ex-Officio* Provincial Sheriff of Iloilo City, asking for information on the sheriffs who implemented the writ of execution. On June 7, 2007, he likewise wrote Judge Amalik Espinosa, Executive Judge of the MTC of Iloilo City and Sheriff Nicolasito Solas, City Clerk of Court and *Ex-Officio* City Sheriff of the MTC of Iloilo City, to obtain the same information.

On June 4, 2007, Judge Rogelio Amador of the RTC, Branch 66 of Iloilo City issued an Order extending the 72-hour TRO to a full 20 days, or until June 21, 2007, and setting the case for a preliminary injunction on June 15, 2007. Said Order was served and received by the Provincial and City Sheriffs of Iloilo.[9]

On June 5, 2007, respondents personally turned over all levied hogs to the MTCC, Branch 2 of Bacolod City.[10]

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[7] *Id.* at 88.

[8] *Id.* at 71.

[9] Affidavit dated August 14, 2007, *id.* at 120-124.

[10] Sheriffs Return of Service dated June 28, 2007, *id.* at 183-184.

On June 7, 2007, Branch Sheriff Emilio Portal of the MTC, Branch 2, Bacolod City, conducted the public auction sale of the levied hogs.[11]

In a letter complaint dated July 3, 2007 and filed on July 9, 2007 with the OCA, complainant alleged that although he had previously sought information from Atty. Sumaculub of the RTC of Iloilo, and Mr. Solas of the MTC of Iloilo, on the purported irregular implementation of the writ of execution in *People of the Philippines v. Mary Ann Ng*, both had not replied. Complainant then sought help from the OCA requesting it to direct Atty. Sumaculub and Mr. Solas to furnish him the said information.

On July 19, 2007, the OCA separately indorsed the complaint dated July 3, 2007 and filed before it on July 9, 2007, to Executive Judges Patricio and Espinosa for immediate action and investigation.

In compliance with said directive of the OCA, Executive Judge Patricio set the initial hearing on August 7, 2007.

On August 14, 2007, Executive Judge Patricio issued an Order directing the respondents to submit their respective counter-affidavits within ten (10) days from receipt thereof.

In his Affidavit[12] dated August 14, 2007, complainant alleged that he went to the facilities of Nueva Swine on June 1, 2007 to stop the implementation of the writ of execution against the properties of his client, Nueva Swine. Upon reaching the farm, he saw about seven armed men in Philippine National Police (PNP) uniform posted outside the gate while swine were being loaded into cargo trucks provided by Keylargo. Complainant approached respondents Sheriffs Tugado, Cordero and Somosa and asked for the necessary documents that gave them authority to implement the execution. After going over the documents, he informed the respondents that the swine being levied upon

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[11] Report dated May 30, 2008, *id.* at 1-14.

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

belonged to Nueva Swine and not to accused Ng. Respondents, however, told him that they would only stop the implementation of the writ if a TRO would be issued. Thus, on that same day, complainant filed a petition for prohibition with prayer for TRO and preliminary injunction, which the RTC granted. Thereafter, armed with the TRO, complainant returned to Nueva Swine and presented the TRO to respondents Sheriffs Divinagracia and Lacatan. When complainant left the premises, however, he was told by Nueva Swine's manager, Dr. Matis Donglal, Jr., that respondents insisted on transporting the swine. Complainant then returned to Nueva Swine to stop the attempt at removing or transporting the swine out of the premises.

Complainant further averred that on June 2, 2007, he received a text message from an employee of Nueva Swine that respondents Tugado, Somosa, Lacatan and Divinagracia were trying to enter the gate of the farm to serve a notice of levy, a notice of sale and inventory documents. He advised the employee not to receive said documents or to sign any receipt. Respondents, however, left the documents at the gate of Nueva Swine.

Complainant added that the swine levied upon were sold at a public auction on June 7, 2007 without any notice to Nueva Swine or accused Ng, and in violation of the TRO. He argued that respondents illegally levied the swine owned by his client and not by accused Ng, and that they violated existing laws and administrative circulars of the Court when it implemented the writ in the absence of the judgment obligor, accused Ng.

To support the complainant's testimony, Dr. Donglal, Production Manager and Farm Veterinarian of Nueva Swine, submitted his Affidavit[13] dated August 13, 2007. He stated that sometime on May 31, 2007, at about 8:00 a.m., 30 men, ten of whom were in PNP uniform, entered the premises of Nueva Swine. Two of them introduced themselves as Sheriffs Lacatan and Divinagracia and showed him a writ of execution and a

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[13] *Id.* at 140-142.

decision rendered against accused Ng. Despite having informed respondents that Nueva Swine did not belong to accused Ng, they ordered their companions to get the swine from the pigpens and load them into the cargo trucks. They also ordered their companions to slaughter one pig of imported variety, which was then cooked into *lechon* (roasted pig) on the premises. As respondents were accompanied by armed men, Dr. Donglal was not able to do anything. He further claimed that the taking of the swine lasted until the afternoon of June 1, 2007, when complainant and Sheriff Jonel Tupas of the RTC, Branch 66 of Barotac Viejo, came with a copy of the TRO. However, after complainant left the premises, respondents insisted on transporting the swine, prompting Dr. Donglal to call up complainant for assistance. Dr. Donglal estimated that about 383 swine, one cow, and a slaughtered pig were taken from the farm.

On the other hand, respondents Lacatan, Divinagracia, Somosa and Haro alleged in their Joint Counter-Affidavit[14] dated August 29, 2007 that prior to the implementation of the writ, respondent Sheriff Tugado, head of the group, together with Keylargo's representative, went to Bacolod City to verify certain matters before implementing the writ on May 31, 2007. On June 1, 2007, complainant arrived at Nueva Swine and ordered the closure and padlocking of the main gates of the corporation. Respondent Sheriff Tugado forced open the padlock and implemented the writ pursuant to the MTCC Order dated May 30, 2007. They levied the swine after Dr. Donglal failed to pay the monetary obligation of accused Ng. The corporation was furnished a copy of the consolidated report on the inventory of the pigs taken from the piggery. Unfortunately, the officers refused to receive it, so they reported the matter to the police station for record purposes. Respondents averred that they discontinued implementation of the writ on June 1, 2007 at around 5:30 p.m., upon being informed that a TRO had been issued by the RTC, Barotac Viejo. Although they were not yet

[14] *Id.* at 180-181.

served a copy of the TRO, they nevertheless stopped levying on the property of Nueva Swine.

In their Joint Counter-Affidavit[15] dated August 29, 2007, respondents Lacatan and Divinagracia argued that they were informed by Keylargo's President, Juanito Gamboa, that accused Ng, as President of Nueva Swine, issued the subject checks on behalf of the corporation to pay for the feeds delivered by Keylargo to Nueva Swine, pursuant to their business relationship which began in 1998. They implemented the writ of execution on May 31, 2007, together with some members of the PNP and a group of individuals provided by Juanito Gamboa, upon the directive of the Clerk of Court of MTCC, Iloilo City. They also coordinated with the deputy sheriff of RTC, Branch 66, Barotac Viejo, Iloilo and the Barotac Viejo PNP and police officers of the Presidential Management Group, Sara, Iloilo. In implementing the writ, they said that they had explained their purpose to Dr. Donglal and asked for the whereabouts of accused Ng, but he told them that she was in Manila. Dr. Donglal called up accused Ng, but the latter refused to talk to them. Hence, they implemented the writ after the corporation failed to pay the judgment obligation by levying the swine and loading them into the cargo trucks provided by Keylargo. They were also given pieces of roasted pork. They later learned that a pig had been slaughtered by the head of the group and provided by Juanito Gamboa, upon the suggestion of Dr. Donglal, because their provision for food was missing. They averred that the employees of the corporation were aware of the slaughtering of the pig and had not objected thereto. The implementation of the writ lasted until 6:00 p.m. of June 1, 2007 when complainant arrived and served upon them a copy of the TRO. An argument ensued between them and complainant but to avoid trouble, they decided to unload the swine which were already taken before the TRO was served upon them.

On August 14, 2007, Executive Judge Espinosa submitted his report, *viz*:

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[15] *Id.* at 187-192.

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In summation, it was the late City Court Deputy Sheriff Johnny Tugado, assigned at Branch 3, MTCC-Iloilo, who actively facilitated the preparatory matters, with the active participation of a lawyer/ practitioner Atty. Gelacio Lira by way of following up with Branch 2, MTCC- Bacolod City, as far as, the implementation of the Writ of Execution, issued by said Court, as well as the Order, dated January 22, 2007.

It was sheriff Tugado who got hold of the original copies of said Court document, but he did not present it to Mr. Nicolasito Solas, the MTCC-Iloilo City Clerk of Court/*Ex-Officio* City Sheriff, instead showed to the latter, only a photocopy thereof. Yet, Mr. Solas issued an office order, directing the four City Deputy Sheriffs to comply and execute the order of Judge Demonteverde. He also wrote a letter request to RTC Clerk of Court Atty. Jerry Sumaculub for him to provide RTC Sheriffs to assist his City Sheriffs to implement the said Order, who granted said letter request by issuing a memorandum to RTC Sheriffs Camilo Divinagracia, Jr. and Gani Lacatan.

These sheriffs therefore comprised the team that were responsible for the implementation of the Order, and Writ of Execution issued by Branch 2, MTCC-Bacolod City. The overall team leader was the late Deputy Sheriff Tugado, who actively made the preparation, in coordination with the complainant, for its implementation, which entailed financial and monetary considerations for police assistance, labor force, transportation (land and water) from the hog farm to the ports, both in Iloilo City and Bacolod City.

Since the letter of Atty. Hector Teodosio requested for these information, the undersigned so limits its report to these matters as narrated, since an exhaustive investigation is being formally conducted by RTC Executive Judge Roger B. Patricio.

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In his Report dated May 30, 2008, Executive Judge Patricio submitted the following findings:

The undersigned Investigator finds merit in the charges of the complainant.

1. The respondents-sheriffs violated the procedure laid down by Sec. 9, Rule 39 of the 1997 Rules of Civil Procedure governing

the implementation in the execution of judgments for money. Under Sec. 9(a), *supra*, it is clear that the officer executing the Writ of Execution shall demand from the judgment obligor the immediate payment of the full amount stated in the Writ of Execution and all the legal fees. The payment shall be in cash, certified bank check payable to the judgment obligee, or in any form acceptable to the latter.

The Rule further provides that levy upon the properties of the judgment obligor may be had by the executing sheriff if the judgment obligor cannot pay all or part of the full amount stated in the Writ of Execution and all the lawful fees in cash, certified bank check or other acceptable mode of payment (Sec. 9(b), *supra*). If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode acceptable to the judgment obligee, he is given the option to immediately choose which of his property or part thereof, not otherwise exempt from execution, may be levied upon sufficient to satisfy the judgment. If the judgment obligor does not exercise the option immediately, or when he is absent or cannot be located, he waives such right, and the sheriff can now first levy his personal properties, if any, and then the real properties if the personal properties are insufficient to answer for the judgment.

The respondents-sheriffs cannot and should not have been the ones to determine if the judgment obligor (in this case Mary Ann Ng) cannot immediately pay because it is the judgment obligor who is in the best position to know if he can immediately pay by way of cash, certified bank check or any other mode of payment acceptable to the judgment obligee.

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From the evidence on record, it appears that the respondents have violated the laws and the Rules of Court by implementing a valid Writ of Execution issued by a competent court in a "Gestapo"-like manner and have caused considerable damages to the Nueva Swine Valley, Inc. in the form of hundreds of hogs which were taken by the respondents without due process of law.

RECOMMENDATION

In view of the foregoing, the undersigned Investigator finds respondent-Sheriffs Gani Lacatan, Camilo Divinagracia, Jr., Rolando Somosa, Edgardo Cordero and Rodolfo Haro guilty of the charges for GRAVE MISCONDUCT filed against them by complainant Atty.

Hector Teodosio, and considering the severity of the acts committed and the extent of the damages they have caused to the Nueva Swine Valley, Inc., client of the complainant, it is hereby respectfully recommended that the respondents be suspended for a period of six (6) months without pay, and that they should be warned that a repetition of similar offense, a more severe penalty shall be imposed upon them.

For having been killed before the investigation of this case was completed, the case against sheriff Johnny Tugado is recommended to be dismissed.[16]

In a Memorandum dated February 4, 2009, the OCA made the following observation:

We agree with the findings of the Investigating Judge.

Section 9 of Rule 39 of the 1997 Rules of Civil Procedure provides that in the execution of a judgment for money, the officer enforcing such judgment shall demand from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.

In the implementation of the writ of execution, respondents failed to strictly comply with the above rule. They failed to show that they demanded from accused Ng the payment of the judgment obligation. Records show that the writ was served on an officer of Nueva Swine who is not a party to the case and not on accused Ng. In their Return of Service dated June 28, 2007, respondents stated that when they arrived in the hog farm of Nueva Swine, accused Ng was not present. Mr. Donglal, an officer of the corporation, allegedly contacted accused Ng but it was not shown whether respondents talked to the former

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[16] Citations omitted.

and demanded from her the payment of her obligation. In his affidavit, Mr. Donglal, denied talking with accused Ng nor did respondents ask him to talk to her. Thereafter, respondents demanded from Mr. Donglal the payment of the judgment obligation. When the latter failed to pay the obligation, respondents levied the corporation's properties. Again, this is in violation of the rules as the hogs levied upon by respondents are not the personal properties of accused Ng.

Respondents' argument that the checks, subject of the criminal case, were issued by accused Ng as president of Nueva Swine and for the benefit of the corporation is irrelevant.

The Writ of Execution dated August 4, 2007 issued by MTCC, Branch 2, Bacolod City, specifically directed the sheriff or his deputies to cause the execution of the judgment on the civil aspect of the cases; **to levy the goods and chattels of the accused,** except those which are exempt from execution and to make the sale thereof in accordance with the procedure outlined by Rule 39, Revised Rules of Court. If the personal property of the accused is insufficient to satisfy the amount of the said judgment by levying the real property of said accused and to sell the same or so much thereof in the manner provided for by law for the satisfaction of the said judgment. The writ made no mention of implementing the writ on the properties of Nueva Swine, rather, it provided to levy the goods and chattels of the accused Ng. Further, the Order dated January 22, 2007 issued by Judge Demonteverde unequivocally directed the City Sheriff and/or the Provincial Sheriff of Iloilo **to serve the writ of execution on the civil aspect of the criminal cases to accused Mary Ann Ng** and not to Nueva Swine.

It is a basic principle of law that money judgments are enforceable only against property unquestionably belonging to the judgment debtor.

In the case at bench, the officer of Nueva Swine during the implementation of the writ of execution informed respondents that the personal properties being levied upon does not belong to accused Ng, the judgment obligor, but to Nueva Swine, a juridical person separate and distinct from the judgment obligor. Such information should have warned respondents of the possibility of levying properties not belonging to accused Ng. Respondents have no authority to determine which property to levy based on documents presented to them and to conclude that the checks issued by accused Ng was for and in behalf of Nueva Swine. Their only directive is to implement the writ on the properties of accused Ng. They have no capacity to

vary the judgment and deviate therefrom based on their own interpretation thereof.

Well settled is the rule that when writs are placed in the hands of sheriffs, it is their ministerial duty to proceed with reasonable celerity and promptness to execute them in accordance with their mandate. It is not their duty to decide on the truth or sufficiency of the processes committed to him for service as their duty to execute a valid writ is not ministerial and not discretionary. A purely ministerial act or duty is one which an officer or tribunal performs in the context of a given set of facts, in a prescribed manner and without regard to the exercise of his own judgment upon the propriety or impropriety of the act done. Where a requirement is made in explicit and unambiguous terms, no discretion is left to the sheriff – he must see to it that its mandate is obeyed.

Thus, echoing the decision of the Honorable Court in *Tropical Homes vs. Fortune* "it is basic that the only portion of the decision that becomes the subject of execution is that ordained in the dispositive portion. Whatever may be found in the body of the decision can only be considered as part of the reason or conclusions of the court and while they may serve as a guide or enlighten to determine the *ratio decidendi* what is controlling is what appears in the dispositive part of the decision.

Being one specifically entrusted with the proper execution of judgments, a sheriff should know that the writs of execution were not enforceable against persons who are clearly not claiming rights under the judgment debtors nor acting in the latter's discretion and control. It must be emphasized that in serving the court's writs and processes, and in implementing the orders of the court, sheriffs cannot afford to err without affecting the efficiency of the process of the administration of justice. They should set the example by faithfully observing the Rules of Court, and not brazenly disregard the Rules.

We take note of the Order of the RTC, Branch 66, Barotac Viejo, Iloilo in Special Civil Action Case No. 2007-607 which held that:

> As shown by the evidence on record, the writ of execution was on the civil aspect of the criminal cases which were filed against accused Mary Ann Ng before the MTCC, Branch 2 in Bacolod City.
>
> It was alleged by the private respondent Lita Gamboa that the transaction which gave rise to the filing of the several cases

for Violation of BP 22 against accused Mary Ann Ng was for the benefit of the petitioner-corporation in payment for feeds. The checks which were issued by the accused as signatory had the name of the corporation printed on them.

During the hearing, however, it was not clearly shown that when accused issued the checks to complainant Keylargo Commodities, it was authorized by the petitioner corporation through a board resolution. When the compromise agreement was signed by Mary Ann Ng as regard the civil aspects of the criminal cases, there was no evidence presented wherein the petitioner corporation authorized Mary Ann Ng to sign the same. These were not introduced in evidence.

If such facts had been established, this Court could readily disregard the legal fiction of corporate entity or piercing the veil of corporate entity so that judgment may be enforced against the property of the petitioner corporation.

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As regards the allegation that respondents slaughtered one pig and cooked it into "lechon" over the objection of the officer-in-charge of Nueva Swine, records show that respondents, in their Inventory of the hogs levied upon, admitted that they slaughtered one swine but argues that it was Mr. Donglal who proposed that the pig be slaughtered as the provision for food for those executing the writ were missing. This was, however, belied by Mr. Donglal.

Sheriffs play an important role in the administration of justice and as agents of the law high standards are expected of them. They and their deputies are the front-line representatives of the justice system, and if, through their lack of care and diligence in the implementation of judicial writs, they lose the trust reposed on them, they inevitably diminish likewise the faith of the people in the judiciary.

Clearly, respondents violated the laws and Rules of Court in implementing the writ of execution that has caused considerable damage to Nueva Swine. They have been remiss in the discharge of their duties as officers of the court in the implementation of the subject writ of execution. Such acts constitute conduct grossly prejudicial to the best interest of the service which is punishable by suspension from the service for six (6) months and one day

> to one year for the first offense and dismissal for the second offense.
>
> Respondent Johnny Tugado was killed before the investigation of the case was completed, hence, the complaint against him be dismissed.
>
> IN VIEW OF THE FOREGOING, it is respectfully recommended to the Honorable Court that:
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> (a) [T]his matter be **FORMALLY DOCKETED** as an administrative complaint against respondents Rolando R. Somosa, Edgar Cordero and Rodolfo Haro, Sheriffs of the MTCC, Iloilo City, and Gani Lacatan and Camilo Divinagracia, Sheriffs of the RTC, Iloilo City.
>
> (b) Respondents be held liable for acts grossly prejudicial to the best interest of the service and be **SUSPENDED** for a period of **SIX** (6) **MONTHS** without salary and other benefits and **WARNED** that a repetition of the same or similar offense in the future shall be dealt with severely.
>
> (c) The complaint against respondent Johnny Tugado be **DISMISSED** in view of his death.

In its Resolution dated February 24, 2009, the Court formally docketed the complaint as an administrative matter and dismissed the complaint against respondent Sheriff Tugado in view of his death and, accordingly, considered the complaint against him as closed and terminated per Resolution of June 2, 2009.

Sheriffs are ministerial officers. They are agents of the law and not agents of the parties, neither of the creditor nor of the purchaser at a sale conducted by either of them.[17] As such, sheriffs and deputy sheriffs must discharge their duties with due care and utmost diligence, because in serving the court's writs and processes and in implementing the orders of the court, they cannot afford to err without affecting the efficiency of the process of the administration of justice. Sheriffs play an

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[17] *Sismaet v. Sabas,* A.M. No. P-03-1680, May 27, 2004, 429 SCRA 241.

important role in the administration of justice and as agents of the law, high standards are expected of them.[18]

The procedure for the implementation of a writ of execution of judgment is provided for under Section 9, Rule 39 of the Rules of Court, which states:

SEC. 9. *Execution of judgments for money, how enforced. —*

(a) Immediate payment on demand. – The officer shall enforce an execution of a judgment for money by demanding from the **judgment obligor** the immediate payment of the full amount stated in the writ of execution and all lawful fees. The judgment obligor shall pay in cash, certified bank check payable to the judgment obligee, or any other form of payment acceptable to the latter, the amount of the judgment debt under proper receipt directly to the judgment obligee or his authorized representative if present at the time of payment. The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount within the same day to the clerk of court of the court that issued the writ. (Emphasis Supplied.)

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In the present case, it was clearly shown that respondents failed to follow the above-cited procedure. Instead of demanding payment from accused Ng, the judgment obligor and therein defendant, as to the civil aspect in Criminal Case Nos. 03-6-5516 to 03-6-5542, 03-9-6218 to 03-9-6270, 03-10-6498 to 03-10-6549, respondents served the writ of execution on Dr. Donglal, an officer of Nueva Swine. Respondents claimed that they tried to contact accused Ng through Dr. Donglal although the latter did not mention such incident in his affidavit. However, respondents failed to establish that they exerted all means to look for accused Ng, who should have been given the option as to which of her personal properties could be levied. They merely proceeded to demand payment from Dr. Donglal who was not even a party to the said criminal case. Worse, they levied the property of Nueva Swine.

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[18] *Abalde v. Roque*, A.M. No. P-02-1643, April 1, 2003, 400 SCRA 210, 215, citing *Ignacio v. Payumo*, 344 SCRA 169, 172 (2000).

In the execution of a money judgment, the sheriff must first make a demand on the obligor for payment of the full amount stated in the writ of execution.[19] Property belonging to third persons cannot be levied upon.[20] Accused Ng was the judgment obligor as stated in said writ, and not Nueva Swine, although she was the President and CEO of the said company. She has a personality which is separate and distinct from that of the corporation[21] and, likewise, her properties cannot be considered as properties of the corporation. Even assuming that accused Ng owned a majority of the stocks of Nueva Swine, respondents could have, at most, proceeded against her shares of stock, but not levy the hogs of Nueva Swine. Although the legal fiction that a corporation has a personality separate and distinct from that of stockholders and members may be disregarded, this exception should not be applied if it is used as a means to perpetrate fraud or an illegal act; or as a vehicle to evade an existing obligation, to circumvent statutes, or to confuse legitimate issues.[22] Therefore, when respondents levied the properties of the corporation, a third party to the case and not named in the writ, they exceeded their authority to strictly comply with the writ of execution.

Moreover, respondents committed grave abuse of authority when they forcibly took the swine despite the explanation of Dr. Donglal that the properties being levied did not belong to accused Ng. They continued to load the hogs into their cargo trucks even after having been informed of the TRO. Respondents' taking was aggravated by the fact that they slaughtered one of the hogs, a fact that they expressly admitted and even stated in

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[19] *Philippine Airlines, Inc. v. Balubar, Jr.*, A.M. No. P-04-1767, August 12, 2004, 436 SCRA 168.

[20] *QBE Insurance (Phils.) Inc. v. Rabello, Jr.*, A.M. No. P-04-1884, December 9, 2004, 445 SCRA 554.

[21] *Prudential Bank v. Alviar,* G.R. No. 150197, July 28, 2005, 464 SCRA 353.

[22] *Aratea and Canonigo v. Suico and Court of Appeals*, G.R. No. 170284, March 16, 2007, 518 SCRA 501.

the Sheriffs' Return of Service[23] dated June 28, 2007. The slaughtered pig was then cooked into *lechon* (roasted pig), and respondents feasted on it while still in the premises of Nueva Swine. While respondents maintain that it was Dr. Donglal who proposed that the pig be slaughtered as food for them, such excuse is unacceptable because sheriffs cannot appropriate levied property for themselves, even though the same be purportedly upon the instance of Dr. Donglal. Sheriffs are enjoined to keep levied properties securely in their custody,[24] and file a return of the writ of execution.[25]

Such conduct of respondents evidently falls short of the standard established by the pertinent provisions of the Code of Conduct for Court Personnel,[26] specifically Section 2, which states that court personnel shall carry out their responsibilities as public servants in as courteous a manner as possible; and Section 6, which states that court personnel shall expeditiously enforce rules and implement orders of the court within the limits of their authority.

Respondents became administratively liable for grave abuse of authority when they forcibly levied and took away properties belonging to a third person and, thereafter, appropriated the levied property for themselves. Respondents' grave abuse of authority amounted to gross misconduct, which under the Uniform Rules on Administrative Cases in the Civil Service,[27] Rule IV, Section 52 A (3) thereof, is a grave offense punishable by dismissal even for the first offense.

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[23] *Rollo*, pp. 67-69.

[24] *Caja v. Nanquil*, A.M. No. P-04-1885, September 13, 2004, 438 SCRA 174.

[25] Rules of Court, Rule 39, Sec. 14.

[26] Promulgated by the Supreme Court *En Banc* through A.M. No. 03-06-13-SC dated June 1, 2004.

[27] 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.

The recommendations of both the Investigating Judge and the OCA that respondents be suspended from the service for six (6) months without pay are not commensurate to the gross misconduct committed. Although respondents are first-time offenders, the Court takes into consideration the seriousness of their offense. They did not only implement a writ of execution in excess of their authority, but appropriated a part of the levied property for themselves. Their act of appropriation is a grave offense that may even subject them to criminal prosecution.

Previously, in *Office of the Court Administrator v. Fuentes and Paralisan*,[28] where therein respondent sheriff hastily implemented a writ of execution when he failed to confer with the officials concerned as to which properties were to be levied, he was found guilty of conduct prejudicial to the best interest of the service and dismissed from the service, with forfeiture of all retirement benefits and accrued leave credits, and with prejudice to reemployment in any branch or instrumentality of the government.

In *Flores v. Caniya*,[29] where therein sheriff failed to issue receipts for money entrusted to him in his official capacity, thereby amounting to misappropriation, he was found guilty of dishonesty, grave misconduct, gross neglect of duty and conduct prejudicial to the best interest of the service, and dismissed from the service, with forfeiture of all retirement benefits and accrued leave credits, and with prejudice to reemployment in any branch or instrumentality of the government.

Likewise, in *Meneses v. Zaragoza*,[30] where therein respondent sheriff demanded money from therein complainant on the pretext that it would be used for demolition expenses, he was found guilty of grave misconduct and simple neglect of duty and, accordingly, dismissed from the service, with forfeiture of

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[28] A.M. No. RTJ-94-1270, August 23, 1995, 247 SCRA 506.

[29] A.M. No. P-95-1133, April 26, 1996, 256 SCRA 518.

[30] A.M. No. P-04-1768, February 11, 2004, 422 SCRA 434.

retirement benefits, except earned leaves, and with prejudice to reemployment in any branch or instrumentality of the government.

In view of the gravity of respondents' offense, and bolstered by established jurisprudence, the Court finds respondents guilty of grave abuse of authority amounting to grave misconduct, and is constrained to impose a penalty of dismissal from the service with forfeiture of all benefits and privileges, except accrued leave credits, if any, and with prejudice to re-employment in any branch or agency of the government, including government-owned or controlled corporations. The penalty of dismissal even for the slightest breach of duty by, and the slightest irregularity in the conduct of, said officers and employees, is warranted.[31]

WHEREFORE, herein respondents, Sheriffs Gani Lacatan and Camilo Divinagracia, Jr., Deputy Sheriffs of the Regional Trial Court of Iloilo City, and Sheriffs Rolando Somosa, Edgardo Cordero and Rodolfo Haro, Deputy Sheriffs of the Municipal Trial Court in Cities of Iloilo City, are found *GUILTY* of grave abuse of authority amounting to *GRAVE MISCONDUCT*, and are *DISMISSED* from the service with forfeiture of all benefits and privileges, except accrued leave credits, if any, and with prejudice to re-employment in any branch or agency of the government, including government-owned or controlled corporations.

This Decision shall take effect immediately.

SO ORDERED.

Puno, C.J., Carpio, Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, Peralta, Bersamin, Del Castillo, and *Abad, JJ.,* concur.

Quisumbing[*] and *Ynares-Santiago,*[**] *JJ.,* on official leave.

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[31] *Orfila v. Arellano*, A.M. No. P-06-2110, and *Spouses Arellano v. Maniñgas, et al.*, A.M. No. P-03-1692, April 26, 2006, 488 SCRA 279.

[*] On official leave.

[**] On official leave.

EN BANC

[G.R. No. 165450. August 13, 2009]

FRANCIS F. YENKO, as Administrator & MAYOR JINGGOY E. ESTRADA, both of the Municipality of San Juan, Metro Manila, *petitioners, vs.* **RAUL NESTOR C. GUNGON,** *respondent.*

[G.R. No. 165452. August 13, 2009]

RAUL NESTOR C. GUNGON, *petitioner, vs.* **FRANCIS F. YENKO, as Administrator, & MAYOR JINGGOY E. ESTRADA, both of the Municipality of San Juan, Metro Manila,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987; REASSIGNMENT OF EMPLOYEE; A REASSIGNMENT INVOLVING A REDUCTION IN RANK, STATUS OR SALARY IS VOID *AB INITIO*.—** As regards the first issue raised by petitioner Gungon in G.R. No. 165452, the Court agrees with the decision of the Court of Appeals that the reassignment of Gungon from the Municipal Assessor's Office, where his primary function was that of land appraiser, to the POSO, where he was required to work as a security guard/ duty agent, was void *ab initio* because it clearly involved a reduction in rank and status. The CSC affirmed the reduction in rank; petitioners Municipal Administrator Yenko and Mayor Estrada did not dispute it. Such reassignment is expressly prohibited by Executive Order No. 292, otherwise known as the Administrative Code of 1987, under Book V, Title 1, Subtitle A, Chapter 5, Sec. 26 (7), thus: (7) *Reassignment*.—An employee may be reassigned from one organizational unit to another in the same agency; ***Provided*, That such reassignment shall not involve a reduction in rank, status or salaries**. The above provision is reflected in Section 10, Rule VII of the Omnibus Civil Service Rules and Regulations: Sec. 10. A reassignment is the movement of an employee from one organizational unit to another in the same department or agency which **does not**

involve a reduction in rank, status or salaries and does not require the issuance of an appointment. Reassignments involving a reduction in rank, status or salary violate an employee's security of tenure, which is assured by the Constitution, the Administrative Code of 1987, and the Omnibus Civil Service Rules and Regulations. Security of tenure covers not only employees removed without cause, but also cases of unconsented transfers and reassignments, which are tantamount to illegal/constructive removal.

2. **ID.; ID.; ID.; ID.; WHEN THE REASSIGNMENT IS VOID, THE DISMISSAL OF THE EMPLOYEE FOR UNAUTHORIZED ABSENCES IN THE OFFICE WHERE HE IS REASSIGNED, HAS NO LEGAL BASIS; AN ILLEGALLY DISMISSED EMPLOYEE IS ENTITLED TO REINSTATEMENT.—** Since Gungon's reassignment order was void *ab initio*, his alleged failure to report for duty at the POSO, where he was reassigned, had no legal basis. Gungon could not have incurred absences in the POSO, because his reassignment was void. Thus, the cause of his separation from the service, which was unauthorized absences from the post where he was reassigned, was not a valid cause for dismissing him from the service. It is undisputed that Gungon reported at the Municipal Assessor's Office after his leave of absence, instead of the POSO. Under the circumstances, Gungon is considered to have been illegally dismissed from the service and entitled to reinstatement.

3. **ID.; ID.; CIVIL SERVICE; CSC MEMORANDUM CIRCULAR NO. 12, SERIES OF 1994; NOT APPLICABLE TO CASE AT BAR; THE RULE THAT THE REAPPOINTMENT OF THE EMPLOYEE IS SUBJECT TO THE DISCRETION OF THE APPOINTING AUTHORITY AND CIVIL SERVICE LAW, RULES AND REGULATIONS DOES NOT APPLY TO AN ILLEGALLY DISMISSED EMPLOYEE.—** The Court of Appeals misconstrued CSC Memorandum Circular No. 12, series of 1994 when it cited the Circular as the basis for holding Gungon's reappointment as "subject to the discretion of the appointing authority and Civil Service Law, rules and regulations." CSC Memorandum Circular No. 12, Series of 1994 has for its subject Amendment No. 1 to the Omnibus Guideline on Appointments and Other Personnel Actions, CSC Memorandum Circular No. 38, Series of 1993 (Dropped from the Rolls). The pertinent portion

of the Memorandum provides: xxx *This shall likewise be without prejudice to the reappointment of the official or employee to government at the discretion of the appointing authority and subject to Civil Service law, rules and regulations*. To reiterate, the italicized paragraph above was used by the Court of Appeals as the basis for subjecting Gungon's reinstatement to the discretion of the appointing authority. The basis is misplaced, because what the provision means is that the separation of an employee from government service through any of the modes enumerated in the Memorandum Circular, which includes unauthorized absences, shall be without prejudice to his reappointment in the government service at the discretion of the appointing authority and subject to Civil Service law, rules and regulations. Hence, an employee who is **validly dismissed** due to unauthorized absences may still be reappointed in the government service, but the reappointment is at the discretion of the appointing authority and subject to Civil Service law, rules and regulations. In this case, Gungon was **not validly dismissed** from the service. His reassignment to the POSO, which involved a reduction in rank and status, was void for being violative of Executive Order No. 292 and the Omnibus Civil Service Rules and Regulations. Hence, Gungon could not have incurred absences in the office where he was reassigned since the reassignment was void. Consequently, his dismissal for unauthorized absences in the office where he was reassigned was not valid. Therefore, Memorandum Circular No. 12, series of 1994, does not apply in the case of Gungon.

4. **ID.; ID.; ID.; AN EMPLOYEE REINSTATED FOR HAVING BEEN ILLEGALLY DISMISSED IS CONSIDERED AS NOT HAVING LEFT HIS OFFICE.—** In fine, Gungon is entitled to reinstatement, without qualification, for having been illegally dismissed. A government official or employee reinstated for having been illegally dismissed is considered as not having left his office. His position does not become vacant and any new appointment made in order to replace him is null and void *ab initio*.

5. **ID.; ID.; ID.; AN ILLEGALLY TERMINATED CIVIL SERVICE EMPLOYEE IS ENTITLED TO BACK SALARIES LIMITED ONLY TO A MAXIMUM PERIOD OF FIVE YEARS.—** As regards the award of Gungon's back salaries, it is settled jurisprudence that an illegally terminated

civil service employee is entitled to back salaries limited only to a maximum period of five years, and not full back salaries from his illegal termination up to his reinstatement.

6. **ID; ID.; ID.; OMNIBUS CIVIL SERVICE RULES AND REGULATIONS; SECTION 6 OF RULE XVI; OPTIONS AVAILABLE TO AN ILLEGALLY DISMISSED EMPLOYEE WHOSE LEAVE CREDITS HAVE BEEN COMMUTED AFTER SEPARATION, AND THEREAFTER REINSTATED.—** When Gungon applied for terminal leave on October 13, 1998 and received his terminal leave pay on November 10, 1998, there was no specific provision on terminal leave. The applicable rule was Section 6, Rule XVI (Leave of Absence) of the Omnibus Civil Service Rules and Regulations, before Rule XVI was amended by CSC Memorandum Circular No. 41, series of 1998. xxx. On December 24, 1998, the CSC issued Memorandum Circular No. 41, which, pursuant to CSC Resolution No. 98-3142, series of 1998, adopted the amendment to Rule XVI (Leave of Absence) and the definitions of leave terms under Rule I of the Omnibus Civil Service Rules and Regulations. The amended Rule XVI contained a specific provision on terminal leave in Sec. 35, and substantially reflected in Sec. 26 the provision in Sec. 6 of the original Rule XVI. xxx Section 6 of the original Rule XVI of the Omnibus Civil Service Rules and Regulations, which is applicable to this case, provides two options for an employee like Gungon whose leave credits have been commuted after separation from the service through no fault of his, and who is subsequently reinstated. These options are: (1) He may refund the money value of the unexpired portion of the leave commuted; or (2) he may not refund the money value of the unexpired portion of the leave commuted, but insofar as his leave credits is concerned, he shall start from zero balance. Hence, the Court of Appeals correctly held that Gungon may start from zero balance of his leave upon re-employment in the government. Notably, the second option of Section 6 of the original Rule XVI is still contained in Sec. 26 of the amended Rule XVI.

7. **ID.; ID.; ID.; ID.; AN APPLICATION FOR TERMINAL LEAVE AND RECEIPT OF TERMINAL LEAVE BENEFITS ARE NOT LEGAL CAUSES FOR THE SEPARATION OF AN EMPLOYEE FROM THE SERVICE.—** The Court cannot subscribe to the assertion of

Municipal Administrator Yenko and Mayor Estrada that mere application for terminal leave or the commutation of leave credits ended Gungon's employment because an application for terminal leave and receipt of terminal leave benefits are not legal causes for the separation or dismissal of an employee from the service. The Constitution explicitly states that "[n]o officer or employee of the civil service shall be removed or suspended except for cause provided by law." At most, an application for terminal leave under Sec. 35 of the amended Rule XVI of the Omnibus Civil Service Rules and Regulations shows the intent of an employee to sever his employment, which intent is clear if he has resigned or retired from the service. However, such intent may be disproved in cases of separation from the service without the fault of the employee, who questions his separation, even if the government agency, pending the employee's appeal, grants his application for terminal leave because it has already dropped him from the rolls. In *Dytiapco v. Civil Service Commission,* the Court understood the predicament of an employee who accepted terminal leave benefits because of economic necessity rather than the desire to leave his employment with the government.

8. **ID.; ID.; ID.; ID.; ACCEPTANCE OF TERMINAL LEAVE BENEFITS NOT CONSTRUED AS AN ABANDONMENT OF THE CLAIM FOR REINSTATEMENT WHERE THE DISMISSED EMPLOYEE HAS APPEALED HIS CASE BEFORE HE RECEIVED HIS TERMINAL LEAVE BENEFITS.—** In this case, the Court of Appeals correctly held that Gungon's application for terminal leave and his acceptance of terminal leave benefits could not be construed as an abandonment of his claim for reinstatement or indicative of his intent to voluntarily sever his employment with the government, because Gungon had appealed his case to the CSC and had a pending motion for reconsideration of CSC Resolution No. 982525 before he received his terminal leave benefits. Indeed, Gungon's appeal against his dismissal to the CSC and, thereafter, to the Court of Appeals, and his petition before this Court – all taken within a span of 11 years – show his desire to be reinstated, not separated from the government service. In this connection, the Court of Appeals aptly stated that it would have been unjust for petitioner, who was dropped from the rolls not to claim his terminal leave pay considering that it would take some time for

his appeal to be resolved. Gungon had no permanent employment and had to sustain the needs of his two sons.

9. **ID.; ID.; ID.; ID.; AN ILLEGALLY DISMISSED EMPLOYEE WHO WAS ORDERED REINSTATED IS ENTITLED TO ALL THE RIGHTS AND PRIVILEGES THAT SHOULD ACCRUE TO HIM BY VIRTUE OF THE OFFICE THAT HE HELD.—** It is settled that a government official or employee who had been illegally dismissed and whose reinstatement was later ordered is considered as not having left his office, so he is entitled to all the rights and privileges that should accrue to him by virtue of the office that he held. Thus, Gungon is entitled to payment of back salaries equivalent to a maximum period of five years.

APPEARANCES OF COUNSEL

Romualdo C. Delos Santos for Francis F. Yenko, *et al.*
Carambas Timog Law Offices for Raul Nestor C. Gungon.

D E C I S I O N

PERALTA, *J.*:

These are consolidated petitions for review on *certiorari*, under Rule 45 of the Rules of Court, of the Amended Decision[1] of the Court of Appeals in CA-G.R. SP No. 51093 dated September 28, 2004, reinstating Raul Nestor C. Gungon to his former position as Local Assessment Operations Officer III in the Assessor's Office of the Municipal Government of San Juan, Metro Manila, without loss of seniority rights, at the discretion of the appointing authority and subject to Civil Service law, rules and regulations; and ordering the payment to Gungon of back salaries equivalent to five years from the date he was dropped from the rolls.

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[1] Penned by Associate Justice Godardo A. Jacinto, with Associate Justices Mariano C. del Castillo and Lucas P. Bersamin (now both members of this Court), concurring; *rollo* (G.R. No. 165450), pp. 25A-32.

The facts are as follows:

On February 28, 1987, Raul Nestor C. Gungon, who holds a professional career service eligibility, was extended a permanent appointment as Local Assessment Operations Officer III in the Assessor's Office of the Municipality of San Juan, Metro Manila.

On January 7, 1998, San Juan Municipal Administrator Francisco F. Yenko issued a Memorandum[2] temporarily reassigning Gungon to the Public Order and Safety Office (POSO) of the said municipality effective January 8, 1998 in the exigency of the service. Gungon was directed to report to Mr. Felesmeno Oliquino for further instruction. When Gungon received the Memorandum, Mr. Oliquino was confined at the San Juan Medical Center and he passed away on January 9, 1998.

On January 8, 1998, Gungon, in compliance with the reassignment Memorandum, reported to the POSO. The officer-in-charge (OIC) of the POSO, Arnulfo Aguilar, issued a Memorandum[3] dated January 8, 1998 requiring Gungon to report as Duty Agent, whose responsibility was "to conduct inspections within the municipal compound, apprehend any suspicious characters roaming within the vicinity of the municipal hall and compound," and setting his tour of duty at 12:01 a.m. to 8:00 a.m. from Monday to Friday.

In a letter[4] dated January 9, 1998 to the OIC of the POSO, Gungon protested his reassignment for being violative of the Administrative Code of 1987, which prohibits reassignment that results in reduction in rank, status or salary of an employee. Gungon went on sick leave from January 8 to 21, 1998 after filing the proper application with supporting medical certificate.[5]

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[2] CA *rollo*, p. 26.

[3] *Id.* at 27.

[4] *Id.* at 28.

[5] *Id.* at 30.

On January 20, 1998, Gungon, through counsel, wrote a letter[6] to Municipal Administrator Yenko, objecting to his reassignment because it amounted to a demotion in rank; it was arbitrary, unwarranted and illegal; and it violated his constitutional right to security of tenure. Gungon requested the recall of the Memorandum dated January 7, 1998 and his reinstatement to his position as Local Assessment Operations Officer III.

On January 22, 1998, Gungon, whose leave of absence had by then expired, reported back to his office at the Municipal Assessor's Office and continued to do so even if he was not given work there.

On February 13, 1998, Gungon received from Municipal Administrator Yenko a Memorandum,[7] which called his attention to his failure to report for duty at the POSO since the date of his reassignment. Gungon was informed that his action was a violation of Civil Service Rules which might constitute a ground for dismissal from the service.

In a letter dated February 18, 1998, Gungon replied to Municipal Administrator Yenko's Memorandum, the pertinent portion of which reads:

Dear Sir:

This is in response to your memorandum of 13 February 1998 concerning my alleged failure to report to my designated place of assignment since the effectivity of the reassignment order on January 8, 1998 up to this date.

x x x x x x x x x

The transfer/reassignment is arbitrary, malicious, patently illegal, and palpably constitutes a violation of the Anti-Graft and Corrupt Practices Act (RA No. 3019) x x x. You know very well that there is no factual nor legal basis to transfer and assign me from the assessor's office, where I work as assessor, to the POSO where I will be working as a security guard in the guise of "exigency of service" which, no

[6] *Id.* at 31.

[7] *Id.* at 32.

matter how one looks at it, is false and beyond comprehension. In fact, your memorandum is silent as to why I am purposely selected to work as security guard amidst the pendency of more important assessor's work I was doing and am still to perform being the number three man in the assessor's office, and availability of others subordinate to me who are more qualified to perform a police work, thus, establishing that the only purpose is to cause injury to me.

Your charge that I have not reported for work is equally untrue. I have been reporting to the assessor's office from 8:00 a.m. to 5:00 p.m., but my time card has not been signed by my superior, evidently for fear that he could be administratively dealt with. On the other hand, I have not reported to the POSO because, instead of being assigned from 8:00 a.m. to 5:00 p.m., I was given a graveyard assignment from 12:01 in the morning up to 8:00 a.m. I certainly cannot work with that kind of schedule and work, placing my personal safety and life in peril.

There is no contumacy on my part not to report because, by your memorandum and implemented by the POSO head, I had been given an assignment impossible to perform, dangerous to undertake, and beyond my personal competence to discharge.[8]

In a Memorandum[9] dated February 23, 1998, then San Juan Mayor Jinggoy Estrada informed Gungon that he was "considered dropped from the rolls because of [his] absence without official leave from x x x January 22, 1998 up to the present x x x."

Gungon appealed the Memoranda dated January 7, 1998 and February 23, 1998 of Municipal Administrator Yenko and Mayor Estrada, respectively, to the Civil Service Commission (CSC). He alleged that the Municipal Administrator committed abuse of authority amounting to oppression in reassigning him from the Assessor's Office, where he was working as Local Assessment Operations Officer III, to the POSO, where he would be required to work as a security guard, even if the Municipal Administrator knew that he never had the knowledge, background or training as a security guard. He also alleged that the Municipal

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

[9] *Id.* at 36.

Administrator violated the Civil Service Law when he effected the reassignment, because he knew that such personnel action was meant to demote, humiliate and subject him to ridicule, risk, harassment and undue injury rather than enhance the so-called "exigency of service." Further, he contended that Mayor Estrada approved the illegal transfer by dropping him from the rolls on the pretext that he was absent from January 22 to February 23, 1998, although his failure to report to the POSO was based on justifiable, meritorious and valid grounds, thereby rendering the Mayor's Memorandum dropping him from the rolls as illegal and void.[10]

The CSC dismissed Gungon's appeal in CSC Resolution No. 982525 dated September 28, 1998. The dispositive portion of the Resolution reads:

> WHEREFORE, the Appeal of Raul Nestor C. Gungon is hereby dismissed. Accordingly, the decision of Mayor Jinggoy Estrada, Municipality of San Juan, Metro Manila, dropping him from the rolls, is affirmed.[11]

The CSC held that even if Gungon suffered a reduction in rank when he was reassigned from the Office of the Municipal Assessor to the POSO, it was improper for him to defy the reassignment order. It cited its ruling in CSC Resolution No. 95-0114 dated January 5, 1995, thus:

> A reassignment order is generally implemented immediately even if the employee does not agree with it. x x x The rule is a reassigned employee who does not agree with the order must nevertheless comply until its implementation is restrained or it is declared to be not in the interest of service or have been issued with grave abuse of discretion.[12]

The CSC held that Gungon's failure to report for work for more than 30 days was violative of CSC Memorandum Circular No. 38, series of 1993, as amended, which provides that "[a]n

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[10] Petition, *rollo* (G.R. No. 165452), pp. 31-32.

[11] *Rollo* (G.R. No. 165450), p. 53.

[12] *Id.* at 52.

officer or employee who is continuously absent without approved leave (AWOL) for at least thirty (30) calendar days shall be separated from the service or dropped from the rolls without prior notice."

Gungon's motion for reconsideration was denied in CSC Resolution No. 990194[13] dated January 15, 1999.

Gungon filed a petition for review of the CSC's Resolutions with the Court of Appeals. He alleged that the CSC erred (1) in not nullifying the reassignment order and order of separation from the service notwithstanding its finding that as a result thereof, he suffered a reduction in rank; (2) in holding that his failure and refusal to comply with the reassignment order was justified; and (3) in holding that for his failure and refusal to report for duty at the disputed job he was deemed to have incurred continuous absences.[14]

Gungon also raised the following issues:

1) Whether or not a transfer of a Career Civil Service Employee amounting to a reduction in rank, thus violative of the Civil Service Law, is valid and enforceable;

2) Whether or not a transfer to a new position which entails a job that is completely and entirely different from the previous assignment is valid and enforceable;

3) Whether or not a refusal or failure to comply with a transfer which amounts to a reduction in rank and/or involving a work completely and entirely different from the previous designation constitutes a ground for dismissal or dropping from the rolls.[15]

On October 2, 2003, the Court of Appeals rendered a Decision in favor of Gungon, the dispositive portion of which reads:

WHEREFORE, premises considered, the assailed Civil Service Commission Resolution Nos. 982525 and 990194 are hereby SET

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[13] *Id.* at 55.

[14] *Id.* at 38-39.

[15] *Id.* at 39.

ASIDE and payment of petitioner's back salaries from February 23, 1998 up to October 13, 1998 is hereby ORDERED.[16]

The Court of Appeals held that Gungon, who occupied the position of Local Assessment Operations Officer III under a permanent appointment, enjoyed security of tenure, which is guaranteed by the Constitution and Civil Service Law. His reassignment from Local Assessment Operations Officer III to security guard involved a reduction in rank and status, which is proscribed under Section 10, Rule 7 of the Omnibus Rules Implementing Book V of Executive Order No. 292 (Omnibus Civil Service Rules and Regulations).[17] Hence, his reassignment, which was directed by Municipal Administrator Yenko in the Memorandum dated January 7, 1998, was void *ab initio*. Consequently, Mayor Estrada's Memorandum dated February 13, 1998, which ordered Gungon's dismissal from the service, must suffer from the same fatal infirmity.[18]

However, the Court of Appeals, pursuant to Section 35 of Rule XVI of the Omnibus Civil Service Rules and Regulations,[19] as amended, did not grant Gungon's plea for reinstatement on the ground that Gungon applied for terminal leave on October 13, 1998, which application was approved. He was paid his terminal leave benefits in the amount of ₱151,514.39 on November 10, 1998.

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[16] *Id.* at 47.

[17] Sec. 10. A reassignment is the movement of an employee from one organizational unit to another in the same department or agency which does not involve a reduction in rank, status or salaries and does not require the issuance of an appointment.

[18] *Rollo* (G.R. No. 165450), pp. 39-46.

[19] Sec. 35. *Terminal leave.* — Terminal leave is applied for by an official or an employee who intends to sever his connection with his employer. Accordingly, the filing of application for terminal leave requires as a condition *sine qua non,* the employee's resignation, retirement or separation from the service without any fault on his part. It must be shown first that public employment ceased by any of the said modes of severance.

The Court of Appeals held that having voluntarily opted to sever his employment by applying for terminal leave and having accepted his terminal leave benefits, Gungon should only be awarded back salaries from the date of his dismissal until the date he applied for terminal leave, which was from February 23, 1998 up to October 13, 1998.

The parties filed separate motions for reconsideration of the Decision of the Court of Appeals.

Gungon contended:

1. The receipt by the dismissed employee of his terminal leave pay is not fatal to his appeal for reinstatement;
2. Sec. 35 of the Amended Rule XVI (Leave of Absence) of the Omnibus Rules finds no application in the case x x x since Sec. 35 of the Amended Rule XVI was an amendment made only on December 14, 1998, published in the Manila Times on December 30, 1998, and took effect only on January 15, 1999;
3. The applicable Omnibus Rule in fact is the original or un-amended Sec. 6 of Rule XVI (Leave of Absence) which was in force and effect at the time petitioner applied for terminal leave on [October] 13, 1998;
4. The petitioner is entitled to reinstatement with back salaries to a maximum of five (5) years in view of the Honorable Court's Decision in setting aside the Memoranda of Municipal Administrator Yenko and Mayor Estrada, and the CSC Resolutions.[20]

On the other hand, Municipal Administrator Yenko and Mayor Estrada contended that the conclusion and the order of payment of Gungon's back salaries be reconsidered based on the following grounds:

1. Petitioner Gungon was away on leave from January 22, 1998 to February 23, 1998.

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[20] *Rollo* (G.R. No. 165450), p. 25-B.

2. There was a prohibition to transfer any employee from one office to another effective January 11, 1998 until June 30, 1998 relative to the May 1998 election;

3. The Memorandum of respondent Municipal Administrator Yenko did not assign petitioner Gungon to work as security guard.[21]

In an Amended Decision dated September 28, 2004, the Court of Appeals modified its Decision, the dispositive portion of which reads:

WHEREFORE, the decision dated October 2, 2003 is hereby MODIFIED. Petitioner is hereby reinstated to his former position as Local Assessment Operations Officer III (LAOO III), without loss of seniority rights, at the discretion of the appointing authority and subject to Civil Service Law, rules and regulations. Petitioner is likewise entitled to be paid five (5) years back salaries from the date he was dropped from the rolls on March 3, 1998.[22]

Citing *Dytiapco v. Civil Service Commission,*[23] the Court of Appeals held that Gungon's application for terminal leave and his subsequent acceptance of terminal leave benefits could not be construed as an abandonment of his claim for reinstatement or indicative of his intent to voluntarily sever his employment with the government considering that Gungon had appealed his case to the CSC and had a pending motion for reconsideration of CSC Resolution No. 982525 before he received his terminal leave benefits. Gungon's appeal to the CSC and then to the Court of Appeals strongly indicated his desire to be reinstated, not separated from the government service.

The Court of Appeals stated that Section 35 of the amended Rule XVI[24] of the Omnibus Civil Service Rules and Regulations,

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[21] *Id.* at 25-B to 26.

[22] *Id.* at 31.

[23] G.R. No. 92136, July 3, 1992, 211 SCRA 88.

[24] As amended by CSC Memorandum Circular No. 41, series of 1998.

which was its basis for denying Gungon's reinstatement, does not apply to this case, because the amended Rule took effect on January 15, 1999, after Gungon had applied for terminal leave on October 13, 1998 and had received his terminal leave benefits on November 10, 1998. The appellate court held that the applicable rule is Sec. 6 of the original Rule XVI, which was the prevailing rule when Gungon received his terminal leave benefits.

Section 6 of the original Rule XVI of the Omnibus Civil Service Rules and Regulations gives two options to a person whose leave credits have been commuted following his separation from the service, but who is thereafter reappointed in the government service before the expiration of the leave commuted. These options are:

(a) Refund the money value of the unexpired portion of the leave commuted; or

(b) May not refund the money value of the unexpired portion of the leave commuted, but insofar as his leave credits is concerned, he shall start from zero balance.

The Court of Appeals noted that the original provision in Section 6 of Rule XVI of the Omnibus Civil Service Rules and Regulations was substantially carried in Section 26 of the amended Rule XVI, except that the first option to refund the money value of the unexpired portion of the leave commuted was no longer included. Hence, the Court of Appeals held that Gungon may start from zero balance of his leave upon reemployment in the government service.

As regards the motion for reconsideration filed by Municipal Administrator Yenko and Mayor Estrada, the Court of Appeals found no reason to change the position it had taken on the said issues since no new matters were raised.

Both parties filed a petition for review on *certiorari* of the Amended Decision of the Court of Appeals. The petition of Municipal Administrator Yenko and Mayor Estrada was docketed as G.R. No. 165450, while that of Gungon was docketed as

G.R. No. 165452. The Court resolved to consolidate both cases in a Resolution[25] dated December 14, 2004.

Municipal Administrator Yenko and Mayor Estrada raised the following issues:

1. Whether or not the Court of Appeals erred in ordering the reinstatement of Gungon to his former position as Local Assessment Operations Officer III without loss of seniority rights despite the fact that Gungon subsequently opted to sever his employment by applying for terminal leave and receiving the equivalent payments thereon.

2. Whether or not the Court of Appeals erred in ordering the payment to Gungon of five years back salaries from the date he was dropped from the rolls on March [1], 1998 despite the undisputed fact that Gungon did not render any service to the Municipal Government of San Juan from the time he was reassigned to POSO up to the time he opted to voluntarily sever his employment when he applied for terminal leave.[26]

Gungon raised these issues:

1) Whether or not the appellate court was correct in declaring the reassignment of petitioner and the dropping of petitioner from the rolls as void *ab initio* and in setting aside the questioned CSC Resolutions;

2) Whether or not the petitioner, who was illegally dismissed, has the vested right to his former position; hence, the right to be reinstated;

3) Whether or not the reinstatement of a career government employee who was illegally dismissed, through no delinquency or misconduct, is discretionary upon the appointing authority as ordered in the decretal portion of the Amended Decision of the Court of Appeals.

4) Whether or not the Supreme Court, based on the realities of the time and situation, may now change its principle adopted in the

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[25] *Rollo* (G.R. 165450), p. 85.

[26] *Id.* at 15-16.

"Mercury Drug Rule" in fixing the amount of back wages at a reasonable level without qualification and deduction.[27]

As regards the first issue raised by petitioner Gungon in G.R. No. 165452, the Court agrees with the decision of the Court of Appeals that the reassignment of Gungon from the Municipal Assessor's Office, where his primary function was that of land appraiser, to the POSO, where he was required to work as a security guard/duty agent, was void *ab initio* because it clearly involved a reduction in rank and status. The CSC affirmed the reduction in rank; petitioners Municipal Administrator Yenko and Mayor Estrada did not dispute it. Such reassignment is expressly prohibited by Executive Order No. 292, otherwise known as the Administrative Code of 1987, under Book V, Title 1, Subtitle A, Chapter 5, Sec. 26 (7), thus:

(7) *Reassignment*.—An employee may be reassigned from one organizational unit to another in the same agency; ***Provided*, That such reassignment shall not involve a reduction in rank, status or salaries**.[28]

The above provision is reflected in Section 10, Rule VII of the Omnibus Civil Service Rules and Regulations:

Sec. 10. A reassignment is the movement of an employee from one organizational unit to another in the same department or agency which **does not involve a reduction in rank, status or salaries** and does not require the issuance of an appointment.[29]

Reassignments involving a reduction in rank, status or salary violate an employee's security of tenure, which is assured by the Constitution, the Administrative Code of 1987, and the Omnibus Civil Service Rules and Regulations.[30] Security of

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[27] *Rollo* (G.R. No. 165452), pp. 44-45.

[28] Emphasis supplied.

[29] Emphasis supplied.

[30] See *Bentain v. Court of Appeals*, G.R. No. 89452, June 9, 1992, 209 SCRA 644.

tenure covers not only employees removed without cause, but also cases of unconsented transfers and reassignments, which are tantamount to illegal/constructive removal.[31]

Since Gungon's reassignment order was void *ab initio*, his alleged failure to report for duty at the POSO, where he was reassigned, had no legal basis. Gungon could not have incurred absences in the POSO, because his reassignment was void. Thus, the cause of his separation from the service, which was unauthorized absences from the post where he was reassigned, was not a valid cause for dismissing him from the service. It is undisputed that Gungon reported at the Municipal Assessor's Office after his leave of absence, instead of the POSO. Under the circumstances, Gungon is considered to have been illegally dismissed from the service and entitled to reinstatement.

Gungon contends that the Court of Appeals erred in subjecting his reinstatement to the discretion of the Municipal Government of San Juan.

The contention is meritorious.

The Court of Appeals misconstrued CSC Memorandum Circular No. 12, series of 1994 when it cited the Circular as the basis for holding Gungon's reappointment as "subject to the discretion of the appointing authority and Civil Service Law, rules and regulations."

CSC Memorandum Circular No. 12, Series of 1994 has for its subject Amendment No. 1 to the Omnibus Guideline on Appointments and Other Personnel Actions, CSC Memorandum Circular No. 38, Series of 1993 (Dropped from the Rolls). The pertinent portion of the Memorandum provides:

> In order to promote efficient and effective personnel administration in government and to obviate any prejudice to the service, the Civil Service Commission pursuant to Resolution No. 94-1464 dated March 10, 1994 hereby promulgates the following procedure to be followed in separating from the service officials and employees who are either

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[31] *Id.*

habitually absent or have unsatisfactory or poor performance or have shown physical and mental unfitness to perform their duties.

Accordingly, Item 2 of Section VI of the Omnibus Guidelines on Appointments and other Personnel Actions (MC No. 38, s. 1993-Dropped from the Rolls), now reads as follows:

2. Dropped from the Rolls

2.1 . Absence without Approved Leave

a. An officer or employee who is continuously absent without approved leave (AWOL) for at least thirty (30) calendar days shall be separated from the service or dropped from the rolls without prior notice. He shall however be informed of his separation from the service not later than five (5) days from its effectivity which shall be sent to the address appearing on his 201 files; and

b. If the number of unauthorized absences incurred is less than thirty (30) calendar days, written return to work order shall be served on the official or employee at his last known address on record. Failure on his part to report for work within the period stated in the order shall be a valid ground to drop him from the rolls.

2.2 . Unsatisfactory or Poor Performance

x x x x x x x x x

2.3 . Physical and Mental Unfitness

x x x x x x x x x

2.4 . The officer or employee who is separated from the service through any of the above modes has the right to appeal his case to the CSC or its Regional Office within fifteen (15) days from receipt of such order or notice of separation;

2.5 . The order of separation is immediately executory pending appeal, unless the Commission on meritorious grounds, directs otherwise;

2.6 . This mode of separation from the service for unauthorized absences or unsatisfactory or poor performance or physical and mental incapacity is non-disciplinary in nature and shall not result in the forfeiture of any benefits on the part of the official or employee nor in disqualifying him from reemployment in the government;

2.7 . The written notice mentioned in the preceding paragraphs may be signed by the person exercising immediate supervision over the official or employee. However, the notice of separation shall be signed by the appointing authority or head of office.

This shall likewise be without prejudice to the reappointment of the official or employee to government at the discretion of the appointing authority and subject to Civil Service law, rules and regulations.[32]

To reiterate, the italicized paragraph above was used by the Court of Appeals as the basis for subjecting Gungon's reinstatement to the discretion of the appointing authority. The basis is misplaced, because what the provision means is that the separation of an employee from government service through any of the modes enumerated in the Memorandum Circular, which includes unauthorized absences, shall be without prejudice to his reappointment in the government service at the discretion of the appointing authority and subject to Civil Service law, rules and regulations. Hence, an employee who is **validly dismissed** due to unauthorized absences may still be reappointed in the government service, but the reappointment is at the discretion of the appointing authority and subject to Civil Service law, rules and regulations.

In this case, Gungon was **not validly dismissed** from the service. His reassignment to the POSO, which involved a reduction in rank and status, was void for being violative of Executive Order No. 292 and the Omnibus Civil Service Rules and Regulations. Hence, Gungon could not have incurred

[32] Italics supplied.

absences in the office where he was reassigned since the reassignment was void. Consequently, his dismissal for unauthorized absences in the office where he was reassigned was not valid. Therefore, Memorandum Circular No. 12, series of 1994, does not apply in the case of Gungon.

In fine, Gungon is entitled to reinstatement, without qualification, for having been illegally dismissed. A government official or employee reinstated for having been illegally dismissed is considered as not having left his office.[33] His position does not become vacant and any new appointment made in order to replace him is null and void *ab initio*.[34]

As regards the award of Gungon's back salaries, it is settled jurisprudence that an illegally terminated civil service employee is entitled to back salaries limited only to a maximum period of five years,[35] and not full back salaries from his illegal termination up to his reinstatement.

In G.R. No. 165450, petitioners Municipal Administrator Yenko and Mayor Estrada contend that an application for commutation of vacation and sick leaves under Section 6 of the original Rule XVI of the Omnibus Civil Service Rules and Regulations is similar to an application for terminal leave under Section 35 of the amended Rule XVI of the Omnibus Civil Service Rules and Regulations, because in both provisions the application for the respective leaves requires prior severance

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[33] *Gementiza v. Court of Appeals*, G.R Nos. L-41717-33, April 12, 1982, 113 SCRA 477, 488; *Cristobal v. Melchor*, No. L-43203, December 29, 1980, 101 SCRA 857.

[34] *Canonizado v. Aguirre*, G.R. No. 133132, February 15, 2001, 351 SCRA 659, 673.

[35] *Adiong v. Court of Appeals*, G.R. No. 136480, December 4, 2001, 371 SCRA 373, 381; *Marohombsar v. Court of Appeals*, G.R. No. 126481, February 18, 2000, 326 SCRA 62, 73-74; *San Luis v. Court of Appeals*, G.R. No. 80160, June 26, 1989, 174 SCRA 258, 273; *Tan, Jr. v. Office of the President,* G.R. No. 110936, February 4, 1994, 229 SCRA 677; *Salcedo v. Court of Appeals*, No. L-40846, January 31, 1978, 81 SCRA 408; *Balquidra v. CFI of Capiz, Branch II,* No. L-40490, October 28, 1977, 80 SCRA 123.

of employment. Thus, petitioners assert that when Gungon applied for terminal leave or commutation of his leave credits, the application ended his employment with the Municipal Government of San Juan. The subsequent payment was merely the result of his severance from employment. Consequently, the municipal government's obligation to pay Gungon's salaries ended. Hence, the Court of Appeals erred in ordering the municipal government to pay Gungon back salaries equivalent to five years.

The arguments of petitioners Municipal Administrator Yenko and Mayor Estrada do not persuade.

When Gungon applied for terminal leave on October 13, 1998 and received his terminal leave pay on November 10, 1998, there was no specific provision on terminal leave. The applicable rule was Section 6, Rule XVI (Leave of Absence) of the Omnibus Civil Service Rules and Regulations, before Rule XVI was amended by CSC Memorandum Circular No. 41, series of 1998. Section 6 of Rule XVI provides:

> Sec. 6. Vacation and sick leave shall be cumulative and any part thereof which may not be taken within the calendar year in which earned may be carried over the succeeding years. **Whenever any officer or employee** retires, voluntarily resigns or is allowed to resign or **is separated from the service through no fault of his own, he shall be entitled to the commutation of all the accumulated vacation and/or sick leave to his credit, provided his leave benefits are not covered by special law**.
>
> The proper head of Department, local government agency, government-owned or controlled corporation with original charter and state college and university may, in his discretion, authorize the commutation of the salary that would be received during the period of vacation and sick leave of any appointive officer and employee and direct its payment on or before the beginning of such leave from the fund out of which the salary would have been paid.
>
> **When a person whose leave has been commuted following his separation from the service is reappointed in the government before the expiration of the leave commuted, he is given two options, as follows:**

(a) **Refund the money value of the unexpired portion of the leave commuted; or**

(b) **May not refund the money value of the unexpired portion of the leave commuted, but insofar as his leave credits is concerned, he shall start from zero balance.**[36]

On December 24, 1998, the CSC issued Memorandum Circular No. 41, which, pursuant to CSC Resolution No. 98-3142, series of 1998, adopted the amendment to Rule XVI (Leave of Absence) and the definitions of leave terms under Rule I of the Omnibus Civil Service Rules and Regulations. The amended Rule XVI contained a specific provision on terminal leave in Sec. 35, and substantially reflected in Sec. 26 the provision in Sec. 6 of the original Rule XVI. The pertinent provisions of Rule XVI, as amended, are as follows:

Sec. 26. *Accumulation of vacation and sick leave*. — Vacation and sick leave shall be cumulative and any part thereof which may not be taken within the calendar year may be carried over to the succeeding years. **Whenever any official or employee** retires, voluntarily resigns or is allowed to resign or **is separated from the service through no fault of his own, he shall be entitled to the commutation of all the accumulated vacation and/or sick leave to his credit**, exclusive of Saturdays, Sundays, and holidays, without limitation as to the number of days of vacation and sick leave that he may accumulate provided his leave benefits are not covered by special law.

When a person whose leave has been commuted following his separation from the service is reemployed in the government before the expiration of the leave commuted, he shall no longer refund the money value of the unexpired portion of the said leave. Insofar as his leave credits is concerned, he shall start from zero balance.

x x x x x x x x x

Sec. 35. *Terminal leave*.—Terminal leave is applied for by an official or an employee who intends to sever his connection with his employer. Accordingly, the filing of application for terminal leave requires as a condition *sine qua non*, the employee's resignation,

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[36] Emphasis supplied.

retirement or separation from the service without any fault on his part. It must be shown first that public employment ceased by any of the said modes of severance.[37]

Section 6 of the original Rule XVI of the Omnibus Civil Service Rules and Regulations, which is applicable to this case, provides two options for an employee like Gungon whose leave credits have been commuted after separation from the service through no fault of his, and who is subsequently reinstated. These options are: (1) He may refund the money value of the unexpired portion of the leave commuted; or (2) he may not refund the money value of the unexpired portion of the leave commuted, but insofar as his leave credits is concerned, he shall start from zero balance. Hence, the Court of Appeals correctly held that Gungon may start from zero balance of his leave upon re-employment in the government. Notably, the second option of Section 6 of the original Rule XVI is still contained in Sec. 26 of the amended Rule XVI.

The Court cannot subscribe to the assertion of Municipal Administrator Yenko and Mayor Estrada that mere application for terminal leave or the commutation of leave credits ended Gungon's employment because an application for terminal leave and receipt of terminal leave benefits are not legal causes for the separation or dismissal of an employee from the service. The Constitution explicitly states that "[n]o officer or employee of the civil service shall be removed or suspended except for cause provided by law."[38]

At most, an application for terminal leave under Sec. 35 of the amended Rule XVI of the Omnibus Civil Service Rules and Regulations shows the intent of an employee to sever his employment, which intent is clear if he has resigned or retired from the service. However, such intent may be disproved in cases of separation from the service without the fault of the employee, who questions his separation, even if the government

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[37] Emphasis supplied.

[38] The Constitution, Art. IX (B), Sec. 2 (3).

agency, pending the employee's appeal, grants his application for terminal leave because it has already dropped him from the rolls. In *Dytiapco v. Civil Service Commission,*[39] the Court understood the predicament of an employee who accepted terminal leave benefits because of economic necessity rather than the desire to leave his employment with the government.

In this case, the Court of Appeals correctly held that Gungon's application for terminal leave and his acceptance of terminal leave benefits could not be construed as an abandonment of his claim for reinstatement or indicative of his intent to voluntarily sever his employment with the government, because Gungon had appealed his case to the CSC and had a pending motion for reconsideration of CSC Resolution No. 982525 before he received his terminal leave benefits. Indeed, Gungon's appeal against his dismissal to the CSC and, thereafter, to the Court of Appeals, and his petition before this Court – all taken within a span of 11 years – show his desire to be reinstated, not separated from the government service. In this connection, the Court of Appeals aptly stated that it would have been unjust for petitioner, who was dropped from the rolls not to claim his terminal leave pay considering that it would take some time for his appeal to be resolved. Gungon had no permanent employment and had to sustain the needs of his two sons.

Further, Municipal Administrator Yenko and Mayor Estrada contend that the Court of Appeals erred in ordering the payment to Gungon of five years back salaries equivalent to five years from the date he was dropped from the rolls on March 1, 1998 despite the fact that Gungon did not render any service to the Municipal Government of San Juan from the time he was reassigned to POSO up to the time he opted to voluntarily sever his employment when he applied for terminal leave.

The contention is without merit.

It is settled that a government official or employee who had been illegally dismissed and whose reinstatement was later

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[39] *Supra* note 23.

ordered is considered as not having left his office, so he is entitled to all the rights and privileges that should accrue to him by virtue of the office that he held.[40] Thus, Gungon is entitled to payment of back salaries equivalent to a maximum period of five years.[41]

Lastly, the Court notes that the dispositive portion of the Amended Decision of the Court of Appeals states that Gungon is "entitled to five (5) years' back salaries from the date he was dropped from the rolls **on March 3, 1998**." However, the records showed that per Mayor Estrada's Memorandum[42] dated February 23, 1998, Gungon was informed that he would be considered dropped from the rolls due to his absences without official leave effective **March 1, 1998**.

WHEREFORE, the Amended Decision of the Court of Appeals in CA-G.R. SP No. 51093 dated September 28, 2004 is *MODIFIED*. Petitioner Gungon is hereby reinstated, without qualification, to his former position as Local Assessment Operations Officer III in the Assessor's Office of the Municipal Government of San Juan, Metro Manila, without loss of seniority rights. Gungon is entitled to payment of back salaries equivalent to five (5) years from the date he was dropped from the rolls, which is March 1, 1998. No costs.

SO ORDERED.

Puno, C.J., Carpio, Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, and *Abad, JJ.,* concur.

Quisumbing and *Ynares-Santiago, JJ.,* on official leave.

Bersamin and *Del Castillo, JJ.,* no part.

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[40] *City Government of Makati City v. Civil Service Commission*, G.R. No. 131392, February 6, 2002, 376 SCRA 248, 271; *Cristobal v. Melchor,* No. L-43203, December 29, 1980, 101 SCRA 857; *Tan, Jr. v. Office of the President*, *supra* note 35.

[41] *Tan, Jr. v. Office of the President*, *supra* note 35.

[42] CA *rollo*, p. 36.

SECOND DIVISION

[G.R. No. 149988. August 14, 2009]

RAMIE VALENZUELA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **CRIMINAL LAW; QUALIFYING OR AGGRAVATING CIRCUMSTANCES; HOW ALLEGED.—** The petitioner, in his Reply, finds the appreciation of abuse of superior strength to be erroneous, as the Information charging him with the crime of frustrated murder did not allege this circumstance with particularity as a *qualifying* circumstance. The petitioner therefore posits that this circumstance, even if proven, must be considered a generic aggravating circumstance. We see no merit in the petitioner's contention in light of our ruling in *People v. Aquino* which we intended to guide the bench and the bar on how to allege or specify qualifying or aggravating circumstances in the Information. We held in this case that the words "aggravating/qualifying," "qualifying," "qualified by," "aggravating," or "aggravated by" need not be expressly stated, so long as the particular attendant circumstances are specified in the Information. This conclusion, notwithstanding, we hold that the conviction of the accused of the crime of either attempted or frustrated murder is substantively flawed, as both the RTC and the CA erroneously appreciated the presence of abuse of superior strength as a qualifying circumstance. Our own examination of the evidence tells us that no conclusive proof exists showing the presence of this circumstance in the commission of the felony.

2. **ID.; ID.; ABUSE OF SUPERIOR STRENGTH; WHEN PRESENT.—** Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor/s that is plainly and obviously advantageous to the aggressor/s and purposely selected or taken advantage of to facilitate the commission of the crime. Evidence must show that the assailants consciously sought the advantage, or that they had the deliberate intent to use this advantage. To take advantage of superior strength means to purposely use force

excessively out of proportion to the means of defense available to the person attacked. The appreciation of this aggravating circumstance depends on the age, size and strength of the parties.

3. **ID.; ID.; ID.; MERE SUPERIORITY IN NUMBERS DOES NOT INDICATE THE PRESENCE THEREOF.—** In the present case, the prosecution failed to present evidence to show a relative disparity in age, size, strength, or force, except for the showing that two assailants, one of them armed with a knife, attacked the victim. The presence of two assailants, one of them armed with a knife, is not *per se* indicative of abuse of superior strength. Mere superiority in numbers does not indicate the presence of this circumstance. Nor can the circumstance be inferred solely from the victim's possibly weaker physical constitution. In fact, what the evidence shows in this case is a victim who is taller than the assailants and who was even able to deliver retaliatory fist blows against the knife-wielder.

4. **ID.; ID.; ID.; CANNOT BE APPRECIATED ABSENT CONSCIOUS EFFORT ON THE PART OF THE ACCUSED TO USE OR TAKE ADVANTAGE OF ANY SUPERIOR STRENGTH AGAINST THE VICTIM.—** The events leading to the stabbing further belie any finding of deliberate intent on the part of the assailants to abuse their superior strength over that of the victim. The testimonies of the witnesses, on the whole, show that the encounter between the victim and his assailants was unplanned and unpremeditated. The victim and his companions were simply passing by after a night of conversation with drinks, while the assailants were simply singing and engaged in merrymaking, and no conscious effort on the part of the accused appeared to have been made to use or take advantage of any superior strength that they then enjoyed. Specifically, we do not find it certain nor clearly established that the accused, taking advantage of their number, purposely resorted to holding the victim by the arms so that the knife-wielder would be free to stab him at the back. In terms of numbers, the victim was with a companion while only two of the Valenzuela brothers participated in the attack; thus a parity in numbers existed. Nor is it certain that the victim was simply overwhelmed by the act of the accused of holding the victim by the shoulders while his brother stabbed him at the back. The evidence on this point is simply too sketchy and too confused for a definitive conclusion. What, to us, is certain is the intent to kill, as shown by the two

stab wounds and their location; they were back wounds that could have been fatal or near fatal had greater force been used or the dynamics of the parties' movements at the time of the stabbing been different. Even if the accused did not directly wield the knife, he is as guilty as the knife-wielder for the unity of purpose he has shown in participating in the attack against the victim, Gregorio.

5. **ID.; ATTEMPTED HOMICIDE; COMMITTED BY THE ACCUSED-PETITIONER IN CASE AT BAR.—** In light of all these, we are compelled to rule out the attendance of abuse of superior strength as a qualifying circumstance. Considering further that the victim sustained wounds that were not fatal and absent a showing that such wounds would have certainly caused his death were it not for timely medical assistance, we declare the petitioner's guilt to be limited to the crime of **attempted homicide**.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

BRION, *J*.:

Petitioner Ramie Valenzuela (*petitioner*) seeks, in this petition for review on *certiorari,*[1] to reverse the Court of Appeals (*CA*) decision and resolution dated June 18, 2001 and September 10, 2001, respectively, in CA-G.R. CR No. 20533, that affirmed with modification the decision of the Regional Trial Court (*RTC*), Branch 38, Lingayen, Pangasinan, dated November 21, 1996, convicting the petitioner with the crime of attempted murder.

Petitioner and his brother, Hermie Valenzuela (*Hermie*), were charged with the crime of frustrated murder, allegedly committed as follows:

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

That on or about the 20th day of February 1996, in the evening, in *Barangay* Maniboc, municipality of Lingayen, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a sharp pointed, bladed instrument, with intent to kill, taking advantage of their superior strength, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously attack, assault and stab Gregorio P. Cruz, inflicting upon him the following:

- Stab wound 1 cm flank area left, 3 cm. depth
- Stap (sic) wound 1 cm flank area left, 3 cm. depth

the accused having thus performed all the acts of execution which would have produced the crime of murder as a consequence but nevertheless did not produce it by reason of causes independent of the will of the accused, that is, the timely medical assistance afforded to Gregorio P. Cruz which prevented his death, to his damage and prejudice.[2]

We summarized below the facts based on the records before us.

Petitioner and the victim, Gregorio P. Cruz (*Gregorio*), both lived in *Barangay* Maniboc, Lingayen, Pangasinan. In the early evening of February 20, 1996, Gregorio and his companion, Rogelio Bernal (*Rogelio*), went to the house of *Barangay* Captain Aurora dela Cruz to talk with Pepito, the latter's husband. While at the dela Cruz home, Gregorio, Rogelio and Pepito drank liquor (*Fundador)*.

Based on the prosecution's account of the events, at around 10:00 o'clock of that same evening, Gregorio and Rogelio left the dela Cruz residence and headed for home after their "drinking spree" with Pepito dela Cruz. While they were walking along the *barangay* road and were near the Valenzuelas' residence/ *sari-sari* store, the petitioner and his brother Hermie suddenly appeared from behind them. The petitioner held the shoulders

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[2] Information dated May 15, 1996, as quoted in the Decision dated November 21, 1996 of the Regional Trial Court, Branch 38, Lingayen, Pangasinan; *rollo*, p. 30.

of Gregorio while Hermie stabbed Gregorio twice at the left side of his back. Immediately thereafter, Hermie ran to the direction of the Valenzuelas' house some 10 meters away.

After the stabbing, Gregorio was brought to the clinic of one Dr. Casipit who administered emergency treatment on the stab wounds. He was transferred the following day to the Pangasinan Provincial Hospital (now Gov. Teofilo Sison Memorial Hospital) for further treatment. *Per* the medical findings of Dr. Antonio Rivera (*Dr. Rivera*), attending physician and Medical Officer III of the said hospital, Gregorio suffered the following wounds:

- Stab wound 1 cm flank area left, 3 cm depth;
- Stab wound 1 cm flank area left, 3 cm depth.

The wounds were found not to be fatal, as no vital organ was affected. Gregorio was discharged after one week of confinement.

On March 13, 1996, SPO II Jimmy B. Melchor of the Lingayen Police Station filed before the Municipal Trial Court of Lingayen, Pangasinan a criminal complaint for **frustrated murder** against the petitioner and Hermie. Finding probable cause, the court issued a warrant for their arrest and forwarded the records of the case to the Office of the Provincial Prosecutor of Pangasinan for the filing of the appropriate Information.[3] On May 16, 1996, an Information was filed before the RTC of Lingayen, Pangasinan, charging the two accused with frustrated murder.

Trial of the case proceeded solely with respect to the petitioner as his brother and co-accused, Hermie, was then, and still is, at large.

The prosecution presented Dr. Rivera of the Pangasinan Provincial Hospital who explained his medical findings on the injuries Gregorio sustained. He said that the 2 one-centimeter long wounds, both three-centimeter deep, were not fatal as no vital organ was affected.

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[3] *Id.*

The prosecution likewise presented Rogelio who declared that on the night of February 20, 1996, he accompanied Gregorio to the house of their *Barangay* Captain to talk to the latter's husband, Pepito dela Cruz; they drank as they talked with Pepito. As they headed for home while passing by the Valenzuelas' house/*sari-sari* store, the petitioner suddenly appeared from behind and held Gregorio, while Hermie stabbed the victim. Rogelio was able to positively identify the petitioner and Hermie as Gregorio's assailants, as the scene of the crime was well-lighted, illuminated by a streetlight from a nearby electric post.

After the stabbing, the two assailants ran towards their house, and Rogelio took Gregorio initially to the house of *Barangay* Captain dela Cruz, and then to the clinic of a certain Dr. Casipit for emergency treatment. Thereafter, he took Gregorio to the Pangasinan Provincial Hospital in Dagupan City because the wounds appeared to be "serious." Rogelio claimed that Hermie used an 8-inch long knife.

The victim, Gregorio, likewise testified for the prosecution. He declared that he was the Chief *Barangay Tanod* of their place and that he knew the two accused because they were residents of his *barangay*. The rest of his testimony was similar to Rogelio's.

The petitioner, after pleading not guilty to the charge, presented his defenses of denial and alibi. He claimed that on the night of February 20, 1996, he was at home together with his uncle, his sister, his sister's friend, and his parents. Earlier that night, he claimed that he read the Bible, ate dinner with his family and guests, then watched television. At around 10:00 o'clock that evening, they heard somebody shouting from the outside; his parents, however, prevented him from going out of the house for fear that he might get into trouble.

The petitioner claimed he was being implicated in the stabbing incident because he had a previous altercation with the victim, Gregorio, when the latter apprehended his other brother, Rommel Valenzuela. He further surmised that Gregorio could have mistaken him for his brother, Willy, with whom he shares physical similarities and who, he claimed, was one of the

assailants in the stabbing incident. Witnesses Nestor Cerezo (*Nestor*) and Rhodora Manzano (*Rhodora*) supported the petitioner's defense of alibi.

Nestor testified that he is a businessman and a resident of Dagupan City. He claimed that the petitioner is his nephew, as the petitioner's maternal aunt, Josefina Campos, is his common-law partner. He stated that on February 20, 1996, he went to the Valenzuelas' house to collect payment on a debt owed him by the parents of the accused. Since he arrived after dark, the parents of the accused prevailed on him to dine and spend the night with them.

At about 10:00 o'clock that night, while he was talking with the petitioner and the latter's father (Rosauro), they heard a commotion outside the house. He and Rosauro went out and saw several persons talking. They learned from their inquiry that Hermie had stabbed Gregorio. Nestor claimed that all this time, the petitioner was inside the house because his father had prevented him from going out.

Rhodora also testified for the defense. She declared under oath that she is a friend of Annie Valenzuela, the younger sister of the accused. On February 20, 1996, Annie invited her to sleep in their house. They had dinner at about 6:30 pm, ahead of the other members of the household who were then in conversation with another visitor, whom she later learned to be Nestor. At about 9:45 pm, while she and Annie were manning the Valenzuelas' store, Willy Valenzuela arrived and joined the group singing and playing the guitar in front of the store; Hermie was among those in the group.

At around 10:00 pm, she noticed Gregorio and Rogelio walking past the store; both appeared drunk as they were walking aimlessly. As they walked, the two momentarily stopped and stared at the group in front of the Valenzuelas' store before proceeding to another *sari-sari* store nearby. She then heard Gregorio shout "vulva of your mother, Valenzuela" three times; Rogelio tried to pacify him. Thereafter, she saw Hermie approach Gregorio to confront him. In a blur, she witnessed Gregorio hit Hermie on the left side of the face. Hermie retreated to his

house but came back and stabbed Gregorio at the left side of his back. She noticed that Willy then held the arms of Gregorio in an attempt to mollify the latter; Gregorio responded by hitting Willy on the head. At this point, she heard Willy advise Gregorio to go away to avoid further trouble; instead of heeding the advice, Gregorio threw a fist blow at Hermie, who dodged the blow and stabbed Gregorio a second time.

Right after the stabbing, she saw Hermie run to the direction of the Valenzuelas' house, while Gregorio and Rogelio proceeded to the house of *Barangay* Captain Dela Cruz. She categorically declared that the petitioner had no participation in the incident, as only the petitioner's brothers, Willy and Hermie, were at the scene of the crime.

After trial on the merits, the trial court rendered its decision[4] of November 21, 1996, convicting the petitioner of **frustrated murder**. The trial court found that the petitioner's defense of alibi had insufficient evidentiary support and must yield to the positive identification by the prosecution witness, Rogelio. The dispositive portion of the lower court's decision reads:

> WHEREFORE, in the light of all the foregoing considerations, the court finds and holds the accused, Ramie Valenzuela, guilty beyond reasonable doubt of the crime of Frustrated Murder as charged in the information filed against him, pursuant to law, taking into account the provision[s] of Article 250 of the Revised Penal Code and the Indeterminate Sentence Law in his favor, hereby sentences said accused to suffer the indeterminate penalty of four (4) years and two (2) months of *prision correccional* as minimum to eight (8) years and one (1) day of *prision mayor* as maximum and to pay the costs of the suit. x x x

In appreciating the qualifying circumstance of abuse of superior strength, the trial court explained:

> The information filed against the accused alleges that the two accused took advantage of their superior strength in attacking and assaulting the offended party with sharp pointed, bladed instrument twice on the left side of the back. Abuse of superior strength is determined

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[4] *Supra* note 2.

by the excess of the aggressors natural strength over that of the victim's, considering the momentary positions of both parties and the employment of means weakening the defense of the victim, although not annulling it. Thus, there is abuse of superior strength in the case where four persons attacked an unarmed victim (*People v. Garcia*, 94 SCRA 14) or where six persons inflicted injuries on the victim (*People v. Gonzales*).

The petitioner appealed to the CA. In its decision of June 18, 2001, the appellate court affirmed with modification the trial court's decision; it held that the crime committed was attempted murder since the wounds inflicted were not fatal. The *fallo* of the CA decision reads:

WHEREFORE, premises considered, the appealed decision is hereby AFFIRMED WITH MODIFICATION. In lieu thereof, another one is entered CONVICTING the accused of the crime of **ATTEMPTED MURDER** and sentencing him to suffer the penalty of imprisonment of four (4) years and two (2) months of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum x x x. (Emphasis supplied.)

The appellate court denied the petitioner's motion for reconsideration that followed, thus paving the way for the present petition for review on *certiorari* on the sole **issue** of —

WHETHER THE COURT OF APPEALS ERRED IN CONVICTING THE PETITIONER FOR ATTEMPTED MURDER.

Thus framed, the sole issue before us is *whether the crime the petitioner committed should properly be attempted murder based on the qualifying circumstance of abuse of superior strength.*

We find the petition meritorious.

The RTC and the CA commonly found an intent to kill. They differ in the appreciation of the stage of execution of the crime as the RTC considered the crime *frustrated*, while the CA decided that it was *attempted* because the victim's wounds were not fatal. In both rulings, the RTC and the CA characterized the act to be qualified by abuse of superior strength; thus, it was either attempted or frustrated murder.

The petitioner, in his Reply,[5] finds the appreciation of abuse of superior strength to be erroneous, as the Information charging him with the crime of frustrated murder did not allege this circumstance with particularity as a *qualifying* circumstance. The petitioner therefore posits that this circumstance, even if proven, must be considered a generic aggravating circumstance.

We see no merit in the petitioner's contention in light of our ruling in *People v. Aquino*[6] which we intended to guide the bench and the bar on how to allege or specify qualifying or aggravating circumstances in the Information. We held in this case that the words "aggravating/qualifying," "qualifying," "qualified by," "aggravating," or "aggravated by" need not be expressly stated, so long as the particular attendant circumstances are specified in the Information.

This conclusion, notwithstanding, we hold that the conviction of the accused of the crime of either attempted or frustrated murder is substantively flawed, as both the RTC and the CA erroneously appreciated the presence of abuse of superior strength as a qualifying circumstance. Our own examination of the evidence tells us that no conclusive proof exists showing the presence of this circumstance in the commission of the felony.

Both the trial and appellate courts concluded that abuse of superior strength was present because the petitioner "held the arms of the victim to facilitate the stabbing by his brother (Hermie) and to limit the degree of resistance that the victim may put up."[7] The trial court, in particular, held that "there is no doubt that accused took advantage of their combined strength when one held the victim by the shoulder and armpit and the other inflicted two stab wounds on the left side of his back." We find this reasoning erroneous.

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[5] *Rollo*, pp. 137-141.

[6] G.R. Nos. 144340-42, August 6, 2002, 386 SCRA 391.

[7] See CA Decision dated June 18, 2001; *rollo,* p. 92.

Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor/s that is plainly and obviously advantageous to the aggressor/s and purposely selected or taken advantage of to facilitate the commission of the crime.[8] Evidence must show that the assailants consciously sought the advantage,[9] or that they had the deliberate intent to use this advantage.[10] To take advantage of superior strength means to purposely use force excessively out of proportion to the means of defense available to the person attacked.[11] The appreciation of this aggravating circumstance depends on the age, size and strength of the parties.[12]

In the present case, the prosecution failed to present evidence to show a relative disparity in age, size, strength, or force, except for the showing that two assailants, one of them armed with a knife, attacked the victim. The presence of two assailants, one of them armed with a knife, is not *per se* indicative of abuse of superior strength.[13] Mere superiority in numbers does not indicate the presence of this circumstance.[14] Nor can the circumstance be inferred solely from the victim's possibly weaker physical constitution. In fact, what the evidence shows in this case is a victim who is taller than the assailants[15] and who was

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[8] *People v. Daquipil*, G.R. Nos. 86305-06, January 20, 1995, 240 SCRA 314, 332-333.

[9] *People v. Casingal*, G.R. No. 87163, March 29, 1995, 243 SCRA 37.

[10] *People v. Escoto*, G.R. No. 91756, May 11, 1995, 244 SCRA 87.

[11] *People v. Ventura*, G.R. Nos. 148145-46, July 5, 2004, 433 SCRA 389, citing *People v. Cabiling*, 74 SCRA 285, 304 (1976); *People v. Sarabia*, 96 SCRA 714, 719-720 (1980); *People v. Cabato*, 160 SCRA 98, 110 (1988); *People v. Carpio*, 191 SCRA 108, 119 (1990); *People v. Moka*, 196 SCRA 378, 387 (1991); *People v. De Leon*, 320 SCRA 495, 505 (1999).

[12] *People v. Cabato; People v. Carpio; People v. Moka, supra*.

[13] *People v. Asis*, G.R. No. 118936, February 9, 1998, 286 SCRA 64.

[14] *People v. Escoto*, *supra* note 10.

[15] TSN, September 26, 1996, pp. 9-10.

even able to deliver retaliatory fist blows[16] against the knife-wielder.

The events leading to the stabbing further belie any finding of deliberate intent on the part of the assailants to abuse their superior strength over that of the victim.[17] The testimonies of the witnesses, on the whole, show that the encounter between the victim and his assailants was unplanned and unpremeditated. The victim and his companions were simply passing by after a night of conversation with drinks, while the assailants were simply singing and engaged in merrymaking, and no conscious effort on the part of the accused appeared to have been made to use or take advantage of any superior strength that they then enjoyed.[18] Specifically, we do not find it certain nor clearly established that the accused, taking advantage of their number, purposely resorted to holding the victim by the arms so that the knife-wielder would be free to stab him at the back. In terms of numbers, the victim was with a companion while only two of the Valenzuela brothers participated in the attack; thus a parity in numbers existed. Nor is it certain that the victim was simply overwhelmed by the act of the accused of holding the victim by the shoulders while his brother stabbed him at the back. The evidence on this point is simply too sketchy and too confused for a definitive conclusion. What, to us, is certain is the intent to kill, as shown by the two stab wounds and their location; they were back wounds that could have been fatal or near fatal had greater force been used or the dynamics of the parties' movements at the time of the stabbing been different. Even if the accused did not directly wield the knife, he is as guilty as the knife-wielder for the unity of purpose he has shown in participating in the attack against the victim, Gregorio.

In light of all these, we are compelled to rule out the attendance of abuse of superior strength as a qualifying circumstance.

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[16] *Ibid.*

[17] *People v. Cañete*, G.R. No. 120495, March 12, 1998, 287 SCRA 490, 503.

[18] *Ibid.*

Considering further that the victim sustained wounds that were not fatal and absent a showing that such wounds would have certainly caused his death were it not for timely medical assistance, we declare the petitioner's guilt to be limited to the crime of **attempted homicide.**

WHEREFORE, the petition is *GRANTED*. The Decision of the Court of Appeals dated June 18, 2001 in CA-G.R. CR No. 20533 is *AFFIRMED with MODIFICATION*. Petitioner Ramie Valenzuela is found guilty of attempted homicide under Article 249 in relation with Article 6 of the Revised Penal Code. In the absence of any modifying circumstance attendant to the commission of the crime, we hereby sentence him to suffer an indeterminate penalty[19] of four (4) months of *arresto mayor* in its medium period, as minimum, to three (3) years of *prision correccional* in its medium period, as maximum.

SO ORDERED.

Carpio Morales (Acting Chairperson),[*] *Carpio,*[**] *Chico-Nazario,*[***] and *Leonardo-de Castro,*[****] *JJ.,* concur.

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[19] Pursuant to the guidelines laid down in Act No. 4103, as amended, or the Indeterminate Sentence Law.

[*] Designated Acting Chairperson of the Second Division effective August 1, 2009 per Special Order No. 670 dated July 28, 2009.

[**] Designated additional Member of the Second Division effective August 1, 2009 per Special Order No. 671 dated July 28, 2009.

[***] Designated additional Member of the Second Division effective June 3, 2009 per Special Order No. 658 dated June 3, 2009.

[****] Designated additional Member of the Second Division effective May 11, 2009 per Special Order No. 635 dated May 7, 2009.

SECOND DIVISION

[G.R. No. 150887. August 14, 2009]

FRANCISCO MADRID* **and EDGARDO BERNARDO,** *petitioners, vs.* **SPOUSES BONIFACIO MAPOY and FELICIDAD MARTINEZ,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EJECTMENT; *ACCION PUBLICIANA*; OBJECTIVE IS TO RECOVER POSSESSION ONLY, NOT OWNERSHIP; ADJUDICATION OF THE ISSUE OF OWNERSHIP IS MERELY PROVISIONAL; CASE AT BAR.—** *Accion publiciana,* also known as *accion plenaria de posesion*, is an ordinary civil proceeding to determine the better right of possession of realty independently of title. It refers to an ejectment suit filed after the expiration of one year from the accrual of the cause of action or from the unlawful withholding of possession of the realty. The objective of the plaintiffs in *accion publiciana* is to recover possession only, not ownership. However, where the parties raise the issue of ownership, the courts may pass upon the issue to determine who between or among the parties has the right to possess the property. This adjudication, however, is not a final and binding determination of the issue of ownership; it is only for the purpose of resolving the issue of possession, where the issue of ownership is inseparably linked to the issue of possession. The adjudication of the issue of ownership, being provisional, is not a bar to an action between the same parties involving title to the property. The adjudication, in short, is not conclusive on the issue of ownership. In the present case, both the petitioners-defendants and the respondents-plaintiffs raised the issue of ownership. The petitioners-defendants claim ownership based on the oral sale to and occupation by Gregorio Miranda, their predecessor-in-interest, since 1948. On the other hand, the respondents-plaintiffs claim that they are the owners, and their

* Died on May 12, 1992 during the pendency of the case in the trial court. He was substituted by his widow, Macrina Generalao *Vda. de* Madrid, as defendant; *rollo*, p. 35.

ownership is evidenced by the TCTs in their names. Under this legal situation, resolution of these conflicting claims will depend on the weight of the parties' respective evidence, *i.e.*, whose evidence deserves more weight.

2. **ID.; APPEALS; THE TRIAL COURT'S FACTUAL FINDINGS, WHEN AFFIRMED BY THE COURT OF APPEALS, ARE FINAL AND CONCLUSIVE AND ARE NOT OPEN FOR REVIEW.—** A weighing of evidence necessarily involves the consideration of factual issues – an exercise that is not appropriate for the Rule 45 petition that the petitioners-defendants filed; under the Rules of Court, the parties may raise only questions of law under Rule 45, as the Supreme Court is not a trier of facts. As a rule, we are not duty-bound to again analyze and weigh the evidence introduced and considered in the tribunals below. This is particularly true where the CA has affirmed the trial court's factual findings, as in the present case. These trial court findings, when affirmed by the CA, are final and conclusive and are not open for our review on appeal. In the present case, both the RTC and the CA gave more weight to the certificate of title the respondents-plaintiffs presented, and likewise found that the petitioners-defendants' possession of the properties was merely upon the respondents-plaintiffs' tolerance. We see no reason to doubt or question the validity of these findings and thus recognize their finality.

3. **CIVIL LAW; LAND REGISTRATION; TORRENS CERTIFICATE OF TITLE; HOLDER THEREOF IS ENTITLED TO ALL THE ATTRIBUTES OF OWNERSHIP OF THE PROPERTY SUBJECT ONLY TO LIMITS IMPOSED BY LAW.—** As a matter of law, a Torrens Certificate of Title is evidence of indefeasible title of property in favor of the person in whose name the title appears. The title holder is entitled to all the attributes of ownership of the property, including possession, subject only to limits imposed by law. In the present case, the respondents-plaintiffs are indisputably the holders of a certificate of title against which the petitioners-defendants' claim of oral sale cannot prevail. As registered titleholders, they are entitled to possession of the properties.

4. **ID.; ID.; ID.; REGISTRATION OF LAND UNDER THE TORRENS SYSTEM RENDERS THE TITLE IMMUNE FROM COLLATERAL ATTACK; COLLATERAL ATTACK**

DISTINGUISHED FROM DIRECT ATTACK; CASE AT BAR.— Registration of land under the Torrens system, aside from perfecting the title and rendering it indefeasible after the lapse of the period allowed by law, also renders the title immune from collateral attack. A collateral attack transpires when, in another action to obtain a different relief and as an incident of the present action, an attack is made against the judgment granting the title. This manner of attack is to be distinguished from a direct attack against a judgment granting the title, through an action whose main objective is to annul, set aside, or enjoin the enforcement of such judgment if not yet implemented, or to seek recovery if the property titled under the judgment had been disposed of. To permit a collateral attack on respondents-plaintiffs' title is to water down the integrity and guaranteed legal indefeasibility of a Torrens title.

5. **ID.; ID.; ID.; ID.; CLAIM OF FRAUD TO IMPUGN THE VALIDITY OF THE PARTIES' TITLE TO THEIR PROPERTY IN AN *ACCION PUBLICIANA*, IS A COLLATERAL ATTACK ON THE TITLE.—** The petitioners-defendants' attack on the validity of respondents-plaintiffs' title, by claiming that fraud attended its acquisition, is a collateral attack on the title. It is an attack incidental to their quest to defend their possession of the properties in an "*accion publiciana,*" not in a direct action whose main objective is to impugn the validity of the judgment granting the title. This is the attack that possession of a Torrens Title specifically guards against; hence, we cannot entertain, much less accord credit to, the petitioners-defendants' claim of fraud to impugn the validity of the respondents-plaintiffs' title to their property.

6. **ID.; ID.; PRESIDENTIAL DECREE 1517; REQUISITES TO QUALIFY FOR PROTECTION UNDER THE LAW; CLAIMANTS WHOSE OCCUPATION OF THE LAND IS MERELY BY THE OWNER'S TOLERANCE FALL OUTSIDE THE COVERAGE THEREOF.—** To qualify for protection under PD 1517 and avail of the rights and privileges granted by the said decree, the claimant must be: (1) a legitimate tenant of the land for ten (10) years or more; (2) must have built his home on the land by contract; and, (3) has resided continuously for the last ten (10) years. The "tenant" covered by PD 1517 is, as defined under Section 3(f) thereof, "the rightful occupant of land and its structures, but does not include those

whose presence on the land is merely tolerated and without the benefit of contract, those who enter the land by force or deceit, or those whose possession is under litigation." Stated differently, those whose possession or occupation of land is devoid of any legal authority or those whose contracts of lease are already terminated, or had already expired, or whose possession is under litigation are not considered "tenants" under the decree. Conversely, a legitimate tenant is one who is not a usurper or an occupant by tolerance. The petitioners-defendants whose occupation has been merely by the owner's tolerance obviously fall outside the coverage of PD 1517 and cannot seek its protection.

7. **REMEDIAL LAW; CIVIL PROCEDURE; PRE-TRIAL; UNLESS A SUBSTANTIAL PREJUDICE IS SHOWN, THE TRIAL COURT'S FAILURE TO SCHEDULE A CASE FOR NEW TRIAL DOES NOT RENDER THE PROCEEDINGS ILLEGAL OR VOID *AB INITIO*.—** Without doubt, the petitioners-defendants, having been belatedly served summons and brought into the case, were entitled to a pre-trial as ordained by Section 2, Rule 18 of the Rules of Court. Unless substantial prejudice is shown, however, the trial court's failure to schedule a case for new trial does not render the proceedings illegal or void *ab initio*. Where, as in this case, the trial proceeded without any objection on the part of the petitioners-defendants by their failure to bring the matter to the attention of the RTC, the petitioners-defendants are deemed to have effectively forfeited a procedural right granted them under the Rules. Issues raised for the first time on appeal and not raised timely in the proceedings in the lower court are barred by estoppel. Points of law, theories, issues and arguments not brought to the attention of the trial court ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal. To consider the alleged facts and arguments raised belatedly would amount to trampling on the basic principles of fair play, justice, and due process. In arriving at this conclusion, we considered, as the CA did, that the petitioners-defendants anchored their right to possess the property on the defenses raised by the original defendant, Gregorio Miranda, their predecessor-in-interest. While belatedly summoned, the petitioners-defendants did not raise a substantial matter in their answer differently from those propounded by Gregorio Miranda; they merely echoed Miranda's positions and arguments. Thus, no prejudice could have resulted

to the petitioners-defendants, especially after they entered trial and had the opportunity to fully ventilate their positions.

8. **ID.; ID.; APPEAL; APPELLATE COURT MAY ONLY PASS UPON ERRORS ASSIGNED BY THE PARTIES; EXCEPTION.—** As a general rule, the appellate court may only pass upon errors assigned by the parties. By way of exception, even unassigned errors may be taken up by the court on appeal if they involve (1) errors affecting the lower court's jurisdiction over the subject matter, (2) plain errors not specified, and (3) clerical errors. In the present case, we note that the award of attorney's fees appears only in the dispositive portion of the RTC decision without any elaboration, explanation, and justification. The award stood there all by itself. We view this as a plain legal error by the RTC that must be rectified.

9. **ID.; DAMAGES; ATTORNEY'S FEES; GRANT THEREOF MUST BE STRUCK DOWN WHERE THE SAME WAS MENTIONED ONLY IN THE DISPOSITIVE PORTION WITHOUT ANY PRIOR JUSTIFICATION IN THE BODY OF THE DECISION.—** Article 2208 of the Civil Code enumerates the instances justifying the grant of attorney's fees; in all cases, the award must be reasonable, just and equitable. Attorney's fees as part of damages are not meant to enrich the winning party at the expense of the losing litigant. They are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate. The award of attorney's fees is the exception rather than the general rule. Thus, findings reflecting the conditions imposed by Article 2208 are necessary to justify an award; attorney's fees mentioned only in the dispositive portion of the decision without any prior justification in the body of the decision is a baseless award that must be struck down.

APPEARANCES OF COUNSEL

Ariel M. Los Baños for petitioners.
Gancayco Balasbas & Associates for respondents.

DECISION

BRION, *J*.:

Before us is the Petition for Review on *Certiorari*[1] filed by petitioners Francisco Madrid and Edgardo Bernardo (*petitioners-defendants*) to reverse and set aside the Decision[2] dated July 16, 2001 and Resolution[3] dated November 19, 2001 of the Former Second Division of the Court of Appeals (*CA*) in CA-G.R. CV No. 47691 entitled *"Spouses Bonifacio Mapoy and Felicidad Martinez v. Edgardo Bernardo and Francisco Madrid."*

FACTUAL BACKGROUND

The facts of the case, based on the records, are summarized below.

The spouses Bonifacio and Felicidad Mapoy (*respondents-plaintiffs*) are the absolute owners of two parcels of land (*the properties*) known as Lot Nos. 79 and 80 of Block No. 27 of the Rizal Park Subdivision, located at No. 1400 Craig Street corner Maria Clara Street, Sampaloc, Manila, under Transfer Certificate of Title (*TCT*) Nos. 130064 and 130065 of the Registry of Deeds of Manila. The *properties* have a combined area of two-hundred seventy (270) square meters.

On April 4, 1988, the respondents-plaintiffs sought to recover possession of the properties through an *accion publiciana* filed with the Regional Trial Court (*RTC*) of Manila[4] against Gregorio Miranda and his family (*Mirandas*) and two other unnamed defendants. After the pre-trial conference, the unnamed defendants were identified as the present petitioners and

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[1] Filed under Rule 45 of the Rules of Civil Procedure.

[2] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Ma. Alicia Austria-Martinez (former member of this Court) and Hilarion L. Aquino (now retired), concurring; *rollo*, pp. 30-42.

[3] *Id.,* p. 61.

[4] Docketed as Civil Case No. 88-44149.

summons were duly served on them. These defendants are referred to in this Decision as the *petitioners-defendants.* The Mirandas are no longer parties to the present case; they did not appeal the lower court decision to the CA.

The respondents-plaintiffs alleged that they acquired the properties from the spouses Procopio and Encarnacion Castelo under a Deed of Absolute Sale dated June 20, 1978. They merely tolerated the petitioners-defendants' continued occupancy and possession until their possession became illegal when demands to vacate the properties were made. Despite the demands, the petitioners-defendants continued to occupy and unlawfully withhold possession of the properties from the respondents-plaintiffs, to their damage and prejudice. Efforts to amicably settle the case proved futile, leaving the respondents-plaintiffs no recourse but to file a complaint for ejectment which the lower court dismissed because the respondents-plaintiffs should have filed an *accion publiciana*. Thus, they filed their complaint for *accion publiciana*, praying for recovery of possession of the properties and the payment of ₱1,000.00 as monthly rental for the use of the properties from January 1987 until the petitioners-defendants vacate the properties, plus ₱50,000.00 as moral and exemplary damages, and ₱30,000.00 as attorney's fees.

The Mirandas countered that Gregorio Miranda owned the properties by virtue of an oral sale made in his favor by the original owner, Vivencio Antonio (*Antonio*). They claimed that in 1948, Gregorio Miranda was Antonio's carpenter, and they had a verbal contract for Miranda to stay in, develop, fix and guard the properties; in 1972, Antonio gave the properties to Gregorio Miranda in consideration of his more than twenty (20) years of loyal service.

Petitioner-defendant Bernardo also asserted ownership over the portion he occupies based on an oral sale to him by Antonio. He alleged that he became a ward of Gregorio Miranda in 1965 when he was 10 years old and helped in the development of the properties; he helped construct a *bodega* and a house within the properties. He and Antonio met in 1975, and Antonio

promised that the *bodega* would be given to him in gratitude for his work.

Petitioner-defendant Madrid, for his part, claimed that he started occupying a portion of the properties in 1974, and constructed a house on this portion in 1989 with the permission of Bernardo, the son of Gregorio Miranda.

On the basis of the length of their claimed occupation of the properties, the petitioners-defendants likewise invoked Section 6 of Presidential Decree No. 1517 (*PD 1517*), also known as the Urban Land Reform Law, which provides that legitimate tenants of 10 years or more, who have built their homes on these lands and who have continuously resided thereon for the past ten years, shall not be dispossessed of their occupied lands and shall be allowed the right of first refusal to purchase these lands within a reasonable time and at reasonable prices.

THE RTC RULING

On July 21, 1994, the RTC-Manila, Branch 3, rendered its decision,[5] the dispositive portion of which states:

> WHEREFORE, judgment is rendered, ordering the defendants and all persons claiming rights thereto to vacate the premises located at the corner of Ma. Clara and Craig Streets, Sampaloc, Manila, evidenced by TCT No. 130064 and 130065 and restore the same to the plaintiffs. The defendants are hereby ordered to pay plaintiff the sum of ₱10,000.00 as attorney's fees and the sum of ₱1,000.00 as reasonable rental for the use and occupation of the premises beginning from the filing of this complaint until they vacated the premises.
>
> SO ORDERED.[6]

The RTC upheld the respondents-plaintiffs' right of possession as registered owners of the properties. It found no merit in the petitioners-defendants' claims of ownership *via* an oral sale given the absence of any public instrument or at least a note or memorandum supporting their claims. The RTC also found

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[5] *Rollo,* pp. 116-119.

[6] *Id.,* p. 119.

the petitioners-defendants' invocation of PD 1517 futile, since its Section 6 refers to a legitimate tenant who has legally occupied the lands by contract; the petitioners-defendants are mere squatters.

The petitioners-defendants elevated the RTC decision to the CA *via* an ordinary appeal under Rule 41 of the Rules of Court. The Mirandas did not join them, and thus failed to file a timely appeal. The petitioners-defendants objected to the RTC's ruling that the sale or promise of sale should appear in a public instrument, or at least in a note or memorandum, to be binding and enforceable. They argued that the RTC failed to consider the respondents-plaintiffs' bad faith in acquiring the properties since they knew of the defects in the title of the owner. They further argued that the CA should have noted Gregorio Miranda's occupancy since 1948, Bernardo's since 1966 and Madrid's since 1973. The petitioners-defendants further submitted that their continuous residence for more than ten (10) years entitled them to the rights and privileges granted by PD 1517. They also argued that the RTC should not have applied the pre-trial order to them, since they had not then been served with summons and were not present during the pre-trial.

THE CA RULING

The CA dismissed the appeal in its decision[7] of July 16, 2001, affirming as a consequence the RTC decision of July 21, 1994. The CA held that the certificate of title in the name of the respondents-plaintiffs serves as evidence of an indefeasible and incontrovertible title to the properties. The CA found that the petitioners-defendants never submitted any proof of ownership. Also, their reliance on their alleged continuous occupation is misplaced since petitioner-defendant Bernardo's occupation in the concept of owner started only in 1975 when Antonio allegedly gave him a portion of the properties as a gift, while petitioner-defendant Madrid's occupation could not have been in the concept of an owner, as he recognized Gregorio

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[7] *Id.,* pp. 30-42.

Miranda as the owner and paid him rents. The CA noted that the petitioners-defendants are not covered by PD 1517 because the law does not apply to occupants whose possession is by the owner's mere tolerance. The CA also observed that the RTC did not err in applying the pre-trial order to the petitioners-defendants because they derive the right of possession from the principal defendants, the Mirandas, who were duly represented at the pre-trial; they waived their right to pre-trial by failing to move that one be held.

The petitioners-defendants moved[8] but failed[9] to secure a reconsideration of the CA decision; hence, they came to us through the present petition.

THE PETITION and THE PARTIES' POSITIONS

The petitioners-defendants essentially reiterate the issues they raised before the CA, *i.e.*, that the ruling court failed to consider: (1) the respondents-plaintiffs' bad faith in the acquisition of the properties; (2) the occupancy of Gregorio Miranda since 1948, Bernardo's since 1966, and Madrid's since 1973; and, (3) petitioners-defendants' continuous residence for more than ten (10) years entitling them to the rights and privileges granted by PD 1517. They also contend that the principle of indefeasibility of the certificate of title should not apply in this case because fraud attended the respondents-plaintiffs' acquisition of title. They again point out that the pre-trial order should not have been applied to them since they were not present during the pre-trial conference.

The respondents-plaintiffs counter-argue that the issues raised by the petitioners-defendants are essentially factual in nature and all have been well-considered and adequately refuted in the challenged CA decision.

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[8] *Id.,* pp. 43-60.

[9] *Id.,* p. 61.

OUR RULING

We resolve to deny the petition for lack of merit.

***a. Accion Publiciana* and Ownership**

Accion publiciana, also known as *accion plenaria de posesion*,[10] is an ordinary civil proceeding to determine the better right of possession of realty independently of title.[11] It refers to an ejectment suit filed after the expiration of one year from the accrual of the cause of action or from the unlawful withholding of possession of the realty.[12]

The objective of the plaintiffs in *accion publiciana* is to recover possession only, not ownership.[13] However, where the parties raise the issue of ownership, the courts may pass upon the issue to determine who between or among the parties has the right to possess the property. This adjudication, however, is not a final and binding determination of the issue of ownership; it is only for the purpose of resolving the issue of possession, where the issue of ownership is inseparably linked to the issue of possession. The adjudication of the issue of ownership, being provisional, is not a bar to an action between the same parties involving title to the property.[14] The adjudication, in short, is not conclusive on the issue of ownership.[15]

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[10] *Bejar v. Caluag,* G.R. No. 171277, February 17, 2007, 516 SCRA 84, 90; *Barredo v. Santiago,* 102 Phil. 127, 130 (1957).

[11] *Bejar v. Caluag, id.*; *Sps. Cruz v. Torres*, 374 Phil. 529, 533 (1999); *Bishop of Cebu v. Mangaron*, 6 Phil. 286, 291 (1906); *Ledesma v. Marcos*, 9 Phil. 618, 620 (1908).

[12] *Encarnacaion v. Amigo,* G.R. No. 169793, September 15, 2006, 502 SCRA 172, 179; *Lopez v. David, Jr.*, G.R. No.152145, March 30, 2004, 426 SCRA 535, 543.

[13] *Natalia Realty, Inc. v. Court of Appeals*, 440 Phil. 1, 25 (2002).

[14] *Rivera v. Rivera*, 453 Phil. 404, 412 (2003).

[15] *Umpoc v. Mercado*, G.R. No. 158166, January 21, 2005, 449 SCRA 220, 238.

In the present case, both the petitioners-defendants and the respondents-plaintiffs raised the issue of ownership. The petitioners-defendants claim ownership based on the oral sale to and occupation by Gregorio Miranda, their predecessor-in-interest, since 1948. On the other hand, the respondents-plaintiffs claim that they are the owners, and their ownership is evidenced by the TCTs in their names. Under this legal situation, resolution of these conflicting claims will depend on the weight of the parties' respective evidence, *i.e.*, whose evidence deserves more weight.

b. Findings of Fact Below – Final and Conclusive

A weighing of evidence necessarily involves the consideration of factual issues – an exercise that is not appropriate for the Rule 45 petition that the petitioners-defendants filed; under the Rules of Court, the parties may raise only questions of law under Rule 45, as the Supreme Court is not a trier of facts.[16] As a rule, we are not duty-bound to again analyze and weigh the evidence introduced and considered in the tribunals below.[17] This is particularly true where the CA has affirmed the trial court's factual findings, as in the present case. These trial court findings, when affirmed by the CA, are final and conclusive and are not open for our review on appeal.[18]

In the present case, both the RTC and the CA gave more weight to the certificate of title the respondents-plaintiffs presented, and likewise found that the petitioners-defendants' possession of the properties was merely upon the respondents-

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[16] *Mitsubishi Motors Phils. Corporation v. Simon,* G.R. No. 164081, April 16, 2008, 551 SCRA 555, 560; *Ochoa v. Apeta*, G.R. No. 146259, September 13, 2007, 533 SCRA 235, 238.

[17] *Diokno v. Cacdac,* G.R. No. 168475, July 4, 2007, 526 SCRA 440, 460-461; *Manotok Realty, Inc. v. CLT Realty Development Corporation,* G.R. Nos. 123346, 134385 & 148767, November 29, 2005, 476 SCRA 305, 335.

[18] *Puen v. Sta. Ana Agro-Aqua Corporation,* G.R. No. 156051, January 28, 2008, 542 SCRA 493, 501; *Child Learning Center, Inc. v. Tagorio*, G.R. No. 150920, November 25, 2005, 476 SCRA 236, 241.

plaintiffs' tolerance. We see no reason to doubt or question the validity of these findings and thus recognize their finality.

As a matter of law, a Torrens Certificate of Title is evidence of indefeasible title of property in favor of the person in whose name the title appears. The title holder is entitled to all the attributes of ownership of the property, including possession, subject only to limits imposed by law.[19] In the present case, the respondents-plaintiffs are indisputably the holders of a certificate of title against which the petitioners-defendants' claim of oral sale cannot prevail. As registered titleholders, they are entitled to possession of the properties.

c. Claim of Fraud – a Prohibited Collateral Attack

Registration of land under the Torrens system, aside from perfecting the title and rendering it indefeasible after the lapse of the period allowed by law, also renders the title immune from collateral attack.[20] A collateral attack transpires when, in another action to obtain a different relief and as an incident of the present action, an attack is made against the judgment granting the title.[21] This manner of attack is to be distinguished from a direct attack against a judgment granting the title, through an action whose main objective is to annul, set aside, or enjoin the enforcement of such judgment if not yet implemented, or to seek recovery if the property titled under the judgment had been disposed of.[22] To permit a collateral attack on respondents-plaintiffs' title is to water down the integrity and guaranteed legal indefeasibility of a Torrens title.[23]

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[19] See *Baloloy v. Hular*, G.R. No. 157767, September 9, 2004, 438 SCRA 80, 92 and CIVIL CODE, Article 428.

[20] *Herce, Jr. v. Municipality of Cabuyao, Laguna,* G.R. No. 166645, November 11, 2005, 474 SCRA 797, 807.

[21] *Teoville Homeowners Association, Inc. v. Ferreira,* G.R. No. 140086, June 8, 2005, 459 SCRA 459, 474.

[22] *Ibid.*

[23] *Republic v. Guerrero,* G.R. No. 133168, March 28, 2006, 485 SCRA 424, 441; *Tichangco v. Enriquez*, G.R. No. 150629, June 30, 2004, 433 SCRA 324, 337.

The petitioners-defendants' attack on the validity of respondents-plaintiffs' title, by claiming that fraud attended its acquisition, is a collateral attack on the title. It is an attack incidental to their quest to defend their possession of the properties in an "*accion publiciana,*" not in a direct action whose main objective is to impugn the validity of the judgment granting the title.[24] This is the attack that possession of a Torrens Title specifically guards against; hence, we cannot entertain, much less accord credit to, the petitioners-defendants' claim of fraud to impugn the validity of the respondents-plaintiffs' title to their property.

d. Claimed Protection under PD 1517

To qualify for protection under PD 1517 and avail of the rights and privileges granted by the said decree, the claimant must be: (1) a legitimate tenant of the land for ten (10) years or more; (2) must have built his home on the land by contract; and, (3) has resided continuously for the last ten (10) years. The "tenant" covered by PD 1517 is, as defined under Section 3(f) thereof, "the rightful occupant of land and its structures, but does not include those whose presence on the land is merely tolerated and without the benefit of contract, those who enter the land by force or deceit, or those whose possession is under litigation."

Stated differently, those whose possession or occupation of land is devoid of any legal authority or those whose contracts of lease are already terminated, or had already expired, or whose possession is under litigation are not considered "tenants" under the decree. Conversely, a legitimate tenant is one who is not a usurper or an occupant by tolerance.[25] The petitioners-

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[24] *Ugale v. Gorospe,* G.R. No. 149516, September 11, 2006, 501 SCRA 376, 386; *Caraan v. Court of Appeals*, G.R. No. 140752, November 11, 2005, 474 SCRA 543, 550; *Baloloy v. Hular*, *supra* note 19.

[25] *Delos Santos v. Court of Appeals*, G.R. No. 127465, October 25, 2001, 368 SCRA 226, 229; *Bermudez v. Intermediate Appellate Court*, G.R. No. 73206, August 6, 1986, 143 SCRA 351, 355; *Zansibarian Residents Asso. v. Municipality of Makati,* G.R. No. 62136, February 28, 1985, 135 SCRA 235, 239.

defendants whose occupation has been merely by the owner's tolerance obviously fall outside the coverage of PD 1517 and cannot seek its protection.

e. <u>The Pre-Trial-based Objection</u>

Without doubt, the petitioners-defendants, having been belatedly served summons and brought into the case, were entitled to a pre-trial as ordained by Section 2, Rule 18 of the Rules of Court. Unless substantial prejudice is shown, however, the trial court's failure to schedule a case for new trial does not render the proceedings illegal or void *ab initio*.[26] Where, as in this case, the trial proceeded without any objection on the part of the petitioners-defendants by their failure to bring the matter to the attention of the RTC, the petitioners-defendants are deemed to have effectively forfeited a procedural right granted them under the Rules. Issues raised for the first time on appeal and not raised timely in the proceedings in the lower court are barred by estoppel.[27] Points of law, theories, issues and arguments not brought to the attention of the trial court ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal.[28] To consider the alleged facts and arguments raised belatedly would amount to trampling on the basic principles of fair play, justice, and due process.

In arriving at this conclusion, we considered, as the CA did, that the petitioners-defendants anchored their right to possess the property on the defenses raised by the original defendant, Gregorio Miranda, their predecessor-in-interest. While belatedly summoned, the petitioners-defendants did not raise a substantial matter in their answer differently from those propounded by

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[26] *Martinez v. de la Merced,* G.R. No. 82039, June 20, 1989, 174 SCRA 182.

[27] *Heirs of Dicman v. Cariño,* G.R. No. 146459, June 8, 2006, 490 SCRA 240, 263; *Cruz v. Fernando, Sr.,* G.R. No. 145470, December 9, 2005, 477 SCRA 173, 182.

[28] *Valdez v. China Banking Corporation,* G.R. No. 155009, April 12, 2005, 455 SCRA 687, 696; *Philippine Ports Authority v. City of Iloilo*, 453 Phil. 927, 938 (2003).

Gregorio Miranda; they merely echoed Miranda's positions and arguments. Thus, no prejudice could have resulted to the petitioners-defendants, especially after they entered trial and had the opportunity to fully ventilate their positions.

f. Attorney's Fees

As a general rule, the appellate court may only pass upon errors assigned by the parties. By way of exception, even unassigned errors may be taken up by the court on appeal if they involve (1) errors affecting the lower court's jurisdiction over the subject matter, (2) plain errors not specified, and (3) clerical errors.[29] In the present case, we note that the award of attorney's fees appears only in the dispositive portion of the RTC decision without any elaboration, explanation, and justification. The award stood there all by itself. We view this as a plain legal error by the RTC that must be rectified.

Article 2208 of the Civil Code enumerates the instances justifying the grant of attorney's fees; in all cases, the award must be reasonable, just and equitable. Attorney's fees as part of damages are not meant to enrich the winning party at the expense of the losing litigant. They are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate.[30] The award of attorney's fees is the exception rather than the general rule. Thus, findings reflecting the conditions imposed by Article 2208 are necessary to justify an award; attorney's fees mentioned only in the dispositive portion of the decision without any prior justification in the body of the decision is a baseless award that must be struck down.[31]

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[29] *Heirs of Ignacia Aguilar-Reyes v. Mijares*, G.R. No. 143826, August 28, 2003, 410 SCRA 97, 111; *Cojuangco, Jr. v. Court of Appeals*, G.R. No. 119398, July 2, 1999, 309 SCRA 602, 614.

[30] *Country Bankers Insurance Corporation v. Lianga Bay and Community Multi-purpose Cooperative, Inc*. 425 Phil. 511, 525 (2002); *Ibaan Rural Bank, Inc. v. Court of Appeals*, 378 Phil. 707, 714 (1999).

[31] *Spouses Samatra v. Vda. de Pariñas*, 431 Phil. 255, 267 (2002); *Development Bank of the Philippines v. Court of Appeals*, G.R. No. 118180, September 20, 1996, 262 SCRA 245, 253.

WHEREFORE, premises considered, we here *DENY* the petition for lack of any reversible error, and consequently *AFFIRM* the decision of July 16, 2001 of the Court of Appeals in CA-G.R. CV No. 47691, with the *MODIFICATION* that the attorney's fees awarded to respondents-plaintiffs are hereby *DELETED*. Costs against the petitioners-defendants.

SO ORDERED.

Carpio-Morales (Acting Chairperson),[**] *Carpio,*[***] *Chico-Nazario,*[****] and *Leonardo-de Castro,*[*****] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 154652. August 14, 2009]

PRUDENCIO M. REYES, JR., *petitioner, vs.* **SIMPLICIO C. BELISARIO and EMMANUEL S. MALICDEM,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; OFFICE OF THE OMBUDSMAN; OMBUDSMAN ACT; DECISION OF THE OMBUDSMAN ABSOLVING THE RESPONDENT OF

[**] Designated Acting Chairperson of the Second Division effective August 1, 2009 per Special Order No. 670 dated July 28, 2009.

[***] Designated additional Member of the Second Division effective August 1, 2009 per Special Order No. 671 dated July 28, 2009.

[****] Designated additional Member of the Second Division effective June 3, 2009 per Special Order No. 658 dated June 3, 2009.

[*****] Designated additional Member of the Second Division effective May 11, 2009 per Special Order No. 635 dated May 7, 2009.

THE ADMINISTRATIVE CHARGE IS FINAL AND UNAPPEALABLE.— By statute and regulation, a decision of the Ombudsman absolving the respondent of the administrative charge is final and unappealable. Section 7, Rule III of the Ombudsman Rules provides: SECTION 7. Finality of decision. — Where the respondent is **absolved of the charge**, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be **final and unappealable**. In all other cases, the decision shall become final after the expiration of ten (10) days from receipt thereof by the respondent, unless a motion for reconsideration or petition for *certiorari* shall have been filed by him (referring to the respondent) as prescribed in Section 27 of RA 6770. This rule is based on Section 27 of Republic Act No. 6770 (RA No. 6770) or the Ombudsman Act, that in turn states: SECTION 27. *Effectivity and Finality of Decisions.* — (1) All provisionary orders of the Office of the Ombudsman are immediately effective and executory. x x x **Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one month's salary shall be final and unappealable**. Notably, exoneration is not mentioned in Section 27 as final and unappealable. However, its inclusion is implicit for, as we held in *Barata v. Abalos,* if a sentence of censure, reprimand and a one-month suspension is considered final and unappealable, so should exoneration.

2. **ID.; ID.; ID.; ID.; NO STATUTORY RIGHT TO APPEAL THE JUDGMENT EXONERATING THE RESPONDENT FROM ADMINISTRATIVE LIABILITY; THE RESPONDENT MAY APPEAL HIS CONVICTION; CONDITION.—** The clear import of Section 7, Rule III of the Ombudsman Rules is to deny the complainant in an administrative complaint the right to appeal where the Ombudsman has exonerated the respondent of the administrative charge, as in this case. The complainant, therefore, is not entitled to any corrective recourse, whether by motion for reconsideration in the Office of the Ombudsman, or by appeal to the courts, to effect a reversal of the exoneration. Only the respondent is granted the right to appeal but only in case he is found liable and the penalty imposed is higher than

public censure, reprimand, one-month suspension or a fine equivalent to one month salary.

3. **ID.; ID.; ID.; ID.; ID.; REMEDY OF THE COMPLAINANT.—** The absence of any *statutory* right to appeal the exoneration of the respondent in an administrative case does not mean, however, that the complainant is left with absolutely no remedy. *Over and above our statutes* is the Constitution whose Section 1, Article VIII empowers the courts of justice to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. This is an overriding authority that cuts across all branches and instrumentalities of government and is implemented through the petition for *certiorari* that Rule 65 of the Rules of Court provides. A petition for *certiorari* is appropriate when a tribunal, clothed with judicial or quasi-judicial authority, acted without jurisdiction (*i.e.,* without the appropriate legal power to resolve a case), or in excess of jurisdiction (*i.e.,* although clothed with the appropriate power to resolve a case, it oversteps its authority as determined by law, or that it committed grave abuse of its discretion by acting either outside the contemplation of the law or in a capricious, whimsical, arbitrary or despotic manner equivalent to lack of jurisdiction). The Rules of Court and its provisions and jurisprudence on writs of *certiorari* fully apply to the Office of the Ombudsman as these Rules are suppletory to the Ombudsman's Rules. The Rules of Court are also the applicable rules in procedural matters on recourses to the courts and hence, are the rules the parties have to contend with in going to the CA. In the present case, the respondents did not file a Rule 65 petition for *certiorari*, and instead filed a petition for review under Rule 43 of the Rules of Court. A Rule 43 petition for review is effectively an appeal to the CA that RA 6770 and the Ombudsman Rules do not allow in an exoneration situation as above discussed. The respondents' petition for review, however, addressed the grave abuse of discretion that the Ombudsman committed in exonerating the present petitioner. This appeal to our overriding constitutional duty and the results of our own examination of the petition compel us to *exercise our liberality* in applying the Rules of Court and to recognize that the recourse made to the CA had the effect of a Rule 65 petition. We consider, therefore, the respondents' petition before the CA as properly filed.

4. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; EFFECT THEREOF.— We fully support the finding of the CA that grave abuse of discretion attended the Ombudsman's decision. As discussed above, grave abuse of discretion is a circumstance beyond the legal error committed by a decision-making agency or entity in the exercise of its jurisdiction; this circumstance affects even the authority to render judgment. Grave abuse of discretion shares this effect with such grounds as the lack of substantial supporting evidence, and the failure to act in contemplation of law, among others. In the absence of any authority to take cognizance of a case and to render a decision, any resulting decision is necessarily null and void. In turn, a null decision, by its very nature, cannot become final and can be impugned at any time. In the context of the Ombudsman operations, a void decision cannot trigger the application of Section 7, Rule III of the Ombudsman Rules. This is the step-by-step flow that arises from a finding of grave abuse of discretion, in relation with the finality and unappealability of an Ombudsman decision involving the penalties of exoneration, censure, reprimand, and suspension for not more than one month.

5. POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE; DETERMINATION OF THE PROPRIETY OF THE REASSIGNMENTS LIES WITH THE CIVIL SERVICE COMMISSION; JURISDICTION OF THE OMBUDSMAN OVER THE ALLEGED OFFENSIVE ACT OF THE PETITIONER.— The factual starting point in the consideration of this case is the propriety of the reassignments that the petitioner, as the LWUA Administrator, ordered; this event triggered the dispute that is now before us. The reassignments, alleged to be without legal basis and arbitrary, led to the highhanded implementation that the respondents also complained about, and eventually to the CSC rulings that the respondents were constructively dismissed. They led also to the charge of harassment and oppression filed against the petitioner, which charge the Ombudsman dismissed. This dismissal, found by the CA to be attended by grave abuse of discretion, is the primary factual and legal issue we have to resolve in passing upon the propriety of the actions of the Ombudsman and the CA in the case. As the CSC and Ombudsman cases developed, the validity of the reassignments was the issue presented before CSC; the latter had the authority to declare

the reassignments invalid but had no authority to penalize the petitioner for his acts. The character of the petitioner's actions, alleged to be harassments and to be oppressive, were brought to the Ombudsman for administrative sanctions against the petitioner; it was the Ombudsman who had the authority to penalize the petitioner for his actions against the respondents. Under this clear demarcation, neither the CSC nor the Ombudsman intruded into each other's jurisdictional domain and no forum shopping issue could have succeeded because of simultaneous recourses to these agencies. While both entities had to examine and to rule on the same set of facts, they did so for different purposes and for different resulting actions.

6. **ID.; ID.; ID.; ANY FINDING OF HARASSMENT AND OPPRESSION, OR THE ABSENCE THEREOF, CONSIDERED PREMATURE ABSENT ANY DEFINITIVE RULING ON THE VALIDITY OF THE REASSIGNMENTS.—** The CSC took the graft charges the respondents brought against the petitioner into account, but this was for purposes of looking at the motive behind the reassignments and of viewing the petitioner's acts in their totality. The same is true in viewing the manner of the implementation of the reassignments. Largely, however, the CSC based its ruling on a legal point – that the LWUA Board, not the LWUA Administrator, can order reassignments. Thus, the CSC ruled that the reassignments constituted constructive dismissal. On the other hand, the Ombudsman, also relying on the events that transpired, should have judged the petitioner's actions mainly on the basis of whether they constituted acts of harassment and oppression. In making this determination, the Ombudsman could not have escaped considering the validity of the reassignments made – a determination that is primarily and authoritatively for the CSC to make. The charges of harassment and oppression would have no basis if the reassignments were in fact valid as they were alleged to be the main acts of harassment and oppression that drove the commission of the petitioner's other similarly-motivated acts. In this sense, the validity of the reassignments must necessarily have to be determined first as a prior question before the full consideration of the existence of harassment or oppression could take place. Stated otherwise, any finding of harassment and oppression, or their absence, rendered without any definitive ruling on the validity of the reassignments would necessarily

be premature. The finding would also suffer from the lack of factual and legal bases.

7. **ID.; ID.; ID.; POWERS OF THE CIVIL SERVICE COMMISSION; DECISION OF THE COMMISSION WITH RESPECT TO THE VALIDITY OF REASSIGNMENTS MUST BE ACCORDED DUE RESPECT; EXONERATION OF THE PETITIONER AND HIS CO-DEFENDANTS OF THE ADMINISTRATIVE CHARGES AGAINST THEM WAS ATTENDED BY GRAVE ABUSE OF DISCRETION.—** We note that the Office of the Ombudsman duly noted in its decision that the CSC has primary jurisdiction over the issue of the reassignments' validity, declaring that it "can hardly arrogate unto itself the task of resolving the said issue." This is a correct reading of the law as the CSC is the central personnel agency of the government whose powers extend to all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters. Constitutionally, the CSC has the power and authority to administer and enforce the constitutional and statutory provisions on the merit system; promulgate policies, standards, and guidelines for the civil service; subject to certain exceptions, approve all appointments, whether original or promotional, to positions in the civil service; hear and decide administrative disciplinary cases instituted directly with it; and perform such other functions that properly belong to a central personnel agency. Pursuant to these powers, the CSC has the authority to determine the validity of the appointments and movements of civil service personnel. Along the way, however, the Ombudsman's decision diverged from its basic legal premise when it refused to apply the rule it had acknowledged – that the CSC is the "administrative body of special competence" to decide on the validity of the reassignments; it refused to accord due respect to the CSC opinion and, later, to the CSC Resolution No. 001729 on the flimsy ground that these were *not yet final and conclusive*. On the strength of this "non-finality" argument, the Ombudsman proceeded to declare the reassignments *presumptively* regular and, finding insufficient evidence of force and intimidation in the implementation of the reassignments by the petitioner and the OICs, sustained the invalid reassignments and their complementary acts. The effect, of course, was the exoneration of the petitioner and his co-defendants of the administrative charge of oppression and harassment. To the respondents and

to the CA as well, the exoneration was attended by grave abuse of discretion.

8. **ID.; CONSTITUTIONAL LAW; OFFICE OF THE OMBUDSMAN; THE OMBUDSMAN'S FINDING OF THE ABSENCE OF HARASSMENT OR OPPRESSION IN THE IMPLEMENTATION OF THE REASSIGNMENT LACKS LEGAL AND FACTUAL BASES.—** After due consideration reflected in the discussions below, we find the Ombudsman's decision fatally flawed for prematurity and arbitrariness, particularly for its lack of legal and factual bases. As discussed above, a CSC determination of the validity of the reassignments is a ruling that the Ombudsman must consider in reaching its own conclusion on whether the reassignments and their implementation were attended by harassment or oppression. With the CSC rulings duly pleaded, the Ombudsman should have accorded these rulings due respect and recognition. If these rulings had not attained finality because of a properly filed motion for reconsideration, the Ombudsman should have at least waited so that its own ruling on the allegations of harassment and oppression would be grounded on the findings of the governmental agency with the primary authority to resolve the validity of the reassignments. An alternative course of action for the Ombudsman to ensure that his decision would have legal and factual bases and would not be tainted with arbitrariness or abuse of discretion, would have been to undertake its own examination of these reassignments from the perspective of harassment and oppression, and to make its own findings on the validity of the petitioner's actions. He should have explained in clear terms and on the basis of substantial evidence on record why no harassment or oppression attended the reassigments and their implementation. Given the duly-pleaded CSC rulings, the Office of the Ombudsman should have explained why it did not need the CSC's pronouncements in making its determination, or if needed, why they should not be followed, stating clearly what exactly was wrong with the CSC's reasoning and why, contrary to the CSC's pronouncement, the reassignments were in fact valid and regular. Unfortunately, no such determination was ever made. Instead, the Office of the Ombudsman simply relied on the presumption of regularity in the performance of duty that it claimed the petitioner enjoyed, and from this premise, ruled that no harassment or oppression transpired in the absence

of force or intimidation that attended the implementation of the reassignments.

9. **REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; OFFICIAL ACTS ENJOY THE PRESUMPTION OF REGULARITY; PRESUMPTION DOES NOT APPLY WHEN AN OFFICIAL'S ACTS ARE NOT WITHIN THE DUTIES SPECIFIED BY LAW; CASE AT BAR.—** As a general rule, "official acts" enjoy the presumption of regularity, and the presumption may be overthrown only by evidence to the contrary. When an act is official, a presumption of regularity exists because of the assumption that the law tells the official what his duties are and that he discharged these duties accordingly. But not all acts of public officers are "official acts," *i.e.,* acts specified by law as an official duty or as a function attached to a public position, and the presumption does not apply when an official's acts are not within the duties specified by law, particularly when his acts properly pertain or belong to another entity, agency, or public official. In the present case, the CSC had spoken by way of an *en banc* resolution, no less, that the petitioner LWUA Administrator's reassignment orders were illegal because, by law, the authority to reassign officers and employees of the LWUA lies with the LWUA Board; the LWUA Administrator's authority is merely to recommend a reassignment to the Board. For reason of its own, the Office of the Ombudsman disregarded this clear statement of the legal allocation of authority on the matter of reassignments. This omission cannot but have fatal consequences for the Ombudsman's decision, anchored as it is on the presumption that the petitioner regularly performed his duty. For, shorn of any basis in law, the petitioner could not have acted with official authority and no presumption of regularity could have been applied in his behalf. Without a valid presumption of regularity, the major linchpin in the Ombudsman's decision is totally removed and the decision is left with nothing to support itself.

10. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE DECISION MUST BE SUPPORTED BY SUBSTANTIAL EVIDENCE TO BE VALID.—** An administrative decision, in order to be valid, should have, among others, "something to support itself." It must be supported by substantial evidence, or *that amount of relevant evidence*

adequate and acceptable enough for a reasonable mind to justify a conclusion or support a decision, even if other minds equally reasonable might conceivably opine otherwise. We note in this regard that the Office of the Ombudsman, other than through its "non-finality" argument, completely failed to explain why the reassignment orders were valid and regular and not oppressive as the respondents alleged. Effectively, it failed to rebut the CSC's declaration that a constructive dismissal took place. This omission is critical because the constructive dismissal conclusion relates back to the filing of graft charges against the petitioner as motive; explains why the respondents were transferred to *ad hoc* positions with no clear duties; and relates forward to the manner the respondents were ejected from their respective offices.

11. **ID.; ID.; ID.; RULING OF THE OMBUDSMAN IN CASE AT BAR CONSIDERED ARBITRARY FOR LACK OF SUBSTANTIAL SUPPORT IN EVIDENCE; VIOLENCE OR INTIMIDATION ARE NOT THE ONLY INDICATORS OF HARASSMENT AND OPPRESSION.—** If the Ombudsman made any factual finding at all, the finding was solely on the lack of violence or intimidation in the respondents' ejectment from their offices. Violence or intimidation, however, are not the only indicators of harassment and oppression as jurisprudence shows. They are not the sole indicators in the context of the Ombudsman's decision because the findings in this regard solely relate to the implementation aspect of the reassignments ordered. We take judicial notice that harassments and oppression do not necessarily come in single isolated acts; they may come in a series of acts that torment, pester, annoy, irritate and disturb another and prejudice him; in the context of this case, the prejudice relates to the respondents' work. Thus, a holistic view must be taken to determine if one is being harassed or oppressed by another. In this sense, and given the facts found by the CA, the Ombudsman ruling dwelling solely with the absence of violence and intimidation is a fatally incomplete ruling; it is not a ruling negating harassment and oppression that we can accept under the circumstances of this case. Effectively, it was an arbitrary ruling for lack of substantial support in evidence.

12. **ID.; ID.; CIVIL SERVICE; A REASSIGNMENT DONE IN BAD FAITH AMOUNT TO CONSTRUCTIVE DISMISSAL; PETITIONER IS LIABLE FOR OPPRESSION; APPROPRIATE PENALTY.—** We fully

agree that the reassignments the petitioner ordered were done in bad faith amounting to constructive dismissal and abuse of authority. We affirm as well the CA's ruling finding that petitioner should be liable for oppression against the respondents. Oppression is characterized as a *grave offense* under Sec. 52(A)(14) of the Uniform Rules on Administrative Cases in the Civil Service and Sec. 22(n) of the Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, penalized with suspension of 6 months and 1 day to 1 year on the first offense. Considering that the oppression found was not a simple one, but was in response to the respondents' filing of an anti-graft complaint against the petitioner, the penalty we should impose should reflect the graft-related origin of this case and should be in the maximum degree. Consequently, we modify the CA decision by increasing the penalty to suspension for one (1) year, in lieu of the six (6) months and one (1) day that the appellate court imposed. If the petitioner is no longer in the service, then the suspension should automatically take the form of a fine equivalent to the petitioner's one-year salary at the time of his separation from the service.

APPEARANCES OF COUNSEL

Benjamin C. Santos & Ofelia Calcetas-Santos Law Offices for petitioner.

Aquino Lorbes & Associates for respondents.

D E C I S I O N

BRION, *J.*:

This petition for review on *certiorari*[1] challenges the Court of Appeals (*CA*) decision of November 27, 2001[2] and resolution of August 1, 2002[3] that commonly reversed the Office of the

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

[2] In CA-G.R. SP No. 61312, rendered by the Seventeenth Division of the Court of Appeals through Associate Justice Portia Aliño-Hormachuelos, and concurred in by Associate Justices Eriberto U. Rosario, Jr. and Amelita G. Tolentino; *rollo* at 39-50.

[3] *Id.,* p. 52.

Ombudsman Decision of July 19, 2000.[4] The petitioner imputes error on the CA for entertaining the respondents' appeal of the Ombudsman's decision, and for the reversal that followed. He maintains that the Ombudsman's decision was final and unappealable under Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman (the *Ombudsman Rules*)[5] and the CA should not have entertained it on appeal.

THE FACTS

The factual antecedents, based on the records before us, are summarized below.

On March 3, 2000, respondents Deputy Administrators Simplicio Belisario, Jr. and Emmanuel B. Malicdem[6] (*respondents*), along with Daniel Landingin and Rodolfo S. De Jesus, all officers of the Local Water Utilities Administration (*LWUA*), filed before the Office of the Ombudsman a ***criminal complaint*** against LWUA Administrator Prudencio M. Reyes, Jr. (*petitioner*) for **violation of Section 3(e) of Republic Act No. 3019**, or the Anti-Graft and Corrupt Practices Act.

On March 16, 2000, or only 13 days after the filing of the graft charge, the petitioner issued Office Order No. 69 **reassigning** respondents together with De Jesus from the offices they then held to the Office of the Administrator. Supposedly, the reassigned officers were to act as a core group of a LWUA Task Force and their specific assignments were to be given by petitioner; Officers-in-Charge (*OIC*s) were designated for the offices they vacated.

The following day, March 17, 2000 – a Friday, the OIC for Administration issued a directive to the Magilas Security Agency to **bar the respondents from using the rooms and facilities** they occupied prior to their reassignments.

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[4] *Id.,* pp. 78-95.

[5] Administrative Order No. 7.

[6] *Per* the Records, Malicdem resigned from office on October 31, 2000.

On Monday, March 20, 2000, the petitioner, through Office Order No. 82, further directed the respondents to "**vacate [their] offices and remove [their] personal belongings and transfer the same to the former PROFUND Office which has been designated as the Office of the Special Task Force.**"

On March 24, 2000, Atty. Arnaldo M. Espinas, LWUA corporate legal counsel, sought the opinion of the Civil Service Commission (*CSC*) regarding the regularity of the reassignments of respondents and of De Jesus.

On March 30, 2000, the petitioner, *via* Office Order No. 99, directed the respondents to **"desist in performing and exercising the functions and activities pertaining to [their] previous positions" and relieved them of their designations or assignments as 6th Member and interim Directors of the Water Districts under their responsibility. To implement this latest Office Order, and in the respondents' absence, entry was effected into their respective rooms with the help of police officers; their room locks were replaced with new ones; and their cabinet drawers were sealed with tapes.**[7]

The CSC responded on April 3, 2000 through a **legal opinion** (CSC *legal opinion*) issued by Assistant Commissioner Adelina B. Sarmiento. It categorically ruled that the reassignments were not in order, were tainted with bad faith, and constituted constructive dismissal.[8] The legal opinion stated:

> Worthy of note is the provision of Section 6a of CSC MC No. 40, s. 1998 which provides that:
>
> a. Reassignment – movement of an employee from one organizational unit to another in the same department or agency which does not involve a reduction in rank, status or salary. If reassignment is without the consent of the employee being

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[7] See Court of Appeals Decision of November 27, 2001, quoting the letter-opinion of Asst. Commissioner Adelina B. Sarmiento of the CSC; *rollo,* pp. 41-42.

[8] *Id.,* p. 41.

> reassigned it shall be allowed only for a maximum period of one year. Reassignment is presumed to be regular and made in the interest of public service unless proven otherwise or if it constitutes constructive dismissal.

On the basis thereof, although the reassignment is presumed regular and made in the interest of public service, there is an iota of **bad faith** attendant to the herein case evidenced by the fact that the reassignment was issued barely ten days after the reassigned officials filed a criminal complaint against the Administrator for violation of the Anti-Graft and Corrupt Practices Act. Moreover, while the reassigned officials used to head their specific departments, being Deputy Administrators at that, their reassignment resulted to a **diminution of their respective ranks**. To apply the ruling of the Court of Appeals in the *Fernandez* case to the herein case, it is clear that there was such a diminution in rank because the reassignment order "did not state any justifiable reason for the reassignment, has no specificity as to the time, functions, duties and responsibilities, making it a floating assignment, and removes from their supervision employees who are part of their staff and subordinates." And more importantly, the recent development wherein the reassigned officials were directed to desist from performing and exercising the functions of their respective positions constituted **constructive dismissal** x x x.

x x x x x x x x x (Emphasis supplied.)

On April 13, 2000, the respondents filed before the Office of the Ombudsman an **administrative complaint**[9] for Oppression and Harassment against the petitioner and the OICs. The petitioner duly filed a counter-affidavit raising as defense his authority to terminate the respondents' employment and forum shopping. The petitioner denied as well that force and intimidation were used in taking over the respondents' offices.

The Office of the Ombudsman resolved the administrative case through a decision dated July 19, 2000.[10] The Ombudsman **desisted from ruling on the validity of the respondents'**

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[9] Docketed as OMB-ADM-0-00-0377.

[10] *Supra* note 4.

reassignments, acknowledging the primary jurisdiction of the CSC over the issue:

> *The CSC is the central personnel agency of the government and as such it is the Office tasked with the duty of rendering opinions and rulings on all personnel and other civil service matters which shall be binding on all heads of departments, offices and agencies.* x x x.
>
> Hence, **this Office can hardly arrogate unto itself the task of resolving the said issue**. As stated by the Supreme Court, the doctrine of primary jurisdiction does not warrant a court to arrogate unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence. x x x (Emphasis supplied.)

but at the same time denied weight to the CSC legal opinion, contending that it was **"not a final and categorical ruling"** on the validity of the reassignments. On this premise, the Ombudsman declared that the reassignments enjoyed the presumption of regularity and were thus considered valid. For this reason and for lack of evidence of force or intimidation on the part of the petitioner and co-defendant OICs in the implementation of the reassignments, the Ombudsman exonerated the petitioner and his co-defendants and dismissed the administrative case against them.

Meanwhile, the CSC *en banc* rendered **Resolution No. 001729**[11] dated July 26, 2000 **fully affirming the CSC opinion** earlier given by Asst. Commissioner Sarmiento. By this action, the CSC *en banc* declared the reassignments invalid, tainted with bad faith, and constitutive of the respondents' constructive dismissal. The CSC *en banc* emphasized that **the LWUA Administrator has no authority under the law to issue the questioned reassignment order**, and ordered the respondents' reinstatement.

The petitioner responded by filing a motion for reconsideration of CSC Resolution No. 001729 and thus avoided the implementation of the respondents' reinstatement.

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[11] *Rollo,* pp. 44-45.

In the administrative case before the Ombudsman, the respondents moved for the reconsideration of the Ombudsman's July 28, 2000 decision, attaching to their motion a copy of CSC Resolution No. 001729. Nevertheless, the Ombudsman denied the requested reconsideration,[12] stressing that CSC Resolution No. 001729 was not yet final in view of the petitioner's pending motion for reconsideration. The pertinent part of the Ombudsman resolution of denial reads:

> While it is true that the CSC *en banc* thru the aforecited resolution appears to have affirmed the earlier opinion of Assistant Commissioner ADELINA B. SARMIENTO that the reassignment of the complainants by respondent REYES is not in order, the same is **not yet final** considering the timely filing before the said Commission of a Motion for Reconsideration by respondent REYES on August 29, 2000 x x x. Certainly, this is **not the final and categorical ruling which this Office had in mind when it issued the questioned DECISION**. (Emphasis supplied.)

The same order expressed that under Section 7, Rule III of the Ombudsman Rules, the Ombudsman's July 28, 2000 decision thus affirmed should now be *final and unappealable*.

The CSC *en banc* denied the petitioner's motion for reconsideration of Resolution No. 001729 through CSC Resolution No. 002348[13] dated October 17, 2000, and thus affirmed the illegality of the reassignments and the reassignment order.

On October 31, 2000, the respondents challenged the Ombudsman's rulings through a petition for review[14] filed with the CA, citing among others the Ombudsman's **grave abuse of discretion** in issuing its rulings.

The CA ruled in the respondents' favor in its decision of November 27, 2001 and thus reversed the assailed Ombudsman's

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[12] *Id.,* p. 45.

[13] *Id.,* p. 47.

[14] Under Rule 43 of the 1997 Rules of Court; *id.,* pp. 68-76.

July 28, 2000 decision.[15] The appellate court observed that the "Ombudsman did not decide the [respondents'] complaint for Harassment and Oppression on its merits, but relied on the non-finality of the Resolution of the Civil Service Commission."[16] It also found the Ombudsman's decision incongruous, as the Ombudsman recognized the CSC's jurisdiction to determine the legality of the reassignments, but did not pursue this recognition to its logical end; he simply "ignored the legal premises" when he applied the presumption of regularity to the petitioner's reassignment orders and, on this basis, absolved the petitioner and his co-defendants of the administrative charge. To quote the CA rulings on this regard:

> [The Ombudsman] was right the first time when it ruled in the assailed Decision that it can "hardly arrogate unto itself the task of resolving the issue" of whether the personnel actions ordered by [the petitioner] against [the respondents] were within the scope of the former's authority. **It correctly ruled that the CSC is tasked with the "duty of rendering opinions and rulings on all personnel and other civil service matters." It then ruled that "unless there is a final and categorical ruling of the CSC that the reassignment of the complainants by [petitioner] Administrator Reyes is not valid, the said Order of Reassignment enjoys the presumption of regularity."**
>
> **Unfortunately, however, without pursuing its initial ruling to its logical conclusion, the Ombudsman ultimately ignored the legal premises presented before it and acted to absolve the [petitioner and his co-defendants], thereby sustaining the illegal reassignments of the [complainants]**, which only the LWUA Board of Trustees as the proper appointing power was authorized to do pursuant to Section 3.1 of Executive Order No. 286, s. 1995. (Emphasis supplied.)

The CA likewise declared that the Ombudsman's exoneration of the petitioner could not have become *final and unappealable* pursuant to Section 7, Rule III of the Ombudsman Rules because it is **void** for lack of substantial evidentiary basis. Again, to quote the appellate court:

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[15] *Supra* note 4.

[16] CA Decision, p. 5; *rollo*, p. 43.

[W]e cannot consider the Decision of the Ombudsman as valid. Section 27 of Republic Act 6770 otherwise known as "An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman" provides that **findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive**.

However, per our examination of the evidence on hand, the findings of fact and conclusion by the Office of the Ombudsman in the questioned Decision are **not supported by substantial evidence**, and in fact, have **deviated from the correct ruling it earlier made as to the proper body to determine the validity of the reassignments of petitioners**, which is the Civil Service Commission. **Consequently such findings are not binding and the decision it rendered has not attained finality**. (Emphasis supplied.)

The appellate court denied the petitioner's motion for reconsideration in its resolution of August 1, 2002.[17]

The petitioner lodged before this Court the present petition for review on *certiorari*[18] on the sole ground that the Ombudsman's July 28, 2000 decision exonerating him of the administrative charge is **final and unappealable** under the express terms of Section 7, Rule III of the Ombudsman Rules. The petitioner thus argues that the CA erred in taking cognizance of the appeal and in reversing the Ombudsman's decision.

The Court's Ruling

The Propriety of the Recourse Taken Before the CA

The threshold issue in this petition is the procedural question of whether a complainant in an administrative case before the Office of the Ombudsman has the right to appeal a judgment exonerating the respondent from liability.

By statute and regulation, a decision of the Ombudsman absolving the respondent of the administrative charge is final

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[17] *Rollo,* p. 52.

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

and unappealable. Section 7, Rule III of the Ombudsman Rules provides:

SECTION 7. Finality of decision. — Where the respondent is **absolved of the charge**, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be **final and unappealable**. In all other cases, the decision shall become final after the expiration of ten (10) days from receipt thereof by the respondent, unless a motion for reconsideration or petition for *certiorari* shall have been filed by him (referring to the respondent) as prescribed in Section 27 of RA 6770. (Emphasis and insertion supplied.)

This rule is based on Section 27 of Republic Act No. 6770 (RA No. 6770)[19] or the Ombudsman Act, that in turn states:

SECTION 27. *Effectivity and Finality of Decisions.* — (1) All provisionary orders of the Office of the Ombudsman are immediately effective and executory.

x x x x x x x x x

Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one month's salary shall be final and unappealable.[20] (emphasis supplied).

Notably, exoneration is not mentioned in Section 27 as final and unappealable. However, its inclusion is implicit for, as we held in *Barata v. Abalos,*[21] if a sentence of censure, reprimand

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[19] Entitled "An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for other purposes," otherwise known as "The Ombudsman Act of 1989."

[20] Note that in all other disciplinary cases, the respondent may appeal the order, directives or decisions of the Office of the Ombudsman to the Court of Appeals *via* a petition for review under Rule 43, *as per* the ruling in *Fabian v. Desierto,* G.R No. 129742, September 16, 1998, 295 SCRA 470.

[21] G.R. No. 142888, June 6, 2001, 358 SCRA 575, 581.

and a one-month suspension is considered final and unappealable, so should exoneration.[22]

The clear import of Section 7, Rule III of the Ombudsman Rules is to deny the complainant in an administrative complaint the right to appeal where the Ombudsman has exonerated the respondent of the administrative charge, as in this case. The complainant, therefore, is not entitled to any corrective recourse, whether by motion for reconsideration in the Office of the Ombudsman, or by appeal to the courts, to effect a reversal of the exoneration. Only the respondent is granted the right to appeal but only in case he is found liable and the penalty imposed is higher than public censure, reprimand, one-month suspension or a fine equivalent to one month salary.

The absence of any *statutory* right to appeal the exoneration of the respondent in an administrative case does not mean, however, that the complainant is left with absolutely no remedy. *Over and above our statutes* is the Constitution whose Section 1, Article VIII empowers the courts of justice to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. This is an overriding authority that cuts across all branches and instrumentalities of government and is implemented through the petition for *certiorari* that Rule 65 of the Rules of Court provides. A petition for *certiorari* is appropriate when a tribunal, clothed with judicial or quasi-judicial authority, acted without jurisdiction (*i.e.,* without the appropriate legal power to resolve a case), or in excess of jurisdiction (*i.e.,* although clothed with the appropriate power to resolve a case, it oversteps its authority as determined by law, or that it committed grave abuse of its discretion by acting either outside the contemplation of the law or in a capricious, whimsical, arbitrary or despotic manner

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[22] *Chan v. Ombudsman Marcelo*, G.R. No.159298, July 6, 2007, 526 SCRA 627.

equivalent to lack of jurisdiction).[23] The Rules of Court and its provisions and jurisprudence on writs of *certiorari* fully apply to the Office of the Ombudsman as these Rules are suppletory to the Ombudsman's Rules.[24] The Rules of Court are also the applicable rules in procedural matters on recourses to the courts and hence, are the rules the parties have to contend with in going to the CA.

In the present case, the respondents did not file a Rule 65 petition for *certiorari*, and instead filed a petition for review under Rule 43 of the Rules of Court. A Rule 43 petition for review is effectively an appeal to the CA that RA 6770 and the Ombudsman Rules do not allow in an exoneration situation as above discussed. The respondents' petition for review, however, addressed the grave abuse of discretion that the Ombudsman committed in exonerating the present petitioner. This appeal to our overriding constitutional duty and the results of our own examination of the petition compel us to *exercise our liberality* in applying the Rules of Court and to recognize that the recourse made to the CA had the effect of a Rule 65 petition. We consider, therefore, the respondents' petition before the CA as properly filed.

The Grave Abuse of Discretion

a. Effect of Grave Abuse of Discretion

We fully support the finding of the CA that grave abuse of discretion attended the Ombudsman's decision. As discussed above, grave abuse of discretion is a circumstance beyond the legal error committed by a decision-making agency or entity in the exercise of its jurisdiction; this circumstance affects even the authority to render judgment. Grave abuse of discretion shares this effect with such grounds as the lack of substantial

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[23] *Active Realty and Development Corp. v. Fernandez*, G.R. No. 157186, October 19, 2007, 537 SCRA 116.

[24] *Barata v. Abalos, Jr., supra*; *Enemecio v. Office of the Ombudsman*, G.R. No. 146731, 13 January 2004, 419 SCRA 82.

supporting evidence,[25] and the failure to act in contemplation of law,[26] among others.

In the absence of any authority to take cognizance of a case and to render a decision, any resulting decision is necessarily null and void. In turn, a null decision, by its very nature, cannot become final and can be impugned at any time.[27] In the context of the Ombudsman's operations, a void decision cannot trigger the application of Section 7, Rule III of the Ombudsman Rules.

This is the step-by-step flow that arises from a finding of grave abuse of discretion, in relation with the finality and unappealability of an Ombudsman decision involving the penalties of exoneration, censure, reprimand, and suspension for not more than one month.

b. The Grave Abuse of Discretion in the Context of the Case

The factual starting point in the consideration of this case is the propriety of the reassignments that the petitioner, as the LWUA Administrator, ordered; this event triggered the dispute that is now before us. The reassignments, alleged to be without legal basis and arbitrary, led to the highhanded implementation that the respondents also complained about, and eventually to the CSC rulings that the respondents were constructively

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[25] *Tensorex Industrial Corporation v. Court of Appeals*, G.R. No. 117925, 12 October 1999, 316 SCRA 471, 479, cited in *Republic v. Canastillo*, G.R. No. 172729, June 8, 2007, 524 SCRA 546.

[26] Grave abuse of discretion also refers to violations of the Constitution, the law and jurisprudence, or for failure or refusal to act according to the law under the facts and the circumstance, *PCGG v. Desierto,* February 10, 2003, 397 SCRA 171, "Without jurisdiction" refers to an absolute want of jurisdiction; "excess of jurisdiction" refers to the case where the court, office or officer has jurisdiction, but it transcended the same or acted without any statutory authority; "grave abuse of discretion" implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, *Miranda v. Abaya,* G.R. No. 136351, July 28, 1999, 311 SCRA 617.

[27] *Ang Lam vs. Rosillosa*, 86 Phil. 447 (1950).

dismissed. They led also to the charge of harassment and oppression filed against the petitioner, which charge the Ombudsman dismissed. This dismissal, found by the CA to be attended by grave abuse of discretion, is the primary factual and legal issue we have to resolve in passing upon the propriety of the actions of the Ombudsman and the CA in the case.

As the CSC and Ombudsman cases developed, the validity of the reassignments was the issue presented before CSC; the latter had the authority to declare the reassignments invalid but had no authority to penalize the petitioner for his acts. The character of the petitioner's actions, alleged to be harassments and to be oppressive, were brought to the Ombudsman for administrative sanctions against the petitioner; it was the Ombudsman who had the authority to penalize the petitioner for his actions against the respondents.

Under this clear demarcation, neither the CSC nor the Ombudsman intruded into each other's jurisdictional domain and no forum shopping issue could have succeeded because of simultaneous recourses to these agencies. While both entities had to examine and to rule on the same set of facts, they did so for different purposes and for different resulting actions.

The CSC took the graft charges the respondents brought against the petitioner into account, but this was for purposes of looking at the motive behind the reassignments and of viewing the petitioner's acts in their totality. The same is true in viewing the manner of the implementation of the reassignments. Largely, however, the CSC based its ruling on a legal point – that the LWUA Board, not the LWUA Administrator, can order reassignments. Thus, the CSC ruled that the reassignments constituted constructive dismissal.

On the other hand, the Ombudsman, also relying on the events that transpired, should have judged the petitioner's actions mainly on the basis of whether they constituted acts of harassment and oppression. In making this determination, the Ombudsman could not have escaped considering the validity of the reassignments made – a determination that is primarily and authoritatively for the CSC to make. The charge of harassment

and oppression would have no basis if the reassignments were in fact valid as they were alleged to be the main acts of harassment and oppression that drove the commission of the petitioner's other similarly-motivated acts. In this sense, the validity of the reassignments must necessarily have to be determined first as a prior question before the full consideration of the existence of harassment or oppression could take place. Stated otherwise, any finding of harassment and oppression, or their absence, rendered without any definitive ruling on the validity of the reassignments would necessarily be premature. The finding would also suffer from the lack of factual and legal bases.

We note that the Office of the Ombudsman duly noted in its decision that the CSC has primary jurisdiction over the issue of the reassignments' validity, declaring that it "can hardly arrogate unto itself the task of resolving the said issue." This is a correct reading of the law as the CSC is the central personnel agency of the government whose powers extend to all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters.[28] Constitutionally, the CSC has the power and authority to administer and enforce the constitutional and statutory provisions on the merit system; promulgate policies, standards, and guidelines for the civil service; subject to certain exceptions, approve all appointments, whether original or promotional, to positions in the civil service; hear and decide administrative disciplinary cases instituted directly with it; and perform such other functions that properly belong to a central personnel agency.[29] Pursuant to these powers, the CSC has the authority to determine the validity of the appointments and movements of civil service personnel.

Along the way, however, the Ombudsman's decision diverged from its basic legal premise when it refused to apply the rule it had acknowledged – that the CSC is the "administrative body of special competence" to decide on the validity of the

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[28] CONSTITUTION, Article IX-B, Section 3.

[29] CIVIL SERVICE LAW, Article V, Section 9.

reassignments; it refused to accord due respect to the CSC opinion and, later, to the CSC Resolution No. 001729 on the flimsy ground that these were *not yet final and conclusive*. On the strength of this "non-finality" argument, the Ombudsman proceeded to declare the reassignments *presumptively* regular and, finding insufficient evidence of force and intimidation in the implementation of the reassignments by the petitioner and the OICs, sustained the invalid reassignments and their complementary acts. The effect, of course, was the exoneration of the petitioner and his co-defendants of the administrative charge of oppression and harassment. To the respondents and to the CA as well, the exoneration was attended by grave abuse of discretion.

c. Prematurity and Arbitrariness

After due consideration reflected in the discussions below, we find the Ombudsman's decision fatally flawed for prematurity and arbitrariness, particularly for its lack of legal and factual bases.

As discussed above, a CSC determination of the validity of the reassignments is a ruling that the Ombudsman must consider in reaching its own conclusion on whether the reassignments and their implementation were attended by harassment or oppression. With the CSC rulings duly pleaded, the Ombudsman should have accorded these rulings due respect and recognition. If these rulings had not attained finality because of a properly filed motion for reconsideration, the Ombudsman should have at least waited so that its own ruling on the allegations of harassment and oppression would be grounded on the findings of the governmental agency with the primary authority to resolve the validity of the reassignments.

An alternative course of action for the Ombudsman to ensure that his decision would have legal and factual bases and would not be tainted with arbitrariness or abuse of discretion, would have been to undertake its own examination of these reassignments from the perspective of harassment and oppression, and to make its own findings on the validity of the petitioner's actions. He should have explained in clear terms

and on the basis of substantial evidence on record why no harassment or oppression attended the reassignments and their implementation. Given the duly-pleaded CSC rulings, the Office of the Ombudsman should have explained why it did not need the CSC's pronouncements in making its determination, or if needed, why they should not be followed, stating clearly what exactly was wrong with the CSC's reasoning and why, contrary to the CSC's pronouncement, the reassignments were in fact valid and regular.

Unfortunately, no such determination was ever made. Instead, the Office of the Ombudsman simply relied on the presumption of regularity in the performance of duty that it claimed the petitioner enjoyed, and from this premise, ruled that no harassment or oppression transpired in the absence of force or intimidation that attended the implementation of the reassignments.

As a general rule, "official acts" enjoy the presumption of regularity, and the presumption may be overthrown only by evidence to the contrary.[30] When an act is official, a presumption of regularity exists because of the assumption that the law tells the official what his duties are and that he discharged these duties accordingly. But not all acts of public officers are "official acts" — *i.e.,* acts specified by law as an official duty or as a function attached to a public position — and the presumption does not apply when an official's acts are not within the duties specified by law,[31] particularly when his acts properly pertain or belong to another entity, agency, or public official.

In the present case, the CSC had spoken by way of an *en banc* resolution, no less, that the petitioner LWUA Administrator's reassignment orders were illegal because, by law, the authority to reassign officers and employees of the

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[30] *People v. Jolliffe*, 105 Phil. 677 (1959), citing *Administrative Law*: *Cases and Comments* by Gellhorn, pp. 315-316.

[31] *Republic v. Principalia,* G.R. No. 167639, 19 April 2006, 487 SCRA 609.

LWUA lies with the LWUA Board; the LWUA Administrator's authority is merely to recommend a reassignment to the Board. For reason of its own, the Office of the Ombudsman disregarded this clear statement of the legal allocation of authority on the matter of reassignments. This omission cannot but have fatal consequences for the Ombudsman's decision, anchored as it is on the presumption that the petitioner regularly performed his duty. For, shorn of any basis in law, the petitioner could not have acted with official authority and no presumption of regularity could have been applied in his behalf. Without a valid presumption of regularity, the major linchpin in the Ombudsman's decision is totally removed and the decision is left with nothing to support itself.

An administrative decision, in order to be valid, should have, among others, "something to support itself."[32] It must be supported by substantial evidence, or *that amount of relevant evidence adequate and acceptable enough for a reasonable mind to justify a conclusion or support a decision,*[33] *even if other minds equally reasonable might conceivably opine otherwise.*[34]

We note in this regard that the Office of the Ombudsman, other than through its "non-finality" argument, completely failed to explain why the reassignment orders were valid and regular and not oppressive as the respondents alleged. Effectively, it failed to rebut the CSC's declaration that a constructive dismissal took place. This omission is critical because the constructive dismissal conclusion relates back to the filing of graft charges against the petitioner as motive; explains why the respondents were transferred to *ad hoc* positions with no clear duties; and relates forward to the manner the respondents were ejected from their respective offices.

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[32] *Ang Tibay v. CIR*, 69 Phil. 635 (1940).

[33] RULES OF COURT, Rule 133, Section 5.

[34] *Montemayor v. Bundalian*, G.R. No. 149335, July 1, 2003, 405 SCRA 264.

If the Ombudsman made any factual finding at all, the finding was solely on the lack of violence or intimidation in the respondents' ejectment from their offices. Violence or intimidation, however, are not the only indicators of harassment and oppression as jurisprudence shows.[35] They are not the sole indicators in the context of the Ombudsman's decision because the findings in this regard solely relate to the implementation aspect of the reassignments ordered. We take judicial notice that harassments and oppression do not necessarily come in single isolated acts; they may come in a series of acts that torment, pester, annoy, irritate and disturb another and prejudice him; in the context of this case, the prejudice relates to the respondents' work. Thus, a holistic view must be taken to determine if one is being harassed or oppressed by another. In this sense, and given the facts found by the CA, the Ombudsman ruling dwelling solely with the absence of violence and intimidation is a fatally incomplete ruling; it is not a ruling negating harassment and oppression that we can accept under the circumstances of this case. Effectively, it was an arbitrary ruling for lack of substantial support in evidence.

The other end of the spectrum in viewing the reassignments and its related events, is the position the CSC and the CA have taken. The appellate court stated in its own decision:

> We likewise agree with the Civil Service Commission that respondent Administrator acted in bad faith in reassigning the petitioners barely ten (10) days after the latter filed their complaint against him for violation of the Anti-Graft and Corrupt Practices Act. No reassignment shall be undertaken if done whimsically because the law is not intended

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[35] "Oppression" has been defined as "an act of cruelty, severity, unlawful exaction, domination, or excessive use of authority" (*United States v. Deaver,* 14 Fed. 495), *Ochate v. Deling,* 105 Phil. 384 (1959), cited in *Buta v. Relampagos,* 279 SCRA 211 (1997); it is a demeanor committed by a public officer, who under color of his office, wrongfully inflicts upon any person any bodily harm, imprisonment or other injury; *Estrada v. Badoy,* A.M. No. SB-02-10-J, January 16, 2003, 395 SCRA 231, 245; hence, like Grave Misconduct and Abuse of Authority, also classified as grave offenses under civil service laws, a finding of Oppression requires the attendance of malice and bad faith in the act complained of.

as a convenient shield for the appointing/disciplining authority to harass or suppress a subordinate on the pretext of advancing and promoting public interest (Section 6, Rule III of Civil Service Commission Memorandum Circular No. 40. S. 1998). Additionally, the reassignments involved a reduction in rank as petitioners were consigned to a "floating assignment with no specificity as to functions, duties, and responsibilities" resulting in the removal from their supervision over their regular staff, subordinates, and even offices. Finally, the subsequent Order of respondent Administrator directing petitioners to desist from performing and exercising the functions of their respective positions constituted constructive dismissal.

We hold that, based on the evidence presented, respondent Administrator is guilty of harassment and oppression as charged, penalized as grave offense under Executive Order No. 292 (Civil Service Law), Section 22 (n) with suspension for six (6) months and one (1) day to one (1) year.

We fully agree that the reassignments the petitioner ordered were done in bad faith amounting to constructive dismissal and abuse of authority. We affirm as well the CA's ruling finding that petitioner should be liable for oppression against the respondents.

d. The Appropriate Penalty

Oppression is characterized as a *grave offense* under Sec. 52(A)(14)[36] of the Uniform Rules on Administrative Cases in the Civil Service[37] and Sec. 22(n)[38] of the Rules Implementing

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[36] 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 <u>grave offenses</u> with their corresponding penalties:

x x x x x x x x x

14. Oppression. *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

[37] Resolution No. 99-1936, effective on September 27, 1999.

[38] Sec. 22. Administrative offenses with its corresponding penalties are classified into grave, less grave, and light, depending on the gravity of its nature and effects on the government service.

Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws,[39] penalized with suspension of 6 months and 1 day to 1 year on the first offense.

Considering that the oppression found was not a simple one, but was in response to the respondents' filing of an anti-graft complaint against the petitioner, the penalty we should impose should reflect the graft-related origin of this case and should be in the maximum degree. Consequently, we modify the CA decision by increasing the penalty to suspension for one (1) year, in lieu of the six (6) months and one (1) day that the appellate court imposed. If the petitioner is no longer in the service, then the suspension should automatically take the form of a fine equivalent to the petitioner's one-year salary at the time of his separation from the service.

WHEREFORE, the petition is *DENIED*. We *AFFIRM* the Court of Appeals Decision and Resolution dated November 27, 2001 and August 1, 2002, respectively, with the *MODIFICATION* that the penalty imposed is suspension of one (1) year, or, alternatively, a fine equivalent to one-year salary if the petitioner has been separated from the service at the time of the finality of this Decision. Costs against the petitioner.

SO ORDERED.

Carpio Morales (Acting Chairperson), * *Carpio,* ** *Del Castillo,* and *Abad, JJ.,* concur.

The following are *grave offenses* with [their] corresponding penalties:

x x x x x x x x x

(n) Oppression: *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

[39] Resolution No. 91-1631, dated December 27, 1991.

* Designated Acting Chairperson of the Second Division per Special Order No. 670 dated July 28, 2009.

** Designated additional Member of the Second Division per Special Order No. 671 dated July 28, 2009.

FIRST DIVISION

[G.R. No. 160379. August 14, 2009]

REPUBLIC OF THE PHILIPPINES THROUGH THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, *petitioner, vs.* **COURT OF APPEALS and ROSARIO RODRIGUEZ REYES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EXPROPRIATION; JUST COMPENSATION; PROPERTY VALUATION, FACTORS TO CONSIDER.—** Eminent domain is the authority and right of the State, as sovereign, to take private property for public use upon observance of due process of law and payment of just compensation. The Constitution provides that, "[p]rivate property shall not be taken for public use without just compensation." Just compensation is the full and fair equivalent of the property sought to be expropriated. Among the factors to be considered in arriving at the fair market value of the property are the cost of acquisition, the current value of like properties, its actual or potential uses, and in the particular case of lands, their size, shape, location, and the tax declarations thereon. The measure is not the taker's gain but the owner's loss. To be just, the compensation must be fair not only to the owner but also to the taker.

2. **ID.; ID.; ID.; ID.; BASIS.—** Just compensation is based on the price or value of the property at the time it was taken from the owner and appropriated by the government. However, if the government takes possession before the institution of expropriation proceedings, the value should be fixed as of the time of the taking of said possession, not of the filing of the complaint. The value at the time of the filing of the complaint should be the basis for the determination of the value when the taking of the property involved coincides with or is subsequent to the commencement of the proceedings.

3. **ID.; ID.; ID.; ID.; PROCEDURAL REQUIREMENTS.—** The procedure for determining just compensation is set forth in Rule 67 of the 1997 Rules of Civil Procedure. Section 5 of Rule 67

partly states that "[u]pon the rendition of the order of expropriation, the court shall appoint not more than three (3) competent and disinterested persons as commissioners to ascertain and report to the court the just compensation for the property sought to be taken." However, we held in *Republic v. Court of Appeals* that Rule 67 presupposes a prior filing of complaint for eminent domain with the appropriate court by the expropriator. If no such complaint is filed, the expropriator is considered to have violated procedural requirements, and hence, waived the usual procedure prescribed in Rule 67, including the appointment of commissioners to ascertain just compensation. In *National Power Corporation v. Court of Appeals*, we clarified that when there is no action for expropriation and the case involves only a complaint for damages or just compensation, the provisions of the Rules of Court on ascertainment of just compensation (*i.e.*, provisions of Rule 67) are no longer applicable, and a trial before commissioners is dispensable. In this case, petitioner took possession of the subject property without initiating expropriation proceedings. Consequently, private respondent filed the instant case for just compensation and damages. To determine just compensation, the trial court appointed three commissioners pursuant to Section 5 of Rule 67 of the 1997 Rules of Civil Procedure. None of the parties objected to such appointment.

4. **ID.; ID.; ID.; ID.; THE TRIAL COURT IS NOT BOUND BY THE COMMISSIONERS' VALUATION OF THE PROPERTY; REMAND OF THE CASE AT BAR TO THE TRIAL COURT FOR PROPER DETERMINATION OF JUST COMPENSATION, PROPER.—** The trial court's appointment of commissioners in this particular case is not improper. The appointment was done mainly to aid the trial court in determining just compensation, and it was not opposed by the parties. Besides, the trial court is not bound by the commissioners' recommended valuation of the subject property. The court has the discretion on whether to adopt the commissioners' valuation or to substitute its own estimate of the value as gathered from the records. However, we agree with the appellate court that the trial court's decision is not clear as to its basis for ascertaining just compensation. The trial court mentioned in its decision the valuations in the reports of the City Appraisal Committee and of the commissioners appointed pursuant to Rule 67. But whether the trial court considered

these valuations in arriving at the just compensation, or the court made its own independent valuation based on the records, was obscure in the decision. The trial court simply gave the total amount of just compensation due to the property owner without laying down its basis. Thus, there is no way to determine whether the adjudged just compensation is based on competent evidence. For this reason alone, a remand of the case to the trial court for proper determination of just compensation is in order. In *National Power Corporation v. Bongbong*, we held that although the determination of just compensation lies within the trial court's discretion, it should not be done arbitrarily or capriciously. The decision of the trial court must be based on all established rules, correct legal principles, and competent evidence. The court is proscribed from basing its judgment on speculations and surmises.

5. **ID.; ID.; ID.; ID.; CONSEQUENTIAL DAMAGES, WHEN MAY BE AWARDED; ACTUAL TAKING OF THE REMAINING PORTION OF THE REAL PROPERTY IS NOT NECESSARY TO GRANT CONSEQUENTIAL DAMAGES.—** No actual taking of the remaining portion of the real property is necessary to grant consequential damages. If as a result of the expropriation made by petitioner, the remaining lot (*i.e.*, the 297-square meter lot) of private respondent suffers from an impairment or decrease in value, consequential damages may be awarded to private respondent. On the other hand, if the expropriation results to benefits to the remaining lot of private respondent, these consequential benefits may be deducted from the awarded consequential damages, if any, or from the market value of the expropriated property. We held in *B.H. Berkenkotter & Co. v. Court of Appeals* that: To determine just compensation, the trial court should first ascertain the market value of the property, to which should be added the consequential damages after deducting therefrom the consequential benefits which may arise from the expropriation. If the consequential benefits exceed the consequential damages, these items should be disregarded altogether as the basic value of the property should be paid in every case.

6. **ID.; ID.; ID.; ID.; AN AWARD OF CONSEQUENTIAL DAMAGES FOR PROPERTY NOT TAKEN IS NOT TANTAMOUNT TO UNJUST ENRICHMENT OF THE PROPERTY OWNER; CONDITIONS; NO UNJUST**

ENRICHMENT WHEN THE PERSON WHO WILL BENEFIT HAS A VALID CLAIM TO SUCH BENEFIT.— An award of consequential damages for property not taken is not tantamount to unjust enrichment of the property owner. There 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 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 principle of unjust enrichment under Article 22 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. There is no unjust enrichment when the person who will benefit has a valid claim to such benefit. As stated, consequential damages are awarded if as a result of the expropriation, the remaining property of the owner suffers from an impairment or decrease in value. Thus, there is a valid basis for the grant of consequential damages to the property owner, and no unjust enrichment can result therefrom.

7. **CIVIL LAW; DAMAGES; ATTORNEY'S FEES; WHEN MAY BE AWARDED; AWARD OF ATTORNEY'S FEES TO PRIVATE RESPONDENT IS PROPER.—** The Court of Appeals did not err in granting attorney's fees to private respondent. Article 2208 (2) of the New Civil Code provides that attorney's fees may be awarded: x x x (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. x x x Attorney's fees may be awarded by a court if one who claims it is compelled to litigate with third persons or to incur expenses to protect one's interest by reason of an unjustified act or omission on the part of the party from whom it is sought. In this case, petitioner took possession of private respondent's real property without initiating expropriation proceedings, and over the latter's objection. As a result, private respondent was compelled to litigate and incur expenses to protect her interests over her property. Thus, the appellate court's award of attorney's fees is proper x x x.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Romualdo and Arnado Law Office for Rosario Rodriguez Reyes.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the Court of Appeals' Decision[2] dated 15 November 2002 and Resolution dated 17 September 2003 in CA-G.R. CV No. 50358. The Court of Appeals affirmed with modifications the Amended Decision of the Regional Trial Court of Cagayan de Oro City, Branch 19 (RTC).

The Antecedent Facts

Private respondent Rosario Rodriguez Reyes is the absolute owner of a parcel of land identified as Lot 849-B and covered by TCT No. T-7194. The 1,043-square meter lot is situated on Claro M. Recto and Osmeña Streets, Cagayan de Oro City.

On 6 November 1990, private respondent received a letter from petitioner Republic of the Philippines, through the Department of Public Works and Highways (DPWH), requesting permission to enter into a portion of private respondent's lot consisting of 663 square meters, and to begin construction of the Osmeña Street extension road. On 20 December 1990, petitioner took possession of private respondent's property without initiating expropriation proceedings. Consequently, on 4 and 7 January 1991, private respondent sent letters to the DPWH stating her objection to the taking of her property. On 16 May 1991, private respondent sent a letter to the City

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

[2] Penned by Associate Justice Ruben T. Reyes with Associate Justices Remedios Salazar-Fernando and Edgardo F. Sundiam, concurring.

Appraisal Committee (CAC) rejecting the latter's appraisal of the subject property, to wit:[3]

Declared Owner	*Tax Declaration No.*	*Market Value 1981 Schedule*	*Recommended Appraised Value*	*Description*
Rosario Reyes	90066	₱400/sq.m.	₱4,000/sq.m.	1 to 20 meters from Claro M. Recto Super Highway
			₱3,200/sq.m.	21 to 40 meters from Claro M. Recto Super Highway
			₱2,400/sq.m.	41 to 60 meters from Claro M. Recto Super Highway

In the same letter, private respondent requested the City Assessor for a reappraisal of her property, but said request was denied.[4]

On 17 March 1992, private respondent filed with the Regional Trial Court (RTC) of Cagayan de Oro City a complaint claiming just compensation and damages against petitioner.

On 30 June 1993, the RTC appointed three commissioners[5] to determine the subject property's fair market value, as well as the consequential benefits and damages of its expropriation. On 15 September 1993, one of the three commissioners, Provincial Assessor Corazon Beltran, submitted to the RTC a separate report, the dispositive portion of which reads:

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[3] *Rollo*, p. 14; records, pp. 204-206.

[4] Letter dated 19 June 1991, signed by City Assessor Myrna R. Pimentel. Records, p. 207.

[5] The three Commissioners were the City Assessor, the City Registrar of Deeds of Cagayan de Oro, and Mrs. Cecilia Roa (*id.* at 160). The City Assessor, who was also the CAC Chairman, was later replaced by Provincial Assessor Corazon Beltran (*id.* at 178-179; *rollo*, p. 140).

WHEREFORE, the undersigned deems it only to be just, fair and reasonable to adopt the market value of FOUR THOUSAND PESOS (₱4,000.00) per square meter as the highest price obtaining and prevailing in 1990, the time of the taking of the property subject of the above entitled case, and fairly reasonable also to impose an additional value equivalent to 5% of the market value as fixed for severance fee.[6]

On 13 April 1994, the scheduled hearing was reset to 19 May 1994, to give private respondent (plaintiff) time to consider the offer of petitioner (defendant) to amicably settle the case and to accept the just compensation of ₱3,200 per square meter, or a total of ₱2,212,600, for the 663-square meter portion of private respondent's lot.[7]

On 16 May 1994, private respondent filed with the RTC an "Urgent Motion to Deposit The Amount of ₱2,121,600 in Court," alleging that petitioner's counsel previously manifested in open court that the amount of ₱2,121,600 was ready for release should the amount be acceptable to private respondent, and praying that said amount of ₱2,121,600 be deposited by petitioner with the trial court.[8] The RTC granted the motion in an Order dated 16 June 1994.[9] However, it was only on 21 October 1994 that petitioner deposited with the RTC Clerk of Court a Landbank check amounting to ₱2,121,600 as just compensation.[10]

On 16 June 1994, the RTC ordered the commissioners to submit their report as soon as possible, but until the scheduled hearing on 15 July 1994, the commissioners still failed to submit their report. Upon motion of private respondent, the RTC issued an order appointing a new set of commissioners.[11]

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[6] *Rollo*, p. 71.

[7] *Id.* at 72.

[8] *Id.* at 73.

[9] Records, p. 296.

[10] *Rollo*, p. 20.

[11] The new commissioners were (1) Atty. Avelino Pakino, the Registrar of Deeds of Cagayan de Oro, (2) Ms. Cecilia Roa (reappointed), and (3) Mr. Norberto Cosadio, the Provincial Assessor. Records, p. 304.

On 11 October 1994, the new commissioners submitted their report, the pertinent portions of which provide, thus:

COMMISSIONERS' REPORT

x x x x x x x x x

The property litigated upon is strategically located along Recto Avenue (National Highway) which is a commercial district. Fronting it across the national highway is the Cagayan Coca Cola Plant and the Shell Gasoline Station. It adjoins an establishment known as the Palana Grocery Store and after it is the Northern Mindanao Development Bank. Three Hundred (300) meters to the west of plaintiff's property is the gigantic structure of the Gaisano City department store along Recto Avenue and Corrales Avenue Extension. Towards the eastern direction of the property are banking institution buildings and the Ororama Superstore along the national highway (Recto Avenue) and the Limketkai Commercial Complex.

For purpose of affording a fair assessment of the market value of plaintiff's property, the herein Commissioners have divided the whole parcel of land into three parts, *viz*:

1. Front portion along Recto Avenue measuring 21.52 meters from south to north -------------------------- 347.66 SQM
2. Middle portion with a measurement of 21.52 meters -- 347.66 SQM
3. Rear/back portion with a measurement of 21.52 meters --- 347.66 SQM

TOTAL AREA: ------------- 1,043 SQM

Taking into consideration, among others, the location of the property and a research of the prevailing prices of lots proximate to and/or near the vicinity of plaintiff's property, the undersigned Commissioners respectfully recommend to the Honorable Court the following valuation, to wit:

(CURRENT VALUE)

1. Front portion along Recto Avenue with a measurement of 21.52 meters from south to north with an area of 347.66 square meters at ₱18,000.00 to ₱20,000.00 per square meter;

2. Middle portion with a measurement of 21.52 meters containing an area of 347.66 square meters at ₱16,000.00 to ₱18,000.00 per square meter;

3. Rear/back portion measuring 21.52 meters with an area of 347.66 square meters at ₱14,000.00 to ₱16,000.00 per square meter;

VALUATION AS OF 1990

1. Front Portion - ₱10,000.00 to ₱12,000.00 per square meter;

2. Middle Portion- ₱8,000.00 to ₱10,000.00 per square meter;

3. Rear Portion - ₱6,000.00 to ₱8,000.00 per square meter;

The undersigned Commissioners would however like to bring to the attention of the Honorable Court that in the subdivision plan prepared by the City Engineer's Office, the whole of plaintiff's property was subdivided into three (3) lots designated as follows:

Lot 849-B-1 (Road Lot)-83 square meters;

Lot 849-B-2 (Road Lot traversed by the RCDP Osmeña Extension Street)-663 SQM;

Lot 849-B-3 remaining portion with an area of 297 square meters;

In effect, what has been taken over and used by the defendant is not only 663 square meters but 746 square meters, more or less, which includes Lot No. 849-B-1.

On the other hand, the remaining portion left to the plaintiff, Lot No. 849-B-3 will not actually be 297 square meters. If we deduct the setback area from Osmeña Extension Street, the usable/buildable area left to the plaintiff would only be a little over 50 square meters. This portion would not command a good price if sold. Neither is it ideal for purposes of any building construction because aside from its being a very small strip of land, the shape is triangular.[12]

The Trial Court's Ruling

On 2 June 1995, the RTC rendered a Decision, the dispositive portion of which reads:

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[12] *Rollo*, pp. 79-81.

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants, declaring the former as having the right to retain 590 square meters of the property covered by TCT No. T-7194, and ordering the latter to return 210 square meters of the 663 square meters taken; that defendants are solidarily liable to pay the sum of ₱5,526,000.00, the fair market value of 1990 (sic), as just compensation for the 536 square meters taken for the Osmeña street extension; to pay ₱185,000.00 representing damages for 37 months computed at the rate of ₱5,000.00 per month from the filing of this case; and Attorney's fees of ₱10,000.00 plus costs of suit.

Plaintiff herein is ordered to forthwith defray the expenses to be incurred in undertaking the road construction of the 210 square meters which the defendants will later on provide along the right portion of her property.

SO ORDERED.[13]

On 15 June 1995, the RTC rendered an Amended Decision with the following dispositive portion, thus:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants, declaring the former as having the right to retain 590 square meters of the property covered by TCT No. T-7194, and ordering the latter to return 293 square meters of the 746 square meters taken; that defendants are solidarily liable to pay the sum of ₱4,696,000.00, the fair market value of 1990 (sic), as just compensation for the 453 square meters taken for the Osmeña Street extension; to pay ₱185,000.00 representing damages for 37 months computed at the rate of ₱5,000.00 per month from the filing of this case; and Attorney's fees of ₱10,000.00 plus costs of suit.

Plaintiff herein is ordered to forthwith defray the expenses to be incurred in undertaking the road construction of the 293 square meters which the defendants will later on provide along the right portion of her property.

SO ORDERED.[14]

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[13] CA *rollo*, pp. 109-110.

[14] *Id.* at 111-112.

The Court of Appeals' Ruling

On appeal by petitioner, the Court of Appeals rendered judgment,[15] affirming with modifications the decision of the RTC. The Court of Appeals found that the commissioners' recommendations on just compensation were not supported by valid documents. Also, it was unclear in the RTC decision whether the trial court merely adopted the commissioners' recommendations or the court made its own independent valuation of the subject property. Thus, the Court of Appeals held that a reconvening of the commissioners or an appointment of new commissioners to determine just compensation was necessary. The appellate court further held that the trial court's order for petitioner's return of the 293-square meter lot had no legal basis and was no longer feasible since the lot was already part of the completed Sergio Osmeña extension road. Moreover, consequential damages should be awarded in lieu of actual damages for private respondent's alleged loss of income from the remaining 297-square meter lot. We quote the dispositive portion of the Court of Appeals' decision below.

WHEREFORE, the appealed judgment is hereby **MODIFIED**.

1. The case is **REMANDED** to the trial court which is ordered to reconvene the commissioners or appoint new commissioners to determine, in accordance with this Decision, the amount of just compensation due to plaintiff-appellee Rosario Rodriguez Reyes for the 746 square meters of land taken from her and consequential damages to the 297-square meter portion left.

2. Defendant-appellant DWPH[16] is ordered to pay plaintiff-appellee the following amounts:

a. the balance, if any, of just compensation to be finally determined after deducting the amount of ₱2,161,600.00[17] DPWH previously advanced and deposited with the trial court;

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[15] Promulgated on 15 November 2002.

[16] This should be "DPWH."

[17] This should be ₱2,121,600 in accordance with the RTC Order of 16 June 1994. *Supra* notes 9 and 10.

b. 6% legal interest per annum on the amount it provisionally deposited from the time of taking up to the time it is deposited with the trial court on October 21, 1994; and on the balance, if any, from the time of taking on December 20, 1990 until fully paid;

c. attorney's fees of ₱20,000.00.

3. Defendant-appellant City Government of Cagayan de Oro is relieved from any liability;

4. The award of ₱185,000.00 as actual damages is deleted;

5. No pronouncement as to costs.

SO ORDERED.[18]

Petitioner filed a Motion for Reconsideration, but this was denied by the Court of Appeals in its Resolution of 17 September 2003.[19]

Hence, this appeal.

The Issues

Petitioner raises the following issues:

1. Whether the Court of Appeals erred in ordering the remand of the case to the trial court, to order the reconvening of the commissioners or appointment of new commissioners to determine the consequential damages for the remaining 297- square meter lot; and

2. Whether the Court of Appeals erred in ordering petitioner to pay attorney's fees.

The Court's Ruling

We find the appeal unmeritorious.

On whether the Court of Appeals erred in ordering the remand of the case to the trial court to order the reconvening

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[18] *Rollo*, p. 54.

[19] *Id.* at 55.

of the commissioners or appointment of new commissioners to determine the consequential damages for the remaining 297-square meter lot

Eminent domain is the authority and right of the State, as sovereign, to take private property for public use upon observance of due process of law and payment of just compensation.[20] The Constitution provides that, "[p]rivate property shall not be taken for public use without just compensation."[21]

Just compensation is the full and fair equivalent of the property sought to be expropriated.[22] Among the factors to be considered in arriving at the fair market value of the property are the cost of acquisition, the current value of like properties, its actual or potential uses, and in the particular case of lands, their size, shape, location, and the tax declarations thereon.[23] The measure is not the taker's gain but the owner's loss.[24] To be just, the compensation must be fair not only to the owner but also to the taker.[25]

Just compensation is based on the price or value of the property at the time it was taken from the owner and appropriated by the government.[26] However, if the government takes possession before the institution of expropriation proceedings, the value should be fixed as of the time of the taking of said possession, not of the filing of the complaint. The value at the time of the filing of the complaint should be the basis for the determination

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[20] *National Power Corporation v. Court of Appeals*, 479 Phil. 850, 860 (2004), citing *Visayan Refining Co. v. Camus*, 40 Phil. 550 (1919).

[21] Article III, Section 9 of the 1987 Philippine Constitution.

[22] *B.H. Berkenkotter & Co. v. Court of Appeals*, G.R. No. 89980, 14 December 1992, 216 SCRA 584, 586.

[23] *Id.* at 587, citing Cruz, *Constitutional Law*, 1991 ed., p. 74.

[24] *Id.* at 586.

[25] *Id.*

[26] *National Power Corporation v. Court of Appeals*, 214 Phil. 583, 590 (1984), citing *Alfonso v. Pasay City*, 106 Phil. 1017 (1960).

of the value when the taking of the property involved coincides with or is subsequent to the commencement of the proceedings.[27]

The procedure for determining just compensation is set forth in Rule 67 of the 1997 Rules of Civil Procedure. Section 5 of Rule 67 partly states that "[u]pon the rendition of the order of expropriation, the court shall appoint not more than three (3) competent and disinterested persons as commissioners to ascertain and report to the court the just compensation for the property sought to be taken." However, we held in *Republic v. Court of Appeals*[28] that Rule 67 presupposes a prior filing of complaint for eminent domain with the appropriate court by the expropriator. If no such complaint is filed, the expropriator is considered to have violated procedural requirements, and hence, waived the usual procedure prescribed in Rule 67, including the appointment of commissioners to ascertain just compensation.[29] In *National Power Corporation v. Court of Appeals*,[30] we clarified that when there is no action for expropriation and the case involves only a complaint for damages or just compensation, the provisions of the Rules of Court on ascertainment of just compensation (*i.e.*, provisions of Rule 67) are no longer applicable, and a trial before commissioners is dispensable, thus:

> In this case, NPC appropriated Pobre's Property without resort to expropriation proceedings. NPC dismissed its own complaint for the second expropriation. At no point did NPC institute expropriation proceedings for the lots outside the 5,554 square-meter portion subject of the second expropriation. The only issues that the trial court had to settle were the amount of just compensation and damages that NPC had to pay Pobre.
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> This case ceased to be an action for expropriation when NPC dismissed its complaint for expropriation. Since this case has been

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[27] *Municipality of La Carlota v. Spouses Gan,* 150-A Phil. 588, 594 (1972).

[28] G.R. No. 147245, 31 March 2005, 454 SCRA 516, 530.

[29] *Id.* at 531.

[30] *Supra* note 20.

reduced to a simple case of recovery of damages, the provisions of the Rules of Court on the ascertainment of the just compensation to be paid were no longer applicable. A trial before commissioners, for instance, was dispensable.[31]

In this case, petitioner took possession of the subject property without initiating expropriation proceedings. Consequently, private respondent filed the instant case for just compensation and damages. To determine just compensation, the trial court appointed three commissioners pursuant to Section 5 of Rule 67 of the 1997 Rules of Civil Procedure. None of the parties objected to such appointment.

The trial court's appointment of commissioners in this particular case is not improper. The appointment was done mainly to aid the trial court in determining just compensation, and it was not opposed by the parties. Besides, the trial court is not bound by the commissioners' recommended valuation of the subject property. The court has the discretion on whether to adopt the commissioners' valuation or to substitute its own estimate of the value as gathered from the records.[32]

However, we agree with the appellate court that the trial court's decision is not clear as to its basis for ascertaining just compensation. The trial court mentioned in its decision the valuations in the reports of the City Appraisal Committee and of the commissioners appointed pursuant to Rule 67. But whether the trial court considered these valuations in arriving at the

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[31] *Id.* at 867.

[32] *Republic of the Philippines v. Santos*, 225 Phil. 29, 35 (1986), citing *Manila Railroad Company v. Velasquez*, 32 Phil. 286 (1915).

Section 8 of Rule 67 of the 1997 Rules of Civil Procedure provides that, "the court may x x x accept the report and render judgment in accordance therewith; or, for cause shown, it may recommit the same to the commissioners for further report of facts; or it may set aside the report and appoint new commissioners; or it may accept the report in part and reject it in part; and it may make such order or render such judgment as shall secure to the plaintiff the property essential to the exercise of his right of expropriation, and to the defendant just compensation for the property so taken."

just compensation, or the court made its own independent valuation based on the records, was obscure in the decision. The trial court simply gave the total amount of just compensation due to the property owner without laying down its basis. Thus, there is no way to determine whether the adjudged just compensation is based on competent evidence. For this reason alone, a remand of the case to the trial court for proper determination of just compensation is in order. In *National Power Corporation v. Bongbong*,[33] we held that although the determination of just compensation lies within the trial court's discretion, it should not be done arbitrarily or capriciously. The decision of the trial court must be based on all established rules, correct legal principles, and competent evidence.[34] The court is proscribed from basing its judgment on speculations and surmises.[35]

Petitioner questions the appellate court's decision to remand the case to determine the consequential damages for the remaining 297-square meter lot of private respondent. Petitioner contends that no consequential damages may be awarded as the remaining lot was "not actually taken" by the DPWH, and to award consequential damages for the lot which was retained by the owner is tantamount to unjust enrichment on the part of the latter.

Petitioner's contention is unmeritorious.

No actual taking of the remaining portion of the real property is necessary to grant consequential damages. If as a result of the expropriation made by petitioner, the remaining lot (*i.e.*, the 297-square meter lot) of private respondent suffers from an impairment or decrease in value, consequential damages may be awarded to private respondent. On the other hand, if

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[33] G.R. No. 164079, 3 April 2007, 520 SCRA 290, 304.

[34] *Manansan v. Republic*, G.R. No. 140091, 10 August 2006, 498 SCRA 348, 363, citing *Manila Railway Company v. Fabie*, 17 Phil. 206, 209 (1910).

[35] *Id.*

the expropriation results to benefits to the remaining lot of private respondent, these consequential benefits[36] may be deducted from the awarded consequential damages, if any, or from the market value of the expropriated property. We held in *B.H. Berkenkotter & Co. v. Court of Appeals*[37] that:

> To determine just compensation, the trial court should first ascertain the market value of the property, to which should be added the consequential damages after deducting therefrom the consequential benefits which may arise from the expropriation. If the consequential benefits exceed the consequential damages, these items should be disregarded altogether as the basic value of the property should be paid in every case.

Section 6 of Rule 67 of the Rules of Civil Procedure provides:

> x x x The commissioners shall assess the consequential damages to the property not taken and deduct from such consequential damages the consequential benefits to be derived by the owner from the public use or purpose of the property taken, the operation of its franchise by the corporation or the carrying on of the business of the corporation or person taking the property. But in no case shall the consequential benefits assessed exceed the consequential damages assessed, or the owner be deprived of the actual value of his property so taken.

An award of consequential damages for property not taken is not tantamount to unjust enrichment of the property owner. There 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."[38] Article 22 of the Civil

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[36] The consequential benefits that shall be deducted refer to the actual benefits derived by the owner on the remaining portion of his land which are the direct and proximate results of the improvements consequent to the expropriation, and not the general benefits which he receives in common with the community. (Regalado, *Remedial Law Compendium*, Vol. 1, p. 746)

[37] *Supra* note 22.

[38] *Benguet Corporation v. Department of Environment and Natural Resources-Mines Adjudication Board,* G.R. No. 163101, 13 February 2008,

Code provides that "[e]very 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 principle of unjust enrichment under Article 22 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.[39] There is no unjust enrichment when the person who will benefit has a valid claim to such benefit.[40]

As stated, consequential damages are awarded if as a result of the expropriation, the remaining property of the owner suffers from an impairment or decrease in value. Thus, there is a valid basis for the grant of consequential damages to the property owner, and no unjust enrichment can result therefrom.

On whether the Court of Appeals erred in ordering petitioner to pay attorney's fees.

The Court of Appeals did not err in granting attorney's fees to private respondent. Article 2208(2) of the New Civil Code provides that attorney's fees may be awarded:

x x x x x x x x x

(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.

x x x x x x x x x

Attorney's fees may be awarded by a court if one who claims it is compelled to litigate with third persons or to incur expenses to protect one's interest by reason of an unjustified act or omission on the part of the party from whom it is sought.[41] In

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545 SCRA 196, citing *Car Cool Philippines, Inc. v. Ushio Realty and Development Corporation,* G.R. No. 138088, 23 January 2006, 479 SCRA 404, 412.

[39] *Id.*

[40] *Id.* at 413.

[41] *Industrial Insurance Company, Inc. v. Bondad*, 386 Phil. 923, 932 (2000).

this case, petitioner took possession of private respondent's real property without initiating expropriation proceedings, and over the latter's objection. As a result, private respondent was compelled to litigate and incur expenses to protect her interests over her property. Thus, the appellate court's award of attorney's fees is proper, *viz*:

> We find, however, the award of attorney's fees in plaintiff-appellee's favor justified. x x x It is admitted that defendant-appellant DPWH neglected to file the appropriate expropriation proceedings before taking over plaintiff-appellee's land. That their road contractor no longer has any portion to work on except on plaintiff-appellee's property is no justification for the precipitate taking of her lot. It is incumbent upon defendant-appellant DPWH to foresee whether private lands will be affected by their project and to file appropriate expropriation proceedings if necessary. They did not do so. Thus, plaintiff-appellee was constrained to institute the instant suit to protect her rights.[42]

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Court of Appeals' Decision dated 15 November 2002 and Resolution dated 17 September 2003 in CA-G.R. CV No. 50358.

SO ORDERED.

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

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[42] *Rollo*, p. 53.

FIRST DIVISION

[G.R. No. 160610. August 14, 2009]

JUDELIO COBARRUBIAS, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES, THE HONORABLE COURT OF APPEALS SPECIAL FORMER SECOND DIVISION, and HON. BONIFACIO SANZ MACEDA, Acting Judge of the Regional Trial Court of Las Piñas City, Branch 255,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; RULES OF PROCEDURE; LIBERAL CONSTRUCTION OF THE RULES; FAILURE TO IMPLEAD THE PEOPLE OF THE PHILIPPINES AS RESPONDENT CONSIDERED NOT SO GRAVE AS TO WARRANT DISMISSAL OF THE CASE.—** The Court of Appeals dismissed the petition for failure of petitioner to comply with the resolution directing him to implead the People of the Philippines as respondent. The Court of Appeals held that the petition was prosecuted manifestly for delay, which is a ground for dismissal under Section 8, Rule 65 of the Rules of Court. However, Section 6, Rule 1 of the Rules of Court also provides that rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding. Thus, in several cases, the Court has ruled against the dismissal of petitions or appeals based solely on technicalities especially when there was subsequent substantial compliance with the formal requirements. In this case, the Court finds the petitioner's failure to implead the People of the Philippines as respondent not so grave as to warrant dismissal of the petition. After all, petitioner rectified his error by moving for reconsideration and filing an Amended Petition, impleading the People of the Philippines as respondent.

2. **ID.; CIVIL PROCEDURE; ACTIONS; PARTIES; FAILURE TO IMPLEAD AN INDISPENSABLE PARTY IS NOT A GROUND FOR THE DISMISSAL OF THE ACTION; TECHNICALITIES MAY BE SET ASIDE WHEN THE STRICT AND RIGID APPLICATION OF THE RULES**

WILL FRUSTRATE RATHER THAN PROMOTE JUSTICE.— In *Vda. de Manguerra v. Risos*, where the petition for *certiorari* filed with the Court of Appeals failed to implead the People of the Philippines as an indispensable party, the Court held: It is undisputed that in their petition for *certiorari* before the CA, respondents failed to implead the People of the Philippines as a party thereto. Because of this, the petition was obviously defective. As provided in Section 5, Rule 110 of the Revised Rules of Criminal Procedure, all criminal actions are prosecuted under the direction and control of the public prosecutor. Therefore, it behooved the petitioners (respondents herein) to implead the People of the Philippines as respondent in the CA case to enable the Solicitor General to comment on the petition. **However, this Court has repeatedly declared that the failure to implead an indispensable party is not a ground for the dismissal of an action. In such a case, the remedy is to implead the non-party claimed to be indispensable. Parties may be added by order of the court, on motion of the party or on its own initiative at any stage of the action and/or such times as are just. If the petitioner/plaintiff refuses to implead an indispensable party despite the order of the court, the latter may dismiss the complaint/petition for petitioner's/plaintiff's failure to comply**. In this case, the Court of Appeals should have granted petitioner's motion for reconsideration and given due course to the petition in view of petitioner's subsequent compliance by filing an Amended Petition, impleading the People of the Philippines as respondent. Technicalities may be set aside when the strict and rigid application of the rules will frustrate rather than promote justice.

3. **ID.; JUDGMENT; RULE IN CASE OF CONFLICT BETWEEN THE *FALLO* AND THE BODY OF THE DECISION.—** The general rule is that where there is a conflict between the *fallo*, or the dispositive part, and the body of the decision or order, the *fallo* prevails on the theory that the *fallo* is the final order and becomes the subject of execution, while the body of the decision merely contains the reasons or conclusions of the court ordering nothing. However, where one can clearly and unquestionably conclude from the body of the decision that there was a mistake in the dispositive portion, the body of the decision will prevail. Thus, in *Spouses Rebuldea v. Intermediate Appellate Court,* the Court held that the trial court did not gravely abuse its discretion when it corrected the dispositive portion of its

decision to make it conform to the body of the decision, and to rectify the clerical errors which interchanged the mortgagors and the mortgagee. In this case, considering the clear finding of the trial court that the prosecution failed to prove beyond reasonable doubt the guilt of petitioner in the charges for Homicide and Frustrated Homicide, while the two other charges for Illegal Possession of Firearms and Violation of the Omnibus Election Code require further evidence, it is only just and proper to correct the dispositive portion to reflect the exact findings of the trial court. Criminal Case No. 94-5036 (Frustrated Homicide) and Criminal Case No. 94-5038 (Homicide) should be dismissed, while Criminal Case No. 94-5037 (Illegal Possession of Firearms under Presidential Decree No. 1866) and Criminal Case No. 24-392 (Violation of Section 261(Q) of the Omnibus Election Code in relation to Section 32 of Republic Act No. 7166) should be set for further trial.

APPEARANCES OF COUNSEL

Jose Atendido Parungo for petitioner.
The Solicitor General for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the Resolutions dated 10 March 2003 and 9 October 2003 of the Court of Appeals in CA-G.R. SP No. 72315.

The Facts

In 1994, petitioner Judelio Cobarrubias was charged with Frustrated Homicide (Criminal Case No. 94-5036), Homicide (Criminal Case No. 94-5038), Violation of Section 261(Q) of the Omnibus Election Code in relation to Section 32 of Republic Act No. 7166 (Criminal Case No. 24-392), and Illegal Possession

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

of Firearms under Presidential Decree No. 1866 (Criminal Case No. 94-5037). Petitioner pleaded not guilty to all the charges and trial followed.

On 20 March 2001, Presiding Judge Florentino M. Alumbres of the Regional Trial Court of Las Piñas City, Branch 255 (trial court), issued an Order,[2] the dispositive portion of which reads:

> WHEREFORE, in the light of the foregoing, the Court rules that the prosecution failed to establish the guilt of the accused beyond reasonable doubt in Criminal Cases Nos. 94-5036 and 94-5037, and these cases are ordered DISMISSED.
>
> Criminal Cases Nos. 94-5038 and 24392 should be set for further trial.
>
> SO ORDERED.[3]

The prosecution did not appeal the trial court's Order. On 5 July 2001, petitioner filed with the trial court a Motion for Correction of Clerical Error,[4] alleging that in the dispositive portion of the Order, Criminal Case No. 94-5038 should have been dismissed instead of Criminal Case No. 94-5037, which should have been the case set for further trial. Petitioner maintained that there was a typographical error in the dispositive portion considering that in the body of the Order, the trial court ruled that the prosecution failed to prove beyond reasonable doubt the guilt of petitioner in the charges for Homicide and Frustrated Homicide.

On 26 February 2002, respondent Acting Judge Bonifacio Sanz Maceda[5] denied the motion, holding that the alleged error was substantial in nature which affected the very merit of the

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[2] *Rollo,* pp. 70-82.

[3] *Id.* at 82.

[4] CA *rollo,* pp. 83-85.

[5] It appears that Judge Florentino M. Alumbres, who issued the Order dated 20 March 2001, already retired and was substituted by Judge Bonifacio Sanz Maceda.

case. Petitioner moved for reconsideration, which respondent Judge denied on 23 July 2002.

On 21 August 2002, petitioner filed with the Court of Appeals a Petition for *Certiorari* and Prohibition with Prayer for a Temporary Restraining Order or Writ of Preliminary Injunction. Petitioner sought to set aside the Orders dated 26 February 2002 and 23 July 2002 of respondent Judge.

On 23 August 2002, the Court of Appeals dismissed the petition for failure to submit with the petition a clear duplicate original or a certified true copy of the assailed Order dated 23 July 2002, and for failure of petitioner's counsel to indicate his current official receipt number and date of payment of the current Integrated Bar of the Philippines membership dues, pursuant to SC Bar Matter No. 287.[6]

Petitioner moved for reconsideration, which the Court of Appeals granted. In a Resolution dated 11 December 2002, the Court of Appeals directed petitioner to implead the People of the Philippines as respondent. On 10 March 2003, the Court of Appeals dismissed the petition for failure of petitioner to comply with the resolution.[7] On 19 March 2003, petitioner filed an Omnibus Motion for Reconsideration and Motion to Admit Amended Petition, which the Court of Appeals dismissed. Hence, this petition.

The Issues

Petitioner contends that:

1. THE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR IN DISMISSING THE PETITION ON THE GROUND OF A TECHNICALITY, DESPITE THE PETITIONER'S COMPLIANCE WITH ITS RESOLUTION DATED 11 DECEMBER 2002.

2. THE COURT OF APPEALS COMMITTED SERIOUS REVERSIBLE ERROR IN NOT GIVING DUE COURSE

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[6] *Rollo,* p. 127.

[7] *Id.* at 32.

TO THE PETITION CONSIDERING THE MERITS THEREOF AND THE SUBSTANTIVE RIGHTS OF THE PETITIONER.[8]

The Ruling of the Court

We find the petition meritorious.

Compliance with the Formal Requirements

The Court of Appeals dismissed the petition for failure of petitioner to comply with the resolution directing him to implead the People of the Philippines as respondent. The Court of Appeals held that the petition was prosecuted manifestly for delay, which is a ground for dismissal under Section 8, Rule 65 of the Rules of Court.[9]

However, Section 6, Rule 1 of the Rules of Court also provides that rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding. Thus, in several cases, the Court has ruled against the dismissal of petitions or appeals based solely on technicalities especially

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[8] *Id.* at 16.

[9] Section 8 of Rule 65, as amended by A.M. No. 07-7-12-SC, reads:

SEC. 8. *Proceedings after comment is filed*. – After the comment or other pleadings required by the court is filed, or the time for the filing thereof has expired, the court may hear the case or require the parties to submit memoranda. If, after such hearing or filing of memoranda or upon the expiration of the period for filing, the court finds that the allegations of the petition are true, it shall render judgment for such relief to which the petitioner is entitled.

However, **the court may dismiss the petition if it finds the same** without merit or **prosecuted manifestly for delay**, or if the questions raised therein are too unsubstantial to require consideration. In such event, the court may award in favor of the respondent treble costs solidarily against the petitioner and counsel, in addition to subjecting counsel to administrative sanctions under Rules 139 and 139-B of the Rules of Court.

The Court may impose *motu proprio*, based on *res ipsa loquitur*, other disciplinary sanctions or measures on erring lawyers for patently dilatory and unmeritorious petitions for *certiorari*. (Emphasis supplied)

when there was subsequent substantial compliance with the formal requirements.[10]

In this case, the Court finds the petitioner's failure to implead the People of the Philippines as respondent not so grave as to warrant dismissal of the petition. After all, petitioner rectified his error by moving for reconsideration and filing an Amended Petition, impleading the People of the Philippines as respondent.

In *Vda. de Manguerra v. Risos*,[11] where the petition for *certiorari* filed with the Court of Appeals failed to implead the People of the Philippines as an indispensable party, the Court held:

> It is undisputed that in their petition for *certiorari* before the CA, respondents failed to implead the People of the Philippines as a party thereto. Because of this, the petition was obviously defective. As provided in Section 5, Rule 110 of the Revised Rules of Criminal Procedure, all criminal actions are prosecuted under the direction and control of the public prosecutor. Therefore, it behooved the petitioners (respondents herein) to implead the People of the Philippines as respondent in the CA case to enable the Solicitor General to comment on the petition.
>
> **However, this Court has repeatedly declared that the failure to implead an indispensable party is not a ground for the dismissal of an action. In such a case, the remedy is to implead the non-party claimed to be indispensable. Parties may be added by order of the court, on motion of the party or on its own initiative at any stage of the action and/or such times as are just. If the petitioner/ plaintiff refuses to implead an indispensable party despite the order of the court, the latter may dismiss the complaint/petition for petitioner's/plaintiff's failure to comply**.[12] (Emphasis supplied)

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[10] *Honda Cars Makati, Inc. v. Court of Appeals,* G.R. No. 165359, 14 July 2008, 558 SCRA 209; *Tan v. Planters Products, Inc.,* G.R. No. 172239, 28 March 2008, 550 SCRA 287; *Heirs of Victoriana Villagracia v. Equitable Banking Corporation,* G.R. No. 136972, 28 March 2008, 550 SCRA 60; *Caña v. Evangelical Free Church of the Philippines,* G.R. No. 157573, 11 February 2008, 544 SCRA 225; *Jaro v. Court of Appeals,* 427 Phil. 532 (2002).

[11] G.R. No. 152643, 28 August 2008, 563 SCRA 499.

[12] *Id.* at 504-505.

In this case, the Court of Appeals should have granted petitioner's motion for reconsideration and given due course to the petition in view of petitioner's subsequent compliance by filing an Amended Petition, impleading the People of the Philippines as respondent. Technicalities may be set aside when the strict and rigid application of the rules will frustrate rather than promote justice.[13]

Conflict Between the Fallo and the Body of the Order

Instead of remanding the case to the Court of Appeals, the Court will resolve the issue raised by petitioner in order to prevent further delay in the resolution of the case.

Petitioner's main contention is that there is a clerical error in the *fallo* or the dispositive portion of Judge Alumbres' Order dated 20 March 2001, which should have dismissed Criminal Case No. 94-5038 instead of Criminal Case No. 94-5037, considering that in the body of the order, the trial court ruled that the prosecution failed to prove beyond reasonable doubt the guilt of petitioner in the charges for Frustrated Homicide (Criminal Case No. 94-5036) and Homicide (Criminal Case No. 94-5038). However, respondent Acting Judge Maceda, who was assigned to the trial court after Judge Alumbres retired, denied petitioner's motion for correction, holding that the alleged error was substantial in nature.

For a clearer understanding of the issue, the pertinent portions of the Order dated 20 March 2001 are hereunder quoted:

On the first and second charges of Homicide (Criminal Case No. 94-5038) and Frustrated Homicide (Criminal Case No. 94-5036), did the prosecution prove the guilt of the accused beyond reasonable doubt in killing Edwin S. Martinez and the wounding of Decampong "without any just motive"?

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[13] *Bautista v. Unangst*, G.R. No. 173002, 4 July 2008, 557 SCRA 256; *Enriquez v. Bank of the Philippine Islands*, G.R. No. 172812, 12 February 2008, 544 SCRA 590; *Lanaria v. Planta*, G.R. No. 172891, 22 November 2007, 538 SCRA 79; *National Power Corporation v. Bongbong*, G.R. No. 164079, 3 April 2007, 520 SCRA 290.

To the mind of the Court, the prosecution failed in this regard.

What is derogatory to the cases of the prosecution is the Resolution dated July 7, 1994 of the Department of Justice issued after a thorough preliminary investigation conducted by an investigating panel composed of State Prosecutor Philip I. Kimpo and Prosecution Attorney Emelie Fe M. delos Santos, duly approved by then Chief State Prosecutor Jovencito R. Zuño.

The pertinent portions of the said Resolution is quoted as follows:

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x x x x x x x x x

"After hitting SI Martinez, respondent Cobarrubias, still seated, pointed his gun towards agent Decampong and an exchange of gun fire ensued leaving both of them wounded. Agent Decampong was hit on his right shoulder while respondent suffered wound on his "left thigh". (p. 4 – Resolution).

It is, therefore, very clear that it was Decampong who first fired at the accused from outside when he (accused) was seated inside his car. It is very difficult to believe the story of the prosecution that the exchange of fire between the accused and the NBI agents happened while the accused was seated inside the car.

In fact, the Resolution of the Department of Justice attest to the fact that the accused was not the aggressor.

Pertinent portion of the Resolution (Exh. 2, 2-A & 2-B, 7/13/95 session) is quoted, thus:

"There is no treachery in the instant case as respondent was not the aggressor. Respondent did not attack the victim (Martinez) but only fired at the latter upon seeing him approaching his car with a gun in his hand, while announcing their being NBI agents and advising respondent and his companion not to move. Hence, it cannot be said that respondent employed means, methods or forms in the execution of the crime which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make (RPC, Art. 14, par. 16). In other words, for *alevosia* to apply, the killer must be the aggressor and he must deliberately and consciously adopt and employ a non-risky mode of execution

that would insure the successful consummation of his criminal act. As ruled by the High Court, there is no treachery if the killing was committed at the moment (*People vs. Gutierrez*, 113 SCRA 155; *People vs. de Castro*, L-38989, Oct. 29, 1982, 117 SCRA 1014; *People vs. Magaddatu*, L-36446, Sept. 9, 1983, 124 SCRA 594; or if the attack cannot be sudden and unprovoked or unexpected (*People v. Atienza*, 115 SCRA 379 (1982); If no time was left for the accused to deliberate on the mode of attack or to prepare for the manner by which he could kill the deceased with the full assurance that it would be improbable or hard for the latter to defend himself or retaliate (*People vs. De Jesus*, 58505, Nov. 19, 1982, 18 SCRA 516; Or the attack is unplanned (*People vs. Manalang*, L-471-36-37, July 28, 1983, 123 SCRA 583).

Neither is there evident premeditation in this case for the same reason that herein respondent was not the aggressor or attacker in the shooting incident or "encounter." Under the facts of the case, it is clear that respondent never planned in killing the victim.

Therefore, he could not have cling to a supposed determination as there was no determination at all to speak of."

(P. 8 & 9 – Resolution dated July 7, 1994, DOJ Emphasis Supplied)

"Not being the aggressor," it is apropos that the accused did not incite, much less, provoke the shooting. Decampong admitted while being cross examined that the accused "withdrew" or "ran away" after being hit on the left thigh, which will fortify the conclusion that there was no unlawful aggression on the part of the accused.

The elements of self-defense are (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself. (*People vs. Hubilla, Jr.,* 252 SCRA 471).

The unlawful aggression, by way of the sudden blocking of the car of the accused, and the unexpected shot hitting the accused on the left thigh, came from the agents. There was no sufficient provocation

on the part of the accused as he was merely inside his car when he was shot.

In *People versus Mallari*, 212 SCRA 777, the Supreme Court ruled that there can be no evident pre-meditation without proof of planning. Evident pre-meditation must be established beyond reasonable doubt and must be based on external acts which are evident, not merely suspected, and which indicate deliberate planning. (*People vs. Florida*, 214 SCRA 227).

Witness: (Norman Decampong)

> "Together with Special Investigation [sic] Edwin Martinez, we ran towards Doña Manuela Subdivision while the accused together with . . . I was not able to notice the two companions ran away."
>
> (P. 44 TSN, Nov. 3, 1994)

With respect to the charges of Illegal Possession of Firearms (P.D. 1866) and Violation of Election Code on Comelec Gun Ban (Sec. 261(q) Election Code), the Court needs these charges to be disputed by countervailing evidence of the accused. It is premature to rule on these charges at the moment without any evidence to the contrary. Thus, Criminal Cases Nos. 94-5038 and 24392 should be set for the reception of the defense evidence.

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It is aciomatic [sic] that the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense (*People vs. Lapinoso*, G.R. No. 122507, Feb. 25, 1999). Proof beyond reasonable doubt is that degree of proof which produces conviction in an unprecedented mind. In criminal cases, the accused is entitled to an acquittal unless his guilt is shown beyond doubt. Proof beyond reasonable doubt does not mean such a degree of proof, as excluding possibility of error, produces absolute certainty (*People vs. Datukon Bansil*, G.R. No. 120163, March 10, 1999).

On the whole, the meager evidence for the prosecution casts serious doubts as to the guilt of the accused. It does not pass the test of moral certainty and is inefficient to rebut the constitutional presumption of innocence.

WHEREFORE, **in the light of the foregoing, the Court rules that the prosecution failed to establish the guilt of the accused beyond reasonable doubt in Criminal Cases Nos. 94-5036 and 94-5037, and these cases are ordered DISMISSED**.

Criminal Cases Nos. 94-5038 and 24392 should be set for further trial.

SO ORDERED.[14] (Emphasis supplied)

It is clearly stated in the body of the assailed Order that the trial court held that the prosecution failed to prove beyond reasonable doubt the guilt of petitioner for Homicide (Criminal Case No. 94-5038) and Frustrated Homicide (Criminal Case No. 94-5036), thus:

On the first and second charges of **Homicide (Criminal Case No. 94-5038)** and **Frustrated Homicide (Criminal Case No. 94-5036)**, did the prosecution prove the guilt of the accused beyond reasonable doubt in killing Edwin S. Martinez and the wounding of Decampong "without any just motive"?

To the mind of the Court, **the prosecution failed in this regard**.[15] (Emphasis supplied)

The trial court then proceeded to discuss the basis for such ruling.

As regards the two other charges for Illegal Possession of Firearms under Presidential Decree No. 1866 (Criminal Case No. 94-5037) and Violation of Section 261(Q) of the Omnibus Election Code in relation to Section 32 of Republic Act No. 7166 (Criminal Case No. 24-392), the trial court held that it was still premature to rule on these charges and that further evidence was needed, thus:

With respect to the charges of **Illegal Possession of Firearms (P.D. 1866) and Violation of Election Code on Comelec Gun Ban (Sec. 261(q) Election Code)**, the Court needs these charges to be disputed

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[14] *Rollo,* pp. 75-78, 81-82.

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

by countervailing evidence of the accused. It is **premature to rule on these charges at the moment without any evidence to the contrary**. Thus, Criminal Cases Nos. **94-5038** and 24392 should be **set for the reception of the defense evidence**.[16] (Emphasis supplied)

However, the trial court inadvertently designated the wrong criminal case number to the charge for Illegal Possession of Firearms. Instead of Criminal Case No. 94-5037, the trial court erroneously wrote Criminal Case No. 94-5038, which is the criminal case number of the charge for Homicide.

Unfortunately, this error was repeated in the dispositive portion of the Order, thus:

WHEREFORE, in the light of the foregoing, the Court rules that the prosecution failed to establish the guilt of the accused beyond reasonable doubt in **Criminal Cases Nos. 94-5036 and 94-5037,** and these cases are ordered **DISMISSED.**

Criminal Cases Nos. 94-5038 and 24392 should be **set for further trial.**

SO ORDERED.[17] (Emphasis supplied)

In the dispositive portion, the trial court erroneously dismissed Criminal Case No. 94-5037 which refers to the charge for Illegal Possession of Firearms under Presidential Decree No. 1866, while Criminal Case No. 94-5038 which refers to the charge for Homicide was set for further trial.

The general rule is that where there is a conflict between the *fallo,* or the dispositive part, and the body of the decision or order, the *fallo* prevails on the theory that the *fallo* is the final order and becomes the subject of execution, while the body of the decision merely contains the reasons or conclusions of the court ordering nothing.[18] However, where one can clearly

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[16] *Id.* at 78.

[17] *Id.* at 82.

[18] *PH Credit Corporation v. Court of Appeals,* 421 Phil. 821 (2001); *Rosales v. Court of Appeals,* 405 Phil. 638 (2001).

and unquestionably conclude from the body of the decision that there was a mistake in the dispositive portion, the body of the decision will prevail.[19] Thus, in *Spouses Rebuldea v. Intermediate Appellate Court*,[20] the Court held that the trial court did not gravely abuse its discretion when it corrected the dispositive portion of its decision to make it conform to the body of the decision, and to rectify the clerical errors which interchanged the mortgagors and the mortgagee.

In this case, considering the clear finding of the trial court that the prosecution failed to prove beyond reasonable doubt the guilt of petitioner in the charges for Homicide and Frustrated Homicide, while the two other charges for Illegal Possession of Firearms and Violation of the Omnibus Election Code require further evidence, it is only just and proper to correct the dispositive portion to reflect the exact findings and conclusions of the trial court. Thus, in accordance with the findings of the trial court, Criminal Case No. 94-5036 (Frustrated Homicide) and Criminal Case No. 94-5038 (Homicide) should be dismissed, while Criminal Case No. 94-5037 (Illegal Possession of Firearms under Presidential Decree No. 1866) and Criminal Case No. 24-392 (Violation of Section 261(Q) of the Omnibus Election Code in relation to Section 32 of Republic Act No. 7166) should be set for further trial.

WHEREFORE, we *GRANT* the petition. The Resolutions dated 10 March 2003 and 9 October 2003 of the Court of Appeals in CA-G.R. SP No. 72315 are *REVERSED* and *SET ASIDE*. The dispositive portion of the Order dated 20 March 2001, of the Regional Trial Court of Las Piñas City, Branch 255, is *CORRECTED* to conform to the body of the Order by dismissing Criminal Case No. 94-5036 (Frustrated Homicide) and Criminal Case No. 94-5038 (Homicide), and setting for further trial Criminal Case No. 94-5037 (Illegal Possession of Firearms under

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[19] *Hipos, Sr. v. Honorable RTC Judge Teodoro A. Bay,* G.R. Nos. 174813-15, 17 March 2009; *Poliand Industrial Limited v. National Development Company,* G.R. Nos. 143866 and 143877, 22 August 2005, 467 SCRA 500.

[20] 239 Phil. 487 (1987).

Presidential Decree No. 1866) and Criminal Case No. 24-392 (Violation of Section 261(Q) of the Omnibus Election Code in relation to Section 32 of Republic Act No. 7166).

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 162355. August 14, 2009]

STA. LUCIA EAST COMMERCIAL CORPORATION, *petitioner, vs.* **HON. SECRETARY OF LABOR AND EMPLOYMENT and STA. LUCIA EAST COMMERCIAL CORPORATION WORKERS ASSOCIATION (CLUP LOCAL CHAPTER),** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; LABOR ORGANIZATION; DEFINED; WHEN LABOR ORGANIZATION SHALL ACQUIRE LEGAL PERSONALITY.—** Article 212(g) of the Labor Code defines a labor organization as "any union or association of employees which exists in whole or in part for the purpose of collective bargaining or of dealing with employers concerning terms and conditions of employment." Upon compliance with all the documentary requirements, the Regional Office or Bureau shall issue in favor of the applicant labor organization a certificate indicating that it is included in the roster of legitimate labor organizations. Any applicant labor organization shall acquire legal personality and shall be entitled to the rights and privileges granted by law to legitimate labor organizations upon issuance of the certificate of registration.

2. **ID.; ID.; ID.; BARGAINING UNIT; CONCEPT; EMPLOYEES IN TWO CORPORATIONS CANNOT BE TREATED AS A SINGLE BARGAINING UNIT EVEN IF THE BUSINESSES OF THE TWO CORPORATIONS ARE RELATED.—** The concepts of a union and of a legitimate labor organization are different from, but related to, the concept of a bargaining unit. We explained the concept of a bargaining unit in *San Miguel Corporation v. Laguesma*, where we stated that: A *bargaining unit* is a "group of employees of a given employer, comprised of all or less than all of the entire body of employees, consistent with equity to the employer, indicated to be the best suited to serve the reciprocal rights and duties of the parties under the collective bargaining provisions of the law." The fundamental factors in determining the appropriate collective bargaining unit are: (1) the will of the employees (Globe Doctrine); (2) affinity and unity of the employees' interest, such as substantial similarity of work and duties, or similarity of compensation and working conditions (Substantial Mutual Interests Rule); (3) prior collective bargaining history; and (4) similarity of employment status. Contrary to petitioner's assertion, this Court has categorically ruled that the existence of a prior collective bargaining history is *neither decisive nor conclusive* in the determination of what constitutes an appropriate bargaining unit. However, employees in two corporations cannot be treated as a single bargaining unit even if the businesses of the two corporations are related.

3. **ID.; ID.; ID.; APPROPRIATE BARGAINING UNIT; THE INCLUSION IN THE UNION OF DISQUALIFIED EMPLOYEES IS NOT A GROUND FOR CANCELLATION OF REGISTRATION, UNLESS SUCH INCLUSION IS DUE TO MISREPRESENTATION, FALSE STATEMENT OR FRAUD; CASE AT BAR.—** CLUP-SLECC and its Affiliates Workers Union's initial problem was that they constituted a legitimate labor organization representing a non-appropriate bargaining unit. However, CLUP-SLECC and its Affiliates Workers Union subsequently re-registered as CLUP-SLECCWA, limiting its members to the rank-and-file of SLECC. SLECC cannot ignore that CLUP-SLECC and its Affiliates Workers Union was a legitimate labor organization at the time of SLECC's voluntary recognition of SMSLEC. SLECC and SMSLEC cannot, by themselves, decide whether CLUP-SLECC and its Affiliates Workers Union represented an appropriate bargaining unit. The

inclusion in the union of disqualified employees is not among the grounds for cancellation of registration, unless such inclusion is due to misrepresentation, false statement or fraud under the circumstances enumerated in Sections (a) to (c) of Article 239 of the Labor Code. Thus, CLUP-SLECC and its Affiliates Workers Union, having been validly issued a certificate of registration, should be considered as having acquired juridical personality which may not be attacked collaterally. The proper procedure for SLECC is to file a petition for cancellation of certificate of registration of CLUP-SLECC and its Affiliates Workers Union and not to immediately commence voluntary recognition proceedings with SMSLEC.

4. **ID.; ID.; ID.; ID.; EMPLOYER'S VOLUNTARY RECOGNITION OF A UNION AS ITS EXCLUSIVE BARGAINING REPRESENTATIVE IS VOID WHERE THE EMPLOYER IS NOT AN UNORGANIZED ESTABLISHMENT; CASE AT BAR.—** The employer may voluntarily recognize the representation status of a union in **unorganized** establishments. SLECC was not an unorganized establishment when it voluntarily recognized SMSLEC as its exclusive bargaining representative on 20 July 2001. CLUP-SLECC and its Affiliates Workers Union filed a petition for certification election on 27 February 2001 and this petition remained pending as of 20 July 2001. Thus, SLECC's voluntary recognition of SMSLEC on 20 July 2001, the subsequent negotiations and resulting registration of a CBA executed by SLECC and SMSLEC are void and cannot bar CLUP-SLECCWA's present petition for certification election.

5. **ID.; ID.; ID.; PETITION FOR CERTIFICATION ELECTION; THE EMPLOYER IS A MERE BYSTANDER AND CANNOT OPPOSE THE PETITION OR APPEAL THE MED-ARBITER'S DECISION; EXCEPTION; NOT PRESENT IN CASE AT BAR.—** We find it strange that the employer itself, SLECC, filed a motion to oppose CLUP-SLECCWA's petition for certification election. In petitions for certification election, the employer is a mere bystander and cannot oppose the petition or appeal the Med-Arbiter's decision. The exception to this rule, which happens when the employer is requested to bargain collectively, is not present in the case before us.

APPEARANCES OF COUNSEL

Jose Valentino G. Dave for petitioner.
Emerson C. Tumanon for private respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] assailing the Decision[2] promulgated on 14 August 2003 as well as the Resolution[3] promulgated on 24 February 2004 of the Court of Appeals (appellate court) in CA-G.R. SP No. 77015. The appellate court denied Sta. Lucia East Commercial Corporation's (SLECC) petition for *certiorari* with prayer for writ of preliminary injunction and temporary restraining order. The appellate court further ruled that the Secretary of Labor and Employment (Secretary) was correct when she held that the subsequent negotiations and registration of a collective bargaining agreement (CBA) executed by SLECC with Samahang Manggagawa sa Sta. Lucia East Commercial (SMSLEC) could not bar Sta. Lucia East Commercial Corporation Workers Association's (SLECCWA) petition for direct certification.

The Facts

The Secretary narrated the facts as follows:

On 27 February 2001, Confederated Labor Union of the Philippines (CLUP), in behalf of its chartered local, instituted a petition for certification election among the regular rank-and-file employees of

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

[2] *Rollo*, pp. 27-32. Penned by Associate Justice Eugenio S. Labitoria, with Associate Justices Elvi John S. Asuncion and Lucas P. Bersamin, concurring.

[3] *Id.* at 34.

Sta. Lucia East Commercial Corporation and its Affiliates, docketed as Case No. RO400-0202-RU-007. The affiliate companies included in the petition were SLE Commercial, SLE Department Store, SLE Cinema, Robsan East Trading, Bowling Center, Planet Toys, Home Gallery and Essentials.

On 21 August 2001, Med-Arbiter Bactin ordered the dismissal of the petition due to inappropriateness of the bargaining unit. CLUP-Sta. Lucia East Commercial Corporation and its Affiliates Workers Union appealed the order of dismissal to this Office on 14 September 2001. On 20 November 2001, CLUP-Sta. Lucia East Commercial Corporation and its Affiliates Workers Union [CLUP-SLECC and its Affiliates Workers Union] moved for the withdrawal of the appeal. On 31 January 2002, this Office granted the motion and affirmed the dismissal of the petition.

In the meantime, on 10 October 2001, [CLUP-SLECC and its Affiliates Workers Union] reorganized itself and re-registered as CLUP-Sta. Lucia East Commercial Corporation Workers Association (herein appellant CLUP-SLECCWA), limiting its membership to the rank-and-file employees of Sta. Lucia East Commercial Corporation. It was issued Certificate of Creation of a Local Chapter No. RO400-0110-CC-004.

On the same date, [CLUP-SLECCWA] filed the instant petition. It alleged that [SLECC] employs about 115 employees and that more than 20% of employees belonging to the rank-and-file category are its members. [CLUP-SLECCWA] claimed that no certification election has been held among them within the last 12 months prior to the filing of the petition, and while there is another union registered with DOLE-Regional Office No. IV on 22 June 2001 covering the same employees, namely [SMSLEC], it has not been recognized as the exclusive bargaining agent of [SLECC's] employees.

On 22 November 2001, SLECC filed a motion to dismiss the petition. It averred that it has voluntarily recognized [SMSLEC] on 20 July 2001 as the exclusive bargaining agent of its regular rank-and-file employees, and that collective bargaining negotiations already commenced between them. SLECC argued that the petition should be dismissed for violating the one year and negotiation bar rules under pars. (c) and (d), Section 11, Rule XI, Book V of the Omnibus Rules Implementing the Labor Code.

On 29 November 2001, a CBA between [SMSLEC] and [SLECC] was ratified by its rank-and-file employees and registered with DOLE-Regional Office No. IV on 9 January 2002.

In the meantime, on 19 December 2001, [CLUP-SLECCWA] filed its Opposition and Comment to [SLECC'S] Motion to Dismiss. It assailed the validity of the voluntary recognition of [SMSLEC] by [SLECC] and their consequent negotiations and execution of a CBA. According to [CLUP-SLECCWA], the same were tainted with malice, collusion and conspiracy involving some officials of the Regional Office. Appellant contended that Chief LEO Raymundo Agravante, DOLE Regional Office No. IV, Labor Relations Division should have not approved and recorded the voluntary recognition of [SMSLEC] by [SLECC] because it violated one of the major requirements for voluntary recognition, *i.e.*, non-existence of another labor organization in the same bargaining unit. It pointed out that the time of the voluntary recognition on 20 July 2001, appellant's registration as [CLUP-SLECC and its Affiliates Workers Union], which covers the same group of employees covered by Samahang Manggagawa sa Sta. Lucia East Commercial, was existing and has neither been cancelled or abandoned. [CLUP-SLECCWA] also accused Med-Arbiter Bactin of malice, collusion and conspiracy with appellee company when he dismissed the petition for certification election filed by [SMSLEC] for being moot and academic because of its voluntary recognition, when he was fully aware of the pendency of [CLUP-SLECCWA's] earlier petition for certification election.

Subsequent pleadings filed by [CLUP-SLECCWA] and [SLECC] reiterated their respective positions on the validity and invalidity of the voluntary recognition. On 29 July 2002, Med-Arbiter Bactin issued the assailed Order.[4]

The Med-Arbiter's Ruling

In his Order dated 29 July 2002, Med-Arbiter Anastacio L. Bactin dismissed CLUP-SLECCWA's petition for direct certification on the ground of contract bar rule. The prior voluntary recognition of SMSLEC and the CBA between SLECC and SMSLEC bars the filing of CLUP-SLECCWA's petition for direct certification. SMSLEC is entitled to enjoy the rights,

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[4] *Id.* at 51-52.

privileges, and obligations of an exclusive bargaining representative from the time of the recording of the voluntary recognition. Moreover, the duly registered CBA bars the filing of the petition for direct certification.

CLUP-SLECCWA filed a Memorandum of Appeal of the Med-Arbiter's Order before the Secretary.

The Ruling of the Secretary of Labor and Employment

In her Decision promulgated on 27 December 2002, the Secretary found merit in CLUP-SLECCWA's appeal. The Secretary held that the subsequent negotiations and registration of a CBA executed by SLECC with SMSLEC could not bar CLUP-SLECCWA's petition. CLUP-SLECC and its Affiliates Workers Union constituted a registered labor organization at the time of SLECC's voluntary recognition of SMSLEC. The dispositive portion of the Secretary's Decision reads:

> WHEREFORE, the appeal is hereby GRANTED and the Order of the Med-Arbiter dated 29 July 2002 is REVERSED and SET ASIDE. Accordingly, let the entire records of the case be remanded to the Regional Office of origin for the immediate conduct of a certification election, subject to the usual pre-election conference, among the regular rank-and-file employees of [SLECC], with the following choices:
>
> 1. Sta. Lucia East Commercial Corporation Workers' Association – CLUP Local Chapter;
>
> 2. Samahang Manggagawa sa Sta. Lucia East Commercial; and
>
> 3. No Union.
>
> Pursuant to Rule XI, Section II.1 of Department Order No. 9, appellee corporation is hereby directed to submit to the office of origin, within ten (10) days from receipt hereof, the certified list of its employees in the bargaining unit or when necessary a copy of its payroll covering the same employees for the last three (3) months preceding the issuance of this Decision.
>
> Let a copy of this Decision be furnished the Bureau of Labor Relations and Labor Relations Division of Regional Office No. IV for the cancellation of the recording of voluntary recognition in favor of Samahang Manggagawa sa Sta. Lucia East Commercial and the appropriate annotation of re-registration of CLUP-Sta. Lucia East

Commercial Corporation and its Affiliates Workers Union to Sta. Lucia East Commercial Corporation Workers Association-CLUP Local Chapter.

SO DECIDED.[5]

SLECC filed a motion for reconsideration which the Secretary denied for lack of merit in a Resolution dated 27 March 2003. SLECC then filed a petition for *certiorari* before the appellate court.

The Ruling of the Appellate Court

The appellate court affirmed the ruling of the Secretary and quoted extensively from the Secretary's decision. The appellate court agreed with the Secretary's finding that the workers sought to be represented by CLUP-SLECC and its Affiliates Workers Union included the same workers in the bargaining unit represented by SMSLEC. SMSLEC was not the only legitimate labor organization operating in the subject bargaining unit at the time of SMSLEC's voluntary recognition on 20 July 2001. Thus, SMSLEC's voluntary recognition was void and could not bar CLUP-SLECCWA's petition for certification election.

The Issue

SLECC raised only one issue in its petition. SLECC asserted that the appellate court commited a reversible error when it affirmed the Secretary's finding that SLECC's voluntary recognition of SMSLEC was done while a legitimate labor organization was in existence in the bargaining unit.

The Ruling of the Court

The petition has no merit. We see no reason to overturn the rulings of the Secretary and of the appellate court.

Legitimate Labor Organization

Article 212(g) of the Labor Code defines a labor organization as "any union or association of employees which exists in whole

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

or in part for the purpose of collective bargaining or of dealing with employers concerning terms and conditions of employment." Upon compliance with all the documentary requirements, the Regional Office or Bureau shall issue in favor of the applicant labor organization a certificate indicating that it is included in the roster of legitimate labor organizations.[6] Any applicant labor organization shall acquire legal personality and shall be entitled to the rights and privileges granted by law to legitimate labor organizations upon issuance of the certificate of registration.[7]

Bargaining Unit

The concepts of a union and of a legitimate labor organization are different from, but related to, the concept of a bargaining unit. We explained the concept of a bargaining unit in *San Miguel Corporation v. Laguesma*,[8] where we stated that:

A *bargaining unit* is a "group of employees of a given employer, comprised of all or less than all of the entire body of employees, consistent with equity to the employer, indicated to be the best suited

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[6] Section 3, Rule VI, Implementing Rules of Book V of the Labor Code (as amended by Department Order No. 9, 21 June 1997).

[7] Art. 234 of the Labor Code states that the following are required for the issuance of a certificate of registration:

(a) Fifty pesos (₱50.00) registration fee;

(b) The names of its officers, their addresses, the principal address of the labor organization, the minutes of the organizational meetings and the list of the workers who participated in such meetings;

(c) The names of all its members comprising at least twenty percent (20%) of all the employees in the bargaining unit where it seeks to operate;

(d) If the applicant union has been in existence for one or more years, copies of its annual financial reports; and

(e) Four (4) copies of the constitution and by-laws of the applicant union, minutes of its adoption or ratification and the list of the members who participated in it.

[8] G.R. No. 100485, 21 September 1994, 236 SCRA 595, 599 (citations omitted).

to serve the reciprocal rights and duties of the parties under the collective bargaining provisions of the law."

The fundamental factors in determining the appropriate collective bargaining unit are: (1) the will of the employees (Globe Doctrine); (2) affinity and unity of the employees' interest, such as substantial similarity of work and duties, or similarity of compensation and working conditions (Substantial Mutual Interests Rule); (3) prior collective bargaining history; and (4) similarity of employment status.

Contrary to petitioner's assertion, this Court has categorically ruled that the existence of a prior collective bargaining history is *neither decisive nor conclusive* in the determination of what constitutes an appropriate bargaining unit.

However, employees in two corporations cannot be treated as a single bargaining unit even if the businesses of the two corporations are related.[9]

A Legitimate Labor Organization Representing An Inappropriate Bargaining Unit

CLUP-SLECC and its Affiliates Workers Union's initial problem was that they constituted a legitimate labor organization representing a non-appropriate bargaining unit. However, CLUP-SLECC and its Affiliates Workers Union subsequently re-registered as CLUP-SLECCWA, limiting its members to the rank-and-file of SLECC. SLECC cannot ignore that CLUP-SLECC and its Affiliates Workers Union was a legitimate labor organization at the time of SLECC's voluntary recognition of SMSLEC. SLECC and SMSLEC cannot, by themselves, decide whether CLUP-SLECC and its Affiliates Workers Union represented an appropriate bargaining unit.

The inclusion in the union of disqualified employees is not among the grounds for cancellation of registration, unless such inclusion is due to misrepresentation, false statement or fraud under the circumstances enumerated in Sections (a) to (c) of

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[9] *Diatagon Labor Federation Local 110 of the ULGWP v. Ople,* 189 Phil. 396 (1980).

Article 239 of the Labor Code.[10] Thus, CLUP-SLECC and its Affiliates Workers Union, having been validly issued a certificate of registration, should be considered as having acquired juridical personality which may not be attacked collaterally. The proper procedure for SLECC is to file a petition for cancellation of certificate of registration[11] of CLUP-SLECC and its affiliates workers union and not to immediately commence voluntary recognition proceedings with SMSLEC.

SLECC's Voluntary Recognition of SMSLEC

The employer may voluntarily recognize the representation status of a union in **unorganized** establishments.[12] SLECC was not an unorganized establishment when it voluntarily recognized SMSLEC as its exclusive bargaining representative on 20 July 2001. CLUP-SLECC and its Affiliates Workers Union filed a petition for certification election on 27 February 2001 and this petition remained pending as of 20 July 2001. Thus, SLECC'S voluntary recognition of SMSLEC on 20 July 2001, the subsequent negotiations and resulting registration of a CBA executed by SLECC and SMSLEC are void and cannot bar CLUP-SLECCWA's present petition for certification election.

Employer's Participation in a Petition for Certification Election

We find it strange that the employer itself, SLECC, filed a motion to oppose CLUP-SLECCWA's petition for certification election. In petitions for certification election, the employer is a mere bystander and cannot oppose the petition or appeal the Med-Arbiter's decision. The exception to this rule, which

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[10] *Tagaytay Highlands International Golf Club Inc. v. Tagaytay Highlands Employees Union-PTGWO*, 443 Phil. 841 (2003).

[11] Rule VIII, Implementing Rules of Book V of the Labor Code (as amended by Department Order No. 9, 21 June 1997).

[12] Section 1, Rule X, Implementing Rules of Book V of the Labor Code (as amended by Department Order No. 9, 21 June 1997).

happens when the employer is requested to bargain collectively, is not present in the case before us.[13]

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Decision promulgated on 14 August 2003 as well as the Resolution promulgated on 24 February 2004 of the Court of Appeals in CA-G.R. SP No. 77015.

SO ORDERED.

Puno, C.J. (Chairperson), Corona, Chico-Nazario,[*] and *Leonardo-de Castro, JJ.,* concur.

FIRST DIVISION

[G.R. No. 163505. August 14, 2009]

GUALBERTO AGUANZA, *petitioner, vs.* **ASIAN TERMINAL, INC., KEITH JAMES, RICHARD BARCLAY, and ATTY. RODOLFO CORVITE,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; APPEAL; DEFECT IN THE PERFECTION OF THE APPEAL TO THE NATIONAL LABOR RELATIONS COMMISSION DUE TO INSUFFICIENCY OF THE SUPERSEDEAS BOND IS A DEFECT IN FORM WHICH MAY BE WAIVED BY THE SAME.—** As a preliminary matter, we agree with the NLRC and the appellate court that the alleged defect in the perfection of the appeal to

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[13] *Samahang Manggagawa sa Samma-Lakas sa Industriya ng Kapatirang Haligi ng Alyansa (Samma-Likha) v. Samma Corporation*, G.R. No. 167141, 13 March 2009.

[*] Designated additional member per Raffle dated 3 August 2009.

the NLRC because of the insufficiency of the supersedeas bond is a defect in form which the NLRC may waive.

2. **ID.; LABOR RELATIONS; TRANSFER OF EMPLOYEES; A MANAGEMENT PREROGATIVE.—** Aguanza asserts that his transfer constituted constructive dismissal, while ATI asserts that Aguanza's transfer was a valid exercise of management prerogative. We agree with ATI. ATI's transfer of Bismark IV's base from Manila to Bataan was, contrary to Aguanza's assertions, a valid exercise of management prerogative. The transfer of employees has been traditionally among the acts identified as a management prerogative subject only to limitations found in law, collective bargaining agreement, and general principles of fair play and justice. Even as the law is solicitous of the welfare of employees, it must also protect the right of an employer to exercise what are clearly management prerogatives. The free will of management to conduct its own business affairs to achieve its purpose cannot be denied.

3. **ID.; ID.; ID.; WHEN DEEMED CONSTRUCTIVE DISMISSAL; TRANSFER OF PETITIONER DOES NOT AMOUNT TO CONSTRUCTIVE DISMISSAL.—** On the other hand, the transfer of an employee may constitute constructive dismissal "when continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank and/or a diminution in pay; or when a clear discrimination, insensibility or disdain by an employer becomes unbearable to the employee." Aguanza's continued employment was not impossible, unreasonable or unlikely; neither was there a clear discrimination against him. Among the employees assigned to Bismark IV, it was only Aguanza who did not report for work in Bataan. Aguanza's assertion that he was not allowed to "time in" in Manila should be taken on its face: Aguanza reported for work in Manila, where he wanted to work, and not in Bataan, where he was supposed to work. There was no demotion in rank, as Aguanza would continue his work as Crane Operator. Furthermore, despite Aguanza's assertions, there was no diminution in pay.

4. **ID.; LABOR STANDARDS; WAGES; NO VIOLATION OF THE RULE AGAINST DIMINUTION OF PAY IN CASE AT BAR.—** When Bismark IV was based in the port of Manila, Aguanza received basic salary, meal allowance, and fixed overtime pay of 16 hours and per diem allowance when the

barge was assigned outside of Manila. The last two items were given to Aguanza upon the condition that Bismark IV was assigned outside of Manila. Aguanza was not entitled to the fixed overtime pay and additional allowances when Bismark IV was in Manila. When ATI transferred Bismark IV's operations to Bataan, ATI offered Aguanza similar terms: basic pay for 40 hours of work from Monday to Friday, overtime pay for work done in excess of eight hours per day, overtime pay for work done on Saturdays and Sundays, no additional allowance and no transportation for working in Bataan. The circumstances of the case made no mention of the salary structure in case Bismark IV being assigned work outside of Bataan; however, we surmise that it would not be any different from the salary structure applied for work done out-of-port. We, thus, agree with the NLRC and the appellate court when they stated that the fixed overtime of 16 hours, out-of-port allowance and meal allowance previously granted to Aguanza were merely supplements or employment benefits given on condition that Aguanza's assignment was out-of-port. The fixed overtime and allowances were not part of Aguanza's basic salary. Aguanza's basic salary was not reduced; hence, there was no violation of the rule against diminution of pay.

APPEARANCES OF COUNSEL

Cadiz Carag & De Mesa for petitioner.

Jimenez Gonzales Liwanag Bello Valdez Caluya & Fernandez for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] assailing the Decision[2] promulgated on 9 January 2004 of the Court of Appeals (appellate

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

[2] *Rollo*, pp. 46-55. Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Eubulo G. Verzola and Edgardo F. Sundiam, concurring.

court) as well as the Resolution[3] promulgated on 5 May 2004 in CA-G.R. SP No. 74626. The appellate court denied Gualberto Aguanza's (Aguanza) petition for *certiorari* and ruled that the National Labor Relations Commission (NLRC) was correct when it held that the transfer of the base of Asian Terminal, Inc.'s (ATI) Bismark IV from Manila to Bataan was a valid exercise of management prerogative. Thus, Aguanza was no longer entitled to receive out-of-port allowance and meal allowance for work done in Bataan.

The Facts

The appellate court narrated the facts as follows:

Petitioner Gualberto Aguanza was employed with respondent company Asian Terminal, Inc. from April 15, 1989 to October 1997. He was initially employed as Derickman or Crane Operator and was assigned as such aboard Bismark IV, a floating crane barge owned by Asian Terminals, Inc. based at the port of Manila.

As of October 1997, he was receiving the following salaries and benefits from [ATI]:

a. Basic salary - ₱8,303.30;

b. Meal allowance - ₱1,800 a month;

c. Fixed overtime pay of 16 hours when the barge is assigned outside Metro Manila;

d. ₱260.00 per day as out of port allowance when the barge is assigned outside Manila.

Sometime in September 1997, the Bismark IV, together with its crew, was temporarily assigned at the Mariveles Grains Terminal in Mariveles, Bataan.

On October 20, 1997, respondent James Keith issued a memo to the crew of Bismark IV stating that the barge had been permanently transferred to the Mariveles Grains terminal beginning October 1, 1997 and because of that, its crew would no longer be entitled to out of port benefits of 16 hours overtime and ₱200 a day allowance.

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[3] *Id.* at 57.

[Aguanza], with four other members of the crew, stated that they did not object to the transfer of Bismark IV to Mariveles, Bataan, but they objected to the reduction of their benefits.

When they objected to the reduction of their benefits, they were told by James Keith to report to the Manila office only to be told to report back to Bataan. On both occasions, [Aguanza] was not given any work assignment.

After being shuttled between Manila and Bataan, [Aguanza] was constrained to write respondent Atty. Corvite for clarification of his status, at the same time informing the latter of his willingness to work either in Manila or Bataan.

While he did not agree with private respondents' terms and conditions, he was nonetheless willing to continue working without prejudice to taking appropriate action to protect his rights.

Because of private respondents' refusal to give him any work assignment and pay his salary, [Aguanza] filed a complaint for illegal dismissal against respondents.

On the other hand, private respondents claim that:

[Aguanza] was employed by [ATI] on February 1, 1996 as a Derickman in Bismark IV, one of the floating crane barges of [ATI] based in the port of Manila. In 1997, [ATI] started operation at the Mariveles Grains Terminals, Mariveles, Bataan. Beginning October 1, 1997, Bismark IV including its crew was transferred to Mariveles. For their transfer, [ATI] offered the crew the following:

> "I am asking you to reply to me by the 31st October 1997 if you wish to be transferred to Mariveles under the following salary conditions:
>
> - regular 40-hour duty Monday to Friday
> - overtime paid in excess of 8 hours/day
> - overtime paid on Saturdays and Sundays
> - no additional allowance
> - no transportation"

By way of reply to the memorandum, [Aguanza] along with all the members of the crew of Bismark IV namely: Rodrigo Cayabyab, Wilfredo Alamo, Eulogio Toling, Jonathan Pereno, Marcelito Vargas,

Erwin Greyblas and Christian Paul Almario (crew member Nestor Resuello did not sign the said letter) answered through an undated letter, to wit:

> "We used to receive the following whenever we are assigned out of town.
>
> 1) ₱200.00 a day allowance
>
> 2) ₱60.00 per day food allowance
>
> 3) 16 hours per day fixed overtime
>
> We have been receiving this [sic] compensation and benefits whenever we are assigned to Bataan. x x x"

They asserted that they have no objection to their assignment in Mariveles, Bataan but on the former terms and conditions.

Eventually, the other members of the crew of Bismark IV accepted the transfer and it was only [Aguanza] who refused the transfer.

On November 12, 1997, [Aguanza] wrote the company asserting that he did not request his transfer "to Manila from Mariveles." He stressed that he was willing to be assigned to Mariveles so long that there is no diminution of his benefits while assigned to Mariveles, which meant, even if he was permanently based in Mariveles, Bataan, he should be paid 24 hours a day – 8 hours regular work and 16 hours overtime everyday plus ₱200.00 per day allowance and ₱60.00 daily food allowance.

[Aguanza] insisted on reporting to work in Manila although his barge, Bismark IV, and its other crew were already permanently based in Mariveles, Bataan. [Aguanza] was not allowed to time in in Manila because his work was in Mariveles, Bataan.

In [Aguanza]'s appointment paper, [Aguanza] agreed to the following conditions printed and which reads in part:

> "That in the interest of the service, I hereby declare, agree and bind myself to work in such place of work as ATI may assign or transfer me. I further agree to work during rest day, holidays, night time or other shifts or during emergency."[4]

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[4] *Id.* at 47-50.

The Labor Arbiter's Ruling

In his Decision dated 28 September 1998, the Labor Arbiter found that respondents illegally dismissed Aguanza. Aguanza was willing to report back to work despite the lack of agreement on his demands but without prejudice to his claims. The Labor Arbiter also construed ATI's offer of separation pay worth two months' salary for every year of service as indicative of ATI's desire to terminate Aguanza's services. ATI failed to justify its failure to allow Aguanza to work because of Aguanza's continued insistence that he be paid his former salary and benefits. ATI's refusal to pay the same amount to Aguanza violated the rule against diminution of benefits. Although ATI had the prerogative to transfer employees, the prerogative could not be exercised if the result was demotion of rank or diminution of salary, benefits and other prerogatives of the employee. The dispositive portion of the Labor Arbiter's decision reads:

> WHEREFORE, premises considered, this office is convinced that complainant Aguanza was illegally dismissed by respondents. Consequently, respondent is hereby ordered to immediately reinstate complainant to his former position without loss of seniority rights and to pay him full backwages and benefits from the time he was dismissed effective November 1997 until he is actually reinstated. Considering that it is clear from respondents' letters that their intention is to assign complainant to Mariveles, Bataan, he is entitled to all the salary and benefits due him if assigned to said place.
>
> Anent the claim of complainant for the cash conversion of his vacation and sick leave credits, respondents never denied their liability for the same. Consequently, they are, likewise, also ordered to pay complainant the cash equivalent of his unused vacation and sick leave credits.
>
> Considering that the respondents are obviously in bad faith in effecting the dismissal as reflected in their ordering him to report back for work but refusing to accept him back, complainant should be awarded moral and exemplary damages in the amount of ₱50,000.00 and ₱100,000.00, respectively.

Further, respondents are ordered to pay complainant attorney's fees equivalent to ten (10%) percent of the total amount awarded in favor of the complainant.

SO ORDERED.[5]

Respondents appealed from the Labor Arbiter's judgment on 5 May 1999.

The Ruling of the NLRC

In its Decision promulgated on 11 February 2002, the NLRC dismissed Aguanza's complaint and set aside the decision of the Labor Arbiter. The NLRC adopted the report and recommendation of Labor Arbiter Cristeta D. Tamayo (Arbiter Tamayo). Arbiter Tamayo recommended that the appeal of respondents should be granted, and found that Aguanza's insistence to be paid out-of-town benefits, despite the fact that the crane to which he was assigned was already permanently based outside Metro Manila, was unreasonable.

The NLRC denied Aguanza's motion for reconsideration in an Order dated 23 September 2002.

The Decision of the Appellate Court

The appellate court affirmed the ruling of the NLRC and dismissed Aguanza's petition in a Decision promulgated on 9 January 2004. The appellate court stated that:

> The fixed overtime of 16 hours, out-of-port allowance and meal allowance previously granted to [Aguanza] were merely supplements or employment benefits given under a certain condition, *i.e.*, if [Aguanza] will be temporarily assigned out-of-port. It is not fixed and is contingent or dependent of [Aguanza's] out-of-port reassignment. Hence, it is not made part of the wage or compensation.
>
> This Court also finds utter bad faith on the part of [Aguanza]. [Aguanza] claims that he does not contest his permanent reassignment to Mariveles, Bataan and yet he insisted on reporting to Manila. If petitioner had only been sincere to his words, he would have reported

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

to Mariveles, Bataan where his work is, and in compliance with the employment contract with [ATI].

There was no illegal dismissal since it was [Aguanza] who refused to report to Mariveles, Bataan where he was assigned.

[Aguanza's] other claims have no basis and, accordingly, should be denied.

WHEREFORE, premises considered, this petition is DENIED and ORDERED DISMISSED.

SO ORDERED.[6]

In a Resolution promulgated on 5 May 2004, the appellate court denied Aguanza's motion for reconsideration.

The Issues

In the present petition, Aguanza states that the appellate court committed the following errors:

1. It was grievous error for the Court of Appeals to uphold the decision of the NLRC in NLRC NCR CA No. 021014-99 notwithstanding the fact that respondents' appeal to the NLRC was never perfected in view of the insufficiency of the supersedeas bond posted by them.
2. There is no factual or legal basis for the respondent Court of Appeals to hold that respondents were correct in not allowing petitioner to "time-in" in Manila.
3. The Court of Appeals likewise disregarded the evidence on record and applicable laws in declaring that the petitioner is not entitled to the cash conversion of his vacation and sick leave credits as well as in denying petitioner's claims for moral and exemplary damages as well as attorney's fees.[7]

The Ruling of the Court

The petition has no merit. We see no reason to overturn the rulings of the NLRC and of the appellate court.

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[6] *Id.* at 54.

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

As a preliminary matter, we agree with the NLRC and the appellate court that the alleged defect in the perfection of the appeal to the NLRC because of the insufficiency of the supersedeas bond is a defect in form which the NLRC may waive.[8]

Transfer of Operations is a Valid Exercise of Management Prerogative

Aguanza asserts that his transfer constituted constructive dismissal, while ATI asserts that Aguanza's transfer was a valid exercise of management prerogative. We agree with ATI.

ATI's transfer of Bismark IV's base from Manila to Bataan was, contrary to Aguanza's assertions, a valid exercise of management prerogative. The transfer of employees has been traditionally among the acts identified as a management prerogative subject only to limitations found in law, collective bargaining agreement, and general principles of fair play and justice. Even as the law is solicitous of the welfare of employees, it must also protect the right of an employer to exercise what are clearly management prerogatives. The free will of management to conduct its own business affairs to achieve its purpose cannot be denied.[9]

On the other hand, the transfer of an employee may constitute constructive dismissal "when continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank and/or a diminution in pay; or when a clear discrimination, insensibility or disdain by an employer becomes unbearable to the employee."[10]

Aguanza's continued employment was not impossible, unreasonable or unlikely; neither was there a clear discrimination against him. Among the employees assigned to Bismark IV,

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[8] Article 218(c), Labor Code of the Philippines.

[9] See *Abbott Laboratories (Phils.), Inc. v. NLRC*, No. 76959, 12 October 1987, 154 SCRA 713.

[10] *Escobin v. NLRC,* 351 Phil. 973, 999 (1998).

it was only Aguanza who did not report for work in Bataan. Aguanza's assertion that he was not allowed to "time in" in Manila should be taken on its face: Aguanza reported for work in Manila, where he wanted to work, and not in Bataan, where he was supposed to work. There was no demotion in rank, as Aguanza would continue his work as Crane Operator. Furthermore, despite Aguanza's assertions, there was no diminution in pay.

When Bismark IV was based in the port of Manila, Aguanza received basic salary, meal allowance, and fixed overtime pay of 16 hours and per diem allowance when the barge was assigned outside of Manila. The last two items were given to Aguanza upon the condition that Bismark IV was assigned outside of Manila. Aguanza was not entitled to the fixed overtime pay and additional allowances when Bismark IV was in Manila.

When ATI transferred Bismark IV's operations to Bataan, ATI offered Aguanza similar terms: basic pay for 40 hours of work from Monday to Friday, overtime pay for work done in excess of eight hours per day, overtime pay for work done on Saturdays and Sundays, no additional allowance and no transportation for working in Bataan. The circumstances of the case made no mention of the salary structure in case Bismark IV being assigned work outside of Bataan; however, we surmise that it would not be any different from the salary structure applied for work done out-of-port. We, thus, agree with the NLRC and the appellate court when they stated that the fixed overtime of 16 hours, out-of-port allowance and meal allowance previously granted to Aguanza were merely supplements or employment benefits given on condition that Aguanza's assignment was out-of-port. The fixed overtime and allowances were not part of Aguanza's basic salary. Aguanza's basic salary was not reduced; hence, there was no violation of the rule against diminution of pay.[11]

Aguanza did not contest his transfer, but the reduction in his take-home pay. Aguanza even asserted, contrary to his

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[11] Article 100, Labor Code of the Philippines.

acts, that he bound himself to work in such place where ATI might assign or transfer him. ATI did not dismiss Aguanza; rather, Aguanza refused to report to his proper workplace.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Decision of the Court of Appeals promulgated on 9 January 2004 as well as the Resolution promulgated on 5 May 2004 in CA-G.R. SP No. 74626.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 164324. August 14, 2009]

TANDUAY DISTILLERS, INC., *petitioner, vs.* **GINEBRA SAN MIGUEL, INC.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; PROVISIONAL REMEDIES; INJUNCTION; REQUISITES FOR A VALID ISSUANCE OF A WRIT OF PRELIMINARY INJUNCTION.—** Section 1, Rule 58 of the Rules of Court defines a preliminary injunction as an order granted at any stage of a proceeding prior to the judgment or final order, requiring a party or a court, agency, or a person to refrain from a particular act or acts. A preliminary injunction is a provisional remedy for the protection of substantive rights and interests. It is not a cause of action in itself but merely an adjunct to the main case. Its objective is to prevent a threatened or continuous irreparable injury to some of the parties before their claims can be thoroughly investigated and advisedly adjudicated. It is resorted to only when there is a pressing need to avoid injurious consequences which cannot be remedied under any standard

compensation. Before an injunctive writ is issued, it is essential that the following requisites are present: (1) the existence of a right to be protected and (2) the acts against which the injunction is directed are violative of the right. The *onus probandi* is on the movant to show that the invasion of the right sought to be protected is material and substantial, that the right of the movant is clear and unmistakable, and that there is an urgent and paramount necessity for the writ to prevent serious damage.

2. **ID.; ID.; ID.; GRANT OF THE WRIT OF PRELIMINARY INJUNCTION IN FAVOR OF THE MOVANT, DESPITE THE LACK OF A CLEAR AND UNMISTAKABLE RIGHT ON ITS PART, CONSTITUTES GRAVE ABUSE OF DISCRETION.—** In this case, a cloud of doubt exists over San Miguel's exclusive right relating to the word "Ginebra." San Miguel's claim to the exclusive use of the word "Ginebra" is clearly still in dispute because of Tanduay's claim that it has, as others have, also registered the word "Ginebra" for its gin products. This issue can be resolved only after a full-blown trial. In *Ong Ching Kian Chuan v. Court of Appeals*, we held that in the absence of proof of a legal right and the injury sustained by the movant, the trial court's order granting the issuance of an injunctive writ will be set aside, for having been issued with grave abuse of discretion. We find that San Miguel's right to injunctive relief has not been clearly and unmistakably demonstrated. The right to the exclusive use of the word "Ginebra" has yet to be determined in the main case. The trial court's grant of the writ of preliminary injunction in favor of San Miguel, despite the lack of a clear and unmistakable right on its part, constitutes grave abuse of discretion amounting to lack of jurisdiction.

3. **ID.; ID.; ID.; COURTS SHOULD AVOID ISSUING A WRIT OF PRELIMINARY INJUNCTION WHICH WOULD IN EFFECT DISPOSE OF THE MAIN CASE WITHOUT TRIAL.—** The instructive ruling in *Manila International Airport Authority v. Court of Appeals* states: Considering the far-reaching effects of a writ of preliminary injunction, the trial court should have exercised more prudence and judiciousness in its issuance of the injunction order. We remind trial courts that while generally the grant of a writ of preliminary injunction rests on the sound discretion of the court taking cognizance of the case, *extreme caution must be observed in the exercise of such discretion*.

The discretion of the court *a quo* to grant an injunctive writ must be exercised based on the grounds and in the manner provided by law. Thus, the Court declared in *Garcia v. Burgos:* "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 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 believe that the issued writ of preliminary injunction, if allowed, disposes of the case on the merits as it effectively enjoins the use of the word "Ginebra" without the benefit of a full-blown trial. In *Rivas v. Securities and Exchange Commission*, we ruled that courts should avoid issuing a writ of preliminary injunction which would in effect dispose of the main case without trial. The issuance of the writ of preliminary injunction had the effect of granting the main prayer of the complaint such that there is practically nothing left for the trial court to try except the plaintiff's claim for damages.

4. **ID.; ID.; ID.; THE WRIT SHOULD NEVER BE ISSUED ABSENT PROOF THAT THE DAMAGE THE MOVANT WILL SUFFER IS IRREPARABLE AND INCAPABLE OF PECUNIARY ESTIMATION.—** In *Levi Strauss & Co. v. Clinton Apparelle, Inc.*, this Court upheld the appellate court's ruling that the damages Levi Strauss & Co. had suffered or continues to suffer may be compensated in terms of monetary consideration. This Court, quoting *Government Service Insurance System v. Florendo*, held: x x x a writ of injunction should never issue when an action for damages would adequately compensate the injuries caused. The very foundation of the jurisdiction to issue the writ of injunction rests in the probability of irreparable injury, inadequacy of pecuniary compensation and the prevention of the multiplicity of suits, and where facts are not shown to bring the case within these conditions, the relief of injunction should be refused. Based on the affidavits and market survey report submitted during the injunction hearings, San Miguel has failed to prove the probability of irreparable injury which

it will stand to suffer if the sale of "Ginebra Kapitan" is not enjoined. San Miguel has not presented proof of damages incapable of pecuniary estimation. At most, San Miguel only claims that it has invested hundreds of millions over a period of 170 years to establish goodwill and reputation now being enjoyed by the "Ginebra San Miguel" mark such that the full extent of the damage cannot be measured with reasonable accuracy. Without the submission of proof that the damage is irreparable and incapable of pecuniary estimation, San Miguel's claim cannot be the basis for a valid writ of preliminary injunction.

APPEARANCES OF COUNSEL

Eduardo R. Ceniza Nelson M. Reyes and Alex B. Carpela, Jr. and *Escaño Sarmiento and Partners Law Offices* for petitioner.

Poblador Bautista & Reyes for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Tanduay Distillers, Inc. (Tanduay) filed this Petition for Review on *Certiorari*[1] assailing the Court of Appeals' Decision dated 9 January 2004[2] as well as the Resolution dated 2 July 2004[3] in CA-G.R. SP No. 79655 denying the Motion for Reconsideration. In the assailed decision, the Court of Appeals (CA) affirmed the Regional Trial Court's Orders[4] dated 23 September 2003 and 17 October 2003 which respectively granted Ginebra San Miguel, Inc.'s (San Miguel) prayer for the issuance

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

[2] Penned by Associate Justice Andres B. Reyes, Jr. with Associate Justices Buenaventura J. Guerrero and Rosmari D. Carandang, concurring.

[3] Penned by Associate Justice Andres B. Reyes, Jr. with Associate Justices Buenaventura J. Guerrero and Rosmari D. Carandang, concurring.

[4] Penned by Judge Edwin D. Sorongon.

of a temporary restraining order (TRO) and writ of preliminary injunction. The Regional Trial Court of Mandaluyong City, Branch 214 (trial court), enjoined Tanduay "from committing the acts complained of, and, specifically, to cease and desist from manufacturing, distributing, selling, offering for sale, advertising, or otherwise using in commerce the mark "Ginebra," and manufacturing, producing, distributing, or otherwise dealing in gin products which have the general appearance of, and which are confusingly similar with," San Miguel's marks, bottle design, and label for its gin products.[5]

THE FACTS

Tanduay, a corporation organized and existing under Philippine laws, has been engaged in the liquor business since 1854. In 2002, Tanduay developed a new gin product distinguished by its sweet smell, smooth taste, and affordable price. Tanduay claims that it engaged the services of an advertising firm to develop a brand name and a label for its new gin product. The brand name eventually chosen was "Ginebra Kapitan" with the representation of a revolutionary *Kapitan* on horseback as the dominant feature of its label. Tanduay points out that the label design of "Ginebra Kapitan" in terms of color scheme, size and arrangement of text, and other label features were precisely selected to distinguish it from the leading gin brand in the Philippine market, "Ginebra San Miguel." Tanduay also states that the "Ginebra Kapitan" bottle uses a resealable twist cap to distinguish it from "Ginebra San Miguel" and other local gin products with bottles which use the crown cap or *tansan*.[6]

After filing the trademark application for "Ginebra Kapitan" with the Intellectual Property Office (IPO) and after securing the approval of the permit to manufacture and sell "Ginebra Kapitan" from the Bureau of Internal Revenue, Tanduay began selling "Ginebra Kapitan" in Northern and Southern Luzon areas

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[5] *Rollo*, Vol. I, p. 541.

[6] *Id.* at 12-15.

in May 2003. In June 2003, "Ginebra Kapitan" was also launched in Metro Manila.[7]

On 13 August 2003, Tanduay received a letter from San Miguel's counsel. The letter informed Tanduay to immediately cease and desist from using the mark "Ginebra" and from committing acts that violate San Miguel's intellectual property rights.[8]

On 15 August 2003, San Miguel filed a complaint for trademark infringement, unfair competition and damages, with applications for issuance of TRO and Writ of Preliminary Injunction against Tanduay before the Regional Trial Court of Mandaluyong. The case was raffled to Branch 214 and docketed as IP Case No. MC-03-01 and Civil Case No. MC-03-073.[9]

On 25 and 29 August and 4 September 2003, the trial court conducted hearings on the TRO. San Miguel submitted five affidavits, but only one affiant, Mercedes Abad, was presented for cross-examination because the trial court ruled that such examination would be inconsistent with the summary nature of a TRO hearing.[10] San Miguel submitted the following pieces of evidence:[11]

> 1. Affidavit of Mercedes Abad, President and Managing Director of the research firm NFO Trends, Inc. (NFO Trends), to present, among others, market survey results which prove that gin drinkers associate the term "Ginebra" with San Miguel, and that the consuming public is being misled that "Ginebra Kapitan" is a product of San Miguel;
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> 2. Market Survey results conducted by NFO Trends to determine the brand associations of the mark "Ginebra"

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[7] *Id.*

[8] *Id.* at 16.

[9] *Rollo*, Vol. I, pp. 16-18; *rollo*, Vol. II, p. 1028.

[10] *Rollo*, Vol. II, p. 1029.

[11] *Id.* at 1029-1030.

and to prove that the consuming public is confused as to the manufacturer of "Ginebra Kapitan";

3. Affidavit of Ramon Cruz, San Miguel's Group Product Manager, to prove, among others, the prior right of San Miguel to the mark "Ginebra" as shown in various applications for, and registrations of, trademarks that contain the mark "Ginebra." His affidavit included documents showing that the mark "Ginebra" has been used on San Miguel's gin products since 1834;

4. Affidavits of Leopoldo Guanzon, Jr., San Miguel's Trade and Promo Merchandising Head for North Luzon Area, and Juderick Crescini, San Miguel's District Sales Supervisor for South Luzon-East Area, to prove, among others, that Tanduay's salesmen or distributors misrepresent "Ginebra Kapitan" as San Miguel's product and that numerous retailers of San Miguel's gin products are confused as to the manufacturer of "Ginebra Kapitan"; and

5. Affidavit of Jose Reginald Pascual, San Miguel's District Sales Supervisor for the North-Greater Manila Area, to prove, among others, that gin drinkers confuse San Miguel to be the manufacturer of "Ginebra Kapitan" due to the use of the dominant feature "Ginebra."

Tanduay filed a Motion to Strike Out Hearsay Affidavits and Evidence, which motion was denied by the trial court. Tanduay presented witnesses who affirmed their affidavits in open court, as follows:[12]

1. Ramoncito Bugia, General Services Manager of Tanduay. Attached to his affidavit were various certificates of registration of trademarks containing the word "Ginebra" obtained by Tanduay and other liquor companies, to prove that the word "Ginebra" is required to be disclaimed by the IPO. The affidavit also attested that there are other

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[12] *Rollo*, Vol. I, p. 20.

liquor companies using the word "Ginebra" as part of their trademarks for gin products aside from San Miguel and Tanduay.

2. Herbert Rosales, Vice President of J. Salcedo and Associates, Inc., the advertising and promotions company hired by Tanduay to design the label of "Ginebra Kapitan." His affidavit attested that the label was designed to make it "look absolutely different from the Ginebra San Miguel label."

On 23 September 2003, the trial court issued a TRO prohibiting Tanduay from manufacturing, selling and advertising "Ginebra Kapitan."[13] The dispositive portion reads in part:

> WHEREFORE, the application for temporary restraining order is hereby GRANTED and made effective immediately. Plaintiff is directed to post a bond of ONE MILLION PESOS (Php 1,000,000.00) within five (5) days from issuance hereof, otherwise, this restraining order shall lose its efficacy. Accordingly, defendant Tanduay Distillers, Inc., and all persons and agents acting for and in behalf are enjoined to cease and desist from manufacturing, distributing, selling, offering for sale and/or advertising or otherwise using in commerce the mark "GINEBRA KAPITAN" which employs, thereon, or in the wrappings, sundry items, cartons and packages thereof, the mark "GINEBRA" as well as from using the bottle design and labels for its gin products during the effectivity of this temporary restraining order unless a contrary order is issued by this Court.[14]

On 3 October 2003, Tanduay filed a petition for *certiorari* with the CA.[15] Despite Tanduay's Urgent Motion to Defer Injunction Hearing, the trial court continued to conduct hearings on 8, 9, 13 and 14 October 2003 for Tanduay to show cause why no writ of preliminary injunction should be issued.[16] On

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[13] *Id.* at 19-21.

[14] *Id.* at 227.

[15] *Id.* at 21.

[16] *Id.* at 22.

17 October 2003, the trial court granted San Miguel's application for the issuance of a writ of preliminary injunction.[17] The dispositive portion of the Order reads:

> WHEREFORE, the plaintiff's application for a writ of preliminary injunction is GRANTED. Upon plaintiff's filing of an injunctive bond executed to the defendant in the amount of ₱20,000,000.00 (TWENTY MILLION) PESOS, let a Writ of Preliminary Injunction issue enjoining the defendant, its employees, agents, representatives, dealers, retailers or assigns, and any all persons acting on its behalf, from committing the acts complained of, and, specifically, to cease and desist from manufacturing, distributing, selling, offering for sale, advertising, or otherwise using in commerce the mark "GINEBRA", and manufacturing, producing, distributing or otherwise dealing in gin products which have the general appearance of, and which are confusingly similar with, plaintiff's marks, bottle design and label for its gin products.
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> SO ORDERED.[18]

On 22 October 2003, Tanduay filed a supplemental petition in the CA assailing the injunction order. On 10 November 2003, the CA issued a TRO enjoining the trial court from implementing its injunction order and from further proceeding with the case.[19] On 23 December 2003, the CA issued a resolution directing the parties to appear for a hearing on 6 January 2004 to determine the need for the issuance of a writ of preliminary injunction.[20]

On 9 january 2004, the CA rendered a Decision dismissing Tanduay's petition and supplemental petition. On 28 January 2004, Tanduay moved for reconsideration which was denied in a Resolution dated 2 July 2004.[21]

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[17] *Id.* at 25.

[18] *Id.* at 541.

[19] *Id.* at 25-26.

[20] *Id.* at 26.

[21] *Id.* at 126, 132.

Aggrieved by the decision dismissing the petition and supplemental petition and by the resolution denying the Motion for Reconsideration, Tanduay elevated the case before this court.

The Trial Court's Orders

In the Order dated 23 September 2003, the trial court stated that during the hearings conducted on 25 and 29 August and on 4 and 11 September 2003, the following facts have been established:

1. San Miguel has registered the trademark "Ginebra San Miguel";
2. There is a close resemblance between "Ginebra San Miguel" and "Ginebra Kapitan";
3. The close similarity between "Ginebra San Miguel" and "Ginebra Kapitan" may give rise to confusion of goods since San Miguel and Tanduay are competitors in the business of manufacturing and selling liquors; and
4. "Ginebra," which is a well-known trademark, was adopted by Tanduay to benefit from the reputation and advertisement of the originator of the mark "Ginebra San Miguel," and to convey to the public the impression of some supposed connection between the manufacturer of the gin product sold under the name "Ginebra San Miguel" and the new gin product "Ginebra Kapitan."[22]

Based on these facts, the trial court concluded that San Miguel had demonstrated a clear, positive, and existing right to be protected by a TRO. Otherwise, San Miguel would suffer irreparable injury if infringement would not be enjoined. Hence, the trial court granted the application for a TRO and set the hearing for preliminary injunction.[23]

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[22] *Id.* at 226.

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

In the order dated 17 October 2003, the trial court granted the application for a writ of preliminary injunction. The trial court ruled that while a corporation acquires a trade name for its product by choice, it should not select a name that is confusingly similar to any other name already protected by law or is patently deceptive, confusing, or contrary to existing law.[24]

The trial court pointed out that San Miguel and its predecessors have continuously used "Ginebra" as the dominant feature of its gin products since 1834. On the other hand, Tanduay filed its trademark application for "Ginebra Kapitan" only on 7 January 2003. The trial court declared that San Miguel is the prior user and registrant of "Ginebra" which has become closely associated to all of San Miguel's gin products, thereby gaining popularity and goodwill from such name.[25]

The trial court noted that while the subject trademarks are not identical, it is obviously clear that the word "Ginebra" is the dominant feature in the trademarks. The trial court stated that there is a strong indication that confusion is likely to occur since one would inevitably be led to conclude that both products are affiliated with San Miguel due to the distinctive mark "Ginebra" which is readily identified with San Miguel. The trial court concluded that ordinary purchasers would not examine the letterings or features printed on the label but would simply be guided by the presence of the dominant mark "Ginebra." Any difference would pale in significance in the face of evident similarities in the dominant features and overall appearance of the products. The trial court emphasized that the determinative factor was whether the use of such mark would likely cause confusion on the part of the buying public, and not whether it would actually cause confusion on the part of the purchasers. Thus, Tanduay's choice of "Ginebra" as part of the trademark of "Ginebra Kapitan" tended to show Tanduay's intention to

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[24] *Id.* at 538.

[25] *Id.*

ride on the popularity and established goodwill of "Ginebra San Miguel."[26]

The trial court held that to constitute trademark infringement, it was not necessary that every word should be appropriated; it was sufficient that enough be taken to deceive the public in the purchase of a protected article.[27]

The trial court conceded to Tanduay's assertion that the term "Ginebra" is a generic word; hence, it is non-registrable because generic words are by law free for all to use. However, the trial court relied on the principle that even if a word is incapable of appropriation as a trademark, the word may still acquire a proprietary connotation through long and exclusive use by a business entity with reference to its products. The purchasing public would associate the word to the products of a business entity. The word thus associated would be entitled to protection against infringement and unfair competition. The trial court held that this principle could be made to apply to this case because San Miguel has shown that it has established goodwill of considerable value, such that its gin products have acquired a well-known reputation as just "Ginebra." In essence, the word "Ginebra" has become a popular by-word among the consumers and they had closely associated it with San Miguel.[28]

On the other hand, the trial court held that Tanduay failed to substantiate its claim against the issuance of the injunctive relief.[29]

The Ruling of the Court of Appeals

In resolving the petition and supplemental petition, the CA stated that it is constrained to limit itself to the determination of whether the TRO and the Writ of Preliminary Injunction were

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[26] *Id.* at 538-539.

[27] *Id.* at 539.

[28] *Id.* at 540.

[29] *Id.* at 541.

issued by the trial court with grave abuse of discretion amounting to lack of jurisdiction.[30]

To warrant the issuance of a TRO, the CA ruled that the affidavits of San Miguel's witnesses and the fact that the registered trademark "Ginebra San Miguel" exists are enough to make a finding that San Miguel has a clear and unmistakable right to prevent irreparable injury because gin drinkers confuse San Miguel to be the manufacturer of "Ginebra Kapitan."[31]

The CA enumerated the requisites for an injunction: (1) there must be a right *in esse* or the existence of a right to be protected and (2) the act against which the injunction is to be directed is a violation of such right. The CA stated that the trademarks "Ginebra San Miguel" and "Ginebra Kapitan" are not identical, but it is clear that the word "Ginebra" is the dominant feature in both trademarks. There was a strong indication that confusion was likely to occur. One would be led to conclude that both products are affiliated with San Miguel because the distinctive mark "Ginebra" is identified with San Miguel. It is the mark which draws the attention of the buyer and leads him to conclude that the goods originated from the same manufacturer.[32]

The CA observed that the gin products of "Ginebra San Miguel" and "Ginebra Kapitan" possess the same physical attributes with reference to their form, composition, texture, or quality. The CA upheld the trial court's ruling that San Miguel has sufficiently established its right to prior use and registration of the mark "Ginebra" as a dominant feature of its trademark. "Ginebra" has been identified with San Miguel's goods, thereby, it acquired a right in such mark, and if another infringed the trademark, San Miguel could invoke its property right.[33]

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

[31] *Id.* at 111.

[32] *Id.* at 124-125.

[33] *Id.* at 125-126.

The Issue

The central question for resolution is whether San Miguel is entitled to the writ of preliminary injunction granted by the trial court as affirmed by the CA. For this reason, we shall deal only with the questioned writ and not with the merits of the case pending before the trial court.

The Ruling of the Court

Clear and Unmistakable Right

Section 1, Rule 58 of the Rules of Court defines a preliminary injunction as an order granted at any stage of a proceeding prior to the judgment or final order, requiring a party or a court, agency, or a person to refrain from a particular act or acts.

A preliminary injunction is a provisional remedy for the protection of substantive rights and interests. It is not a cause of action in itself but merely an adjunct to the main case. Its objective is to prevent a threatened or continuous irreparable injury to some of the parties before their claims can be thoroughly investigated and advisedly adjudicated. It is resorted to only when there is a pressing need to avoid injurious consequences which cannot be remedied under any standard compensation.[34]

Section 3, Rule 58 of the Rules of Court provides:

Section 3. *Grounds for issuance of a writ 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;

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[34] *Del Rosario v. Court of Appeals*, 325 Phil. 424, 431 (1996).

(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.

Before an injunctive writ is issued, it is essential that the following requisites are present: (1) the existence of a right to be protected and (2) the acts against which the injunction is directed are violative of the right. The *onus probandi* is on the movant to show that the invasion of the right sought to be protected is material and substantial, that the right of the movant is clear and unmistakable, and that there is an urgent and paramount necessity for the writ to prevent serious damage.[35]

San Miguel claims that the requisites for the valid issuance of a writ of preliminary injunction were clearly established. The clear and unmistakable right to the exclusive use of the mark "Ginebra" was proven through the continuous use of "Ginebra" in the manufacture, distribution, marketing and sale of gin products throughout the Philippines since 1834. To the gin-drinking public, the word "Ginebra" does not simply indicate a kind of beverage; it is now synonymous with San Miguel's gin products.[36]

San Miguel contends that "Ginebra" can be appropriated as a trademark, and there was no error in the trial court's provisional ruling based on the evidence on record. Assuming that "Ginebra" is a generic word which is proscribed to be registered as a trademark under Section 123.1(h)[37] of Republic Act No. 8293

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[35] *Kho v. Court of Appeals*, 429 Phil. 140, 150 (2002).

[36] *Rollo*, Vol. II, p. 1487.

[37] Section 123. *Registrability*. — 123.1. A mark cannot be registered if it:

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or the Intellectual Property Code (IP Code),[38] it can still be appropriated and registered as a trademark under Section 123.1(j)[39] in relation to Section 123.2[40] of the IP Code, considering that "Ginebra" is also a mark which designates the kind of goods produced by San Miguel.[41] San Miguel alleges that although "Ginebra," the Spanish word for "gin," may be a term originally incapable of exclusive appropriation, jurisprudence dictates that the mark has become distinctive of San Miguel's products due to its substantially exclusive and continuous use as the dominant feature of San Miguel's trademarks since 1834. Hence, San Miguel is entitled to a finding that the mark is deemed to have acquired a secondary meaning.[42]

(h) Consists exclusively of signs that are generic for the goods or services that they seek to identify;

x x x x x x x x x

[38] An Act Prescribing the Intellectual Property Code and Establishing the Intellectual Property Office, Providing for its Powers and Functions, and for other Purposes. Approved on 6 June 1997 and took effect on 1 January 1998.

[39] Section 123. *Registrability*. — 123.1. A mark cannot be registered if it:

x x x x x x x x x

(j) Consists exclusively of signs or of indications that may serve in trade to designate the kind, quality, quantity, intended purpose, value, geographical origin, time or production of the goods or rendering of the services, or other characteristics of the goods or services;

[40] Section 123.2. As regards signs or devices mentioned in paragraphs (j), (k), and (l), nothing shall prevent the registration of any such sign or device which has become distinctive in relation to the goods for which registration is requested as a result of the use that have been made of it in commerce in the Philippines. The Office may accept as *prima facie* evidence that the mark has become distinctive, as used in connection with the applicant's goods or services in commerce, proof of substantially exclusive and continuous use thereof by the applicant in commerce in the Philippines for five (5) years before the date on which the claim of distinctiveness is made.

[41] *Rollo*, Vol. II, pp. 1444-1445.

[42] *Id.* at 1448-1449.

San Miguel states that Tanduay failed to present any evidence to disprove its claims; thus, there is no basis to set aside the grant of the TRO and writ of preliminary injunction.[43]

San Miguel states that its disclaimer of the word "Ginebra" in some of its registered marks is without prejudice to, and did not affect, its existing or future rights over "Ginebra," especially since "Ginebra" has demonstrably become distinctive of San Miguel's products.[44] San Miguel adds that it did not disclaim "Ginebra" in all of its trademark registrations and applications like its registration for "Ginebra Cruz de Oro," "Ginebra Ka Miguel," "Ginebra San Miguel" bottle, "Ginebra San Miguel," and "Barangay Ginebra."[45]

Tanduay asserts that not one of the requisites for the valid issuance of a preliminary injunction is present in this case. Tanduay argues that San Miguel cannot claim the exclusive right to use the generic word "Ginebra" for its gin products based on its registration of the composite marks "Ginebra San Miguel," "Ginebra S. Miguel 65," and "La Tondeña Cliq! Ginebra Mix," because in all of these registrations, San Miguel disclaimed any exclusive right to use the non-registrable word "Ginebra" for gin products.[46] Tanduay explains that the word "Ginebra," which is disclaimed by San Miguel in all of its registered trademarks, is an unregistrable component of the

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[43] *Id.* at 1449.

[44] *Id.* at 1463-1464.

[45] *Id.* at 1465-1466.

[46] *Id.* at 1508, 1514, 1610, 1614, 1617, 1620.

San Miguel's Certificate of Registration No. 7484 for the mark "Ginebra San Miguel" says, "The word "Ginebra" is disclaimed apart from the mark as shown." Certificate of Registration No. 42568 for the trademark "Ginebra San Miguel" says: "Applicant disclaimed the word "Ginebra" apart from the mark as shown." Certificate of Registration No. 53688 for the mark "Ginebra S. Miguel 65" says: "The word Ginebra 65 is disclaimed." Certificate of Registration No. 4-1996-113597 for the mark "La Tondeña Cliq! Ginebra Mix & Stylized Letters Ltd. With crown device inside a rectangle" disclaimed the words "Ginebra Mix."

composite mark "Ginebra San Miguel." Tanduay argues that this disclaimer further means that San Miguel does not have an exclusive right to the generic word "Ginebra."[47] Tanduay states that the word "Ginebra" does not indicate the source of the product, but it is merely descriptive of the name of the product itself and not the manufacturer thereof.[48]

Tanduay submits that it has been producing gin products under the brand names Ginebra 65, Ginebra Matador, and Ginebra Toro without any complaint from San Miguel. Tanduay alleges that San Miguel has not filed any complaint against other liquor companies which use "Ginebra" as part of their brand names such as Ginebra Pinoy, a registered trademark of Webengton Distillery; Ginebra Presidente and Ginebra Luzon as registered trademarks of Washington Distillery, Inc.; and Ginebra Lucky Nine and Ginebra Santiago as registered trademarks of Distileria Limtuaco & Co., Inc.[49] Tanduay claims that the existence of these products, the use and registration of the word "Ginebra" by other companies as part of their trademarks belie San Miguel's claim that it has been the exclusive user of the trademark containing the word "Ginebra" since 1834.

Tanduay argues that before a court can issue a writ of preliminary injunction, it is imperative that San Miguel must establish a clear and unmistakable right that is entitled to protection. San Miguel's alleged exclusive right to use the generic word "Ginebra" is far from clear and unmistakable. Tanduay claims that the injunction issued by the trial court was based on its premature conclusion that "Ginebra Kapitan" infringes "Ginebra San Miguel."[50]

In *Levi Strauss & Co. v. Clinton Apparelle, Inc.*,[51] we held:

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[47] *Id.* at 1537.

[48] *Id.* at 1579-1580.

[49] *Id.* at 1510-1511.

[50] *Id.* at 1581-1582.

[51] G.R. No. 138900, 20 September 2005, 470 SCRA 236.

While the matter of the issuance of a writ of preliminary injunction is addressed to the sound discretion of the trial court, this discretion must be exercised based upon the grounds and in the manner provided by law. The exercise of discretion by the trial court in injunctive matters is generally not interfered with save in cases of manifest abuse. And to determine whether there was grave abuse of discretion, a scrutiny must be made of the bases, if any, considered by the trial court in granting injunctive relief. Be it stressed that injunction is the strong arm of equity which must be issued with great caution and deliberation, and only in cases of great injury where there is no commensurate remedy in damages.[52]

The CA upheld the trial court's ruling that San Miguel has sufficiently established its right to prior use and registration of the word "Ginebra" as a dominant feature of its trademark. The CA ruled that based on San Miguel's extensive, continuous, and substantially exclusive use of the word "Ginebra," it has become distinctive of San Miguel's gin products; thus, a clear and unmistakable right was shown.

We hold that the CA committed a reversible error. The issue in the main case is San Miguel's right to the exclusive use of the mark "Ginebra." The two trademarks "Ginebra San Miguel" and "Ginebra Kapitan" apparently differ when taken as a whole, but according to San Miguel, Tanduay appropriates the word "Ginebra" which is a dominant feature of San Miguel's mark.

It is not evident whether San Miguel has the right to prevent other business entities from using the word "Ginebra." It is not settled (1) whether "Ginebra" is indeed the dominant feature of the trademarks, (2) whether it is a generic word that as a matter of law cannot be appropriated, or (3) whether it is merely a descriptive word that may be appropriated based on the fact that it has acquired a secondary meaning.

The issue that must be resolved by the trial court is whether a word like "Ginebra" can acquire a secondary meaning for gin products so as to prohibit the use of the word "Ginebra" by

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[52] *Id.* at 253.

other gin manufacturers or sellers. This boils down to whether the word "Ginebra" is a generic mark that is incapable of appropriation by gin manufacturers.

In *Asia Brewery, Inc. v. Court of Appeals*,[53] the Court ruled that "pale pilsen" are generic words, "pale" being the actual name of the color and "pilsen" being the type of beer, a light bohemian beer with a strong hops flavor that originated in Pilsen City in Czechoslovakia and became famous in the Middle Ages, and hence incapable of appropriation by any beer manufacturer.[54] Moreover, Section 123.1(h) of the IP Code states that a mark cannot be registered if it "consists exclusively of signs that are generic for the goods or services that they seek to identify."

In this case, a cloud of doubt exists over San Miguel's exclusive right relating to the word "Ginebra." San Miguel's claim to the exclusive use of the word "Ginebra" is clearly still in dispute because of Tanduay's claim that it has, as others have, also registered the word "Ginebra" for its gin products. This issue can be resolved only after a full-blown trial.

In *Ong Ching Kian Chuan v. Court of Appeals*,[55] we held that in the absence of proof of a legal right and the injury sustained by the movant, the trial court's order granting the issuance of an injunctive writ will be set aside, for having been issued with grave abuse of discretion.

We find that San Miguel's right to injunctive relief has not been clearly and unmistakably demonstrated. The right to the exclusive use of the word "Ginebra" has yet to be determined in the main case. The trial court's grant of the writ of preliminary injunction in favor of San Miguel, despite the lack of a clear and unmistakable right on its part, constitutes grave abuse of discretion amounting to lack of jurisdiction.

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[53] G.R. No. 103543, 5 July 1993, 224 SCRA 437, 448.

[54] *Id.* at 449.

[55] 415 Phil. 365, 374-375 (2001).

Prejudging the Merits of the Case

Tanduay alleges that the CA, in upholding the issuance of the writ of preliminary injunction, has prejudged the merits of the case since nothing is left to be decided by the trial court except the amount of damages to be awarded to San Miguel.[56]

San Miguel claims that neither the CA nor the trial court prejudged the merits of the case. San Miguel states that the CA did not rule on the ultimate correctness of the trial court's evaluation and appreciation of the evidence before it, but merely found that the assailed Orders of the trial court are supported by the evidence on record and that Tanduay was not denied due process.[57] San Miguel argues that the CA only upheld the trial court's issuance of the TRO and writ of preliminary injunction upon a finding that there was sufficient evidence on record, as well as legal authorities, to warrant the trial court's preliminary findings of fact.[58]

The instructive ruling in *Manila International Airport Authority v. Court of Appeals*[59] states:

> Considering the far-reaching effects of a writ of preliminary injunction, the trial court should have exercised more prudence and judiciousness in its issuance of the injunction order. We remind trial courts that while generally the grant of a writ of preliminary injunction rests on the sound discretion of the court taking cognizance of the case, *extreme caution must be observed in the exercise of such discretion*. The discretion of the court *a quo* to grant an injunctive writ must be exercised based on the grounds and in the manner provided by law. Thus, the Court declared in *Garcia v. Burgos:*
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> > "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

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[56] *Rollo*, Vol. II, p. 1590.

[57] *Id.* at 1497.

[58] *Id.* at 1440.

[59] 445 Phil. 369, 383-384 (2003), citing *Gov. Garcia v. Hon. Burgos*, 353 Phil. 740 (1998).

> 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 lightly or precipitately. *It should be granted only when the court is fully satisfied that the law permits it and the emergency demands it*." (Emphasis in the original)

We believe that the issued writ of preliminary injunction, if allowed, disposes of the case on the merits as it effectively enjoins the use of the word "Ginebra" without the benefit of a full-blown trial. In *Rivas v. Securities and Exchange Commission*,[60] we ruled that courts should avoid issuing a writ of preliminary injunction which would in effect dispose of the main case without trial. The issuance of the writ of preliminary injunction had the effect of granting the main prayer of the complaint such that there is practically nothing left for the trial court to try except the plaintiff's claim for damages.

Irreparable Injury

Tanduay points out that the supposed damages that San Miguel will suffer as a result of Tanduay's infringement or unfair competition cannot be considered irreparable because the damages are susceptible of mathematical computation. Tanduay invokes Section 156.1 of the IP Code[61] as the basis for the computation of damages.[62]

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[60] G.R. No. 53772, 4 October 1990, 190 SCRA 295, 305.

[61] Section 156.1. The owner of a registered mark may recover damages from any person who infringes his rights, and the measure of the damages suffered shall be either the reasonable profit which the complaining party would have made, had the defendant not infringed his rights, or the profit which the defendant actually made out of the infringement, or in the event such measure of damages cannot be readily ascertained with reasonable certainty, then the court may award as damages a reasonable percentage based upon the amount of gross sales of the defendant.

[62] *Rollo*, Vol. II, pp. 1584-1585.

San Miguel avers that it stands to suffer irreparable injury if the manufacture and sale of Tanduay's "Ginebra Kapitan" are not enjoined. San Miguel claims that the rough estimate of the damages[63] it would incur is simply a guide for the trial court in computing the appropriate docket fees. San Miguel asserts that the full extent of the damage it would suffer is difficult to measure with any reasonable accuracy because it has invested hundreds of millions over a period of 170 years to establish goodwill and reputation now being enjoyed by the "Ginebra San Miguel" mark.[64] San Miguel refutes Tanduay's claim that the injury which San Miguel stands to suffer can be measured with reasonable accuracy as the legal formula to determine such injury is provided in Section 156.1 of the IP Code. San Miguel reasons that if Tanduay's claim is upheld, then there would never be a proper occasion to issue a writ of preliminary injunction in relation to complaints for infringement and unfair competition, as the injury which the owner of the mark suffers, or stands to suffer, will always be susceptible of mathematical computation.[65]

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[63] *Rollo*, Vol. I, p. 307.

San Miguel's prayer in the Complaint filed with the trial court includes:

x x x x x x x x x

f. ordering the Defendant to pay plaintiff:

i) damages in either the amount equal to double all profits made out of the sale and distribution of "Ginebra Kapitan" and/or of Defendant's other gin products bearing the mark "Ginebra," the reasonable profit which Plaintiff would have made had Defendant not violated its intellectual property rights, or a reasonable percentage determined by this Honorable Court based upon the gross sales of defendant's infringing and/or unfairly competing products, as well as other pecuniary loss, estimated to be at least ₱25,000,000.00.

ii) exemplary damages in an amount not less than ₱75,000,000.00

iii) Attorney's fees and expenses of litigation in an amount not less than ₱1,000,000.00; and

iv) costs of suits.

[64] *Rollo,* Vol. II, pp. 1490-1491.

[65] *Id.* at 1494.

In *Levi Strauss & Co. v. Clinton Apparelle, Inc.*,[66] this court upheld the appellate court's ruling that the damages Levi Strauss & Co. had suffered or continues to suffer may be compensated in terms of monetary consideration. This Court, quoting *Government Service Insurance System v. Florendo*,[67] held:

> x x x a writ of injunction should never issue when an action for damages would adequately compensate the injuries caused. The very foundation of the jurisdiction to issue the writ of injunction rests in the probability of irreparable injury, inadequacy of pecuniary compensation and the prevention of the multiplicity of suits, and where facts are not shown to bring the case within these conditions, the relief of injunction should be refused.

Based on the affidavits and market survey report submitted during the injunction hearings, San Miguel has failed to prove the probability of irreparable injury which it will stand to suffer if the sale of "Ginebra Kapitan" is not enjoined. San Miguel has not presented proof of damages incapable of pecuniary estimation. At most, San Miguel only claims that it has invested hundreds of millions over a period of 170 years to establish goodwill and reputation now being enjoyed by the "Ginebra San Miguel" mark such that the full extent of the damage cannot be measured with reasonable accuracy. Without the submission of proof that the damage is irreparable and incapable of pecuniary estimation, San Miguel's claim cannot be the basis for a valid writ of preliminary injunction.

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the Decision of the Court of Appeals dated 9 January 2004 and the Resolution dated 2 July 2004 in CA-G.R. SP No. 79655. We declare *VOID* the order dated 17 October 2003 and the corresponding writ of preliminary injunction issued by Branch 214 of the Regional Trial Court of Mandaluyong City in IP Case No. MC-03-01 and Civil Case No. MC-03-073.

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[66] *Supra* note 51 at 256-257.

[67] G.R. No. L-48603, 29 September 1989, 178 SCRA 76, 87.

The Regional Trial Court of Mandaluyong City, Branch 214, is directed to continue expeditiously with the trial to resolve the merits of the case.

SO ORDERED.

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

FIRST DIVISION

[G.R. Nos. 164813 & 174590. August 14, 2009]

LOWE, INC., MARIA ELIZABETH ("MARILES") L. GUSTILO, and RAUL M. CASTRO, *petitioners, vs.* **COURT OF APPEALS and IRMA M. MUTUC,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; LIMITED TO QUESTIONS OF LAW; EXCEPTIONS.—** As a general rule, a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to questions of law. However, this rule admits of exceptions, such as in this case where the findings of the Labor Arbiter vary from the findings of the NLRC and the Court of Appeals.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; AUTHORIZED CAUSES; REDUNDANCY; WHEN IT EXISTS.—** Redundancy, which is one of the authorized causes for the dismissal of an employee, is governed by Article 283 of the Labor Code which provides: Art. 283. *Closure of establishment and reduction of personnel*. — xxx. Redundancy exists when the service of an employee is in excess of what is reasonably demanded by the actual requirements of the business. A redundant position is

one rendered superfluous by any number of factors, such as overhiring of workers, decreased volume of business, dropping of a particular product line previously manufactured by the company or phasing out of a service activity formerly undertaken by the enterprise.

3. **ID.; ID.; ID.; ID.; ID.; REQUISITES TO BE VALID.—** For a valid implementation of a redundancy program, the employer must comply with the following requisites: (1) written notice served on both the employee and the DOLE at least one month prior to the intended date of termination; (2) payment of separation pay equivalent to at least one month pay or at least one month pay for every year of service, whichever is higher; (3) good faith in abolishing the redundant position; and (4) fair and reasonable criteria in ascertaining what positions are to be declared redundant. In this case, there is no dispute that, on 28 September 2001, Mutuc was duly advised of the termination of her services on the ground of redundancy. On the same date, the DOLE was also served a copy of Mutuc's notice of termination. Likewise, Lowe made available to Mutuc her separation pay equivalent to one month salary for every year of service and her proportionate 13th month pay upon completion of her clearance. However, Mutuc did not accomplish her clearance and instead filed a complaint for illegal dismissal.

4. **ID.; ID.; ID.; ID.; ID.; CRITERIA IN IMPLEMENTING A REDUNDANCY PROGRAM.—** The Court recognizes that a host of relevant factors comes into play in determining who among the employees should be retained or separated. Among the accepted criteria in implementing a redundancy program are: (1) preferred status; (2) efficiency; and (3) seniority. We agree with the Labor Arbiter that Lowe employed fair and reasonable criteria in declaring Mutuc's position redundant. Mutuc, who was hired only on 23 June 2000, did not deny that she was the most junior of all the executives of Lowe. Mutuc also did not present contrary evidence to disprove that she was the least efficient and least competent among all the Creative Directors.

5. **ID.; ID.; ID.; ID.; ID.; THE DETERMINATION OF THE CONTINUING NECESSITY OF A PARTICULAR OFFICER OR POSITION IN A BUSINESS CORPORATION IS A MANAGEMENT PREROGATIVE, AND THE COURTS WILL NOT INTERFERE UNLESS ARBITRARY**

OR MALICIOUS ACTION ON THE PART OF THE MANAGEMENT IS SHOWN.— The determination of the continuing necessity of a particular officer or position in a business corporation is a management prerogative, and the courts will not interfere unless arbitrary or malicious action on the part of management is shown. It is also within the exclusive prerogative of management to determine the qualification and fitness of an employee for hiring and firing, promotion or reassignment. Indeed, an employer has no legal obligation to keep more employees than are necessary for the operation of its business. Besides, the fact that the functions of Mutuc were simply added to the duties of the other Creative Directors does not affect the legitimacy of Lowe's right to abolish a position when done in the normal exercise of its prerogative to adopt sound business practices in the management of its affairs.

6. **ID.; ID.; ID.; MANAGEMENT HAS MUCH WIDER DISCRETION IN TERMINATING THE EMPLOYMENT OF MANAGERIAL PERSONNEL; REASON.—** Considering further that Mutuc held a position which was definitely managerial in character, Lowe had a broad latitude of discretion in abolishing her position. An employer has a much wider discretion in terminating the employment of managerial personnel as compared to rank and file employees. The reason is that officers in such key positions perform not only functions which by nature require the employer's full trust and confidence but also functions that spell the success or failure of a business. Aside from Mutuc's self-serving statements, we find no evidence to support her conclusion that she was dismissed because of the "rift" with Castro. We agree with the Labor Arbiter that Lowe was motivated by good faith in declaring Mutuc's position redundant since it was acting pursuant to a business decision dictated by the prevailing economic environment.

7. **ID.; ID.; ID.; AWARD OF SEPARATION PAY AND PROPORTIONATE 13TH MONTH PAY, PROPER IN CASE AT BAR.—** We affirm the award of the Labor Arbiter of separation pay equivalent to one month salary for every year of service amounting to ₱100,000. We also affirm the award of the Labor Arbiter of Mutuc's proportionate 13th month pay with modification that it be computed from the period of 1 January 2001 to 31 October 2001 amounting to ₱83,333.

8. **ID.; ID.; ID.; BACKWAGES; A VALIDLY DISMISSED EMPLOYEE IS NOT ENTITLED TO AN AWARD THEREOF.—** The issue on the proper computation of Mutuc's backwages has been rendered moot by our decision that Mutuc was validly dismissed. Backwages is a relief given to an illegally dismissed employee. Since Mutuc's dismissal is for an authorized cause, she is not entitled to backwages.

9. **ID.; ID.; ID.; AWARD OF MORAL DAMAGES UNWARRANTED ABSENT EVIDENCE THAT THE TERMINATION OF THE EMPLOYEE WAS DONE IN ARBITRARY, CAPRICIOUS OR MALICIOUS MANNER.—** We likewise delete the award of moral damages as there was no clear and convincing evidence showing that Lowe's termination of Mutuc's services was done in an arbitrary, capricious, or malicious manner.

10. **ID.; ID.; ID.; ABSENT MALICE OR BAD FAITH IN THE DISMISSAL OF THE EMPLOYEE, THE DIRECTOR OR OFFICER OF A CORPORATION CANNOT BE MADE PERSONALLY LIABLE FOR THE MONETARY AWARDS TO THE SAID EMPLOYEE.—** Gustilo and Castro argue that, in the absence any evidence of bad faith, they should not be made personally liable for the monetary awards to Mutuc. It is settled that in the absence of malice, bad faith, or specific provision of law, a director or an officer of a corporation cannot be made personally liable for corporate liabilities. In *Mcleod v. NLRC*, we said: To reiterate, a corporation is a juridical entity with legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. The rule is that obligations incurred by the corporation, acting through its directors, officers, and employees are its sole liabilities. Personal liability of corporate directors, trustees or officers attaches only when (1) they assent to a patently unlawful act of the corporation, or **when they are guilty of bad faith or gross negligence in directing its affairs**, or when there is a conflict of interest resulting in damages to the corporation, its stockholders or other persons; (2) they consent to the issuance of watered down stocks or when, having knowledge of such issuance, do not forthwith file with the corporate secretary their written objection; (3) they agree to hold themselves personally and solidarily liable with the corporation; or (4) they are made by specific provision of law personally answerable for their

corporate action. Gustilo and Castro, as corporate officers of Lowe, have personalities which are distinct and separate from that of Lowe's. Hence, in the absence of any evidence showing that they acted with malice or in bad faith in declaring Mutuc's position redundant, Gustilo and Castro are not personally liable for the monetary awards to Mutuc.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioners.
Rayala Alonso & Partners for Irma M. Mutuc.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court are the consolidated cases docketed as G.R. Nos. 174590 and 164813. Both cases stemmed from the 30 June 2003 Resolution[1] of the National Labor Relations Commission (NLRC), which declared that respondent Irma M. Mutuc (Mutuc) was illegally dismissed by petitioner Lowe, Inc. (Lowe).[2]

The first case, G.R. No. 164813, is a petition for review[3] of the 23 January 2004 Decision[4] and the 4 August 2004 Resolution[5] of the Court of Appeals in CA-G.R. SP No. 80531. In its 23 January 2004 Decision, the Court of Appeals affirmed the NLRC's 30 June 2003 Resolution. In its 4 August 2004

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[1] *Rollo* (G.R. No. 164813), pp. 234-245. Penned by Commissioner Tito F. Genilo, with Presiding Commissioner Lourdes C. Javier and Commissioner Ernesto C. Verceles, concurring.

[2] Lowe, Inc. was formerly known as Lowe Lintas & Partners.

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

[4] *Rollo* (G.R. No. 164813), pp. 55-63. Penned by Associate Justice Eugenio S. Labitoria, with Associate Justices Mercedes Gozo-Dadole and Rosmari D. Carandang, concurring.

[5] *Id.* at 65-66.

Resolution, the Court of Appeals denied Lowe's motion for reconsideration.

The second case, G.R. No. 174590, is a petition for review[6] of the 13 March 2006 Decision[7] and 5 September 2006 Resolution[8] of the Court of Appeals in CA-G.R. SP No. 80473. In its 13 March 2006 Decision, the Court of Appeals granted Mutuc's petition and partially modified the NLRC's 30 June 2003 Resolution by awarding Mutuc backwages computed from the time of her dismissal up to the finality of the decision of the Court of Appeals. In its 5 September 2006 Resolution, the Court of Appeals denied Lowe's motion for reconsideration.

The Facts

Lowe, an advertising agency, is a corporation duly organized and existing under the laws of the Philippines. Petitioner Maria Elizabeth "Mariles" L. Gustilo (Gustilo)[9] is the Chief Executive Officer and President of Lowe, while petitioner Raul M. Castro (Castro) is the Executive Creative Director of Lowe. Gustilo and Castro were included in the complaint for illegal dismissal in their capacity as officers of Lowe.

On 23 June 2000, at the height of the influx of advertising projects, Lowe hired Mutuc as a Creative Director to help out the four other Creative Directors of Lowe. Mutuc was given a salary of ₱100,000 a month. On 26 February 2001, Mutuc became a regular employee of Lowe.

However, in 2001, most of Lowe's clients reduced their advertising budget. In response to the situation, Lowe implemented cost-cutting measures including a redundancy

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

[7] *Rollo* (G.R. No. 174590), pp. 41-47. Penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Elvi John S. Asuncion and Noel G. Tijam, concurring.

[8] *Id.* at 49-52.

[9] Sometimes appears in the records as "Ma. Elizabeth L. Gustilo" and "Gustillo."

program. On 31 October 2001, Lowe terminated Mutuc's services because her position was declared redundant.

Subsequently, Mutuc filed a complaint for illegal dismissal, nonpayment of 13th month pay with prayer for the award of moral and exemplary damages plus attorney's fees against Lowe.

On 15 August 2002, the Labor Arbiter dismissed Mutuc's complaint and ruled that Lowe validly dismissed Mutuc from the service. The 15 August 2002 Decision of the Labor Arbiter reads:

> WHEREFORE, all foregoing premises considered, judgment is hereby rendered finding complainant to have been validly dismissed from the service due to the redundancy of her position with respondent company. Accordingly, respondent Lowe Lintas & Partners is hereby ordered to pay complainant separation pay equivalent to one (1) month salary for every year of service amounting to **P100,000.00**. Additionally, same respondent is likewise ordered to pay complainant her proportionate 13th Month Pay for the period January 1 – September 28, 2001 in the amount of **P74,416.67**.
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> Individual respondents Mariles Gustillo and Raul Castro are hereby ordered dropped as party-respondents in this case for reasons above-discussed.
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> All other claims are dismissed for lack of factual and/or legal basis.
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> SO ORDERED.[10]

Feeling aggrieved, Mutuc appealed to the NLRC.

In its 30 June 2003 Resolution, the NLRC set aside the Labor Arbiter's 15 August 2002 Decision and declared that Mutuc was illegally dismissed by Lowe. The 30 June 2003 Resolution of the NLRC reads:

> ACCORDINGLY, the decision appealed from is SET ASIDE. A new Decision is hereby rendered directing the respondents to pay

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[10] *Rollo* (G.R. No. 164813), pp. 212-213. Penned by Labor Arbiter Napoleon M. Menese.

[private respondent] separation pay equivalent to one (1) month pay for every year of service, a fraction of six (6) months shall be considered one (1) year and backwages computed from the time she was unlawfully dismissed up to the promulgation of this Decision. Moreover, respondents are hereby ordered to pay [private respondent] moral damages in the amount of PHP 10,000.00.

SO ORDERED.[11]

Lowe filed a motion for reconsideration. Mutuc also filed a motion for partial reconsideration. In its 5 September 2003 Resolution,[12] the NLRC denied both motions.

Both Lowe and Mutuc filed petitions for *certiorari* before the Court of Appeals.

Lowe's petition was docketed as CA-G.R. SP No. 80531. Lowe alleged that the NLRC committed grave abuse of discretion in ruling that the selection of Mutuc for redundancy was done in bad faith and that Mutuc was dismissed because of professional jealousy. Lowe also questioned the NLRC's decision holding Gustilo and Castro liable for the monetary awards in favor of Mutuc, including the award of ₱10,000 as moral damages.

In its 23 January 2004 Decision, the Court of Appeals dismissed Lowe's petition and affirmed the NLRC's 30 June 2003 Resolution. Lowe filed a motion for reconsideration. In its 4 August 2004 Resolution, the Court of Appeals denied Lowe's motion.

Mutuc's petition was docketed as CA-G.R. SP No. 80473. Mutuc alleged that the NLRC committed grave abuse of discretion in awarding her backwages computed only from the time she was unlawfully dismissed up to the promulgation of the NLRC's decision. In its 13 March 2006 Decision, the Court of Appeals granted Mutuc's petition and modified the award of backwages. The 13 March 2006 Decision of the Court of Appeals reads:

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[11] *Id.* at 245.

[12] *Id.* at 271-272.

WHEREFORE, premises considered, the instant petition is GRANTED. The Resolution dated June 30, 2003 is hereby MODIFIED. The award of backwages shall be computed from the time the petitioner was unlawfully dismissed up to the finality of this decision.

SO ORDERED.[13]

Lowe filed a motion for reconsideration. In its 5 September 2006 Resolution, the Court of Appeals denied Lowe's motion.

The 15 August 2002 Decision of the Labor Arbiter

The Labor Arbiter ruled that Lowe satisfied the requisites for a valid implementation of a redundancy program, namely: (1) there was notice to Mutuc and the Department of Labor and Employment (DOLE); (2) there was an offer to pay separation pay, which Mutuc refused to receive since she did not want to process her clearance; (3) that Lowe was motivated by good faith in declaring Mutuc's position redundant; and (4) that the criteria used by Lowe, which were seniority and efficiency, to determine which position was redundant, were fair and reasonable. The Labor Arbiter found self-serving Mutuc's allegation that she was terminated from service due to professional jealousy.

Since Mutuc was validly dismissed, the Labor Arbiter ruled that Mutuc was not entitled to backwages or reinstatement. However, in the absence of proof of payment of her proportionate 13th month pay for the period of 1 January to 28 September 2001, the Labor Arbiter ordered Lowe to pay Mutuc ₱74,416.67. The Labor Arbiter denied Mutuc's claim for moral damages and attorney's fees because there was no evidence of malice or bad faith on the part of Lowe in terminating her services.

Finally, the Labor Arbiter ruled that Gustilo and Castro could not be held liable for the monetary awards to Mutuc since they were merely acting in the performance of their duties and there was no showing that they acted deliberately or maliciously to evade any obligation to Mutuc.

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[13] *Rollo* (G.R. No. 174590), p. 46.

The 30 June 2003 Resolution of the NLRC

The NLRC set aside the Labor Arbiter's 15 August 2002 Decision and declared that Lowe acted in bad faith in terminating Mutuc's services. The NLRC added that Lowe failed to adopt any fair and reasonable criteria in declaring Mutuc's position redundant. The NLRC said it appeared that Mutuc was singled out and only her position was declared redundant. The NLRC also noted that the other employees under Mutuc's supervision were reassigned to other projects and that Lowe could have also reassigned Mutuc to these projects. The NLRC added that Lowe should have dismissed Malou Dulce, the Creative Director in-charge of the Unilever account, Lowe's client which greatly reduced its advertising budget. The NLRC also gave credence to Mutuc's claim that she was removed because of professional jealousy. The NLRC concluded that Lowe used redundancy as a guise to get rid of Mutuc even if there was no basis to declare her position redundant.

Since Mutuc was illegally dismissed and strained relations made reinstatement impossible, the NLRC ordered Lowe, Gustilo, and Castro to pay Mutuc backwages and separation pay. The NLRC also awarded Mutuc ₱10,000 as moral damages because her dismissal was tainted with bad faith.

The 23 January 2004 Decision of the Court of Appeals

The Court of Appeals agreed with the NLRC that Lowe failed to prove two requisites of a valid redundancy program, namely: (1) good faith in abolishing the redundant position, and (2) fair and reasonable criteria in ascertaining which positions were to be declared redundant. While the Court of Appeals declared that Lowe had convincingly presented the alleged losses in its revenues and massive cutbacks in client spending, the Court of Appeals concluded that Lowe "just included" Mutuc's position in the redundancy program and that she was being dismissed without cause. The Court of Appeals also said that Lowe should not have made Mutuc a regular employee if she was incompetent and if her performance was below par.

The 13 March 2006 Decision of the Court of Appeals

The Court of Appeals modified the NLRC's 30 June 2003 Resolution and ruled that Mutuc's backwages should be computed from the time she was unlawfully dismissed until the decision of the Court of Appeals becomes final. According to the Court of Appeals, illegally dismissed employees are entitled to full backwages, computed from the time their compensation was withheld from them up to the time of their actual reinstatement. If, as in this case, reinstatement is no longer possible, backwages shall be computed from the time of their illegal termination up to the finality of the decision.

The Issues

In G.R. No. 164813, Lowe raises the following issues:

I.

THE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH THE LAW WHEN IT RULED THAT THE PRIVATE RESPONDENT WAS ILLEGALLY DISMISSED FOR REDUNDANCY.

A. THE COURT OF APPEALS DISREGARDED THE EVIDENCE ON RECORD WHEN IT RULED THAT THE SELECTION OF THE PRIVATE RESPONDENT FOR REDUNDANCY WAS TAINTED WITH BAD FAITH.

B. THE COURT OF APPEALS DISREGARDED THE EVIDENCE ON RECORD WHEN IT RULED THAT THE SELECTION OF THE PRIVATE RESPONDENT WAS NOT DONE IN ACCORDANCE WITH ANY FAIR AND REASONABLE CRITERIA.

II.

THE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH THE LAW IN AFFIRMING THE RULING OF THE NLRC HOLDING THE INDIVIDUAL PETITIONERS RAUL CASTRO AND MARILES GUSTILO LIABLE TO THE PRIVATE RESPONDENT WHEN THE SAID CORPORATE OFFICERS

HAVE PERSONALITIES THAT ARE DISTINCT AND SEPARATE FROM LOWE, AND WHEN THERE IS EVEN NO EVIDENCE IN THE RECORDS SHOWING THAT THEY EFFECTED THE TERMINATION OF THE PRIVATE RESPONDENT WITH MALICE OR BAD FAITH.

III.

THE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH THE LAW IN AFFIRMING THE RULING OF THE NLRC HOLDING THE PETITIONERS LIABLE TO THE PRIVATE RESPONDENT (FOR) MORAL DAMAGES.[14]

In G.R. No. 174590, Lowe raises the sole issue:

THE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW AND THE APPLICABLE DECISIONS OF THE SUPREME COURT WHEN IT RULED THAT THE PRIVATE RESPONDENT IS ENTITLED TO BACKWAGES COMPUTED FROM THE TIME OF HER DISMISSAL UP TO THE TIME OF FINALITY OF ITS DECISION.[15]

The Court's Ruling

The petitions are meritorious.

As a general rule, a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to questions of law. However, this rule admits of exceptions,[16] such as in this case where the findings of the Labor Arbiter vary from the findings of the NLRC and the Court of Appeals.

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[14] *Rollo* (G.R. No. 164813), p. 23.

[15] *Rollo* (G.R. No. 174590), p. 18.

[16] *Endico v. Quantum Foods Distribution Center*, G.R. No. 161615, 30 January 2009; *Eastern Telecommunications Philippines, Inc. v. Diamse*, G.R. No. 169299, 16 June 2006, 491 SCRA 239.

Mutuc was validly dismissed by reason of redundancy

Redundancy, which is one of the authorized causes for the dismissal of an employee, is governed by Article 283 of the Labor Code which provides:

> Art. 283. *Closure of establishment and reduction of personnel*. — The employer may also terminate the employment of any employee due to installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the worker and the Department of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses and financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered as one (1) whole year.

Redundancy exists when the service of an employee is in excess of what is reasonably demanded by the actual requirements of the business.[17] A redundant position is one rendered superfluous by any number of factors, such as overhiring of workers, decreased volume of business, dropping of a particular product line previously manufactured by the company or phasing out of a service activity formerly undertaken by the enterprise.[18]

For a valid implementation of a redundancy program, the employer must comply with the following requisites: (1) written

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[17] *Wiltshire File Co., Inc. v. National Labor Relations Commission*, G.R. No. 82249, 7 February 1991, 193 SCRA 665; *Asian Alcohol Corporation v. National Labor Relations Commission*, 364 Phil. 912 (1999).

[18] *Id.*

notice served on both the employee and the DOLE at least one month prior to the intended date of termination; (2) payment of separation pay equivalent to at least one month pay or at least one month pay for every year of service, whichever is higher; (3) good faith in abolishing the redundant position; and (4) fair and reasonable criteria in ascertaining what positions are to be declared redundant.[19]

In this case, there is no dispute that, on 28 September 2001, Mutuc was duly advised of the termination of her services on the ground of redundancy.[20] On the same date, the DOLE was also served a copy of Mutuc's notice of termination.[21] Likewise, Lowe made available to Mutuc her separation pay equivalent to one month salary for every year of service and her proportionate 13th month pay upon completion of her clearance. However, Mutuc did not accomplish her clearance and instead filed a complaint for illegal dismissal.

The controversy lies on whether Lowe used any fair and reasonable criteria in declaring Mutuc's position redundant and whether there was bad faith in the abolition of her position.

Lowe insists that it used fair and reasonable criteria in declaring Mutuc's position redundant. Lowe argues that Mutuc was the most junior of all the executives of Lowe and that, based on its performance evaluation,[22] Mutuc was also the least efficient among the Creative Directors.

Mutuc maintains that she was dismissed from the service because of her "rift" with Castro. Mutuc claims that Lowe singled her out and "just included" her position in the redundancy program to cover up her illegal dismissal.

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[19] *Asian Alcohol Corporation v. National Labor Relations Commission*, *supra*.

[20] *Rollo* (G.R. No. 164813), p. 91.

[21] *Id.* at 92.

[22] *Id.* at 127-164.

The Court recognizes that a host of relevant factors comes into play in determining who among the employees should be retained or separated.[23] Among the accepted criteria in implementing a redundancy program are: (1) preferred status; (2) efficiency; and (3) seniority.[24]

We agree with the Labor Arbiter that Lowe employed fair and reasonable criteria in declaring Mutuc's position redundant. Mutuc, who was hired only on 23 June 2000, did not deny that she was the most junior of all the executives of Lowe. Mutuc also did not present contrary evidence to disprove that she was the least efficient and least competent among all the Creative Directors.

The determination of the continuing necessity of a particular officer or position in a business corporation is a management prerogative, and the courts will not interfere unless arbitrary or malicious action on the part of management is shown.[25] It is also within the exclusive prerogative of management to determine the qualification and fitness of an employee for hiring and firing, promotion or reassignment.[26] Indeed, an employer has no legal obligation to keep more employees than are necessary for the operation of its business.[27]

Besides, the fact that the functions of Mutuc were simply added to the duties of the other Creative Directors does not

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[23] *Coats Manila Bay, Inc. v. Ortega*, G.R. No. 172628, 13 February 2009.

[24] *AMA Computer College, Inc. v. Garcia*, G.R. No. 166703, 14 April 2008, 551 SCRA 254; *Asufrin, Jr. v. San Miguel Corporation*, 469 Phil. 237 (2004).

[25] *Wiltshire File Co., Inc. v. National Labor Relations Commission*, *supra* note 17, citing *International Harvester Macleod, Inc. v. Intermediate Appellate Court*, 233 Phil. 655 (1987).

[26] *Almodiel v. National Labor Relations Commission*, G.R. No. 100641, 14 June 1993, 223 SCRA 341.

[27] *Wiltshire File Co., Inc. v. National Labor Relations Commission*, *supra*.

affect the legitimacy of Lowe's right to abolish a position when done in the normal exercise of its prerogative to adopt sound business practices in the management of its affairs.[28]

Considering further that Mutuc held a position which was definitely managerial in character, Lowe had a broad latitude of discretion in abolishing her position. An employer has a much wider discretion in terminating the employment of managerial personnel as compared to rank and file employees.[29] The reason is that officers in such key positions perform not only functions which by nature require the employer's full trust and confidence but also functions that spell the success or failure of a business.[30]

Aside from Mutuc's self-serving statements, we find no evidence to support her conclusion that she was dismissed because of the "rift" with Castro. We agree with the Labor Arbiter that Lowe was motivated by good faith in declaring Mutuc's position redundant since it was acting pursuant to a business decision dictated by the prevailing economic environment.

Mutuc is entitled only to separation pay and proportionate 13th month pay

We affirm the award of the Labor Arbiter of separation pay equivalent to one month salary for every year of service amounting to ₱100,000. We also affirm the award of the Labor Arbiter of Mutuc's proportionate 13th month pay with modification that it be computed from the period of 1 January 2001 to 31 October 2001 amounting to ₱83,333.

The issue on the proper computation of Mutuc's backwages has been rendered moot by our decision that Mutuc was validly

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[28] *Almodiel v. National Labor Relations Commission*, *supra*.

[29] *Almodiel v. National Labor Relations Commission*, *supra*; *Wiltshire File Co., Inc. v. National Labor Relations Commission, supra*, citing *D.M. Consunji, Inc. v. National Labor Relations Commission*, 227 Phil. 192 (1986).

[30] *Almodiel v. National Labor Relations Commission*, *supra*.

dismissed. Backwages is a relief given to an illegally dismissed employee.[31] Since Mutuc's dismissal is for an authorized cause, she is not entitled to backwages.

We likewise delete the award of moral damages as there was no clear and convincing evidence showing that Lowe's termination of Mutuc's services was done in an arbitrary, capricious, or malicious manner.

Gustilo and Castro are not liable for the monetary awards

Gustilo and Castro argue that, in the absence any evidence of bad faith, they should not be made personally liable for the monetary awards to Mutuc.

It is settled that in the absence of malice, bad faith, or specific provision of law, a director or an officer of a corporation cannot be made personally liable for corporate liabilities.[32] In *Mcleod v. NLRC*,[33] we said:

> To reiterate, a corporation is a juridical entity with legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. The rule is that obligations incurred by the corporation, acting through its directors, officers, and employees are its sole liabilities.
>
> Personal liability of corporate directors, trustees or officers attaches only when (1) they assent to a patently unlawful act of the corporation, or **when they are guilty of bad faith or gross negligence in directing its affairs**, or when there is a conflict of interest resulting in damages to the corporation, its stockholders or other persons; (2) they consent to the issuance of watered down stocks or when, having knowledge of such issuance, do not forthwith file with the corporate secretary

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[31] *Smart Communications, Inc. v. Astorga*, G.R. No. 148132, 28 January 2008, 542 SCRA 434; *Filflex Industrial & Manufacturing Corporation v. National Labor Relations Commission*, 349 Phil. 913 (1998).

[32] *Carag v. National Labor Relations Commission*, G.R. No. 147590, 2 April 2007, 520 SCRA 28; *Land Bank of the Philippines v. Court of Appeals*, 416 Phil. 774 (2001); *Complex Electronics Employees Association v. National Labor Relations Commission*, 369 Phil. 666 (1999).

[33] G.R. No. 146667, 23 January 2007, 512 SCRA 222.

their written objection; (3) they agree to hold themselves personally and solidarily liable with the corporation; or (4) they are made by specific provision of law personally answerable for their corporate action.[34] (Emphasis supplied)

Gustilo and Castro, as corporate officers of Lowe, have personalities which are distinct and separate from that of Lowe's. Hence, in the absence of any evidence showing that they acted with malice or in bad faith in declaring Mutuc's position redundant, Gustilo and Castro are not personally liable for the monetary awards to Mutuc.

WHEREFORE, we *GRANT* petitioner Lowe, Inc.'s petition in G.R. No. 164813 and *AFFIRM* the 15 August 2002 Decision of the Labor Arbiter with the *MODIFICATION* that petitioner Lowe, Inc. is ordered to pay respondent Irma M. Mutuc ₱83,333.33 representing her proportionate 13th month pay for the period of 1 January 2001 to 31 October 2001. We *DENY* petitioner Lowe, Inc.'s petition in G.R. No. 174590 for being moot.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 166738. August 14, 2009]

ROWENA PADILLA-RUMBAUA, *petitioner, vs.* **EDWARD RUMBAUA,** *respondent.*

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[34] *Id.* at 249.

SYLLABUS

1. **CIVIL LAW; FAMILY CODE; DECLARATION OF NULLITY OF MARRIAGE; A.M. NO. 02-11-10-SC; REMOVED THE MANDATORY NATURE OF AN OFFICE OF THE SOLICITOR GENERAL'S CERTIFICATION AND MAY BE APPLIED RETROACTIVELY TO PENDING MATTERS.—** The amendment introduced under A.M. No. 02-11-10-SC is procedural or remedial in character; it does not create or remove any vested right, but only operates as a remedy in aid of or confirmation of already existing rights. The settled rule is that procedural laws may be given retroactive effect, as we held in *De Los Santos v. Vda. de Mangubat:* Procedural Laws do not come within the legal conception of a retroactive law, or the general rule against the retroactive operation of statues — they may be given retroactive effect on actions pending and undetermined at the time of their passage and this will not violate any right of a person who may feel that he is adversely affected, insomuch as there are no vested rights in rules of procedure. A.M. No. 02-11-10-SC, as a remedial measure, removed the mandatory nature of an OSG certification and may be applied retroactively to pending matters. In effect, the measure cures in any pending matter any procedural lapse on the certification prior to its promulgation. Our rulings in *Antonio v. Reyes* and *Navales v. Navales* have since confirmed and clarified that A.M. No. 02-11-10-SC has dispensed with the *Molina* guideline on the matter of certification, although Article 48 mandates the appearance of the prosecuting attorney or fiscal to ensure that no collusion between the parties would take place. Thus, what is important is the presence of the prosecutor in the case, not the remedial requirement that he be certified to be present. From this perspective, the petitioner's objection regarding the *Molina* guideline on certification lacks merit.

2. **REMEDIAL LAW; CIVIL PROCEDURE; NEW TRIAL; GROUNDS; BLUNDERS AND MISTAKES IN THE CONDUCT OF THE PROCEEDINGS IN THE TRIAL COURT AS A RESULT OF THE IGNORANCE, INEXPERIENCE OR INCOMPETENCE OF COUNSEL DO NOT QUALIFY AS A GROUND FOR NEW TRIAL.—** A remand of the case to the RTC for further proceedings amounts to the grant of a new trial that is not procedurally proper at this

stage. Section 1 of Rule 37 provides that an aggrieved party may move the trial court to set aside a judgment or final order already rendered and to grant a new trial *within the period for taking an appeal.* In addition, a motion for new trial may be filed only on the grounds of (1) fraud, accident, mistake or excusable negligence that could not have been guarded against by ordinary prudence, and by reason of which the aggrieved party's rights have probably been impaired; or (2) newly discovered evidence that, with reasonable diligence, the aggrieved party could not have discovered and produced at the trial, and that would probably alter the result if presented. In the present case, the petitioner cites the inadequacy of the evidence presented by her former counsel as basis for a remand. She did not, however, specify the inadequacy. That the RTC granted the petition for declaration of nullity *prima facie* shows that the petitioner's counsel had not been negligent in handling the case. Granting *arguendo* that the petitioner's counsel had been negligent, the negligence that would justify a new trial must be excusable, *i.e.* one that ordinary diligence and prudence could not have guarded against. The negligence that the petitioner apparently adverts to is that cited in *Uy v. First Metro Integrated Steel Corporation* where we explained: Blunders and mistakes in the conduct of the proceedings in the trial court as a result of the ignorance, inexperience or incompetence of counsel do not qualify as a ground for new trial. If such were to be admitted as valid reasons for re-opening cases, there would never be an end to litigation so long as a new counsel could be employed to allege and show that the prior counsel had not been sufficiently diligent, experienced or learned. This will put a premium on the willful and intentional commission of errors by counsel, with a view to securing new trials in the event of conviction, or an adverse decision, as in the instant case. Thus, we find no justifiable reason to grant the petitioner's requested remand.

3. **CIVIL LAW; FAMILY CODE; ARTICLE 36 THEREOF; PSYCHOLOGICAL INCAPACITY; REQUISITES.—** A petition for declaration of nullity of marriage is anchored on Article 36 of the Family Code which provides that "a marriage contracted by any party who, at the time of its celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization." In *Santos v. Court of Appeals*, the Court first declared that

psychological incapacity must be characterized by (a) gravity; (b) juridical antecedence; and (c) incurability. The defect should refer to "no less than a mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage." It must be confined to "the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage."

4. **ID.; ID.; ID.; ID.; ID.; MUST BE STRICTLY COMPLIED WITH; GRANT OF PETITION BASED ON PSYCHOLOGICAL INCAPACITY MUST BE CONFINED ONLY TO THE MOST SERIOUS CASES OF PERSONALITY DISORDERS CLEARLY DEMONSTRATIVE OF AN UTTER INSENSITIVITY OR INABILITY TO GIVE MEANING AND SIGNIFICANCE TO THE MARRIAGE.—** We laid down more definitive guidelines in the interpretation and application of Article 36 of the Family Code in *Republic v. Court of Appeals* where we said: xxx. These *Guidelines* incorporate the basic requirements we established in *Santos.* To reiterate, psychological incapacity must be characterized by: (a) gravity; (b) juridical antecedence; and (c) incurability. These requisites must be strictly complied with, as the grant of a petition for nullity of marriage based on psychological incapacity must be confined only to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage. Furthermore, since the Family Code does not define "psychological incapacity," fleshing out its terms is left to us to do so on a case-to-case basis through jurisprudence. We emphasized this approach in the recent case of *Ting v. Velez-Ting* when we explained: It was for this reason that we found it necessary to emphasize in *Ngo Te* that each case involving the application of Article 36 must be treated distinctly and judged not on the basis of *a priori* assumptions, predilections or generalizations but according to its own attendant facts. Courts should interpret the provision on a case-to-case basis, guided by experience, the findings of experts and researchers in psychological disciplines, and by decisions of church tribunals. In the present case and using the above standards and approach, we find the totality of the petitioner's evidence insufficient to

prove that the respondent is psychologically unfit to discharge the duties expected of him as a husband.

5. **ID.; ID.; ID.; ID.; IT IS NOT ENOUGH THAT THE RESPONDENT HAD DIFFICULTY IN COMPLYING WITH HIS MARITAL OBLIGATIONS OR WAS UNWILLING TO PERFORM THE SAME; PROOF OF A NATAL OR SUPERVENING DISABLING FACTOR MUST NECESSARILY BE SHOWN; CASE AT BAR.—** The petitioner's evidence merely showed that the respondent: (a) reneged on his promise to cohabit with her; (b) visited her occasionally from 1993 to 1997; (c) forgot her birthday in 1992, and did not send her greeting cards during special occasions; (d) represented himself as single in his visa application; (e) blamed her for the death of his mother; and (f) told her he was working in Davao when in fact he was cohabiting with another woman in 1997. These acts, in our view, do not rise to the level of the "psychological incapacity" that the law requires, and should be distinguished from the "difficulty," if not outright "refusal" or "neglect" in the performance of some marital obligations that characterize some marriages. In *Bier v. Bier*, we ruled that it was not enough that respondent, alleged to be psychologically incapacitated, had difficulty in complying with his marital obligations, or was unwilling to perform these obligations. Proof of a natal or supervening disabling factor – an adverse integral element in the respondent's personality structure that effectively incapacitated him from complying with his essential marital obligations – had to be shown and was not shown in this cited case. In the present case, the respondent's stubborn refusal to cohabit with the petitioner was doubtlessly irresponsible, but it was never proven to be rooted in some psychological illness. As the petitioner's testimony reveals, respondent *merely refused* to cohabit with her for fear of jeopardizing his application for a scholarship, and later due to his fear of antagonizing his family. The respondent's failure to greet the petitioner on her birthday and to send her cards during special occasions, as well as his acts of blaming petitioner for his mother's death and of representing himself as single in his visa application, could only at best amount to forgetfulness, insensitivity or emotional immaturity, not necessarily psychological incapacity. Likewise, the respondent's act of living with another woman four years into the marriage cannot automatically be equated with a psychological disorder, especially when no specific evidence

was shown that promiscuity was a trait already existing at the inception of marriage. In fact, petitioner herself admitted that respondent was caring and faithful when they were going steady and for a time after their marriage; their problems only came in later.

6. **ID.; ID.; ID.; ID.; IRRECONCILABLE DIFFERENCES, SEXUAL INFIDELITY OR PERVERSION, EMOTIONAL IMMATURITY AND IRRESPONSIBILITY DO NOT BY THEMSELVES WARRANT A FINDING OF PSYCHOLOGICAL INCAPACITY.—** To be sure, the respondent was far from perfect and had some character flaws. The presence of these imperfections, however, does not necessarily warrant a conclusion that he had a psychological malady at the time of the marriage that rendered him incapable of fulfilling his duties and obligations. To use the words of *Navales v. Navales*: Article 36 contemplates downright incapacity or inability to take cognizance of and to assume basic marital obligations. Mere "difficulty," "refusal" or "neglect" in the performance of marital obligations or "ill will" on the part of the spouse is different from "incapacity" rooted on some debilitating psychological condition or illness. **Indeed, irreconcilable differences, sexual infidelity or perversion, emotional immaturity and irresponsibility, and the like, do not by themselves warrant a finding of psychological incapacity under Article 36, as the same may only be due to a person's refusal or unwillingness to assume the essential obligations of marriage and not due to some psychological illness that is contemplated by said rule.**

7. **ID.; ID.; ID.; ID.; THE REPORT AND TESTIMONY OF THE PSYCHOLOGIST FAILED TO PROVE THAT A PSYCHOLOGICAL INCAPACITY EXISTED THAT PREVENTED THE RESPONDENT FROM COMPLYING WITH THE ESSENTIAL OBLIGATIONS OF MARRIAGE.—** Dr. Tayag, in her report, merely summarized the petitioner's narrations, and on this basis characterized the respondent to be a self-centered, egocentric, and unremorseful person who "believes that the world revolves around him"; and who "used love as a…deceptive tactic for exploiting the confidence [petitioner] extended towards him." Dr. Tayag then incorporated her own idea of "love"; made a generalization that respondent was a person who "lacked commitment, faithfulness, and remorse," and who engaged "in promiscuous acts that made

the petitioner look like a fool"; and finally concluded that the respondent's character traits reveal "him to suffer Narcissistic Personality Disorder with traces of Antisocial Personality Disorder declared to be grave and incurable." We find these observations and conclusions insufficiently in-depth and comprehensive to warrant the conclusion that a psychological incapacity existed that prevented the respondent from complying with the essential obligations of marriage. It failed to identify the root cause of the respondent's narcissistic personality disorder and to prove that it existed at the inception of the marriage. Neither did it explain the incapacitating nature of the alleged disorder, nor show that the respondent was really incapable of fulfilling his duties due to some incapacity of a psychological, not physical, nature. Thus, we cannot avoid but conclude that Dr. Tayag's conclusion in her Report – *i.e.*, that the respondent suffered "Narcissistic Personality Disorder with traces of Antisocial Personality Disorder declared to be grave and incurable" – is an unfounded statement, not a necessary inference from her previous characterization and portrayal of the respondent. While the various tests administered on the petitioner could have been used as a fair gauge to assess her own psychological condition, this same statement cannot be made with respect to the respondent's condition. To make conclusions and generalizations on the respondent's psychological condition based on the information fed by only one side is, to our mind, not different from admitting hearsay evidence as proof of the truthfulness of the content of such evidence.

8. **ID.; ID.; ID.; ID.; PERSONAL EXAMINATION OF THE PERSON SOUGHT TO BE DECLARED PSYCHOLOGICALLY INCAPACITATED BY THE PSYCHOLOGIST NOT A CONDITION *SINE QUA NON* TO ARRIVE AT SUCH DECLARATION; INDEPENDENT EVIDENCE MAY BE ADMITTED AND GIVEN CREDIT TO PROVE A PSYCHOLOGICAL DISORDER OF THE RESPONDENT.—** Her testimony was short on factual basis for her diagnosis because it was wholly based on what the petitioner related to her. As the doctor admitted to the prosecutor, she did not at all examine the respondent, only the petitioner. Neither the law nor jurisprudence requires, of course, that the person sought to be declared psychologically incapacitated should be personally examined by a physician or psychologist as a condition *sine qua non* to arrive at such declaration. If a

psychological disorder can be proven by independent means, no reason exists why such independent proof cannot be admitted and given credit. No such independent evidence, however, appears on record to have been gathered in this case, particularly about the respondent's early life and associations, and about events on or about the time of the marriage and immediately thereafter. Thus, the testimony and report appear to us to be no more than a diagnosis that revolves around the one-sided and meager facts that the petitioner related, and were all slanted to support the conclusion that a ground exists to justify the nullification of the marriage. We say this because only the baser qualities of the respondent's life were examined and given focus; none of these qualities were weighed and balanced with the better qualities, such as his focus on having a job, his determination to improve himself through studies, his care and attention in the first six months of the marriage, among others. The evidence fails to mention also what character and qualities the petitioner brought into her marriage, for example, why the respondent's family opposed the marriage and what events led the respondent to blame the petitioner for the death of his mother, if this allegation is at all correct. To be sure, these are important because not a few marriages have failed, not because of psychological incapacity of either or both of the spouses, but because of basic incompatibilities and marital developments that do not amount to psychological incapacity. The continued separation of the spouses likewise never appeared to have been factored in. Not a few married couples have likewise permanently separated simply because they have "fallen out of love," or have outgrown the attraction that drew them together in their younger years. Thus, on the whole, we do not blame the petitioner for the move to secure a remand of this case to the trial courts for the introduction of additional evidence; the petitioner's evidence in its present state is woefully insufficient to support the conclusion that the petitioner's marriage to the respondent should be nullified on the ground of the respondent's psychological incapacity.

9. ID.; ID.; ID.; ID.; THE PSYCHOLOGICAL ILLNESS THAT MUST AFFLICT A PARTY AT THE INCEPTION OF THE MARRIAGE SHOULD BE A MALADY SO GRAVE AND PERMANENT AS TO DEPRIVE THE PARTY OF HIS AWARENESS OF THE DUTIES AND RESPONSIBILITIES

OF THE MATRIMONIAL BOND HE WAS THEN ABOUT TO ASSUME.— The Court commiserates with the petitioner's marital predicament. The respondent may indeed be unwilling to discharge his marital obligations, particularly the obligation to live with one's spouse. Nonetheless, we cannot presume psychological defect from the mere fact that respondent refuses to comply with his marital duties. As we ruled in *Molina*, **it is not enough to prove that a spouse failed to meet his responsibility and duty as a married person; it is essential that he must be shown to be incapable of doing so due to some psychological illness. The psychological illness that must afflict a party at the inception of the marriage should be a malady so grave and permanent as to deprive the party of his or her awareness of the duties and responsibilities of the matrimonial bond he or she was then about to assume.**

APPEARANCES OF COUNSEL

Joselito A. Oliveros for petitioner.

D E C I S I O N

BRION, *J.*:

Petitioner Rowena Padilla-Rumbaua (*petitioner*) challenges, through her petition for review on *certiorari,*[1] the decision dated June 25, 2004[2] and the resolution dated January 18, 2005[3] of the Court of Appeals (*CA*) in **CA-G.R. CV No. 75095**. The challenged decision reversed the decision[4] of the Regional Trial Court (*RTC*) declaring the marriage of the petitioner and respondent Edward Rumbaua (*respondent*) null and void on

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

[2] Penned by Associate Justice Arcangelita M. Romilla-Lontok, and concurred in by Associate Justice Eloy R. Bello, Jr. and Associate Justice Danilo B. Pine (both retired); *rollo,* pp. 26-34.

[3] *Id.*, pp. 33-34.

[4] Penned by Hon. Gil L. Valdez, Presiding Judge, Branch 29, RTC, Boyombong, Nueva Vizcaya; records, pp. 1-4.

the ground of the latter's psychological incapacity. The assailed resolution, on the other hand, denied the petitioner's motion for reconsideration.

ANTECEDENT FACTS

The present petition traces its roots to the petitioner's complaint for the declaration of nullity of marriage against the respondent before the RTC, docketed as Civil Case No. 767. The petitioner alleged that the respondent was psychologically incapacitated to exercise the essential obligations of marriage as shown by the following circumstances: the respondent reneged on his promise to live with her under one roof after finding work; he failed to extend financial support to her; he blamed her for his mother's death; he represented himself as single in his transactions; and he pretended to be working in Davao, although he was cohabiting with another woman in Novaliches, Quezon City.

Summons was served on the respondent through substituted service, as personal service proved futile.[5] The RTC ordered the provincial prosecutor to investigate if collusion existed between the parties and to ensure that no fabrication or suppression of evidence would take place.[6] Prosecutor Melvin P. Tiongson's report negated the presence of collusion between the parties.[7]

The Republic of the Philippines (*Republic*), through the office of the Solicitor General (*OSG*), opposed the petition.[8] The OSG entered its appearance and deputized the Provincial Prosecutor of Nueva Vizcaya to assist in all hearings of the case.[9]

The petitioner presented testimonial and documentary evidence to substantiate her charges.

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[5] Sheriff's Return, *id.*, p. 9.

[6] *Id.*, p. 15.

[7] Resolution of August 11, 2000; *id.*, pp. 23-24.

[8] *Id.*, pp. 29-32.

[9] *Id.,* p. 33.

The petitioner related that she and the respondent were childhood neighbors in Dupax del Norte, Nueva Vizcaya. Sometime in 1987, they met again and became sweethearts but the respondent's family did not approve of their relationship. After graduation from college in 1991, the respondent promised to marry the petitioner as soon as he found a job. The job came in 1993, when the Philippine Air Lines (*PAL*) accepted the respondent as a computer engineer. The respondent proposed to the petitioner that they first have a "secret marriage" in order not to antagonize his parents. The petitioner agreed; they were married in Manila on February 23, 1993. The petitioner and the respondent, however, never lived together; the petitioner stayed with her sister in Fairview, Quezon City, while the respondent lived with his parents in Novaliches.

The petitioner and respondent saw each other every day during the first six months of their marriage. At that point, the respondent refused to live with the petitioner for fear that public knowledge of their marriage would affect his application for a PAL scholarship. Seven months into their marriage, the couple's daily meetings became occasional visits to the petitioner's house in Fairview; they would have sexual trysts in motels. Later that year, the respondent enrolled at FEATI University after he lost his employment with PAL.[10]

In 1994, the parties' respective families discovered their secret marriage. The respondent's mother tried to convince him to go to the United States, but he refused. To appease his mother, he continued living separately from the petitioner. The respondent forgot to greet the petitioner during her birthday in 1992 and likewise failed to send her greeting cards on special occasions. The respondent indicated as well in his visa application that he was single.

In April 1995, the respondent's mother died. The respondent blamed the petitioner, associating his mother's death to the pain that the discovery of his secret marriage brought. Pained

[10] TSN, November 23, 2000, pp. 1-13.

by the respondent's action, the petitioner severed her relationship with the respondent. They eventually reconciled through the help of the petitioner's father, although they still lived separately.

In 1997, the respondent informed the petitioner that he had found a job in Davao. A year later, the petitioner and her mother went to the respondent's house in Novaliches and found him cohabiting with one Cynthia Villanueva (*Cynthia*). When she confronted the respondent about it, he denied having an affair with Cynthia.[11] The petitioner apparently did not believe the respondents and moved to to Nueva Vizcaya to recover from the pain and anguish that her discovery brought.[12]

The petitioner disclosed during her cross-examination that communication between her and respondent had ceased. Aside from her oral testimony, the petitioner also presented a certified true copy of their marriage contract;[13] and the testimony, *curriculum vitae*,[14] and psychological report[15] of clinical psychologist Dr. Nedy Lorenzo Tayag (*Dr. Tayag*).

Dr. Tayag declared on the witness stand that she administered the following tests on the petitioner: a Revised Beta Examination; a Bender Visual Motor Gestalt Test; a Rorschach Psychodiagnostic Test; a Draw a Person Test; a Sach's Sentence Completion Test; and MMPI.[16] She thereafter prepared a psychological report with the following findings:

TEST RESULTS AND EVALUATION

Psychometric tests data reveal petitioner to operate in an average intellectual level. Logic and reasoning remained intact. She is seen to be the type of woman who adjusts fairly well into most situations

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[11] *Id.*, pp. 13-14.

[12] TSN, January 11, 1001, pp. 2-9.

[13] Records, p. 46.

[14] *Id.*, pp. 54-55.

[15] *Id.*, pp. 47-53.

[16] TSN, February 22, 2001, p. 6.

especially if it is within her interests. She is pictured to be faithful to her commitments and had reservations from negative criticisms such that she normally adheres to social norms, behavior-wise. Her age speaks of maturity, both intellectually and emotionally. Her one fault lies in her compliant attitude which makes her a subject for manipulation and deception such that of respondent. In all the years of their relationship, she opted to endure his irresponsibility largely because of the mere belief that someday things will be much better for them. But upon the advent of her husband's infidelity, she gradually lost hope as well as the sense of self-respect, that she has finally taken her tool to be assertive to the point of being aggressive and very cautious at times – so as to fight with the frustration and insecurity she had especially regarding her failed marriage.

Respondent in this case, is revealed to operate in a very self-centered manner as he believes that the world revolves around him. His egocentrism made it so easy for him to deceitfully use others for his own advancement with an extreme air of confidence and dominance. He would do actions without any remorse or guilt feelings towards others especially to that of petitioner.

REMARKS

Love happens to everyone. It is dubbed to be boundless as it goes beyond the expectations people tagged with it. In love, "age does matter." People love in order to be secure that one will share his/her life with another and that he/she will not die alone. Individuals who are in love had the power to let love grow or let love die – it is a choice one had to face when love is not the love he/she expected.

In the case presented by petitioner, it is very apparent that love really happened for her towards the young respondent – who used "love" as a disguise or deceptive tactic for exploiting the confidence she extended towards him. He made her believe that he is responsible, true, caring and thoughtful – only to reveal himself contrary to what was mentioned. He lacked the commitment, faithfulness, and remorse that he was able to engage himself to promiscuous acts that made petitioner look like an innocent fool. His character traits reveal him to suffer Narcissistic Personality Disorder — declared to be grave, severe and incurable.[17] [Emphasis supplied.]

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[17] Records, pp. 51-53.

The RTC Ruling

The RTC nullified the parties' marriage in its decision of April 19, 2002. The trial court saw merit in the testimonies of the petitioner and Dr. Tayag, and concluded as follows:

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Respondent was never solicitous of the welfare and wishes of his wife. Respondent imposed limited or block [*sic*] out communication with his wife, forgetting special occasions, like petitioner's birthdays and Valentine's Day; going out only on occasions despite their living separately and to go to a motel to have sexual intercourse.

It would appear that the foregoing narration are the attendant facts in this case which show the psychological incapacity of respondent, at the time of the celebration of the marriage of the parties, to enter into lawful marriage and to discharge his marital responsibilities (See Articles 68 to 71, Family Code). This incapacity is "declared grave, severe and incurable."

WHEREFORE, in view of the foregoing, the marriage between petitioner Rowena Padilla Rumbaua and respondent Edwin Rumbaua is hereby declared annulled.

SO ORDERED.[18]

The CA Decision

The Republic, through the OSG, appealed the RTC decision to the CA.[19] The CA decision of June 25, 2004 reversed and set aside the RTC decision, and denied the nullification of the parties' marriage.[20]

In its ruling, the CA observed that Dr. Tayag's psychiatric report did not mention the cause of the respondent's so-called "narcissistic personality disorder"; it did not discuss the respondent's childhood and thus failed to give the court an insight into the respondent's developmental years. Dr. Tayag

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[18] *Rollo*, pp. 40-41.

[19] Docketed as CA-G.R. CV No. 75095.

[20] Annex "A"; *id.*, pp. 26-29.

likewise failed to explain why she came to the conclusion that the respondent's incapacity was "deep-seated" and "incurable."

The CA held that Article 36 of the Family Code requires the incapacity to be psychological, although its manifestations may be physical. Moreover, the evidence presented must show that the incapacitated party was mentally or physically ill so that he or she could not have known the marital obligations assumed, knowing them, could not have assumed them. In other words, the illness must be shown as downright incapacity or inability, not a refusal, neglect, or difficulty to perform the essential obligations of marriage. In the present case, the petitioner suffered because the respondent adamantly refused to live with her because of his parents' objection to their marriage.

The petitioner moved to reconsider the decision, but the CA denied her motion in its resolution of January 18, 2005. [21]

The Petition and the Issues

The petitioner argues in the present petition that –

1. the OSG certification requirement under *Republic v. Molina*[22] (the *Molina* case) cannot be dispensed with because A.M. No. 02-11-10-SC, which relaxed the requirement, took effect only on March 15, 2003;

2. vacating the decision of the courts *a quo* and remanding the case to the RTC to recall her expert witness and cure the defects in her testimony, as well as to present additional evidence, would temper justice with mercy; and

3. Dr. Tayag's testimony in court cured the deficiencies in her psychiatric report.

The petitioner prays that the RTC's and the CA's decisions be reversed and set aside, and the case be remanded to the RTC for further proceedings; in the event we cannot grant this

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[21] Annex "A-1"; *id.*, pp. 33-34.

[22] G.R. No. 108763, February 13, 1997, 268 SCRA 198.

prayer, that the CA's decision be set aside and the RTC's decision be reinstated.

The Republic maintained in its comment that: (a) A.M. No. 02-11-10-SC was applicable although it took effect after the promulgation of *Molina*; (b) invalidating the trial court's decision and remanding the case for further proceedings were not proper; and (c) the petitioner failed to establish respondent's psychological incapacity.[23]

The parties simply reiterated their arguments in the memoranda they filed.

THE COURT'S RULING

We resolve to **deny** the petition for **lack of merit**.

A.M. No. 02-11-10-SC is applicable

In *Molina,* the Court emphasized the role of the prosecuting attorney or fiscal and the OSG; they are to appear as counsel for the State in proceedings for annulment and declaration of nullity of marriages:

> (8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. **No decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating therein his reasons for his agreement or opposition, as the case may be, to the petition.** The Solicitor General, along with the prosecuting attorney, shall submit to the court such certification within fifteen (15) days from the date the case is deemed submitted for resolution of the court. The Solicitor General shall discharge the equivalent function of the *defensor vinculi* contemplated under Canon 1095. [Emphasis supplied.]

A.M. No. 02-11-10-SC[24] — which this Court promulgated on March 15, 2003 and duly published — is geared towards

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[23] *Rollo*, pp. 104-124.

[24] The Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages.

the relaxation of the OSG certification that *Molina* required. Section 18 of this remedial regulation provides:

SEC. 18. *Memoranda*. – The court may require the parties and the public prosecutor, in consultation with the Office of the Solicitor General, to file their respective memoranda in support of their claims within fifteen days from the date the trial is terminated. It may require the Office of the Solicitor General to file its own memorandum if the case is of significant interest to the State. No other pleadings or papers may be submitted without leave of court. After the lapse of the period herein provided, the case will be considered submitted for decision, with or without the memoranda.

The petitioner argues that the RTC decision of April 19, 2002 should be vacated for prematurity, as it was rendered despite the absence of the required OSG certification specified in *Molina*. According to the petitioner, A.M. No. 02-11-10-SC, which took effect only on March 15, 2003, cannot overturn the requirements of *Molina* that was promulgated as early as February 13, 1997.

The petitioner's argument lacks merit.

The amendment introduced under A.M. No. 02-11-10-SC is procedural or remedial in character; it does not create or remove any vested right, but only operates as a remedy in aid of or confirmation of already existing rights. The settled rule is that procedural laws may be given retroactive effect,[25] as we held in *De Los Santos v. Vda. de Mangubat:*[26]

Procedural Laws do not come within the legal conception of a retroactive law, or the general rule against the retroactive operation of statues - they may be given retroactive effect on actions pending and undetermined at the time of their passage and this will not violate any right of a person who may feel that he is adversely affected, insomuch as there are no vested rights in rules of procedure.

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[25] See *Republic v. Court of Appeals*, G.R. No. 141530, March 18, 2003, 399 SCRA 277.

[26] G.R. No. 149508, October 10, 2007, 535 SCRA 411.

A.M. No. 02-11-10-SC, as a remedial measure, removed the mandatory nature of an OSG certification and may be applied retroactively to pending matters. In effect, the measure cures in any pending matter any procedural lapse on the certification prior to its promulgation. Our rulings in *Antonio v. Reyes*[27] and *Navales v. Navales*[28] have since confirmed and clarified that A.M. No. 02-11-10-SC has dispensed with the *Molina* guideline on the matter of certification, although Article 48 mandates the appearance of the prosecuting attorney or fiscal to ensure that no collusion between the parties would take place. Thus, what is important is the presence of the prosecutor in the case, not the remedial requirement that he be certified to be present. From this perspective, the petitioner's objection regarding the *Molina* guideline on certification lacks merit.

A Remand of the Case to the RTC is Improper

The petitioner maintains that vacating the lower courts' decisions and the remand of the case to the RTC for further reception of evidence are procedurally permissible. She argues that the inadequacy of her evidence during the trial was the fault of her former counsel, Atty. Richard Tabago, and asserts that remanding the case to the RTC would allow her to cure the evidentiary insufficiencies. She posits in this regard that while mistakes of counsel bind a party, the rule should be liberally construed in her favor to serve the ends of justice.

We do not find her arguments convincing.

A remand of the case to the RTC for further proceedings amounts to the grant of a new trial that is not procedurally proper at this stage. Section 1 of Rule 37 provides that an aggrieved party may move the trial court to set aside a judgment or final order already rendered and to grant a new trial *within the period for taking an appeal.* In addition, a motion for new trial may be filed only on the grounds of (1) fraud, accident, mistake or excusable negligence that could not have been guarded

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[27] G.R. No. 155800, March 10, 2006, 484 SCRA 353.

[28] G.R. No. 167523, June 27, 2008.

against by ordinary prudence, and by reason of which the aggrieved party's rights have probably been impaired; or (2) newly discovered evidence that, with reasonable diligence, the aggrieved party could not have discovered and produced at the trial, and that would probably alter the result if presented.

In the present case, the petitioner cites the inadequacy of the evidence presented by her former counsel as basis for a remand. She did not, however, specify the inadequacy. That the RTC granted the petition for declaration of nullity *prima facie* shows that the petitioner's counsel had not been negligent in handling the case. Granting *arguendo* that the petitioner's counsel had been negligent, the negligence that would justify a new trial must be excusable, *i.e.* one that ordinary diligence and prudence could not have guarded against. The negligence that the petitioner apparently adverts to is that cited in *Uy v. First Metro Integrated Steel Corporation* where we explained:[29]

> Blunders and mistakes in the conduct of the proceedings in the trial court as a result of the ignorance, inexperience or incompetence of counsel do not qualify as a ground for new trial. If such were to be admitted as valid reasons for re-opening cases, there would never be an end to litigation so long as a new counsel could be employed to allege and show that the prior counsel had not been sufficiently diligent, experienced or learned. This will put a premium on the willful and intentional commission of errors by counsel, with a view to securing new trials in the event of conviction, or an adverse decision, as in the instant case.

Thus, we find no justifiable reason to grant the petitioner's requested remand.

Petitioner failed to establish the respondent's psychological incapacity

A petition for declaration of nullity of marriage is anchored on Article 36 of the Family Code which provides that "a marriage contracted by any party who, at the time of its celebration, was psychologically incapacitated to comply with the essential

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[29] G.R. No. 167245, September 27, 2006, 503 SCRA 704.

marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization." In *Santos v. Court of Appeals*,[30] the Court first declared that psychological incapacity must be characterized by (a) gravity; (b) juridical antecedence; and (c) incurability. The defect should refer to "no less than a mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage." It must be confined to "the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage."

We laid down more definitive guidelines in the interpretation and application of Article 36 of the Family Code in *Republic v. Court of Appeals* where we said:

(1) The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. This is rooted in the fact that both our Constitution and our laws cherish the validity of marriage and unity of the family. Thus, our Constitution devotes an entire Article on the Family, recognizing it "as the foundation of the nation." It decrees marriage as legally "inviolable," thereby protecting it from dissolution at the whim of the parties. Both the family and marriage are to be "protected" by the state.

The Family Code echoes this constitutional edict on marriage and the family and emphasizes their permanence, inviolability and solidarity.

(2) The root cause of the psychological incapacity must be (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision. Article 36 of the Family Code requires that the incapacity must be psychological — not physical, although its manifestations and/or symptoms may be physical. The evidence must convince the court that the parties, or one of them, was mentally or psychically ill to such an extent that the person could not have known the obligations

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[30] G.R. No. 112019, January 4, 1995, 240 SCRA 20.

he was assuming, or knowing them, could not have given valid assumption thereof. Although no example of such incapacity need be given here so as not to limit the application of the provision under the principle of *ejusdem generis*, nevertheless such root cause must be identified as a psychological illness and its incapacitating nature fully explained. Expert evidence may be given by qualified psychiatrists and clinical psychologists.

(3) The incapacity must be proven to be existing at "the time of the celebration" of the marriage. The evidence must show that the illness was existing when the parties exchanged their "I do's." The manifestation of the illness need not be perceivable at such time, but the illness itself must have attached at such moment, or prior thereto.

(4) Such incapacity must also be shown to be medically or clinically permanent or incurable. Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. Furthermore, such incapacity must be relevant to the assumption of marriage obligations, not necessarily to those not related to marriage, like the exercise of a profession or employment in a job. x x x

(5) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage. Thus, "mild characteriological peculiarities, mood changes, occasional emotional outbursts" cannot be accepted as root causes. The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.

(6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligation(s) must also be stated in the petition, proven by evidence and included in the text of the decision.

(7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts…

(8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. No decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating therein his reasons for his agreement or opposition, as the case may be, to the petition. The Solicitor General, along with the prosecuting attorney, shall submit to the court such certification within fifteen (15) days from the date the case is deemed submitted for resolution of the court. The Solicitor General shall discharge the equivalent function of the *defensor vinculi* contemplated under Canon 1095.

These *Guidelines* incorporate the basic requirements we established in *Santos.* To reiterate, psychological incapacity must be characterized by: (a) gravity; (b) juridical antecedence; and (c) incurability.[31] These requisites must be strictly complied with, as the grant of a petition for nullity of marriage based on psychological incapacity must be confined only to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage. Furthermore, since the Family Code does not define "psychological incapacity," fleshing out its terms is left to us to do so on a case-to-case basis through jurisprudence.[32] We emphasized this approach in the recent case of *Ting v. Velez-Ting*[33] when we explained:

It was for this reason that we found it necessary to emphasize in *Ngo Te* that each case involving the application of Article 36 must be treated distinctly and judged not on the basis of *a priori* assumptions, predilections or generalizations but according to its own attendant facts. Courts should interpret the provision on a case-to-case basis, guided by experience, the findings of experts and researchers in psychological disciplines, and by decisions of church tribunals.

In the present case and using the above standards and approach, we find the totality of the petitioner's evidence insufficient to

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[31] *Paras v. Paras*, G.R. No. 147824, August 2, 2007, 529 SCRA 81.

[32] *Bier v. Bier*, G.R. No. 173294, February 27, 2008, 547 SCRA 123.

[33] G.R. No. 166562, March 31, 2009.

prove that the respondent is psychologically unfit to discharge the duties expected of him as a husband.

a. Petitioner's testimony did not prove the root cause, gravity and incurability of respondent's condition

The petitioner's evidence merely showed that the respondent: (a) reneged on his promise to cohabit with her; (b) visited her occasionally from 1993 to 1997; (c) forgot her birthday in 1992, and did not send her greeting cards during special occasions; (d) represented himself as single in his visa application; (e) blamed her for the death of his mother; and (f) told her he was working in Davao when in fact he was cohabiting with another woman in 1997.

These acts, in our view, do not rise to the level of the "psychological incapacity" that the law requires, and should be distinguished from the "difficulty," if not outright "refusal" or "neglect" in the performance of some marital obligations that characterize some marriages. In *Bier v. Bier*,[34] we ruled that it was not enough that respondent, alleged to be psychologically incapacitated, had difficulty in complying with his marital obligations, or was unwilling to perform these obligations. Proof of a natal or supervening disabling factor – an adverse integral element in the respondent's personality structure that effectively incapacitated him from complying with his essential marital obligations – had to be shown and was not shown in this cited case.

In the present case, the respondent's stubborn refusal to cohabit with the petitioner was doubtlessly irresponsible, but it was never proven to be rooted in some psychological illness. As the petitioner's testimony reveals, respondent *merely refused* to cohabit with her for fear of jeopardizing his application for a scholarship, and later due to his fear of antagonizing his family. The respondent's failure to greet the petitioner on her birthday and to send her cards during special occasions, as well as his acts of blaming petitioner for his mother's death and of

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[34] *Supra* note 33.

representing himself as single in his visa application, could only at best amount to forgetfulness, insensitivity or emotional immaturity, not necessarily psychological incapacity. Likewise, the respondent's act of living with another woman four years into the marriage cannot automatically be equated with a psychological disorder, especially when no specific evidence was shown that promiscuity was a trait already existing at the inception of marriage. In fact, petitioner herself admitted that respondent was caring and faithful when they were going steady and for a time after their marriage; their problems only came in later.

To be sure, the respondent was far from perfect and had some character flaws. The presence of these imperfections, however, does not necessarily warrant a conclusion that he had a psychological malady at the time of the marriage that rendered him incapable of fulfilling his duties and obligations. To use the words of *Navales v. Navales*:[35]

> Article 36 contemplates downright incapacity or inability to take cognizance of and to assume basic marital obligations. Mere "difficulty," "refusal" or "neglect" in the performance of marital obligations or "ill will" on the part of the spouse is different from "incapacity" rooted on some debilitating psychological condition or illness. **Indeed, irreconcilable differences, sexual infidelity or perversion, emotional immaturity and irresponsibility, and the like, do not by themselves warrant a finding of psychological incapacity under Article 36, as the same may only be due to a person's refusal or unwillingness to assume the essential obligations of marriage and not due to some psychological illness that is contemplated by said rule.**

b. Dr. Tayag's psychological report and court testimony

We cannot help but note that Dr. Tayag's conclusions about the respondent's psychological incapacity were based on the information fed to her by only one side – the petitioner – whose bias in favor of her cause cannot be doubted. While this

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[35] *Supra* note 29.

circumstance alone does not disqualify the psychologist for reasons of bias, her report, testimony and conclusions deserve the application of a more rigid and stringent set of standards in the manner we discussed above.[36] For, effectively, Dr. Tayag only diagnosed the respondent from the prism of a third party account; she did not actually hear, see and evaluate the respondent and how he would have reacted and responded to the doctor's probes.

Dr. Tayag, in her report, merely summarized the petitioner's narrations, and on this basis characterized the respondent to be a self-centered, egocentric, and unremorseful person who "believes that the world revolves around him"; and who "used love as a…deceptive tactic for exploiting the confidence [petitioner] extended towards him." Dr. Tayag then incorporated her own idea of "love"; made a generalization that respondent was a person who "lacked commitment, faithfulness, and remorse," and who engaged "in promiscuous acts that made the petitioner look like a fool"; and finally concluded that the respondent's character traits reveal "him to suffer Narcissistic Personality Disorder with traces of Antisocial Personality Disorder declared to be grave and incurable."

We find these observations and conclusions insufficiently in-depth and comprehensive to warrant the conclusion that a psychological incapacity existed that prevented the respondent from complying with the essential obligations of marriage. It failed to identify the root cause of the respondent's narcissistic personality disorder and to prove that it existed at the inception of the marriage. Neither did it explain the incapacitating nature of the alleged disorder, nor show that the respondent was really incapable of fulfilling his duties due to some incapacity of a psychological, not physical, nature. Thus, we cannot avoid but conclude that Dr. Tayag's conclusion in her Report – *i.e.*, that the respondent suffered "Narcissistic Personality Disorder with traces of Antisocial Personality Disorder declared to be grave and incurable" – is an unfounded statement, not a necessary

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[36] See *So v. Valera*, G.R. No.150677, June 5, 2009.

inference from her previous characterization and portrayal of the respondent. While the various tests administered on the petitioner could have been used as a fair gauge to assess her own psychological condition, this same statement cannot be made with respect to the respondent's condition. To make conclusions and generalizations on the respondent's psychological condition based on the information fed by only one side is, to our mind, not different from admitting hearsay evidence as proof of the truthfulness of the content of such evidence.

Petitioner nonetheless contends that Dr. Tayag's subsequent testimony in court cured whatever deficiencies attended her psychological report.

We do not share this view.

A careful reading of Dr. Tayag's testimony reveals that she failed to establish the fact that at the time the parties were married, respondent was already suffering from a psychological defect that deprived him of the ability to assume the essential duties and responsibilities of marriage. Neither did she adequately explain how she came to the conclusion that respondent's condition was grave and incurable. To directly quote from the records:

ATTY. RICHARD TABAGO:

Q: I would like to call your attention to the Report already marked as Exh. "E-7", there is a statement to the effect that his character traits begin to suffer narcissistic personality disorder with traces of antisocial personality disorder. What do you mean? Can you please explain in layman's word, Madam Witness?

DR. NEDY LORENZO TAYAG:

A: Actually, in a layman's term, narcissistic personality disorder cannot accept that there is something wrong with his own behavioral manifestation. [*sic*] They feel that they can rule the world; they are eccentric; they are exemplary, demanding financial and emotional support, and this is clearly manifested by the fact that respondent abused and used petitioner's love. Along the line, a narcissistic person cannot give empathy;

cannot give love simply because they love themselves more than anybody else; and thirdly, narcissistic person cannot support his own personal need and gratification without the help of others and this is where the petitioner set in.

Q: Can you please describe the personal [*sic*] disorder?

A: Clinically, considering that label, the respondent behavioral manifestation under personality disorder [*sic*] this is already considered grave, serious, and treatment will be impossible [*sic*]. As I say this, a kind of developmental disorder wherein it all started during the early formative years and brought about by one familiar relationship the way he was reared and cared by the family. Environmental exposure is also part and parcel of the child disorder. [*sic*]

Q: You mean to say, from the formative [years] up to the present?

A: Actually, the respondent behavioral manner was [present] long before he entered marriage. [Un]fortunately, on the part of the petitioner, she never realized that such behavioral manifestation of the respondent connotes pathology. [*sic*]

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Q: So in the representation of the petitioner that the respondent is now lying [*sic*] with somebody else, how will you describe the character of this respondent who is living with somebody else?

A: This is where the antisocial personality trait of the respondent [*sic*] because an antisocial person is one who indulge in philandering activities, who do not have any feeling of guilt at the expense of another person, and this [is] again a buy-product of deep seated psychological incapacity.

Q: And this psychological incapacity based on this particular deep seated [*sic*], how would you describe the psychological incapacity? [*sic*]

A: As I said there is a deep seated psychological dilemma, so I would say incurable in nature and at this time and again [*sic*] the psychological pathology of the respondent. One plays a major factor of not being able to give meaning to a relationship in terms of sincerity and endurance.

Q: And if this psychological disorder exists before the marriage of the respondent and the petitioner, Madam Witness?

A: Clinically, any disorder are usually rooted from the early formative years and so if it takes enough that such psychological incapacity of respondent already existed long before he entered marriage, because if you analyze how he was reared by her parents particularly by the mother, there is already an unhealthy symbiosis developed between the two, and this creates a major emotional havoc when he reached adult age.

Q: How about the gravity?

A: This is already grave simply because from the very start respondent never had an inkling that his behavioral manifestation connotes pathology and second ground [*sic*], respondent will never admit again that such behavior of his connotes again pathology simply because the disorder of the respondent is not detrimental to himself but, more often than not, it is detrimental to other party involved.

x x x x x x x x x

PROSECUTOR MELVIN TIONGSON:

Q: You were not able to personally examine the respondent here?

DR. NEDY TAYAG:

A: Efforts were made by the psychologist but unfortunately, the respondent never appeared at my clinic.

Q: On the basis of those examinations conducted with the petitioning wife to annul their marriage with her husband in general, what can you say about the respondent?

A: That from the very start respondent has no emotional intent to give meaning to their relationship. If you analyze their marital relationship they never lived under one room. From the very start of the [marriage], the respondent to have petitioner to engage in secret marriage until that time their family knew of their marriage [*sic*]. Respondent completely refused, completely relinquished his marital obligation to the petitioner.

x x x x x x x x x

COURT:

Q: Because you have interviewed or you have questioned the petitioner, can you really enumerate the specific traits of the respondent?

DR. NEDY TAYAG:

A: One is the happy-go-lucky attitude of the respondent and the dependent attitude of the respondent.

Q: Even if he is already eligible for employment?

A: He remains to be at the mercy of his mother. He is a happy-go-lucky simply because he never had a set of responsibility. I think that he finished his education but he never had a stable job because he completely relied on the support of his mother.

Q: You give a more thorough interview so I am asking you something specific?

A: The happy-go-lucky attitude; the overly dependent attitude on the part of the mother merely because respondent happened to be the only son. I said that there is a unhealthy symbiosis relationship [*sic*] developed between the son and the mother simply because the mother always pampered completely, pampered to the point that respondent failed to develop his own sense of assertion or responsibility particularly during that stage and there is also presence of the simple lying act particularly his responsibility in terms of handling emotional imbalance and it is clearly manifested by the fact that respondent refused to build a home together with the petitioner when in fact they are legally married. Thirdly, respondent never felt or completely ignored the feelings of the petitioner; he never felt guilty hurting the petitioner because on the part of the petitioner, knowing that respondent indulge with another woman it is very, very traumatic on her part yet respondent never had the guts to feel guilty or to atone said act he committed in their relationship, and clinically this falls under antisocial personality.[37]

In terms of incurability, Dr. Tayag's answer was very vague and inconclusive, thus:

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[37] TSN, February 22, 2001, pp. 8-17.

x x x   x x x   x x x

ATTY. RICHARD TABAGO

Q: Can this personally be cured, madam witness?

DR. NEDY TAYAG

A: Clinically, if persons suffering from personality disorder curable, up to this very moment, no scientific could be upheld to alleviate their kind of personality disorder; Secondly, again respondent or other person suffering from any kind of disorder particularly narcissistic personality will never admit that they are suffering from this kind of disorder, and then again **curability will always be a question.** [*sic*][38]

This testimony shows that while Dr. Tayag initially described the general characteristics of a person suffering from a narcissistic personality disorder, she did not really show how and to what extent the respondent exhibited these traits. She mentioned the buzz words that jurisprudence requires for the nullity of a marriage – namely, gravity, incurability, existence at the time of the marriage, psychological incapacity relating to marriage – and in her own limited way, related these to the medical condition she generally described. The testimony, together with her report, however, suffers from very basic flaws.

First, what she medically described was not related or linked to the respondent's exact condition except in a very general way. In short, her testimony and report were rich in generalities but disastrously short on particulars, most notably on how the respondent can be said to be suffering from narcissistic personality disorder; why and to what extent the disorder is grave and incurable; how and why it was already present at the time of the marriage; and the effects of the disorder on the respondent's awareness of and his capability to undertake the duties and responsibilities of marriage. All these are critical to the success of the petitioner's case.

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[38] TSN, February 22, 2001, p. 17.

Second, her testimony was short on factual basis for her diagnosis because it was wholly based on what the petitioner related to her. As the doctor admitted to the prosecutor, she did not at all examine the respondent, only the petitioner. Neither the law nor jurisprudence requires, of course, that the person sought to be declared psychologically incapacitated should be personally examined by a physician or psychologist as a condition *sine qua non* to arrive at such declaration.[39] If a psychological disorder can be proven by independent means, no reason exists why such independent proof cannot be admitted and given credit.[40] No such independent evidence, however, appears on record to have been gathered in this case, particularly about the respondent's early life and associations, and about events on or about the time of the marriage and immediately thereafter. Thus, the testimony and report appear to us to be no more than a diagnosis that revolves around the one-sided and meager facts that the petitioner related, and were all slanted to support the conclusion that a ground exists to justify the nullification of the marriage. We say this because only the baser qualities of the respondent's life were examined and given focus; none of these qualities were weighed and balanced with the better qualities, such as his focus on having a job, his determination to improve himself through studies, his care and attention in the first six months of the marriage, among others. The evidence fails to mention also what character and qualities the petitioner brought into her marriage, for example, why the respondent's family opposed the marriage and what events led the respondent to blame the petitioner for the death of his mother, if this allegation is at all correct. To be sure, these are important because not a few marriages have failed, not because of psychological incapacity of either or both of the spouses, but because of basic incompatibilities and marital developments that do not

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[39] See *Marcos v. Marcos,* G.R. No. 136490, October 19, 2000, 343 SCRA 755.

[40] See *Republic v. Tanyag-San Jose*, G.R. No. 168328, February 28, 2007, 517 SCRA 123.

amount to psychological incapacity. The continued separation of the spouses likewise never appeared to have been factored in. Not a few married couples have likewise permanently separated simply because they have "fallen out of love," or have outgrown the attraction that drew them together in their younger years.

Thus, on the whole, we do not blame the petitioner for the move to secure a remand of this case to the trial courts for the introduction of additional evidence; the petitioner's evidence in its present state is woefully insufficient to support the conclusion that the petitioner's marriage to the respondent should be nullified on the ground of the respondent's psychological incapacity.

The Court commiserates with the petitioner's marital predicament. The respondent may indeed be unwilling to discharge his marital obligations, particularly the obligation to live with one's spouse. Nonetheless, we cannot presume psychological defect from the mere fact that respondent refuses to comply with his marital duties. As we ruled in *Molina*, **it is not enough to prove that a spouse failed to meet his responsibility and duty as a married person; it is essential that he must be shown to be incapable of doing so due to some psychological illness. The psychological illness that must afflict a party at the inception of the marriage should be a malady so grave and permanent as to deprive the party of his or her awareness of the duties and responsibilities of the matrimonial bond he or she was then about to assume**.[41]

WHEREFORE, in view of these considerations, we *DENY* the petition and *AFFIRM* the decision and resolution of the Court of Appeals dated June 25, 2004 and January 18, 2005, respectively, in CA-G.R. CV No. 75095.

SO ORDERED.

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[41] *Supra* note 34.

Carpio Morales (Acting Chairperson),[*] *Carpio,*[**] *Chico-Nazario,*[***] and *Leonardo-de Castro,*[****] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 166879. August 14, 2009]

A. SORIANO AVIATION, *petitioner, vs.* **EMPLOYEES ASSOCIATION OF A. SORIANO AVIATION, JULIUS S. VARGAS IN HIS CAPACITY AS UNION PRESIDENT, REYNALDO ESPERO, JOSEFINO ESPINO, GALMIER BALISBIS, GERARDO BUNGABONG, LAURENTE BAYLON, JEFFREY NERI, ARTURO INES, REYNALDO BERRY, RODOLFO RAMOS, OSWALD ESPION, ALBERT AGUILA, RAYMOND BARCO, REYNANTE AMIMITA, SONNY BAWASANTA, MAR NIMUAN and RAMIR LICUANAN,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; STRIKE; A "NO STRIKE-NO LOCKOUT" PROVISION IN THE COLLECTIVE BARGAINING AGREEMENT

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[*] Designated Acting Chairperson of the Second Division effective August 1, 2009 per Special Order No. 670 dated July 28, 2009.

[**] Designated additional Member of the Second Division effective August 1, 2009 per Special Order No. 671 dated July 28, 2009.

[***] Designated additional Member of the Second Division effective June 3, 2009 per Special Order No. 658 dated June 3, 2009.

[****] Designated additional Member of the Second Division effective May 11, 2009 per Special Order No. 635 dated May 7, 2009.

MAY BE INVOKED BY THE EMPLOYER ONLY WHEN THE STRIKE IS ECONOMIC IN NATURE BUT NOT WHERE THE SAME IS GROUNDED ON UNFAIR LABOR PRACTICE.— The Court notes that, as found by the Labor Arbiter in NLRC Case No. 07-05409-97, the first strike or the mechanics' refusal to work on 3 consecutive holidays was prompted by their disagreement with the management-imposed new work schedule. Having been grounded on a non-strikeable issue and without complying with the procedural requirements, then the same is a violation of the "No Strike-No Lockout Policy" in the existing CBA. Respecting the second strike, where the Union complied with procedural requirements, the same was not a violation of the "No Strike- No Lockout" provisions, as a "No Strike-No Lockout" provision in the Collective Bargaining Agreement (CBA) is a valid stipulation but may be invoked only by employer when the strike is economic in nature or one which is conducted to force wage or other concessions from the employer that are not mandated to be granted by the law. It would be inapplicable to prevent a strike which is grounded on unfair labor practice. In the present case, the Union believed in good faith that petitioner committed unfair labor practice when it went on strike on account of the 30-day suspension meted to the striking mechanics, dismissal of a union officer and perceived union-busting, among others. As held in *Malayang Samahan ng mga Manggagawa sa M. Greenfield v. Ramos*: On the submission that the strike was illegal for being grounded on a non-strikeable issue, that is, the intra-union conflict between the federation and the local union, it bears reiterating that **when respondent company dismissed the union officers, the issue was transformed into a termination dispute and brought respondent company into the picture**. Petitioners believed in good faith that in dismissing them upon request by the federation, respondent company was guilty of unfair labor practice in that it violated the petitioner's right to self-organization. The strike was staged to protest respondent company's act of dismissing the union officers. **Even if the allegations of unfair labor practice are subsequently found out to be untrue, the presumption of legality of the strike prevails**. Be that as it may, the Court holds that the second strike became invalid due to the commission of illegal action in its course.

2. **ID.; ID.; ID.; THE EXERCISE OF THE RIGHT TO STRIKE IS NOT ABSOLUTE; EVEN IF THE PURPOSE OF STRIKE**

IS VALID, THE SAME MAY STILL BE HELD ILLEGAL WHERE THE MEANS EMPLOYED ARE ILLEGAL.— It is hornbook principle that the exercise of the right of private sector employees to strike is not absolute. Thus Section 3 of Article XIII of the Constitution provides: SECTION 3. x x x It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations and peaceful concerted activities, including the **right to strike in accordance with law**. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law. Indeed, even if the purpose of a strike is valid, the strike may still be held illegal where the *means* employed are illegal. Thus, the employment of violence, intimidation, restraint or coercion in carrying out concerted activities which are injurious to the right to property renders a strike illegal. And so is picketing or the obstruction to the free use of property or the comfortable enjoyment of life or property, when accompanied by intimidation, threats, violence, and coercion as to constitute nuisance.

3. **ID.; ID.; ID.; CONSIDERED ILLEGAL WHERE ACTS OF VIOLENCE WERE COMMITTED DURING THE STRIKE; ACTS OF VIOLENCE NEED NOT BE CONTINUOUS OR FOR THE ENTIRE DURATION OF THE STRIKE.—** It cannot be gainsaid that by the above-enumerated undisputed acts, the Union committed illegal acts during the strike. The Union members' repeated name-calling, harassment and threats of bodily harm directed against company officers and non-striking employees and, *more significantly*, the putting up of placards, banners and streamers with vulgar statements imputing criminal negligence to the company, which put to doubt reliability of its operations, come within the purview of illegal acts under Art. 264 and jurisprudence. That the alleged acts of violence were committed in nine non-consecutive days during the almost eight months that the strike was on-going does not render the violence less pervasive or widespread to be excusable. Nowhere in Art. 264 does it require that violence must be continuous or that it should be for the entire duration of the strike.

4. **ID.; ID.; ID.; IT IS ABSURD TO EXPECT AN EMPLOYER TO FILE A COMPLAINT AT THE FIRST INSTANCE THAT AN ACT OF VIOLENCE IS ALLEGED TO BE COMMITTED.—**

The appellate court took against petitioner its filing of its complaint to have the strike declared illegal almost eight months from the time it commenced. Art. 264 does not, however, state for purposes of having a strike declared as illegal that the employer should immediately report the same. It only lists what acts are prohibited. It is thus absurd to expect an employer to file a complaint at the first instance that an act of violence is alleged to be committed, especially, as in the present case, when an earlier complaint to have the refusal of the individual respondents to work overtime declared as an illegal strike was still pending — an issue resolved in its favor only on September 25, 1998.

5. **ID.; ID.; ID.; RIGHT OF THE UNION TO STRIKE MUST BE USED SPARINGLY AND WITHIN THE BOUNDS OF LAW IN THE INTEREST OF INDUSTRIAL PEACE AND PUBLIC WELFARE.—** The records show that the Union went on strike on October 22, 1997, and the first reported harassment incident occurred on October 29, 1997, while the last occurred in January, 1998. Those instances may have been sporadic, but as found by the Labor Arbiter and the NLRC, the display of placards, streamers and banners even up to the time the appeal was being resolved by the NLRC works against the Union's favor. The acts complained of including the display of placards and banners imputing criminal negligence on the part of the company and its officers, apparently with the end in view of intimidating the company's clientele, are, given the nature of its business, that serious as to make the "second strike" illegal. Specifically with respect to the putting up of those banners and placards, coupled with the name-calling and harassment, the same indicates that it was resorted to to coerce the resolution of the dispute – the very evil which Art. 264 seeks to prevent. While the strike is the most preeminent economic weapon of workers to force management to agree to an equitable sharing of the joint product of labor and capital, it exerts some disquieting effects not only on the relationship between labor and management, but also on the general peace and progress of society and economic well-being of the State. If such weapon has to be used at all, it must be used sparingly and within the bounds of law in the interest of industrial peace and public welfare.

6. **ID.; ID.; ID.; EFFECTS OF ILLEGAL STRIKE ON THE UNION OFFICERS AND WORKERS WHO PARTICIPATED THEREIN.—** As to the issue of loss of employment of those

who participated in the illegal strike, *Sukhothai* instructs: In the determination of the liabilities of the individual respondents, the applicable provision is Article 264(a) of the Labor Code:Art. 264. *Prohibited Activities* – (a) x x x **Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during an illegal strike may be declared to have lost his employment status: Provided, That mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment**, even if a replacement had been hired by the employer during such lawful strike. x x x In *Samahang Manggagawa sa Sulpicio Lines, Inc.-NAFLU v. Sulpicio Lines, Inc.,* this Court explained that the effects of such illegal strikes, outlined in Article 264, make a distinction between workers and union officers who participate therein: an ordinary striking worker cannot be terminated for mere participation in an illegal strike. **There must be proof that he or she committed illegal acts during a strike. A union officer, on the other hand, may be terminated from work when he knowingly participates in an illegal strike, and like other workers, when he commits an illegal act during an illegal strike. In all cases, the striker must be identified**. But proof beyond reasonable doubt is not required. Substantial evidence available under the attendant circumstances, which may justify the imposition of the penalty of dismissal, may suffice.

7. **ID.; ID.; ID.; LIABILITIES OF THOSE WHO PARTICIPATED IN THE ILLEGAL STRIKE SHALL BE DETERMINED ON AN INDIVIDUAL BASIS; REMAND OF THE CASE TO THE NLRC, WARRANTED.—** The liability for prohibited acts has thus to be determined on an individual basis. A perusal of the Labor Arbiter's Decision, which was affirmed *in toto* by the NLRC, shows that on account of the staging of the illegal strike, individual respondents were all deemed to have lost their employment, without distinction as to their respective participation. Of the participants in the illegal strike, whether they knowingly participated in the illegal strike in the case of *union officers* or knowingly participated in the commission of violent acts during the illegal strike in the case of *union members*, the records do not indicate. While respondent Julius Vargas was identified to be a union officer, there is no indication if he knowingly participated in the illegal strike. The Court not being a trier of facts, the remand of the

case to the NLRC is in order only for the purpose of determining the status in the Union of individual respondents and their respective liability, if any.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala and Cruz for petitioner.
Federation of Free Workers (FFW) Legal Worker for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

On May 22, 1997, A. Soriano Aviation (petitioner or the company) which is engaged in providing transportation of guests to and from *Amanpulo* and *El Nido* resorts in Palawan, and respondent Employees Association of A. Soriano Aviation (the Union), the duly-certified exclusive bargaining agent of the rank and file employees of petitioner, entered into a Collective Bargaining Agreement (CBA) effective January 1, 1997 up to December 31, 1999. The CBA included a "No-Strike, No-Lock-out" clause.

On May 1 & 12, and June 12, 1997, which were legal holidays and peak season for the company, eight mechanics-members of respondent Union, its herein co-respondents Albert Aguila (Aguila), Reynante Amimita (Amimita), Galmier Balisbis (Balisbis), Raymond Barco (Barco), Gerardo Bungabong (Bungabong), Josefino Espino (Espino), Jeffrey Neri (Neri) and Rodolfo Ramos, Jr. (Ramos), refused to render overtime work.

Petitioner treated the refusal to work as a concerted action which is a violation of the "No-Strike, No-Lockout" clause in the CBA. It thus meted the workers a 30-day suspension. It also filed on July 31, 1997 a complaint for illegal strike against them, docketed as NLRC Case No. 07-05409-97, which was later dismissed at its instance in order to give way to settlement, without prejudice to its re-filing should settlement be unavailing.

The attempted settlement between the parties having been futile, the Union filed a Notice of Strike with the National Conciliation and Mediation Board (NCMB) on October 3, 1997, attributing to petitioner the following acts: (1) union busting, (2) illegal dismissal of union officer, (3) illegal suspension of eight mechanics, (4) violation of memorandum of agreement, (5) coercion of employees and interrogation of newly-hired mechanics with regard to union affiliation, (6) discrimination against the aircraft mechanics, (7) harassment through systematic fault-finding, (8) contractual labor, and (9) constructive dismissal of the Union President, Julius Vargas (Vargas).

As despite conciliation no amicable settlement of the dispute was arrived at, the Union went on strike on October 22, 1997.

Meanwhile, pursuant to its reservation in NLRC Case No. 07-05409-97, petitioner filed a Motion to Re-Open the Case which was granted by Labor Arbiter Manuel P. Asuncion by Order of October 21, 1997.

By Decision[1] dated September 28, 1998 rendered in petitioner's complaint in NLRC Case No. 07-05409-97, the Labor Arbiter declared that the newly implemented work-shift schedule was a valid exercise of management prerogative and the refusal of herein individual respondents to work on three consecutive holidays was a form of protest by the Union, hence, deemed a concerted action. Noting that the Union failed to comply with the formal requirements prescribed by the Labor Code in the holding of strike, the strike was declared illegal.

The Union appealed to the NLRC which dismissed it in a *per curiam* Decision[2] dated September 14, 1999, and the subsequent motion for reconsideration was denied by Resolution dated November 11, 1999.

In the interim or on June 16, 1998, eight months into the "second strike," petitioner filed a complaint against respondents

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[1] Records, Vol. I, pp. 367-382.

[2] *Id.* at 447-493.

before the Labor Arbiter, praying for the declaration as illegal of the strike on account of their alleged pervasive and widespread use of force and violence and for the loss of their employment, citing the following acts committed by them: publicly shouting of foul and vulgar words to company officers and non-striking employees; threatening of officers and non-striking employees with bodily harm and dousing them with water while passing by the strike area; destruction of or inflicting of damage to company property, as well as private property of company officers; and putting up of placards and streamers containing vulgar and insulting epithets including imputing crime on the company.

By Decision[3] of June 15, 2000, Labor Arbiter Ramon Valentin C. Reyes declared the "second strike" illegal. Taking judicial notice of the September 28, 1998 Decision of Labor Arbiter Asuncion, he noted that as the Union went on the "first strike" on a non-strikeable issue — the questioned change of work schedule, it violated the "No-Strike, No-Lockout" clause in the CBA and, in any event, the Union failed to comply with the requirements for a valid strike.

The Labor Arbiter went on to hold that the Union deliberately resorted to the use of violent and unlawful acts in the course of the "second strike," hence, the individual respondents were deemed to have lost their employment.

On appeal, the National Labor Relations Commission (NLRC) affirmed *in toto* the Labor Arbiter's decision, by Resolution[4] dated October 31, 2001. It held that even if the strike were legal at the onset, the commission of violent and unlawful acts by individual respondents in the course thereof rendered it illegal.

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[3] *Id.* at 499-520.

[4] *Id.*, unnumbered. Penned by Commissioner Victoriano R. Calaycay and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan.

Its motion for reconsideration having been denied by Resolution[5] dated December 14, 2001, the Union appealed to the Court of Appeals.

By the assailed Decision of April 16, 2004,[6] the appellate court reversed and set aside the NLRC ruling, holding that the acts of violence committed by the Union members in the course of the strike were not, as compared to the acts complained of in *Shell Oil Workers' Union v. Shell Company of the Philippines,*[7] *First City Interlink Transportation Co., Inc., v. Roldan-Confesor*[8] and *Maria Cristina Fertilizer Plant Employees Association v. Tandaya*[9] (this case was applied by the Labor Arbiter in his Decision of September 28, 2008) where the acts of violence resulted in loss of employment, concluded that the acts in the present case were not as serious or pervasive as in these immediately-cited cases to call for loss of employment of the striking employees.

Specifically, the appellate court noted that at the time petitioner filed its complaint in June 1998, almost eight months had already elapsed from the commencement of the strike and, in the interim, the alleged acts of violence were committed only during nine non-consecutive days, *viz*: one day in October, two days in November, four days in December, all in 1997, and two days in January 1998. To the appellate court, these incidents did not warrant the conversion of an otherwise legal strike into an illegal one, and neither would it result in the loss of employment of the strikers. For, so the appellate court held, the incidents consisted merely of name-calling and using of banners imputing negligence and criminal acts to the company

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[5] *Vide* Entry of Judgment, *id.*, unnumbered.

[6] Penned by Associate Justice Perlita J. Tria Tirona with the concurrence of Associate Justice B.A. Adefuin-dela Cruz and Associate Justice (now Associate Justice of this Court) Arturo D. Brion; CA *rollo*, pp. 667-679.

[7] G.R. No. L-28607, May 31, 1971, 39 SCRA 276.

[8] G.R. No. 106316, May 5, 1997, 272 SCRA 124.

[9] G.R. No. L-29217, May 11, 1978, 83 SCRA 56.

and its officers, which do not indicate a degree of violence that could be categorized as grave or serious to warrant the loss of employment of the individual strikers found to be responsible.

By Resolution of January 25, 2005, the appellate court denied petitioner's motion for reconsideration, hence, the present petition.

Petitioner insists that, contrary to the appellate court's finding, the questioned acts of the strikers were of a serious character, widespread and pervasive; and that the Union's imputation of crime and negligence on its part, and the prolonged strike resulted in its loss of goodwill and business, particularly the termination of its lease and air-service contract with *Amanpulo*, the loss of its after-sales repair service agreement with Bell Helicopters, the loss of its accreditation as the Beechcraft service facility, and the decision of *El Nido* to put up its own aviation company.

Apart from the acts of violence committed by the strikers, petitioner bases its plea that the strike should be declared illegal on the violation of the "No-Strike-No-Lockout" clause in the CBA, the strike having arisen from non-strikeable issues. Petitioner proffers that what actually prompted the holding of the strike was the implementation of the new shift schedule, a valid exercise of management prerogative.

In issue then is whether the strike staged by respondents is illegal due to the alleged commission of illegal acts and violation of the "No Strike-No Lockout" clause of the CBA and, if in the affirmative, whether individual respondents are deemed to have lost their employment status on account thereof.

The Court rules in the affirmative.

The Court notes that, as found by the Labor Arbiter in NLRC Case No. 07-05409-97, the first strike or the mechanics' refusal to work on 3 consecutive holidays was prompted by their disagreement with the management-imposed new work schedule. Having been grounded on a non-strikeable issue and without complying with the procedural requirements, then the same is a violation of the "No Strike-No Lockout Policy" in the existing

CBA. Respecting the second strike, where the Union complied with procedural requirements, the same was not a violation of the "No Strike- No Lockout" provisions, as a "No Strike-No Lockout" provision in the Collective Bargaining Agreement (CBA) is a valid stipulation but may be invoked only by employer when the strike is economic in nature or one which is conducted to force wage or other concessions from the employer that are not mandated to be granted by the law. It would be inapplicable to prevent a strike which is grounded on unfair labor practice.[10] In the present case, the Union believed in good faith that petitioner committed unfair labor practice when it went on strike on account of the 30-day suspension meted to the striking mechanics, dismissal of a union officer and perceived union-busting, among others. As held in *Malayang Samahan ng mga Manggaggawa sa M. Greenfield v. Ramos*:[11]

> On the submission that the strike was illegal for being grounded on a non-strikeable issue, that is, the intra-union conflict between the federation and the local union, it bears reiterating that **when respondent company dismissed the union officers, the issue was transformed into a termination dispute and brought respondent company into the picture**. Petitioners believed in good faith that in dismissing them upon request by the federation, respondent company was guilty of unfair labor practice in that it violated the petitioner's right to self-organization. The strike was staged to protest respondent company's act of dismissing the union officers. **Even if the allegations of unfair labor practice are subsequently found out to be untrue, the presumption of legality of the strike prevails**. (Emphasis supplied)

Be that as it may, the Court holds that the second strike became invalid due to the commission of illegal action in its course.

It is hornbook principle that the exercise of the right of private sector employees to strike is not absolute. Thus Section 3 of Article XIII of the Constitution provides:

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[10] Vide *Panay Electric Co. v. NLRC*, G.R. No. 102672, October 4, 1995, 248 SCRA 688.

[11] G.R. No. 113907, February 28, 2000, 326 SCRA 428, 468.

SECTION 3. x x x

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations and peaceful concerted activities, including the **right to strike in <u>accordance</u> <u>with</u> <u>law</u>**. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law. (Emphasis and underscoring supplied)

Indeed, even if the purpose of a strike is valid, the strike may still be held illegal where the *means* employed are illegal. Thus, the employment of violence, intimidation, restraint or coercion in carrying out concerted activities which are injurious to the right to property renders a strike illegal. And so is picketing or the obstruction to the free use of property or the comfortable enjoyment of life or property, when accompanied by intimidation, threats, violence, and coercion as to constitute nuisance.[12]

Apropos is the following ruling in *Sukhothai Cuisine v. Court of Appeals*:[13]

Well-settled is the rule that even if the strike were to be declared valid because its objective or purpose is lawful, the strike may still be declared invalid where the means employed are illegal. Among such limits are the prohibited activities under Article 264 of the Labor Code, particularly paragraph (e), which states that no person engaged in picketing shall:

a) commit any act of violence, coercion, or intimidation or

b) obstruct the free ingress to or egress from the employer's premises for lawful purposes, or

c) obstruct public thoroughfares.

The following acts have been held to be prohibited activities: where the **strikers shouted slanderous and scurrilous words against the owners** of the vessels; where the **strikers used unnecessary and**

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[12] *Philippine Diamond Hotel and Resort, Inc. (Manila Diamond Hotel) vs. Manila Diamond Hotel Employees Union*, G.R. No. 158075, June 30, 2006, 494 SCRA 195.

[13] G.R. No. 150437, July 17, 2006, 495 SCRA 336.

obscene language or epithets to prevent other laborers to go to work, and circulated **libelous statements against the employer which show actual malice**; where the **protestors used abusive and threatening language towards the patrons of a place of business or against co-employees**, going beyond the mere attempt to persuade customers to withdraw their patronage; where the strikers formed a human cordon and blocked all the ways and approaches to the launches and vessels of the vicinity of the workplace and perpetrated acts of violence and coercion to prevent work from being performed; and where the **strikers shook their fists and threatened non-striking employees with bodily harm if they persisted to proceed to the workplace**. **Permissible activities of the picketing workers do not include obstruction of access of customers**. (emphasis supplied)

The appellate court found in the present case, as in fact it is *not disputed*, that the acts complained of were the following:[14]

1. On 29 October 1997, while Robertus M. Cohen, personnel manager of the Company, was eating at the canteen, petitioner Rodolfo Ramos **shouted "insults and other abusive, vulgar and foul-mouthed word" with the use of a megaphone, such as, "*sige, ubusin mo yung pagkain," "kapal ng mukha mo";*** that when he left the canteen to go back to his office **he was splashed with water from behind so that his whole back was drenched**; that when he confronted that strikers at the picket line accompanied by three (3) security guards, to find out who was responsible, he was told by petitioner Oswald Espion who was then holding a thick piece of wood approximately two (2) feet long to leave.

2. On the same day, 29 October 1997, petitioners Julius Vargas, Jeffrey Neri, and Rodolfo Ramos, together with Jose Brin, shouted to Capt. Ben Hur Gomez, the chief operating officer of the Company, in this wise, ***"Matanda ka na, balatuba ka pa rin. Mangungurakot ka sa kompanya!"***

3. In the morning of 11 November 1997, petitioner Ramos was reported to have shouted to Mr. Maximo Cruz, the Mechanical and Engineering Manager of the Company, ***"Max, mag-resign ka na, ang baho ng bunganga mo!"***

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[14] *Vide* Decision, pp. 674-677.

4. In the afternoon of the same day, 11 November 1997, petitioner Jeffrey Neri was said to have shouted these words – ***"Max, mag-resign ka na, ang baho ng bunganga mo!" to Mr. Maximo Cruz;***

5. On 12 November 1997, petitioners Julius Vargas, Jeffrey Neri, Oswald Espion, Raymond Barco, together with Jose Brin, were reported to have shouted to Capt. Gomez and Mr. Maximo Cruz, ***"Matanda ka na, balatuba ka pa rin! Max, ang baho ng bunganga mo, kasing baho ng ugali mo!"***

6. On the same day, 12 November 1997, petitioner Oswald Espion was said to have **shouted to the non-striking employees and officers of the Company, *"putang-ina ninyo!"***

7. Also, on 12 November 1997, petitioner Oswald Espion was reported to have thrown **gravel and sand to the car owned by Celso Villamor Gomez, lead man of the Company, as the said car was traveling along company premises near the picket line**; (apart from the marks of mud, gravel and sand found on the entire body of the car, no heavy damages, however, appears to have been sustained by the car)."

8. On 08 December 1997, petitioners Julius Vargas, Rey Espero, Rey Barry, Galmier Balisbis, Rodolfo Ramos, Sonny Bawasanta and Arturo Ines, together with Jose Brin, shouted, ***"Max, ang sama mo talaga, lumabas ka dito at pipitpitin ko ang mukha mo!" "Cohen, inutil ka talaga. Nagpahaba ka pa ng balbas para kang tsonggo!" Cohen, lumabas ka dito at hahalikan kita."***

9. On 10 December 1997, petitioners Vargas and Espion were reported to have shouted to Mr. Maximino Cruz, ***"Hoy, Max Cruz, wala kang alam dyan, huwag kang poporma-porma dyan!"* and then flashed the "dirty finger" at him**;

10. On 15 December 1997, petitioner Neri was said to have **shouted to non-striking employees at the canteen, *"Hoy, mga iskerol, kain lang ng kain, mga putangina ninyo!"***

11. Also on 15 December 1997, petitioners Vargas, Neri, Espion, Mar Nimuan, Ramir Licuanan, Albert Aguila and Sonny Bawasanta, together with Jose Brin, **splashed water over Edmund C. Manibog, Jr., security guard of the Company**;

12. On 20 December 1997, the **strikers admittedly lit and threw firecrackers purportedly outside the Company premises, as part of a noise barrage, while the Company was having its Christmas party inside the Company premises**;

13. On 14 January 1998, when Chris A. Oballas, collector of the Company, boarded a public utility jeepney where Jose Brin, a striker, was also passenger, Jose Brin was said to have shouted to the other passengers and driver of the jeepney, ***"Mga pasahero, driver, itong tao ito sherol, ang kapal ng mukha. Iyong pinagtrabahuhan namin kinakain nito, ibenebent[a] kami nito, hudas ito! Mga pasahero, tingnan niyo, hindi makatingin-tingin sa akin, hindi makapagsalita. Hoy, tingin ka sa akin, napahiya ka sa mga ginagawa mo ano?"*** **and, that when Chris Oballas was alighting from the jeepney, he was kicked on his leg** by Jose Brin; and,

14. On 15 January 1998, while Julio Tomas, Avionics Technician of the Company, and his girlfriend, Elizabeth Gali, also an employee of the Company, were waiting for their ride, several union members shouted to Elizabeth Gali, ***Beth iwanan mo na yang taong yan, walang kwentang tao yan!" "Beth, paano na yung pinagsamahan natin?"*** irked, Julio Tomas upon boarding the passenger jeepney with his girlfriend threw a ₱2.00 coin in the direction of the picketers, the coin hit the windshield of a privately-owned jeepney belonging to petitioner Espion which was parked alongside the premises of the strike area; The act of Tomas, provoked the petitioners Espion and Amimita to follow Tomas, who when left alone inside the tricycle after his girlfriend took a separate tricycle to her home, was approached by petitioners Espion and Amimita; petitioner Espion then threw a ₱2.00 coin at him, and while pointing a baseball bat to his face shouted, ***"Huwag mong uulitin yung ginawa mo kundi tatamaan ka sa akin!"*** (Emphasis and italics in the original)

The Court notes that the placards and banners put up by the striking workers in the company premises read: "ANDRES SORIANO AVIATION, INC. CAUGHT IN THE ACT, ATTEMPTING TO BRIBE GOVERNMENT OFFICIALS BEWARE, NOW A NAME YOU CAN TRASH," "ASAI DETERIORATING SAFETY RECORD KILLS 2 DEAD + VARIOUS (IN PLANE CRASH) FLIGHT MISHAPS

BEWARE," "FLY AT YOUR OWN RISK," "ANDRES SORIANO AVIATION, INC. DETERIORATING SAFETY RECORD KILLS INNOCENT PEOPLE IN PLANE CRASH, THE CAUSE: UNTRAINED MECHANICS DOING AIRCRAFT RELEASE, THE RESULT: SLIPSHOD MAINTENANCE AND SLOPPY PLANE INSPECTION," "WANNA FLY BLIND?," "BENHUR GOMEZ DRAGS COMPANY TO DEBT AND SHAMEFUL EXPERIENCE (*MAHIYA KA NAMAN, OY*!)," "A. SORIANO AVIATION, INC., DEAD PEOPLE IN PLANE CRASH," "ELY BONIFACIO (*MASAKIT ANG TOTOO*) *MAGNANAKAW NG PIYESA, PALITAN NA RIN*! *TINGNAN NYO KUNG NAGNANAKAW," "MEKANIKO DE EROPLANO Y HUELGA UN VIAJE DE PELIGRO*, AIRCRAFT MANAGEMENT *BULOK*; "A. SORIANO AVIATION KILLS PEOPLE FOR LAX OVERSIGHT OF SAFETY PROC." "(ELY BONIFACIO-*PATALSIKIN NA RIN*," "*MANDARAMBONG*" "*MUKHANG KWARTA*," "*SAAN MO DINALA ANG* DORNIER SPECIAL TOOLS? *IKAW HA*!)," "ELY BONIFACIO *KAWATAN BANTAY SALAKAY*," "AMANPULO AND EL NIDO GUESTS, BEWARE OF ASAI FLIGHTS, AIRCRAFT MECHANICS STILL ON STRIKE," "GOING TO BORACAY AND EL NIDO IS GOOD BUT FLYING WITH A. SORIANO AVIATION? THINK TWICE!" "*ACHTUNG*: A SORIANO AVIATION DEAD PEOPLE IN PLANE CRASH INSURANCE ENTITLEMENTS DENIED DUE TO CAR VIOLATIONS," "UNDRESS SORIANO AVIATION, INC. UNRELIABLE FIXED BASED OPERATOR KILLS PEOPLE FOR LAX OVERSIGHT OF SAFETY PROCEDURES."

It cannot be gainsaid that by the above-enumerated undisputed acts, the Union committed illegal acts during the strike. The Union members' repeated name-calling, harassment and threats of bodily harm directed against company officers and non-striking employees and, *more significantly*, the putting up of placards, banners and streamers with vulgar statements imputing criminal negligence to the company, which put to doubt reliability of its operations, come within the purview of illegal acts under Art. 264 and jurisprudence.

That the alleged acts of violence were committed in nine non-consecutive days during the almost eight months that the strike was on-going does not render the violence less pervasive or widespread to be excusable. Nowhere in Art. 264 does it require that violence must be continuous or that it should be for the entire duration of the strike.

The appellate court took against petitioner its filing of its complaint to have the strike declared illegal almost eight months from the time it commenced. Art. 264 does not, however, state for purposes of having a strike declared as illegal that the employer should immediately report the same. It only lists what acts are prohibited. It is thus absurd to expect an employer to file a complaint at the first instance that an act of violence is alleged to be committed, especially, as in the present case, when an earlier complaint to have the refusal of the individual respondents to work overtime declared as an illegal strike was still pending — an issue resolved in its favor only on September 25, 1998.

The records show that the Union went on strike on October 22, 1997, and the first reported harassment incident occurred on October 29, 1997, while the last occurred in January, 1998. Those instances may have been sporadic, but as found by the Labor Arbiter and the NLRC, the display of placards, streamers and banners even up to the time the appeal was being resolved by the NLRC works against the Union's favor.

The acts complained of including the display of placards and banners imputing criminal negligence on the part of the company and its officers, apparently with the end in view of intimidating the company's clientele, are, given the nature of its business, that serious as to make the "second strike" illegal. Specifically with respect to the putting up of those banners and placards, coupled with the name-calling and harassment, the same indicates that it was resorted to to coerce the resolution of the dispute – the very evil which Art. 264 seeks to prevent.

While the strike is the most preeminent economic weapon of workers to force management to agree to an equitable sharing

of the joint product of labor and capital, it exerts some disquieting effects not only on the relationship between labor and management, but also on the general peace and progress of society and economic well-being of the State.[15] If such weapon has to be used at all, it must be used sparingly and within the bounds of law in the interest of industrial peace and public welfare.

As to the issue of loss of employment of those who participated in the illegal strike, *Sukhothai*[16] instructs:

In the determination of the liabilities of the individual respondents, the applicable provision is Article 264(a) of the Labor Code:

Art. 264. *Prohibited Activities* – (a) x x x

x x x x x x x x x

x x x **Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during an illegal strike may be declared to have lost his employment status: Provided, That mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment,** even if a replacement had been hired by the employer during such lawful strike.

x x x x x x x x x

In *Samahang Manggagawa sa Sulpicio Lines, Inc.-NAFLU v. Sulpicio Lines, Inc.,* this Court explained that the effects of such illegal strikes, outlined in Article 264, make a distinction between workers and union officers who participate therein: an ordinary striking worker cannot be terminated for mere participation in an illegal strike. **There must be proof that he or she committed illegal acts during a strike. A union officer, on the other hand, may be terminated from work when he knowingly participates in an illegal**

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[15] Vide *Pilipino Telephone Corp. v. PILTEA, et al.*, G.R. No. 160058, June 22, 2007, 525 SCRA 361.

[16] *Supra* note 10.

strike, and like other workers, when he commits an illegal act during an illegal strike. In all cases, the striker must be identified. But proof beyond reasonable doubt is not required. Substantial evidence available under the attendant circumstances, which may justify the imposition of the penalty of dismissal, may suffice.[17] (Emphasis supplied)

The liability for prohibited acts has thus to be determined on an individual basis. A perusal of the Labor Arbiter's Decision, which was affirmed *in toto* by the NLRC, shows that on account of the staging of the illegal strike, individual respondents were all deemed to have lost their employment, without distinction as to their respective participation.

Of the participants in the illegal strike, whether they knowingly participated in the illegal strike in the case of *union officers* or knowingly participated in the commission of violent acts during the illegal strike in the case of *union members*, the records do not indicate. While respondent Julius Vargas was identified to be a union officer, there is no indication if he knowingly participated in the illegal strike. The Court not being a trier of facts, the remand of the case to the NLRC is in order only for the purpose of determining the status in the Union of individual respondents and their respective liability, if any.

WHEREFORE, the petition is *GRANTED***.** The Court of Appeals Decision and Resolution dated April 16, 2004 and January 25, 2005, respectively, are *REVERSED* and *SET ASIDE*. The Resolutions dated October 31, 2001 and December 14, 2001 of the National Labor Relations Commission affirming the Decision of the Labor Arbiter in NLRC-NCR Case No. 00-06-04890-98 are *AFFIRMED* with the *MODIFICATION* in light of the foregoing discussions.

The case is accordingly *REMANDED* to the *National Labor Relations Commission* for the purpose of determining the Union status and respective liabilities, if any, of the individual respondents.

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[17] *Sukhothai*, *supra*.

SO ORDERED.

Carpio,[*] *Corona,*[**] *Del Castillo,* and *Abad, JJ.,* concur.

FIRST DIVISION

[G.R. No. 167230. August 14, 2009]

SPOUSES DANTE and MA. TERESA L. GALURA, *petitioners, vs.* **MATH-AGRO CORPORATION,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; PLEADINGS AND PRACTICES; SUMMONS; SUBSTITUTED SERVICE; REQUISITES TO BE VALID; NOT PRESENT IN CASE AT BAR.—** The Spouses Galura claim that the RTC failed to acquire jurisdiction over their persons because the substituted service of summons was invalid. xxx. The Court agrees. Section 6, Rule 14 of the Rules of Court states that, "Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him." xxx In *Sandoval II v. HRET*, the Court enumerated the requisites of a valid substituted service: (1) service of summons within a reasonable time is impossible; (2) the person serving the summons exerted efforts to locate the defendant; (3) the person to whom the summons is served is of sufficient age and discretion; (4) the person to whom the summons is served resides at the defendant's place of residence; and (5) pertinent

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[*] Additional member per Special Order No. 671 in lieu of Senior Associate Justice Leonardo A. Quisumbing who is on official leave.

[**] Additional member pursuant to Adm. Matter Circular No. 84-2007, as amended, in lieu of Associate Justice Arturo D. Brion who took no part.

facts showing the enumerated circumstances are stated in the return of service. In *Sandoval*, the Court held that "statutory restrictions for substituted service must be strictly, faithfully and fully observed." In the present case, there is no showing that personal service of summons within a reasonable time was impossible.

2. **ID.; ID.; ID.; SUMMONS MUST BE SERVED ON THE DEFENDANT IN PERSON; EXCEPTION; EFFECT OF AN INVALID SUBSTITUTED SERVICE OF SUMMONS.—** Whenever practicable, the summons must be served on the defendant in person. Substituted service may be resorted to only when service of summons within a reasonable time is impossible. Impossibility of prompt service should appear in the return of service — the efforts exerted to find the defendant and the fact that such efforts failed must be stated in the return of service. In *Keister v. Judge Navarro*, the Court held: Service of summons upon the defendant is the means by which the court may acquire jurisdiction over his person. In the absence of a valid waiver, trial and judgment without such service are null and void. This process is solely for the benefit of the defendant. Its purpose is not only to give the court jurisdiction of the person of the defendant, but also to afford the latter an opportunity to be heard on the claim made against him. The summons must be served to the defendant in person. It is only when the defendant cannot be served personally within a reasonable time that a substituted service may be made. Impossibility of prompt service should be shown by stating the efforts made to find the defendant personally and the fact that such efforts failed. This statement should be made in the proof of service. This is necessary because substituted service is in derogation of the usual method of service. It has been held that this method of service is "in derogation of the common law; it is a method extraordinary in character, and hence may be used only as prescribed and in the circumstances authorized by statute." Thus, under the controlling decisions, the statutory requirements of substituted service must be followed strictly, faithfully and fully, and any substituted service other than that authorized by the statute is considered ineffective. Indeed, the constitutional requirement of due process requires that the service be such as may be reasonably expected to give the desired notice to the party of the claim against him. In the present case, there was no showing in the return of service (1)

of the impossibility of personal service within a reasonable time; (2) that Lapuz, the person on whom summons was served, was of suitable age and discretion; and (3) that Lapuz resided in the residence of the Spouses Galura. Consequently, the RTC did not acquire jurisdiction over the persons of the Spouses Galura, and thus the Spouses Galura are not bound by the RTC's 27 June 2001 Decision and 10 November 2004 Order.

3. **ID.; JUDGMENT; ANNULMENT OF JUDGMENT ON GROUND OF LACK OF JURISDICTION OVER THE PERSON OF THE DEFENDANT; PETITIONER NEED NOT ALLEGE THAT THE ORDINARY REMEDIES OF NEW TRIAL, APPEAL, OR PETITION FOR RELIEF ARE NO LONGER AVAILABLE THROUGH NO FAULT OF HIS OWN; REASON.—** When a petition for annulment of judgment or final order under Rule 47 is grounded on lack of jurisdiction over the person of the defendant, the petitioner does not need to allege that the ordinary remedies of new trial, appeal, or petition for relief are no longer available through no fault of his or her own. In *Ancheta v. Ancheta*, the Court held: [T]he Court of Appeals erred in dismissing the original petition and denying admission of the amended petition. This is so because apparently, the Court of Appeals failed to take note from the material allegations of the petition, that the petition was based not only on extrinsic fraud but also on lack of jurisdiction over the person of the petitioner, on her claim that the summons and the copy of the complaint in Sp. Proc. No. NC-662 were not served on her. While the original petition and amended petition did not state a cause of action for the nullification of the assailed order on the ground of extrinsic fraud, we rule, however, that it states a sufficient cause of action for the nullification of the assailed order on the ground of lack of jursdiction of the RTC over the person of the petitioner, notwithstanding the absence of any allegation therein that the ordinary remedy of new trial or reconsideration, or appeal are no longer available through no fault of the petitioner. **In a case where a petition for annulment of a judgment or final order of the RTC filed under Rule 47 of the Rules of Court is grounded on lack of jurisdiction over the person of the defendant/respondent or over the nature or subject of the action, the petitioner need not allege in the petition that the ordinary remedy of new trial or reconsideration of the final order or judgment**

or appeal therefrom are no longer available through no fault of her own. This is so because a judgment rendered or final order issued by the RTC without jurisdiction is null and void and may be assailed any time either collaterally or in a direct action or by resisting such judgment or final order an any action or proceeding whenever it is invoked, unless barred by laches.

APPEARANCES OF COUNSEL

Yusingco Law Office for petitioners.
Wilfredo O. Arceo for respondent.

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, with prayer for the issuance of a writ of preliminary injunction or temporary restraining order. The petition challenges the 25 January and 28 February 2005 Resolutions[2] of the Court of Appeals in CA-G.R. SP No. 88088 dismissing the petition[3] for annulment of judgment and final order and denying the motion[4] for reconsideration, respectively, filed by Dante and Ma. Teresa L. Galura (Spouses Galura). The Spouses Galura sought to annul the 27 June 2001 Decision[5] and 10 November 2004 Order[6] of the Regional Trial Court (RTC), Judicial Region 3, Malolos, Bulacan, Branch 22, in Civil Case No. 473-M-2000.

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[1] *Rollo,* pp. 17-33.

[2] *Id.* at 6-14. Penned by Associate Justice Salvador J. Valdez, Jr., with Associate Justices Juan Q. Enriquez, Jr. and Vicente Q. Roxas concurring.

[3] *Id.* at 75-87.

[4] *Id.* at 43-51.

[5] *Id.* at 70-72. Penned by Judge Candido R. Belmonte.

[6] *Id.* at 73-74.

<u>The Facts</u>

In March 1997, the Spouses Galura purchased broiler starters and finishers worth ₱426,000 from Math-Agro Corporation (MAC). The Spouses Galura paid MAC ₱72,500. Despite several demands, they failed to pay the ₱353,500 unpaid balance.

MAC engaged the services of a certain Atty. Ronolfo S. Pasamba (Atty. Pasamba) for the purpose of collecting the ₱353,500 unpaid balance from the Spouses Galura. In his letter[7] dated 13 November 1998 and addressed to the Spouses Galura, Atty. Pasamba stated:

Ang kinatawan ng aming kliyente na Math Agro Corporation na may tanggapan sa Balagtas , Bulacan, ay lumapit sa aming tanggapan at kinuha ang aming paglilingkod bilang manananggol kaugnay sa inyong natitirang pagkakautang sa kanila na halagang ₱353,500.00, na hanggang sa ngayon ay hindi pa ninyo nababayaran.

Dahilan dito, kayo ay binibigyan namin ng limang (5) araw mula sa pagkatanggap ng sulat na ito upang bayaran ang aming nabanggit na kliyente, pati na ang kaukulang tubo nito. Ikinalulungkot naming sabihin sa inyo na kung hindi ninyo bibigyang pansin ang mga bagay na ito, mapipilitan na kaming magsampa ng kaukulang dimanda sa hukuman laban sa inyo upang mapangalagaan namin ang karapatan at interes ng aming nabanggit na kliyente.

Inaasahan namin na bibigyang pansin ninyo ang mga bagay na ito.

In its complaint[8] dated 21 June 2000 and filed with the RTC, MAC prayed that the RTC order the Spouses Galura to pay the ₱353,500 unpaid balance and ₱60,000 attorney's fees and litigation expenses. In the complaint, MAC stated that "defendants are both of legal age, spouses, and residents of G.L. Calayan Agro System Inc., Bo. Kalayaan, Gerona, Tarlac, and/or 230 Apo St., Sta. Mesa Heights, Quezon City, where they may be served with summonses and other processes of this Honorable Court."

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[7] *Id.* at 67.

[8] *Id.* at 59-62.

Clerk of Court Emmanuel L. Ortega issued the corresponding summons[9] dated 15 August 2000 requiring the Spouses Galura to file their answer within 15 days, otherwise judgment by default would be taken against them.

On 17 September 2000, Court Process Server Faustino B. Sildo (Sildo) went to 230 Apo Street, Sta. Mesa Heights, Quezon City, to serve the summons. There, Dante Galura's father, Dominador Galura, told Sildo that the Spouses Galura were presently residing at Tierra Pura Subdivision, Tandang Sora, Quezon City. On 22 September 2000, Sildo went to G.L. Calayan Agro System, Inc. in Barrio Kalayaan, Gerona, Tarlac to serve the summons. Sildo learned that the property had been foreclosed and that the Spouses Galura no longer resided there. On 26 September 2000, Sildo went to Tierra Pura Subdivision, Tandang Sora, Quezon City, to serve the summons. Sildo served the summons on Teresa L. Galura's sister, Victoria Lapuz (Lapuz). In his return of service[10] dated 4 October 2000, Sildo stated:

THIS IS TO CERTIFY that on September 22, 2000 the undersigned went to the given address of the defendant at G. Bo. Kalayaan, Gerona, Tarlac for the purpose of serving the summons, issued in the above-entitled case

That the defendants is [sic] no longer residing at the given address and their property was foreclose [sic] by the Bank,

That on September 17, the undersigned went to the given address of the defendants at 230 Apo St., Sta Mesa Heights, Quezon City;

That the defendants is [sic] not residing at the given address as per information given by Mr. Dominador Galura father of the defendants.

That Mr. Dominador Galura give [sic] the address of the defendant where they are presently residing at Tierra Fura [sic] Subd. at Tandang Sora, Quezon City.

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[9] *Id.* at 68.

[10] *Id.* at 69.

That on September 26, 2000 the undersigned went to Tandang Sora where the defendants presently residing [sic] Tierra Fura [sic] Subd. for the purpose of serving the summons, complaint together with the annexes,

That Ms. Victoria Lapuz sister-in-Law of Dante Galura received the copy of said summons, as evidence [sic] by her signature appearing on the face of original summons.

The Spouses Galura failed to file their answer. In its Order dated 23 January 2001, the RTC declared the Spouses Galura in default and allowed MAC to present its evidence *ex parte*.

In its 27 June 2001 Decision, the RTC ruled in favor of MAC and ordered the Spouses Galura to pay the ₱353,500 unpaid balance, ₱30,000 attorney's fees, and expenses of litigation. The RTC stated:

Based on the facts and findings established above, the Court is of the considered view that a judgment in favor of the plaintiff is in order. Likewise, this Court strongly believes that the failure of the defendants or their refusal to file any answer to the complaint is a clear admission on their part of their obligation to the plaintiff. It may even be safely presumed that by their inaction, defendants have no valid defense against the claim of the plaintiff such that under the circumstances, this Court has no other alternative but to pass judgment on the issued [sic] based on the evidence on record.

The award of attorney's fees in the amount of ₱30,000.00 is justified under the premises in view of the court's finding that the defendants acted in gross and evident bad faith in refusing to satisfy plaintiff's plainly valid, just and demandable claim.

WHEREFORE, judgment is hereby rendered ordering the defendants to pay the plaintiff the following:

1. The sum of ₱353,500.00 representing the unpaid purchase price of the poultry products plus interest of 6% per annum accruing from the date of defendants' receipt of the first demand letter on October 18, 1998 until full payment is made;
2. The sum of ₱30,000.00 as and for attorney's fees; and
3. The costs of suit.

SO ORDERED.[11]

In its Order dated 10 November 2004, the RTC issued a writ of execution to implement the 27 June 2001 Decision. The RTC stated:

In support of the motion, it is alleged among others that on June 27, 2001, the Decision was rendered in the above-entitled case, has become final and executory on August 1, 2001 and was duly recorded in the Book of Entry of Judgment.

On the other hand, the fifteen (15) days period given to the defendants, from receipt of the order of the Court dated November 11, 2003 had already lapsed without complying therewith, hence his right to file comment on the Motion for Execution filed by the plaintiff was waived.

For reasons heretofore made apparent, the Court resolves to grant the motion for execution.[12]

On 13 December 2004, the Spouses Galura received "from their parents-in-law" a copy of the 10 November 2004 Order. On 6 January 2005, the Spouses Galura filed with the Court of Appeals a petition[13] for annulment of judgment and final order under Rule 47 of the Rules of Court, with prayer for the issuance of a writ of preliminary injunction or temporary restraining order. The Spouses Galura claimed that the RTC's 27 June 2001 Decision and 10 November 2004 Order were void for two reasons: (1) the RTC failed to acquire jurisdiction over their persons because the substituted service of summons was invalid, and (2) there was extrinsic fraud because MAC made them believe that it would not file a case against them. The Spouses Galura stated:

The assailed decision dated June 27, 2001 and the order of execution dated November 10, 2004, issued by respondent Judge in Civil Case

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[11] *Id.* at 71-72.

[12] *Id.* at 73.

[13] *Id.* at 75-87.

No. 473-M-2000, should be annulled pursuant to Rule 47 of the 1997 Rules of Court.

1. The assailed decision and order of execution are null and void having been rendered and issued despite failure of the court *a quo* to first acquire jurisdiction over the persons of the petitioners, on account of the improper service of summons upon them.

2. The assailed decision and order of execution were rendered with extrinsic fraud in attendance. The owner of Math-Agro and herein petitioners had an existing agreement for the settlement of their obligation, and herein petitioners were complying with the agreement. Math-Agro, despite the commitment of its owner not to file the complaint, did so. Such an act on the part of Math-Agro and its owner constitutes extrinsic fraud, as it prevented petitioners from defending themselves in the action lodged with the court *a quo*.[14]

The Court of Appeals' Ruling

In its 25 January 2005 Resolution, the Court of Appeals dismissed the petition for lack of merit. The Court of Appeals held that there was a valid substituted service of summons, that the allegation of extrinsic fraud was unbelievable, and that the Spouses Galura should have first availed of the ordinary remedies of new trial, appeal, or petition for relief. The Court of Appeals stated:

1. Petitioners make no denial that insofar as known by the respondent Math-Agro Corporation, their address at the time of the filing of the complaint on July 25, 2000 was at G.L. Calayaan Agro System Inc., Bo. Kalayaan, Gerona, Tarlac and/or 230 Apo St., Sta. Mesa Heights, Quezon City. They likewise do not deny the proceedings taken by Court Process Server Paulino Sildo as narrated in his Return of Service dated October 4, 2000 x x x.

Under the circumstances, we believe, and so hold, that there was a valid substituted service of summons on the petitioners as defendants in the case. To begin with, the petitioners never took the bother of informing the creditor Math-Agro Corporation that they were leaving their address known to the latter and were moving on to another place of residence, so the process server took it upon himself to diligently

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[14] *Id.* at 80.

trace the whereabouts of the petitioners until he was able to effect service of the summons on Victoria Lapuz, a sister-in-law of petitioner Dante Galura at Tierra Fura Subdivision in Tandang Sora, Quezon City, where the defendants were then residing. What they claim is that substituted service was immediately resorted to without the process server first exhausting all opportunities for personal service which is improper.

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Far from being improper, the actuations taken and the efforts exerted by the process server are highly commendable for he started looking for the petitioners in the addresses given by them to their creditor and alleged by the latter in the complaint. Finding them not to be there, he methodically traced their whereabouts until he came upon their latest address at Tierra Fura Subdivision, Tandang Sora, Quezon City, as given by Dominador Galura, father of petitioner-husband, Dante Galura. Quite conspicuously, the petitioner do not deny that they were residing at that place when service of the summons was made on petitioner-husband's sister-in-law, Victoria Lapuz.

x x x x x x x x x

2. Petitioners' posturing that they are at the receiving end of extrinsic fraud because they had an existing payment arrangement with their creditor, Math-Agro Corporation, that the latter would not resort to judicial action for as long as payments are being made by them and that they had been paying their obligation until July, 2004 is hard to be believed in. This is but a bare and vagrant allegation without any visible means of support for nowhere in their petition, as well as in their joint affidavit of merit, did they attach copies of the corresponding receipts of their payments. x x x

3. Prescinding from the foregoing records also show that contrary to Section 1, Rule 47 of the 1997 Rules of Civil Procedure, petitioners have not availed themselves first of the ordinary remedies of a motion to lift order of default, new trial, appeal, petition for relief before resorting to this extra-ordinary action for annulment of judgment.[15]

The Spouses Galura filed a motion for reconsideration dated 14 February 2005. In its Resolution dated 28 February 2005, the Court of Appeals denied the motion for lack of merit.

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[15] *Id.* at 7-11.

Hence, the present petition.

The Issues

In their petition dated 8 April 2005, the Spouses Galura raised as issues that the Court of Appeals erred when it ruled that (1) there was a valid substituted service of summons; (2) the allegation of extrinsic fraud was unbelievable; and (3) they should have availed first of the ordinary remedies of new trial, appeal, or petition for relief.

In its Resolution[16] dated 27 April 2005, the Court issued a temporary restraining order enjoining the Court of Appeals from implementing its 25 January and 28 February 2005 Resolutions.

The Court's Ruling

The petition is meritorious.

The Spouses Galura claim that the RTC failed to acquire jurisdiction over their persons because the substituted service of summons was invalid. They stated:

> The resort of the process server to what purports to be a substituted service, when he left the summons with Ms. Victoria Lapuz is clearly unjustified, as it was premature. He could still serve the summons personally upon herein petitioners had he exerted efforts to do so. Unfortunately, he did not, and he immediately resorted to a substituted service of the summons. Clearly, the acts of the trial court's process server contravenes the rulings espoused by the Honorable Supreme Court that summons must be served personally on the defendant as much as possible.
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> x x x x x x x x x
>
> The process server, in his return of service above, did not state that his attempts to serve the summons by personal service upon the petitioners at the Tierra Pura Subdivision address failed, and that the same could not be made within a reasonable time. He likewise failed to state facts and circumstances showing why personal service of the summons upon the petitioners at the said address was impossible.

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[16] *Id.* at 110.

Finally, he also failed to state that Ms. Victoria Lapuz, the person with whom he left the summons, was a person of sufficient age and discretion, and residing in the said Tierra Pura address.[17]

The Court agrees. Section 6, Rule 14 of the Rules of Court states that, "Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him." Section 7 states:

SEC. 7. *Substituted service*. — If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.

In *Sandoval II v. HRET*,[18] the Court enumerated the requisites of a valid substituted service: (1) service of summons within a reasonable time is impossible; (2) the person serving the summons exerted efforts to locate the defendant; (3) the person to whom the summons is served is of sufficient age and discretion; (4) the person to whom the summons is served resides at the defendant's place of residence; and (5) pertinent facts showing the enumerated circumstances are stated in the return of service. In *Sandoval*, the Court held that "statutory restrictions for substituted service must be strictly, faithfully and fully observed."

In the present case, there is no showing that personal service of summons within a reasonable time was impossible. On 17 September 2000, Sildo went to 230 Apo Street, Sta. Mesa Heights, Quezon City, to serve the summons. There, Dominador Galura told him that the Spouses Galura were presently residing at Tierra Pura Subdivision, Tandang Sora, Quezon City. Despite being told of the Spouses Galura's correct address, Sildo still

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

[18] 433 Phil. 290, 301 (2002).

went to G.L. Calayan Agro System, Inc. in Barrio Kalayaan, Gerona, Tarlac to serve the summons, only to find out that the property had already been foreclosed and that the Spouses Galura no longer resided there. On 26 September 2000, Sildo went to Tierra Pura Subdivision, Tandang Sora, Quezon City, and, without any explanation, served the summons on Lapuz. In his 4 October 2000 return of service, Sildo stated:

> That on September 26, 2000 the undersigned went to Tandang Sora where the defendants presently residing [sic] Tierra Fura [sic] Subd. for the purpose of serving the summons, complaint together with the annexes,
>
> That Ms. Victoria Lapuz sister-in-Law of Dante Galura received the copy of said summons, as evidence [sic] by her signature appearing on the face of original summons.

Whenever practicable, the summons must be served on the defendant in person. Substituted service may be resorted to only when service of summons within a reasonable time is impossible. Impossibility of prompt service should appear in the return of service — the efforts exerted to find the defendant and the fact that such efforts failed must be stated in the return of service. In *Keister v. Judge Navarro*,[19] the Court held:

> Service of summons upon the defendant is the means by which the court may acquire jurisdiction over his person. In the absence of a valid waiver, trial and judgment without such service are null and void. This process is solely for the benefit of the defendant. Its purpose is not only to give the court jurisdiction of the person of the defendant, but also to afford the latter an opportunity to be heard on the claim made against him.
>
> The summons must be served to the defendant in person. It is only when the defendant cannot be served personally within a reasonable time that a substituted service may be made. Impossibility of prompt service should be shown by stating the efforts made to find the defendant personally and the fact that such efforts failed. This statement should be made in the proof of service. This is necessary because substituted service is in derogation of the usual method of service. It has been

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[19] 167 Phil. 567, 572-573 (1977).

held that this method of service is "in derogation of the common law; it is a method extraordinary in character, and hence may be used only as prescribed and in the circumstances authorized by statute." Thus, under the controlling decisions, the statutory requirements of substituted service must be followed strictly, faithfully and fully, and any substituted service other than that authorized by the statute is considered ineffective.

Indeed, the constitutional requirement of due process requires that the service be such as may be reasonably expected to give the desired notice to the party of the claim against him.

In the present case, there was no showing in the return of service (1) of the impossibility of personal service within a reasonable time; (2) that Lapuz, the person on whom summons was served, was of suitable age and discretion; and (3) that Lapuz resided in the residence of the Spouses Galura. Consequently, the RTC did not acquire jurisdiction over the persons of the Spouses Galura, and thus the Spouses Galura are not bound by the RTC's 27 June 2001 Decision and 10 November 2004 Order.[20]

The Spouses Galura claim that the Court of Appeals erred when it ruled that they should have first availed of the ordinary remedies of new trial, appeal, or petition for relief. The Spouses Galura stated:

In the case at bar, the assailed decision was rendered in June 27, 2001. More than three years have passed since the said decision, clearly the remedies for a motion to lift order of default, new trial, appeal, petition for relief, have already prescribed. Herein petitioners, therefore, are left only with the remedy of a petition for the annulment of judgment.[21]

The Court agrees. When a petition for annulment of judgment or final order under Rule 47 is grounded on lack of jurisdiction over the person of the defendant, the petitioner does not need

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[20] *Orion Security Corporation v. Kalfam Enterprises, Inc.,* G.R. No. 163287, 27 April 2007, 522 SCRA 617, 623-624.

[21] *Rollo*, p. 31.

to allege that the ordinary remedies of new trial, appeal, or petition for relief are no longer available through no fault of his or her own. In *Ancheta v. Ancheta*,[22] the Court held:

> [T]he Court of Appeals erred in dismissing the original petition and denying admission of the amended petition. This is so because apparently, the Court of Appeals failed to take note from the material allegations of the petition, that the petition was based not only on extrinsic fraud but also on lack of jurisdiction over the person of the petitioner, on her claim that the summons and the copy of the complaint in Sp. Proc. No. NC-662 were not served on her. While the original petition and amended petition did not state a cause of action for the nullification of the assailed order on the ground of extrinsic fraud, we rule, however, that it states a sufficient cause of action for the nullification of the assailed order on the ground of lack of jursdiction of the RTC over the person of the petitioner, notwithstanding the absence of any allegation therein that the ordinary remedy of new trial or reconsideration, or appeal are no longer available through no fault of the petitioner.
>
> **In a case where a petition for annulment of a judgment or final order of the RTC filed under Rule 47 of the Rules of Court is grounded on lack of jurisdiction over the person of the defendant/ respondent** or over the nature or subject of the action, **the petitioner need not allege in the petition that the ordinary remedy of new trial or reconsideration of the final order or judgment or appeal therefrom are no longer available through no fault of her own**. This is so because a judgment rendered or final order issued by the RTC without jurisdiction is null and void and may be assailed any time either collaterally or in a direct action or by resisting such judgment or final order an any action or proceeding whenever it is invoked, unless barred by laches. (Emphasis supplied)

WHEREFORE, the Court (1) *GRANTS* the petition, (2) *SETS ASIDE* the 25 January and 28 February 2005 Resolutions of the Court of Appeals in CA-G.R. SP No. 88088, (3) *MAKES PERMANENT* the temporary restraining order issued on 27 April 2005, and (4) *SETS ASIDE* the 27 2001 Decision and 10 November 2004 Order of the Regional Trial Court, Judicial

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[22] 468 Phil. 900, 911 (2004).

Region 3, Malolos, Bulacan, Branch 22, in Civil Case No. 473-M-2000.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 170672. August 14, 2009]

JUDGE FELIMON ABELITA III, *petitioner, vs.* **P/SUPT. GERMAN B. DORIA and SPO3 CESAR RAMIREZ,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; WARRANTLESS ARREST; REQUISITES TO BE VALID.—** Section 5, Rule 113 of the 1985 Rules on Criminal Procedure states: Sec. 5. *Arrest without warrant; when lawful*. A peace officer or a private person may, without a warrant, arrest a person: (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense; (b) When an offense has in fact just been committed and he has personal knowledge of facts indicating that the person to be arrested has committed it; and (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another. For the warrantless arrest under this Rule to be valid, two requisites must concur: (1) the offender has just committed an offense; and (2) the arresting peace officer or private person has personal knowledge of facts indicating that the person to be arrested has committed it.

2. **ID.; ID.; ID.; ID.; ID.; THE ARRESTING OFFICERS NEED NOT PERSONALLY WITNESS THE COMMISSION OF THE OFFENSE IN THEIR OWN EYES; REASONABLE GROUNDS OF SUSPICION ARE SUFFICIENT PROVIDED THE SAME MUST BE FOUNDED ON PROBABLE CAUSE, COUPLED WITH GOOD FAITH ON THE PART OF THE PEACE OFFICER MAKING THE ARREST.—** Personal knowledge of facts must be based on probable cause, which means an actual belief or reasonable grounds of suspicion. The grounds of suspicion are reasonable when, in the absence of actual belief of the arresting officers, the suspicion that the person to be arrested is probably guilty of committing the offense is based on actual facts, *i.e*., supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested. A reasonable suspicion, therefore, must be founded on probable cause, coupled with good faith on the part of the peace officers making the arrest. Section 5, Rule 113 of the 1985 Rules on Criminal Procedure does not require the arresting officers to personally witness the commission of the offense with their own eyes. In this case, P/Supt. Doria received a report about the alleged shooting incident. SPO3 Ramirez investigated the report and learned from witnesses that petitioner was involved in the incident. They were able to track down petitioner, but when invited to the police headquarters to shed light on the incident, petitioner initially agreed then sped up his vehicle, prompting the police authorities to give chase. Petitioner's act of trying to get away, coupled with the incident report which they investigated, is enough to raise a reasonable suspicion on the part of the police authorities as to the existence of probable cause.

3. **ID.; ID.; ID.; ID.; PLAIN VIEW DOCTRINE; REQUISITES; SEIZURE OF THE FIREARMS IN CASE AT BAR WAS JUSTIFIED UNDER THE PLAIN VIEW DOCTRINE.—** The seizure of the firearms was justified under the plain view doctrine. Under the plain view doctrine, objects falling in the plain view of an officer who has a right to be in the position to have that view are subject to seizure and may be presented as evidence. The plain view doctrine applies when the following requisites concur: (1) the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area; (2) the discovery of the evidence in plain view is inadvertent; and (3) it is immediately

apparent to the officer that the item he observes may be evidence of a crime, contraband or otherwise subject to seizure. In this case, the police authorities were in the area because that was where they caught up with petitioner after the chase. They saw the firearms inside the vehicle when petitioner opened the door. Since a shooting incident just took place and it was reported that petitioner was involved in the incident, it was apparent to the police officers that the firearms may be evidence of a crime. Hence, they were justified in seizing the firearms.

4. **ID.; JUDGMENT; *RES JUDICATA*; BAR BY PRIOR JUDGMENT AND CONCLUSIVENESS OF JUDGMENT, DISTINGUISHED.—** Respondents raise the defense of *res judicata* against petitioner's claim for damages. *Res judicata* has two aspects: bar by prior judgment and conclusiveness of judgment provided under Section 47(b) and (c), Rule 39, respectively, of the 1997 Rules of Civil Procedure which provide: Sec. 47. *Effect of judgments or final orders.* xxx. Bar by prior judgment and conclusiveness of judgment differ as follows: There is "bar by prior judgment" when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. In this instance, the judgment in the first case constitutes an absolute bar to the second action. Otherwise put, the judgment or decree of the court of competent jurisdiction on the merits concludes the litigation between the parties, as well as their privies, and constitutes a bar to a new action or suit involving the same cause of action before the same or other tribunal. But where there is identity of parties in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. This is the concept of *res judicata* known as "conclusiveness of judgment." Stated differently, any right, fact or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claim, demand, purpose, or subject matter of the two actions is the same.

5. **ID.; ID.; ID.; REQUISITES.—** For *res judicata* to apply, the following requisites must be present: (a) the former judgment

or order must be final; (b) it must be a judgment or order on the merits, that is, it was rendered after a consideration of the evidence or stipulations submitted by the parties at the trial of the case; (c) it must have been rendered by a court having jurisdiction over the subject matter and the parties; and (d) there must be, between the first and second actions, identity of parties, of subject matter, and of cause of action; this requisite is satisfied if the two actions are substantially between the same parties.

6. **ID.; ID.; ID.; DOCTRINE NOT APPLICABLE ABSENT IDENTITY OF PARTIES IN BOTH CASES; CASE AT BAR.—** While the present case and the administrative case are based on the same essential facts and circumstances, the doctrine of *res judicata* will not apply. An administrative case deals with the administrative liability which may be incurred by the respondent for the commission of the acts complained of. The case before us deals with the civil liability for damages of the police authorities. There is no identity of causes of action in the cases. While identity of causes of action is not required in the application of *res judicata* in the concept of conclusiveness of judgment, it is required that there must always be identity of parties in the first and second cases. There is no identity of parties between the present case and the administrative case. The administrative case was filed by Benjamin Sia Lao (Sia Lao) against petitioner. Sia Lao is not a party to this case. Respondents in the present case were not parties to the administrative case between Sia Lao and petitioner. In the present case, petitioner is the complainant against respondents. Hence, while *res judicata* is not a defense to petitioner's complaint for damages, respondents nevertheless cannot be held liable for damages as discussed above.

APPEARANCES OF COUNSEL

Vicente Roy L. Kabayan, Jr. for petitioner.
Eduardo T. Sierra, Jr. for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review[1] assailing the 10 July 2004 Decision[2] and 18 October 2004 Order[3] of the Regional Trial Court of Quezon City, Branch 217 (trial court), in Civil Case No. Q-98-33442 for Damages.

The Antecedent Facts

Judge Felimon Abelita III (petitioner) filed a complaint for Damages under Articles 32(4) and (9) of the Civil Code against P/Supt. German B. Doria (P/Supt. Doria) and SPO3 Cesar Ramirez (SPO3 Ramirez). Petitioner alleged in his complaint that on 24 March 1996, at around 12 noon, he and his wife were on their way to their house in Bagumbayan, Masbate, Masbate when P/Supt. Doria and SPO3 Ramirez (respondents), accompanied by 10 unidentified police officers, requested them to proceed to the Provincial PNP Headquarters at Camp Boni Serrano, Masbate, Masbate. Petitioner was suspicious of the request and told respondents that he would proceed to the PNP Headquarters after he had brought his wife home. Petitioner alleged that when he parked his car in front of their house, SPO3 Ramirez grabbed him, forcibly took the key to his Totoya Lite Ace van, barged into the vehicle, and conducted a search without a warrant. The search resulted to the seizure of a licensed shotgun. Petitioner presented the shotgun's license to respondents. Thereafter, SPO3 Ramirez continued his search and then produced a .45 caliber pistol which he allegedly found inside the vehicle. Respondents arrested petitioner and detained him, without any appropriate charge, at the PNP special detention cell.

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

[2] *Rollo,* pp. 30-40. Penned by Judge Lydia Querubin Layosa.

[3] *Id.* at 41.

P/Supt. Doria alleged that his office received a telephone call from a relative of Rosa Sia about a shooting incident in Barangay Nursery. He dispatched a team headed by SPO3 Ramirez to investigate the incident. SPO3 Ramirez later reported that a certain William Sia was wounded while petitioner, who was implicated in the incident, and his wife just left the place of the incident. P/Supt. Doria looked for petitioner and when he found him, he informed him of the incident report. P/Supt. Doria requested petitioner to go with him to the police headquarters as he was reported to be involved in the incident. Petitioner agreed but suddenly sped up his vehicle and proceeded to his residence. P/Supt. Doria and his companions chased petitioner. Upon reaching petitioner's residence, they caught up with petitioner as he was about to run towards his house. The police officers saw a gun in the front seat of the vehicle beside the driver's seat as petitioner opened the door. They also saw a shotgun at the back of the driver's seat. The police officers confiscated the firearms and arrested petitioner. P/Supt. Doria alleged that his men also arrested other persons who were identified to be with petitioner during the shooting incident. Petitioner was charged with illegal possession of firearms and frustrated murder. An administrative case was also filed against petitioner before this Court.[4]

The Decision of the Trial Court

In its 10 July 2004 Decision, the trial court dismissed petitioner's complaint.

The trial court found that petitioner was at the scene of the shooting incident in Barangay Nursery. The trial court ruled that the police officers who conducted the search were of the belief, based on reasonable grounds, that petitioner was involved

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[4] *Sia Lao v. Abelita III,* A.M. No. RTJ-96-1359, 356 Phil. 575 (1998). The Court found petitioner guilty of conduct unbecoming a member of the judiciary and dismissed him from the service with forfeiture of all benefits and with prejudice to reemployment in any other branch, instrumentality or agency of the government, including government-owned and controlled corporations.

in the incident and that the firearm used in the commission of the offense was in his possession. The trial court ruled that petitioner's warrantless arrest and the warrantless seizure of the firearms were valid and legal. The trial court gave more credence to the testimonies of respondents who were presumed to have performed their duties in accordance with law. The trial court rejected petitioner's claim of frame-up as weak and insufficient to overthrow the positive testimonies of the police officers who conducted the arrest and the incidental search. The trial court concluded that petitioner's claim for damages under Article 32 of the Civil Code is not warranted under the circumstances.

Petitioner filed a motion for reconsideration.

In its 18 October 2004 Order, the trial court denied the motion.

Hence, the petition before this Court.

<u>The Issues</u>

The issues in this case are the following:

1. Whether the warrantless arrest and warrantless search and seizure were illegal under Section 5, Rule 113 of the 1985 Rules on Criminal Procedure;

2. Whether respondents are civilly liable for damages under Articles 32(4) and (9) of the Civil Code; and

3. Whether the findings in the administrative case against petitioner are conclusive in this case.

<u>The Ruling of this Court</u>

The petition has no merit.

Application of Section 5, Rule 113 of the 1985 Rules on Criminal Procedure

Petitioner alleges that his arrest and the search were unlawful under Section 5, Rule 113 of the 1985 Rules on Criminal Procedure. Petitioner alleges that for the warrantless arrest to be lawful, the arresting officer must have personal knowledge of facts that the person to be arrested has committed, is actually

committing, or is attempting to commit an offense. Petitioner alleges that the alleged shooting incident was just relayed to the arresting officers, and thus they have no personal knowledge of facts as required by the Rules.

We do not agree.

Section 5, Rule 113 of the 1985 Rules on Criminal Procedure states:

Sec. 5. *Arrest without warrant; when lawful*. — A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has in fact just been committed and he has personal knowledge of facts indicating that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

For the warrantless arrest under this Rule to be valid, two requisites must concur: (1) the offender has just committed an offense; and (2) the arresting peace officer or private person has personal knowledge of facts indicating that the person to be arrested has committed it.[5]

Personal knowledge of facts must be based on probable cause, which means an actual belief or reasonable grounds of suspicion.[6] The grounds of suspicion are reasonable when, in the absence of actual belief of the arresting officers, the suspicion that the person to be arrested is probably guilty of committing the offense is based on actual facts, *i.e.*, supported by circumstances sufficiently strong in themselves to create

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[5] *People v. Cubcubin, Jr.,* 413 Phil. 249 (2001).

[6] *Id.*

the probable cause of guilt of the person to be arrested.[7] A reasonable suspicion, therefore, must be founded on probable cause, coupled with good faith on the part of the peace officers making the arrest.[8]

Section 5, Rule 113 of the 1985 Rules on Criminal Procedure does not require the arresting officers to personally witness the commission of the offense with their own eyes. In this case, P/Supt. Doria received a report about the alleged shooting incident. SPO3 Ramirez investigated the report and learned from witnesses that petitioner was involved in the incident. They were able to track down petitioner, but when invited to the police headquarters to shed light on the incident, petitioner initially agreed then sped up his vehicle, prompting the police authorities to give chase. Petitioner's act of trying to get away, coupled with the incident report which they investigated, is enough to raise a reasonable suspicion on the part of the police authorities as to the existence of probable cause.

Plain View Doctrine

The seizure of the firearms was justified under the plain view doctrine.

Under the plain view doctrine, objects falling in the plain view of an officer who has a right to be in the position to have that view are subject to seizure and may be presented as evidence.[9] The plain view doctrine applies when the following requisites concur: (1) the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area; (2) the discovery of the evidence in plain view is inadvertent; and (3) it is immediately apparent to the officer that the item he observes

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[7] *Umil v. Ramos,* G.R. No. 81567, 3 October 1991, 202 SCRA 251; *People v. Lozada,* 454 Phil. 241 (2003).

[8] *Id.*

[9] *Abenes v. Court of Appeals,* G.R. No. 156320, 14 February 2007, 515 SCRA 690.

may be evidence of a crime, contraband or otherwise subject to seizure.[10]

In this case, the police authorities were in the area because that was where they caught up with petitioner after the chase. They saw the firearms inside the vehicle when petitioner opened the door. Since a shooting incident just took place and it was reported that petitioner was involved in the incident, it was apparent to the police officers that the firearms may be evidence of a crime. Hence, they were justified in seizing the firearms.

Civil Liability Under Article 32 of the Civil Code

Petitioner alleges that respondents are civilly liable under paragraphs (4) and (9) of Article 32 of the Civil Code.

Paragraphs (4) and (9) of Article 32 of the Civil Code respectively state:

> Art. 32. Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:
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> x x x x x x x x x
>
> (4) Freedom from arbitrary or illegal detention;
>
> x x x x x x x x x
>
> (9) The right to be secure in one's person, house, papers, and effects against unreasonable searches and seizures;
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> x x x x x x x x x

In this case, it was established that petitioner was lawfully arrested without a warrant and that firearms were validly seized from his possession. The trial court found that petitioner was charged with illegal possession of firearms and frustrated murder. We agree with the trial court in rejecting petitioner's allegation that he was merely framed-up. We also agree with the trial court that respondents were presumed to be performing their

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[10] *Id.*

duties in accordance with law. Hence, respondents should not be held civilly liable for their actions.

Res Judicata Does Not Apply

Respondents raise the defense of *res judicata* against petitioner's claim for damages.

Res judicata has two aspects: bar by prior judgment and conclusiveness of judgment provided under Section 47(b) and (c), Rule 39, respectively, of the 1997 Rules of Civil Procedure[11] which provide:

Sec. 47. *Effect of judgments or final orders.* — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:

x x x x x x x x x

(b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the 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; and

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

Bar by prior judgment and conclusiveness of judgment differ as follows:

There is "bar by prior judgment" when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. In this instance, the judgment in the first case constitutes an absolute bar to the second action. Otherwise put, the judgment or decree of the court of competent jurisdiction on the merits concludes the litigation between the parties, as well as their privies, and constitutes

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[11] *Agustin v. Sps. Delos Santos,* G.R. No. 168139, 20 January 2009.

a bar to a new action or suit involving the same cause of action before the same or other tribunal.

But where there is identity of parties in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. This is the concept of *res judicata* known as "conclusiveness of judgment." Stated differently, any right, fact or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claim, demand, purpose, or subject matter of the two actions is the same.[12]

For *res judicata* to apply, the following requisites must be present:

(a) the former judgment or order must be final;

(b) it must be a judgment or order on the merits, that is, it was rendered after a consideration of the evidence or stipulations submitted by the parties at the trial of the case;

(c) it must have been rendered by a court having jurisdiction over the subject matter and the parties; and

(d) there must be, between the first and second actions, identity of parties, of subject matter, and of cause of action; this requisite is satisfied if the two actions are substantially between the same parties.[13]

While the present case and the administrative case are based on the same essential facts and circumstances, the doctrine of *res judicata* will not apply. An administrative case deals with the administrative liability which may be incurred by the respondent for the commission of the acts complained of.[14]

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[12] *Id.*

[13] *Estate of the Late Encarnacion Vda. de Panlilio v. Dizon,* G.R. No. 148777, 18 October 2007, 536 SCRA 565.

[14] See *Velasquez v. Hernandez*, 480 Phil. 844 (2004).

The case before us deals with the civil liability for damages of the police authorities. There is no identity of causes of action in the cases. While identity of causes of action is not required in the application of *res judicata* in the concept of conclusiveness of judgment,[15] it is required that there must always be identity of parties in the first and second cases.

There is no identity of parties between the present case and the administrative case. The administrative case was filed by Benjamin Sia Lao (Sia Lao) against petitioner. Sia Lao is not a party to this case. Respondents in the present case were not parties to the administrative case between Sia Lao and petitioner. In the present case, petitioner is the complainant against respondents. Hence, while *res judicata* is not a defense to petitioner's complaint for damages, respondents nevertheless cannot be held liable for damages as discussed above.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 10 July 2004 Decision and 18 October 2004 Order of the Regional Trial Court of Quezon City, Branch 217, in Civil Case No. Q-98-33442.

SO ORDERED.

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

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[15] See *Layos v. Fil-Estate Gold and Development, Inc.,* G.R. No. 150470, 6 August 2008, 561 SCRA 75, citing *Oropeza Marketing Corp. v. Allied Banking Corp.,* 441 Phil. 551 (2002).

SECOND DIVISION

[G.R. No. 171313. August 14, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDGAR TRAYCO *y* MASOLA,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; RAPE; WHEN AND HOW COMMITTED.—** The Revised Penal Code, as amended by Republic Act No. 8353, defines and penalizes Rape under Article 266-A, paragraph 1, as follows: ART. 266-A. *Rape; When and How Committed*. — Rape is committed - 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 otherwise unconscious; c) By means of fraudulent machination or grave abuse of authority; and 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 Thus, for the charge of rape to prosper, the prosecution must prove that (1) **the offender had carnal knowledge of a woman**, and (2) he accomplished such act through force, threat, or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was **under 12 years of age** or was demented. Sexual intercourse with a girl below 12 years old is statutory rape.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESS; TESTIMONY OF YOUNG RAPE VICTIM, UPHELD.—** We view the testimony of the rape victim to be clear, convincing and credible, considering especially the corroboration it received from the medico-legal report and testimony of Dr. Suguitan. The records do not contain any evidence that would inject doubt into AAA's testimony or give rise to any suspicion that she had any ulterior motive in charging and testifying against the appellant. We have held time and again that testimonies of rape victims who are young and immature, as in this case, deserve full credence considering that no young woman, especially one of tender age, would concoct a story of defloration, allow the examination of her private parts, and subject

herself to a public trial if she had not been motivated by the desire to obtain justice for the wrong committed against her.

3. **CRIMINAL LAW; RAPE; SUFFICIENCY OF CARNAL KNOWLEDGE, PRESENT.—** The prosecution positively established the elements of rape under Article 266-A. *First*, the appellant succeeded in having carnal knowledge with the victim. AAA initially testified that the appellant's penis merely touched her vagina, but later clarified that the appellant's penis was ***inserted*** into her vagina. Whether the appellant's penis merely touched AAA's private part, or fully penetrated it is of no moment. Jurisprudence firmly holds that full penetration of the vaginal orifice is not an essential ingredient, nor is the rupture of the hymen necessary, to conclude that carnal knowledge took place; the *mere touching* of the external genitalia by a penis that is capable of consummating the sexual act is sufficient to constitute carnal knowledge.

4. **ID.; ID.; RULE WHERE MINORITY OF THE VICTIM WAS ESTABLISHED.—** The prosecution established AAA's minority during the trial through the presentation of her birth certificate (*Exh.* "C") showing that she was born on October 22, 1986. AAA's mother, BBB, likewise testified on her age. Hence, when the appellant raped AAA on July 30, 1998, she was only 11 years old. Where the victim is below 12 years of age, violence or intimidation is not required, and the only subject of inquiry is whether "carnal knowledge" took place. Proof of force, intimidation or consent is unnecessary as force is not an element of statutory rape; the law *conclusively* presumes the absence of consent when the victim is below the age of twelve. Thus, we held in *People v. Valenzuela*: What the law punishes in statutory rape is carnal knowledge of a woman below twelve (12) years old. Thus, force, intimidation, and physical evidence of injury are immaterial; the only subject of inquiry is the age of the woman and whether carnal knowledge took place. The law presumes that the victim does not and cannot have a will of her own on account of her tender years; the child's consent is immaterial because of her presumed incapacity to discern evil from good.

5. **REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; CONSTRUED.—** To be believed, denial must be supported by strong evidence of innocence; otherwise it is regarded as a purely self-serving testimony. Alibi, on the other hand, is one

of the weakest defenses in a criminal case and is rejected when the prosecution sufficiently establishes the identity of the accused. For the defense of alibi to prosper, the accused should prove the physical impossibility of his presence at the scene of the crime at the time it was committed. Physical impossibility refers to distance and the facility of access between the *situs criminis* and the location of the accused when the crime was committed. He must demonstrate that he was so far away and could not have been physically present at the scene of the crime and its immediate vicinity when the crime was committed.

6. **CRIMINAL LAW; STATUTORY RAPE; PENALTY.—** The applicable provisions of the Revised Penal Code, as amended by Republic Act No. 8353 (effective October 22, 1997), covering the crime of Rape are Articles 266-A and 266-B provide: Article 266-A. *Rape; When and How Committed*. — Rape is committed: 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances: x x x 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 Article 266-B. Penalties. — Rape under paragraph 1 of the next preceding article **shall be punished by *reclusion perpetua***. x x x The lower courts therefore are correct in imposing the penalty of *reclusion perpetua* on the appellant.

7. **ID.; ID.; CIVIL INDEMNITY, MORAL DAMAGES AND EXEMPLARY DAMAGES, AWARDED.—** The award of civil indemnity to the rape victim is mandatory upon the finding of the fact of rape. Thus, this Court affirms the award of ₱50,000.00 as civil indemnity based on prevailing jurisprudence. Similarly, moral damages are awarded to rape victims without need of proof other than the fact of rape under the assumption that the victim suffered moral injuries from the experience she underwent. Pursuant to current rules, we affirm the award of ₱50,000.00 as moral damages to AAA. In addition, we award exemplary damages in the amount of ₱30,000.00. The award of exemplary damages is justified under Article 2229 of the Civil Code to set a public example and serve as deterrent against elders who abuse and corrupt the youth.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

BRION, *J*.:

We review in this appeal the November 2, 2005 Decision of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No. 00004,[1] affirming with modification the November 20, 2002 Decision of the Regional Trial Court (*RTC*), Branch 73, Antipolo City.[2] The RTC Decision found accused-appellant Edgar Trayco *y* Masola (*appellant*) guilty of the crime of rape and sentenced him to suffer the penalty of *reclusion perpetua*.

ANTECEDENT FACTS

The prosecution charged the appellant before the RTC with the crime of rape under an Information that states:

x x x x x x x x x

That on or about the 30th day of July, 1998, in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a bladed weapon, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with one [*AAA*],[3] a minor, who is eleven (11) years of age, against her will and consent.

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[1] Penned by Associate Justice Celia C. Librea-Leagogo, and concurred in by Associate Justice Renato C. Dacudao and Associate Justice Lucas P. Bersamin (now a member of this Court); *rollo*, pp. 3-42.

[2] Penned by Executive Judge Mauricio M. Rivera.

[3] This appellation is pursuant to our ruling in *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, wherein this Court has resolved to withhold the real name of the victim-survivor and to use fictitious initials instead to represent her in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to

CONTRARY TO LAW.[4]

The appellant pleaded not guilty to the charge.[5] The prosecution presented the following witnesses in the trial on the merits that followed: AAA; Rufino Almodiel (*Rufino*); BBB; CCC; and Dr. Tomas Suguitan (*Dr. Suguitan*). The appellant, Reynilda Naprada (*Reynilda*), and Arnold Naprada (*Arnold*) took the witness stand for the defense.

AAA testified that at around 5:30 a.m. of July 30, 1998, she left her house in Cogeo, Antipolo City and walked towards Bagong Nayon Elementary School to attend her classes. On her way to school, the appellant appeared from behind, went to her right side, and placed his arms over her shoulders. The appellant pointed a sharp object at AAA's neck, and told her not to make a noise. The appellant brought AAA to a nearby garage in Cogeo, and, once inside, started kissing her. AAA resisted but the appellant continued kissing her. The appellant took out his penis and asked AAA to hold it. AAA declined but the appellant threatened to kill her. AAA held the appellant's penis using her right hand; afterwards, the appellant inserted his hand into AAA's shorts and touched her private part.

Thereafter, the appellant ordered AAA to lie on the hood of the car that was parked inside the garage. The appellant took off AAA's shorts and then inserted his penis inside her vagina. AAA felt pain but did not tell the appellant to stop because she felt scared. Afterwards, the appellant ordered AAA to stand and place his penis inside her mouth. AAA obliged because she was scared. Immediately after, the appellant told AAA to put back her shorts and pick up her bag. He told AAA to go to school as they went out of the garage.

AAA arrived in school at around 6:30 a.m., but she went home because her teacher was not yet there. She narrated the

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establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed.

[4] Records, p. 1.

[5] *Id*., p. 23.

rape to her mother, BBB, upon arriving home. BBB immediately reported the incident to the *barangay* officials, and then accompanied AAA to the garage where the rape took place. The appellant was no longer there. The *barangay tanod* conducted a search for the appellant, but only located him at around 7:00 a.m. of the next day. The *tanod* brought the appellant to the *barangay* hall, where AAA pointed to him as the person who had raped her.[6]

On cross-examination, AAA confirmed that she had executed an affidavit at the police station on August 1, 1998 in the presence of BBB. She recalled that the appellant came from behind her, overtook her, covered his face with his t-shirt, came back to her right side and placed his arms around her shoulder. According to her, the appellant was wearing a moss green t-shirt and *maong* pants; and that his face was still partly visible despite the t-shirt on his face. She further added that the street was quite bright when the appellant approached her.[7]

On re-direct, AAA explained that the appellant's face was not anymore covered when he started kissing her. On re-cross, AAA confirmed that the appellant's face was also not covered when he ordered her to lie on the hood of the car.[8]

Rufino, the over-all chief *tanod* of *Barangay* Bagong Nayon, testified that AAA and BBB arrived at the *barangay* hall at 7:00 a.m. of July 30, 1998 to report the rape incident. AAA narrated that she had been raped inside a garage located at the corner of Road 3 and Road 4 in Cogeo; she then described the features of the suspect. Immediately after, the *barangay tanod* went to the garage but did not find anyone.

AAA, BBB, and the victim's father, CCC, returned to the *barangay* hall the next morning and reported that AAA saw the appellant at Phase 2, Road 28. The *barangay tanod*, AAA and her parents all went to this place; AAA saw the appellant

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[6] TSN, October 28, 1998, pp. 2-21.

[7] TSN, February 3, 1999, pp. 2-14.

[8] *Id.*, pp. 14-17.

and pointed to him as the person who had raped her. Immediately after, the *tanod* approached the appellant and invited him to the *barangay* hall. At the *barangay* hall, AAA again identified the appellant as the person who had raped her.[9]

On cross-examination, Rufino testified that the house beside the garage was owned by a certain Colonel Ruiz who was seldom home. He explained that the appellant was delivering water when he (Rufino) approached him and invited him to the *barangay* hall.[10]

BBB stated that AAA was 11 years old on July 30, 1998. She narrated that AAA returned from school at around 7:00 a.m. of July 30, 1998, and told her that she had been raped. She and other *barangay* officials accompanied AAA to the garage in Cogeo, but the suspect was not there. They went to the house of her friend, Gertrudes Bascal (*Gertrudes*), where they waited for AAA's father, CCC. When CCC arrived, AAA narrated to him her harrowing experience. At around 10:00 a.m., AAA and BBB went to Camp Crame, where AAA was interviewed and examined. Afterwards, they went to the Antipolo Police Station to report the rape.[11]

On cross-examination, BBB testified that the house of Gertrudes was near the garage where AAA had been raped. She confirmed that AAA was interviewed at Camp Crame before being examined. She added that AAA executed at the Antipolo Police Station a sworn statement narrating the rape.[12]

CCC narrated that he went to the Land Transportation Office at around 5:00 a.m. of July 30, 1998 to have the meter of his taxi resealed. He went back to Cogeo at around 10:00 a.m. Upon arrival, his brother-in-law told him that AAA had been raped. AAA confirmed in their talk that she had indeed been

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[9] TSN, December 8, 1998, pp. 2-11.

[10] *Id.*, pp. 12-24.

[11] TSN, February 10, 1999, pp. 3-17.

[12] TSN, March 25, 1999, pp. 2-15.

raped. He went to the garage together with AAA, BBB and his brother-in-law, but did not see anyone. According to him, the occupants of the house adjacent to the garage refused to talk to them about the incident.

CCC further testified that in the early morning of the next day, AAA informed him that she saw the appellant deliver water to a neighbor. AAA answered in the affirmative when asked if the appellant was the person who had raped her. He immediately went to the *barangay* hall and sought the assistance of the *barangay tanod*. They proceeded to Road 28 and saw the appellant delivering water to another neighbor. The chief *barangay tanod* invited the appellant to the *barangay* hall where they questioned him. There, AAA identified the appellant as the person who had raped her.[13]

On cross-examination, CCC stated that he only saw one car in the garage. He added that he tried to talk to the occupants of the nearby houses but they refused to cooperate. At the *barangay* hall, the chief *tanod* took the appellant's clothes. CCC brought these clothes to Camp Crame for examination.[14]

Dr. Suguitan, the Medico-Legal Officer of the PNP Crime Laboratory, Quezon City, testified that she conducted a medical examination of AAA on July 31, 1998, and made the following findings:

FINDINGS:

GENERAL AND EXTRAGENITAL:

Fairly developed, fairly nourished and coherent female subject. Breasts are conical with pale brown areola and nipples from which secretions could be pressed out. Abdomen is flat and soft.

GENITAL:

There is scanty growth of pubic hair. *Labia majora* are full, convex and coaptated with the congested *labia minora* presenting in between.

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[13] TSN, April 7, 1999, pp. 3-22.

[14] TSN, April 8, 1999, pp. 3-10.

On separating the same disclosed a congested and abraded posterior fourchette and an elastic, fleshy-type hymen with deep fresh lacerations at 3 and 9 o'clock and shallow fresh laceration at 5 o'clock positions. External vaginal orifice offers strong resistance to the introduction of the examining index finger. Vaginal canal is narrow with prominent rugosities. Cervix is firm and closed.

<u>CONCLUSION:</u>

Findings are compatible with recent loss of virginity.

There are no external signs of application of any form of trauma.

<u>REMARKS:</u>

Vaginal and peri-urethral smears are negative for gram negative diplococci and for spermatozoa.[15]

According to Dr. Suguitan, the lacerations could have been caused by a blunt object like an erect male penis.[16]

The defense presented a different version of the events.

Reynilda testified that the appellant worked for her as a "water-delivery helper." At around 5:00 a.m. of July 30, 1998, the appellant reported for work at her house in Cogeo Village, Antipolo City. She woke up her son, Arnold, and told the appellant to wait in the *sala*. Arnold took a shower, drank coffee and told the appellant to start the truck's engine. Afterwards, Arnold and the appellant proceeded to Buso-Buso to pick up the water they would deliver. They returned to Reynilda's house at around 10:00 a.m.[17]

The appellant declared on the witness stand that he left his house in Cogeo Village, Antipolo City at around 4:30 a.m. of July 30, 1998 to report for work at the house of his employer, Reynilda. He arrived there in 20 to 30 minutes, and asked Reynilda to call Arnold as he (appellant) was ready for their water delivery. The appellant and Arnold left the house at around

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[15] Records, p. 13.

[16] TSN, June 8, 1999, pp. 13-14.

[17] TSN, June 14, 2000, pp. 3-9.

6:00 a.m. and returned there after one delivery. He stayed at Reynilda's house until 3:00 p.m., and then went home.

The next day, the appellant went to work at 4:30 a.m.; he and Arnold finished delivering water before 7:00 a.m. Arnold parked the delivery truck at Road 28. At this point, two men approached him and asked about the price of a drum of water. The two men then held his hand and requested him to go with them. They brought him to the *barangay* hall and placed him in a cell. They brought him before the *barangay* captain when he arrived. While before the *barangay* captain, a girl arrived and pointed to him as the person who had raped her. The people inside the room then mauled him.[18]

On cross-examination, the appellant testified that he had stayed in Cogeo for only two weeks prior to July 30, 1998. He resides in Olongapo and worked there as a carnival employee. While in Cogeo, he was hired by Reynilda as a truck helper to assist in her water delivery business. He would report for work at around 5:00 a.m., and go with Reynilda's son, Arnold, to Buso-Buso to pick up the water they would deliver. They picked up water four to five times a day, and finish their delivery at around 5:00 p.m.

He reiterated that he left his house at 4:30 a.m. on July 30, 1998 to report for work, and arrived at Reynilda's house at around 4:45 a.m. In the early morning of the next day, two men approached him while he and Arnold were delivering water at Road 28. One of the men asked about the price of a drum of water, and then told him to go with them to the *barangay* hall. He went with them and was handcuffed and placed in a cell at the *barangay* hall. He was in the cell for an hour and was thereafter brought before the *barangay* chairman. At that point, BBB arrived, slapped him, and accused him of raping her (BBB's) daughter. Thereafter, the men inside the *barangay* chairman's office punched him. His wife and mother-in-law arrived soon after. They later brought him in a vehicle to the Antipolo Police

[18] TSN, August 9, 2000, pp. 3-12.

Station where they again investigated him and placed him in a cell.[19]

Arnold testified that he saw the appellant wiping the delivery truck outside his house at around 5:00 a.m. of July 30, 1998. After his shower, he and the appellant proceeded to *Buso Buso* to pick the water they would deliver. They delivered water in Cogeo until 12:00 p.m., ate lunch and separated at Road 24. The next day, while he and the appellant were delivering water at Road 28, two men approached the appellant and invited him to come with them to the *barangay* hall for questioning. The appellant went with the two men and was detained at the *barangay* hall. A *tanod* informed him (Arnold) that the appellant was being accused of rape. Arnold thereafter went home.[20]

In its decision of November 20, 2002, the RTC convicted the appellant of the crime of rape and sentenced him to *reclusion perpetua* pursuant to Republic Act No. 7610, as amended by Republic Act No. 8353. The RTC likewise ordered him to indemnify the victim the amount of ₱50,000.00.[21]

The records of this case were originally transmitted to this Court on appeal. Pursuant to *People v. Mateo*,[22] we endorsed the case and the records to the CA for appropriate action and disposition.[23]

In its decision[24] of November 2, 2005, the CA affirmed the RTC decision with the modification that the appellant be ordered to pay the victim ₱50,000.00 as moral damages.

The CA held that AAA's testimony was candid, straightforward, and free from inconsistencies. AAA positively

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[19] TSN, February 28, 2001, pp. 3-30.

[20] TSN, April 18, 2001, pp. 3-9.

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

[22] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 656.

[23] Per our Resolution dated September 8, 2004.

[24] *Rollo*, pp. 3-42.

identified the appellant as the person who had raped her using force and intimidation, and her testimony was corroborated by the medico-legal report of Dr. Suguitan. According to the CA, when the victim's testimony is corroborated by the physician's finding of penetration, sufficient basis exists to conclude that carnal knowledge took place.

The CA further ruled that mere carnal knowledge with AAA, even without force and intimidation, already constituted rape as the prosecution proved that AAA was only 11 years old when she was sexually abused.

As its final point, the CA held that the appellant's denial cannot overcome AAA's positive identification that he was her rapist.

In his brief,[25] the appellant essentially argued that the RTC erred in convicting him because the prosecution failed to prove his guilt beyond reasonable doubt.

THE COURT'S RULING

We resolve to *deny* the appeal for lack of merit but modify the amount of the awarded indemnities.

Sufficiency of Prosecution Evidence

The Revised Penal Code, as amended by Republic Act No. 8353,[26] defines and penalizes Rape under Article 266-A, paragraph 1, as follows:

> ART.266-A. *Rape; When and How Committed.* — Rape is committed —
>
> 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 otherwise unconscious;

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[25] CA *rollo*, pp. 50-67.

[26] The Anti-Rape Law of 1997.

c) By means of fraudulent machination or grave abuse of authority; and

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 x x x x x x

Thus, for the charge of rape to prosper, the prosecution must prove that (1) **the offender had carnal knowledge of a woman,** and (2) he accomplished such act through force, threat, or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was **under 12 years of age** or was demented.[27] Sexual intercourse with a girl below 12 years old is statutory rape.[28]

AAA, while recounting her ordeal, positively identified the appellant as the person who had raped her. Her testimony dated October 28, 1998 was clear and straightforward; she was consistent in her recollection of the details of her defloration, and never wavered in pointing to the appellant as her abuser. To directly quote from the records:

FISCAL MARIO CLUTARIO, JR.:

Q: On July 30, 1998, did you leave your house to go to school?

[AAA]:

A: Yes, sir.

Q: What time did you leave your house?

A: 5:30 in the morning.

Q: Who was your companion when you left your house in order to walk on your way to school?

A: None, sir.

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[27] *People v. Dela Paz*, G.R. No. 177294, February 19, 2008, 546 SCRA 363.

[28] See *People v. Jusayan*, G.R. No. 149785, April 28, 2004, 428 SCRA 228, 235.

Q: Do you usually leave for school alone, without any companion?

A: Sometimes I have a companion and sometimes none.

x x x x x x x x x

Q: You said you were alone when you walked to your school on July 30, 1998 from your house, do you remember any unusual incident that happened on that date while you were on your way to school?

x x x x x x x x x

A: Something happened, sir.

Q: What do you mean something happened?

A: When I was raped.

Q: Where were you raped.

A: Inside a garage.

Q: You said you were walking on your way to school, how did you happen to be inside a garage?

A: I was brought there.

Q: Who brought you inside the garage?

A: Edgar Trayco.

Q: How far is that garage from the place where you were walking?

A: Just near, sir.

Q: And how did you meet Edgar Trayco?

A: While I was walking, he placed his arm on my shoulders.

Q: Can you describe to the Court the position of Edgar Trayco relative to you when he placed his arm over your shoulders?

A: He was on my right side.

Q: And where did he come from when he was on your right side and he placed his arm over your shoulder?

A: He came from behind.

Q: After he came from behind and placed his arm over your shoulders, what happened next?

A: He poked something on me.

Q: Did you see what was that something that was poked on you?

A: No, sir.

Q: What part of your body did he poke that object to you?

A: On my neck.

Q: What did you feel when he poked something on your neck?

A: It was painful.

Q: What, if anything, did you say when Edgar Trayco came from behind to place his arm over your shoulders and poked something that was painful in your neck? [*sic*]

A: He said I should not make a noise.

x x x x x x x x x

Q: After that, what happened next?

A: We went to the garage.

x x x x x x x x x

Q: After you were brought to the garage, what happened next?

A: **He started raping me.**

Q: What was your position when you said he started raping you?

A: At first, I was standing, sir.

Q: When you said you were standing, are you telling the Court that you were raped while standing?

A: No, sir, he first kissed me.

x x x x x x x x x

Q: When he kissed you, did you say anything to him?

A: I told him I don't want it.

x x x x x x x x x

Q: After he kissed you, what happened next?

A: **He directed me to hold his penis.**

Q: Was his penis already out when he asked you to hold it?

A: Yes, sir.

x x x x x x x x x

Q: When he asked you to hold his penis, did you obey as he ordered you?

A: Yes, sir.

Q: Why did you obey him?

A: Because he ordered me to, and I told him I don't want to but he said if I will not obey him, he will kill me. [*sic*]

Q: What is the position of Edgar Trayco and your position when he asked you to hold his penis?

A: We were standing, sir. He was on my side.

Q: Which side was he?

A: He was on my right side.

Q: **What hand did you use in holding his penis?**

A: **My right hand.**

Q: **How long did you hold his penis?**

A: Only for a while. **He touched my vagina.**

Q: While you were standing side by side?

A: Yes, sir.

Q: How was he able to touch your vagina?

A: **He just held my vagina. He just put his hand under my shirt and inside my shorts.**

Q: **Did you say anything when he placed his hand inside your shorts and held your vagina?**

A: Yes, sir. I said I did not want it.

Q: Did he say anything when you said you did not want it?

A: Yes, sir. He said he will kill me.

Q: After he touched your vagina, what happened next?

A: He ordered me to lie on a car.

Q: What part of the car were you asked to lie down?

A: The front, sir.

Q: You mean to say the part of the car which covers the engine?

A: Yes, sir.

Q: Did you lie down on the hood of the car?

A: Yes, sir.

Q: Then what happened next?

A: He took off my shorts.

x x x x x x x x x

Q: After he took off your shorts, what happened next?

A: **"*Pinagdikit*." He touched my vagina with his penis.**

Q: **Did you feel anything when his penis touched your vagina?**

A: Yes, sir. I felt something. **I felt pain.**

Q: **For how long did you feel that pain when his penis was touching your vagina?**

A: **For quite some time.**

x x x x x x x x x

Q: You did not tell him to stop?

A: I became scared.

COURT:

The Court would like to be clarified, when you said "*nakadikit*," you mean to say that his penis was not inserted in your vagina?

AAA:

A: He **inserted his penis inside my vagina** but it is "*natatanggal*."

FISCAL MARIO CLUTARIO, JR.:

Q: Was his penis hard at that time?

AAA:

A: "*Medyo po*."

Q: After that, what happened next?

A: He ordered me to stand up.

x x x x x x x x x

Q: And after coming down from the car and you were already sanding (sic) up, what happened next?

A: **He told me to put his penis inside my mouth.**

x x x x x x x x x

Q: **Did you insert his penis inside your mouth?**

A: **Yes, sir.**

Q: Why did you obey him when he asked you to **insert his penis inside your mouth?**

A: Because I was already scared during that time.

Q: How long was his **penis inside your mouth?**

A: **Only for a while.**

Q: After that, what happened next?

A: He ordered me to put on my shorts.

Q: Did you put on your shorts as he ordered?

A: Yes, sir.

Q: After you put on your shorts, what happened next?

A: He ordered me to get my bag.

Q: After that, what happened next?

A: We went out.

x x x x x x x x x[29] [*Emphasis ours*]

We view this testimony to be clear, convincing and credible, considering especially the corroboration it received from the

[29] TSN, October 28, 1998, pp. 5-16.

medico-legal report and testimony of Dr. Suguitan. The records do not contain any evidence that would inject doubt into AAA's testimony or give rise to any suspicion that she had any ulterior motive in charging and testifying against the appellant. We have held time and again that testimonies of rape victims who are young and immature, as in this case, deserve full credence considering that no young woman, especially one of tender age, would concoct a story of defloration, allow the examination of her private parts, and subject herself to a public trial if she had not been motivated by the desire to obtain justice for the wrong committed against her.[30]

The prosecution positively established the elements of rape under Article 266-A. *First*, the appellant succeeded in having carnal knowledge with the victim. AAA initially testified that the appellant's penis merely touched her vagina, but later clarified that the appellant's penis was ***inserted*** into her vagina. Whether the appellant's penis merely touched AAA's private part, or fully penetrated it is of no moment. Jurisprudence firmly holds that full penetration of the vaginal orifice is not an essential ingredient, nor is the rupture of the hymen necessary, to conclude that carnal knowledge took place; the *mere touching* of the external genitalia by a penis that is capable of consummating the sexual act is sufficient to constitute carnal knowledge.[31]

Our ruling in *People v. Bali-Balita*[32] is particularly instructive:

> We have said often enough that in concluding that carnal knowledge took place, full penetration of the vaginal orifice is not an essential ingredient, nor is the rupture of the hymen necessary; the mere touching of the external genitalia by the penis capable of consummating the sexual act is sufficient to constitute carnal knowledge. **But the act of touching should be understood here as inherently part of the**

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[30] See *People v. Malones,* G.R. Nos. 124388-90, March 11, 2004, 425 SCRA 318.

[31] See *People v. Campuhan*, G.R. No. 129433, March 30, 2000, 329 SCRA 271.

[32] G.R. No. 134266, September 15, 2000, 340 SCRA 450.

entry of the penis into the *labias* of the female organ and not mere touching alone of the *mons pubis* or the pudendum.

x x x Thus, **touching when applied to rape cases does not simply mean mere epidermal contact, stroking or grazing of organs, a slight brush or a scrape of the penis on the external layer of the victim's vagina, or the *mons pubis*, as in this case. There must be sufficient and convincing proof that the penis indeed touched the *labias* or slid into the female organ, and not merely stroked the external surface thereof, for an accused to be convicted of consummated rape.** As the *labias*, which are required to be "touched" by the penis, are by their natural *situs* or location beneath the *mons pubis* or the vaginal surface, to touch them with the penis is to attain some degree of penetration beneath the surface, hence, the conclusion that touching the *labia majora* or the *labia minora* of the pudendum constitutes consummated rape.[33] [*Emphasis and italics supplied*]

There was, at the very least, touching of the *labia* as AAA testified that **the appellant's penis touched her vagina**, as a result of which "**she felt pain**." She also testified that **the pain lasted for some time**. More importantly, Dr. Suguitan testified that there were **fresh hymenal lacerations** on AAA's private part. To quote Dr. Suguitan's examination:

FISCAL MARIO CLUTARIO, JR.:

Q: Can you tell the Honorable Court what your findings are?

DR. TOMAS SUGUITAN:

A: **The hymen has fresh lacerations at 3 and 9 o'clock and shallow fresh lacerations at 5 o'clock positions.**

Q: During the interview did you find out when this incident occurred?

A: According to her, at 5:30 a.m. of July 30, 1998.

Q: It was on the same day of examination?

A: Yes, sir.

x x x x x x x x x

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[33] *Id.*, p. 465.

Q: **You mentioned that you found on the genitals lacerations. [W]here in the genitals were you able to find these lacerations?**

A: **On the hymen**.

Q: Can you tell the Honorable court what could have caused these lacerations?

A: Probably caused by insertion of a blunt object.

Q: **Would you consider an erect male penis as blunt object?**

A: **Yes, sir.**

Q: **These lacerations that you found can you tell the Court when could have these inflicted?** [*sic*]

A: **Since the laceration is still fresh, within 24 hours.**

Q: So, the lacerations that you found is consistent with the statement of [AAA] that the incident happened on the same day of lacerations inflicted? [*sic*]

A: Yes, sir.

x x x x x x x x x[34] [*Emphasis supplied*]

Second, the prosecution established AAA's minority during the trial through the presentation of her birth certificate (*Exh.* "C") showing that she was born on October 22, 1986. AAA's mother, BBB, likewise testified on her age.[35] Hence, when the appellant raped AAA on July 30, 1998, she was only 11 years old. Where the victim is below 12 years of age, violence or intimidation is not required, and the only subject of inquiry is whether "carnal knowledge" took place. Proof of force, intimidation or consent is unnecessary as force is not an element of statutory rape; the law *conclusively* presumes the absence of consent when the victim is below the age of twelve.[36] Thus, we held in *People v. Valenzuela*:

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[34] TSN, June 8, 1999, pp. 10-14.

[35] TSN, February 10, 1999, p. 4.

[36] See *People v. Escultor*, G.R. Nos. 149366-67, May 27, 2004, 429 SCRA 651.

What the law punishes in statutory rape is carnal knowledge of a woman below twelve (12) years old. Thus, force, intimidation, and physical evidence of injury are immaterial; the only subject of inquiry is the age of the woman and whether carnal knowledge took place. The law presumes that the victim does not and cannot have a will of her own on account of her tender years; the child's consent is immaterial because of her presumed incapacity to discern evil from good.[37]

The Appellant's Defenses

In his defense, the appellant invoked denial and alibi. He denied raping the victim, and insisted that he went to the house of Reynilda at 5:00 a.m. on July 30, 1998; and thereafter delivered water to customers. He returned to Reynilda's house after one delivery, and stayed there until 3:00 p.m.

To be believed, denial must be supported by strong evidence of innocence; otherwise it is regarded as a purely self-serving testimony. Alibi, on the other hand, is one of the weakest defenses in a criminal case and is rejected when the prosecution sufficiently establishes the identity of the accused. For the defense of alibi to prosper, the accused should prove the physical impossibility of his presence at the scene of the crime at the time it was committed. Physical impossibility refers to distance and the facility of access between the *situs criminis* and the location of the accused when the crime was committed. He must demonstrate that he was so far away and could not have been physically present at the scene of the crime and its immediate vicinity when the crime was committed.[38]

In the present case, the defense completely failed to show the required physical impossibility. According to the appellant, he left his house in Agora Complex, Cogeo at 4:30 a.m. and arrived at Reynilda's house in Road 28, Cogeo at around 5:30 a.m. On cross-examination, however, he stated that he arrived at Reynilda's house at 4:45 a.m.

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[37] G.R. No. 182057, February 6, 2009.

[38] See *People v. Limio*, G.R. Nos. 148804-06, May 27, 2004, 429 SCRA 597.

The appellant tried to explain the discrepancies in time by stating that he was not wearing any watch when he left his house on July 30, 1998; he also admitted that the time of his arrival was a mere estimate. Rather than favor his case, however, his attempt to explain only stressed that he was not certain of the time he left his residence and the time he arrived at Reynilda's house. Considering AAA's undisputed testimony that their house is *also located in Road 28*, and that her school was a mere five-minute walk from her house, it was not physically impossible for the appellant to have been at Road 28 between 4:45 and 5:30 a.m. on July 30, 1998 to commit the crime charged.

The fact that Reynilda and Arnold testified that the appellant went to their house at around 5:00 a.m., more or less, did not negate the possibility that the appellant met and raped AAA before he reported for work at Reynilda's place. We note in this regard that both the appellant and AAA testified that they passed by Road 28 in Cogeo during the early morning of July 30, 1998.

As aptly explained by the CA:

> In the instant case, the victim was raped in the early morning of 30 July 1998 on her way to school which was a five minute walk from where she used to reside at 41, Road 28, Cogeo, Antipolo City. Appellant admitted that on July 30, 1998, he resided at the Agora Complex, Cogeo Village, Antipolo City and went to the house of Mrs. Naprada located at Road 28, leaving his house at 4:30 a.m. to go to work thereat. From appellant's house to the house of Mrs. Naprada, appellant walked and only traversed one road and turned at a church. This admission in fact puts appellant at the crime scene. His denial of the crime cannot overcome the categorical testimony of private complainant and her positive identification of him. Further, appellant's claim that he was delivering water on 30 July 1998 at around 5:20 a.m. until 10:00 a.m. does not constitute evidence of non-culpability because the same does not prove the impossibility for him to be at the crime scene when he raped private complainant at the appointed time. Moreover, as correctly argued by appellee, appellant's witness Reynilda Naprada could not account appellant's actual whereabouts from 5:00 to 10:00 a.m. or a full five (5) hours after appellant and

her son Arnold left their house at 5:00 a.m. on July 30, 1998. x x x [*sic*][39]

The Proper Penalty

The applicable provisions of the Revised Penal Code, as amended by Republic Act No. 8353 (effective October 22, 1997), covering the crime of Rape are Articles 266-A and 266-B provide:

Article 266-A. *Rape; When and How Committed.* — Rape is committed:

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

x x x x x x x x x

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 x x x x x x

Article 266-B. Penalties. — Rape under paragraph 1 of the next preceding article **shall be punished by *reclusion perpetua***.

x x x x x x x x x

The lower courts therefore are correct in imposing the penalty of *reclusion perpetua* on the appellant.

Proper Indemnity

The award of civil indemnity to the rape victim is mandatory upon the finding of the fact of rape. Thus, this Court affirms the award of ₱50,000.00 as civil indemnity based on prevailing jurisprudence.[40]

Similarly, moral damages are awarded to rape victims without need of proof other than the fact of rape under the assumption

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[39] *Rollo*, p. 38.

[40] See *People v. Begino*, G.R. No. 181246, March 20, 2009.

that the victim suffered moral injuries from the experience she underwent.[41] Pursuant to current rules, we affirm the award of ₱50,000.00 as moral damages to AAA.[42]

In addition, we award exemplary damages in the amount of ₱30,000.00.[43] The award of exemplary damages is justified under Article 2229 of the Civil Code to set a public example and serve as deterrent against elders who abuse and corrupt the youth.[44]

WHEREFORE, premises considered, we *AFFIRM* the November 2, 2005 decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00004 with the following *MODIFICATIONS*:

(a) appellant Edgar Trayco *y* Masola is hereby found GUILTY beyond reasonable doubt of statutory rape as defined and penalized in Article 266-A(1)(d) of the Revised Penal Code; and

(b) he is further ORDERED to PAY the victim the amount of ₱30,000.00 as exemplary damages.

SO ORDERED.

Carpio,[*] *Carpio Morales (Acting Chairperson),*[**] *Del Castillo,* and *Abad, JJ.,* concur.

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[41] *People v. Nieto*, G.R. No. 177756, March 3, 2008.

[42] *People v. Valenzuela*, *supra*.

[43] See *People v. Sia*, G.R. No. 174059, February 27, 2009; *People v. Layco, Sr*., G.R. No. 182191, May 8, 2009.

[44] See *People v. Tormis*, G.R. No. 183456, December 18, 2008.

[*] Designated additional Member of the Second Division per Special Order No. 671 dated July 28, 2009.

[**] Designated Acting Chairperson of the Second Division per Special Order No. 670 dated July 28, 2009.

SECOND DIVISION

[G.R. No. 171732. August 14, 2009]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDGAR DENOMAN *y* ACURDA,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); SUFFICIENCY OF REQUIRED EVIDENCE.—** A successful prosecution for the sale of illegal drugs requires more than the perfunctory presentation of evidence establishing each element of the crime: the identities of the buyer and seller, the transaction or sale of the illegal drug and the existence of the *corpus delicti*. In securing or sustaining a conviction under RA No. 9165, the intrinsic worth of these pieces of evidence, especially the identity and integrity of the *corpus delicti,* must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant; otherwise, the prosecution for possession or for drug pushing under RA No. 9165 fails.

2. **ID.; ID.; IMPLEMENTING RULES AND REGULATIONS (IRR) OF RA 9165; PROCEDURES TO OBSERVE IN HANDLING SEIZED DRUGS; MUST BE STRICTLY COMPLIED WITH.—** Section 21, paragraph 1, Article II of RA No. 9165 and Section 21(a), Article II of the Implementing Rules and Regulations (*IRR*) of RA No. 9165 give us the procedures that the apprehending team should observe in the handling of seized illegal drugs in order to preserve their identity and integrity as evidence. As indicated by their mandatory terms, strict compliance with the prescribed procedure is essential and the prosecution must show compliance in every case. Parenthetically, in *People v. De la Cruz*, we justified the need

for strict compliance with the prescribed procedures to be consistent with the principle that penal laws shall be construed strictly against the government and liberally in favor of the accused. Section 21, paragraph 1, Article II of RA No. 9165, states: 1) The apprehending team having initial custody and control of the drugs **shall**, immediately after seizure and confiscation, **physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated** and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. This provision is further elaborated in Section 21(a), Article II of the IRR of RA No. 9165, which reads: The apprehending office/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 further that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

3. **ID.; ID.; ID.; ID.; ID.; VIOLATED IN CASE AT BAR.—** In the present case, the records show that the buy-bust team did not observe even the most basic requirements of the prescribed procedures. While the markings, "AOC-BB/17-02-03," were made in the small plastic sachet allegedly seized from the accused-appellant, the evidence does not show the identity of the person who made these markings and the time and place where these markings were made. Notably, PO1 Carlos' testimony failed to disclose whether a physical inventory and photograph of the illegal drug had been done. Further, nothing in the records also indicates whether the physical inventory and photograph, if done at all, were made in the presence of the accused-appellant or his representatives or within the presence of any representative from the media, DOJ or any elected official. Then again, PO1

Carlos' testimony also failed to show that any of these people has been required to sign the copies of the physical inventory, or that any of them was subsequently given a copy of the physical inventory.

4. **ID.; ID.; ID.; ID.; ID.; SAVING MECHANISM FOR NON-COMPLIANCE OF THE REQUIRED PROCEDURE; WHAT PROSECUTION MUST DO TO WARRANT APPLICATION THEREOF.—** While the chain of custody has been a critical issue leading to acquittals in drug cases, we have nevertheless held that non-compliance with the prescribed procedures does not necessarily result in the conclusion that the identity of the seized drugs has been compromised so that an acquittal should follow. The last paragraph of Section 21(a), Article II of the IRR of RA No. 9165 provides a saving mechanism to ensure that not every case of non-compliance will irretrievably prejudice the prosecution's case. To warrant application of this saving mechanism, however, the prosecution must recognize and explain the lapse or lapses in the prescribed procedures. The prosecution must likewise demonstrate that the integrity and evidentiary value of the evidence seized have been preserved.

5. **ID.; ID.; ID.; ID.; ID.; REQUIREMENTS THAT MUST BE FOLLOWED IN HANDLING ILLEGAL DRUG SEIZED; CHAIN OF CUSTODY.—** In *Lopez v. People,* we laid down the requirements that must be followed in handling an illegal drug seized: As a method 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. **It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then 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 same**. Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, which implements RA No. 9165, defines chain of custody in this wise: b. "Chain

of Custody" means the **duly recorded authorized movements** and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, **from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction**. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

6. **ID.; ID.; ID.; ID.; ID.; ID.; ID.; REQUIREMENT TO DOCUMENT THE CHAIN OF CUSTODY; NOT COMPLIED WITH IN CASE AT BAR.—** Sections 3 and 6 (paragraph 8) of Dangerous Drugs Board Regulation No. 2, Series of 2003, requires laboratory personnel to document the chain of custody each time a specimen is handled or transferred until its disposal; the board regulation also requires identification of the individuals in this part of the chain. The records of the case are bereft of details showing that this board regulation was ever complied with; the records also do not indicate how the specimen was handled after the laboratory examination and the identity of the person who had the custody of the *shabu* before its presentation in court.

7. **REMEDIAL LAW; APPEALS; FINDINGS OF TRIAL COURT AFFIRMED BY THE COURT OF APPEALS, RESPECTED; EXCEPTION; WHERE THERE IS MISAPPREHENSION OF FACTS AND EVIDENCE AS IN CASE AT BAR.—** We are aware that the RTC's findings of fact, when affirmed by the CA, are entitled to great weight and will not be disturbed on appeal. This rule, however, finds application only where the lower courts did not overlook or misapprehend facts of weight and substance in their review and appreciation of the presented evidence. In this case, the exception rather than the general rule applies given the RTC and CA's failure to recognize material facts and fatal omissions on the part of the buy-bust team. Both courts simply relied on the presumption of regularity in the performance of official duties – a presumption that does not arise when lapses in procedure are evident from the record, in this case, the failure to comply with Section 21, paragraph (1) of Article II of RA No. 9165 and its implementing rules. This same lapse resulted in no less

than the failure to establish the existence of the *corpus delicti*. In the absence of this element, no conviction for the illegal sale of *shabu* under Section 5 of RA No. 9165 can be sustained.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

BRION, *J*.:

We review the conviction of accused-appellant Edgar Denoman *y* Acurda (*accused-appellant*) for illegal sale of *shabu* under Section 5, Article II of Republic Act (*RA*) No. 9165 or the *Comprehensive Dangerous Drugs Act of 2002*. The Regional Trial Court (*RTC*), Branch 72, Malabon City, originally rendered the judgment[1] of conviction. The Court of Appeals (*CA*) affirmed the conviction in its own decision[2] dated January 16, 2006 in CA-G.R. CR H.C. No. 00305.

The accused-appellant was charged under two informations for violation of RA No. 9165 before the RTC. The *first*, docketed as Criminal Case No. 27283-MN, charged him with illegal possession of dangerous drug under Section 11, Article II of RA No. 9165. This Information reads:

That on or about the 30th day of July, 2002 in the City of Malabon, the above-named accused, being a private person and without authority of law, did, then and there, willfully, unlawfully and feloniously have in his possession, custody and control One (1) heat-sealed transparent plastic sachet containing white crystalline substance with net weight 0.04 gram which substance when subjected to chemistry examination

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[1] Penned by Judge Benjamin M. Aquino, Jr.

[2] Penned by Associate Justice Arturo G. Tayag (now retired), with Associate Justice Jose L. Sabio, Jr. and Associate Justice Jose C. Mendoza, concurring; *rollo,* pp. 2-15.

gave positive result for Methylaphetamine Hydrochloride otherwise known "*shabu,*" a dangerous drug.[3]

The *second*, docketed as Criminal Case No. 28387-MN, charged him with the crime of illegal sale of *shabu* under the following allegations:

> That on or about the 17th day of February 2003 in the City of Malabon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being a private person and without authority of law, did, then and there, willfully, unlawfully and feloniously sell and deliver for consideration in the amount of ₱ 100.00 to poseur buyer One (1) heat-sealed transparent plastic sachet containing white crystalline substance with a net weight of 0.03 gram which substance when subjected to chemistry examination gave positive result for Methylamphetamine Hydrochloride otherwise known as "*shabu,*" a dangerous drug.[4]

The accused-appellant pleaded not guilty to both charges[5] which were jointly tried after pre-trial.

THE FACTS

The prosecution showed that on two separate occasions, the accused-appellant was caught red-handed in the illegal possession of *shabu* and of drug pushing. The prosecution presented two (2) witnesses: P/A Ronald Ticlao (*P/A Ticlao*) and PO1 Alexander Carlos (*PO1 Carlos*) who both positively identified the accused-appellant as the person who handled the *shabu (*in P/A Ticlao's case) and sold the *shabu* (in PO1 Carlos' case).[6]

P/A Ticlao,[7] testifying in Criminal Case No. 27283-MN, related that on July 30, 2002 at 3:15 p.m. in Sulucan,[8] Malabon

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[3] Records, p. 1.

[4] *Id.*, p. 40.

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

[6] TSN, April 21. 2003, p. 2 and TSN, May 15, 2003, p. 4.

[7] Direct Examination, TSN, April 21, 2003, pp. 2-5.

[8] Also spelled as Sulukan in the records.

City, he and the other operatives of the Drug Enforcement Unit (*DEU*) of the Malabon Police Station were engaged in a narcotics operation after receipt of reports of rampant selling of *shabu* in the area. In the course of their operation, P/A Ticlao saw the accused-appellant and one Jomarie Damasco[9] each holding a plastic sachet which he suspected contained *shabu*. The operatives then immediately arrested the accused-appellant and his companion and brought them to the *Pagamutang Bayan* before proceeding to the police headquarters. The items seized from the accused-appellant were sent to laboratory examination, and they tested positive for *shabu*.[10]

The prosecution presented the following documentary evidence:

Exhibits "A" and "A-1"	- Blotter of Dispatch and Brought-in;
Exhibits "B" and "B-1"	- Improvised wrapper and *shabu*;
Exhibit "C"	- Request for Laboratory Examination;
Exhibit "D"	- Laboratory Report; and
Exhibits "E", "E-1" to "E-3"	- Affidavit of arrest/sworn statement.

In Criminal Case No. 28387-MN, PO1 Carlos[11] testified that he was a member of the DEU, Malabon Police Station. He related that upon being informed on February 17, 2003 at 6:45 p.m. by a confidential informant of illegal drug selling activities by one *alias* Edgar, the Malabon City police conducted a buy-bust operation on Sulucan St., Hulong Duhat, Malabon City. He was designated as *poseur buyer,* and he was given a ₱100.00 bill as buy-bust money. On arrival at the indicated place, PO1 Carlos and the confidential informant saw and approached the accused-appellant. After a short talk, the trio proceeded to a house located in the area where the accused-appellant presented

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[9] Also referred to as Jomari Damasco in the records.

[10] Records, pp. 4-5.

[11] Direct Examination, TSN, May 15, 2003, pp. 3-5, and TSN, June 23, 2003, pp. 2-8.

to him a small plastic sachet which he suspected contained *shabu*. PO1 Carlos agreed to buy the small plastic sachet and gave the ₱100.00 bill to the accused-appellant as payment. Upon receipt of the plastic sachet containing the suspected *shabu*, he gave the pre-arranged signal, prompting his back-ups to come forward and arrest the accused-appellant. After the arrest, they brought the accused-appellant to the *Pagamutang Bayan*. The seized plastic sachet was sent to a forensic chemist for laboratory examination which showed positive results for *shabu*.[12]

The prosecution presented the following documentary evidence:

Exhibits "F" and "F-1"	- Blotter of Dispatch and Brought-in;
Exhibits "G" and "G-1"	- Xerox of ₱100 bill;
Exhibits "H" and "H-1"	- Improvised wrapper and *shabu*;
Exhibit "I"	- Request of Laboratory Examination;
Exhibit "J"	- Laboratory Report; and
Exhibits "K", "K-1" to "K-4"	- Affidavit of arrest/sworn statement and signatures.

In both cases, the accused-appellant denied the accusations against him.[13] He claimed that he was a victim of frame-up and extortion. He also claimed that the police filed the charges against him because he failed to provide the whereabouts of a person named Rollie.[14]

The prosecution and defense agreed during the trial to dispense with the testimonies of the defense witnesses – Jomarie Damasco and Marife Demata – on the stipulation that these witnesses would simply corroborate the accused-appellant's

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[12] Records, pp. 43 and 46.

[13] TSN, May 23, 2003, p. 8, and TSN, July 4, 2003, p. 7.

[14] TSN, May 23, 2003, pp. 5-7, TSN, June 5, 2003, p. 3, and TSN, July 4, 2003, pp. 6-7.

testimony.[15] The two sides likewise dispensed with the rebuttal testimony of PO1 Carlos and sur-rebuttal testimony of the accused-appellant on the stipulation that they will simply repeat and insist on their respective versions of events.[16]

In a Joint Decision dated August 15, 2003,[17] the RTC found the accused-appellant guilty beyond reasonable doubt of drug pushing but was acquitted of the charge of illegal possession of *shabu*. The RTC sentenced the accused-appellant to life imprisonment and to pay a fine of ₱500,000 and to pay the costs.[18]

The accused-appellant appealed to the CA essentially challenging the RTC's findings of fact. He argued that: (1) the incredible testimony of PO1 Carlos should not be believed because of its inconsistencies and contradictions; and (2) the seized plastic sachet allegedly containing *shabu* was not properly marked and identified.

The CA fully affirmed the accused-appellant's conviction in its decision dated January 16, 2006.[19]

The CA found no reason to overturn the RTC findings anchored on PO1 Carlos' testimony for being a clear and straightforward narration of the antecedent events that transpired and that indubitably showed the arrest of the accused-appellant during a legitimate buy-bust operation.[20] On the basis of PO1 Carlos' testimony, the CA also brushed aside the accused-appellant's attack on the identity and integrity of the buy-bust money and the seized plastic sachet.[21]

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[15] Joint Order dated June 6, 2003 and Order dated July 11, 2003; records; pp. 72 and 94.

[16] Orders dated July 18, 2003 and July 31, 2003; records, pp. 98 and 104.

[17] *Id.*, pp. 106-112.

[18] *Id.*, pp. 111-112.

[19] *Rollo*, p. 14.

[20] *Id.*, pp. 6-7.

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

The CA also rejected the accused-appellant's defenses of denial and frame-up, and gave greater credence to PO1 Carlos' testimony, relying on the presumption of regularity in the performance of official functions by the police officers who conducted the buy-bust operation.[22]

THE ISSUE

In the petition now before us, the accused-appellant raises the core issue of whether sufficient evidence exists to support his conviction for illegal sale of *shabu* under RA No. 9165.

In his Appellant's Brief,[23] the accused-appellant questions the lower courts' reliance on PO1 Carlos' incredible story that the accused-appellant sold *shabu* to PO1 Carlos, a stranger to him. He also questions the worth of PO1 Carlos' testimony about the buy-bust sale in light of PO1 Carlos' failure to explain how he (PO1 Carlos) could have agreed to a pre-arranged signal with the confidential informant and the DEU operatives when he never expected that the illegal transaction would take place inside a house.

Lastly, the accused-appellant attacks the prosecution evidence for its failure to establish the proper chain of custody of the *shabu* allegedly seized from him.

In its Brief for the Appellee,[24] the Office of the Solicitor (*OSG*), representing the People, contends that the prosecution evidence amply supports the accused-appellant's guilt beyond reasonable doubt of drug pushing. The OSG emphasizes that on the issue of the witness' credibility, great respect must be given to the factual findings of the RTC, especially after the defense failed to adduce evidence of improper motive against the prosecution witness. The OSG further posits that the accused-appellant's defense of denial is self-serving and uncorroborated by any credible evidence from a disinterested witness. His denial

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[22] *Id.*, pp. 6-7, 9 and 13.

[23] *CA rollo*, pp. 70-81.

[24] *Id.,* pp. 122-140.

should not also prevail over the positive, convincing and credible testimony of PO1 Carlos.

OUR RULING

We find the appeal meritorious.

A successful prosecution for the sale of illegal drugs requires more than the perfunctory presentation of evidence establishing each element of the crime: the identities of the buyer and seller, the transaction or sale of the illegal drug and the existence of the *corpus delicti*.[25] In securing or sustaining a conviction under RA No. 9165, the intrinsic worth of these pieces of evidence, especially the identity and integrity of the *corpus delicti,* must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise.[26] Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant; otherwise, the prosecution for possession or for drug pushing under RA No. 9165 fails.

Section 21, paragraph 1, Article II of RA No. 9165 and Section 21(a), Article II of the Implementing Rules and Regulations (*IRR*) of RA No. 9165 give us the procedures that the apprehending team should observe in the handling of seized illegal drugs in order to preserve their identity and integrity as evidence. As indicated by their mandatory terms, strict compliance with the prescribed procedure is essential and the prosecution must show compliance in every case.[27] Parenthetically, in *People v. De la Cruz*,[28] we justified the need

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[25] *People v. Partoza*, G.R. No. 182418, May 8, 2009.

[26] *People v. Robles*, G.R. No. 177220, April 24, 2009.

[27] *People v. Garcia*, G.R. No. 173480, February 25, 2009.

[28] G.R. No. 177222, October 29, 2008.

for strict compliance with the prescribed procedures to be consistent with the principle that penal laws shall be construed strictly against the government and liberally in favor of the accused.

Section 21, paragraph 1, Article II of RA No. 9165, states:

> 1) The apprehending team having initial custody and control of the drugs **shall**, immediately after seizure and confiscation, **physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated** and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. [Emphasis supplied]

This provision is further elaborated in Section 21(a), Article II of the IRR of RA No. 9165, which reads:

> (a) The apprehending office/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, further that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.[Emphasis supplied]

In the present case, the records show that the buy-bust team did not observe even the most basic requirements of the prescribed procedures. While the markings, "AOC-BB/17-02-03," were made in the small plastic sachet allegedly seized from the accused-appellant, the evidence does not show the identity of the person who made these markings and the time

and place where these markings were made.[29] Notably, PO1 Carlos' testimony failed to disclose whether a physical inventory and photograph of the illegal drug had been done. Further, nothing in the records also indicates whether the physical inventory and photograph, if done at all, were made in the presence of the accused-appellant or his representatives or within the presence of any representative from the media, DOJ or any elected official. Then again, PO1 Carlos' testimony also failed to show that any of these people has been required to sign the copies of the physical inventory, or that any of them was subsequently given a copy of the physical inventory.

We had occasions to discuss and expound in several cases on the implications of the failure to comply with Section 21, paragraph 1, Article II of RA No. 9165.

In *People v. Sanchez*,[30] we declared that in a warrantless seizure (such as in a buy-bust operation) under RA No. 9165, the physical inventory and photograph of the items can be made by the buy-bust team, *if practicable*, at the place of seizure considering that such interpretation is more in keeping with the law's intent of preserving the integrity and evidentiary value of the seized drugs.[31]

People v. Garcia[32] resulted in an acquittal because the buy-bust team failed to immediately mark the seized items at the place of seizure and failed to explain the discrepancies in the markings in the seized items. The underlying reason for the acquittal, of course, was the doubts raised on whether the seized items are the exact same items that were taken from the accused-appellant when he was arrested; the prosecution failed to satisfactorily establish the *corpus delicti* – a material element of the crime.

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[29] Records, p. 44.

[30] G.R. No. 181545, October 08, 2008.

[31] *Id.*

[32] G.R. No. 173480, February 25, 2009.

Another acquittal was *People v. Robles*,[33] where the Court considered the uncertainty of the origins of the seized drug given the lack of evidence showing compliance with the prescribed procedures on physical inventory, the photographing of the seized articles, and the observance of the chain of custody rule.

While the chain of custody has been a critical issue leading to acquittals in drug cases, we have nevertheless held that non-compliance with the prescribed procedures does not necessarily result in the conclusion that the identity of the seized drugs has been compromised so that an acquittal should follow. The last paragraph of Section 21(a), Article II of the IRR of RA No. 9165 provides a saving mechanism to ensure that not every case of non-compliance will irretrievably prejudice the prosecution's case. To warrant application of this saving mechanism, however, the prosecution must recognize and explain the lapse or lapses in the prescribed procedures.[34] The prosecution must likewise demonstrate that the integrity and evidentiary value of the evidence seized have been preserved.[35]

In the present case, the prosecution miserably failed to adduce evidence establishing the chain of custody of the seized illegal drugs, and failed as well to establish compliance with the saving mechanism discussed above.

In *Lopez v. People,*[36] we laid down the requirements that must be followed in handling an illegal drug seized:

> As a method 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

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[33] *Supra* note 27.

[34] *People v. Sanchez,* G.R. No. 175832, October 15, 2008.

[35] *Id.*

[36] G.R. No. 172953, April 30, 2008.

proponent claims it to be. **It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then 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 same.** [Emphasis supplied]

Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002,[37] which implements RA No. 9165, defines chain of custody in this wise:

b. "Chain of Custody" means the **duly recorded authorized movements** and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage**, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.** Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition;[Emphasis supplied]

While the identities of the seller and the buyer and the transaction involving the sale of the illegal drug were duly proven in this case by PO1 Carlos' testimony, we find the testimony deficient for its failure to establish the various links in the chain of custody. PO1 Carlos did not state the details material to the handling of the items seized from the accused-appellant. This glaring deficiency is readily obvious from PO1 Carlos' short testimony which glossed over the required details. To quote PO1 Carlos:

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[37] Guidelines On The Custody And Disposition Of Seized Dangerous Drugs, Controlled Precursors And Essential Chemicals, and Laboratory Equipment pursuant to Section 21, Article II of the IRR of RA No. 9165 in relation to Section 81(b), Article IX of RA No. 9165.

Q: After you have purchased, what happened next?
A: We arrested them.

x x x x x x x x x

Q: After that?
A: We apprised him of his rights and his violation then we brought him to the Pagamutang Bayan.

Q: What was the result of the laboratory examination?
A: Positive, sir.[38]

Thus, PO1 Carlos failed to testify *about the following critical links in the chain of custody* –

(a) The first link

The links in the chain of custody start with the seizure of the plastic sachet containing the suspected *shabu* bought in the buy-bust sale. The short testimony of PO1 Carlos in this regard merely showed that after making the arrest, the accused-appellant was taken to the *Pagamutang Bayan* and thereafter to the police station. His testimony was glaringly silent regarding the handling and disposition of the seized plastic sachet and its contents after the arrest. He did not also identify the person who had care of the seized plastic sachet during the ride to the *Pagamutang Bayan*, and from there to the police station.

(b) The second link

The second link in the chain of custody – the turnover of the seized plastic sachet containing the *shabu* from the buy-bust team to the police investigator – was not supported by evidence. As we mentioned earlier, while markings were made on the seized plastic sachet recovered from the accused-appellant, the prosecution failed to adduce any evidence identifying the person who made the markings and the place and occasion when these markings were made.[39] Similarly,

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[38] TSN, June 23, 2003, pp. 6-7.

[39] Records, p. 44.

the prosecution also failed to present evidence pertaining to the identity of the person who submitted the seized plastic sachet to the police investigator. Although the records show that the request for laboratory examination of the seized plastic sachet was prepared by one Monchito Glory Lusterio as Chief Police Inspector of the DEU, the evidence does not show that the Chief Police Inspector was the police investigator who received the marked plastic sachet from the buy-bust team.[40]

A close examination of the records likewise shows that the buy-bust sale occurred on February 17, 2003 while the request for laboratory examination was prepared a day after or on February 18, 2003.[41] The evidence does not show who had temporary custody of the seized items during this intervening period of time and before it was taken to the Philippine National Police (*PNP*) Crime Laboratory for examination.

(c) The third link

Evidence showing the custody of the seized plastic sachets at the PNP Crime Laboratory stage has not been adduced. Notably, the identity of the person who took the seized *shabu* to the crime laboratory and the identity of the person who received the seized *shabu* for laboratory examination were not disclosed. The records show that one Albert S. Arturo, as Chief Forensic Chemist, examined the specimens submitted in the request dated February 18, 2003; it does not appear however that he was the person who received the specimens when they were turned over by the Malabon City police. At most, the evidence on hand only identified him as the one who actually examined the specimens submitted by the Malabon City police.

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[40] *Ibid.*

[41] *Id.*, p. 43.

(d) The fourth link

Sections 3[42] and 6[43] (paragraph 8) of Dangerous Drugs Board Regulation No. 2, Series of 2003,[44] requires laboratory personnel to document the chain of custody each time a specimen is handled or transferred until its disposal; the board regulation also requires identification of the individuals in this part of the chain. The records of the case are bereft of details showing that this board regulation was ever complied with; the records also do not indicate how the specimen was handled after the laboratory examination and the identity of the person who had the custody of the *shabu* before its presentation in court.

The above enumeration and discussion show the glaring gaps in the chain of custody – from the seizure of the plastic sachet until the *shabu* was presented in court – and the prosecution's failure to establish the identities of the persons who handled the seized items.

We are not unmindful of the evidence on record showing that PO1 Carlos identified the *shabu* offered in evidence as the very same *shabu* recovered from the accused-appellant. We cannot accord weight to PO1 Carlos' identification, however, in light of our above discussions and findings.[45] To repeat, the

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[42] Chain of Custody refers to procedures to account for each specimen by tracking its handling and storage from point of collection to final disposal. These procedures require that the applicant's identity is confirmed and that a Custody and Control Form is used from time of collection to receipt by the laboratory. Within the laboratory, appropriate chain of custody records must account for the samples until disposal.

[43] 8. Chain of Custody — A laboratory shall use documented chain of custody procedures to maintain control and accountability of specimens. The date and purpose shall be recorded on an appropriate Custody and Control Form each time a specimen is handled or transferred and every individual in the chain shall be identified. Accordingly, authorized collection staff shall be responsible for each specimen in their possession and shall sign and complete the Custody and Control Forms.

[44] Implementing Rules and Regulations Governing Accreditation of Drug Testing Laboratories in the Philippines.

[45] TSN, June 23, 2003, p. 5.

lapses in the required procedures do not provide us any reasonable certainty that the *shabu* that was offered in court as evidence is the same *shabu* that was allegedly seized from the accused-appellant. In the absence of concrete evidence on the illegal drug bought and sold, the body of the crime – the *corpus delicti* – has not been adequately proven.

In light of this conclusion, we see no need to discuss the strength of the accused-appellant's defenses and the veracity of his evidence. Neither do we see any need to pass upon the merits of the other arguments raised by the accused-appellant, since the prosecution failed to overcome the accused-appellant's right to be presumed innocent of the crime charged.

As our last point, we are aware that the RTC's findings of fact, when affirmed by the CA, are entitled to great weight and will not be disturbed on appeal. This rule, however, finds application only where the lower courts did not overlook or misapprehend facts of weight and substance in their review and appreciation of the presented evidence.[46]

In this case, the exception rather than the general rule applies given the RTC and CA's failure to recognize material facts and fatal omissions on the part of the buy-bust team. Both courts simply relied on the presumption of regularity in the performance of official duties – a presumption that does not arise when lapses in procedure are evident from the record,[47] in this case, the failure to comply with Section 21, paragraph (1) of Article II of RA No. 9165 and its implementing rules. This same lapse resulted in no less than the failure to establish the existence of the *corpus delicti*. In the absence of this element, no conviction for the illegal sale of *shabu* under Section 5 of RA No. 9165 can be sustained.

WHEREFORE, premises considered, we hereby *REVERSE* and *SET ASIDE* the Decision dated January 16, 2006 of the Court of Appeals in CA-G.R. CR H.C. No. 00305. Accused-

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[46] *People v. Robles*, *supra* note 27.

[47] *People v. Garcia*, *supra* note 28.

appellant Edgar Denoman *y* Acurda is hereby *ACQUITTED* for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately *RELEASED* from detention unless he is confined for another lawful cause.

Let a copy of this Decision be furnished the Director, Bureau of Corrections, Muntinlupa City for immediate implementation. The Director of the Bureau of Corrections is directed to report the action he has taken to this Court within five days from receipt of this Decision.

SO ORDERED.

Carpio,[*] *Carpio Morales (Acting Chairperson),*[**] *Del Castillo,* and *Abad, JJ.,* concur.

SECOND DIVISION

[G.R. No. 172537. August 14, 2009]

JETHRO INTELLIGENCE & SECURITY CORPORATION and YAKULT PHILS., INC., *petitioners, vs.* **THE HON. SECRETARY OF LABOR AND EMPLOYMENT, FREDERICK GARCIA, GIL CORDERO, LEONIELYN UDALBE, MICHAEL BENOZA, EDWIN ABLITER, CELEDONIO SUBERE and MA. CORAZON LANUZA,** *respondents.*

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[*] Designated additional Member of the Second Division per Special Order No. 671 dated July 28, 2009.

[**] Designated Acting Chairperson of the Second Division per Special Order No. 670 dated July 28, 2009.

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPRIETY THEREOF.—** The sole office of a writ of *certiorari* is the correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack of jurisdiction. It does not include the correction of a tribunal's evaluation of the evidence and factual findings thereon, especially since factual findings of administrative agencies are generally held to be binding and final so long as they are supported by substantial evidence in the record of the case.

2. **LABOR LAWS; SECRETARY OF LABOR AND EMPLOYMENT (SOLE) OR DULY AUTHORIZED REPRESENTATIVES; VISITORIAL POWERS; EXCLUDE FROM ITS COVERAGE ARTICLES 129 AND 217 OF THE LABOR CODE.—** The scope of the visitorial powers of the SOLE and his/her duly authorized representatives was clarified in *Allied Investigation Bureau, Inc. v. Secretary of Labor and Employment*, *viz*: While it is true that under Articles 129 and 217 of the Labor Code, the Labor Arbiter has jurisdiction to hear and decide cases where the aggregate money claims of each employee exceeds ₱5,000.00, said provisions do not contemplate nor cover the visitorial and enforcement powers of the Secretary of Labor or his duly authorized representatives. Rather, said powers are defined and set forth in Article 128 of the Labor Code (as amended by R.A. No. 7730) thus: Art. 128. ***Visitorial and enforcement power***.— x x x (b) *Notwithstanding the provisions of Articles 129 and 217 of this Code to the contrary, and in cases where the relationship of employer-employee exists, the Secretary of Labor and Employment or his duly authorized representatives shall have the* **power to issue compliance orders** *to give effect to the labor standards provisions of this Code and other labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection*. The Secretary or his duly authorized representatives shall issue writs of execution to the appropriate authority for the enforcement of their orders, ***except*** in cases where the employer contests the finding of the labor employment and enforcement officer and raises issues supported by documentary proofs which were not considered in the course of inspection. x x x The aforequoted [Art. 128]

explicitly excludes from its coverage Articles 129 and 217 of the Labor Code by the phrase "(N)otwithstanding the provisions of Articles 129 and 217 of this Code to the contrary xxx" thereby retaining and further strengthening the power of the Secretary of Labor or his duly authorized representative to issue compliance orders to give effect to the labor standards provisions of said Code and other labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection.

3. **ID.; TECHNICAL RULES ARE NOT BINDING; THAT WITNESS WAS NOT CROSS-EXAMINED ON HIS AFFIDAVIT, NOT CRUCIAL.—** Respecting petitioners' objection to the weight given to Garcia's affidavit, it bears noting that said affidavit was *not* the only basis in arriving at the judgment award. The payrolls for June 16-30, 2003 and February 1-15, 2004 reveal that the overtime rates were below the required rate. That Garcia was not cross-examined on his affidavit is of no moment. For, as *Mayon Hotel and Restaurant vs. Adana* instructs: **Article 221 of the Labor Code is clear: technical rules are not binding, and the application of technical rules of procedure may be relaxed in labor cases to serve the demand of substantial justice**. **The rule of evidence prevailing in court of law or equity shall not be controlling in labor cases and it is the spirit and intention of the Labor Code that the Labor Arbiter shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure**, all in the interest of due process. Labor laws mandate the speedy administration of justice, with least attention to technicalities but without sacrificing the fundamental requisites of due process. It bears noting that while Jethro claims that it did not cross-examine Garcia, the minutes of the July 5, 2004 hearing – at which Jethro's counsel was present – indicate that Garcia's affidavit was presented. Jethro had thus the opportunity to controvert the contents of the affidavit, but it failed.

4. **ID.; SECRETARY OF LABOR AND EMPLOYMENT; QUASI-JUDICIAL POWER; HE/SHE OR THE REGIONAL DIRECTORS CAN ISSUE COMPLIANCE ORDERS AND WRITS OF EXECUTION FOR ENFORCEMENT THEREOF; BINDING EFFECT.—** It bears emphasis that the SOLE, under Article 106 of the Labor Code, as amended,

exercises quasi-judicial power, at least to the extent necessary to determine violations of labor standards provisions of the Code and other labor legislation. He/she or the Regional Directors can issue compliance orders and writs of execution for the enforcement thereof. The significance of and binding effect of the compliance orders of the DOLE Secretary is enunciated in Article 128 of the Labor Code, as amended, *viz*: ART. 128. Visitorial and enforcement power. – x x x (d) It shall be unlawful for any person or entity to obstruct, impede, delay or otherwise render ineffective the orders of the Secretary of Labor or his duly authorized representatives issued pursuant to the authority granted under this article, and no inferior court or entity shall issue temporary or permanent injunction or restraining order or otherwise assume jurisdiction over any case involving the enforcement orders issued in accordance with this article. And Sec. 5, Rule V (Execution) of the Rules on Disposition of Labor Standards Cases in Regional Offices provides that the filing of a petition for *certiorari* shall not stay the execution of the appealed order or decision, unless the aggrieved party secures a temporary restraining order (TRO) from the Court.

APPEARANCES OF COUNSEL

Vicente A. Garcia for petitioners.
David Bartido Loste for private respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Petitioner Jethro Intelligence and Security Corporation (Jethro) is a security service contractor with a security service contract agreement with co-petitioner Yakult Phils., Inc. (Yakult). On the basis of a complaint[1] filed by respondent Frederick Garcia (Garcia), one of the security guards deployed by Jethro, for underpayment of wages, legal/special holiday pay, premium pay for rest day, 13th month pay, and night shift differential, the Department of Labor and Employment (DOLE)-Regional

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[1] Records, p. 3.

Office No. IV conducted an inspection at Yakult's premises in Calamba, Laguna in the course of which several labor standards violations were noted, including keeping of payrolls and daily time records in the main office, underpayment of wages, overtime pay and other benefits, and non-registration with the DOLE as required under Department Order No. 18-02[2].

Hearings on Garcia's complaint and on the subsequent complaints of his co-respondents Gil Cordero *et al*. were conducted during which Jethro submitted copies of payrolls covering June 16 to 30, 2003, February to May 16-31, 2004, June 16-30, 2003, and February 1-15, 2004. Jethro failed to submit daily time records of the claimants from 2002 to June 2004, however, despite the order for it to do so.

By Order[3] of September 9, 2004, the DOLE Regional Director, noting petitioners' failure to rectify the violations noted during the above-stated inspection within the period given for the purpose, found them jointly and severally liable to herein respondents for the aggregate amount of **EIGHT HUNDRED NINE THOUSAND TWO HUNDRED TEN AND 16/100 PESOS (₱809,210.16)** representing their wage differentials, regular holiday pay, special day premium pay, 13th month pay, overtime pay, service incentive leave pay, night shift differential premium and rest day premium. Petitioners were also ordered to submit proof of payment to the claimants within ten calendar days, failing which the entire award would be doubled, pursuant to Republic Act No. 8188, and the corresponding writs of execution and garnishment would be issued.

Jethro appealed[4] to the Secretary of Labor and Employment (SOLE), faulting the Regional Director for, among other things, basing the computation of the judgment award on Garcia's

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[2] *Id.* at 67.

[3] *Id.* at 64-67.

[4] *Id.* at 119-124.

affidavit instead of on the data reflected in the payrolls for 2001 to 2004.[5]

By Decision[6] dated May 27, 2005, then SOLE Patricia A. Sto. Tomas partially granted petitioner Jethro's appeal by affirming with modification the Regional Director's Order dated September 9, 2004 by deleting the penalty of double indemnity and setting aside the writs of execution and garnishment, without prejudice to the subsequent issuance by the Regional Director of the writs necessary to implement the said Decision.

Petitioners' Motion for Reconsideration[7] of the SOLE Decision having been denied,[8] they filed a petition for *certiorari* before the Court of Appeals, insisting that the affidavit of Garcia should not have been given evidentiary weight in computing the judgment award.

By Decision[9] of January 24, 2006, the appellate court denied the petition, it holding that contrary to petitioners' contention, Garcia's affidavit has probative weight for under Art. 221 of the Labor Code, the rules of evidence are not controlling, and pursuant to Rule V of the National Labor Relations Commission (NLRC) Rules of Procedure, labor tribunals may accept affidavits in lieu of direct testimony. Petitioners' motion for reconsideration having been denied by Resolution[10] dated April 28, 2006, they filed the present petition for review on *certiorari*.

Petitioners attribute grave abuse of discretion on the part of the DOLE Regional Director and the SOLE in this wise: (1) the SOLE has no jurisdiction over the case because, following

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[5] *Id.* at 123.

[6] *Id.* at 188-191.

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

[8] *Id.* at 217-219.

[9] Penned by Associate Justice Arturo G. Tayag (ret), with the concurrence of Associate Justices Jose L. Sabio, Jr. and Jose C. Mendoza. CA *rollo*, pp. 98-107.

[10] CA *rollo*, pp. 122-123.

Article 129 of the Labor Code, the aggregate money claim of each employee exceeded ₱5,000.00; (2) petitioner Jethro, as the admitted employer of respondents, could not be expected to keep payrolls and daily time records in Yakult's premises as its office is in Quezon City, hence, the inspection conducted in Yakult's plant had no basis; and (3) having filed the required bond equivalent to the judgment award, and as the Regional Director's Order of September 9, 2004 was not served on their counsel of record, the writs of execution and garnishment subsequently issued were not in order.

And petitioners maintain that Garcia's affidavit should not have been given weight, they not having been afforded the opportunity to cross-examine him.

The petition is bereft of merit.

The sole office of a writ of *certiorari* is the correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack of jurisdiction. It does not include the correction of a tribunal's evaluation of the evidence and factual findings thereon, especially since factual findings of administrative agencies are generally held to be binding and final so long as they are supported by substantial evidence in the record of the case.[11]

In dismissing petitioners' petition for *certiorari* and thus affirming the SOLE Decision, the appellate court did not err. The scope of the visitorial powers of the SOLE and his/her duly authorized representatives was clarified in *Allied Investigation Bureau, Inc. v. Secretary of Labor and Employment*,[12] *viz*:

> While it is true that under Articles 129 and 217 of the Labor Code, the Labor Arbiter has jurisdiction to hear and decide cases where the aggregate money claims of each employee exceeds ₱5,000.00, said provisions do not contemplate nor cover the visitorial and enforcement powers of the Secretary of Labor or his duly authorized representatives.

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[11] *Cuenca v. Atas*, G.R. No. 146214, October 5, 2007, 535 SCRA 48, 84.

[12] 377 Phil. 80 (1999).

Rather, said powers are defined and set forth in Article 128 of the Labor Code (as amended by R.A. No. 7730) thus:

Art. 128. ***Visitorial and enforcement power.—***

x x x x x x x x x

(b) *Notwithstanding the provisions of Articles 129 and 217 of this Code to the contrary, and in cases where the relationship of employer-employee exists, the Secretary of Labor and Employment or his duly authorized representatives shall have the* ***power to issue compliance orders*** *to give effect to the labor standards provisions of this Code and other labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection.* The Secretary or his duly authorized representatives shall issue writs of execution to the appropriate authority for the enforcement of their orders, **except** in cases where the employer contests the finding of the labor employment and enforcement officer and raises issues supported by documentary proofs which were not considered in the course of inspection. [Emphasis, underscoring and italics supplied]

x x x x x x x x x

The aforequoted [Art. 128] explicitly excludes from its coverage Articles 129 and 217 of the Labor Code by the phrase "(N)otwithstanding the provisions of Articles 129 and 217 of this Code to the contrary xxx" thereby retaining and further strengthening the power of the Secretary of Labor or his duly authorized representative to issue compliance orders to give effect to the labor standards provisions of said Code and other labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection.[13] (Emphasis and underscoring supplied.)

In *Ex-Bataan Veterans Security Agency, Inc. v. Laguesma* case, the Court went on to hold that

x x x if the labor standards case is covered by the exception clause in Article 128(b) of the Labor Code, then the Regional Director will

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

have to endorse the case to the appropriate Arbitration Branch of the NLRC. In order to divest the Regional Director or his representatives of jurisdiction, the following elements must be present: (a) that the employer contests the findings of the labor regulations officer and raises issues therein; (b) that in order to resolve such issues, there is a need to examine evidentiary matters; and (c) that such matters are not verifiable in the normal course of inspection. The rules also provide that the employer shall raise such objections during the hearing of the case or at any time after receipt of the notice of inspection results.[14]

In the case at bar, the Secretary of Labor correctly assumed jurisdiction over the case as it does not come under the exception clause in Art. 128(b) of the Labor Code. While petitioner Jethro appealed the inspection results and there is a need to examine evidentiary matters to resolve the issues raised, the payrolls presented by it were considered in the ordinary course of inspection. While the employment records of the employees could not be expected to be found in Yakult's premises in Calamba, as Jethro's offices are in Quezon City, the records show that Jethro was given ample opportunity to present its payrolls and other pertinent documents during the hearings and to rectify the violations noted during the ocular inspection. It, however, failed to do so, more particularly to submit competent proof that it was giving its security guards the wages and benefits mandated by law.

Jethro's failure to keep payrolls and daily time records in Yakult's premises was not the only labor standard violation found to have been committed by it; it likewise failed to register as a service contractor with the DOLE, pursuant to Department Order No. 18-02 and, as earlier stated, to pay the wages and benefits in accordance with the rates prescribed by law.

Respecting petitioners' objection to the weight given to Garcia's affidavit, it bears noting that said affidavit was *not* the only basis in arriving at the judgment award. The payrolls for June 16-30, 2003 and February 1-15, 2004 reveal that the

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[14] *Ex-Bataan Veterans Security Agency, Inc. v. Laguesma*, G.R. No. 152396, November 20, 2007, 537 SCRA 651, 663.

overtime rates were below the required rate.[15] That Garcia was not cross-examined on his affidavit is of no moment. For, as *Mayon Hotel and Restaurant vs. Adana*[16] instructs:

> **Article 221 of the Labor Code is clear: technical rules are not binding, and the application of technical rules of procedure may be relaxed in labor cases to serve the demand of substantial justice. The rule of evidence prevailing in court of law or equity shall not be controlling in labor cases and it is the spirit and intention of the Labor Code that the Labor Arbiter shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure,** all in the interest of due process. Labor laws mandate the speedy administration of justice, with least attention to technicalities but without sacrificing the fundamental requisites of due process.[17] (Emphasis and underscoring supplied)

It bears noting that while Jethro claims that it did not cross-examine Garcia, the minutes of the July 5, 2004 hearing – at which Jethro's counsel was present – indicate that Garcia's affidavit was presented.[18] Jethro had thus the opportunity to controvert the contents of the affidavit, but it failed.

Respecting the fact that Jethro's first counsel of record, Atty. Benjamin Rabuco III, was not furnished a copy of the September 9, 2004 Order of the Director, the SOLE noted in her assailed Decision that since Atty. Thaddeus Venturanza formally entered his appearance as Jethro's new counsel on appeal – and an appeal was indeed filed and duly verified by Jethro's owner/ manager, for all practical purposes, the failure to furnish Atty. Rabuco a copy of the said Order had been rendered moot. For, on account of such lapse, the SOLE deleted the double indemnity award and held that the writs issued in implementation of the September 9, 2004 Order were null and void, "without prejudice

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[15] Records, p. 30.

[16] G.R. No. 157634, May 16, 2005, 458 SCRA 609, 628.

[17] *Id.* at 628.

[18] Records, p. 26.

to the subsequent issuance by the Regional Director of the writs necessary to implement" the SOLE Decision.

Thus, the DOLE-Regional Office subsequently issued the following Orders: Order[19] of July 31, 2006 holding in abeyance the release of the amount equivalent to the judgment award out of Yakult accounts pending the receipt of the supersedeas bond; and Order[20] of February 27, 2007 ordering the immediate release of the garnished amount.

It bears emphasis that the SOLE, under Article 106 of the Labor Code, as amended, exercises quasi-judicial power, at least to the extent necessary to determine violations of labor standards provisions of the Code and other labor legislation. He/she or the Regional Directors can issue compliance orders and writs of execution for the enforcement thereof. The significance of and binding effect of the compliance orders of the DOLE Secretary is enunciated in Article 128 of the Labor Code, as amended, *viz*:

> ART. 128. Visitorial and enforcement power. –
>
> x x x x x x x x x
>
> (d) It shall be unlawful for any person or entity to obstruct, impede, delay or otherwise render ineffective the orders of the Secretary of Labor or his duly authorized representatives issued pursuant to the authority granted under this article, and no inferior court or entity shall issue temporary or permanent injunction or restraining order or otherwise assume jurisdiction over any case involving the enforcement orders issued in accordance with this article.

And Sec. 5, Rule V (Execution) of the Rules on Disposition of Labor Standards Cases in Regional Offices provides that the filing of a petition for *certiorari* shall not stay the execution of the appealed order or decision, unless the aggrieved party secures a temporary restraining order (TRO) from the Court.

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[19] Records, 465-466.

[20] *Id.* at 525-527. Penned by Atty. Ricardo S. Martinez, Sr., Regional Director.

In the case at bar, no TRO or injunction was issued, hence, the issuance of the questioned writs of execution and garnishment by the DOLE-Regional Director was in order.

WHEREFORE, the petition is *DENIED* and the Court of Appeals' Decision dated January 24, 2006 and Resolution dated April 28, 2006 are *AFFIRMED*.

SO ORDERED.

Carpio,[*] *Brion, Del Castillo,* and *Abad, JJ.,* concur.

SECOND DIVISION

[G.R. No. 177134. August 14, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RACHEL ANGELES *y* NAVAL *alias* RUSSEL ANGELES *y* CABAL,** *appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; ALIBI; HOW ESTABLISHED.—** For alibi to prosper, it is not enough for an accused to prove that he was somewhere else when the crime was committed. He must prove that he could not have been physically present at the *locus criminis* or in its immediate vicinity, and the same must be supported by credible corroboration, preferably from disinterested witnesses who would swear that they saw or were with the accused somewhere else when the crime was being committed.

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[*] Additional member per Special Order No. 671 in lieu of Senior Associate Justice Leonardo A. Quisumbing who is on official leave.

2. ID.; ID.; CREDIBILITY OF WITNESSES; POSITIVE IDENTIFICATION ABSENT SHOWING OF ILL MOTIVE, PREVAILS.— It bears stressing that appellant and even his mother could not impute any ill-motive on the part of prosecution eyewitness Aguilar to falsely charge him of having stabbed the victim. The well-settled rule that positive identification by a witness, absent any showing of ill motive on his part, prevails thus stands.

3. CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; TREACHERY; APPRECIATED IN CASE AT BAR.— That treachery attended the stabbing cannot be gainsaid. The essence of treachery is the sudden and unexpected attack by the aggressor on an unsuspecting victim, depriving him of any real chance to defend himself. Even when the victim was forewarned of the danger to his person, treachery may still be appreciated since what is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate. In the present case, even assuming that the victim was forewarned of the danger because he was, immediately before the stabbing, engaged in an argument with appellant, he was not in a position to defend himself as his hands were held by appellant's companion.

4. ID.; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; NOT APPRECIATED IN CASE AT BAR.— As for appellant's claim of voluntary surrender to mitigate the penalty imposed on him, the same fails. The records do not indicate that appellant intended to assume responsibility for the death of the victim. As the Office of the Solicitor General observes, he was "merely forced by circumstances."

5. ID.; MURDER; CIVIL PENALTIES; TEMPERATE DAMAGES; MAY BE RECOVERED IN CASE AT BAR.— Under Article 2224 of the Civil Code, when the court finds that some pecuniary loss has been suffered but its amount cannot be proved with certainty, temperate damages may be recovered. Consistent with prevailing jurisprudence, the appellate court correctly awarded the amount of ₱25,000.

6. ID.; ID.; ID.; EXEMPLARY DAMAGES, AWARDED.— Under Article 2230 of the Civil Code, exemplary damages may be awarded in criminal cases when the crime was committed with one or more aggravating circumstances, in this case, treachery. This is intended to serve as deterrent to serious wrongdoings

and as vindication of undue sufferings and wanton invasion of the rights of an injured, or as a punishment for those guilty of outrageous conduct. The imposition of exemplary damages is also justified under Article 2229 of the Civil Code in order to set an example for the public good. The amount for the purpose is ₱25,000 following precedents.

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.*:

His conviction for murder by the Regional Trial Court of Manila, Branch 18 in Criminal Case No. 98-167500 having been affirmed with modification by the Court of Appeals by Decision of May 15, 2006,[1] Rachel Angeles *y* Naval *alias* Russel Angeles *y* Cabal (appellant) lodged the present appeal.

The Information against appellant reads:

That on or about September 1, 1998, in the City of Manila, Philippines, conspiring and confederating with another whose true name, identity and present whereabout[s] are still unknown and helping each other, did then and there wil[l]fully, unlawfully and feloniously, with intent to kill and with evident premeditation and treachery, attack, assault and use personal violence upon one MICHAEL COLIGADO *Y* TARRAYO[2] by then and there stabbing the latter with a bladed weapon hitting him on the left side of the trunk, thereby inflicting upon the said Michael Coligado *y* Tarrayo mortal stab wound which was the direct and immediate cause of his death.[3] (Underscoring supplied)

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[1] CA *rollo*, pp. 85-96. Penned by Justice Marina L. Buzon, with the concurrence of Justices Aurora Santiago-Lagman and Arcangelita Romilla-Lontok.

[2] Also spelled Taroyo in some parts of the records.

[3] Records, p. 1.

Oddly, while appellant was alleged to have conspired with one whose whereabouts were "still unknown," the "John Doe" was not impleaded as accused.

From the testimonies of prosecution witnesses Antonio Aguilar (Aguilar) and Jonathan V. Carpio (Carpio) and the Medico-Legal Report of the autopsy of the victim containing the following:

POSTMORTEM FINDINGS:

x x x x x x x x x

HEAD AND TRUNK:

1. Scalp hematoma, occipital region, measuring 6x5 cm, bisected by the posterior midline.

2. Stab wound, left mammary region, measuring 2.7 cm long with 3 stitches applied 17.5cm from the anterior midline, 15 cm deep, directed posteriorwards, downwards and medialwards, passing thru the 4th intercostals space, piercing the upper lobe of the left lung, pericardial sac and heart.

x x x x x x x x x

CONCLUSION:

Cause of death is hemorrhagic shock as a result of a stab wound of the trunk.

(Underscoring supplied),

the following version of the prosecution is culled:

At around 11:45 p.m. of September 1, 1998, while prosecution witness Aguilar was driving his tricycle along Batanes St., Sampaloc, Manila behind another tricycle driven by Michael Colligado (the victim) bearing appellant and an unidentified companion, the victim's tricycle stopped at the corner of Tomas Pinpin and Batanes Streets.

After Aguilar's tricycle passed by the victim's tricycle, he (Aguilar) made a "U-turn" upon which he heard the victim and appellant arguing about the fare. While appellant was standing on the left side of the victim and his companion was

holding the victim's hands, appellant stabbed the victim near his armpit causing him to fall down. Appellant and his companion immediately fled, passing by Carpio, also a tricycle driver.

Aguilar, with the help of people in the vicinity, immediately brought the victim to the United Doctors Medical Center where he died at the Emergency Room.[4]

As Carpio saw appellant holding a knife, he went inside the nearby house of appellant's aunt and told her what he had witnessed. The aunt who was then busy playing *"tong-its"* was unmoved, however. Carpio thus left and proceeded to the nearby basketball court where he learned from the people there that someone had been stabbed.[5]

On the other hand, appellant, interposing alibi, claimed that at around 9:15 p.m. to 9:35 p.m. on September 1, 1998, he was sitting in front of his house, after which he went inside and watched television until around 10:30 p.m. when he fell asleep at the sofa located at the ground floor of their house.

Appellant's mother Evelyn corroborated appellant's claim.

By Decision of May 3, 2001 Decision, the trial court convicted appellant of murder, disposing as follows:

> WHEREFORE, the accused, Rachel Angeles, is hereby convicted of the crime of murder under Article 248 of the Revised Penal Code and sentenced to suffer *reclusion perpetua* with all the accessory penalties provided by law and to pay the costs. The accused is further ordered to pay the legal heirs of the victim moral and <u>nominal damages</u> in the respective sums of ₱200,000.00 and ₱70,000.00, plus compensation for the loss of the life of the victim in the sum of ₱50,000.00 with interest thereon at the legal rate of 6% per annum from this date until fully paid.[6] (Underscoring supplied)

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[4] TSN, Antonio Aguilar, February 12, 1999, pp. 3-5; November 19, 1999, pp. 3-7.

[5] TSN, Jonathan Carpio, February 23, 2000, pp. 2-7.

[6] Records, pp. 123-124.

This Court, following *People v. Mateo,*[7] referred the case, by Resolution of September 15, 2004,[8] to the Court of Appeals where it was docketed as CA-G.R. CR-H.C. No. 01612.

In his Brief,[9] appellant faults the trial court in:

I.

… CONVICTING [APPELLANT] OF MURDER WHEN THE LATTER'S GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

II

…CONVICTING [APPELLANT] OF MURDER IN THE ABSENCE OF THE QUALIFYING CIRCUMSTANCE OF TREACHERY.

III

…NOT TAKING INTO CONSIDERATION THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER IN IMPOSING THE PENALTY.[10] (Underscoring supplied)

The appellate court affirmed with modification the trial court's decision, disposing as follows:

WHEREFORE, the Decision appealed from is **MODIFIED** by **DELETING** the award of nominal damages in the amount of ₱70,000.00 and **ORDERING** accused-appellant Rachel Angeles *y* Naval to pay the heirs of Michael Coligado the amount of ₱25,000.00 as temperate damages, **REDUCING** the award of moral damages

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[7] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640. The case modified the pertinent provisions of the Revised Rules on Criminal Procedure, more particularly Section 3 and Section 10 of Rule 122, Section 13 of Rule 124, Section 3 of Rule 125 insofar as they provide for direct appeals from the Regional Trial Courts to the Supreme Court in cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment and allowed intermediate review by the Court of Appeals before such cases are elevated to the Supreme Court.

[8] CA *rollo*, p. 83.

[9] *Id.* at 39-50.

[10] *Id.* at 39.

from ₱200,000.00 to ₱50,000.00 and **AFFIRMING** the same in all other respects. (Emphasis and capitalization in the original; underscoring supplied)

In deleting the trial court's award of nominal damages, the appellate court held that nominal damages are awarded only when no actual damages resulted or none were shown. In the present case, however, the appellate court noted that the family of the victim made a downpayment of ₱10,000 to the Davao Funeral Home as part of the funeral expenses, and while an Agreement[11] between the mother of the victim and the funeral home for funeral expenses and interment in the amount of ₱38,000 was presented, it was not established that the total amount of ₱38,000 was actually paid.[12] Hence, the appellate court's award of temperate damages instead of nominal damages.

Hence, the present appeal.

For alibi to prosper, it is not enough for an accused to prove that he was somewhere else when the crime was committed. He must prove that he could not have been physically present at the *locus criminis* or in its immediate vicinity, and the same must be supported by credible corroboration, preferably from disinterested witnesses who would swear that they saw or were with the accused somewhere else when the crime was being committed.[13]

Appellant's mother's corroboration of his alibi does not impress. For while she declared that when she went up the second floor of their house to sleep at around 11:30 p.m., appellant was already sleeping at the sofa, and that when she went down to urinate at 1:00 a.m., appellant was still there sleeping, she could not have known whether appellant stepped out of the house between 11:30 p.m. and 1:00 a.m.

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[11] Records, p. 77.

[12] CA *rollo*, pp. 94-95.

[13] *People v. Gusmo*, 467 Phil. 199, 217-218.

Q: And what time did you go to sleep?

A: 11:30 p.m., sir.

Q: And you woke up on the following morning, is that correct?

A: Yes, sir, early morning at 1:00 a.m. because I urinated.

Q: While you were asleep from 11:30 up to 1:00 a.m. the following morning, you did not saw [*sic*] your son Rachel [A]ngeles went out your house?

A: He was there sleeping, sir.

Q: The basis of your answer that he was sleeping is your allegation that when you went to sleep you saw him sleeping, is that correct?

A: Yes, sir.

Q: But **you cannot be absolutely certain that after you went to bed, he did not leave your house because you admitted that you already went to sleep?**

A: **Yes, sir**.

x x x x x x x x x

COURT:

Q: Where was he sleeping at that time when you slept at 11:30 p.m.?

A: At the sala, Your Honor.

COURT

Q: And where is your **room situated**, in what part of your house?

A: **Upstairs**, sir.

Q: And the **sala of your house** is located on the **ground floor** of your house?

A: **Yes, sir.**[14] (Emphasis and underscoring supplied)

That appellant's guilt is not ruled out in view of the proximity of his house to the *locus criminis* is reflected in his own testimony on cross-examination, *viz:*

Q: Now, that place where you reside is at No. 2172 T. Pinpin St., is that correct?

A: Yes, sir.

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[14] TSN, Evelyn Angeles, November 28, 2000, pp. 2-4.

Q: And that is very near the place where where [sic] Michael Colligado was killed, is that correct?

A: It's far, it's on the other street, sir.

Q: That is also along T. Pinpin St., is that correct?

A: No, sir, it happened on Batanes Street, sir.

Q: And that is at the corner of T. Pinpin Street, is that correct?

A: Yes, sir.

Q: And from your house, you could reach that place by walk[ing] just for about 5 minutes, is that correct?

A: **It would take me about ten minutes**, sir.

Q: But if you run, you would reach that in a short period of time, probably about 5 minutes more or less, is that correct?

A: **Probably about 5 minutes,** sir.[15] (Emphasis and underscoring supplied)

It bears stressing that appellant and even his mother could not impute any ill-motive on the part of prosecution eyewitness Aguilar to falsely charge him of having stabbed the victim.

The well-settled rule that positive identification by a witness, absent any showing of ill motive on his part, prevails thus stands.[16]

That treachery attended the stabbing cannot be gainsaid. The essence of treachery is the sudden and unexpected attack by the aggressor on an unsuspecting victim, depriving him of any real chance to defend himself. Even when the victim was forewarned of the danger to his person, treachery may still be appreciated since what is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate.[17]

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[15] TSN, Rachel Angeles, May 26, 2000, p. 6.

[16] *People v. Barcimo, Jr.,* 467 Phil. 709, 719 (2004). *Vide Sienes v. People*, G.R. No. 132925, December 13, 2006, 511 SCRA 13, 27; *People v. Bon*, G.R. No. 166401, October 30, 2006, 506 SCRA 168, 186.

[17] *People v. Rodas*, G.R. No. 175881, August 28, 2007, 531 SCRA 554, 567.

In the present case, even assuming that the victim was forewarned of the danger because he was, immediately before the stabbing, engaged in an argument with appellant, he was not in a position to defend himself as his hands were held by appellant's companion.

As for appellant's claim of voluntary surrender to mitigate the penalty imposed on him, the same fails. The records do not indicate that appellant intended to assume responsibility for the death of the victim. As the Office of the Solicitor General observes, he was "merely forced by circumstances."[18]

Under Article 2224 of the Civil Code, when the court finds that some pecuniary loss has been suffered but its amount cannot be proved with certainty, temperate damages may be recovered. Consistent with prevailing jurisprudence, the appellate court correctly awarded the amount of ₱25,000.[19]

Further, under Article 2230 of the Civil Code, exemplary damages may be awarded in criminal cases when the crime was committed with one or more aggravating circumstances, in this case, treachery. This is intended to serve as deterrent to serious wrongdoings and as vindication of undue sufferings and wanton invasion of the rights of an injured, or as a punishment for those guilty of outrageous conduct.[20] The imposition of exemplary damages is also justified under Article 2229 of the Civil Code in order to set an example for the public good. The amount for the purpose is ₱25,000 following precedents.[21]

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[18] CA *rollo,* p. 73.

[19] *People v. Eling*, G.R. No. 178546, April 30, 2008, 553 SCRA 724, 740; *People v. Tagana,* 468 Phil. 784, 814 (2004).

[20] *People v. Malibiran*, G.R. No. 178301, April 24, 2009.

[21] <u>*Vide*</u> *People v. Obligado,* G.R. No. 171735, April 16, 2009; *People v. Rolida,* G.R. No. 178322, March 4, 2009; *People v. Martin*, G.R. No. 177571, September 29, 2008, 567 SCRA 42; *People v. Segobre,* G.R. No. 169877, February 14, 2008, 545 SCRA 341, 350.

WHEREFORE, the May 15, 2006 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01612 is *AFFIRMED with MODIFICATION* in that appellant is also ordered to pay the heirs of Michael Coligado the amount of Twenty Five Thousand (₱25,000) as exemplary damages.

SO ORDERED.

Carpio,[*] *Brion, Del Castillo,* and *Abad, JJ.,* concur.

SPECIAL SECOND DIVISION

[G.R. No. 178188. August 14, 2009]

OLYMPIC MINES AND DEVELOPMENT CORP., *petitioner, vs.* **PLATINUM GROUP METALS CORPORATION,** *respondent.*

[G.R. No. 180674. August 14, 2009]

CITINICKEL MINES AND DEVELOPMENT CORPORATION, *petitioner, vs.* **HON. JUDGE BIENVENIDO C. BLANCAFLOR, in his capacity as the Presiding Judge of the Regional Trial Court of Palawan, Branch 95, Puerto Princesa City, Palawan, and PLATINUM GROUP METALS CORPORATION,** *respondents.*

[G.R. No. 181141. August 14, 2009]

PLATINUM GROUP METALS CORPORATION, *petitioner, vs.* **CITINICKEL MINES AND DEVELOPMENT CORPORATION, acting for its own interest and on behalf of OLYMPIC MINES AND DEVELOPMENT CORPORATION,** *respondent.*

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[*] Additional member per Special Order No. 671 in lieu of Senior Associate Justice Leonardo A. Quisumbing who is on official leave.

[G.R. No. 183527. August 14, 2009]

PLATINUM GROUP METALS CORPORATION, *petitioner, vs.* **COURT OF APPEALS and POLLY C. DY,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; SUPREME COURT; DECISION OF A COURT DIVISION IS A DECISION OF THE COURT, NOT APPEALABLE TO THE COURT *EN BANC*.—** The Constitution itself decrees that the Supreme Court can sit *En Banc* or in divisions of three, five, or seven members. Cases or matters heard by a division shall be decided or resolved with the concurrence of the majority of the Members who actually took part in the deliberations of the issues in the case and voted thereon, and in no case without the concurrence of at least three of such Members. Under SC Circular No. 2-89 (*Guidelines and Rules in the Referral to the Court En Banc of Cases Assigned to a Division*), a decision of a Division of the Court, when concurred in by a majority of its Members who actually took part in the deliberations on the issues in a case and voted thereon, is a decision of the Supreme Court. The Supreme Court sitting *En Banc* is not an appellate court in relation with the Divisions to which the latter's decisions may be appealed. Each division of the Court is *not* a body inferior to the Court *En Banc*, and sits veritably as the Court *En Banc* itself. Undoubtedly, a decision by majority of a division of the Supreme Court — whether the vote is a split 3-2 vote or a unanimous decision — is still a decision of the Supreme Court. Therefore, the fact the May 8, 2009 Decision was reached by a 3-2 vote is not, by itself, sufficient ground to refer the case to the Court *En Banc*.
2. **REMEDIAL LAW; JURISDICTION; REGIONAL TRIAL COURT; WHERE COMPLAINT IS NOT AN ADVERSE CLAIM TO THE OTHER PARTY'S MINERAL AGREEMENT APPLICATION BUT MERELY WANTED SAID PARTY TO ACKNOWLEDGE THE VALIDITY OF THE OPERATING AGREEMENT, COMPLAINT DOES NOT FALL UNDER THE PANEL OF ARBITRATORS' (POA) JURISDICTION BASED ON THE MINING ACT.—**

Olympic and Citinickel posit that only questions involving the validity or voidness of mining contracts or agreements can be settled by the courts; other matters, especially those that require the interpretation and the application of that particular knowledge and expertise possessed by members of the POA, should be resolved by the POA. x x x Olympic and Citinickel assert that the principal issue raised in Civil Case No. 4199 was *whether Platinum committed gross violations of the Operating Agreement* — a contractual dispute between the parties that requires the technical expertise of the POA to resolve. x x x In relation to Section 77 (a) on disputes involving rights to mining areas, Olympic contends that when Platinum filed Civil Case No. 4199, it had a pending application for MPSA; this situation allegedly brings the case within the POA's jurisdiction under Section 77 (a), as it becomes a pre-approval protest or adverse claim. x x x Platinum's complaint is not an adverse claim to Olympic's/ Citinickel's mineral agreement application; Platinum is not making a separate bid for the mining areas covered by the Operating Agreement. On the contrary, Platinum merely wanted Olympic/Citinickel to acknowledge the validity of the Operating Agreement and to remove all doubts as to its rights under the agreement. And as pointed out, x x x Platinum's complaint does not fall under the POA's jurisdiction based on Section 77(a) of the Mining Act.

3. **ID.; CIVIL PROCEDURE; PARTIES; TRANSFER OF INTEREST; INCLUSION OR SUBSTITUTION OF TRANSFEREE *PENDENTE LITE* TO THE CASE, DISCRETIONARY TO THE COURT AS JUDGMENT IS BINDING AGAINST THE PARTIES AND THEIR SUCCESSORS-IN-INTEREST.—** Citinickel insists that the injunctive writ issued by Judge Blancaflor in Civil Case No. 4199 against it should not be sustained as it was never impleaded in the case, despite being an indispensable party. x x x To be clear, Citinickel is not an indispensable party which must be impleaded in Civil Case No. 4199 to make the writs and orders issued therein binding against it. Rather, it is a transferee *pendente lite* under Section 19 of Rule 3 of the Rules of Court whose inclusion or substitution lies entirely within the discretion of the court hearing the case. The formal inclusion of a successor-in-interest is not an absolute requirement as a judgment is binding against the parties and their successors-in-interest.

4. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PARTY NOT SUBJECT TO INJUNCTIVE WRIT HAS NO LEGAL STANDING TO ASSAIL THEM THROUGH *CERTIORARI*.—** While Citinickel rejects the validity and binding force of the injunctive writ issued in Civil Case No. 4199 that expressly included its name, Dy, whose name was never included in either writs resists its *probable* application against her and thus sought its annulment before the CA by filing a *certiorari* petition against the trial court. Not being the subject of the injunctive writs, Dy has no legal standing to assail them through a *certiorari* petition. Under Section 1 of Rule 65, it is the *person aggrieved by the assailed act* of a board, tribunal or officer which has acted without or in excess of its jurisdiction who can file a petition for *certiorari* before the proper court.

APPEARANCES OF COUNSEL

Corporate Counsels Philippines Law Offices for Platinum Group Metals Corp.

Reynaldo P. Melendres, Ma. Corazon L. Leynes Xavier and *Dela Cruz Labitoria Albano Gasis and Associates* for Citinickel Mines and Development Corp.

The Law Firm of Chan Robles and Associates for Polly C. Dy & Citinickel Mines and Development Corporation.

Radaza Law Office and *Ermitaño Manzano Reodica and Associates* for Olympic Mines and Development Corporation.

R E S O L U T I O N

BRION, *J.*:

We resolve in this Resolution: (1) the motions for reconsideration of the Court's Decision of May 8, 2009 in these consolidated cases filed by Olympic Mines and Development Corporation (*Olympic*),[1] Citinickel Mines and Development Corporation (*Citinickel*),[2] and Polly Dy

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[1] Dated June 5 and 9, 2009; *rollo*, pp. 475-485.

[2] Dated June 10, 2009; *id.*, pp. 511-544.

(*Dy*);[3] and (2) the motions to elevate the same cases to the Court *En Banc*.[4]

The dispositive of the Court's May 8, 2009 Decision declared:

WHEREFORE, premises considered, we rule as follows:

a) in **G.R. No. 178188** (*Olympic Mines v. Platinum Group Metals Corporation*): Olympic's petition is denied for lack of merit and the assailed CA Decision in *CA-G.R. SP No. 97259* is **AFFIRMED**;

b) in **G.R. No. 183527** (*Platinum Group Metals Corporation v. Court of Appeals*): The assailed CA Resolution in *CA-G.R. SP No. 101544* is **REVERSED** and **SET ASIDE**;

c) in **G.R. No. 180674** (*Citinickel Mines and Development Corporation v. Judge Bienvenido Blancaflor and Platinum Group Metals Corporation*): The questioned CA Decision in *CA-G.R. SP No. 99422* is **AFFIRMED**; and

d) in **G.R. No. 181141** (*Platinum Group Metals Corporation v. Citinickel Mines and Development Corporation*): The CA decision in *CA-G.R. SP No. 97288* is **REVERSED** and **SET ASIDE**. The POA Resolution, having been issued in violation of a previously issued writ of preliminary injunction, is **ANNULLED** and **SET ASIDE.**

BACKGROUND FACTS

In 1971 and 1980, Olympic was granted "Mining Lease Contracts" by the Secretary of the Department of Environment and Natural Resources (*DENR*) covering mining areas located in Palawan. With the passage of Republic Act No. 7942 or the Philippine Mining Act of 1995 (*Mining Act*),[5] these mining

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[3] Dated June 10, 2009; *id.*, pp. 555-567.

[4] Motions dated June 15, 17 and 29, 2009 filed by Citinickel and motion dated June 26, 2009 filed by Olympic; *id.*, pp. 617-631.

[5] Section 112. *Non-impairment of Existing Mining/Quarrying Rights.* – All valid and existing mining lease contracts, permits/licenses, leases pending renewal, mineral production-sharing agreements granted under Executive Order No. 279, at the date of effectivity of this Act, shall remain valid,

lease contracts became the subject of Mineral Production Sharing Agreement (*MPSA*) applications by Olympic.

On July 18, 2003, Olympic entered into an *Operating Agreement* with the Platinum Group Metals Corporation (*Platinum*), under which Platinum was given the exclusive right to control, possess, manage/operate, and conduct mining operations, and to market or dispose mining products found in the Toronto Nickel Mine in the Municipality of Narra and in the Pulot Nickel Mine in the Municipality of Espanola (*subject mining areas*) for a period of twenty-five years. In return, Platinum bound itself to pay Olympic a royalty fee of 2½ of the gross revenues.

In 2006, Olympic made various attempts to terminate the Operating Agreement and to deprive Platinum of its rights and interests over the subject mining areas, alleging that Platinum committed gross violations of the Operating Agreement. These attempts included:

a) sending Platinum a letter on April 24, 2006 to inform Platinum that it was terminating the Operating Agreement and demanding the immediate return of the possession of the subject mining areas;

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shall not be impaired, and shall be recognized by the Government: Provided, That the provisions of Chapter XIV on government share in mineral production-sharing agreement and Chapter XVI on incentives of this Act shall immediately govern and apply to a mining lessee or contractor indicates his intention to the secretary, in writing, not to avail of said provisions: Provided, further, That no renewal of mining lease contracts shall be made after the expiration of its term: Provided, finally, That such leases, production-sharing agreements, financial or technical assistance agreements shall comply with the applicable provisions of this Act and its implementing rules and regulations.

Section 113. *Recognition of Valid and Existing Mining Claims and Lease/ Quarry Applications.* – Holders of Valid and existing mining claims, lease/ quarry applications shall be given preferential rights to enter into any mode of mineral agreement with the government within two (2) years from the promulgation of the rules and regulations implementing this Act.

b) filing a complaint with a prayer for the issuance of an injunctive writ against Platinum on April 25, 2006 before the Regional Trial Court (*RTC*) of Puerto Princesa, Branch 52 (docketed as **Civil Case No. 4181**) to enjoin Platinum from conducting mining operations on the subject mining areas and to recover possession thereof;

c) filing a letter with Governor Joel T. Reyes of Palawan on May 18, 2006 to inform the governor of the termination of the Operating Agreement and to ask for the revocation of Platinum's Small Scale Mining Permits (*SSMPs*);

d) sending another letter to Platinum on June 8, 2006 to inform Platinum that it would file legal actions for the alleged violations of the Operating Agreement; and

e) filing two administrative cases[6] before different agencies of the DENR, both with the intent to terminate the Operating Agreement and to revoke Platinum's SSMPs.

During the pendency of the two administrative cases, Olympic transferred its MPSA applications (which necessarily included all its mining rights over the subject mining areas) to Citinickel *via* a **Deed of Assignment** dated June 9, 2006, without notice to or the consent of Platinum. The Regional Director of the Mines and Geosciences Bureau approved the assignment of rights on September 6, 2006.

Fearing the consequences of Olympic's various attempts to invalidate the Operating Agreement, **Platinum filed a complaint**

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[6] These two administrative cases filed by Olympic against Platinum were:

a. Provincial Mining Regulatory Board (*PMRB*) Case No. 001-06 (filed on May 18, 2006) for the revocation of the SSMPs of Platinum, on the ground of Olympic's termination of the Operating Agreement because of the alleged gross violations thereof by Platinum; and

b. Panel of Arbitrators (*POA*) Case No. 2006-01-B (filed on June 8, 2006) for the cancellation of the Operating Agreement and the revocation of the SSMPs of Platinum.

for quieting of title, damages, breach of contract, and specific performance against Olympic before the RTC of Puerto Princesa, Palawan, Branch 95 on June 14, 2006 (docketed as **Civil Case No. 4199**). Olympic filed a motion to dismiss alleging that the trial court was without jurisdiction to rule on the issues raised in the complaint, as these involved a mining dispute requiring the technical expertise of the Panel of Arbitrators (*POA*). The RTC, through Judge Blancaflor, denied Olympic's motion to dismiss.[7]

On July 21, 2006, Judge Blancaflor issued an order granting Platinum's application for a ***writ of preliminary injunction***. The writ directed Olympic, its assignees, successors-in-interest, agents, and representatives, to respect Platinum's rights under the Operating Agreement. Judge Blancaflor thereafter issued another order[8] granting Platinum's application for an ***extended writ of preliminary injunction*** to enjoin the DENR and its offices and agencies from acting in any manner that will disturb the *status quo* or impede or affect the full enjoyment of Platinum's rights under the Operating Agreement. **The validity of the injunctive writs and the jurisdiction of the RTC to hear Civil Case No. 4199 are the main focuses of *G.R. Nos. 178188, 183527, and 180674.***

Meanwhile, Citinickel, after the execution of the Deed of Assignment, also made several attempts to invalidate the Operating Agreement, in the way its predecessor Olympic did. It filed Civil Case No. 06-0185 before the RTC of Parañaque, Branch 258, on June 21, 2006 for rescission of the Operating Agreement; the trial court dismissed the case on the grounds of forum shopping and improper venue, among others. Two other administrative cases[9] filed by Citinickel against Platinum

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[7] Order dated August 15, 2006.

[8] Order dated April 13, 2007.

[9] The two administrative cases filed by Citinickel against Platinum were:

a. PMRB Case No. 002-06 for revocation of Platinum's SSMPs; and

b. EMB Case No. 8253 for revocation of Platinum's ECCs.

for the cancellation of its (Platinum's) permits were likewise dismissed.

While Civil Case No. 06-0185 was pending before the RTC of Parañaque, however, Citinickel filed another administrative action with the POA of the DENR, docketed as **POA Case No. 002-06-B**, asking for a writ of injunction against Platinum and for the cancellation of the Operating Agreement. This time, Citinickel succeeded; the POA issued a resolution dated October 30, 2006 (*POA Resolution*) cancelling the Operating Agreement and Platinum's SSMPs, and Platinum was ordered to cease and desist from operating the subject mining areas. **The validity of the POA Resolution in light of the writs of injunction issued in Civil Case No. 4199 is the subject of the fourth case, *G.R. No. 181141*.**

For a more graphic presentation, as in the Court's Decision of May 8, 2009, we reprint the table summarizing the cases filed by the parties involving the Operating Agreement:

CASE NUMBER	PARTIES	CAUSE OF ACTION	STATUS
Civil Case No. 4181 (RTC Palawan, Branch 52)	*Olympic v. Platinum*	**Complaint for injunction** to enjoin Platinum from continuing mining activities filed on April 25, 2006	• **May 16, 2006 Order dismissing the complaint for injunction** after finding that unilateral termination of the Operating Agreement was illegal (***Branch 52 Order***). • Olympic did not appeal the Order.
PMRB Case No. 001-06	*Olympic v. Platinum*	Complaint for revocation of Platinum's SSMPs dated May 18, 2006	• August 16, 2006 Resolution dismissing complaint on the basis of the Branch 52 Order, which had become final and executory.

Civil Case No. 4199 (RTC Palawan, Branch 95)	*Platinum v. Olympic*	Complaint for quieting of title, damages, and specific performance	• July 21, 2005 Order granting the writ of preliminary injunction against Olympic and Citinickel • August 15, 2006 Order denying Olympic's motion to dismiss/suspend proceedings
DENR POA Case No. 2006-01-B	*Olympic v. Platinum*	Petition to cancel Operating Agreement and revoke Platinum's SSMPs dated June 8, 2006	• June 20, 2006 Notice of Withdrawal filed by Olympic
Civil Case No. 06-0185 (RTC Paranaque)	*Citinickel v. Platinum*	Complaint to rescind Operating Agreement dated June 21, 2006	• December 22, 2006 Order dismissing complaint on the ground of **forum shopping and improper venue.** • Citinickel did not appeal the Order.
PMRB Case No. 002-06	*Citinickel v. Platinum*	Petition to cancel Platinum's SSMPs dated July 12, 2006	• September 12, 2006 Resolution dismissing the petition on the basis of the injunctive writ issued in Civil Case No. 4199 and **the forum shopping committed by Citinickel.**
DENR POA Case No. 2006-02-B	*Citinickel v. Platinum*	Complaint to cancel Operating Agreement and to issue injunction against Platinum dated July 19, 2006	• **October 30, 2006 Resolution** cancelling OA and SSMP of Platinum (***POA Resolution***)

EMB letter-complaints filed as DENR EMB Case No. 8253	*Citinickel v. Platinum*	Complaint to cancel ECCs issued to Platinum dated July 31, 2006	• Elevated to DENR Secretary by Citinickel on account of alleged inaction of EMB • Sept 25, 2006 Order of DENR Secretary cancelling the ECCs issued to Platinum • Nov 22 Order denying MR of Platinum • Feb 26, 2007 Decision of the Office of the President reversing DENR Secretary's Order that cancelled the ECCs
Civil Case No. Q-07-59855 (RTC Quezon City, Branch 76)	*Citinickel v. DENR*	Petition for *mandamus* to compel DENR Secretary to confiscate and hold mineral ores stockpiled in Palawan pier	• May 4, 2007 Order dismissing the petition **for lack of merit and forum shopping.**

THE COURT'S MAY 8, 2009 DECISION

The consolidated cases raised the following matters:

a) in **G.R. No. 178188**, Olympic claimed that the RTC of Palawan was without jurisdiction to hear Civil Case No. 4199 (Platinum's action for quieting of title) since it is the POA that has exclusive jurisdiction over the case;

b) in **G.R. No. 183527**, Platinum assailed the Court of Appeals (*CA*) resolution[10] that granted Dy's petition to nullify the injunctive writs issued by the RTC of Palawan in Civil Case No. 4199 and to enjoin the trial court from hearing and conducting further proceedings

[10] Dated March 2, 2008 in CA-G.R. SP No. 101544.

in the same case. Platinum likewise questioned Dy's standing to assail the injunctive writs that were not addressed against her;

c) in **G.R. No. 180674**, Citinickel assailed the injunctive writ issued against it in Civil Case No. 4199, as it was allegedly never impleaded in the case even though it was an indispensable party; and

d) in **G.R. No. 181141**, Platinum assailed the POA Resolution terminating the Operating Agreement, as it was issued in violation of the injunctive writs issued in Civil Case No. 4199 and in blatant disregard of the rules on forum shopping.

The Court, through the May 8, 2009 decision, resolved to **deny** Olympic's and Citinickel's petitions in G.R. No. 178188 and 180674, and to **grant** Platinum's petitions in G.R. Nos. 183527 and 181141.

The Court upheld the RTC Palawan's jurisdiction to hear Civil Case No. 4199 after finding that the main issue to be resolved – the validity of Olympic's unilateral termination of the Operating Agreement – is a judicial question, not a mining dispute. Platinum's complaint merely sought to protect its interest or title in the subject mining areas and to remove all doubts regarding the Operating Agreement's continuous effectivity by having a competent court declare that Olympic's unilateral termination of the Operating Agreement was unlawful. In other words, Platinum invoked the RTC's jurisdiction for a judicial confirmation of the Operating Agreement's validity and existence, that, to the Court's mind, is clearly a legal question.

More importantly, after dissecting Section 77 of the Mining Act that outlined the POA's jurisdiction, we found that a dispute involving an Operating Agreement is clearly outside the bounds of the POA's jurisdiction. Section 77 of the Mining Act reads:

> Sec. 77. *Panel of Arbitrators.* – xxx. 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.]

Citing recent jurisprudence, particularly *Celestial Nickel Mining Exploration Corporation v. Macroasia Corporation,*[11] the Court ruled that Section 77(a) refers to an "adverse claim, protest, or opposition to an *application* for a mineral agreement." Notably, even Justice Tinga, in his dissent, conceded that Section 77(a) of the Mining Act does not apply to Platinum's complaint.[12]

Section 77(b), on the other hand, pertained to disputes involving *mineral agreements* or permits – terms that have acquired technical meanings under Section 3 (ab) of the Mining Act:

ab. *Mineral agreement* means **a contract between the government and a contractor**, involving mineral production-sharing agreement, co-production agreement, or joint-venture agreement.

Obviously the Operating Agreement, being a purely civil contract between two private entities, cannot in any way be considered a mineral agreement whose fundamental nature requires that it be a contract between the government and a contractor.

Based on these findings, the Court affirmed the jurisdiction of the RTC of Puerto Princesa, Palawan, Branch 95 to hear Civil Case No. 4199. Corollary, we held that the RTC of Palawan could not validly be enjoined from hearing the case, correcting thereby the erroneous ruling on this point by the CA.

In the same Decision, we did not find persuasive Citinickel's argument that the injunctive writ was not binding against it

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[11] G.R. Nos. 169080, 172936, 176226, and 176319, December 19, 2007, 541 SCRA 166.

[12] See p. 28 of Justice Tinga's Dissenting Opinion.

for Platinum's failure to implead it as an indispensable party. To begin with, the execution of the Deed of Assignment on June 9, 2006 was done surreptitiously or without any notice to Platinum, in violation of Section 13 of the Operating Agreement; Platinum understandably could not be faulted for not impleading Citinickel as defendant when it filed Civil Case No. 4199 on June 14, 2006. Even if Platinum had known of the assignment at the time it filed the complaint, Platinum was still not required to implead Citinickel since the assignment only took effect after the DENR Secretary or his representative had given his approval, pursuant to DENR Administrative Order No. 96-40 (*DENR AO No. 96-40*) or the Revised Implementing Rules and Regulations of the Mining Act. The DENR Secretary's approval only occurred on September 6, 2006 – long after Civil Case No. 4199 had been filed and the injunctive writ issued. Citinickel, being a mere successor-in-interest of Olympic, was bound by the July 21, 2006 injunction order. It was for this reason, as well as the finding of blatant forum shopping by Olympic and Citinickel, that we resolved to nullify the October 30, 2006 POA Resolution terminating the Operating Agreement.

THE MOTIONS FOR RECONSIDERATION

The various motions filed by Olympic, Citinickel, and Dy all raise substantially the same issues, which can be reduced to the following:

a) whether the RTC of Palawan or the POA has jurisdiction over Platinum's complaint for quieting of title, breach of contract, damages and specific performance (Civil Case No. 4199);

b) whether Citinickel was an indispensable party in Civil Case No. 4199 and should have been impleaded to make the injunctive writ binding against it; and

c) whether Dy has the standing to have the injunctive writs issued in Civil Case No. 4199 nullified.

Also, both Olympic and Citinickel pray that their motions for reconsideration be referred to the Court *En Banc* for resolution.

THE COURT'S RULING

Referral to Court En Banc is unwarranted

In their motions, Olympic and Citinickel harp on the Court's split majority in its May 8, 2009 Decision. Since the votes of members of the Court's Second Division were closely divided – 3 to 2 in favor of denying their claims, the movants suggest that the resolution of the issues involved in these consolidated cases is better referred to the Court *En Banc*.

The Constitution itself decrees that the Supreme Court can sit *En Banc* or in divisions of three, five, or seven members.[13] Cases or matters heard by a division shall be decided or resolved with the concurrence of the majority of the Members who actually took part in the deliberations of the issues in the case and voted thereon, and in no case without the concurrence of at least three of such Members.[14] Under SC Circular No. 2-89 (*Guidelines and Rules in the Referral to the Court En Banc of Cases Assigned to a Division*), a decision of a Division of the Court, when concurred in by a majority of its Members who actually took part in the deliberations on the issues in a case and voted thereon, is a decision of the Supreme Court. The Supreme Court sitting *En Banc* is not an appellate court in relation with the Divisions to which the latter's decisions may be appealed. Each division of the Court is ***not*** a body inferior to the Court *En Banc*, and sits veritably as the Court *En Banc* itself.[15]

Undoubtedly, a decision by majority of a division of the Supreme Court – whether the vote is a split 3-2 vote or a unanimous decision – is still a decision of the Supreme Court. Therefore, the fact the May 8, 2009 Decision was reached by

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[13] CONSTITUTION, Article VIII, Section 4 (1).

[14] *Id.,* Section 4 (3).

[15] *Apo Fruits Corporation v. CA,* G.R. No. 164195, April 30, 2008, 553 SCRA 237; *J.G. Summit Holdings, Inc. v. CA,* G.R. No. 124293, January 31, 2005, 450 SCRA 169; *Firestone Ceramics v. Court of Appeals,* G.R. No. 127022, June 28, 2000, 334 SCRA 465.

a 3-2 vote is not, by itself, sufficient ground to refer the case to the Court *En Banc*.

More importantly, we observe that Olympic and Citinickel merely rehashed the same issues and arguments we already discussed and passed upon in our May 8, 2009 Decision. The Court *En Banc's* time and resources would simply be wasted in resolving cases that neither modified nor reversed a doctrine or principle of law established *En Banc* or in a division. Thus, we resolve to deny the motions to refer these cases to the Court *En Banc*.

I. The Issue of Jurisdiction

Olympic and Citinickel claim that the doctrine that should be applied in these consolidated cases is that laid down in *Gonzales v. Climax-Arimco Mining*,[16] not the doctrine settled in the *Celestial* case. Admittedly, the tribunals or bodies participating in the jurisdictional conflict in the present consolidated cases more closely resemble those involved in *Gonzales* than those in *Celestial*. *Gonzales* involved the issue of whether or not it was the regular court or the POA that has jurisdiction to resolve the presented dispute. *Celestial*, on the other hand, involved the issue of whether or not it was the Secretary of the DENR or the POA who has jurisdiction to cancel a mining lease contract or existing mineral agreement. Under the ruling in *Gonzales* that:

> **[T]he resolution of the validity or voidness of the contracts remains a legal or judicial question as it requires the exercise of judicial function.** It requires the ascertainment of what laws are applicable to the dispute, the interpretation and application of those laws, and the rendering of a judgment based thereon. Clearly, the dispute is not a mining conflict. It is essentially judicial. The complaint was not merely for the determination of rights under the mining contracts since the very validity of those contracts is put in issue.
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> The *Complaint* is not about a dispute involving rights to mining areas, nor is it a dispute involving claimholders or concessionaires.

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[16] G.R. No. 161957, February 28, 2005, 452 SCRA 607.

The main question raised was the validity of the *Addendum Contract*, the FTAA and the subsequent contracts. xxx.

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Arbitration before the Panel of Arbitrators is proper only when there is a disagreement between the parties as to some provisions of the contract between them, which needs the interpretation and the application of that particular knowledge and expertise possessed by members of that Panel. It is not proper when one of the parties repudiates the existence or validity of such contract or agreement on the ground of fraud or oppression as in this case. The validity of the contract cannot be subject of arbitration proceedings. Allegations of fraud and duress in the execution of a contract are matters within the jurisdiction of the ordinary courts of law. These questions are legal in nature and require the application and interpretation of laws and jurisprudence which is necessarily a judicial function. [Emphasis supplied.]

Olympic and Citinickel posit that only questions involving the validity or voidness of mining contracts or agreements can be settled by the courts; other matters, especially those that require the interpretation and the application of that particular knowledge and expertise possessed by members of the POA, should be resolved by the POA.

We do not agree. Nothing in *Gonzales* leads to the conclusion that in mining cases, ordinary courts can only resolve questions of validity of mining contracts or agreements; rather, *Gonzales* simply established that these questions are more properly resolved by courts of law, as these are essentially judicial questions requiring the application of laws. Nothing more was said beyond this; *Gonzales* certainly did not limit the courts' authority to questions of validity of mining contracts or agreements.

Olympic and Citinickel assert that the principal issue raised in Civil Case No. 4199 was *whether Platinum committed gross violations of the Operating Agreement* – a contractual dispute between the parties that requires the technical expertise of the POA to resolve. Assuming this to be correct, Olympic and

Citinickel's reliance on *Gonzales* would actually work against the grant of jurisdiction to the POA. *Gonzales* decreed:

> Decisions of the Supreme Court on mining disputes have recognized a distinction between (1) the primary powers granted by pertinent provisions of law to the then Secretary of Agriculture and Natural Resources (and the bureau directors) of an executive or administrative nature, such as granting of license, permits, lease and contracts, or approving, rejecting, reinstating or canceling applications, or deciding conflicting applications, and (2) **controversies or disagreements of civil or contractual nature between litigants which are questions of a judicial nature that may be adjudicated only by the courts of justice. This distinction is carried on even in Rep. Act No. 7942.** [Emphasis supplied.]

What is ultimately being questioned in Civil Case No. 4199 is the *validity of Olympic's unilateral termination of the Operating Agreement,* as similarly found by Justice Carpio Morales in her Concurring Opinion. Besides, in light of the ruling in Civil Case No. 4181 (the complaint filed by Olympic against Platinum) that Platinum substantially complied with the terms of the Operating Agreement – a ruling that Olympic never appealed – the determination of whether Platinum committed gross violations of the Operating Agreement may no longer be necessary.

Platinum's resort to a judicial action *via* a complaint to quiet title to question the unilateral termination of the Operating Agreement by Olympic can be likened to an action subjecting to judicial scrutiny the validity of a contracting party's extrajudicial rescission of a contract by resorting to the automatic resolution clause. We ruled in *UP v. De Los Angeles*[17] that a party contesting the extrajudicial rescission of its contract with another may seek judicial relief:

> [T]he **act of a party in treating a contract as cancelled or resolved on account of infractions by the other contracting party must be made known to the other and is always provisional, being ever subject to scrutiny and review by the proper court**. ***If the other***

[17] G.R. No. L-28602, September 29, 1970, 35 SCRA 102.

party denies that rescission is justified, it is free to resort to judicial action in its own behalf, and bring the matter to court. Then, should the court, after due hearing, decide that the resolution of the contract was not warranted, the responsible party will be sentenced to damages; in the contrary case, the resolution will be affirmed, and the consequent indemnity awarded to the party prejudiced.

In other words, the party who deems the contract violated many consider it resolved or rescinded, and act accordingly, without previous court action, but it proceeds at its own risk. **For it is only the final judgment of the corresponding court that will conclusively and finally settle whether the action taken was or was not correct in law.** xxx.

In every case where the extrajudicial resolution is contested, only the final award of the court of competent jurisdiction can conclusively settle whether the resolution was proper or not. It is in this sense that judicial action will be necessary, as without it, the extrajudicial resolution will remain contestable and subject to judicial invalidation, unless attack thereon should become barred by acquiescence, estoppel or prescription. [Emphasis supplied.]

Section 20 of the Operating Agreement requires a 30-day notice before a party can terminate the agreement.[18] Olympic failed to show that it satisfied this requirement; indeed, a day after it sent Platinum the letter of termination, Olympic instituted Civil Case No. 4181 to enjoin Platinum from conducting mining activities on the subject mining areas.

Significantly, *Gonzales* never completely went into the specifics of the POA's jurisdiction as enumerated in Section 77 of the Mining Act in the same thoroughness that *Celestial* did. It was in *Celestial* that the POA's jurisdiction on disputes involving rights to mining areas and disputes involving mineral agreements or permit under paragraphs (a) and (b) of Section 77, respectively, was clarified and defined. *Celestial* accomplished this by tracing the development of POA's

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[18] Section 20 of the Operating Agreement states:

The FIRST PARTY may terminate this agreement by giving thirty (30) days notice to the SECOND PARTY based on gross violations of the terms and conditions of this agreement.

jurisdiction through a survey of the previously enacted mining laws and comparing these laws with the present Mining Act and the implementing rules and regulations.

In relation to Section 77 (a) on disputes involving rights to mining areas, Olympic contends that when Platinum filed Civil Case No. 4199, it had a pending application for MPSA; this situation allegedly brings the case within the POA's jurisdiction under Section 77 (a), as it becomes a pre-approval protest or adverse claim that *Celestial* spoke of. Even before Olympic raised this argument, however, Justice Leonardo-De Castro had already addressed and settled this matter in her Separate Opinion:

> In the cases at bar, there were no conflicting claims or rival interests in a mineral agreement or permit granted by the government. There was only one grantee of, or applicant for, a mineral agreement and that was Olympic (later substituted by Citinickel). Any mining rights that Platinum enjoyed or exercise under the Operating Agreement was in representation of Olympic. It is conceded that Platinum had no mining grant or concession from the government in its own name over the same mining areas. Platinum was issued mining permits, not as a grantee or applicant in its own right, but as Olympic's agent/operator. There can be no rival or disputing claims to a granted mineral agreement or permit.[19]

Platinum's complaint is not an adverse claim to Olympic's/Citinickel's mineral agreement application; Platinum is not making a separate bid for the mining areas covered by the Operating Agreement. On the contrary, Platinum merely wanted Olympic/Citinickel to acknowledge the validity of the Operating Agreement and to remove all doubts as to its rights under the agreement. And as pointed out, even Justice Tinga, in his dissent, recognized that Platinum's complaint does not fall under the POA's jurisdiction based on Section 77(a) of the Mining Act.

In their petitions, motions, and other pleadings, Olympic and Citinickel have thrown in every conceivable argument they could raise against the trial court's jurisdiction over Civil Case

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[19] See p. 6 of *J.* Leonardo-de Castro's Separate Opinion.

No. 4199, yet they have been unable to reconcile and explain why, despite these attacks, they themselves invoked the trial court's jurisdiction when they filed Civil Case Nos. 4181 and 06-0185 before the RTCs of Palawan and Parañaque, respectively. By their acts, Olympic and Citinickel acknowledged the authority and jurisdiction of the ordinary courts to resolve their dispute with Platinum. They are now estopped from claiming the contrary.

II. The Indispensable Party Issue

Echoing its earlier claim, Citinickel insists that the injunctive writ issued by Judge Blancaflor in Civil Case No. 4199 against it should not be sustained as it was never impleaded in the case, despite being an indispensable party. We fully addressed this issue in our May 8, 2009 Decision, and we see no need to re-address this now. We categorically said:

> In this case, one fact resonates and remains unrebutted – the transfer of Olympic's rights to Citinickel was done surreptitiously, *via* the Deed of Assignment dated June 9, 2006, without the knowledge or consent of Platinum. Thus, when Platinum instituted Civil Case No. 4199 on June 14, 2006 – five days after the execution of the Deed of Assignment – Platinum was not notified of the assignment or even of the earlier Memorandum of Agreement between Olympic and Rockworks, contrary to the terms of Section 13 of the Operating Agreement xxx:
>
>> The rights and interests of either [Olympic] or [Platinum] in and under this Agreement are assignable and/or transferrable, in whole or in part, to persons or entities qualified xxx provided that the rights of both of the parties under this Agreement are preserved and maintained, unaffected or unimpaired, and provided further that the assignee undertake to be bound by all the provisions of this Agreement, provided furthermore that **the assigning party shall duly notify in writing the other party of such proposed assignment and/or transfer *before* the actual assignment and/or transfer is done.**
>
> Even if Platinum knew of the assignment/transfer, it was not bound to include Citinickel in the complaint because the assignment/transfer of a mineral agreement application would, by law, take effect only *after* the approval of the DENR Secretary or his representative. Section

40 of DENR Administrative Order No. 96-40 (Revised Implementing Rules and Regulations of the Mining Act) states:

> Section 40. *Transfer or Assignment of Mineral Agreement Application.* — Transfer or assignment of Mineral Agreement applications shall be allowed **subject to the approval of the Director/concerned Regional Director taking into account the national interest and public welfare**: *Provided*, That such transfer or assignment shall be subject to eligibility requirements and shall not be allowed in cases involving speculation. [Emphasis supplied.]

The provision is clear – any transfer or assignment of a mineral agreement application is still subject to the approval of the Director of the Mines and Geosciences Bureau or the Regional Director concerned. xxx. Thus, although the Deed of Assignment between Olympic and Citinickel was executed on June 9, 2006, the actual transfer of rights occurred only *after* the Regional Director of the MGB Regional Office No. IV-B had given its approval to the assignment on September 6, 2006, or after Civil Case No. 4199 was filed on June 14, 2006. Accordingly, Citinickel, being a mere successor-in-interest of Olympic, is bound by the questioned injunction order. xxx.

Citinickel additionally argues that when Section 40 of DENR AO No. 96-40 declared that the "transfer or assignment of the mineral agreement application shall be allowed subject to the approval of the Director/concerned Regional Director" of the DENR, the phrase *"shall be allowed"* should be construed to mean that the transfer is ***effective immediately***, though subject to the condition of the DENR's approval. Thus, as of June 9, 2006, Citinickel claims there was already an effective transfer or assignment of Olympic's rights, and it became imperative for Platinum to implead Citinickel as defendant in its June 14, 2006 complaint to make the orders and writs issued therein binding against Citinickel.

Citinickel's argument does not merit a reversal of the Court's ruling. Section 40 of DENR AO No. 96-40 (Revised Implementing Rules and Regulations of the Mining Act) is derived from Section 30 of the Mining Act which reads:

Section 30. *Assignment/Transfer*. – **Any assignment or transfer of rights and obligations under any mineral agreement**, except a financial or technical assistance agreement, **shall be subject to the *prior* approval of the Secretary**. **Such assignment or transfer shall be deemed automatically approved if not acted upon by the Secretary** within thirty (30) working days from official receipt thereof, unless patently unconstitutional or illegal. [Emphasis supplied.]

If the Court were to follow Citinickel's argument, we would effectively render nugatory the requirement of *prior approval* and the *automatic approval clause* of Section 30 above. Such construction – obviously against the literal wording of the law – is beyond the powers of this Court to make, whether acting *en banc* or in division.

To be clear, Citinickel is not an indispensable party which must be impleaded in Civil Case No. 4199 to make the writs and orders issued therein binding against it. Rather, it is a transferee *pendente lite* under Section 19 of Rule 3 of the Rules of Court[20] whose inclusion or substitution lies entirely within the discretion of the court hearing the case. The formal inclusion of a successor-in-interest is not an absolute requirement as a judgment is binding against the parties and their successors-in-interest.[21]

III. The Legal Standing Issue

While Citinickel rejects the validity and binding force of the injunctive writ issued in Civil Case No. 4199 that expressly included its name, Dy, whose name was never included in either writs (July 21, 2006 injunctive writ and April 13, 2007 expanded injunctive writ), resists its *probable* application against her and thus sought its annulment before the CA by filing a *certiorari* petition against the trial court (CA-G.R. SP No. 101544). The

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[20] SECTION 19. *Transfer of interest*.—In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.

[21] I Moran, *Rules of Court*, 1963 ed., pp. 178-179.

CA issued a resolution (dated March 3, 2008) enjoining the RTC of Palawan from conducting further proceedings in Civil Case No. 4199.

We have carefully read and scrutinized the injunctive writs and failed to find any provision expressly mentioning Dy's name or even implying that it can be made enforceable against her. Dy, however, reasons that:

> Due to the xxx allegations in the Amended Complaint of conspiracy and the alleged bad faith on the part of private respondent Polly Dy in directing the affairs of Rockworks and in allegedly sanctioning Rockworks' interference with the Operating Agreement of Platinum, **it *may* be said that the order of injunction issued by the respondent Judge *a quo* which continues to exist also operates against private respondent Polly Dy.** [Emphasis supplied.]

The argument borders on the absurd. Not being the subject of the injunctive writs, Dy has no legal standing to assail them through a *certiorari* petition. Under Section 1 of Rule 65, it is the *person aggrieved by the assailed act* of a board, tribunal or officer which has acted without or in excess of its jurisdiction who can file a petition for *certiorari* before the proper court.[22]

The Expanded Injunctive Writs

Before the Court finally resolves and disposes of these consolidated cases, we find it significant to clarify the extent of the coverage of the RTC's expanded injunctive writ insofar it relates to the other functions of the agencies of the DENR. As aptly observed by Justice Leonardo-de Castro:

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[22] 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, or 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.

The RTC's order should be understood as only preventing the said agencies from taking jurisdiction over disputes pertaining to the Operating Agreement. However, **the RTC should not enjoin the DENR and its offices, or other executive/administrative agencies, from exercising their jurisdiction over alleged violations of the terms of Platinum's ECCs or other mining permits.** To my mind, breaches of the Operating Agreement and breaches of the terms of Platinum's ECCs or mining permits are different matters. The former belongs to the jurisdiction of the regular courts while the latter belongs to the jurisdiction of the appropriate executive/administrative agencies. Each should respect the jurisdiction of the others.[23]

IN VIEW OF THE FOREGOING, the Court hereby resolves to *DENY* the Motions to Refer the Resolution of these consolidated cases to the Court *En Banc* filed by Olympic and Citinickel, and similarly *DENY* the Motions for Reconsideration of the Court's May 8, 2009 Decision filed by Olympic, Citinickel and Dy.

SO ORDERED.

Carpio Morales (Acting Chairperson),[*] *Velasco, Jr., Leonardo-de Castro,*[**] and *Peralta, JJ.,* concur.

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[23] See p. 8 of *J*. Leonardo-de Castro's Separate Opinion.

[*] Designated Acting Chairperson of the Second Division per Special Order No. 618 dated April 14, 2009.

[**] Designated additional member of the Second Division per Special Order No. 619 dated April 14, 2009.

SECOND DIVISION

[G.R. No. 179293. August 14, 2009]

EDEN LLAMAS, *petitioner, vs.* **OCEAN GATEWAY MARITIME AND MANAGEMENT, INC.,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; GROUNDS; GROSS AND HABITUAL NEGLIGENCE; COMMITTED IN CASE AT BAR.—** Under Article 282 (b) of the Labor Code, negligence must be both gross and habitual to justify the dismissal of an employee. Gross negligence is characterized by want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences insofar as other persons may be affected. In the present case, petitioner, as respondent's Accounting Manager, failed to discharge her important duty of remitting SSS/PhilHealth contributions not once but quadruple times, resulting in respondent's incurring of penalties totaling ₱18,580.41, not to mention the employees/members' contributions being unupdated.

2. **ID.; ID.; ID.; SERIOUS MISCONDUCT; PRESENT IN CASE AT BAR.—** On petitioner's declaration that "I believe that I did something good for our office when our declaration of gross income submitted to City Hall for the renewal of our municipal license was lower than our actual gross income for which the office had paid a lower amount," the Court finds the same as betraying a streak of dishonesty in her. It partakes of serious misconduct. x x x Misconduct has been defined as improper or wrong conduct. **It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error of judgment**. The misconduct to be serious must be of such grave and aggravated character and not merely trivial and unimportant. ***Such misconduct, however serious,*** **must nevertheless be in connection with the employee's work to constitute just cause for his separation**. Thus, for misconduct or improper behavior to be a just cause for dismissal, (a) it

must be serious; (b) must relate to the performance of the employee's duties; and (c) must show that the employee has become unfit to continue working for the employer. **Indeed, an employer may not be compelled to continue to employ such person whose continuance in the service would be patently inimical to his employer's interest**. For her act of understating the company's profits or financial position was willful and not a mere error of judgment, committed as it was in order to "save" costs, which to her warped mind, was supposed to benefit respondent. It was not merely a violation of company policy, but of the law itself, and put respondent at risk of being made legally liable. Verily, it warrants her dismissal from employment as respondent's Accounting Manager, for as correctly ruled by the appellate court, an employer cannot be compelled to retain in its employ someone whose services is inimical to its interests.

APPEARANCES OF COUNSEL

Roderick B. Morales for petitioner.
Ocampo & Manalo Law Firm for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Ocean Gateway Maritime and Management, Inc. (respondent or the company) hired Eden Llamas (petitioner) on August 1, 2001 as an accounting manager.

On February 9, 2002, Mary Anne T. Macaraig (Mary Anne), respondent's Chief Executive Officer, called petitioner's attention to her failure, despite repeated demands, to accomplish the long overdue monthly and annual company financial reports and to remit the company's contributions to the Social Security System (SSS) and PhilHealth for November and December 2001.

Subsequently or on February 20, 2002, Mary Anne again instructed petitioner to remit on that day or until the following day the company's contributions to the SSS and PhilHealth for January 2002. By petitioner's claim, she failed to comply

with the instruction as money for the purpose was not, as of February 20, 2002, credited to the company's account at the bank. The following day, February 21, 2002, petitioner did not report for work as she was allegedly suffering from hypertension, hence, she was again unable to remit the contributions.

On February 26, 2002 Mary Anne sent a memorandum to petitioner charging her with gross and habitual neglect of duty and/or misconduct or willful disobedience and insubordination, detailing therein the bases of the charges, and requiring her to submit a written explanation why she should not be penalized or dismissed from employment.

Complying with the show cause order, petitioner claimed that the delay was due to the fact that she was overloaded with work and undermanned. Her explanation reads:

> I was able to submit SSS/PhilHealth reports and payment from July to October, 2001 because I was assisted by an on-the-job trainee who stayed only up to November.
>
> In spite of my repeated request to give me some help because of my heavy load nothing has been provided. I have to stay working for 10 to 12 hours a day and sometimes for more than 12 hours without overtime pay just to lessen my load and meet the deadlines.
>
> In our February 9th meeting, Ms. Abigail Carranza was instructed to help me in order to finish the needed report for SSS/Philhealth for November up to January and she was able to finish on February 14th after she unloaded herself of her regular duties and concentrated on the SSS/Philhealth reports. Her regular work was divided between Ms. Sonia Gonzales & Mr. Efren Robles.
>
> On February 20th at about 12:10 P.M. Ms. Macaraig gave me, in the presence of Capt. Picardal, the finished work of Ms. Carranza and instructed me to pay the SSS on that day or the next day. I called up BPI to check if the remittance from MMM has already been credited to our bank account but I was informed by BPI Forex Dept. that the money is not yet credited. The payment was made the following day by Ms. Macaraig and Ms. Carranza since I was not able to report because I got sick.

With the above explanation, the penalties imposed therefore, on non-remittance of the contribution to SSS and PhilHealth on time should not be blamed on me.

x x x x x x x x x

I believe I did something good for the office when our declaration of gross income submitted to City Hall for the renewal of our municipal license was lower than our actual gross income for which the office paid a lower amount. City Hall is only after the gross income which amount I got from our Agency Fee received during the year.

If only I will be provided with some assistance that I always request, who will do some of my additional tasks especially the vouchers & check preparation, reports for SSS/Philhealth, POEA & BIR, and filing, I could perform all the tasks given to me by the Management and submit all the reports on time;

x x x x x x x x x[1] (Underscoring supplied)

On account of the delay in the remittance of those contributions, respondent was penalized in the amount of ₱18,580.41 which it charged to petitioner via salary deductions.

Sometime in July 2002, Mary Anne instructed petitioner to encash a check and remit the proceeds thereof to the architect who renovated respondent's new office in Makati. Petitioner instead suggested that she would ask one of the cadets to encash the check because she was scheduled to go to the Bureau of Internal Revenue, and reminded Mary Anne that it was very risky to pay in cash. Insisting that she was the boss, Mary Anne told petitioner to follow her orders. Petitioner complied. Getting wind of the incident, respondent's president asked her to give a statement of facts thereof which she did.

As respondent found petitioner's explanation unsatisfactory, it sent her a notice of termination from employment on July 31, 2002,[2] anchored on gross and habitual neglect of duty and/or serious misconduct or willful disobedience/insubordination,

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[1] NLRC records, pp. 29-30.

[2] *Id.* at 31-35.

drawing, petitioner to file on August 5, 2002 before the National Labor Relations Commission (NLRC) a Complaint[3] against respondent and Mary Anne for illegal dismissal, damages and attorney's fees.

She later amended her complaint to include as cause of action non-payment of overtime pay.[4] Still, in her Position Paper,[5] she included illegal deductions as additional cause of action.

Petitioner, claiming that she was fired because of the heated discussion between her and Mary Anne, maintained that her delay in the remittance of the company's SSS/PhilHealth contributions was occasioned by the circumstances she had spelled out.

Upon the other hand, respondent maintained its justification of petitioner's dismissal, highlighting her failure to accomplish the company's monthly and annual financial reports for 2001 reflecting its gross income which is determinative of the amount to be paid to secure government licenses and permits.

Respecting petitioner's claim for overtime pay, respondent contended that she, being a managerial employee and/or a member of the managerial staff, is not entitled thereto.

By Decision[6] of April 15, 2003, the Labor Arbiter found petitioner's dismissal to have been for a just cause and with due process. However, he ordered respondent to pay petitioner's "proportionate 13th month pay for the year 2000 [*sic*] and final assistance" in the amount of Thirty Three Thousand Two Hundred Fifty Pesos (₱33,250).

On appeal, the NLRC, finding petitioner to have been illegally dismissed, <u>set aside the Labor Arbiter's decision and awarded backwages, separation pay, and 13th month pay</u>. It held that

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[3] *Id.* at 2.

[4] *Id.* at 8.

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

[6] *Id.* at 171-180.

petitioner's dismissal was due to the heated argument between her and Mary Anne and that she was already penalized when she was required to pay via salary deduction the above-stated fine meted the company.

On petition for *certiorari*, the Court of Appeals nullified the NLRC decision and reinstated the Labor Arbiter's decision.[7] The appellate court ruled that petitioner neglected her duties not just once, but four times. Furthermore, it held that, following *Amadeo Fishing Corporation v. Nierra,*[8] as petitioner occupied a position of trust and confidence, the company could not be compelled to continuously engage her services which is detrimental to its interests. Petitioner's motion for reconsideration having been denied by Resolution[9] dated August 17, 2007, she filed the present petition.[10]

The petition fails.

Under Article 282 (b) of the Labor Code, negligence must be both gross and habitual to justify the dismissal of an employee. Gross negligence is characterized by want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences insofar as other persons may be affected.[11]

In the present case, petitioner, as respondent's Accounting Manager, failed to discharge her important duty of remitting SSS/PhilHealth contributions not once but quadruple times,

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[7] Decision of May 25, 2007, penned by Associate Justice Fernanda Lampas Peralta, with the concurrence of Associate Justices Edgardo P. Cruz and Normandie B. Pizarro. CA *rollo*, pp. 155-166.

[8] G.R. No. 163099, October 4, 2005, 472 SCRA 13.

[9] Annex "B" of Petition, *rollo*, p. 38. Penned by Associate Justice Fernanda Lampas Peralta, with the concurrence of Associate Justices Edgardo P. Cruz and Normandie B. Pizarro.

[10] *Rollo*, pp. 9-26.

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

resulting in respondent's incurring of penalties totaling ₱18,580.41, not to mention the employees/members' contributions being unupdated.

Her claim of being overworked and undermanned does not persuade. As noted by respondent, the company had been in operation for less than three (3) months at the time the negligence and delays were committed, with only a few transactions and only with one principal, Malaysian Merchant Marine Bhd., hence, its financial and accounting books should not have been difficult to prepare. Moreover, as claimed by respondent which was *not refuted* by petitioner, she failed to remit the contributions as early as November 2001 during which time, however, on-the-job trainees were still with the company, hence, her claim of being undermanned behind such failure does not lie.

As to the delay in the remittance of SSS/PhilHealth contributions for January 2002, which petitioner claims to be due to the fact that the money intended for payment was not yet credited as of February 20, 2002 to respondent's bank account, as well as to her absence the following day or on February 21, 2002 due to hypertension, the Court is not persuaded, given that at that time, she had already been in delay in the performance of her duties.

On petitioner's declaration that "I believe that I did something good for our office when our declaration of gross income submitted to City Hall for the renewal of our municipal license was lower than our actual gross income for which the office had paid a lower amount," the Court finds the same as betraying a streak of dishonesty in her. It partakes of serious misconduct.

> x x x Misconduct has been defined as improper or wrong conduct. **It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error of judgment**. The misconduct to be serious must be of such grave and aggravated character and not merely trivial and unimportant. **Such misconduct, however serious, *must nevertheless be in connection with the employee's work to constitute just cause for his separation***. Thus, for misconduct or improper behavior to be a just cause for dismissal, (a) it must be

serious; (b) must relate to the performance of the employee's duties; and (c) must show that the employee has become unfit to continue working for the employer. **Indeed, an employer may not be compelled to continue to employ such person whose continuance in the service would be patently inimical to his employer's interest.**[12] (Emphasis supplied)

For her act of understating the company's profits or financial position was willful and not a mere error of judgment, committed as it was in order to "save" costs, which to her warped mind, was supposed to benefit respondent. It was not merely a violation of company policy, but of the law itself, and put respondent at risk of being made legally liable. Verily, it warrants her dismissal from employment as respondent's Accounting Manager, for as correctly ruled by the appellate court, an employer cannot be compelled to retain in its employ someone whose services is inimical to its interests.

As to whether due process was accorded petitioner, the Court rules in the affirmative. Far from being arbitrary, the termination of her services was effected after she was afforded the opportunity to, as she did, submit her explanation on why she should not be disciplined or dismissed, which explanation, it bears reiteration, was, however, found unsatisfactory.

WHEREFORE, the May 25, 2007 Decision of the Court of Appeals reinstating the April 15, 2003 decision of the Labor Arbiter is *AFFIRMED*.

SO ORDERED.

Carpio,[*] *Brion, Del Castillo,* and *Abad, JJ.,* concur.

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[12] *Fujitsu Computer Products v. Court of Appeals*, G.R. No. 158232, March 31, 2005, 454 SCRA 737, 740.

[*] Additional member per Special Order No. 671 in lieu of Senior Associate Justice Leonardo A. Quisumbing who is on official leave.

FIRST DIVISION

[G.R. No. 182528. August 14, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **MARIAN CORECHE *y* CABER**, *appellant.*

SYLLABUS

1. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); *CORPUS DELICTI* MUST BE ESTABLISHED BEYOND REASONABLE DOUBT.—** In drug-related prosecutions, the State not only bears the burden of proving the elements of the offenses of sale and possession of methamphetamine hydrochloride under RA 9165, but also carries the obligation to prove the *corpus delicti*, the body of the crime, to discharge its overall duty of proving the guilt of the accused beyond reasonable doubt. The prosecution fails to comply with the indispensable requirement of proving *corpus delicti* not only when it is missing but also when there are substantial gaps in the chain of custody of the seized drugs which raise doubts on the authenticity of the evidence presented in court.

2. **ID.; ID.; IMMEDIATE MARKING OF THE SEIZED DRUGS, CRUCIAL.—** Crucial in proving chain of custody is the marking of the seized drugs or other related items *immediately after* they are seized from the accused. Marking after seizure is the starting point in the custodial link, thus it is vital that the seized contraband are immediately marked because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of criminal proceedings, obviating switching, "planting," or contamination of evidence. Long before Congress passed RA 9165, this Court has consistently held that failure of the authorities to immediately mark the seized drugs raises reasonable doubt on the authenticity of the *corpus delicti* and suffices to rebut the presumption of regularity in the performance of official duties, the doctrinal fallback of every drug-related prosecution.

Thus, in *People v. Laxa* and *People v. Casimiro*, we held that the failure to mark the drugs immediately after they were seized from the accused casts doubt on the prosecution evidence, warranting acquittal on reasonable doubt. These rulings are refinements of our holdings in *People v. Mapa* and *People v. Dismuke* that doubts on the authenticity of the drug specimen occasioned by the prosecution's failure to prove that the evidence submitted for chemical analysis is the same as the one seized from the accused suffice to warrant acquittal on reasonable doubt. In *Zarraga v. People,* we reversed a guilty verdict for violation of Section 5 of RA 9165 (sale of *shabu*) largely due to the conflicting testimonies of the police officers who conducted the sting operation on when and where the seized drugs were marked.

3. **REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; PROOF BEYOND REASONABLE GROUND; NOT ESTABLISHED IN CASE AT BAR.—** In sustaining the prosecution's case, the lower courts inevitably relied on the evidentiary presumption that official duties have been regularly performed. This presumption, it must be emphasized, is not conclusive. Not only is it rebutted by contrary proof, as here, but it is also inferior to the constitutional presumption of innocence. All told, we find merit in appellant's claim that the prosecution failed to discharge its burden of proving her guilt beyond reasonable doubt due to substantial gaps in the chain of custody, raising reasonable doubt on the authenticity of the *corpus delicti*.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

DECISION

CARPIO, *J.*:

The Case

This is an appeal from the Decision[1] of the Court of Appeals dated 19 November 2007, affirming the conviction of appellant Marian Coreche *y* Caber (appellant) for violation of Sections 5 and 11, Article II of Republic Act No. 9165 (RA 9165), the Comprehensive Dangerous Drugs Act of 2002, for selling and possessing the prohibited drug methamphetamine hydrochloride or *shabu*.

The Facts

The prosecution's evidence showed that between 4:00 to 4:30 in the morning of 10 September 2003, SPO1 Herminio V. Arellano (Arellano), PO1 Juanito L. Tougan (Tougan), and PO1 Noel P. Pineda (Pineda), members of the Philippine National Police (PNP) of San Mateo, Rizal station, received a tip from an unnamed informant that appellant was peddling *shabu*. The police officers decided to conduct a sting operation. After Arellano prepared the sting money, consisting of two (2) one hundred peso bills marked "HVA," the three officers and their informant proceeded to appellant's house on San Mateo Street, Dulongbayan, San Mateo, Rizal. Arellano and the informant posed as buyers, while Tougan and Pineda posted themselves nearby as back-up. After appellant and another woman opened the door, the informant asked appellant for "two pesos" worth of *shabu* and handed appellant the marked bills. Appellant took the money, turned to the other woman and said "Emily, *pahinge ka nga ng dalawang piso*" ("Emily, can I have two pesos' worth"). After receiving from Emily a plastic sachet supposedly containing *shabu*, appellant gave the sachet to the informant. Arellano immediately arrested appellant and recovered from her the marked bills and two more plastic sachets. Tougan,

[1] Penned by Associate Justice Agustin S. Dizon with Associate Justices Amelita G. Tolentino and Lucenito N. Tagle, concurring.

who had drawn nearer, arrested the other woman, later identified as Emily Coreche (Emily), appellant's sister and co-accused. Tougan recovered from Emily two plastic sachets containing what was suspected to be *shabu*.

The police officers brought appellant and Emily to the San Mateo police station for detention. The plastic sachets taken from appellant and Emily were marked. The station chief, Police Senior Inspector Jesus Fetalino, requested the PNP laboratory for chemical analysis of the sachets' contents.

The specimens tested positive for methamphetamine hydrochloride.

Appellant and Emily were separately charged before the Regional Trial Court of San Mateo, Rizal, Branch 76 (trial court), with violation of Section 11 of RA 9165 for possession of methamphetamine hydrochloride.[2] Appellant was further charged with violation of Section 5 of RA 9165 for the sale of methamphetamine hydrochloride.[3] Appellant and Emily posted

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[2] The Informations alleged (Records, p. 147):

Crim. Case No. 6988 (against Emily Coreche):

That on or about the 10th day of September 2003 in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully, unlawfully and knowingly have in her possession, direct custody and control a total of 2.40 grams of white crystalline substance contained in two (2) heat sealed transparent plastic sachets which gave positive result to the test for Methylamphetamine Hydrochloride, a dangerous drug.

Crim. Case No. 6989 (against appellant)

That on or about the 10th day of September 2003 in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully, unlawfully and knowingly have in her possession, direct custody and control a total of 2.40 grams of white crystalline substance contained in two (2) heat sealed transparent plastic sachets which gave positive result to the test for Methylamphetamine Hydrochloride, a dangerous drug.

[3] The Information in Criminal Case No. 6990 (against appellant) alleged (Records, p. 147):

bail and, during arraignment, entered not guilty pleas. Emily was tried *in absentia* for failing to appear at the trial.

Denying the charges, appellant claimed never to have transacted with Arellano in a drug deal. According to appellant, Arellano, Tougan, and Pineda went to her house in the early morning of 10 September 2003 and tried to mulct ₱50,000 to free Emily whom the police officers had arrested. When appellant could not produce the amount, the police officers detained her and Emily at the San Mateo police station and filed the charges in question.

The Ruling of the Trial Court

In its Decision dated 6 July 2006, the trial court convicted appellant of the charges.[4] The trial court gave credence to the prosecution evidence and found it sufficient to prove beyond

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That on or about the 10th day of September 2003 in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully, unlawfully and knowingly sell[,] deliver and give away to another 0.20 gram of white crystalline substance contained in one (1) heat sealed transparent plastic sachet which gave positive result to the test for Methylamphetamine Hydrochloride, a dangerous drug.

[4] The trial court also convicted Emily. The dispositive portion of the ruling provides (Records, pp. 156-157):

WHEREFORE, premises considered, judgment is hereby rendered, as follows:

1. In Criminal Case No. 6988 finding accused Emily Coreche GUILTY beyond reasonable doubt of the crime of Possession of Dangerous Drug (Violation of Section 11, 2nd par, [s]ub-par 3, Article II, R.A. 9165) and sentencing her to suffer the penalty of imprisonment of Twelve (12) years and one (1) day to Twenty (20) years and to pay a fine of Three Hundred Thousand Pesos (₱300,000.00);

2. In Criminal Case No. 6989 finding accused Marian Coreche GUILTY beyond reasonable doubt of the crime of Possession of Dangerous Drug (Violation of Section II, 2nd par, [s]ub-par 3, Article II, R.A. 9165) and sentencing her to suffer the penalty of imprisonment of Twelve (12) years and one (1) day to Twenty (20) years and to pay a fine of Three Hundred Thousand Pesos (₱300,000.00);

3. In Criminal Case No. 6990 finding accused Marian Coreche GUILTY beyond reasonable doubt of the crime of Sale of Dangerous Drug (Violation

reasonable doubt appellant's violation of Sections 5 and 11 of RA 9165. The trial court rejected appellant's defense for lack of credence in the face of the presumption of regularity in the performance of official duties accorded to the actions of Arellano, Tougan, and Pineda.

Appellant appealed to the Court of Appeals, contending that the trial court erred in ruling that the prosecution discharged its burden of proving her guilt beyond reasonable doubt. Appellant argued that the testimonies of Arellano and Pineda were far from credible because they failed to coordinate with the Philippine Drug Enforcement Agency, did not conduct surveillance prior to the sting operation, and failed to give details on the marking of the seized *shabu*. Appellant also called the appellate court's attention to gaps in the chain of custody of the seized plastic sachets and their contents.

The Ruling of the Court of Appeals

In its Decision dated 19 November 2007, the Court of Appeals sustained the trial court. The appellate court saw no reason to disturb the trial court's assessment of the credibility of the prosecution witnesses. Turning the table on appellant, the Court of Appeals noted that appellant's denial and defense of frame-up strain credulity, no improper motive having been shown on the part of the police officers who took part in the sting operation.

Hence, this appeal. In separate manifestations, the parties waived the filing of supplemental briefs.

The Issue

The issue is whether appellant is guilty of sale and possession of methamphetamine hydrochloride under Sections 5 and 11, respectively, of RA 9165.

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of Section 5, 1st par, Article II, R.A. 9165) and sentencing her to suffer the penalty of Life Imprisonment and a fine of Five Hundred Thousand Pesos (₱500,000.00).

The plastic sachets of "*shabu*" subject matter of these cases are hereby ordered forfeited in favor of the government and the Branch Clerk of Court is hereby directed to safely deliver the same to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

The Ruling of the Court

We find merit in the appeal and accordingly reverse the Court of Appeals.

The Prosecution Failed to Prove Beyond Reasonable Doubt the *Corpus Delicti*

In drug-related prosecutions, the State not only bears the burden of proving the elements of the offenses of sale and possession of methamphetamine hydrochloride under RA 9165,[5] but also carries the obligation to prove the *corpus delicti*, the body of the crime,[6] to discharge its overall duty of proving the guilt of the accused beyond reasonable doubt.[7] The prosecution fails to comply with the indispensable requirement of proving *corpus delicti* not only when it is missing[8] but also when there are substantial gaps in the chain of custody of the seized drugs which raise doubts on the authenticity of the evidence presented in court.[9]

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[5] The elements for the sale of dangerous drugs are (1) the accused sold the dangerous drug to the buyer for a consideration and (2) the accused delivered the dangerous drug to the buyer (see *People v. Sanchez*, G.R. No. 175832, 15 October 2008, 569 SCRA 194). The elements for possession of dangerous drugs are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug (*People v. Dela Cruz,* G.R. No. 182348, 20 November 2008, 571 SCRA 469).

[6] *People v. Garcia*, G.R. No. 173480, 25 February 2009; *People v. Sanchez*, *supra*; *People v. Magat*, G.R. No. 179939, 29 September 2008, 567 SCRA 86. *Corpus delicti* has also been broadly defined to refer to the commission of the crime itself (see *Rieta v. People*, 479 Phil. 943 [2004]).

[7] *People v. Garcia*, *supra*; *People v. Lacap*, 420 Phil. 153 (2001); *People v. Chang,* 382 Phil. 669 (2000).

[8] *People v. Rigodon*, G.R. No. 111888, 8 November 1994, 238 SCRA 27.

[9] RA 9165 does not define "chain of custody" but the administrative guidelines implementing the law refer to chain of custody as "[T]he duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of

Failure to Mark at the Arrest Site the Shabu Allegedly Seized from Appellant Created the First Gap in the Chain of Custody

Crucial in proving chain of custody is the marking[10] of the seized drugs or other related items *immediately after* they are seized from the accused. Marking after seizure is the starting point in the custodial link, thus it is vital that the seized contraband are immediately marked because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of criminal proceedings, obviating switching, "planting," or contamination of evidence.

Long before Congress passed RA 9165, this Court has consistently held that failure of the authorities to immediately mark the seized drugs raises reasonable doubt on the authenticity of the *corpus delicti* and suffices to rebut the presumption of regularity in the performance of official duties,[11] the doctrinal fallback of every drug-related prosecution. Thus, in *People v. Laxa*[12] and *People v. Casimiro*,[13] we held that the failure to

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each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition." (Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002)

[10] In criminal procedure, "marking" means the "placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the items/s seized" (*People v. Sanchez*, G.R. No. 175832, 15 October 2008, 569 SCRA 164).

[11] *People v. Lim*, 435 Phil. 640 (2002).

[12] 414 Phil. 156 (2001) (involving marijuana specimens which were marked only at the police station).

[13] 432 Phil. 966 (2002) (involving marijuana brick which was marked only at the police headquarters).

mark the drugs immediately after they were seized from the accused casts doubt on the prosecution evidence, warranting acquittal on reasonable doubt. These rulings are refinements of our holdings in *People v. Mapa*[14] and *People v. Dismuke*[15] that doubts on the authenticity of the drug specimen occasioned by the prosecution's failure to prove that the evidence submitted for chemical analysis is the same as the one seized from the accused suffice to warrant acquittal on reasonable doubt.[16]

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[14] G.R. No. 91014, 31 March 1993, 220 SCRA 670.

[15] G.R. No. 108453, 11 July 1994, 234 SCRA 51.

[16] RA 9165 is silent on when and where *marking* should be done. On the other hand, its implementing rules provide guidelines on the *inventory* of the seized drugs, thus: "the physical inventory x x x shall be conducted at the place where the search warrant is served; or at the nearest police station or at the office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures" (Section 21(a) of Implementing Rules and Regulations). In *People v. Sanchez* (G.R. No. 175832, 15 October 2008, 569 SCRA 194), we drew a distinction between *marking* and *inventory* and held that consistent with the chain of custody rule, the marking of the drugs seized without warrant must be done "immediately upon confiscation" and in the presence of the accused.

The concern with narrowing the window of opportunity for tampering with evidence found legislative expression in Section 21(1) of RA 9165 on the *inventory* of seized dangerous drugs and paraphernalia by putting in place a three-tiered requirement on the *time*, *witnesses*, and *proof* of inventory by imposing on the apprehending team having initial custody and control of the drugs the duty to "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." Although RA 9165 is silent on the effect of non-compliance with Section 21(1), its implementing guidelines provide that "non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items." We have interpreted this provision to mean that the prosecution bears the burden of proving "justifiable cause" (*People v. Sanchez*, *id.*; *People v. Garcia*, G.R. No. 173480, 25 February 2009).

The records of this case show that the plastic sachets allegedly seized from appellant were indeed marked (as "HVA, HVA-1 and HVA-2"). However, there is nothing on record to show *when* and *where* this was done. The policeman who arrested appellant, Arellano, testified only as to the following: (1) after he arrested appellant, he retrieved from her "two pieces of ₱100 bills and another two sachets of suspected *shabu*"; (2) he "prepared a document regarding the plastic sachet [sic] for examination"; and (3) the contents of five plastic sachets marked HVA, HVA-1 and HVA-2 and JLT-1 tested positive for methamphetamine hydrochloride, thus:

[Prosecutor Gonzales]

Q. What if any, happened next?

[Arellano]

A. After I was able to hold the hands of the woman with short hair [appellant], she was able to free herself and told me, "Sir, *maawa ka nag-iipon lang ako ng pampyansa para sa aking asawa,*" sir.

Q. After that, what happened?

A. I asked her to empty her pocket, sir.

Q. Did that person comply with your order?

A. Yes, sir.

Q. What did she do, if she did anything?

A. She showed to me the contents of her pocket and I was able to retrieve from her the two pieces of ₱100.00 bills and another two sachets of suspected shabu, sir.

Q. And thereafter, what happened next?

A. *After I was able to retrieve from her the evidence, we brought her to our station for investigation, sir.*

Q. You said there was a previous transaction between your informant and the person with short hair, *tell us what happened to the plastic sachets of shabu that had been the subject of the sale between your informer and the woman with short hair* [appellant]?

A. *We prepared a document regarding the plastic sachet for examination, sir.*

Q. What plastic sachets?

A. All of the plastic sachets, sir.

x x x x x x x x x

Q. You said that the plastic sachets which had been confiscated and as well as the subject of the sale had been sent to the Crime Laboratory for examination, what evidence, if any, do you have that the said specimens or objects had been submitted for examination?

A. We prepared a laboratory request, sir.

x x x x x x x x x

Q. If that laboratory request will be shown to you, will you be able to identify the same?

A. Yes, sir.

Q. I am showing to you Exhibit D, which is a request for laboratory examination of the specimens which had been identified as *one heat-sealed transparent plastic sachet marked HVA for Section 5, two heatsealed transparent sachets containing suspected shabu marked HVA-1 and HVA-2 for Section 11 confiscated from suspect, No. 1 two (2) heatsealed transparent plastic sachets containing suspected shabu marked as JLT-1*, what is the relation of this document to that you said is the request for laboratory examination on the object confiscated from the persons of the accused as well as the subject of the sale?

A. This is the request for laboratory examination we prepared, sir.

Pros. Gonzales:

Witness identifying Exhibit D, your Honor.

Q. What was the result of this request, if you know?

A. It gave positive result for methamphetamine hydrochloride, sir.[17] (Emphasis supplied)

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[17] TSN, 6 November 2003, pp. 7-9.

On the other hand, Tougan, who arrested Emily, specified that he marked the plastic sachets he seized from Emily at the San Mateo police station, thus:

Pros. Gonzales:

Q. *At the station, what happened to the plastic sachets which you said were confiscated from the person of the accused*?

[Tougan]

A. *I marked it with my initial JLT-1, sir*.

Q. And this transparent plastic bag of shabu marked as JLT-1 referred to whom [sic]

A. The one I confiscated from Emily Coreche, sir.[18] (Emphasis supplied)

Tougan's clear admission that he marked the plastic sachet at the police station gives rise to the strong inference that like him, Arellano also marked the plastic sachets he took from appellant at the San Mateo police station.

In *Zarraga v. People,*[19] we reversed a guilty verdict for violation of Section 5 of RA 9165 (sale of *shabu*) largely due to the conflicting testimonies of the police officers who conducted the sting operation on when and where the seized drugs were marked. There, we observed that:

[T]here are material inconsistencies in the testimonies of Guevarra and Luna *particularly with regard to when and where the markings on the shabu were made*. Guevarra testified that he handed the shabu to Manglo and that he put markings on the substance.

x x x x x x x x x

Guevarra's account leaves a gap as regards when the *shabu* was marked, *i.e*., whether it was marked before or after it was handed over to Manglo. He also did not say specifically in what place he put the identifying marks. Luna's testimony on this score fills the gap

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[18] TSN, 19 March 2004, p. 6.

[19] G.R. No. 162064, 14 March 2006, 484 SCRA 639.

and, more, it creates reasonable doubt as to the identity of the *corpus delicti*.

x x x x x x x x x

Luna unequivocally declared that he and Guevarra wrapped the *shabu* in tissue only at the office and that the latter put markings on the tissue and plastic wrapper, *suggesting that Guevarra did not follow the standard procedure of marking the confiscated items immediately after the accused were apprehended*.[20] (Emphasis supplied)

Equivocal Evidence on Post-Chemical Examination Custody of the Seized Drugs Created the Second Gap in the Chain of Custody

The prosecution's failure to prove that the sachets of *shabu* presented in court were marked immediately after they were allegedly seized from appellant is compounded by the equivocal evidence on the specimens' post-examination custody. According to the prosecution, the plastic sachets seized from the accused were transferred to the custody of Police Senior Inspector Isidro L. Cariño (Cariño) of the Eastern Police District (EPD) Laboratory for chemical analysis of their contents. In lieu of Cariño's testimony, the prosecution and defense stipulated on the following facts, as contained in the Order of the trial court dated 18 February 2004:

1) That upon the request of the San Mateo Police Station, PSI Isidro Cariño conducted an examination over five (5) heat sealed transparent plastic bags each with 0.20 gram. and the rest 1.20 gram each respectively;

2) That after the said examination had been conducted by the said witness, the result is positive for methylamphetamine [sic] hydrochloride, a dangerous drug;

3) That the same had been reduced into writing under Chemistry Report No. D-1742-03E;

4) That the said witness signed the same and approved by Pol. Chief Insp. Jose Arnel Marquez;

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[20] *Id*. at 647-650.

5) That after the examination, the specimens had been placed in a transparent plastic bag with markings D-1742-03E and initialed by the said witness;

6) That he is a Pol. Sr. Inspector and Forensic Chemical Officer of the Eastern Police District, Mandaluyong City;

7) That the witness had no personal knowledge as to the origin or source of the specimen subject of the examination.[21] (Emphasis supplied)

When taken together with the contents of Chemistry Report No. D-1742-03E,[22] what the stipulation proves is that upon chemical analysis by Cariño, the contents of five plastic sachets marked "HVA thru E (JLT1)"[23] tested positive for "methylamphetamine [sic] hydrochloride." This fact leaves unanswered the question of post-examination custody. Did the plastic sachets remain in Cariño's safekeeping? Were they transferred to another location until they were presented in court? The stipulation in the fifth paragraph that "after the examination, the specimens had been placed in a transparent plastic bag with markings D-1742-03E and initialed by the said witness [Cariño]" merely settles the issue of *how* the specimens were packaged after testing, not *who* took custody of them.[24]

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[21] Records, p. 57.

[22] *Id.* at 44.

[23] Significantly, although Report No. D-1742-03E stated that the five specimens turned over by the San Mateo station were marked "HVA thru E (JLT1)," Arellano testified that he marked the plastic sachets taken from appellant as "HVA, HVA-1 and HVA-2" (TSN, 6 November 2003, p. 9). For his part, testified that he marked the plastic sachets he took from Emily as "JLT-1" (TSN, 19 March 2004, p. 6).

[24] In the bail hearing of 3 December 2003, the prosecution and defense also stipulated on Cariño's testimony and, unlike the stipulation in the hearing of 18 February 2004, the 3 December 2003 stipulation provided in the fourth paragraph that "the specimens subject of the examination are now in the possession of the EPD Lab" (Records, p. 45). The variance between the two stipulations is material. Nearly two months separate the two stipulations and the tenor of the 18 February 2004 stipulation does not foreclose the possibility of post-testing transfer of custody, not to mention that as the

The Presumption of Innocence Prevails Over the Presumption of Regular Performance of Official Duty

In sustaining the prosecution's case, the lower courts inevitably relied on the evidentiary presumption that official duties have been regularly performed.[25] This presumption, it must be emphasized, is not conclusive.[26] Not only is it rebutted by contrary proof, as here, but it is also inferior[27] to the constitutional presumption of innocence.[28] All told, we find merit in appellant's claim that the prosecution failed to discharge its burden of proving her guilt beyond reasonable doubt due to substantial gaps in the chain of custody, raising reasonable doubt on the authenticity of the *corpus delicti*.

The disposition of this appeal once more underscores the need for trial courts to conduct a more exacting scrutiny of prosecution evidence to meet the stringent standard of proof beyond reasonable doubt with due regard to relevant jurisprudence. In the long run, this redounds to the benefit of the criminal justice system by protecting civil liberties and at the same time instilling rigorous discipline on prosecutors.

WHEREFORE, the Decision dated 19 November 2007 of the Court of Appeals is *REVERSED*. Appellant Marian Coreche *y* Caber is *ACQUITTED* of the charges in Criminal Case No. 6989 and Criminal Case No. 6990 on the ground of reasonable doubt.

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latest agreement of the parties, the stipulation of 18 February 2004, supersedes the stipulation of 3 December 2003 and binds the prosecution.

[25] *Rollo*, pp. 15-17.

[26] The presumption reads: "*Disputable presumptions*. — The following presumptions are satisfactory if uncontradicted, but may be contradicted or overcome by other evidence: x x x (m) That official duty has been regularly performed." (The Revised Rules on Evidence, Section 3, Rule 131; underlining supplied, italicization in the original).

[27] *People v. Cañete*, 433 Phil. 781 (2002).

[28] Section 14, par. (2), Article III, 1987 Constitution.

The Director of the Bureau of Corrections is *ORDERED* to immediately *RELEASE* appellant Marian Coreche *y* Caber from custody, unless she is detained for some other lawful cause, and to report to this Court compliance within five (5) days from receipt of this Decision.

Costs *de oficio.*

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 186080. August 14, 2009]

JULIUS AMANQUITON, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; PROOF BEYOND REASONABLE DOUBT, REQUIRED IN CRIMINAL PROSECUTIONS.—** The Constitution itself provides that in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved. An accused is entitled to an acquittal unless his guilt is shown beyond reasonable doubt. It is the primordial duty of the prosecution to present its side with clarity and persuasion, so that conviction becomes the only logical and inevitable conclusion, with moral certainty. The necessity for proof beyond reasonable doubt was discussed in *People v. Berroya*: [Proof beyond reasonable doubt] lies in the fact that in a criminal prosecution, the State is arrayed against the subject; it enters the contest with a prior inculpatory finding in its hands; with unlimited means of command; with counsel

usually of authority and capacity, who are regarded as public officers, as therefore as speaking semi-judicially, and with an attitude of tranquil majesty often in striking contrast to that of defendant engaged in a perturbed and distracting struggle for liberty if not for life. These inequalities of position, the law strives to meet by the rule that there is to be no conviction where there is reasonable doubt of guilt. However, proof beyond reasonable doubt requires only moral certainty or that degree of proof which produces conviction in an unprejudiced mind.

2. **ID.; ID.; ID.; ID.; *PRO REO* PRINCIPLE AND EQUIPOISE RULE; APPLICATION IN CASE AT BAR.—** While we ordinarily do not interfere with the findings of the lower courts on the trustworthiness of witnesses, when there appear in the records facts and circumstances of real weight which might have been overlooked or misapprehended, this Court cannot shirk from its duty to sift fact from fiction. We apply the *pro reo* principle and the equipoise rule in this case. Where the evidence on an issue of fact is in question or there is doubt on which side the evidence weighs, the doubt should be resolved in favor of the accused. If inculpatory facts and circumstances are capable of two or more explanations, one consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and will not justify a conviction.

3. **ID.; ID.; ID.; ID.; RA NO. 7610 ON CRIMES COMMITTED AGAINST CHILDREN, NOT TO BE APPLIED IN THE ABSENCE OF SUFFICIENT EVIDENCE TO CONVICT.—** Time and again, we have held that: Republic Act No. 7610 is a measure geared towards the implementation of a national comprehensive program for the survival of the most vulnerable members of the population, the Filipino children, in keeping with the Constitutional mandate under Article XV, Section 3, paragraph 2, that "**The State shall defend the right of the children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development**." This piece of legislation supplies the inadequacies of existing laws treating crimes committed against children, namely, the Revised Penal Code and Presidential Decree No. 603 or the Child and Youth Welfare Code. As a statute that

provides for a mechanism for strong deterrence against the commission of child abuse and exploitation, the law has stiffer penalties for their commission, and a means by which child traffickers could easily be prosecuted and penalized. Also, the definition of child abuse is expanded to encompass not only those specific acts of child abuse under existing laws but includes also "other acts of neglect, abuse, cruelty or exploitation and other conditions prejudicial to the child's development." However, this noble statute should not be used as a sharp sword, ready to be brandished against an accused even if there is a patent lack of proof to convict him of the crime. The right of an accused to liberty is as important as a minor's right not to be subjected to any form of abuse. Both are enshrined in the Constitution. One need not be sacrificed for the other. There is no dearth of law, rules and regulations protecting a child from any and all forms of abuse. While unfortunately, incidents of maltreatment of children abound amidst social ills, care has to be likewise taken that wayward youths should not be cuddled by a misapplication of the law. Society, through its laws, should correct the deviant conduct of the youth rather than take the cudgels for them. Lest we regress to a culture of juvenile delinquency and errant behavior, laws for the protection of children against abuse should be applied only and strictly to actual abusers.

APPEARANCES OF COUNSEL

Fernandez & Associates Law Firm for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CORONA, *J.*:

Petitioner Julius Amanquiton was a *purok* leader of Barangay Western Bicutan, Taguig, Metro Manila. As a *purok* leader and *barangay tanod*, he was responsible for the maintenance of cleanliness, peace and order of the community.

At 10:45 p.m. on October 30, 2001, petitioner heard an explosion. He, together with two auxiliary *tanods*, Dominador

Amante[1] and a certain Cabisudo, proceeded to Sambong Street where the explosion took place. Thereafter, they saw complainant Leoselie John Bañaga being chased by a certain Gil Gepulane. Upon learning that Bañaga was the one who threw the pillbox[2] that caused the explosion, petitioner and his companions also went after him.

On reaching Bañaga's house, petitioner, Cabisudo and Amante knocked on the door. When no one answered, they decided to hide some distance away. After five minutes, Bañaga came out of the house. At this juncture, petitioner and his companions immediately apprehended him. Bañaga's aunt, Marilyn Alimpuyo, followed them to the *barangay* hall.

Bañaga was later brought to the police station. On the way to the police station, Gepulane suddenly appeared from nowhere and boxed Bañaga in the face. This caused petitioner to order Gepulane's apprehension along with Bañaga. An incident report was made.[3]

During the investigation, petitioner learned Bañaga had been previously mauled by a group made up of a certain Raul, Boyet and Cris but failed to identify two others. The mauling was the result of gang trouble in a certain residental compound in

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[1] Co-accused of petitioner in Criminal Case No. 122996. Amante opted to apply for probation. *Rollo*, p. 34.

[2] An improvised explosive device.

[3] "10-30-201 (sic)

Time: 10-06 p.m.

RECORD purposes

Nagsadya si Gel Pulane *Y* Castello 25 yrs. Old *Binata may trabaho Tubong Bacolod nakatira sa* no.03 Sambong St., M.B.T. Mla.

Upang ireklamo si Neosen (*sic*) Banaga 14 yrs old *Dahil siya ang nakitanaming na naghagis ng* pillbox *sa harap ng* tricycle *na nakaparada sa kahabaan ng sambong*.

Patunay dito ang kanyang lagda."

Gel pulanes (sgd)." *Rollo*, p. 8.

Taguig City. Bañaga's mauling was recorded in a barangay blotter which read:

10-30-201 (sic)
Time: 10-15 p.m.
RECORD purposes

Dumating dito sa Barangay Head Quarters *si* Dossen[4] Bañaga is (sic) Alimpuyo 16 years old student *nakatira sa* 10 B Kalachuchi St. M.B.T. M.M.

Upang ireklamo yong sumapak sa akin sina Raul[,] Boyet [*at*] Cris *at yong dalawang sumapak ay hindi ko kilala. Nang yari ito kaninang* 10:p.m. *araw ng [M]artes taong kasalukuyan at yong labi ko pumutok at yong kabilang mata ko ay namaga sa bandang kanan. Ang iyong kaliwang mukha at pati yong likod ko ay may tama sa sapak.*

Patunay dito ang aking lagda.

Dossen Banaga (sic) (sgd.)

Thereafter, an Information for violation of Section 10 (a), Article VI, RA[5] 7160[6] in relation to Section 5 (j) of R.A. 8369 was filed against petitioner, Amante and Gepulane. The Information read:

The undersigned 2nd Assistant Provincial Prosecutor accuses Julius Amanquiton, Dominador Amante and Gil Gepulane of the crime of Violations of Section 10 (a) Article VI, Republic Act No. 7610 in relation to Section 5 (j) of R.A. No. 8369 committed as follows:

That on the 30th day of October, 2001, in the Municipality of Taguig, Metro Manila, Philippines and within the jurisdiction of this Honorable

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[4] Dossen Bañaga is the same person as Leoselie John A. Bañaga.

[5] Republic Act.

[6] An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, Providing Penalties for its Violation and for Other Purposes.

Court, the above-named accused in conspiracy with one another, armed with nightstick, did then and there willfully, unlawfully and feloniously attack, assault and use personal violence, a form of physical abuse, upon the person of Leoselie John A. [Bañaga], seventeen (17) years old, a minor, by then and there manhandling him and hitting him with their nightsticks, thus, constituting other acts of child abuse, which is inimical or prejudicial to child's development, in violation of the above-mentioned law.

CONTRARY TO LAW.

On arraignment, petitioner and Amante both pleaded not guilty. Gepulane remains at-large.

During the trial, the prosecution presented the following witnesses: Dr. Paulito Cruz, medico-legal officer of the Taguig-Pateros District Hospital who attended to Bañaga on October 30, 2001, Bañaga himself, Alimpuyo and Rachelle Bañaga (complainant's mother).

The defense presented the testimonies of petitioner, Amante and Briccio Cuyos, then deputy chief *barangay tanod* of the same *barangay*. Cuyos testified that the blotter notation entered by Gepulane and Bañaga was signed in his presence and that they read the contents thereof before affixing their signatures.

On May 10, 2005, the RTC found petitioner and Amante guilty beyond reasonable doubt of the crime charged.[7] The dispositive portion of the RTC decision read:

WHEREFORE, in view of the foregoing, this Court finds the accused JULIUS AMANQUITON and DOMINADOR AMANTE "GUILTY" beyond reasonable doubt for violation of Article VI Sec. 10 (a) of Republic Act 7610 in relation to Section 3 (j) of Republic Act 8369, hereby sentences accused JULIUS AMANQUITON and DOMINADOR AMANTE a straight penalty of thirty (30) days of *Arresto Menor*.

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[7] *Rollo*, pp. 52-67.

Both accused Julius Amanquiton and Dominador Amante are hereby directed to pay Leoselie John A. Banaga the following:

1. Actual damages in the amount of ₱5,000.00;
2. Moral Damages in the amount of ₱30,000.00; and
3. Exemplary damages in the amount of ₱20,000.00.

The case against the accused Gil Gepulane is hereby sent to the ARCHIVES to be revived upon the arrest of the accused. Let [a] warrant of arrest be issued against him.

SO ORDERED.

Amanquiton's motion for reconsideration was denied.[8]

Petitioner filed a notice of appeal which was given due course. On August 28, 2008, the CA rendered a decision[9] which affirmed the conviction but increased the penalty. The dispositive portion of the assailed CA decision read:

WHEREFORE, in view of the foregoing the *Decision* appealed from is **AFFIRMED** with **MODIFICATION**. The accused-appellant is sentenced to suffer the penalty of four (4) years, two (2) months and one (1) day of *prision correccional maximum* up to eight (8) years of *prision mayor minimum* as maximum. In addition to the damages already awarded, a fine of thirty thousand pesos (₱30,000.00) is hereby solidarily imposed the proceeds of which shall be administered as a cash fund by the DSWD.

IT IS SO ORDERED.

Petitioner's motion for reconsideration was denied.[10]

Hence, this petition. Petitioner principally argues that the facts of the case as established did not constitute a violation of Section 10 (a), Article VI of RA 7160 and definitely did not prove the guilt of petitioner beyond reasonable doubt.

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[8] Resolution dated June 29, 2006. *Id.*, pp. 76-77.

[9] *Id.*, pp. 34-50.

[10] Resolution dated January 15, 2009. *Id.*, p. 51.

The Constitution itself provides that in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved.[11] An accused is entitled to an acquittal unless his guilt is shown beyond reasonable doubt.[12] It is the primordial duty of the prosecution to present its side with clarity and persuasion, so that conviction becomes the only logical and inevitable conclusion, with moral certainty.[13]

The necessity for proof beyond reasonable doubt was discussed in *People v. Berroya*:[14]

> [Proof beyond reasonable doubt] lies in the fact that in a criminal prosecution, the State is arrayed against the subject; it enters the contest with a prior inculpatory finding in its hands; with unlimited means of command; with counsel usually of authority and capacity, who are regarded as public officers, as therefore as speaking semi-judicially, and with an attitude of tranquil majesty often in striking contrast to that of defendant engaged in a perturbed and distracting struggle for liberty if not for life. These inequalities of position, the law strives to meet by the rule that there is to be no conviction where there is reasonable doubt of guilt. However, proof beyond reasonable doubt requires only moral certainty or that degree of proof which produces conviction in an unprejudiced mind.

The RTC and CA hinged their finding of petitioner's guilt beyond reasonable doubt (of the crime of child abuse) solely on the supposed positive identification by the complainant and his witness (Alimpuyo) of petitioner and his co-accused as the perpetrators of the crime.

We note Bañaga's statement that, when he was apprehended by petitioner and Amante, there were many people around.[15] Yet, the prosecution presented only Bañaga and his aunt,

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[11] CONSTITUTION, Article III, Section 14 (2).

[12] RULES OF COURT, Rule 133, Section 2.

[13] *People v. Fernandez*, 434 Phil. 435, 445 (2002).

[14] 347 Phil. 410, 423 (1997).

[15] *Rollo*, p. 90.

Alimpuyo, as witnesses to the mauling incident itself. Where were the other people who could have testified, in an unbiased manner, on the alleged mauling of Bañaga by petitioner and Amante, as supposedly witnessed by Alimpuyo?[16] The testimonies of the two other prosecution witnesses, Dr. Paulito Cruz and Rachelle Bañaga, did not fortify Bañaga's claim that petitioner mauled him, for the following reasons: Dr. Cruz merely attended to Bañaga's injuries, while Rachelle testified that she saw Bañaga only after the injuries have been inflicted on him.

We note furthermore that, Bañaga failed to controvert the validity of the *barangay* blotter he signed regarding the mauling incident which happened prior to his apprehension by petitioner. Neither did he ever deny the allegation that he figured in a prior battery by gang members.

All this raises serious doubt on whether Bañaga's injuries were really inflicted by petitioner, *et al*., to the exclusion of other people. In fact, petitioner testified clearly that Gepulane, who had been harboring a grudge against Bañaga, came out of nowhere and punched Bañaga while the latter was being brought to the police station. Gepulane, not petitioner, could very well have caused Bañaga's injuries.

Alimpuyo admitted that she did not see who actually caused the bloodied condition of Bañaga's face because she had to first put down the baby she was then carrying when the melee started.[17] More importantly, Alimpuyo stated that she was told by Bañaga that, while he was allegedly being held by the neck by petitioner, others were hitting him. Alimpuyo was obviously testifying not on what she personally saw but on what Bañaga told her.

While we ordinarily do not interfere with the findings of the lower courts on the trustworthiness of witnesses, when there appear in the records facts and circumstances of real weight

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[16] *Id.*

[17] *Id.*, p. 16.

which might have been overlooked or misapprehended, this Court cannot shirk from its duty to sift fact from fiction.

We apply the *pro reo* principle and the equipoise rule in this case. Where the evidence on an issue of fact is in question or there is doubt on which side the evidence weighs, the doubt should be resolved in favor of the accused.[18] If inculpatory facts and circumstances are capable of two or more explanations, one consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and will not justify a conviction.[19]

Time and again, we have held that:

> Republic Act No. 7610 is a measure geared towards the implementation of a national comprehensive program for the survival of the most vulnerable members of the population, the Filipino children, in keeping with the Constitutional mandate under Article XV, Section 3, paragraph 2, that "**The State shall defend the right of the children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development**." This piece of legislation supplies the inadequacies of existing laws treating crimes committed against children, namely, the Revised Penal Code and Presidential Decree No. 603 or the Child and Youth Welfare Code. As a statute that provides for a mechanism for strong deterrence against the commission of child abuse and exploitation, the law has stiffer penalties for their commission, and a means by which child traffickers could easily be prosecuted and penalized. Also, the definition of child abuse is expanded to encompass not only those specific acts of child abuse under existing laws but includes also "other acts of neglect, abuse, cruelty or exploitation and other conditions prejudicial to the child's development."[20]

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[18] *People v. Abarquez,* G.R. No. 150762, 20 January 2006, 479 SCRA 225, 239.

[19] *People v. Lagmay,* 365 Phil. 606, 633 (1999).

[20] *Gonzalo Araneta v. People*, G.R. No. 174205, 27 June 2008, 556 SCRA 323, 332.

However, this noble statute should not be used as a sharp sword, ready to be brandished against an accused even if there is a patent lack of proof to convict him of the crime. The right of an accused to liberty is as important as a minor's right not to be subjected to any form of abuse. Both are enshrined in the Constitution. One need not be sacrificed for the other.

There is no dearth of law, rules and regulations protecting a child from any and all forms of abuse. While unfortunately, incidents of maltreatment of children abound amidst social ills, care has to be likewise taken that wayward youths should not be cuddled by a misapplication of the law. Society, through its laws, should correct the deviant conduct of the youth rather than take the cudgels for them. Lest we regress to a culture of juvenile delinquency and errant behavior, laws for the protection of children against abuse should be applied only and strictly to actual abusers.

The objective of this seemingly catch-all provision on abuses against children will be best achieved if parameters are set in the law itself, if only to prevent baseless accusations against innocent individuals. Perhaps the time has come for Congress to review this matter and institute the safeguards necessary for the attainment of its laudable ends.

We reiterate our ruling in *People v. Mamalias*:[21]

> We emphasize that the great goal of our criminal law and procedure is not to send people to the gaol but to do justice. The prosecution's job is to prove that the accused is guilty beyond reasonable doubt. Conviction must be based on the strength of the prosecution and not on the weakness of the defense. Thus, when the evidence of the prosecution is not enough to sustain a conviction, it must be rejected and the accused absolved and released at once.

WHEREFORE, the petition is hereby *GRANTED*. The August 28, 2008 decision and January 15, 2009 resolution of Court of Appeals are *REVERSED* and *SET ASIDE*. Petitioner

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[21] *People v. Mamalias*, 385 Phil. 499, 513-514 (2000).

Julius Amanquiton is hereby *ACQUITTED* of violation of Section 10 (a), Article VI of RA 7160.

SO ORDERED.

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

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Management prerogatives — Management has much wider discretion in terminating the employment of managerial personnel; reason. (Lowe, Inc. *vs*. CA, G.R. Nos. 164813 and 174590, Aug. 14, 2009) p. 1044

— The determination of the continuing necessity of a particular officer or position in a business corporation is a management prerogative, and the courts will not interfere unless arbitrary or malicious action on the part of the management is shown. *(Id.)*

EMPLOYMENT, TERMINATION OF

Claim for reinstatement — Acceptance of terminal leave benefits not construed as an abandonment of the claim for reinstatement where the dismissed employee has appealed his case before he received his terminal leave benefits. (Yenko *vs*. Gungon, G.R. No. 165450, Aug. 13, 2009) p. 881

Constructive dismissal — A reassignment done in bad faith amounts to constructive dismissal; employer is liable for oppression. (Reyes, Jr. *vs*. Belisario, G.R. No. 154652, Aug. 14, 2009) p. 936

— When transfer of employee is not deemed a constructive dismissal. (Aguanza *vs*. Asian Terminal, Inc., G.R. No. 163505, Aug. 14, 2009) p. 1009

Dismissal — Dismissal without just cause and procedural due process; employee entitled to reinstatement and full backwages; exception. (Abel *vs*. Philex Mining Corp., G.R. No. 178976, July 31, 2009) p. 203

— Requisites for a valid dismissal. (Abel *vs*. Philex Mining Corp., G.R. No. 178976, July 31, 2009) *(Id.)*

Gross and habitual negligence — Negligence must be gross and habitual to be a valid cause for dismissal; gross negligence, elucidated. (Llamas *vs.* Ocean Gateway Maritime and Management, Inc., G.R. No. 179293, Aug. 14, 2009) p. 1230

Illegal dismissal — An employee reinstated for having been illegally dismissed is considered as not having left his

office. (Yenko *vs.* Gungon, G.R. No. 165450, Aug. 13, 2009) p. 881

— An illegally dismissed employee who was ordered reinstated is entitled to all the rights and privileges that should accrue to him by virtue of the office that he held. *(Id.)*

— An illegally terminated civil service employee is entitled to back salaries limited only to a maximum period of five years. *(Id.)*

— Fact of dismissal must first be established by employee. (Gallego *vs.* Bayer Phils. Inc., G.R. No. 179807, July 31, 2009) p. 250

Loss of trust and confidence as a ground — Must be willful and work-related. (Dela Cruz *vs.* Coca-Cola Bottlers Phils. Inc., G.R. No. 180465, July 31, 2009) p. 285

— When valid as a ground for dismissal. (Abel *vs.* Philex Mining Corp., G.R. No. 178976, July 31, 2009) p. 203

Redundancy — Criteria in implementing a redundancy program. (Lowe, Inc. *vs.* CA, G.R. Nos. 164813 and 174590, Aug. 14, 2009) p. 1044

— Requisites to be valid. *(Id.)*

Serious misconduct as a ground — Nature thereof, discussed. (Llamas *vs.* Ocean Gateway Maritime and Management, INC., G.R. No. 179293, Aug. 14, 2009) p. 1230

Validity of — Burden of proving validity rests with employer; burden of proof means substantial evidence. (Abel *vs.* Philex Mining Corp., G.R. No. 178976, July 31, 2009) p. 203

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EVIDENCE

Flight of the accused — When unexplained, it is competent evidence of guilt. (People *vs.* Diaz, G.R. No. 185841, Aug. 04, 2009) p. 692

Substantial evidence — Satisfied in administrative proceedings when there is reasonable ground to believe that the person indicted was responsible for alleged wrongdoing or misconduct. (Regir *vs*. Regir, A.M. No. P-06-2282, Aug. 07, 2009) p. 771

***EX PARTE* PROCEEDINGS**

Branch Clerk of Court — As commissioner in such a proceeding, has discretion to terminate the same. (Sps. Corpuz *vs*. Citibank N.A., G.R. No. 175677, July 31, 2009) p. 150

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Minority — A child above fifteen (15) but below eighteen (18) years of age shall likewise be exempt from criminal liability unless he/she acted with discernment. (Madali *vs*. People, G.R. No. 180380, Aug. 04, 2009) p. 582

— A child fifteen (15) years of age or under at the time of the commission of the crime shall be exempt from criminal liability; civil liability is not extinguished. *(Id.)*

EXPROPRIATION

Just compensation — Actual taking of the remaining portion of the real property is not necessary to grant consequential damages in expropriation proceedings. (Rep. of the Phils. *vs.* CA, G.R. No. 160379, Aug. 14, 2009) p. 965

— Basis. *(Id.)*

— Procedural requirements. *(Id.)*

— Property valuation; factors to consider. *(Id.)*

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Admissibility — Extrajudicial confession of accused assisted by municipal attorney is not admissible in evidence. (People *vs*. Maliao, G.R. 178058, July 31, 2009) p. 189

EXTRAJUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE (ACT NO. 3135)

Writ of possession — Between petitioner and the alleged third party, the lessee, the latter is the proper party to question the ex parte issuance and enforcement of the writ of possession for the subject property; remedies available to the party in possession of the subject property. (Top Art Shirt Manufacturing, Inc. *vs.* Metrobank, G.R. No. 184005, Aug. 04, 2009) p. 633

— General rule is that upon proper application and proof of title, the issuance thereof to the purchaser of the foreclosed property at a public auction sale becomes a ministerial duty of the court; exception. *(Id.)*

— Upon the purchaser's filing of the ex parte petition and posting of the appropriate bond, the trial court shall, as a matter of course, order the issuance of the writ of possession. *(Id.)*

— Will issue as a matter of course, even without the filing and approval of a bond, after consolidation of ownership and the issuance of a new transfer certificate of title in the name of the purchaser. *(Id.)*

FAMILY CODE

Summary judicial proceeding — Rule on appeal of judgments rendered therein, explained. (Rep. of the Phils. *vs.* Tango, G.R. No. 161062, July 31, 2009) p. 76

FORUM SHOPPING

Concept — A motion for reconsideration cannot be treated as a new petition to make it fit the definition of forum shopping. (Sameer Overseas Placement Agency, Inc. *vs.* Santos, G.R. No. 152579, Aug. 04, 2009) p. 379

— There is forum shopping where the elements of litis pendentia are present. *(Id.)*

Definition — Forum shopping is defined as an act of a party, against whom an adverse judgment or order has been

rendered in one forum, of seeking and possibly getting a favorable opinion in another forum, other than by appeal or special civil action for certiorari. (Sameer Overseas Placement Agency, Inc. *vs*. Santos, G.R. No. 152579, Aug. 04, 2009) p. 379

Prohibition against — Mere divisions of one and the same Court of Appeals cannot be considered as different fora within the ambit of the prohibition against forum shopping. (Sameer Overseas Placement Agency, Inc. *vs*. Santos, G.R. No. 152579, Aug. 04, 2009) p. 379

GRAVE ABUSE OF DISCRETION

Concept — Grant of the writ of preliminary injunction in favor of the movant, despite the lack of a clear and unmistakable right on its part, constitutes grave abuse of discretion. (Tanduay Distillers, Inc. *vs.* Ginebra San Miguel, Inc., G.R. No. 164324, Aug. 14, 2009) p. 1020

HABEAS CORPUS

Writ of — Since respondent's appointment as judicial guardian is proper, the issuance of a writ of *habeas corpus* in her favor is also in order after she was unduly deprived of the rightful custody of her ward. (Hernandez *vs.* San Juan-Santos, G.R. No. 166470, Aug. 07, 2009) p. 780

ILLEGITIMATE CHILD

Recognition of — Article 176 of the Family Code must be read in conjunction with Articles 175 and 172 of the same Code to show that a father who acknowledges paternity of a child through a written instrument must affix his signature therein. (Dela Cruz *vs.* Gracia, G.R. No. 177728, July 31, 2009) p. 167

— Court promulgates rules respecting the requirement of affixing the signature of the acknowledging parent in any private handwritten instrument. *(Id.)*

— Existence of special circumstances to uphold autobiography acknowledging child's paternity, though unsigned by the putative father. *(Id.)*

— Policy of the Family Code to liberalize the rule on the investigation of the paternity and filiation of children, especially of illegitimate children. *(Id.)*

— Use of surname of father, discussed. *(Id.)*

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Application — Conditions. (Gallego *vs*. Bayer Phils. Inc., G.R. No. 179807, July 31, 2009) p. 250

— Other circumstances showing product image as a legitimate job contractor in case at bar. *(Id.)*

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Administrative charge against — A judge's erroneous judgment cannot be a ground for disciplinary action in the absence of bad faith. (Malabed *vs*. Judge Asis, A.M. No. RTJ-07-2031, Aug. 04, 2009) p. 336

Delay in the disposition of cases — Consequences. (*Re*: Report on the Judicial Audit Conducted at the MTC, Br. 55, Malabon City, A.M. No. 08-3-73-MeTC, July 31, 2009) p. 8

Disbarment — A judge's dishonesty puts his moral character in serious doubt and rendered him unfit to continue in the practice of law; the requirement of good moral character is of much greater import, as far as the public is concerned, than the possession of legal learning. (Samson *vs*. Judge Caballero, A.M. No. RTJ-08-2138, Aug. 5, 2009) p. 737

Dishonesty — Committed in case a judge made an obviously false statement in his personal data sheet. (Samson *vs*. Judge Caballero, A.M. No. RTJ-08-2138, Aug. 5, 2009) p. 737

Duties — A judge is responsible for the physical inventory of cases and it is deemed violated when he failed to make complete report to the audit team as mandated by

Administrative Circular No. 10-94. (*Re*: Report on the Judicial Audit Conducted at the MTC, Br. 55, Malabon City, A.M. No. 08-3-73-MeTC, July 31, 2009) p. 8

— Proper and efficient court management is the responsibility of the judge. *(Id.)*

— To administer justice impartially and without delay; partiality or bias, defined. (Malabed *vs*. Judge Asis, A.M. No. RTJ-07-2031, Aug. 04, 2009) p. 336

Gross ignorance of the law — Imposable penalty. (Cervantes *vs*. Judge Pangilinan, A.M. No. MTJ-08-1709, July 31, 2009) p. 36

Gross inefficiency — Failure to decide cases within the prescribed period, a case of. (*Re*: Report on the Judicial Audit Conducted at the MTC, Br. 55, Malabon City, A.M. No. 08-3-73-MeTC, July 31, 2009) p. 8

Judicial conduct — A judge should not permit a law firm, of which he was formerly an active member, to continue to carry his name in the firm name; rationale. (Atty. Binalay *vs*. Judge Lelina, Jr., A.M. No. RTJ-08-2132, July 31, 2009) p. 63

— A judge who disobeys the basic rules of judicial conduct also violates his oath as a lawyer; respondent's dishonest act is against the lawyer's oath "to do no falsehood, nor consent to the doing of any in court." (Samson *vs*. Judge Caballero, A.M. No. RTJ-08-2138, Aug. 05, 2009) p. 737

— A judge's conduct should be free of impropriety with respect to the performance of his official duties and to his behavior as a private individual. (Malabed *vs*. Judge Asis, A.M. No. RTJ-07-2031, Aug. 04, 2009) p. 336

— Where the law does not make any distinction in prohibiting judges from engaging in the private practice of law while holding judicial office, no distinction should be made in its application. (Atty. Binalay *vs*. Judge Lelina, Jr., A.M. No. RTJ-08-2132, July 31, 2009) p. 63

Standard of integrity required — Should be higher than that of an average person for it is their integrity that gives them the right to judge. (Samson *vs.* Judge Caballero, A.M. No. RTJ-08-2138, Aug. 05, 2009) p. 737

Unauthorized practice of law — Proper penalty. (Atty. Binalay *vs.* Judge Lelina, Jr., A.M. No. RTJ-08-2132, July 31, 2009) p. 63

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Annulment of — Grounds. (Nudo *vs.* Hon. Caguioa, G.R. No. 176906, Aug. 04, 2009) p. 517

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Finality of judgment — Doctrine thereof, explained; exceptions. (Rep. of the Phils. *vs.* Tango, G.R. No. 161062, July 31, 2009) p. 76

Immutability of judgment — Application; purpose. (Navarro *vs.* Metrobank, G.R. No. 165697, Aug. 04, 2009) p. 462

Judicial compromise — Has the force and effect of a judgment. (Rañola *vs.* Sps. Rañola, G.R. No. 185095. July 31, 2009) p. 307

— When approved by the court, it attains the effect and authority of *res judicata. (Id.)*

Res judicata — An order granting a motion to dismiss based on paragraphs (F), (H) and (I) of Section 1, Rule 16 of the Rules of Court constitutes *res judicata*. (Navarro *vs.* Metrobank, G.R. No. 165697, Aug. 04, 2009) p. 462

— Principle thereof inapplicable where there is lack of identity of rights asserted or causes of action and identity of relief sought. (D.M. Consunji, Inc. *vs.* Duvaz Corp., G.R. No. 155174, Aug. 04, 2009) p. 423

— Requisites. (Judge Abelita III *vs.* P/Supt. Doria, G.R. No. 170672, Aug. 14, 2009) p. 1127

JUDICIAL ADMISSIONS

Application — No proof required. (People *vs*. Maliao, G.R. No. 178058, July 31, 2009) p. 189

— When respondent filed before the Department of Agrarian Reform Adjudication Board a petition for annulment of sale of land in question by Land Bank to petitioner's predecessor's-in-interest, she effectively admitted ownership of petitioner over land. (Sison *vs*. Cariaga, G.R. No. 177847, July 31, 2009) p. 181

JURISDICTION

Jurisdictional question — A mere inquiry from an improper office cannot be considered as an act of having raised the jurisdictional question prior to the rendition of the trial court's decision. (Lu *vs*. Lu Ym, Sr., G.R. No. 153690, Aug. 04, 2009; *Carpio Morales, J., dissenting opinion*) p. 390

Lack of jurisdiction — The matter of lack of jurisdiction of the trial court may be raised at any stage of the proceedings. (Lu *vs*. Lu Ym, Sr., G.R. No. 153690, Aug. 04, 2009; *Nachura, J., dissenting opinion*) p. 390

JUST COMPENSATION

Consequential damages — Actual taking of the remaining portion of the real property is not necessary to grant consequential damages in expropriation proceedings. (Rep. of the Phils. *vs*. CA, G.R. No. 160379, Aug. 14, 2009) p. 965

Determination of — Basis. (Rep. of the Phils. *vs*. CA, G.R. No. 160379, Aug. 14, 2009) p. 965

— Factors to be considered in the determination of just compensation. *(Id.)*

— Procedure for the determination of just compensation. *(Id.)*

— The trial court is not bound by the commissioners' valuation of the property. *(Id.)*

JUSTICES

Standard of integrity required — Should be higher than that of an average person for it is their integrity that gives them the right to judge. (Samson *vs*. Judge Caballero, A.M. No. RTJ-08-2138, Aug. 5, 2009) p. 737

JUSTIFYING CIRCUMSTANCES

Self-defense — When not appreciated. (Rep. of the Phils. *vs*. CA, G.R. No. 160379, Aug. 14, 2009) p. 965

JUVENILE JUSTICE AND WELFARE ACT OF 2006 (R.A. NO. 9334)

Application — A child above fifteen (15) but below eighteen (18) years of age shall likewise be exempt from criminal liability unless he/she acted with discernment. (Madali *vs*. People, G.R. No. 180380, Aug. 04, 2009) p. 582

— A child fifteen (15) years of age or under at the time of the commission of the crime shall be exempt from criminal liability; civil liability is not extinguished. *(Id.)*

LABOR CASES

Rules of procedure — Technical rules are not binding; that witness was not cross-examined on his affidavit, not crucial. (Jethro Intelligence & Security Corp. *vs*. Hon. Sec. of Labor and Employment, G.R. No. 172537, Aug. 14, 2009) p. 1184

LABOR ORGANIZATIONS

Definition of — Any union or association of employees which exists in whole or in part for the purpose of collective bargaining or of dealing with employers concerning terms and conditions of employment. (Sta. Lucia East Commercial Corp. *vs*. Hon. Sec. of Labor and Employment, G.R. No. 162355, Aug. 14, 2009) p. 998

Exclusive bargaining representative — Employer's voluntary recognition of a union as its exclusive bargaining representative is void where the employer is not an unorganized establishment. (Sta. Lucia East Commercial

Corp. *vs*. Hon. Sec. of Labor and Employment, G.R. No. 162355, Aug. 14, 2009) p. 998

Right to self-organization — Overrides any provision in a CBA disqualifying probationary employees from voting in a certification election. (National Union of Workers in Hotels, Restaurants and Allied Industries-Manila Pavilion Hotel Chapter *vs*. Sec. of Labor and Employment, G.R. No. 181531, July 31, 2009) p. 291

LABOR STANDARDS

Job contracting and sub-contracting — Conditions for application. (Gallego *vs*. Bayer Phils. Inc., G.R. No. 179807, July 31, 2009) p. 250

— Other circumstances showing product image as a legitimate job contractor in case at bar. *(Id.)*

LACHES

Principle of — Defined. (Navarro *vs*. Metrobank, G.R. No. 165697, Aug. 04, 2009) p. 462

— Inapplicable where the action was filed within the prescriptive period provided by law. (D.B.T. Mar-Bay Construction Inc. *vs*. Panes, G.R. No. 167232, July 31, 2009) p. 93

— The broad provision of Section 1 of Rule 16 of the Rules of Court includes the doctrine of laches as a ground for the dismissal of a complaint. (Navarro *vs*. Metrobank, G.R. No. 165697, Aug. 04, 2009) p. 462

LAND REGISTRATION

Certificate of title — Claim of fraud to impugn the validity of the parties' title to their property in an *accion publiciana* is a collateral attack on the title. (Madrid *vs*. Sps. Mapoy and Martinez, G.R. No. 150887, Aug. 14, 2009) p. 920

Registered land — Rule that no title thereto in derogation of the rights of the registered owner shall be acquired by prescription or adverse possession. (D.B.T. Mar-Bay

Construction Inc. *vs*. Panes, G.R. No. 167232, July 31, 2009) p. 93

Torrens system — Registration of land under the Torrens system renders the title immune from collateral attack. (Madrid *vs*. Sps. Mapoy and Martinez, G.R. No. 150887, Aug. 14, 2009) p. 920

Torrens title — Holder thereof is entitled to all the attributes of ownership of the property subject only to limits imposed by law. (Madrid *vs*. Sps. Mapoy and Martinez, G.R. No. 150887, Aug. 14, 2009) p. 920

— Innocent third persons may rely on the correctness of the certificate of title issued; rights thus acquired over the property cannot be disregarded by the court. (D.B.T. Mar-Bay Construction Inc. *vs*. Panes, G.R. No. 167232, July 31, 2009) p. 93

— Title holder should not be made to bear the unfavorable effect of the mistake or negligence of the state's agents. *(Id.)*

LEGAL FEES

Computation of — Computation of filing fees in intra-corporate cases; application. (Lu *vs*. Lu Ym, Sr., G.R. No. 153690, Aug. 04, 2009; *Carpio Morales, J., dissenting opinion*) p. 390

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Party affiliations — Question of fact which court does not resolve. (Drilon *vs*. Hon. De Venecia Jr., G.R. No. 180055, July 31, 2009) p. 267

LETTERS TESTAMENTARY

Concept — Elucidated. (Rep. of the Phils. *vs*. Marcos II, G.R. Nos. 130371 & 130855, Aug. 04, 2009) p. 355

To whom not issued — Persons incompetent to serve as executors and persons convicted of an offense involving moral turpitude; moral turpitude, defined. (Rep. of the Phils. *vs*. Marcos II, G.R. Nos. 130371 & 130855, Aug. 04, 2009) p. 355

LIQUIDATED DAMAGES

Award of — Proper where default is incurred. (Continental Cement Corp. *vs.* Filipinas [PREFAB] Systems, Inc., G.R. No. 176917, Aug. 4, 2009) p. 524

LIS PENDENS

Notice of lis pendens — Defined. (Lu *vs.* Lu Ym, Sr., G.R. No. 153690, Aug. 04, 2009; *Nachura, J., dissenting opinion*) p. 390

LOCAL TAXATION

Tax Ordinance Nos. 7988 and 8011 of the City of Manila — Considering the nullity of Tax Ordinance No. 7988 and Tax Ordinance No. 8011, respondent should not have been subjected to the local business tax under Section 21 of Tax Ordinance No. 7794 for the third and fourth quarters of 2000, given its exemption therefrom since it was already paying the local business tax under Section 14 of the same ordinance. (The City of Manila. *vs.* Coca-Cola Bottlers Phils., Inc., G.R. No. 181845, Aug. 04, 2009) p. 609

— Respondent cannot be taxed and assessed under Tax Ordinance No. 7988 and Tax Ordinance No. 8011 which were declared null and void and without any legal effect. *(Id.)*

MARRIAGE, ANNULMENT OF

Declaration of nullity — A. M. No. 02-11-10-SC (Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages) removed the mandatory nature of an Office of the Solicitor General's certification and may be applied retroactively to pending matters. (Padilla-Rumbaua *vs.* Rumbaua, G.R. No. 166738, Aug. 14, 2009) p. 1061

MINORITY

As an exempting circumstance — A child above fifteen (15) but below eighteen (18) years of age shall likewise be exempt

from criminal liability unless he/she acted with discernment. (Madali *vs*. People, G.R. No. 180380, Aug. 04, 2009) p. 582

— A child fifteen (15) years of age or under at the time of the commission of the crime shall be exempt from criminal liability; civil liability is not extinguished. *(Id.)*

MITIGATING CIRCUMSTANCES

Voluntary surrender — When not appreciated. (People *vs*. Angeles, G.R. No. 177134, Aug. 14, 2009) p. 1195

MORAL DAMAGES

Award of — Proper in rape cases. (People *vs*. Laboa, G.R. No. 185711, Aug. 24, 2009; *Chico-Nazario, J., dissenting opinion)*

— Unwarranted absent evidence that the termination of the employee was done in an arbitrary, capricious or malicious manner. (Lowe, Inc. *vs*. CA, G.R. Nos. 164813 and 174590, Aug. 14, 2009) p. 1044

MORAL TURPITUDE

Concept — Failure to file an income tax return is not a crime involving moral turpitude but the filing of a fraudulent return with intent to evade tax is a crime involving moral turpitude. (Rep. of the Phils. *vs*. Marcos II, G.R. Nos. 130371 & 130855, Aug. 04, 2009) p. 355

MOTIVE

Proof of — While motive is not indispensable for conviction, it assumes true significance when there is no showing of who the true perpetrator of a crime might have been. (People *vs*. Diaz, G.R. No. 185841, Aug. 04, 2009) p. 692

MURDER

Commission of — Elements. (People *vs*. Perez, G.R. No. 179154, July 31, 2009) p. 222

— Motive, not an element. *(Id.)*

NATIONAL LABOR RELATIONS COMMISSION

Appeal to the National Labor Relations Commission — Defect in the perfection of the appeal to the National Labor Relations Commission due to insufficiency of the supersedeas bond is a defect in form which may be waived by the NLRC. (Aguanza *vs.* Asian Terminal, Inc., G.R. No. 163505, Aug. 14, 2009) p. 1009

NEW TRIAL

Grounds — Blunders and mistakes in the conduct of the proceedings in the trial court as a result of the ignorance, inexperience or incompetence of counsel does not qualify as a ground for new trial. (Padilla-Rumbaua *vs.* Rumbaua, G.R. No. 166738, Aug. 14, 2009) p. 1061

Proceedings — Unless a substantial prejudice is shown, the trial court's failure to schedule a case for new trial does not render the proceedings illegal or void ab initio. (Madrid *vs.* Sps. Mapoy and Martinez, G.R. No. 150887, Aug. 14, 2009) p. 920

NON-IMPAIRMENT CLAUSE

Violation of — Not established when there is no existing contract and, therefore, no enforceable right or demandable obligation that will be impaired. (Barangay Association for National Advancement and Transparency [BANAT] Party-List *vs.* COMELEC, G.R. No. 177508, Aug. 07, 2009) p. 793

NOVATION

Extinctive novation — Distinguished from partial novation. (Tomimbang *vs.* Atty. Tomimbang, G.R. No. 165116, Aug. 04, 2009) p. 447

— Explained. (Foundation Specialists, Inc. *vs.* Betonval Ready Concrete, Inc., G.R. No. 170674, Aug. 24, 2009)

OBLIGATIONS

Just debts — Concept. (Tan *vs.* Sermonia, A.M. No. P-08-2436, Aug. 04, 2009) p. 314

OBLIGATIONS, EXTINGUISHMENT OF

Novation — Extinctive and partial novation, distinguished. (Tomimbang *vs*. Atty. Tomimbang, G.R. No. 165116, Aug. 04, 2009) p. 447

— Modificatory or partial novation, duly established in case at bar. *(Id.)*

— The obligation in case at bar has become due and demandable under the novated agreement. *(Id.)*

OMBUDSMAN

Decision of — Decision of the Ombudsman absolving the respondent of the administrative charge is final and unappealable. (Reyes, Jr. *vs*. Belisario, G.R. No. 154652, Aug. 14, 2009) p. 936

Factual findings of — The Ombudsman's finding of the absence of harassment or oppression in the implementation of the reassignment lacks legal and factual bases. (Reyes, Jr. *vs*. Belisario, G.R. No. 154652, Aug. 14, 2009) p. 936

PARTIES TO CIVIL ACTIONS

Rule on substitution by heirs — Not a matter of jurisdiction, but a requirement of due process. (Nudo *vs*. Hon. Caguioa, G.R. No. 176906, Aug. 04, 2009) p. 517

Transfer of interest of parties — Inclusion or substitution of transferee pendente lite to the case is discretionary to the court as judgment binding against the parties and their successors-in-interest. (Olympic Mines and Dev't. Corp. *vs*. Platinum Group Metals Corp., G.R. No. 178188, Aug. 14, 2009) p. 1205

PATERNITY AND FILIATION

Recognition of illegitimate child — Article 176 of the Family Code must be read in conjunction with Articles 175 and 172 of the same Code to show that a father who acknowledges paternity of a child through a written instrument must affix his signature therein. (Dela Cruz *vs*. Gracia, G.R. No. 177728, July 31, 2009) p. 167

— Court promulgates rules respecting the requirement of affixing the signature of the acknowledging parent in any private handwritten instrument. *(Id.)*

— Existence of special circumstances to uphold autobiography acknowledging child's paternity, though unsigned by the putative father. *(Id.)*

— Policy of the Family Code to liberalize the rule on the investigation of the paternity and filiation of children, especially of illegitimate children. *(Id.)*

— Use of surname of father, discussed. *(Id.)*

PLEADINGS

Parts of a pleading — The rule allows the pleadings to be signed by either the party to the case or the counsel representing that party. (Sameer Overseas Placement Agency, Inc. *vs*. Santos, G.R. No. 152579, Aug. 04, 2009) p. 379

PRELIMINARY INJUNCTION

Writ of — Courts should avoid issuing a writ of preliminary injunction which would in effect dispose of the main case without trial. (Tanduay Distillers, Inc. *vs*. Ginebra San Miguel, Inc., G.R. No. 164324, Aug. 14, 2009) p. 1020

— Grant of the writ of preliminary injunction in favor of the movant, despite the lack of a clear and unmistakable right on its part, constitutes grave abuse of discretion. *(Id.)*

— Requisites for a valid issuance of a writ of preliminary injunction. *(Id.)*

— The writ should never be issued absent proof that the damage the movant will suffer is irreparable and incapable of pecuniary estimation. *(Id.)*

PRESUMPTIONS

Presumption of regular performance of official duties — Official acts enjoy the presumption of regularity; presumption does not apply when an official's acts are not within the

duties specified by law. (Reyes, Jr. *vs*. Belisario, G.R. No. 154652, Aug. 14, 2009) p. 936

— The Department of Labor and Employment certificate of registration carries with it the presumption it was issued in the regular performance of official duty. (Gallego *vs*. Bayer Phils., Inc., G.R. No. 179807, July 31, 2009) p. 250

***PRO REO* PRINCIPLE**

Concept of — Discussed. (Amanquiton *vs*. People, G.R. No. 186080, Aug. 14, 2009) p. 1253

PROCESS SERVERS

Simple neglect of duty — Committed in case of failure to give proper attention to required tasks. (Judge Collado-Lacorte *vs*. Rabena, A.M. No. P-09-2665, Aug. 04, 2009) p. 327

PSYCHOLOGICAL INCAPACITY

As a ground for annulment of marriage — The grant of petition based on psychological incapacity must be confined only to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage. (Padilla-Rumbaua *vs*. Rumbaua, G.R. No. 166738, Aug. 14, 2009) p. 1061

— The psychological illness that must afflict a party at the inception of the marriage should be a malady so grave and permanent as to deprive the party of his awareness of the duties and responsibilities of the matrimonial bond he was then about to assume. *(Id.)*

Determination of — Irreconcilable differences, sexual infidelity or perversion, emotional immaturity and irresponsibility do not by themselves warrant a finding of psychological incapacity. (Padilla-Rumbaua *vs*. Rumbaua, G.R. No. 166738, Aug. 14, 2009) p. 1061

— It is not enough that the respondent had difficulty in complying with his marital obligations or was unwilling to perform the same; proof of a natal or supervening disabling factor must necessarily be shown. *(Id.)*

Personal examination of the person sought to be declared psychologically incapacitated — Not a condition *sine qua non* to arrive at such declaration; independent evidence may be admitted and given credit to prove a psychological disorder of the respondent. (Padilla-Rumbaua *vs*. Rumbaua, G.R. No. 166738, Aug. 14, 2009) p. 1061

QUIETING OF TITLE

Prescriptive period — If a person claiming to be the owner is in actual possession of the property, the right to seek reconveyance, which in effect seeks to quiet title to the property, does not prescribe. (Pioneer Ins. and Surety Corp. *vs.* Heirs of Vicente Coronado, G.R. No. 180357, Aug. 04, 2009) p. 573

Title — Does not necessarily denote a certificate of title issued in favor of the person filing the suit. (D.B.T. Mar-Bay Construction Inc. *vs*. Panes, G.R. No. 167232, July 31, 2009) p. 93

RAPE

Commission of — Crime of rape downgraded to acts of lasciviousness; the mere act of lying on top of the alleged victim, even if naked, does not constitute rape. (People *vs.* Mejia, G.R. No. 185723, Aug. 04, 2009) p. 668

— Elements. (People *vs*. Trayco, G.R. No 171313, Aug. 14, 2009) p. 1140

(People *vs*. Achas, G.R. No. 185712, Aug. 04, 2009) p. 652

— Hymenal lacerations are not an element of rape; rape is committed so long as there is enough proof of entry of the male organ into the labia of the pudendum of the female organ. (People *vs*. Cruz, G.R. No. 186129, Aug. 04, 2009) p. 726

(People *vs*. Achas, G.R. No. 185712, Aug. 04, 2009) p. 652

— Imposable penalty. (People *vs.* Trayco, G.R. No. 171313, Aug. 14, 2009) p. 1140

— Lust is no respecter of time and place. (People *vs.* Mejia, G.R. No. 185723, Aug. 04, 2009) p. 668

— Physical resistance need not be established when intimidation is brought to bear on the victim and the latter submits herself out of fear. (People *vs.* Achas, G.R. No. 185712, Aug. 04, 2009) p. 652

— Sufficiency of carnal knowledge, elucidated. (People *vs.* Trayco, G.R. No 171313, Aug. 14, 2009) p. 1140

— The twin circumstances of minority of the victim and her relationship to the offender must concur to qualify the crime of rape. (People *vs.* Mejia, G.R. No. 185723, Aug. 04, 2009) p. 668

— Victim's mental retardation in rape cases, how proved. (People *vs.* An, G.R. No. 169870, Aug. 04, 2009) p. 476

Impotency as a defense — A physical and medical question that should be satisfactorily established with the aid of an expert and competent testimony; in rape cases, it must be proved with certainty to overcome the presumption in favor of potency. (People *vs.* Cruz, G.R. No. 186129, Aug. 04, 2009) p. 726

— Erectile dysfunction can be a total inability to achieve erection, an inconsistent ability to do so, or a tendency to sustain a brief erection; since the doctor who examined appellant did not specify what kind of dysfunction appellant is suffering from, his impotency cannot be considered as completely eliminating possibility of sexual intercourse. *(Id.)*

Review of rape cases — Guiding principles. (People *vs.* An, G.R. No. 169870, Aug. 04, 2009) p. 476

(People *vs.* Achas, G.R. No. 185712, Aug. 04, 2009) p. 652

(People *vs.* Cruz, G.R. No. 186129, Aug. 04, 2009) p. 726

REGIONAL TRIAL COURTS

Jurisdiction — Where complaint is not an adverse claim to the other party's mineral agreement application but merely

wanted said party to acknowledge the validity of the operating agreement, complaint does not fall under the panel of arbitrators' jurisdiction but with the RTC. (Olympic Mines and Dev't. Corp. *vs*. Platinum Group Metals Corp., G.R. No. 178188, Aug. 14, 2009) p. 1205

RES JUDICATA

Bar by prior judgment — Distinguished from conclusiveness of judgment. (Judge Abelita III *vs*. P/Supt. Doria, G.R. No. 170672, Aug. 14, 2009) p. 1127

Doctrine of — Inapplicable where there is lack of identity of rights asserted or causes of action and identity of relief sought. (D.M. Consunji, Inc. *vs*. Duvaz Corp., G.R. No. 155174, Aug. 04, 2009) p. 423

Nature — Elucidated; an order granting a motion to dismiss based on paragraphs (F), (H), and (I) of Section 1, Rule 16 of the Rules of Court constitutes *res judicata*. (Navarro *vs*. Metrobank, G.R. No. 165697, Aug. 04, 2009) p. 462

RIGHTS OF THE ACCUSED

Right against double jeopardy — A judgment of acquittal is final and no longer reviewable; it is also immediately executory and the state may not seek its review without placing the accused in double jeopardy. (People *vs.* Dir. Gen. Nazareno, G.R. No. 168982, Aug. 05, 2009) p. 753

— Rationale behind the constitutional policy against double jeopardy. *(id.)*

— When double jeopardy exists. *(Id.)*

RULES OF PROCEDURE

Application — Failure to implead an indispensable party is not a ground for the dismissal of the action; technicalities may be set aside when the strict and rigid application of the rules will frustrate rather than promote justice. (Cobarrubias *vs.* People, G.R. No. 160610, Aug. 14, 2009) p. 984

— Liberal construction of the rules; failure to implead the People of the Philippines as respondent considered not so grave as to warrant dismissal of the case. *(Id.)*

— May be suspended if the application would tend to frustrate rather than promote justice. (Sps. Espejo *vs*. Ito, G.R. No. 176511, Aug. 04, 2009) p. 502

SALES

Conditional contract of sale — Distinguished from bilateral contract to sell. (United Muslim and Christian Urban Poor Association, Inc. *vs*. Bryc-V Development Corp., G.R. No. 179653, July 31, 2009) p. 238

Contract to sell — Perfected the moment there is a meeting of the minds upon the thing which is the object of the contract and upon the price. (Baladad *vs*. Rublico, G.R. No. 160743, Aug. 04, 2009) p. 437

Earnest money — Applies to a perfected sale. (Xyst Corp. *vs*. DMC Urban Properties Dev't., Inc., G.R. No. 171968, July 31, 2009) p. 116

Innocent purchaser for value — The rule that the purchaser is not required to explore further what the certificate indicates on its face applies only to innocent purchasers for value and good faith. (Baladad *vs*. Rublico, G.R. No. 160743, Aug. 04, 2009) p. 437

SECRETARY OF LABOR AND EMPLOYMENT

Quasi-judicial power — The Secretary can issue compliance orders and writs of execution for enforcement thereof; binding effect. (Jethro Intelligence & Security Corp. *vs*. Hon. Sec. of Labor and Employment, G.R. No. 172537, Aug. 14, 2009) p. 1184

Visitorial powers — Exclude from its coverage Articles 129 and 217 of the Labor Code. (Jethro Intelligence & Security Corp. *vs*. Hon. Sec. of Labor and Employment, G.R. No. 172537, Aug. 14, 2009) p. 1184

SEPARATION OF POWERS

Application — Congress and the COMELEC En Banc do not encroach upon the jurisdiction of the Presidential Electoral Tribunal and the Senate Electoral Tribunal; no conflict of jurisdiction since the powers of Congress and the Commission on Elections En Banc, on one hand, and the Presidential Electoral Tribunal and Senate Electoral Tribunal, on the other, are exercised on different occasions and for different purposes. (Barangay Association for National Advancement and Transparency [BANAT] Party-List *vs*. COMELEC, G.R. No. 177508, Aug. 07, 2009) p. 793

SEPARATION PAY

Award of — When justified. (Dela Cruz *vs.* Coca-Cola Bottlers Phils. Inc., G.R. No. 180465, July 31, 2009) p. 285

SHERIFFS

Duties — Required to strictly comply with the writ of execution; properties belonging to a third party to a case and not named in the writ cannot be levied upon. (Atty. Teodosio *vs*. Somosa, A.M. No. P-09-2610, Aug. 13, 2009) p. 858

— Sheriffs cannot appropriate levied property for themselves. *(Id.)*

— To discharge their duties with due care and utmost diligence. *(Id.)*

Gross misconduct — Forcible levying and taking away of properties belonging to another and appropriating the levied property for themselves, a case of; punishable by dismissal even for the first offense. (Atty. Teodosio *vs*. Somosa, A.M. No. P-09-2610, Aug. 13, 2009) p. 858

SLANDER

Prosecution of — Revised Rules on Summary Procedure governs the proceedings in a criminal case for slander. (Cervantes *vs*. Judge Pangilinan, A.M. No. MTJ-08-1709, July 31, 2009) p. 36

SOLICITOR GENERAL

Duty — To represent the government in the Supreme Court in all criminal proceedings before the Court. (Heirs of Federico C. Delgado and Annalisa Pesico *vs*. Gonzalez, G.R. No. 184337, Aug. 07, 2009; *Carpio, J., dissenting opinion*) p. 817

Jurisdiction — As a general rule, only the Solicitor General may bring and defend actions in behalf of the Republic of the Philippines or represent the state in criminal actions before the court; exceptions. (Heirs of Federico C. Delgado and Annalisa Pesico *vs*. Gonzalez, G.R. No. 184337, Aug. 07, 2009; *Velasco, J., dissenting opinion*) p. 817

— Two (2) established exceptions where OSG will not intervene and a private complainant or offended party in a criminal case may file directly with the Supreme Court. *(Id.)*

STATE, INHERENT POWERS OF

Police power — Superior to the non-impairment clause; important role played by poll watchers in the elections, considered. (Barangay Association for National Advancement and Transparency [BANAT] Party-List *vs*. COMELEC, G.R. No. 177508, Aug. 07, 2009) p. 793

STATUTES

Interpretation of — Constitutional requirement that "every bill passed by Congress shall embrace only one subject which shall be expressed in the title thereof"; always given a practical consideration rather than a technical construction and is satisfied if the title is comprehensive enough to include subjects related to the general purpose which the statute seeks to achieve. (Barangay Association for National Advancement and Transparency [BANAT] Party-List *vs*. COMELEC, G.R. No. 177508, Aug. 7, 2009) p. 793

— Every statute is presumed to be constitutional. *(Id.)*

Judicial interpretation of — Constitutes part of the law as of the date it was originally passed; it does not amount to

the passage of a new law. (Eagle Realty Corp. *vs*. Rep. of the Phils., G.R. No. 151424, July 31, 2009) p. 72

STATUTORY RAPE

Commission of — Proper penalty. (People *vs*. Trayco, G.R. No 171313, Aug. 14, 2009) p. 1140

STRIKE

A "no strike-no lockout" provision in the Collective Bargaining Agreement — May be invoked by the employer only when the strike is economic in nature but not where the same is grounded on unfair labor practice. (A. Soriano Aviation vs. Employees Ass'n. of A. Soriano Aviation, G.R. No. 166879, Aug. 14, 2009) p. 1093

Illegal strike — Established where acts of violence were committed during the strike; acts of violence need not be continuous or for the entire duration of the strike. (A. Soriano Aviation *vs*. Employees Ass'n. of A. Soriano Aviation, G.R. No. 166879, Aug. 14, 2009) p. 1093

— Liabilities of those who participated in the illegal strike shall be determined on an individual basis. *(Id.)*

Right to strike — Exercise thereof is not absolute; even if the purpose of strike is valid, the same may still be held illegal where the means employed are illegal. (A. Soriano Aviation *vs*. Employees Ass'n. of A. Soriano Aviation, G.R. No. 166879, Aug. 14, 2009) p. 1093

— Must be used sparingly and within the bounds of law in the interest of industrial peace and public welfare. *(Id.)*

SUBSTANTIAL EVIDENCE

Sufficiency of — Satisfied in administrative proceedings when there is reasonable ground to believe that the person indicted was responsible for alleged wrongdoing or misconduct. (Regir *vs*. Regir, A.M. No. P-06-2282, Aug. 07, 2009) p. 771

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Application — Lower courts, when faced with a motion for summary judgment, should resolve doubts in favor of the party against whom it is directed. (D.M. Consunji, Inc. *vs*. Duvaz Corp., G.R. No. 155174, Aug. 04, 2009) p. 423

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Personal service — Preferred mode of service in an action in personam. (Judge Collado-Lacorte *vs*. Rabena, A.M. No. P-09-2665, Aug. 04, 2009) p. 327

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— Must be served on the defendant in person; exception. *(Id.)*

Substituted service — Requisites. (Sps. Galura *vs*. Math-Agro Corp., G.R. No. 167230, Aug. 14, 2009) p. 1112

— When may be availed of; requirements, discussed. (Judge Collado-Lacorte *vs*. Rabena, A.M. No. P-09-2665, Aug. 04, 2009) p. 327

SUPREME COURT

Decision of a Court Division — It is the decision of the Court, and is not appealable to the Court *En Banc*. (Olympic Mines and Dev't. Corp. *vs*. Platinum Group Metals Corp., G.R. No. 178188, Aug. 14, 2009) p. 1205

Resolutions of — Should not be construed as a mere request, and should be complied with promptly and completely. (Tan *vs*. Sermonia, A.M. No. P-08-2436, Aug. 04, 2009) p. 314

TAX AMNESTY LAW OF 2007 (R.A. NO. 9480)

Tax amnesty — Explained. (Metrobank *vs*. Commissioner of Internal Revenue, G.R. No. 178797, Aug. 04, 2009) p. 544

— Reliance of the Commissioner of Internal Revenue on paragraphs (a) and (f) of Section 8 of Republic Act No. 9480 to oppose the availment by petitioner bank of the tax amnesty program is untenable. *(Id.)*

— The application for tax amnesty of petitioner bank under Republic Act No. 9480 covered all national internal revenue taxes for 2005 and prior years; the merger of petitioner bank and Philippine Banking Corporation (PBC) with petitioner as the surviving entity, resulted in the absorption of the tax liabilities of PBC for 2005 and prior years by petitioner bank and are deemed included in the application of the subject tax amnesty. *(Id.)*

— The assertion of the Commissioner of Internal Revenue that deficiency documentary tax is not covered by the tax amnesty program under Republic Act No. 9480 is downright specious. *(Id.)*

TAX PROTEST

Remedy of — The assessment is not yet final and executory and sufficient documents were submitted by petitioner bank to enable the Commissioner of Internal Revenue to render a decision on the protest. (Metrobank *vs*. Commissioner of Internal Revenue, G.R. No. 178797, Aug. 04, 2009) p. 544

TAXATION

Local taxation — Considering the nullity of Tax Ordinance No. 7988 and Tax Ordinance No. 8011, respondent should not have been subjected to the local business tax under Section 21 of Tax Ordinance No. 7794 for the third and fourth quarters of 2000, given its exemption therefrom since it was already paying the local business tax under Section 14 of the same ordinance. (The City of Manila *vs*. Coca-Cola Bottlers Phils., Inc., G.R. No. 181845, Aug. 04, 2009) p. 609

— Respondent cannot be taxed and assessed under Tax Ordinance No. 7988 and Tax Ordinance No. 8011 which were declared null and void and without any legal effect. *(Id.)*

TORRENS CERTIFICATE OF TITLE

Validity of — Claim of fraud to impugn the validity of the parties' title to their property in an accion publiciana is a collateral attack on the title. (Madrid *vs*. Sps. Mapoy and Martinez, G.R. No. 150887, Aug. 14, 2009) p. 920

— Holder thereof is entitled to all the attributes of ownership of the property subject only to limits imposed by law. *(Id.)*

— Registration of land under the Torrens system renders the title immune from collateral attack; collateral attack, distinguished from direct attack. *(Id.)*

TREACHERY

As a qualifying circumstance — Elements. (People *vs*. Diaz, G.R. No. 185841, Aug. 04, 2009) p. 692

As an aggravating circumstance — When appreciated. (People *vs*. Angeles, G.R. No. 177134, Aug. 14, 2009) p. 1195

UNJUST ENRICHMENT

Principle of — Award of consequential damages for property not taken, not a case of unjust enrichment; no unjust enrichment when the person who will benefit has a valid claim to such benefit. (Rep. of the Phils. *vs*. CA, G.R. No. 160379, Aug. 14, 2009) p. 965

VOLUNTARY SURRENDER

As a mitigating circumstance — When not appreciated. (People *vs*. Angeles, G.R. No. 177134, Aug. 14, 2009) p. 1195

WITNESSES

Credibility of — A matter best left to the determination of the trial court. (Madali *vs*. People, G.R. No. 180380, Aug. 04, 2009) p. 582

(People *vs.* Diaz, G.R. No. 185841, Aug. 04, 2009) p. 692

— Affidavit of recantation executed by witness is of no moment as it was effectively repudiated. *(Id.)*

— Bare denials cannot prevail over positive testimonies of witnesses. (Regir *vs.* Regir, A.M. No. P-06-2282, Aug. 07, 2009) p. 771

— Confusion as to the time of rape is a minor detail which cannot affect the credibility of a testimony as a whole. (People *vs.* Mejia, G.R. No. 185723, Aug. 04, 2009) p. 668

— Conviction for rape may be based solely on the testimony of the victim if it is credible, natural, convincing and consistent with human nature and normal course of things.

(Id.)

(People *vs.* Cruz, G.R. No. 186129, Aug. 04, 2009) p. 726

— Findings of trial court generally deserve great respect and are accorded finality; exceptions. (People *vs.* An, G.R. No. 169870, Aug. 04, 2009) p. 476

— Inconsistencies on minor details and collateral matters do not affect veracity and weight of testimonies where there is consistency in relating the principal occurrence and the positive identification of the accused. (Madali *vs.* People, G.R. No. 180380, Aug. 04, 2009) p. 582

(People *vs.* An, G.R. No. 169870, Aug. 04, 2009) p. 476

— Positive identification by witness absent showing of ill motive, prevails. (People *vs.* Angeles, G.R. No. 177134, Aug. 14, 2009) p. 1195

— Single most important issue in prosecution for rape is victim's testimony on the fact of molestation which was positive and credible. (People *vs.* Achas, G.R. No. 185712, Aug. 04, 2009) p. 652

— Testimony of eyewitness substantiated the medical findings and the other pieces of evidence found at the scene of the crime. (Madali *vs.* People, G.R. No. 180380, Aug. 04, 2009) p. 582

— Testimony of rape victims who are young and immature deserve full credence; it is impossible for a girl of complainant's age to fabricate a charge so humiliating to herself and her family had she not been subjected to the painful experience of sexual abuse. (People *vs*. Trayco, G.R. No 171313, Aug. 14, 2009) p. 1140

— Witnessing a crime is an unusual experience which elicits different reactions from witnesses for which no clear-cut standard form of behavior can be drawn. (People *vs*. Diaz, G.R. No. 185841, Aug. 04, 2009) p. 692

Expert opinion — Not necessary where the sanity of a person is at issue, the observations of the trial judge coupled with evidence establishing the person's state of mind will suffice. (Hernandez *vs*. San Juan-Santos, G.R. No. 166470, Aug. 07, 2009) p. 780

Opinion rule — Ordinary witness may give his opinion on the mental sanity of a person with whom he is sufficiently acquainted. (Hernandez *vs*. San Juan-Santos, G.R. No. 166470, Aug. 07, 2009) p. 780

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