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FROM

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MANILA
2014

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[G.R. No. 178933. September 16, 2009]

RICARDO S. SILVERIO, JR. *petitioner, vs.* **COURT OF APPEALS (Fifth Division) and NELIA S. SILVERIO-DEE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ORDERS; INTERLOCUTORY ORDER DISTINGUISHED FROM FINAL ORDER; APPLICATION.— An interlocutory order, as opposed to a final order, was defined in *Tan v. Republic*: A final order is one that disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing else to be done but to enforce by execution what has been determined by the court, while **an interlocutory order is one which does not dispose of the case completely but leaves something to be decided upon.** Additionally, it is only after a judgment has been rendered in the case that the ground for the appeal of the interlocutory order may be included in the appeal of the judgment itself. The interlocutory order generally cannot be appealed separately from the judgment. It is only when such interlocutory order was rendered without or in excess of jurisdiction or with grave abuse of discretion that *certiorari* under Rule 65 may be resorted to. In the instant case, Nelia Silverio-Dee appealed the May 31, 2005 Order of the RTC on the ground that it ordered her to vacate the premises of the property located at No. 3 Intsia Road, Forbes Park, Makati City.

On that aspect the order is not a final determination of the case or of the issue of distribution of the shares of the heirs in the estate or their rights therein. It must be borne in mind that until the estate is partitioned, each heir only has an inchoate right to the properties of the estate, such that no heir may lay claim on a particular property.

2. ID.; ID.; APPEALS; EFFECT OF AN IMPROPER APPEAL.— [P]rivate respondent employed the wrong mode of appeal by filing a Notice of Appeal with the RTC. Hence, for employing the improper mode of appeal, the case should have been dismissed. The implication of such improper appeal is that the notice of appeal did not toll the reglementary period for the filing of a petition for *certiorari* under Rule 65, the proper remedy in the instant case. This means that private respondent has now lost her remedy of appeal from the May 31, 2005 Order of the RTC.

APPEARANCES OF COUNSEL

Salva Salva & Salva for petitioner.
A.M. Sison, Jr. and Partners for private respondent.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This Petition for Review on *Certiorari* under Rule 65 seeks the reversal of the May 4, 2007 Resolution[1] and July 6, 2007 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 98764, entitled *Nelia S. Silverio-Dee and Ricardo C. Silverio, Sr. (impleaded as necessary party) v. Reinato G. Quilala,*

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[1] *Rollo*, pp. 59-67. Penned by Associate Justice Arturo G. Tayag and concurred in by Associate Justices Martin S. Villarama, Jr. and Hakim S. Abdulwahid.

[2] *Id*. at 69-84. Penned by Associate Justice Arturo G. Tayag and concurred in by Associate Justices Rodrigo V. Cosico and Hakim S. Abdulwahid.

in his capacity as Presiding Judge of the RTC of Makati, Branch 57, Ricardo S. Silverio, Jr., Edmundo S. Silverio, represented by Nestor Dela Merced II, and Sheriff Villamor R. Villegas.

The assailed resolution granted private respondent's prayer for the issuance of a Temporary Restraining Order against public respondent Judge Quilala. On the other hand, the assailed decision set aside the Writ of Execution dated April 17, 2007 and the Notice to Vacate dated April 19, 2007 while directing the respondent lower court to give due course to the appeal of herein private respondent.

The Facts

The instant controversy stemmed from the settlement of estate of the deceased Beatriz Silverio. After her death, her surviving spouse, Ricardo Silverio, Sr., filed an intestate proceeding for the settlement of her estate. The case was docketed as SP. PROC. NO. M-2629 entitled *In Re: Estate of the Late Beatriz D. Silverio, Ricardo C. Silverio, Sr. v. Ricardo S. Silverio Jr., et al.* pending before the Regional Trial Court (RTC) of Makati City, Branch 57 (RTC).

On November 16, 2004, during the pendency of the case, Ricardo Silverio, Jr. filed a petition to remove Ricardo C. Silverio, Sr. as the administrator of the subject estate. On November 22, 2004, Edmundo S. Silverio also filed a comment/opposition for the removal of Ricardo C. Silverio, Sr. as administrator of the estate and for the appointment of a new administrator.

On January 3, 2005, the RTC issued an Order granting the petition and removing Ricardo Silverio, Sr. as administrator of the estate, while appointing Ricardo Silverio, Jr. as the new administrator.

On January 26, 2005, Nelia S. Silverio-Dee filed a Motion for Reconsideration of the Order dated January 3, 2005, as well as all other related orders.

On February 4, 2005, Ricardo Silverio Jr. filed an Urgent Motion for an Order Prohibiting Any Person to Occupy/Stay/

Use Real Estate Properties Involved in the Intestate Estate of the Late Beatriz Silverio, Without Authority from this Honorable Court.[3]

Then, on May 31, 2005, the RTC issued an Omnibus Order[4] affirming its Order dated January 3, 2005 and denying private respondent's motion for reconsideration. In the Omnibus Order, the RTC also authorized Ricardo Silverio, Jr. to, upon receipt of the order, immediately exercise his duties as administrator of the subject estate. The Omnibus Order also directed Nelia S. Silverio-Dee to vacate the property at No. 3, Intsia, Forbes Park, Makati City within fifteen (15) days from receipt of the order.

Nelia Silverio-Dee received a copy of the Omnibus Order dated May 31, 2005 on June 8, 2005.

On June 16, 2005, private respondent filed a Motion for Reconsideration dated June 15, 2005[5] of the Omnibus Order. This was later denied by the RTC in an Order dated December 12, 2005, which was received by private respondent on December 22, 2005.

Notably, the RTC in its Order dated December 12, 2005[6] also recalled its previous order granting Ricardo Silverio, Jr. with letters of administration over the intestate estate of Beatriz Silverio and reinstating Ricardo Silverio, Sr. as the administrator.

From the Order dated December 12, 2005, Ricardo Silverio, Jr. filed a motion for reconsideration which was denied by the RTC in an Order dated October 31, 2006. In the same order, the RTC also allowed the sale of various properties of the intestate estate of the late Beatriz Silverio to partially settle estate taxes, penalties, interests and other charges due thereon. Among the properties authorized to be sold was the one located at No. 3 Intsia Road, Forbes Park, Makati City.[7]

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

[4] *Id*. at 133-157.

[5] *Id*. at 158-163.

[6] *Id*. at 166-171.

[7] *Id*. at 35.

Meanwhile, on January 6, 2006, Nelia Silverio-Dee filed a Notice of Appeal dated January 5, 2006[8] from the Order dated December 12, 2005 while the Record on Appeal dated January 20, 2006[9] was filed on January 23, 2006.

Thereafter, on October 23, 2006, Ricardo Silverio, Jr. filed a Motion to Dismiss Appeal and for Issuance of a Writ of Execution[10] against the appeal of Nelia Silverio-Dee on the ground that the Record on Appeal was filed ten (10) days beyond the reglementary period pursuant to Section 3, Rule 41 of the Rules of Court.

Thus, on April 2, 2007, the RTC issued an Order[11] denying the appeal on the ground that it was not perfected within the reglementary period. The RTC further issued a writ of execution for the enforcement of the Order dated May 31, 2005 against private respondent to vacate the premises of the property located at No. 3, Intsia, Forbes Park, Makati City. The writ of execution was later issued on April 17, 2007[12] and a Notice to Vacate[13] was issued on April 19, 2007 ordering private respondent to leave the premises of the subject property within ten (10) days.

Consequently, private respondent filed a Petition for *Certiorari* and Prohibition (With Prayer for TRO and Writ of Preliminary Injunction) dated May 2, 2007[14] with the CA.

On May 4, 2007, the CA issued the assailed Resolution granting the prayer for the issuance of a TRO. In issuing the TRO, the CA ruled that the Notice of Appeal was filed within the reglementary period provided by the Rules of Court applying

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[8] *Id*. at 172-174.

[9] *Id*. at 175-262.

[10] *Id*. at 263-266.

[11] *Id*. at 114-115.

[12] *Id*. at 116-117.

[13] *Id*. at 118.

[14] *Id*. at 85-276.

the "fresh rule period" enunciated by this Court in *Neypes v. Court of Appeals*[15] as reiterated in *Sumaway v. Union Bank*.[16]

Afterwards, on July 6, 2007, the CA issued the assailed decision granting the petition of private respondent. The dispositive portion reads:

> WHEREFORE, in view of the foregoing, the instant petition is **GRANTED** and **GIVEN DUE COURSE**. Accordingly, the **Order**, dated April 2, 2007, the **writ of execution**, dated April 17, 2007, and the **Notice to Vacate**, dated April 19, 2007, are **ANNULLED AND SET ASIDE**. Further, the court *a quo* is hereby directed to give due course to the appeal of Nelia S. Silverio-Dee.
>
> SO ORDERED.

Hence, the instant petition.

The Issues

-A-

The Omnibus Order dated May 31, 2005 (Annex G of Annex C) and the Order dated December 12, 2005 are Interlocutory Orders which are not subject to appeal under Sec. 1 of Rule 41;

-B-

The respondent Court seriously erred and/or committed grave abuse of discretion amounting to lack of or excess of jurisdiction, in deliberately failing to decide that the basis of the occupancy of Nelia S. Silverio-Dee are fraudulent documents, without any authority from the Intestate Court;

-C-

The respondent Court seriously erred and/or committed grave abuse of discretion amounting to lack of or excess of jurisdiction, in issuing precipitately the temporary restraining order (TRO) in its Resolution dated May 4, 2007 (Annex A-1);

-D-

The respondent Court seriously erred and/or committed grave abuse of discretion amounting to lack of or excess of jurisdiction in annulling

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[15] G.R. No. 141524, September 14, 2005, 469 SCRA 633.

[16] G.R. No. 142534, June 27, 2006, 493 SCRA 99.

the Order dated April 2, 2007, the Writ of Execution dated April 17, 2007, and the Notice to Vacate dated April 19, 2007 because the respondent Silverio-Dee's occupancy of the Intestate property located at No. 3 Intsia Road, Forbes Park, Makati City (Annex N of Annex C) will prevent the sale authorized by the Order dated October 31, 2006 to secure funds for the payment of taxes due which are now high and rapidly increasing payment of which must not be enjoined.[17]

The Court's Ruling

This petition is meritorious.

The May 31, 2005 Order of the RTC Is an Interlocutory Order, Not Subject to an Appeal

To recapitulate, the relevant facts to the instant issue are as follows:

On May 31, 2005, the RTC issued an Omnibus Order ordering Nelia Silverio-Dee to vacate the premises of the property located at No. 3, Intsia Road, Forbes Park, Makati City. She received a copy of the said Order on June 8, 2005. Instead of filing a Notice of Appeal and Record on Appeal, private respondent filed a motion for reconsideration of the Order. This motion for reconsideration was denied in an Order dated December 12, 2005. This Order was received by private respondent on December 22, 2005. On January 6, 2006, private respondent filed her Notice of Appeal while she filed her Record on Appeal on January 23, 2006.

Thus, in denying due course to the Notice/Record on Appeal, the RTC, in its Order dated April 2, 2007, ruled:

> Verily, the appeal taken by the movant Nelia Silverio-Dee from the Order of this Court dated December 12, 2005 denying the Motion for Reconsideration is misplaced as no appeal may be taken from the order denying the motion for reconsideration (see Section 1, Rule 41 of the 1997 Rules of Civil Procedure in relation to Section 1(f), Rule 109 of the Rules of Court). Furthermore, assuming that what said movant had appealed is the final Order dated May 31, 2005, still, the appeal cannot be given due course as the Record on Appeal

[17] *Rollo*, p. 38.

had been filed beyond the thirty-day period to appeal (see Section 3 Rule 41 of the Rules of Court)

WHEREFORE, the appeal filed by Nelia Silverio is hereby **DENIED** due course.

Let a writ of execution issue to enforce the Order dated May 31, 2005 against Nelia Silverio-Dee requiring her to vacate the premises at No. 3 Intsia, Forbes Park, Makati City.

SO ORDERED.

Thus, the denial of due course by the RTC was based on two (2) grounds: (1) that Nelia Silverio-Dee's appeal was against an order denying a motion for reconsideration which is disallowed under Sec. 1(a), Rule 41 of the Rules of Court; and (2) that Nelia Silverio-Dee's Record on Appeal was filed beyond the reglementary period to file an appeal provided under Sec. 3 of Rule 41.

Sec. 1(a), Rule 41 of the Rules of Court provides:

RULE 41
APPEAL FROM THE REGIONAL TRIAL COURTS

SECTION 1. Subject of appeal.—An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

(a) An order denying a motion for new trial or reconsideration;

x x x x x x x x x

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

Petitioner argues that because private respondent filed a Notice of Appeal from the Order dated December 12, 2005 which denied her motion for reconsideration of the Omnibus Order dated May 31, 2005, her appeal is of an order denying a motion for reconsideration. Thus, petitioner alleges that private respondent employed the wrong remedy in filing a notice of appeal and should have filed a petition for *certiorari* with the CA under Rule 65 of the Rules of Court instead.

The CA, however, ruled that the filing of the Notice of Appeal in this case was proper saying that the appeal pertained to the earlier Omnibus Order dated May 31, 2005. The CA, citing *Apuyan v. Haldeman*,[18] argued that an order denying a motion for reconsideration may be appealed as such order is the "final order" which disposes of the case. In that case, we stated:

> In the recent case of *Quelnan v. VHF Philippines, Inc.*, We held, thus:
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> > ... [T]his Court finds that the proscription against appealing from an order denying a motion for reconsideration refers to an interlocutory order, and not to a final order or judgment. That that was the intention of the above-quoted rules is gathered from *Pagtakhan v. CIR*, 39 SCRA 455 (1971), cited in above-quoted portion of the decision in Republic, in which this Court held that an order denying a motion to dismiss an action is interlocutory, hence, not appealable.
> >
> > The rationale behind the rule proscribing the remedy of appeal from an interlocutory order is to prevent undue delay, useless appeals and undue inconvenience to the appealing party by having to assail orders as they are promulgated by the court, when they can be contested in a single appeal. The appropriate remedy is thus for the party to wait for the final judgment or order and assign such interlocutory order as an error of the court on appeal.
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> > **The denial of the motion for reconsideration of an order of dismissal of a complaint is not an interlocutory order, however, but a final order as it puts an end to the particular matter resolved, or settles definitely the matter therein disposed of, and nothing is left for the trial court to do other than to execute the order.**
> >
> > Not being an interlocutory order, an order denying a motion for reconsideration of an order of dismissal of a complaint is effectively an appeal of the order of dismissal itself.
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> > The reference by petitioner, in his notice of appeal, to the March 12, 1999 Order denying his Omnibus Motion—Motion for Reconsideration should thus be deemed to refer to the

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[18] G.R. No. 129980, September 20, 2004, 438 SCRA 402, 418-419.

January 17, 1999 Order which declared him non-suited and accordingly dismissed his complaint.

If the proscription against appealing an order denying a motion for reconsideration is applied to any order, then there would have been no need to specifically mention in both above-quoted sections of the Rules "final orders or judgments" as subject to appeal. In other words, from the entire provisions of Rule 39 and 41, there can be no mistaking that what is proscribed is to appeal from a denial of a motion for reconsideration of an interlocutory order. (Emphasis supplied.)

Thus, the question posed is whether the Omnibus Order dated May 31, 2005 is an interlocutory order.

On this aspect, the CA ruled that the Omnibus Order dated May 31, 2005 was a final order, to wit:

We note that the Order, dated December 12, 2005, is an offshoot of the Omnibus Order, dated May 31, 2005. In the Omnibus Order, the court *a quo* ruled that the petitioner, as an heir of the late Beatriz S. Silverio, had no right to use and occupy the property in question despite authority given to her by Ricardo Silverio, Sr. when it said, thus:

x x x In the first place, Nelia S. Silverio-Dee cannot occupy the property in Intsia, Forbes Park, admittedly belonging to the conjugal estate and subject to their proceedings without authority of the Court. Based on the pretenses of Nelia Silverio-Dee in her memorandum, it is clear that she would use and maintain the premises in the concept of a distributee. Under her perception, Section 1 Rule 90 of the Revised Rules of Court is violated. x x x

x x x x x x x x x

For the property at Intsia, Forbes Park cannot be occupied or appropriated by, nor distributed to Nelia S. Silverio-Dee, since no distribution shall be allowed until the payment of the obligations mentioned in the aforestated Rule is made. In fact, the said property may still be sold to pay the taxes and/or other obligations owned by the estate, which will be difficult to do if she is allowed to stay in the property.

Moreover, the alleged authority given by SILVERIO, SR. for Nelia S. Silverio-Dee to occupy the property dated May 4, 2004,

assuming it is not even antedated as alleged by SILVERIO, JR., is null and void since the possession of estate property can only be given to a purported heir by virtue of an Order from this Court (see Sec. 1 Rule 90, *supra*; and Sec. 2 Rule 84, Revised Rules of Court). In fact, the Executor or Administrator shall have the right to the possession and management of the real as well as the personal estate of the deceased only when it is necessary for the payment of the debts and expenses of administration (See Sec. 3 Rule 84, Revised Rules of Court). With this in mind, it is without an iota of doubt that the possession by Nelia S. Silverio-Dee of the property in question has absolutely no legal basis considering that her occupancy cannot pay the debts and expenses of administration, not to mention the fact that it will also disturb the right of the new Administrator to possess and manage the property for the purpose of settling the estate's legitimate obligations.

In the belated Memorandum of Nelia Silverio-Dee, she enclosed a statement of the expenses she incurred pertaining to the house renovation covering the period from May 26, 2004 to February 28, 2005 in the total amount of Php12,434,749.55, which supports this Court's conclusion that she is already the final distributee of the property. Repairs of such magnitude require notice, hearing of the parties and approval of the Court under the Rules. Without following this process, the acts of Nelia Silverio-Dee are absolutely without legal sanction.

To our mind, the court *a quo*'s ruling clearly constitutes a final determination of the rights of the petitioner as the appealing party. As such, the Omnibus Order, dated May 31, 2002 (the predecessor of the Order dated December 12, 2002) is a final order; hence, the same may be appealed, for the said matter is clearly declared by the rules as appealable and the proscription does not apply.[19] (Emphasis supplied.)

An interlocutory order, as opposed to a final order, was defined in *Tan v. Republic*:[20]

A final order is one that disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing else

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[19] *Rollo*, pp. 77-80.

[20] G.R. No. 170740, May 25, 2007, 523 SCRA 203, 210-211.

to be done but to enforce by execution what has been determined by the court, while **an interlocutory order is one which does not dispose of the case completely but leaves something to be decided upon.** (Emphasis supplied.)

Additionally, it is only after a judgment has been rendered in the case that the ground for the appeal of the interlocutory order may be included in the appeal of the judgment itself. The interlocutory order generally cannot be appealed separately from the judgment. It is only when such interlocutory order was rendered without or in excess of jurisdiction or with grave abuse of discretion that *certiorari* under Rule 65 may be resorted to.[21]

In the instant case, Nelia Silverio-Dee appealed the May 31, 2005 Order of the RTC on the ground that it ordered her to vacate the premises of the property located at No. 3 Intsia Road, Forbes Park, Makati City. On that aspect the order is not a final determination of the case or of the issue of distribution of the shares of the heirs in the estate or their rights therein. It must be borne in mind that until the estate is partitioned, each heir only has an inchoate right to the properties of the estate, such that no heir may lay claim on a particular property. In *Alejandrino v. Court of Appeals*, we succinctly ruled:

> Art. 1078 of the Civil Code provides that where there are two or more heirs, the whole estate of the decedent is, before partition, owned in common by such heirs, subject to the payment of the debts of the deceased. Under a co-ownership, the ownership of an undivided thing or right belongs to different persons. Each co-owner of property which is held pro indiviso exercises his rights over the whole property and may use and enjoy the same with no other limitation than that he shall not injure the interests of his co-owners. **The underlying rationale is that until a division is made, the respective share of each cannot be determined and every co-owner exercises, together with his co-participants, joint ownership over the pro indiviso property, in addition to his use and enjoyment of the same.**

Although the right of an heir over the property of the decedent is inchoate as long as the estate has not been fully settled and

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[21] 1 F. Regalado, *REMEDIAL LAW COMPENDIUM* 540 (8th revised ed.).

partitioned, the law allows a co-owner to exercise rights of ownership over such inchoate right. Thus, the Civil Code provides:

> Art. 493. Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.[22] (Emphasis supplied.)

Additionally, the above provision must be viewed in the context that the subject property is part of an estate and subject to intestate proceedings before the courts. It is, thus, relevant to note that in Rule 84, Sec. 2 of the Rules of Court, the administrator may only deliver properties of the estate to the heirs upon order of the Court. Similarly, under Rule 90, Sec. 1 of the Rules of Court, the properties of the estate shall only be distributed after the payment of the debts, funeral charges, and other expenses against the estate, except when authorized by the Court.

Verily, once an action for the settlement of an estate is filed with the court, the properties included therein are under the control of the intestate court. And not even the administrator may take possession of any property that is part of the estate without the prior authority of the Court.

In the instant case, the purported authority of Nelia Silverio-Dee, which she allegedly secured from Ricardo Silverio, Sr., was never approved by the probate court. She, therefore, never had any real interest in the specific property located at No. 3 Intsia Road, Forbes Park, Makati City. As such, the May 31, 2005 Order of the RTC must be considered as interlocutory and, therefore, not subject to an appeal.

Thus, private respondent employed the wrong mode of appeal by filing a Notice of Appeal with the RTC. Hence, for employing

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[22] G.R. No. 114151, September 17, 1998, 295 SCRA 536, 548-549.

the improper mode of appeal, the case should have been dismissed.[23]

The implication of such improper appeal is that the notice of appeal did not toll the reglementary period for the filing of a petition for *certiorari* under Rule 65, the proper remedy in the instant case. This means that private respondent has now lost her remedy of appeal from the May 31, 2005 Order of the RTC.

Therefore, there is no longer any need to consider the other issues raised in the petition.

WHEREFORE, the May 4, 2007 Resolution and July 6, 2007 Decision of the CA in CA-G.R. SP No. 98764 are *REVERSED* and *SET ASIDE*. Thus, the Decision dated April 2, 2007 of the RTC denying due course to the appeal of Nelia Silverio-Dee; the Writ of Execution dated April 17, 2007; and the Notice to Vacate dated April 19, 2007 are hereby *REINSTATED*.

No costs.

SO ORDERED.

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

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[23] RULES OF COURT, Rule 50, Sec. 2.

[*] Additional member as per August 3, 2009 raffle.

EN BANC

[A.M. No. P-05-2046. September 17, 2009]
(Formerly No. 05-6-159-MCTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **CLERK OF COURT FE P. GANZAN, MCTC, JASAAN-CLAVERIA, MISAMIS ORIENTAL,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; WILLFUL DISOBEDIENCE TO AND DISREGARD OF THE COURT'S RESOLUTIONS CONSTITUTE GRAVE AND SERIOUS MISCONDUCT.— Up until the resolution of the instant administrative case against her, Ganzan has not complied with any of the Resolutions of the Court. With her obstinate defiance and incessant refusal to submit her compliance to this Court, despite the latter's repeated directives and stern admonitions, Ganzan exposed her insolence and disrespect for the lawful orders of the Court. 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 betrays, not only a recalcitrant streak in character, but also a disrespect for the lawful order and directive of the Court. Furthermore, 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. Ganzan's transgression is highlighted even more 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. Her willful disobedience to and disregard for the Resolutions of this Court constitute grave and serious misconduct, which cannot be tolerated.

2. ID.; ID.; ID.; FUNCTIONS OF THE CLERKS OF COURT, EXPLAINED.— Clerks of Court are important officers in our judicial system. Their office is the nucleus of all court activities, adjudicative and administrative. Their administrative functions

are as vital to the prompt and proper administration of justice as their judicial duties. Clerks of Court perform a very delicate function as the custodians of the funds and revenues, records, property, and premises of the court. Being the custodians thereof, they are liable for any loss, shortage, destruction, or impairment of said funds and property. Supreme Court Circulars No. 13-92 and No. 5-93 provide the guidelines for the proper administration of court funds. Supreme Court Circular No. 13-92 mandates that all fiduciary collections "shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized depository bank." In Supreme Court Circular No. 5-93, the Land Bank was designated as the authorized government depository. x x x The Court, in *Office of the Court Administrator v. Galo*, pointed out that it had always reminded Clerks of Court that, as custodians of court funds and revenues, they have the duty to immediately deposit the various funds received by them with the authorized government depositories, for Clerks of Court are not supposed to keep funds in their custody.

3. ID.; ID.; ID.; FAILURE OF THE CLERK OF COURT TO REMIT HER COLLECTIONS CONSTITUTES DISHONESTY AND GRAVE MISCONDUCT.— [T]he failure of a public officer to remit funds, upon demand by an authorized officer, shall be *prima facie* evidence that the public officer has put such missing funds or property to personal use. In the total absence of rebutting or contrary evidence, then the Court can only conclude that Ganzan has misappropriated the unaccounted/unremitted court funds in her care and custody. The conduct or behavior of all court personnel is circumscribed with the heavy burden of responsibility. Time and again, the High Court affirms the practical reality that the image of the court as a true temple of justice is mirrored by the conduct of everyone who works therein, from the judge to the lowest clerk. It is therefore imperative that those involved in the administration of justice must live up to the highest standard of honesty and integrity in the public service. On court employees who have fallen short of their accountabilities, particularly, Clerks of Court who are the custodians of court funds and properties, the Court has not hesitated to impose the ultimate penalty. x x x Ganzan's failure to remit her collections, amounting to ₱256,530.25 and to report/collect fines totaling ₱50,050.00, constitutes gross neglect of duty, dishonesty, and grave misconduct. She has transgressed

the trust reposed in her as cashier and disbursement officer of the Court. Therefore, the Court is left with no other recourse but to declare Ganzan guilty of dishonesty and gross misconduct.

D E C I S I O N

PER CURIAM:

This administrative case arose from the Report dated 15 June 2005, submitted by an Audit Team of the Office of the Court Administrator (OCA), containing the results of its financial audit of the 5th Municipal Circuit Trial Court (MCTC) of Jasaan-Claveria, Misamis Oriental, conducted on 11 March 2005. The said financial audit covered the accountability period of Clerk of Court II Fe P. Ganzan (Ganzan) from July 1994 to 28 February 2005.

The OCA Audit Team made the following recommendations in its Report:

1. This report be docketed as a regular administrative matter against Clerk of Court Fe P. Ganzan;

2. Clerk of Court Fe P. Ganzan be DIRECTED within ten (10) days from notice to:

   a. Pay and Deposit to the respective account the following amounts incurred as shortages, and Submit to this office the validated deposit slips as proof of payment of the same;

FUND	AMOUNT	SEE SCHEDULES
Special Allowance for the Judiciary	₱ 4,351.10	A
General Fund	5,039.80	B
Judiciary Development Fund	108,639.35	C
Fiduciary Fund	38,500.00	D
Total	256,530.25	

b. Explain why she should not be held accountable for the uncollected/unreported fines enumerated in Annex "B" amounting to ₱50,050.00 and cash bonds of undetermined amount on cases enumerated in Annex "E." The amount was not part of the reported collections.

c. Account for the missing Official Receipts which were not presented for inventory as neither unissued nor included in the Monthly Reports as issued:

9590551	9590600
9590701	9590750
9590901	9590950
9590951	9591000

d. Submit the triplicate copies of the following official receipts issued for the particular collections.

From	To	Explanation
5378101	5378118	Included in the Monthly Reports but the triplicate copies were not presented in audit.
5378119	53781150	Not included in the Monthly Reports and the triplicate copies were likewise not presented in audit.

GENERAL FUND

Period	From	To
Jan. 6 to Jan. 21, 2005	20248201	20248250
May 5 to June 20, 2003	17843801	17843850

JUDICIARY DEVELOPMENT FUND

Period	From	To
Jan. 6 to Jan. 21, 2005	20248201	20248250
May 5 to June 20, 2003	17843801	17843850
Mar. 1991 to July 1994	7863201	7863500

e. Submit the original and duplicate copies of cancelled Official Receipts Nos. 4264861, 20247681 and 20247454 or proofs that the same were submitted with the Monthly Reports to the Accounting Division-OCA.

3. Pending resolution of this administrative matter, Ms. Fe P. Ganzan be SUSPENDED in order to prevent her from interfering with the court transactions as well as to avoid the commission of similar infraction in the future;

4. A Hold Departure Order be issued against Clerk of Court Fe P. Ganzan to prevent her from leaving the country.

5. The designated Officer-in-Charge be DIRECTED to:

a. Withdraw all fiduciary fund collections still deposited with the Municipal Treasurer's Office and deposit/transfer the same to the Fiduciary Fund LBP Savings Account No. 0151-1096-91 pursuant to SC Circular No. 50-95.

b. Withdraw the net interest earned from the Fiduciary Fund Account in the amount of ₱1,153.34 and deposit the same with the JDF Account.

6. Presiding Judge, MCTC, Jasaan, Misamis Oriental, be DIRECTED to strictly monitor the designated Officer-in-Charge and Collecting officer in the strict adherence to the circulars and issuances of the Court particularly in the handling of judiciary funds.

On 15 June 2005, then Court Administrator, now Supreme Court Associate Justice Presbitero J. Velasco, Jr. issued a Memorandum adopting the recommendations of the OCA Audit Team, and recommending to the Court the approval of the same recommendations.

The Court, in a Resolution[1] dated 27 July 2005, approved and adopted the recommendations of the Court Administrator.

Ganzan filed on 24 August 2005 a Manifestation[2] in which she prayed for the Court to order the OCA to furnish her with copies of the Schedule/Annex "A" and Schedule/Annex "C"

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[1] *Rollo*, pp. 39-41.

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

of the Audit Report, and to give her an extension of at least 60 days, reckoned from her receipt of copies of said schedules, within which to file her explanation for the same, as she had a hard time looking for a lawyer to represent her in the case, given her financial constraints.

Acting on Ganzan's Manifestation, the Court issued a Resolution[3] on 5 December 2005 ordering the OCA to furnish Ganzan copies of the documents she prayed for and granting her a 60-day extension for the filing of her explanation. Although she was already duly furnished copies of the pertinent schedules/ annexes of the Audit Report, Ganzan failed to comply with the Resolution dated 27 July 2005 of this Court requiring her to submit her explanation, accounting, and receipts. Thus, the Court issued another Resolution dated 12 March 2007, requiring Ganzan to show cause why she should not be held in contempt of court for such failure and to comply with the earlier Resolution dated 27 July 2005, both within 10 days from notice.

Ganzan, however, still failed to submit to the Court the explanation, accounting, and receipts required by the Resolution dated 27 July 2005, as well as to comply with the show-cause directive under the Resolution dated 12 March 2007. Consequently, the Court issued a Resolution dated 16 January 2008 imposing upon Ganzan a fine of ₱500.00 and again requiring her to comply with the Resolution dated 27 July 2005 within 10 days from notice.

In the interim, Honorable Marites Filomena Rana-Bernales (Judge Rana-Bernales), Presiding Judge, 5th MCTC of Jasaan-Claveria, Misamis Oriental, wrote the Court a Letter dated 18 March 2008, relaying her perception that Ganzan, based on the latter's actuations, had no intention at all to comply with the Resolutions of the Court. In the same Letter, Judge Rana-Bernales also requested the early resolution of the instant administrative case, since Ganzan had been on preventive suspension since July 2005, and the interest of justice required a regular Clerk of Court to already be appointed in Ganzan's place. The Court noted Judge Rana-Bernales' aforementioned letter.

[3] *Id.* at 44.

For Ganzan's continued failure to comply with its directives, the Court issued yet another Resolution[4] dated 9 July 2008 imposing upon her a fine of ₱1,000.00, in addition to the fine of ₱500.00 previously imposed upon her under the Resolution dated 16 January 2008. Ganzan was further ordered to comply with the Resolution dated 16 January 2008, with a warning that should she still fail to pay the fines imposed and comply with the directives of the Court, she would be ordered arrested and detained by the National Bureau of Investigation (NBI) until her compliance or until such time as the Court may order.

On 30 March 2009, the Court referred to the OCA the matter of Ganzan's non-compliance with the Resolution dated 9 July 2008 and required the said office to submit its Report within 30 days from notice.[5]

The OCA submitted its Report[6] on 4 June 2009, bearing the following recommendations:

IN VIEW OF ALL THE FOREGOING, it is most respectfully recommended for the consideration of the Honorable Court as follows:

a) Respondent FE P. GANZAN, Clerk of Court, Municipal Circuit Trial Court of Jasaan, Misamis Oriental be found GUILTY of DISHONESTY and the penalty of DISMISSAL from the service with forfeiture of all retirement benefits except leave credits and disqualification for re-employment in any government office including government-owned or controlled corporations be imposed upon her;

b) Respondent be ordered to RESTITUTE the following amounts incurred as shortages within thirty (30) days from notice:

FUND	AMOUNT
Special Allowance for the Judiciary	₱ 4,351.10
General Fund	5,039.80
Judiciary Development Fund	108,639.35
Fiduciary Fund	138,500.00

[4] *Id.* at 57.

[5] *Id.* at 59.

[6] *Id.* at 60-72.

or a total of Two Hundred Fifty-Six Thousand Five Hundred Thirty Pesos and Twenty-five centavos (₱256,530.25) plus additional amount of Fifty Thousand And Fifty Pesos (₱50,050.00) representing the uncollected/unreported fines;

c) Respondent be ORDERED to PAY the fines of ₱500.00 and ₱1,000.00 per Court Resolutions dated 16 January 2008 and 9 July 2008, respectively, within ten (10) days from notice hereof;

d) The Fiscal Management Office, OCA be ORDERED to compute whatever benefits due to the Respondent including the money value of her leave credits dispensing with the usual documentary requirements and apply the same to the shortages in the following order of preference: Fiduciary Fund, Judiciary Development Fund, Special Allowance for the Judiciary and Court General Fund; and

e) The Office of the Court Administrator be DIRECTED to coordinate with the prosecuting arm of the government for the filing of the appropriate criminal action against respondent Fe P. Ganzan.

The Court has already given Ganzan more than enough opportunity to explain her side. It granted Ganzan's motion for extension of time to comply with the Resolution dated 27 July 2005 ordering her to submit her explanation, accounting, and receipts, but Ganzan still failed to comply with the directive of the Court during the extended period. Ganzan persistently ignored the subsequent Resolutions of this Court, *i.e.*, the Resolution dated 12 March 2007, which directed her to show cause why she should not be held in contempt for her non-compliance with the Resolution dated 27 July 2007 and to finally comply therewith; the Resolution dated 16 January 2008, which imposed upon her a fine of ₱500.00 for her failure to comply with the Show-Cause Resolution of 16 January 2008; and the Resolution dated 9 July 2008, which imposed upon her an additional fine of ₱1,000.00 for continuing to disregard the Resolution dated 16 January 2008. Ganzan has managed to drag this case for over four years now.

Up until the resolution of the instant administrative case against her, Ganzan has not complied with any of the Resolutions of the Court.

With her obstinate defiance and incessant refusal to submit her compliance to this Court, despite the latter's repeated directives and stern admonitions, Ganzan exposed her insolence and disrespect for the lawful orders of the Court. 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 betrays, not only a recalcitrant streak in character, but also a disrespect for the lawful order and directive of the Court.[7] Furthermore, 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.[8] Ganzan's transgression is highlighted even more 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.[9] Her willful disobedience to and disregard for the Resolutions of this Court constitute grave and serious misconduct,[10] which cannot be tolerated.

The Court shall no longer wait for Ganzan, who has clearly forfeited her chance to be heard on the charges against her. It must now proceed to resolve this administrative case against her based on the present contents of the record, the most significant of which are the report and recommendations of the Audit Team and their annexes, as adopted by the OCA.

Clerks of Court are important officers in our judicial system. Their office is the nucleus of all court activities, adjudicative and administrative. Their administrative functions are as vital

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[7] *Tugot v. Judge Coliflores*, 467 Phil. 391, 402-403 (2004).

[8] *Parane v. Reloza*, A.M. No. MTJ-92-718, 7 November 1994, 238 SCRA 1, 4.

[9] *Teopicio Tan v. Salvacion D. Sermonia*, Clerk of Court IV, MTCC, Iloilo City, A.M. No. P-08-2436, 4 August 2009.

[10] *Longboan v. Polig*, A.M. No. R-704-RTJ, 14 June 1990, 186 SCRA 557, 561.

to the prompt and proper administration of justice as their judicial duties.[11]

Clerks of Court perform a very delicate function as the custodians of the funds and revenues, records, property, and premises of the court. Being the custodians thereof, they are liable for any loss, shortage, destruction, or impairment of said funds and property.[12]

Supreme Court Circulars No. 13-92 and No. 5-93 provide the guidelines for the proper administration of court funds. Supreme Court Circular No. 13-92 mandates that all fiduciary collections "shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized depository bank." In Supreme Court Circular No. 5-93, the Land Bank was designated as the authorized government depository.

In *Office of the Court Administrator v. Fortaleza*,[13] the Court expounded on the responsibility and accountability of Clerks of Court for the collected legal fees in their custody, thus:

> Clerks of Court are the chief administrative officers of their respective courts; with regard to the collection of legal fees, they perform a delicate function as judicial officers entrusted with the correct and effective implementation of regulations thereon. Even the undue delay in the remittances of amounts collected by them at the very least constitutes misfeasance. On the other hand, a vital administrative function of a judge is the effective management of his court and this includes control of the conduct of the court's ministerial officers. It should be brought home to both that the safekeeping of funds and collections is essential to the goal of an orderly administration of justice and no protestation of good faith can override the

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[11] *Re: Report on the Financial Audit Conducted in the RTC, Br. 34, Balaoan, La Union*, 480 Phil. 484, 492 (2004), citing *Dizon v. Bawalan*, 453 Phil. 125, 133 (2003).

[12] *Office of the Court Administrator v. Fortaleza*, 434 Phil. 511, 522 (2002), citing *Office of the Court Administrator v. Bawalan*, A.M. No. P-93-945, 24 March 1994, 231 SCRA 408, 411.

[13] *Id.* at 522.

mandatory nature of the Circulars designed to promote full accountability for government funds.

The Court, in *Office of the Court Administrator v. Galo*,[14] pointed out that it had always reminded Clerks of Court that, as custodians of court funds and revenues, they have the duty to immediately deposit the various funds received by them with the authorized government depositories, for Clerks of Court are not supposed to keep funds in their custody.

Ganzan's refusal to face head-on the charges against her is contrary to the principle that the first impulse of an innocent person, when accused of wrongdoing, is to express his/her innocence at the first opportune time.[15] Ganzan's silence and non-participation in the present administrative proceedings, despite due notice and directives of this Court for her to submit documents in her defense, *i.e.*, a written explanation, an accounting, and missing receipts, strongly indicate her guilt. Moreover, the failure of a public officer to remit funds, upon demand by an authorized officer, shall be *prima facie* evidence that the public officer has put such missing funds or property to personal use.[16] In the total absence of rebutting or contrary evidence, then the Court can only conclude that Ganzan has misappropriated the unaccounted/unremitted court funds in her care and custody.

The conduct or behavior of all court personnel is circumscribed with the heavy burden of responsibility.[17] Time and again, the High Court affirms the practical reality that the image of the court as a true temple of justice is mirrored by the conduct of everyone who works therein, from the judge to the lowest clerk.[18]

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[14] 373 Phil. 483, 491 (1999).

[15] *Re: Report on the Financial Audit Conducted in the Regional Trial Court, Branch 34, Balaoan, La Union*, *supra* note 11; *Office of the Court Administrator v. Bernardino*, 490 Phil. 500, 531 (2005).

[16] *Office of the Court Administrator v. Besa*, 437 Phil. 372, 380 (2002).

[17] *Re: Dropping from the Rolls of Ms. Carolyn C. Arcangel*, A.M. No. 2005-27-SC, 31 March 2006, 486 SCRA 27, 30.

[18] *Mutia v. Pacariem*, A.M. No. P-06-2170, 11 July 2006, 494 SCRA 448, 454-455.

It is therefore imperative that those involved in the administration of justice must live up to the highest standard of honesty and integrity in the public service.[19]

On court employees who have fallen short of their accountabilities, particularly, Clerks of Court who are the custodians of court funds and properties, the Court has not hesitated to impose the ultimate penalty. This Court has never tolerated or condoned any conduct that would violate the norms of public accountability and diminish, or even tend to diminish, the faith of the people in the justice system.[20]

Ganzan's failure to remit her collections, amounting to ₱256,530.25 and to report/collect fines totaling ₱50,050.00, constitutes gross neglect of duty, dishonesty, and grave misconduct.[21] She has transgressed the trust reposed in her as cashier and disbursement officer of the Court.[22] Therefore, the Court is left with no other recourse but to declare Ganzan guilty of dishonesty and gross misconduct.

Under Section 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 and other pertinent Civil Service Laws, dishonesty and grave misconduct are considered grave offenses, for which the penalty of dismissal is prescribed even at the first instance. Section 9 of said Rules additionally provides: "The penalty of dismissal shall carry with it cancellation of eligibility and retirement benefits, and the disqualification of re-employment in the government service. This penalty is without prejudice to criminal liability of the respondent."

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[19] *Reyes v. Cabrera*, A.M. No. P-05-2027, 27 January 2006, 480 SCRA 257, 263.

[20] *Office of the Court Administrator v. Galo, supra* note 14.

[21] *Re: Report on the Judicial and Financial Audit of RTC-Br. 4, Panabo, Davao del Norte*, 351 Phil. 1, 20 (1998).

[22] *Office of the Court Administrator v. Clerk of Court Bernardino, supra* note 15.

WHEREFORE, the Court finds respondent Fe P. Ganzan, Clerk of Court II, 5th Municipal Circuit Trial Court of Jasaan-Claveria, Misamis Oriental, *GUILTY* of gross dishonesty and grave misconduct and imposes on her the penalty of *DISMISSAL* from the service with *FORFEITURE* of retirement benefits, except her accrued leave credits, and with prejudice to re-employment in any government agency, including government-owned and controlled corporations. The Civil Service Commission is ordered to cancel her civil service eligibility, if any, in accordance with Section 9, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292.

The Court further orders:

1. Respondent Fe P. Ganzan to *RESTITUTE* the following amounts incurred as shortages within thirty (30) days from notice:

FUND	AMOUNT
Special Allowance for the Judiciary	₱ 4,351.10
General Fund	5,039.80
Judiciary Development Fund	108,639.35
Fiduciary Fund	138,500.00

or a total of Two Hundred Fifty-Six Thousand Five Hundred Thirty Pesos and Twenty-five Centavos (₱256,530.25), plus the additional amount of Fifty Thousand and Fifty Pesos (₱50,050.00) representing the uncollected/unreported fines;

2. Respondent Fe P. Ganzan to *PAY* the fines of ₱500.00 and ₱1,000.00 per Court Resolutions dated 16 January 2008 and 9 July 2008, respectively, within ten (10) days from notice hereof;

3. The Fiscal Management Office of the Office of the Court Administrator to *COMPUTE* whatever benefits are due to Ganzan including the money value of her leave credits, dispensing with the usual documentary requirements, and *APPLY* the same to the shortages in the following order of preference: Fiduciary Fund, Judiciary Development Fund, Special Allowance for the Judiciary and Court General Fund; and

4) The Office of the Court Administrator to *COORDINATE* with the prosecution arm of the government for the filing of the appropriate criminal action against respondent Fe P. Ganzan.

SO ORDERED.

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

Quisumbing and *Carpio, JJ.,* are on official leave.

THIRD DIVISION

[G.R. Nos. 140743 & 140745. September 17, 2009]

CITY GOVERNMENT OF TAGAYTAY, *petitioner, vs.* **HON. ELEUTERIO F. GUERRERO, Presiding Judge of the Regional Trial Court of Tagaytay, Branch XVIII; TAGAYTAY-TAAL TOURIST DEVELOPMENT CORPORATION; PROVINCE OF BATANGAS; MUNICIPALITY OF LAUREL, BATANGAS; and MUNICIPALITY OF TALISAY, BATANGAS,** *respondents.*

[G.R. Nos. 141451-52. September 17, 2009]

AMEURFINA MELENCIO-HERRERA and EMILINA MELENCIO-FERNANDO, *petitioners, vs.* **HON. ELEUTERIO F. GUERRERO, Presiding Judge of the Regional Trial Court of Cavite City, Branch XVIII; TAGAYTAY-TAAL TOURIST DEVELOPMENT CORPORATION; PROVINCE OF BATANGAS; MUNICIPALITY OF LAUREL, BATANGAS; MUNICIPALITY OF TALISAY, BATANGAS; and CITY OF TAGAYTAY,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; REPUBLIC ACT NO. 1418; THE ENTIRE BARRIO BIRINAYAN WAS TAKEN AWAY FROM THE CITY OF TAGAYTAY AND TRANSFERRED TO THE PROVINCE OF BATANGAS.— Under Commonwealth Act No. 338, Barrio Birinayan was annexed to the City of Tagaytay as of its incorporation on June 31, 1938. However, upon the passage of R.A. No. 1418 on June 7, 1956, Barrio Birinayan was taken away from the City of Tagaytay and transferred to the Province of Batangas. x x x On June 21, 1969, by virtue of R.A. No. 5689, Barrio Birinayan became part of the Municipality of Laurel, Province of Batangas. x x x Central to the resolution of this dispute is the proper interpretation of Section 1 of R.A. No. 1418. Petitioner City of Tagaytay argues that only certain portions of Birinayan were transferred to the Province of Batangas, and not the entire Barrio. However, upon perusal, it can be easily discerned that the law is clear and categorical. The transfer of the entire Barrio Birinayan to the Municipality of Talisay, Province of Batangas, is definite and unqualified. There is no indication that only certain portions of the Barrio were transferred. Thus, no further interpretation is required in order to ascertain its meaning and consequent implication.

2. ID.; ID.; ID.; THE CITY OF TAGAYTAY IS PRESUMED TO KNOW THE LAW.— The City of Tagaytay acted in bad faith when it levied real estate taxes on the subject properties. R.A. No. 1418 became law as early as 1956. The City of Tagaytay is conclusively presumed to know the law that delineates its jurisdiction, more especially when the law, as in this case, is clear and categorical. Men of common intelligence need not guess at its meaning and differ on its application. The entire Barrio Birinayan, not only portions thereof, was transferred to the Province of Batangas. If it was the true intention of the legislature to transfer only certain portions of Barrio Birinayan to the Province of Batangas, it would have plainly stated so in the law.

3. REMEDIAL LAW; CIVIL PROCEDURE; ANNULMENT OF JUDGMENT BASED ON EXTRINSIC FRAUD; CATEGORIES OF FRAUD, DISCUSSED.— Fraud is of two categories. It may either be: (a) actual or constructive and (b) extrinsic or intrinsic. Actual or positive fraud proceeds from an intentional deception

practiced by means of the misrepresentation or concealment of a material fact. Constructive fraud is construed as such because of its detrimental effect upon public interest and public or private confidence, even though the act is not done with an actual design to commit positive fraud or injury upon other persons. On the other hand, fraud may also be either extrinsic or intrinsic. There is intrinsic fraud where the fraudulent acts pertain to an issue involved in the original action, or where the acts constituting the fraud were or could have been litigated therein. Fraud is regarded as extrinsic where the act prevents a party from having a trial or from presenting his entire case to the court, or where it operates upon matters pertaining not to the judgment itself but to the manner in which it is procured, so that there is not a fair submission of the controversy. Extrinsic fraud is also actual fraud, but collateral to the transaction sued upon.

4. ID.; ID.; ID.; EXTRINSIC FRAUD, EXPLAINED.— Extrinsic fraud refers to any fraudulent act of the prevailing party in the litigation which is committed outside of the trial of the case, whereby the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent. The fraud or deceit cannot be of the losing party's own doing, nor must such party contribute to it. The extrinsic fraud must be employed against it by the adverse party, who, because of some trick, artifice, or device, naturally prevails in the suit. It affects not the judgment itself but the manner in which the said judgment is obtained. Extrinsic fraud is also present where the unsuccessful party has been prevented by his opponent from exhibiting fully his case by keeping the former away from court or giving him a false promise of a compromise; or where the defendant never had knowledge of the suit, having been kept in ignorance by the acts of the plaintiff; or where an attorney fraudulently or without authority assumed to represent a party and connived at his defeat; or where the attorney regularly employed corruptly sold out his client's interest to the other side. The overriding consideration is that the fraudulent scheme of the prevailing litigant prevented a party from having his day in court.

5. ID.; ID.; ID.; WHEN A PARTY'S ACTION OR INACTION DOES NOT AMOUNT TO EXTRINSIC FRAUD.— In the instant case, we find that the action or inaction of the City of Tagaytay does

not amount to extrinsic fraud. The City of Tagaytay is not the prevailing party in the assailed decision. Moreover, the Melencios were not totally without fault in protecting their interest. They were aware of the pendency of Civil Case No. TG-1196, as shown by their filing of a motion to intervene in the case. When their motion was denied by the trial court, they no longer pursued their cause. The alleged assurances and representations of certain officials of the City of Tagaytay that they would file the necessary motion for reconsideration or appeal in case of an unfavorable decision in Civil Case No. TG-1196 was not an impediment to the Melencios protecting their rights over the disputed properties. There is no allegation that the City of Tagaytay prevented them from, or induced them against, acting on their own. Its failure to implead the Melencios did not prevent the latter from having their day in court, which is the essence of extrinsic fraud.

6. CIVIL LAW; TORTS; DOCTRINE OF *RESPONDEAT SUPERIOR*, APPLIED; THE CITY OF TAGAYTAY IS LIABLE FOR THE NEGLIGENT ACTS OF ITS OFFICERS WHO LEVIED TAXES AND SOLD PROPERTIES OUTSIDE ITS TERRITORIAL JURISDICTION.— [W]e reiterate our finding that the City of Tagaytay acted in bad faith when it levied real estate taxes on the subject properties, and should be held accountable for all the consequences thereof, including the void sale of the properties to the Melencios. The City of Tagaytay is accountable for erroneously assessing taxes on properties outside its territorial jurisdiction. As of the passage of R.A. No. 1418 in 1956, the City of Tagaytay is presumed to know that Barrio Birinayan, in which the subject properties are situated, is no longer within its territorial jurisdiction and beyond its taxing powers. Under the doctrine of *respondeat superior*, the principal is liable for the negligence of its agents acting within the scope of their assigned tasks. The City of Tagaytay is liable for all the necessary and natural consequences of the negligent acts of its city officials. It is liable for the tortious acts committed by its agents who sold the subject lots to the Melencios despite the clear mandate of R.A. No. 1418, separating Barrio Birinayan from its jurisdiction and transferring the same to the Province of Batangas. The negligence of the officers of the City of Tagaytay in the performance of their official functions gives rise to an action *ex contractu* and *quasi ex-delictu*. However, the Melencios cannot recover twice for the same act

or omission of the City of Tagaytay. Negligence is the failure to observe protection of the interests of another person, that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury. Thus, negligence is the want of care required under circumstances. In this case, it is basic that before the City of Tagaytay may levy a certain property for sale due to tax delinquency, the subject property should be under its territorial jurisdiction. The city officials are expected to know such basic principle of law. The failure of the city officials of Tagaytay to verify if the property is within its jurisdiction before levying taxes on the same constitutes gross negligence. Accordingly, the City of Tagaytay is liable to return the full amount paid by the Melencios during the auction sale of the subject properties by way of actual damages. The amount paid at the auction sale shall earn interest at the rate of six percent (6%) per annum from the time of the finality of the RTC decision in Civil Case No. TG-1196, when the claim was judicially demanded. Thereafter, interest at the rate of twelve percent (12%), in lieu of the 6%, shall be imposed on such amount upon finality of this decision until full payment thereof.

7. ID.; DAMAGES; MORAL AND EXEMPLARY DAMAGES AWARDED FOR THE GROSS NEGLIGENCE COMMITTED BY THE CITY OF TAGAYTAY.— The gross negligence of the City of Tagaytay in levying taxes and auctioning properties to answer for real property tax deficiencies outside its territorial jurisdiction amounts to bad faith that calls for the award of moral damages. Moral damages are meant to compensate the claimant for any physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injuries unjustly caused. Although incapable of pecuniary estimation, the amount must somehow be proportional to and in approximation of the suffering inflicted. Moral damages are awarded to enable the injured party to obtain means, diversions or amusements that will serve to alleviate the moral suffering the person has undergone, by reason of defendant's culpable action. The award is aimed at restoration, as much as possible, of the spiritual *status quo ante*. Thus, it must be proportionate to the suffering inflicted. Since each case must be governed by its own peculiar circumstances, there is no hard and fast rule in determining

the proper amount. The social standing of the aggrieved party is essential to the determination of the proper amount of the award. Otherwise, the goal of enabling him to obtain means, diversions, or amusements to restore him to the *status quo ante* would not be achieved. The Melencios are likewise entitled to exemplary damages. Exemplary or corrective damages are imposed by way of example or correction for the public good, in addition to the moral, temperate, liquidated, or compensatory damages. Article 2229 of the Civil Code grants the award of exemplary or corrective damages in order to deter the commission of similar acts in the future and to allow the courts to mould behavior that can have grave and deleterious consequences to society. In the instant case, the gross negligence of the City of Tagaytay in erroneously exacting taxes and selling properties outside its jurisdiction, despite the clear mandate of statutory law, must be rectified.

APPEARANCES OF COUNSEL

Herrera Teehankee Faylona and Cabrera for petitioners.

Estelito P. Mendoza and Orlando AQ. Santiago for Tagaytay-Taal Tourist Development Corporation.

City Legal Office for City Government of Tagaytay.

Provincial Legal Officer for Province of Batangas, Municipalities of Laurel and Talisay.

D E C I S I O N

NACHURA, *J.*:

Before the Court are consolidated petitions for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] dated June 19, 1998 and the Resolution[2] dated November 11, 1999 of the Court of Appeals (CA) in CA-G.R. SP Nos. 39008 and 38298.

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[1] Penned by Associate Justice Bernardo Ll. Salas, with Associate Justices Ma. Alicia Austria- Martinez (a retired member of this Court) and Artemio G. Tuquero, concurring; *rollo* (G.R. Nos. 140743 and 140745), pp. 33-56.

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

The Facts

Tagaytay-Taal Tourist Development Corporation (TTTDC) is the registered owner of two (2) parcels of land covered by Transfer Certificate of Title (TCT) Nos. T-9816[3] and T-9817[4] of the Registry of Deeds of Tagaytay City. TTTDC incurred real estate tax liabilities on the said properties for the tax years 1976 to 1983.[5]

On November 28, 1983, for failure of TTTDC to settle its delinquent real estate tax obligations, the City Government of Tagaytay (City of Tagaytay) offered the properties for sale at public auction. Being the only bidder, a certificate of sale was executed in favor of the City of Tagaytay and was correspondingly inscribed on the titles of the properties on November 20, 1984.[6]

On July 14, 1989, the City of Tagaytay filed an unnumbered petition for entry of new certificates of title in its favor before the Regional Trial Court (RTC) of Cavite, Branch XVIII, Tagaytay City. The case was entitled, "In re: Petition for Entry of New Certificate of Title, City of Tagaytay, Petitioner." On December 5, 1989, the RTC granted the petition. The dispositive portion of the Decision[7] reads:

> WHEREFORE, finding the petition to be meritorious and sufficiently sustained with preponderant, legal and factual basis, this Court hereby gives its imprimatur to it and grants the same, dismissing in the process, the Opposition filed by Tagaytay-Taal Tourist Development Corporation. Accordingly, the Register of Deeds of Tagaytay City is hereby ordered to allow the City to consolidate the titles covering the properties in question (TCT Nos. T-9816 and T-9817), by issuing in its favor, and under its name, new Transfer Certificates of Titles and canceling as basis thereof, the said TCT Nos. 9816 and 9817 in the name of Tagaytay-Taal Tourist Development

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[3] CA *rollo*, p. 51.

[4] *Id.* at 52.

[5] *Rollo* (G.R. Nos. 140743 and 140745), p. 66.

[6] *Id.*

[7] *Rollo* (G.R. Nos. 141451-52), pp. 88-90.

Corporation, all of which, being hereby declared null and void, henceforth.

SO ORDERED.[8]

In granting the petition for entry of new certificates of title in favor of the City of Tagaytay, the trial court ratiocinated that whatever rights TTTDC had over the properties had been lost by laches for its failure to question the validity of the auction sale. It also ruled that, as of April 30, 1989, the unpaid real estate tax obligations of TTTDC to the City of Tagaytay amounted to ₱3,307,799.00. Accordingly, TTTDC's failure to exercise its right of redemption by way of paying its delinquent real estate taxes and charges called for the application of Section 75[9] of Presidential Decree (P.D.) No. 1529, otherwise known as the Property Registration Decree.[10] TTTDC appealed to the CA. The case was docketed as CA-G.R. No. 24933, entitled "*City of Tagaytay v. Tagaytay-Taal Tourist Development Corporation*."

On June 29, 1990, Atty. Donato T. Faylona, acting as agent of Ameurfina Melencio-Herrera and Emilina Melencio-Fernando (Melencios), purchased the subject properties pursuant to Section 81[11] in relation to Section 78[12] of P.D.

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[8] *Id.* at 90.

[9] P.D. 1529, Sec. 75:

SEC. 75. *Application for new certificate upon expiration of redemption period.* — Upon the expiration of the time, if any, allowed by law for redemption after registered land has been sold on execution taken or sold for the enforcement of a lien of any description, except a mortgage lien, the purchaser at such sale or anyone claiming under him may petition the court for the entry of a new certificate of title to him.

Before the entry of a new certificate of title, the registered owner may pursue all legal and equitable remedies to impeach or annul such proceedings.

[10] *Rollo* (G.R. Nos. 141451-52), p. 89.

[11] P.D. 464, Sec. 81:

SECTION 81. *Disposition of real property acquired by province or city.* — The provincial or city treasurer shall have charge of the delinquent real property acquired by the province or city under the provisions of Section seventy-five during which time the delinquent taxpayer shall have possession

No. 464.[13] The Melencios bought the subject properties for Three Million Five Hundred Fifty Thousand Pesos (₱3,550,000.00) representing the total amount of taxes and penalties due on the same.[14]

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and usufruct of such property in accordance with Section seventy-nine hereof. Said treasurer shall take steps within one year from the date of issuance of final bill of sale to dispose of the delinquent real property at public auction; but at any time before the auction sale, any person in his own right may repurchase such property by paying the total amount of the taxes and penalties due up to the time of repurchase, the costs of sale, and other legitimate expenses incurred by the province or city with respect to the property, and an additional penalty of twenty per cent on the purchase price: Provided, however, That the right of the delinquent taxpayer or his representative or any person holding lien or claim over the property to further redeem said property within one year from the date of acquisition by the province or city, in the manner provided in Section seventy- eight hereof; and, Provided, further That if the treasurer has entered into a contract for the lease of the property in the meantime, any repurchase made hereunder shall be subject to such contract.

[12] P.D. 464, Sec. 78:

SECTION 78. *Redemption of real property after sale*. — Within the term of one year from the date of the registration of sale of the property, the delinquent taxpayer or his representative, or in his absence, any person holding a lien or claim over the property, shall have the right to redeem the same by paying the provincial or city treasurer or his deputy the total amount of taxes and penalties due up to the date of redemption, the costs of sale and the interest at the rate of twenty per centum on the purchase price, and such payment shall invalidate the sale certificate issued to the purchaser and shall entitle the person making the same to a certificate from the provincial or city treasurer or his deputy, stating that he had redeemed the property.

The provincial or city treasurer or his deputy shall, upon surrender by the purchaser of the certificate of sale previously issued to him, forthwith return to the latter the entire purchase price paid by him plus the interest at twenty per centum per annum herein provided for, the portion of the cost of the sale and other legitimate expenses incurred by him, and said property shall thereafter be free from the lien of said taxes and penalties.

[13] Republic Act No. 7160 (Local Government Code of 1991) repealed P.D. No. 464 (The Real Property Tax Code); *rollo* (G.R. Nos. 140743 and 140745), p. 36; *rollo* (G.R. Nos. 141451-52), p. 495.

[14] *Rollo* (G.R. Nos. 141451-52), p. 496.

Meanwhile, on July 21, 1991, during the pendency of CA-G.R. CV No. 24933, TTTDC filed a petition for nullification of the public auction involving the disputed properties on the ground that the properties were not within the jurisdiction of the City of Tagaytay and, thus, beyond its taxing authority.[15] The case, docketed as Civil Case No. TG-1196 before the RTC of Cavite, Branch XVIII, Tagaytay City, was entitled "*Tagaytay-Taal Tourist Development Corporation v. City of Tagaytay, Municipality of Laurel (formerly Talisay), Province of Batangas, Register of Deeds of Batangas, and Register of Deeds of the City of Tagaytay*."[16] On the other hand, the City of Tagaytay averred that based on its Charter,[17] the subject properties were within its territorial jurisdiction.[18] The sole issue in Civil Case No. TG-1196 was whether the parcels of land covered by TCT Nos. T-9816 and T-9817 were within the territorial jurisdiction of the City of Tagaytay.

Despite the fact that the Melencios had already purchased the subject properties, they were not impleaded in Civil Case No. TG-1196. Thus, on June 23, 1994, they filed a Motion to Intervene.[19] On October 5, 1994, the RTC issued an Order[20] denying the motion. The pertinent portions of the Order read:

> This Court could clearly discern from the records that on July 13, 1994, this Court, after the parties to the case at bar have concluded the presentation of their respective evidences (sic), issued an Order giving the parties thirty (30) days within which to file their respective memoranda simultaneously and thereafter the instant case is considered submitted for decision. It is equally observed by the Court that although the motion to intervene was filed by the movants on July 1, 1994, the latter had set the same motion for the consideration

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[15] *Rollo* (G.R. Nos. 140743 and 140745), p. 37.

[16] *Id.* at 66.

[17] Commonwealth Act No. 338.

[18] In Civil Case No. TG-1196, respondents Province of Batangas and Municipality of Batangas adopted the stand of TTTDC that the litigated properties are within the jurisdiction of Talisay, Batangas. (*Id.* at 69.)

[19] CA *rollo* (CA-G.R. SP No. 38298), pp. 376-379.

[20] *Id.* at 381-382.

of this Court on July 15, 1994 at 8:30 o'clock in the morning or two (2) days after the trial in this case was concluded. Thus, while this Court is inclined to agree with movants' postulation that they have a legal interest in the case at bar being the purchasers of the parcels of land involved in the instant controversy, it however believes and so holds that it is legally precluded from granting the motion to intervene on account of the provisions of Section 2, Rule 12 of the Revised Rules of Court which is quoted hereinunder as follows:

> "SEC. 2. Intervention. – A person may, before or during a trial, be permitted by the court, in its discretion, to intervene in an action, if he has legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or when he is so situated as to be adversely affected by the distribution or other disposition of property in the custody of the court or of an official thereof."

It is quite evident that the movants have filed their motion to intervene beyond the period mentioned in the above-quoted rule as it was repeatedly held by jurisprudence that "the authority of the court to permit a person to intervene is delimited by the provisions of Section 2, Rule 12 of the Rules of Court – 'before or during trial.'" "And, trial is here used in a restricted sense and refers to 'the period for the introduction of evidence by both parties.'" (*Pacusa v. Del Rosario*, L-26353, July 29, 1968; 24 SCRA 125, 129-130; *Bool v. Mendoza*, 92 Phil. 892, 895; *Trazo v. Manila Pencil* Co., 1 SCRA 403, 405).

Surprisingly, even with the denial of the motion, the Melencios did not further pursue their cause. This was allegedly due to the assurances of the City of Tagaytay that it would file a motion for reconsideration and an appeal if the motion for reconsideration was denied. However, the City of Tagaytay filed a defective motion for reconsideration which was denied by the RTC and the City of Tagaytay did not file an appeal from the decision of the trial court.[21]

On November 11, 1991, the CA, in CA-G.R. No. 24933, affirmed the decision of the trial court in the unnumbered petition. The case was elevated to the Supreme Court *via* a petition for

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[21] *Rollo* (G.R. Nos. 140743 and 140745), p. 37.

review on *certiorari* and was docketed as G.R. No. 106812.[22] The case was entitled "*Tagaytay-Taal Tourist Development Corporation v. Court of Appeals (Special Ninth Division) and The City of Tagaytay*."

During the pendency of the proceedings in G.R. No. 106812, on October 21, 1994, the RTC rendered a Decision[23] in Civil Case No. TG-1196 wherein the trial court directed the annulment of the public sale of the contested properties. The dispositive portion of the decision reads:

> WHEREFORE, judgment is hereby rendered granting the instant petition and as a consequence, the public auction sale of the properties of the petitioner, both covered by TCT Nos. T-9816 and T-9817 of the Registry of Deeds of Tagaytay City, as well as the Certificate of Sale and the Final Bill of Sale of said properties in favor of the respondent City of Tagaytay City (sic), and all proceedings held in connection therewith are hereby annulled and set aside, and the respondent Register of Deeds of the City of Tagaytay is hereby directed to cancel Entries Nos. 21951/T-9816 and 36984/T9816 annotated and appearing on TCT No. T-9816 and Entries Nos. 21950/ T-9817 and 30087/T-9817 annotated and appearing on TCT No. T-9817 regarding the sale of the lots described therein in favor of the City of Tagaytay.
>
> Moreover, the writ of preliminary injunction issued by this Court on September 24 is hereby made permanent.
>
> SO ORDERED.[24]

The City of Tagaytay filed a motion for reconsideration of the RTC decision in Civil Case No. TG-1196. But for failure to comply with the procedural requirements of a litigious motion, the trial court denied the same in an Order[25] dated February 28, 1995. The *fallo* of the order reads:

> WHEREFORE, in the light of the foregoing, this Court finds no cogent grounds (sic) for a grant of the Motion for Reconsideration

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[22] *Id.* at 36.

[23] *Id.* at 66-76.

[24] *Id.* at 76.

[25] *Id.* at 184-186.

filed by respondent City of Tagaytay and considering that the same motion failed to comply with the requirements imposed by Sections 4, 5 and 6 of Rule 15 of the Revised Rules of Court, this Court hereby directs that the said motion be stricken from the records and the Acting Clerk of this Court is directed to enter the Decision dated October 21, 1994 as required under Section 2, Rule 36 of the Revised Rules of Court.

SO ORDERED.[26]

On November 9, 1994, the RTC Decision dated October 21, 1994 in Civil Case No. TG-1196 became final and executory. On March 24, 1995, the Decision was entered in the Book of Entries of Judgments.[27]

On August 31, 1995, the Melencios filed before the CA a petition for annulment of judgment of the RTC Decision in Civil Case No. TG-1196. The case was docketed as CA-G.R. SP No. 38298, entitled "*Ameurfina Melencio-Herrera and Emilina Melencio-Fernando v. Hon. Eleuterio F. Guerrero, Tagaytay-Taal Tourist Development Corporation, the Province of Batangas, the Municipality of Laurel, the Municipality of Talisay and the City of Tagaytay*." In the Petition,[28] the Melencios questioned the final and executory decision of the trial court on the ground that the City of Tagaytay allegedly committed extrinsic fraud and that was the ultimate reason why they were deprived of property without due process of law. Furthermore, they averred that the decision was rendered with absolute lack of jurisdiction over the subject matter and nature of the petition due to the following: (1) violation of the prohibition to entertain cases without the payment of the required deposit under Section 83 of P.D. No. 464; (2) violation of the doctrine of *litis pendentia* or the doctrine of non-interference with a co-equal body; (3) forum-shopping by TTTDC; and (4) failure to follow the administrative procedure in the settlement of boundary disputes between local government units as provided under the Local Government Code.[29]

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[26] *Id.* at 186.

[27] *Id.* at 187-188.

[28] CA *rollo* (CA G.R. SP No. 38298), pp. 3-28.

[29] *Id.*

On November 15, 1995, City of Tagaytay also filed before the CA a petition for annulment of judgment of the RTC Decision in Civil Case No. TG-1196. The case was docketed as CA-G.R. SP No. 39008, entitled "*City of Tagaytay v. Hon. Eleuterio F. Guerrero, Tagaytay-Taal Tourist Development Corporation, the Municipality of Laurel, Batangas, and the Municipality of Talisay, Batangas*." The City of Tagaytay filed the Petition[30] on the following grounds: (1) the RTC had no primary jurisdiction to resolve boundary disputes; (2) the RTC committed judicial legislation in its interpretation of Commonwealth Act No. 338 and Republic Act (R.A.) No. 1418; and (3) the RTC acted in excess of jurisdiction in entertaining the case of TTTDC without the deposit of the amount of the tax sale as required by Section 83 of P.D. No. 464.[31]

CA-G.R. SP Nos. 38298 and 39008 were eventually consolidated.

In the interregnum, on June 10, 1997, the Supreme Court rendered a Decision[32] in G.R. No. 106812, the dispositive portion of which reads:

> WHEREFORE, the decision of respondent Court of Appeals promulgated on November 11, 1991 and its resolution of August 24, 1992, and the decision of the Regional Trial Court of Cavite dated December 5, 1989 are hereby REVERSED and SET ASIDE. The "Petition for Entry of New Certificates of Title" of respondent City of Tagaytay is DENIED.
>
> SO ORDERED.[33]

In denying the petition, the Court ratiocinated, thus:

> The Regional Trial Court of Cavite, sitting as a land registration or cadastral court, could not have ordered the issuance of new certificates of title over the properties in the name of respondent

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[30] CA *rollo* (CA G.R. SP No. 39008), pp. 1-29.

[31] *Id.*

[32] *Tagaytay-Taal Tourist Development Corporation v. Court of Appeals*, G.R. No. 106812, June 10, 1997, 273 SCRA 182.

[33] *Id.* at 199.

City if the delinquency sale was invalid because said properties are actually located in the municipality of Talisay, Batangas, not in Tagaytay City. Stated differently, respondent City could not have validly collected real taxes over properties that are outside its territorial jurisdiction. x x x

x x x x x x x x x

The Regional Trial Court of Cavite in Civil Case No. TG-1196 rendered a decision on October 21, 1994 ruling that the properties in question are actually situated in Talisay, Batangas, hence, the assessment of real estate taxes thereon by respondent City and the auction sale of the properties on November 28, 1983, as well as the Certificate of Sale and Final Bill of Sale in favor of respondent City are null and void. We quote with favor portions of said decision:

> As earlier stated herein, the portion of Barrio of Birinayan, Municipality of Talisay, Province of Batangas, by virtue of the provisions of Commonwealth Act No. 338 corresponds to Exhibit "1-B" of the Plan of Mendez-Nuñez marked as Exhibit "1," and it is noted that Exhibit "1-B" or that portion of the Municipality of Talisay, Province of Batangas given to the respondent City under Commonwealth Act No. 338 is located below the Tagaytay Ridge which was the boundary between the Provinces of Cavite and Batangas before the enactment of Commonwealth Act No. 338. Thus, taking into account the above-quoted portion of the explanatory note of Republic Act No. 1418, there can be no doubt that what had been ordered returned by the law to the Municipality of Talisay, Province of Batangas does not extend only to the portion annexed to the respondent City by virtue of Executive Order No. 336 but also the portion mentioned under Commonwealth Act No. 338. Besides, the same explanatory note mentions specifically the return of the two (2) barrios of Talisay, Batangas, and not merely portions thereof, hence the conclusion is inescapable that Republic Act No. 1418 intended the return of the entire barrios of Caloocan and Birinayan to the same municipality.
>
> It is beyond [any] doubt, therefore, that Lots 10-A and 10-B of TCT Nos. T-9816 and T-9817 of petitioner, which are located in Barrio Birinayan, Municipality of Talisay, Province of Batangas, at the time Republic Act No. 1418 took effect, are

no longer within the territorial jurisdiction of the respondent City of Tagaytay and since there is no dispute that under the law, the City of Tagaytay may only subject to the payment of real estate tax properties that are situated within its territorial boundaries (See Sections 27 & 30, Commonwealth Act No. 338; Presidential Decree No. 464; and 1991 Local Government Code), the assessment of real estate taxes imposed by the respondent City on the same properties in the years 1976 up to 1983 appears to be legally unwarranted. In the same manner, the public auction sale, which was conducted by the same respondent on November 28, 1989, for deficiencies on the part of the petitioner to pay real estate taxes on the same years, as well as the certificates of sale and the final bills issued and executed in connection with such auction sale, and all proceedings taken by the respondent City in connection therewith are all considered by this Court as illegal, and null and void.

In fine, this Court finds from the evidence adduced on record that petitioner has preponderantly established its entitlement to the reliefs mentioned in its petition.

WHEREFORE, judgment is hereby rendered granting the instant petition and as a consequence, the public auction sale of the properties of the petitioner, both covered by TCT Nos. T-9816 and T-9817 of the Registry of Deeds of Tagaytay City, as well as the Certificates of Sale and the Final Bills of Sale of said properties in favor of the respondent Tagaytay City, and all proceedings held in connection therewith are hereby annulled and set aside, and the respondent Register of Deeds of the City of Tagaytay is hereby directed to cancel Entries Nos. 21951/T-9816, 21984/T-9816 annotated and appearing on TCT No. T-9816 and Entries Nos. 21950/T-98917 and 30087/T-9817 annotated and appearing on TCT No. T-9817 regarding the sale of the lots described therein in favor of the City of Tagaytay.

The above-cited decision has not been appealed and is now final and executory.[34]

The Supreme Court decision in G.R. No. 108612 is already final and executory.

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[34] *Id.* at 196-199. (Citations omitted.)

On June 19, 1998, the CA rendered a Decision[35] dismissing the consolidated petitions for annulment of judgment of the RTC Decision in Civil Case No. TG-1196.

Both the City of Tagaytay and the Melencios filed their respective motions for reconsideration. However, both motions were denied in the Resolution[36] of the CA dated November 11, 1999.

Hence, the instant consolidated petitions.

The Issues

In G.R. Nos. 140743 and 140745, petitioner City of Tagaytay assigns the following errors:

THE HONORABLE COURT OF APPEALS ERRED IN FAILING TO RULE ON THE QUESTION OF JURISDICTION AND TO CONSIDER THE FACT THAT THE REGIONAL TRIAL COURT OF TAGAYTAY CITY HAS NO JURISDICTION TO RENDER ITS OCTOBER 21, 1994 DECISION BECAUSE:

A] THE REGIONAL TRIAL COURT HAS NO ORIGINAL JURISDICTION OVER A BOUNDARY DISPUTE BETWEEN TWO PROVINCES (CAVITE AND BATANGAS). THE LOCAL GOVERNMENT CODE CLEARLY VESTS PRIMARY AND ORIGINAL JURISDICTION OVER BOUNDARY DISPUTES TO THE SANGGUNIAN OF THE LOCAL GOVERNMENT UNITS CONCERNED;

B] THE REGIONAL TRIAL COURT DID NOT ACQUIRE JURISDICTION OVER THE CASE FOR FAILURE OF PRIVATE RESPONDENT TO COMPLY WITH THE JURISDICTIONAL REQUIREMENT OF DEPOSITING/PAYING TO THE COURT THE AMOUNT EQUIVALENT TO THE TAX SALE AS MANDATED BY SECTION 83 OF PRESIDENTIAL DECREE NO. 464 OTHERWISE KNOWN AS THE "REAL PROPERTY TAX CODE" AND SECTION 35 (C) OF COMMONWEALTH ACT NO. 338 (TAGAYTAY CITY CHARTER); AND

C] THE REGIONAL TRIAL COURT HAS NO JURISDICTION TO CHANGE/AMEND THE EXISTING TERRITORIAL LIMITS OF POLITICAL SUBDIVISIONS.[37]

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[35] *Supra* note 1.

[36] *Supra* note 2.

[37] *Rollo* (G.R. Nos. 140743 and 140745), p. 17.

In G.R. Nos. 141451-52, the Melencios assign the following errors, *viz.*:

I.

THE COURT OF APPEALS ERRED IN RULING THAT FOR EXTRINSIC FRAUD TO JUSTIFY AND/OR WARRANT THE NULLIFICATION OF THE DECISION OF THE REGIONAL TRIAL COURT, THE SAME MUST BE COMMITTED BY THE "PREVAILING PARTY."

II.

THE COURT OF APPEALS FAILED TO CONSIDER THAT PETITIONERS HAVE VESTED RIGHTS OVER THE SUBJECT PARCELS OF LAND.

III.

THE COURT OF APPEALS ERRED IN FAILING TO ANNUL THE JUDGMENT ON THE GROUND THAT PETITIONERS WERE NOT IMPLEADED IN THE CASE DESPITE BEING INDISPENSABLE PARTIES.

IV.

THE COURT OF APPEALS ERRED IN DISREGARDING THE FOLLOWING JURISDICTIONAL ISSUES:

(1) SECTION 83 OF PD 464;

(2) THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES.

(3) THE DOCTRINE OF NON-FORUM SHOPPING;

(4) DOCTRINE OF LITIS PENDENTIA; AND

(5) THE DOCTRINE OF NON-INTERFERENCE OF CO-EQUAL BODY

V.

THE COURT OF APPEALS ERRED IN FAILING TO DECLARE THAT RESPONDENT COURT HAD NO JURISDICTION TO REPEAL BY IMPLICATION THE PROVISIONS OF COMMONWEALTH ACT NO. 338 WHICH REFERS TO THE SUBJECT PARCELS OF LAND.[38]

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[38] *Rollo* (G.R. Nos. 141451-52), p. 501.

The errors assigned by petitioners may be distilled into two major issues: (1) whether the RTC had jurisdiction to settle the alleged boundary dispute; and (2) whether the City of Tagaytay committed extrinsic fraud against the Melencios.

The Ruling of the Court

I. *On Lack of Jurisdiction*

The consolidated petitions are an offshoot of the petitions for annulment of judgment of the RTC Decision in Civil Case No. TG-1196 filed by the City of Tagaytay and the Melencios.

Annulment of Judgment under Rule 47 of the Rules of Court is a recourse equitable in character and allowed only in exceptional cases where the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of petitioner.[39] Section 2 of the said Rule provides that the annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction, although jurisprudence recognizes denial of due process as an additional ground.[40]

Petitioners aver that the instant case involves a boundary dispute and, thus, the RTC had no jurisdiction to decide the matter. They maintain that the basic issue resolved by the RTC was the location of the properties, whether in the City of Tagaytay or in the Province of Batangas. They cite Sections 118 and 119 of the Local Government Code in support of their argument. The said sections read:

SECTION 118. Jurisdictional Responsibility for Settlement of Boundary Dispute. — Boundary disputes between and among local government units shall, as much as possible, be settled amicably. To this end:

(a) Boundary disputes involving two (2) or more barangays in the same city or municipality shall be referred for settlement to the sangguniang panlungsod or sangguniang bayan concerned.

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[39] RULES OF COURT, Rule 47, Sec. 1.

[40] *Biaco v. Philippine Countryside Rural Bank*, G.R. No. 161417, February 8, 2007, 515 SCRA 106; *Intestate Estate of the Late Nimfa Sian v. Philippine National Bank*, G.R. No. 168882, January 31, 2007, 513 SCRA 662; *Arcelona v. Court of Appeals*, 345 Phil. 250 (1997).

(b) Boundary disputes involving two (2) or more municipalities within the same province shall be referred for settlement to the sangguniang panlalawigan concerned.

(c) Boundary disputes involving municipalities or component cities of different provinces shall be jointly referred for settlement to the sanggunians of the province concerned.

(d) Boundary disputes involving a component city or municipality on the one hand and a highly urbanized city on the other, or two (2) or more highly urbanized cities, shall be jointly referred for settlement to the respective sanggunians of the parties.

(e) In the event the sanggunian fails to effect an amicable settlement within sixty (60) days from the date the dispute was referred thereto, it shall issue a certification to that effect. Thereafter, the dispute shall be formally tried by the sanggunian concerned which shall decide the issue within sixty (60) days from the date of the certification referred to above.

SECTION 119. Appeal. — Within the time and manner prescribed by the Rules of Court, any party may elevate the decision of the sanggunian concerned to the proper Regional Trial Court having jurisdiction over the area in dispute. The Regional Trial Court shall decide the appeal within one (1) year from the filing thereof. Pending final resolution of the disputed area prior to the dispute shall be maintained and continued for all legal purposes.

They further claimed that the RTC had no jurisdiction to repeal by implication Commonwealth Act No. 338,[41] particularly on the territorial limits of the City of Tagaytay.

The subject properties, covered by TCT Nos. 9816 and 9817, are more particularly described as follows:

TECHNICAL DESCRIPTION
TCT No. T-9816
CITY OF TAGAYTAY

A parcel of land (Lot 10-A of the subdivision plan (LRC) Psd-229279, being a portion of Lot 10, Psu-82838, Amd. 4 LRC Record No. 49057), situated in the Barrio of Birinayan, Municipality of Talisay, Province of Batangas, Island of Luzon. Bounded on the NW., and

[41] Charter of the City of Tagaytay.

NE., points 7 to 1, and 1 to 2 by Lot 10-B; on the SE., points 3 to 4, by Lot 10-C both of the subdivision plan; and on the SW., points 4 to 7, by property of Agapito Rodriguez x x x containing an area of SEVENTY FOUR THOUSAND THREE HUNDRED FORTY (74,340) SQUARE METERS, more or less x x x.[42]

TECHNICAL DESCRIPTION
TCT No. T-9817
CITY OF TAGAYTAY

A parcel of land (Lot 10-B, of the subdivision plan (LRC) Psd-229279, being a portion of Lot 10, Psu-82838, Amd. 4., LRC Record No. 49057), situated in the Barrio of Birinayan, Municipality of Talisay, Province of Batangas, Island of Luzon. Bounded on the NE., points 14 to 1; and 1 to 4 by property of Angel T. Limjoco; on the SE., points 4 to 5 by Lot 10-D; on the SW., and SE., points 5 to 7 by Lot 10-A, both of the subdivision plan; on the SW., points 7 to 9 by property of Agapito Rodriguez; and on the NW., points 9 to 12 by Lot 11, points 12 to 13 by Lot 9, and points 13 to 14 by Lot 7, x x x containing an area of NINE HUNDRED THIRTY SEVEN THOUSAND EIGHT HUNDRED FOURTEEN (937,814) SQUARE METERS, more or less. x x x.[43]

Based on the decision of the Court in G.R. No. 106812 and the findings of fact of the RTC, as affirmed by the CA, the subject properties that are situated in Barrio Birinayan, Municipality of Talisay, are within the territorial jurisdiction of the Province of Batangas. This factual finding binds this Court and is no longer subject to review. Recourse under Rule 45 of the Rules of Court, as in this case, generally precludes the determination of factual issues.

Under Commonwealth Act No. 338, Barrio Birinayan was annexed to the City of Tagaytay as of its incorporation on June 31, 1938. However, upon the passage of R.A. No. 1418[44] on

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[42] CA *rollo* (CA G.R. SP No. 38298), pp. 362-363.

[43] *Id.* at 364-365.

[44] AN ACT TO TRANSFER TO THE MUNICIPALITY OF TALISAY, PROVINCE OF BATANGAS, ITS FORMER BARRIOS OF CALOOCAN AND BIRINAYAN WHICH WERE ANNEXED TO THE CITY OF TAGAYTAY.

June 7, 1956, Barrio Birinayan was taken away from the City of Tagaytay and transferred to the Province of Batangas. The pertinent portions of R.A. No. 1418 read:

SECTION 1. The former barrios of Caloocan and Birinayan of the Municipality of Talisay, Province of Batangas, which were annexed to the City of Tagaytay, are hereby separated from the latter city and transferred to the said Municipality of Talisay.

SECTION 2. The portion of Executive Order numbered three hundred and thirty-six, dated April first, nineteen hundred and forty-one, relating to the transfer of the said barrios of Caloocan and Birinayan to the City of Tagaytay, is hereby repealed.

On June 21, 1969, by virtue of R.A. No. 5689,[45] Barrio Birinayan became part of the Municipality of Laurel, Province of Batangas. Section 1 of R.A. No. 5689 reads:

SECTION 1. Barrios Bayuyungan, Ticub, Balakilong, Bugaan, Borinayan, As-is, San Gabriel, and Buso-buso in the Municipality of Talisay, Province of Batangas, are separated from said municipality and constituted into a distinct and independent municipality to be known as the Municipality of Laurel, same province. The seat of government of the new municipality shall be in the present site of Barrio Bayuyungan.

Central to the resolution of this dispute is the proper interpretation of Section 1 of R.A. No. 1418. Petitioner City of Tagaytay argues that only certain portions of Birinayan were transferred to the Province of Batangas, and not the entire Barrio. However, upon perusal, it can be easily discerned that the law is clear and categorical. The transfer of the entire Barrio Birinayan to the Municipality of Talisay, Province of Batangas, is definite and unqualified. There is no indication that only certain portions of the Barrio were transferred. Thus, no further interpretation is required in order to ascertain its meaning and consequent implication.

A statute is not subject to interpretation or construction as a matter of course. It is only when the language of the statute

[45] AN ACT CREATING THE MUNICIPALITY OF LAUREL IN THE PROVINCE OF BATANGAS.

is ambiguous when taken in relation to a set of facts, or reasonable minds disagree as to its meaning, that interpretation or construction becomes necessary. Where the terms of the statute are clear and unambiguous, no interpretation is called for, and the law is applied as written, for application is the first duty of the court, and interpretation is needed only where literal application is impossible or inadequate.[46]

Every statute is understood to contain, by implication, if not by its express terms, all such provisions as may be necessary to effectuate its object and purpose, or to make effective the rights, powers, privileges, or jurisdiction which it grants, and also all such collateral and subsidiary consequences as may be fairly and logically inferred from its terms.[47]

There is no boundary dispute in the case at bar. The RTC did not amend the existing territorial limits of the City of Tagaytay and the Province of Batangas. The entire Barrio Birinayan was transferred to the Municipality of Talisay, Province of Batangas, by virtue of R.A. No. 1418. At present, Barrio Birinayan forms part of the Municipality of Laurel, also in the Province of Batangas, pursuant to R.A. No. 5689. The RTC acted well within its powers when it passed judgment on the nullification of the auction sale of the contested properties, considering that the City of Tagaytay has no right to collect real estate taxes on properties that are not within its territorial jurisdiction.

The City of Tagaytay acted in bad faith when it levied real estate taxes on the subject properties. R.A. No. 1418 became law as early as 1956. The City of Tagaytay is conclusively presumed to know the law that delineates its jurisdiction, more especially when the law, as in this case, is clear and categorical. Men of common intelligence need not guess at its meaning and differ on its application. The entire Barrio Birinayan, not only portions thereof, was transferred to the Province of Batangas.

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[46] *Commissioner of Internal Revenue v. Limpan Investment Corp., et al.*, 145 Phil. 191 (1970).

[47] *Department of Agrarian Reform v. Philippine Communications Satellite Corp.*, G.R. No. 152640, June 15, 2006, 490 SCRA 729; *Go Chioco v. Martinez*, 45 Phil. 256 (1923).

If it was the true intention of the legislature to transfer only certain portions of Barrio Birinayan to the Province of Batangas, it would have plainly stated so in the law.

Petitioners also claim that the doctrine of exhaustion of administrative remedies was violated when the RTC took cognizance of the case for the annulment of the auction sale. They aver that the jurisdiction of the RTC is only appellate in view of Section 119 of R.A. No. 7160. However, as already explained, the instant case does not involve a boundary dispute. As such, there is no room for the application of Section 119.

Petitioners likewise make reference to Section 83 of P.D. No. 464 to assail the jurisdiction of the RTC in entertaining the petition for the annulment of the auction sale of the contested properties. They aver that compliance with Section 83 of P.D. No. 464 is a jurisdictional requirement that must be complied with before a court may take cognizance of a case assailing the validity of a tax sale of real estate. The said Section reads:

Section 83. Suits assailing validity of tax sale. No court shall entertain any suit assailing the validity of a tax sale of real estate under this Chapter until the taxpayer shall have paid into court the amount for which the real property was sold, together with interests of twenty per centum per annum upon that sum from the date of sale to the time of instituting suit. The money so paid into court shall belong to the purchaser at the tax sale if the deed is declared invalid, but shall be returned to the depositor if the action fails.

However, this provision may only be used in a voidable tax sale. When the sale is void because the property subjected to real estate tax is not situated within the jurisdiction of the taxing authority, the provision cannot be invoked. In this case, there is already a final and executory decision by the Supreme Court in G.R. No. 106812 that the properties are situated outside the territorial jurisdiction of the City of Tagaytay. Thus, there was no basis for the collection of the real estate tax.

The other arguments of petitioners, *i.e.*, violation of the doctrine of non-forum shopping, violation of the doctrine of *litis pendentia* and the doctrine of non-interference of a co-equal body, must

likewise be struck down. These issues were already addressed by the Court, through the *ponencia* of Justice Kapunan, in G.R. No. 106812, *viz.*:

> The issues raised before the RTC sitting as a land registration or cadastral court, without question, involved substantial or controversial matters and, consequently, beyond said court's jurisdiction. The issues may be resolved only by a court of general jurisdiction.

In Re: *Balanga v. Court of Appeals*, we emphatically held:

> x x x. While it is true that Section 78 of Act. 496 on which the petition is based provides that upon the failure of the judgment-debtor to redeem the property sold at public auction the purchaser of the land *may be granted* a new certificate of title, the exercise of such function is qualified by the provision that "at any time prior to the entry of a new certificate the registered owner may pursue all his lawful remedies to impeach or annul proceedings under executions or to enforce liens of any description." The right, therefore, to petition for a new certificate under said section is not absolute but subject to the determination of any objection that may be interposed relative to the validity of the proceedings leading to the transfer of the land subject thereof which should be threshed out in a separate appropriate action. This is the situation that obtains herein. Teopista Balanga, the judgment-debtor, is trying to impeach or annul the execution and sale of the properties in question by alleging that they are conjugal in nature and the house erected on the land has been constituted as a family home which under the law is exempt from execution. These questions should first be determined by the court in an ordinary action before entry of a new certificate may be decreed.
>
> This pronouncement is also in line with the interpretation we have placed on Section 112 of the same Act to the effect that although cadastral courts are empowered to order the cancellation of a certificate of title and the issuance of a new one in favor of the purchaser of the land covered by it, such relief can only be granted if there is unanimity among the parties, or no serious objection is interposed by a party in interest. As this Court has aptly said: "While this section, (112) among other things, authorizes a person in interest to ask the court

> for any erasure, alteration, or amendment of a certificate of title x x x and apparently the petition comes under its scope, such relief can only be granted if there is unanimity among the parties, or there is no adverse claim or serious objection on the part of any party in interest; otherwise the case becomes controversial and should be threshed out in an ordinary case or in the case where the incident properly belongs" (*Angeles v. Razon*, G.R. No. L-13679, October 26, 1959, and cases cited therein). x x x.
>
> From the foregoing ruling, it is clear that petitions under Section 75 and Section 108 of P.D. 1529 (formerly Sec. 78 and Sec. 112 of Act 496) can be taken cognizance of by the RTC sitting as a land registration or cadastral court. Relief under said sections can only be granted if there is *unanimity among the parties*, or that there is no adverse claim or serious objection on the part of any party in interest; otherwise, the case becomes controversial and should be threshed out in an ordinary case or in the case where the incident properly belongs.[48]

The foregoing *ponencia* is now the controlling precedent on the matters being raised anew by petitioners. We can no longer digress from such ruling. The determination of the questions of fact and of law by this Court in G.R. No. 106812 already attained finality, and may not now be disputed or relitigated by a reopening of the same questions in a subsequent litigation between the same parties and their privies over the same subject matter.

Furthermore, Section 4, sub-paragraph (3), Article VIII of the 1987 Constitution explicitly provides that no doctrine or principle of law laid down by the Supreme Court en banc or its Divisions may be modified or reversed except by the Court sitting en banc. Reasons of public policy, judicial orderliness, economy, judicial time, and interests of litigants, as well as the peace and order of society, all require that stability be accorded the solemn and final judgments of the courts or tribunals of competent jurisdiction. There can be no question that such reasons apply with greater force to final judgments of the highest Court of the land.[49]

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[48] *Tagaytay-Taal Tourist Development Corporation v. Court of Appeals*, *supra* note 32. (Citations omitted.)

[49] *Lee Bun Ting v. Judge Aligaen*, 167 Phil. 164 (1977).

II. *On Extrinsic Fraud*

Fraud is of two categories. It may either be: (a) actual or constructive and (b) extrinsic or intrinsic.

Actual or positive fraud proceeds from an intentional deception practiced by means of the misrepresentation or concealment of a material fact. Constructive fraud is construed as such because of its detrimental effect upon public interest and public or private confidence, even though the act is not done with an actual design to commit positive fraud or injury upon other persons.[50]

On the other hand, fraud may also be either extrinsic or intrinsic. There is intrinsic fraud where the fraudulent acts pertain to an issue involved in the original action, or where the acts constituting the fraud were or could have been litigated therein. Fraud is regarded as extrinsic where the act prevents a party from having a trial or from presenting his entire case to the court, or where it operates upon matters pertaining not to the judgment itself but to the manner in which it is procured, so that there is not a fair submission of the controversy. Extrinsic fraud is also actual fraud, but collateral to the transaction sued upon.[51]

In this case, the Melencios allege extrinsic fraud on the part of petitioner City of Tagaytay for its failure to implead them in Civil Case No. TG-1196. They allege that they are indispensable parties to the case, considering that have vested rights to protect, being purchasers of the subject parcels of land. Sadly, this contention does not persuade.

Extrinsic fraud refers to any fraudulent act of the prevailing party in the litigation which is committed outside of the trial of the case, whereby the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent. The fraud or deceit cannot be of the losing party's own doing, nor must such party contribute to it.

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[50] *Cal, Jr. v. Zosa*, G.R. No. 152518, July 31, 2006, 497 SCRA 291.

[51] *Id.*

The extrinsic fraud must be employed against it by the adverse party, who, because of some trick, artifice, or device, naturally prevails in the suit.[52] It affects not the judgment itself but the manner in which the said judgment is obtained.[53]

Extrinsic fraud is also present where the unsuccessful party has been prevented by his opponent from exhibiting fully his case by keeping the former away from court or giving him a false promise of a compromise; or where the defendant never had knowledge of the suit, having been kept in ignorance by the acts of the plaintiff; or where an attorney fraudulently or without authority assumed to represent a party and connived at his defeat; or where the attorney regularly employed corruptly sold out his client's interest to the other side. The overriding consideration is that the fraudulent scheme of the prevailing litigant prevented a party from having his day in court.[54]

In the instant case, we find that the action or inaction of the City of Tagaytay does not amount to extrinsic fraud. The City of Tagaytay is not the prevailing party in the assailed decision. Moreover, the Melencios were not totally without fault in protecting their interest. They were aware of the pendency of Civil Case No. TG-1196, as shown by their filing of a motion to intervene in the case. When their motion was denied by the trial court, they no longer pursued their cause.

The alleged assurances and representations of certain officials of the City of Tagaytay that they would file the necessary motion for reconsideration or appeal in case of an unfavorable decision in Civil Case No. TG-1196 was not an impediment to the Melencios protecting their rights over the disputed properties. There is no allegation that the City of Tagaytay prevented them from, or induced them against, acting on their own. Its failure to implead the Melencios did not prevent the latter from having their day in court, which is the essence of extrinsic fraud.

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[52] *Tan v. Court of Appeals*, G.R. No. 157194, June 20, 2006, 491 SCRA 452.

[53] *People v. Bitanga*, G.R. No. 159222, June 26, 2007, 525 SCRA 623.

[54] *Biaco v. Philippine Countryside Rural Bank*, *supra* note 40.

The foregoing disquisition notwithstanding, we reiterate our finding that the City of Tagaytay acted in bad faith when it levied real estate taxes on the subject properties, and should be held accountable for all the consequences thereof, including the void sale of the properties to the Melencios.

The City of Tagaytay is accountable for erroneously assessing taxes on properties outside its territorial jurisdiction. As of the passage of R.A. No. 1418 in 1956, the City of Tagaytay is presumed to know that Barrio Birinayan, in which the subject properties are situated, is no longer within its territorial jurisdiction and beyond its taxing powers.

Under the doctrine of *respondeat superior*, the principal is liable for the negligence of its agents acting within the scope of their assigned tasks.[55] The City of Tagaytay is liable for all the necessary and natural consequences of the negligent acts of its city officials. It is liable for the tortious acts committed by its agents who sold the subject lots to the Melencios despite the clear mandate of R.A. No. 1418, separating Barrio Birinayan from its jurisdiction and transferring the same to the Province of Batangas. The negligence of the officers of the City of Tagaytay in the performance of their official functions gives rise to an action *ex contractu* and *quasi ex-delictu*. However, the Melencios cannot recover twice for the same act or omission of the City of Tagaytay.

Negligence is the failure to observe protection of the interests of another person, that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury.[56] Thus, negligence is the want of care required under circumstances.[57]

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[55] *City of Manila v. Intermediate Appellate Court*, G.R. No. 71159, November 15, 1989, 179 SCRA 428; *Torio v. Fontanilla*, G.R. Nos. L-29993 and L-30183, October 23, 1978, 85 SCRA 599; *Municipality of Moncada v. Cajuigan*, G.R. No. 7048, January 12, 1912, 21 Phil. 184.

[56] *Layugan v. Intermediate Appellate Court*, G.R. No. L-73998, November 14, 1988, 167 SCRA 363.

[57] *Corliss v. Manila Railroad Company*, No. L-21291, March 28, 1969, 27 SCRA 674.

In this case, it is basic that before the City of Tagaytay may levy a certain property for sale due to tax delinquency, the subject property should be under its territorial jurisdiction. The city officials are expected to know such basic principle of law. The failure of the city officials of Tagaytay to verify if the property is within its jurisdiction before levying taxes on the same constitutes gross negligence.

Accordingly, the City of Tagaytay is liable to return the full amount paid by the Melencios during the auction sale of the subject properties by way of actual damages. The amount paid at the auction sale shall earn interest at the rate of six percent (6%) per annum from the time of the finality of the RTC decision in Civil Case No. TG-1196, when the claim was judicially demanded. Thereafter, interest at the rate of twelve percent (12%), in lieu of the 6%, shall be imposed on such amount upon finality of this decision until full payment thereof.[58]

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[58] The foregoing disposition on the interest rate on the amount of liability of the City of Tagaytay to the Melencios is based on the guidelines set by the Court in *Eastern Shipping Lines v. Court of Appeals*, (234 SCRA 78), *viz*.:

I. When an obligation, regardless of its source, *i.e*., law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e*., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, *i.e*., from judicial or extrajudicial demand under and subject to the provisions of Article 1169[65] 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

The gross negligence of the City of Tagaytay in levying taxes and auctioning properties to answer for real property tax deficiencies outside its territorial jurisdiction amounts to bad faith that calls for the award of moral damages. Moral damages are meant to compensate the claimant for any physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injuries unjustly caused. Although incapable of pecuniary estimation, the amount must somehow be proportional to and in approximation of the suffering inflicted.[59]

Moral damages are awarded to enable the injured party to obtain means, diversions or amusements that will serve to alleviate the moral suffering the person has undergone, by reason of defendant's culpable action. The award is aimed at restoration, as much as possible, of the spiritual *status quo ante*. Thus, it must be proportionate to the suffering inflicted. Since each case must be governed by its own peculiar circumstances, there is no hard and fast rule in determining the proper amount.[60]

The social standing of the aggrieved party is essential to the determination of the proper amount of the award. Otherwise, the goal of enabling him to obtain means, diversions, or

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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 of 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 of 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.

[59] *Kierulf v. Court of Appeals*, G.R. Nos. 99301 and 99343, March 13, 1997, 269 SCRA 433, 451.

[60] *Id.* at 452.

amusements to restore him to the *status quo ante* would not be achieved.[61]

The Melencios are likewise entitled to exemplary damages. Exemplary or corrective damages are imposed by way of example or correction for the public good, in addition to the moral, temperate, liquidated, or compensatory damages.[62] Article 2229 of the Civil Code grants the award of exemplary or corrective damages in order to deter the commission of similar acts in the future and to allow the courts to mould behavior that can have grave and deleterious consequences to society.[63] In the instant case, the gross negligence of the City of Tagaytay in erroneously exacting taxes and selling properties outside its jurisdiction, despite the clear mandate of statutory law, must be rectified.

WHEREFORE, in lieu of the foregoing, the Decision dated June 19, 1998 and the Resolution dated November 11, 1999 of the Court of Appeals in CA-G.R. SP Nos. 39008 and 38298 are hereby *AFFIRMED WITH MODIFICATIONS*:

(1) The City of Tagaytay is hereby *ORDERED* to return to petitioners Ameurfina Melencio-Herrera and Emilina Melencio-Fernando the total amount that they have paid in connection with the auction sale of the lands covered by Transfer Certificate of Title Nos. 9816 and 9817, plus interest on the said amount at six percent (6%) per annum from the date of the finality of the decision of the Regional Trial Court in Civil Case No. TG-1196. A twelve percent (12%) interest per annum, in lieu of the six percent (6%), shall be imposed on such amount upon finality of this decision until the full payment thereof;

(2) The City of Tagaytay is hereby *ORDERED* to pay petitioners Ameurfina Melencio-Herrera and Emilina Melencio-Fernando moral damages in the amount of Five Hundred Thousand Pesos (₱500,000.00);

(3) The City of Tagaytay is hereby *ORDERED* to pay petitioners Ameurfina Melencio-Herrera and Emilina Melencio-

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[61] *Samson, Jr. v. Bank of the Philippine Islands*, 453 Phil. 577 (2003).

Fernando exemplary damages in the amount of Two Hundred Thousand Pesos (₱200,000.00); and

(4) To pay the costs of this suit.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 175490. September 17, 2009]

ILEANA DR. MACALINAO, *petitioner, vs.* **BANK OF THE PHILIPPINE ISLANDS,** *respondent.*

SYLLABUS

1. CIVIL LAW; LOANS; INTEREST; EXCESSIVE AND UNCONSCIONABLE INTEREST RATE AND PENALTY CHARGES SHOULD BE EQUITABLY REDUCED; APPLICATION.— We are of the opinion that the interest rate and penalty charge of 3% per month should be equitably reduced to 2% per month or 24% per annum. Indeed, in the Terms and Conditions Governing the Issuance and Use of the BPI Credit Card, there was a stipulation on the 3% interest rate. Nevertheless, it should be noted that this is not the first time that this Court has considered the interest rate of 36% per annum as excessive and unconscionable. x x x *We need not unsettle the principle we had affirmed in a plethora of cases that stipulated interest rates of 3% per month and higher are excessive, iniquitous, unconscionable and exorbitant. Such stipulations are void for being contrary to morals, if not against the law.* x x x Since the stipulation on the interest rate is void, it is as if there was no express contract thereon. Hence,

courts may reduce the interest rate as reason and equity demand. The same is true with respect to the penalty charge. Notably, under the Terms and Conditions Governing the Issuance and Use of the BPI Credit Card, it was also stated therein that respondent BPI shall impose an additional penalty charge of 3% per month. Pertinently, Article 1229 of the Civil Code states: x x x In exercising [its] power to determine what is iniquitous and unconscionable, courts must consider the circumstances of each case since what may be iniquitous and unconscionable in one may be totally just and equitable in another. In the instant case, the records would reveal that petitioner Macalinao made partial payments to respondent BPI, as indicated in her Billing Statements. Further, the stipulated penalty charge of 3% per month or 36% per annum, in addition to regular interests, is indeed iniquitous and unconscionable. Thus, under the circumstances, the Court finds it equitable to reduce the interest rate pegged by the CA at 1.5% monthly to 1% monthly and penalty charge fixed by the CA at 1.5% monthly to 1% monthly or a total of 2% per month or 24% per annum in line with the prevailing jurisprudence and in accordance with Art. 1229 of the Civil Code.

2. REMEDIAL LAW; REVISED RULE ON SUMMARY PROCEDURE; EFFECT OF FAILURE TO ANSWER.— Based on the records, the summons and a copy of the complaint were served upon petitioner Macalinao and her husband on May 4, 2004. Nevertheless, they failed to file their Answer despite such service. Thus, respondent BPI moved that judgment be rendered accordingly. Consequently, a decision was rendered by the MeTC on the basis of the evidence submitted by respondent BPI. This is in consonance with Sec. 6 of the Revised Rule on Summary Procedure. x x x Considering the foregoing rule, respondent BPI should not be made to suffer for petitioner Macalinao's failure to file an answer and concomitantly, to allow the latter to submit additional evidence by dismissing or remanding the case for further reception of evidence. Significantly, petitioner Macalinao herself admitted the existence of her obligation to respondent BPI, albeit with reservation as to the principal amount. Thus, a dismissal of the case would cause great injustice to respondent BPI. Similarly, a remand of the case for further reception of evidence would unduly prolong the proceedings of the instant case and render inutile the proceedings conducted before the lower courts.

APPEARANCES OF COUNSEL

Soo Gutierrez Leogardo & Lee for petitioner.
Cases Corpuz & Associates Law Offices for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the June 30, 2006 Decision[1] of the Court of Appeals (CA) and its November 21, 2006 Resolution[2] denying petitioner's motion for reconsideration.

The Facts

Petitioner Ileana Macalinao was an approved cardholder of BPI Mastercard, one of the credit card facilities of respondent Bank of the Philippine Islands (BPI).[3] Petitioner Macalinao made some purchases through the use of the said credit card and defaulted in paying for said purchases. She subsequently received a letter dated January 5, 2004 from respondent BPI, demanding payment of the amount of one hundred forty-one thousand five hundred eighteen pesos and thirty-four centavos (PhP 141,518.34), as follows:

Statement Date	Previous Balance	Purchases (Payments)	Penalty Interest	Finance Charges	Balance Due
10/27/2002	94,843.70		559.72	3,061.99	98,456.41
11/27/2002	98,465.41	(15,000)	0	2,885.61	86,351.02
12/31/2002	86,351.02	30,308.80	259.05	2,806.41	119,752.28

[1] *Rollo*, pp. 29-38. Penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Godardo A. Jacinto and Rosalinda Asuncion-Vicente.

[2] *Id.* at 40-41.

[3] *Id.* at 30.

1/27/2003	119,752.28		618.23	3,891.07	124,234.58
2/27/2003	124,234.58		990.93	4,037.62	129,263.13
3/27/2003	129,263.13	(18,000.00)	298.72	3,616.05	115,177.90
4/27/2003	115,177.90		644.26	3,743.28	119,565.44
5/27/2003	119,565.44	(10,000.00)	402.95	3,571.71	113,540.10
6/29/2003	113,540.10	8,362.50 (7,000.00)	323.57	3,607.32	118,833.49
7/27/2003	118,833.49		608.07	3,862.09	123,375.65
8/27/2003	123,375.65		1,050.20	4,009.71	128,435.56
9/28/2003	128,435.56		1,435.51	4,174.16	134,045.23
10/28/2003					
11/28/2003					
12/28/2003					
12/28/2003					
1/27/2004	**141,518.34**		8,491.10	4,599.34	**154,608.78**

Under the Terms and Conditions Governing the Issuance and Use of the BPI Credit and BPI Mastercard, the charges or balance thereof remaining unpaid after the payment due date indicated on the monthly Statement of Accounts shall bear interest at the rate of 3% per month and an additional penalty fee equivalent to another 3% per month. Particularly:

8. PAYMENT OF CHARGES – BCC shall furnish the Cardholder a monthly Statement of Account (SOA) and the Cardholder agrees that all charges made through the use of the CARD shall be paid by the Cardholder as stated in the SOA on or before the last day for payment, which is twenty (20) days from the date of the said SOA, and such payment due date may be changed to an earlier date if the Cardholder's account is considered overdue and/or with balances in excess of the approved credit limit, or to such other date as may be deemed proper by the CARD issuer with notice to the Cardholder on the same monthly SOA. If the last day fall on a Saturday, Sunday or a holiday, the last day for the payment automatically becomes the last working day prior to said payment date. However,

notwithstanding the absence or lack of proof of service of the SOA of the Cardholder, the latter shall pay any and all charges made through the use of the CARD within thirty (30) days from date or dates thereof. Failure of the Cardholder to pay the charges made through the CARD within the payment period as stated in the SOA or within thirty (30) days from actual date or dates of purchase whichever occur earlier, shall render him in default without the necessity of demand from BCC, which the Cardholder expressly waives. **The charges or balance thereof remaining unpaid after the payment due date indicated on the monthly Statement of Accounts shall bear interest at the rate of 3% per month for BPI Express Credit, BPI Gold Mastercard and an additional penalty fee equivalent to another 3% of the amount due for every month or a fraction of a month's delay.** PROVIDED that if there occurs any change on the prevailing market rates, BCC shall have the option to adjust the rate of interest and/or penalty fee due on the outstanding obligation with prior notice to the cardholder. The Cardholder hereby authorizes BCC to correspondingly increase the rate of such interest [in] the event of changes in the prevailing market rates, and to charge additional service fees as may be deemed necessary in order to maintain its service to the Cardholder. A CARD with outstanding balance unpaid after thirty (30) days from original billing statement date shall automatically be suspended, and those with accounts unpaid after ninety (90) days from said original billing/statement date shall automatically be cancel (*sic*), without prejudice to BCC's right to suspend or cancel any card anytime and for whatever reason. In case of default in his obligation as provided herein, Cardholder shall surrender his/her card to BCC and in addition to the interest and penalty charges aforementioned , pay the following liquidated damages and/or fees (a) a collection fee of 25% of the amount due if the account is referred to a collection agency or attorney; (b) service fee for every dishonored check issued by the cardholder in payment of his account without prejudice, however, to BCC's right of considering Cardholder's account, and (c) a final fee equivalent to 25% of the unpaid balance, exclusive of litigation expenses and judicial cost, if the payment of the account is enforced though court action. Venue of all civil suits to enforce this Agreement or any other suit directly or indirectly arising from the relationship between the parties as established herein, whether arising from crimes, negligence or breach thereof, shall be in the process of courts of the City of Makati or in other courts at the option of BCC.[4] (Emphasis supplied.)

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

For failure of petitioner Macalinao to settle her obligations, respondent BPI filed with the Metropolitan Trial Court (MeTC) of Makati City a complaint for a sum of money against her and her husband, Danilo SJ. Macalinao. This was raffled to Branch 66 of the MeTC and was docketed as Civil Case No. 84462 entitled *Bank of the Philippine Islands vs. Spouses Ileana Dr. Macalinao and Danilo SJ. Macalinao*.[5]

In said complaint, respondent BPI prayed for the payment of the amount of one hundred fifty-four thousand six hundred eight pesos and seventy-eight centavos (PhP 154,608.78) plus 3.25% finance charges and late payment charges equivalent to 6% of the amount due from February 29, 2004 and an amount equivalent to 25% of the total amount due as attorney's fees, and of the cost of suit.[6]

After the summons and a copy of the complaint were served upon petitioner Macalinao and her husband, they failed to file their Answer.[7] Thus, respondent BPI moved that judgment be rendered in accordance with Section 6 of the Rule on Summary Procedure.[8] This was granted in an Order dated June 16, 2004.[9] Thereafter, respondent BPI submitted its documentary evidence.[10]

In its Decision dated August 2, 2004, the MeTC ruled in favor of respondent BPI and ordered petitioner Macalinao and her husband to pay the amount of PhP 141,518.34 plus interest and penalty charges of 2% per month, to wit:

WHEREFORE, finding merit in the allegations of the complaint supported by documentary evidence, judgment is hereby rendered in favor of the plaintiff, **Bank of the Philippine Islands** and against

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[5] *Id.* at 184.

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

[7] *Id.* at 141.

[8] *Id.* at 165.

[9] *Id.* at 228.

[10] *Id.* at 192-223. The documentary evidence was presented pursuant to the Order dated June 16, 2004 of the MeTC.

defendant-spouses Ileana DR Macalinao and Danilo SJ Macalinao by ordering the latter to pay the former jointly and severally the following:

1. The amount of PESOS: **ONE HUNDRED FORTY ONE THOUSAND FIVE HUNDRED EIGHTEEN AND 34/100 (₱141,518.34)** plus interest and penalty charges of 2% per month from January 05, 2004 until fully paid;

2. ₱10,000.00 as and by way of attorney's fees; and

3. Cost of suit.

SO ORDERED.[11]

Only petitioner Macalinao and her husband appealed to the Regional Trial Court (RTC) of Makati City, their recourse docketed as Civil Case No. 04-1153. In its Decision dated October 14, 2004, the RTC affirmed *in toto* the decision of the MeTC and held:

In any event, the sum of ₱141,518.34 adjudged by the trial court appeared to be the result of a recomputation at the reduced rate of 2% per month. Note that the total amount sought by the plaintiff-appellee was P154,608.75 exclusive of finance charge of 3.25% per month and late payment charge of 6% per month.

WHEREFORE, the appealed decision is hereby affirmed *in toto*.

No pronouncement as to costs.

SO ORDERED.[12]

Unconvinced, petitioner Macalinao filed a petition for review with the CA, which was docketed as CA-G.R. SP No. 92031. The CA affirmed with modification the Decision of the RTC:

WHEREFORE, the appealed decision is **AFFIRMED** but **MODIFIED** with respect to the total amount due and interest rate. Accordingly, petitioners are jointly and severally ordered to pay respondent Bank of the Philippine Islands the following:

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[11] *Id.* at 166. Penned by Judge Perpetua Atal-Paño.

[12] *Id.* at 142-143. Penned by Hon. Manuel D. Victorio.

1. The amount of **One Hundred Twenty Six Thousand Seven Hundred Six Pesos and Seventy Centavos** plus interest and penalty charges of 3% per month from January 5, 2004 until fully paid;

2. ₱10,000.00 as and by way of attorney's fees; and

3. Cost of Suit.

SO ORDERED.[13]

Although sued jointly with her husband, petitioner Macalinao was the only one who filed the petition before the CA since her husband already passed away on October 18, 2005.[14]

In its assailed decision, the CA held that the amount of PhP141,518.34 (the amount sought to be satisfied in the demand letter of respondent BPI) is clearly not the result of the re-computation at the reduced interest rate as previous higher interest rates were already incorporated in the said amount. Thus, the said amount should not be made as basis in computing the total obligation of petitioner Macalinao. Further, the CA also emphasized that respondent BPI should not compound the interest in the instant case absent a stipulation to that effect. The CA also held, however, that the MeTC erred in modifying the amount of interest rate from 3% monthly to only 2% considering that petitioner Macalinao freely availed herself of the credit card facility offered by respondent BPI to the general public. It explained that contracts of adhesion are not invalid per se and are not entirely prohibited.

Petitioner Macalinao's motion for reconsideration was denied by the CA in its Resolution dated November 21, 2006. Hence, petitioner Macalinao is now before this Court with the following assigned errors:

I.

THE REDUCTION OF INTEREST RATE, FROM 9.25% TO 2%, SHOULD BE UPHELD SINCE THE STIPULATED RATE OF

[13] *Id.* at 37.

[14] *Id.* at 146.

INTEREST WAS UNCONSCIONABLE AND INIQUITOUS, AND THUS ILLEGAL.

II.

THE COURT OF APPEALS ARBITRARILY MODIFIED THE REDUCED RATE OF INTEREST FROM 2% TO 3%, CONTRARY TO THE TENOR OF ITS OWN DECISION.

III.

THE COURT *A QUO*, INSTEAD OF PROCEEDING WITH A RECOMPUTATION, SHOULD HAVE DISMISSED THE CASE FOR FAILURE OF RESPONDENT BPI TO PROVE THE CORRECT AMOUNT OF PETITIONER'S OBLIGATION, OR IN THE ALTERNATIVE, REMANDED THE CASE TO THE LOWER COURT FOR RESPONDENT BPI TO PRESENT PROOF OF THE CORRECT AMOUNT THEREOF.

Our Ruling

The petition is partly meritorious.

The Interest Rate and Penalty Charge of 3% Per Month or 36% Per Annum Should Be Reduced to 2% Per Month or 24% Per Annum

In its Complaint, respondent BPI originally imposed the interest and penalty charges at the rate of 9.25% per month or 111% per annum. This was declared as unconscionable by the lower courts for being clearly excessive, and was thus reduced to 2% per month or 24% per annum. On appeal, the CA modified the rate of interest and penalty charge and increased them to 3% per month or 36% per annum based on the Terms and Conditions Governing the Issuance and Use of the BPI Credit Card, which governs the transaction between petitioner Macalinao and respondent BPI.

In the instant petition, Macalinao claims that the interest rate and penalty charge of 3% per month imposed by the CA is iniquitous as the same translates to 36% per annum or thrice the legal rate of interest.[15] On the other hand, respondent BPI asserts that said interest rate and penalty charge are reasonable

[15] *Id.* at 17.

as the same are based on the Terms and Conditions Governing the Issuance and Use of the BPI Credit Card.[16]

We find for petitioner. We are of the opinion that the interest rate and penalty charge of 3% per month should be equitably reduced to 2% per month or 24% per annum.

Indeed, in the Terms and Conditions Governing the Issuance and Use of the BPI Credit Card, there was a stipulation on the 3% interest rate. Nevertheless, it should be noted that this is not the first time that this Court has considered the interest rate of 36% per annum as excessive and unconscionable. We held in *Chua vs. Timan*:[17]

> The stipulated interest rates of 7% and 5% per month imposed on respondents' loans must be equitably reduced to 1% per month or 12% *per annum*. **We need not unsettle the principle we had affirmed in a plethora of cases that stipulated interest rates of 3% per month and higher are excessive, iniquitous, unconscionable and exorbitant. Such stipulations are void for being contrary to morals, if not against the law.** While C.B. Circular No. 905-82, which took effect on January 1, 1983, effectively removed the ceiling on interest rates for both secured and unsecured loans, regardless of maturity, nothing in the said circular could possibly be read as granting *carte blanche* authority to lenders to raise interest rates to levels which would either enslave their borrowers or lead to a hemorrhaging of their assets. (Emphasis supplied.)

Since the stipulation on the interest rate is void, it is as if there was no express contract thereon. Hence, courts may reduce the interest rate as reason and equity demand.[18]

The same is true with respect to the penalty charge. Notably, under the Terms and Conditions Governing the Issuance and Use of the BPI Credit Card, it was also stated therein that respondent BPI shall impose an additional penalty

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[16] *Id.* at 323.

[17] G.R. No. 170452, August 13, 2008, 562 SCRA 146, 149-150.

[18] *Imperial v. Jaucian*, G.R. No. 149004, April 14, 2004, 427 SCRA 517; citing *Tongoy v. Court of Appeals*, No. L-45645, June 28, 1983, 123 SCRA 99.

charge of 3% per month. Pertinently, Article 1229 of the Civil Code states:

> Art. 1229. The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable.

In exercising this power to determine what is iniquitous and unconscionable, courts must consider the circumstances of each case since what may be iniquitous and unconscionable in one may be totally just and equitable in another.[19]

In the instant case, the records would reveal that petitioner Macalinao made partial payments to respondent BPI, as indicated in her Billing Statements.[20] Further, the stipulated penalty charge of 3% per month or 36% per annum, in addition to regular interests, is indeed iniquitous and unconscionable.

Thus, under the circumstances, the Court finds it equitable to reduce the interest rate pegged by the CA at 1.5% monthly to 1% monthly and penalty charge fixed by the CA at 1.5% monthly to 1% monthly or a total of 2% per month or 24% per annum in line with the prevailing jurisprudence and in accordance with Art. 1229 of the Civil Code.

There Is No Basis for the Dismissal of the Case, Much Less a Remand of the Same for Further Reception of Evidence

Petitioner Macalinao claims that the basis of the re-computation of the CA, that is, the amount of PhP 94,843.70 stated on the October 27, 2002 Statement of Account, was not the amount of the principal obligation. Thus, this allegedly necessitates a re-examination of the evidence presented by the parties. For this reason, petitioner Macalinao further contends that the dismissal of the case or its remand to the lower court would be a more appropriate disposition of the case.

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[19] *Imperial, id.*

[20] *Rollo,* pp. 56-81.

Such contention is untenable. Based on the records, the summons and a copy of the complaint were served upon petitioner Macalinao and her husband on May 4, 2004. Nevertheless, they failed to file their Answer despite such service. Thus, respondent BPI moved that judgment be rendered accordingly.[21] Consequently, a decision was rendered by the MeTC on the basis of the evidence submitted by respondent BPI. This is in consonance with Sec. 6 of the Revised Rule on Summary Procedure, which states:

> Sec. 6. *Effect of failure to answer.* — **Should the defendant fail to answer the complaint within the period above provided, the court, *motu proprio*, or on motion of the plaintiff, shall render judgment as may be warranted by the facts alleged in the complaint and limited to what is prayed for therein:** Provided, however, that the court may in its discretion reduce the amount of damages and attorney's fees claimed for being excessive or otherwise unconscionable. This is without prejudice to the applicability of Section 3(c), Rule 10 of the Rules of Court, if there are two or more defendants. (As amended by the 1997 Rules of Civil Procedure; emphasis supplied.)

Considering the foregoing rule, respondent BPI should not be made to suffer for petitioner Macalinao's failure to file an answer and concomitantly, to allow the latter to submit additional evidence by dismissing or remanding the case for further reception of evidence. Significantly, petitioner Macalinao herself admitted the existence of her obligation to respondent BPI, albeit with reservation as to the principal amount. Thus, a dismissal of the case would cause great injustice to respondent BPI. Similarly, a remand of the case for further reception of evidence would unduly prolong the proceedings of the instant case and render inutile the proceedings conducted before the lower courts.

Significantly, the CA correctly used the beginning balance of PhP 94,843.70 as basis for the re-computation of the interest considering that this was the first amount which appeared on the Statement of Account of petitioner Macalinao. There is no other amount on which the re-computation could be based, as

[21] *Id.* at 165.

can be gathered from the evidence on record. Furthermore, barring a showing that the factual findings complained of are totally devoid of support in the record or that they are so glaringly erroneous as to constitute serious abuse of discretion, such findings must stand, for this Court is not expected or required to examine or contrast the evidence submitted by the parties.[22]

In view of the ruling that only 1% monthly interest and 1% penalty charge can be applied to the beginning balance of PhP 94,843.70, this Court finds the following computation more appropriate:

Statement Date	Previous Balance	Purchases (Payments)	Balance	Interest (1%)	Penalty Charge (1%)	Total Amount Due for the Month
10/27/2002	94,843.70		94,843.70	948.48	948.44	96,740.58
11/27/2002	94,843.70	(15,000)	79,843.70	798.44	798.44	81,440.58
12/31/2002	79,843.70	30,308.80	110,152.50	1,101.53	1,101.53	112,355.56
1/27/2003	110,152.50		110,152.50	1,101.53	1,101.53	112,355.56
2/27/2003	110,152.50		110,152.50	1,101.53	1,101.53	112,355.56
3/27/2003	110,152.50	(18,000.00)	92,152.50	921.53	921.53	93,995.56
4/27/2003	92,152.50		92,152.50	921.53	921.53	93,995.56
5/27/2003	92,152.50	(10,000.00)	82,152.50	821.53	821.53	83,795.56
6/29/2003	82,152.50	8,362.50 (7,000.00)	83,515.00	835.15	835.15	85,185.30
7/27/2003	83,515.00		83,515.00	835.15	835.15	85,185.30
8/27/2003	83,515.00		83,515.00	835.15	835.15	85,185.30
9/28/2003	83,515.00		83,515.00	835.15	835.15	85,185.30
10/28/2003	83,515.00		83,515.00	835.15	835.15	85,185.30
11/28/2003	83,515.00		83,515.00	835.15	835.15	85,185.30
12/28/2003	83,515.00		83,515.00	835.15	835.15	85,185.30
1/27/2004	83,515.00		83,515.00	835.15	835.15	85,185.30
TOTAL			**83,515.00**	**14,397.26**	**14,397.26**	**112,309.52**

[22] *Atlantic Gulf and Pacific Company of Manila v. Court of Appeals*, G.R. Nos. 114841-43, August 23, 1995, 247 SCRA 606.

WHEREFORE, the petition is *PARTLY GRANTED*. The CA Decision dated June 30, 2006 in CA-G.R. SP No. 92031 is hereby *MODIFIED* with respect to the total amount due, interest rate, and penalty charge. Accordingly, petitioner Macalinao is ordered to pay respondent BPI the following:

(1) The amount of **one hundred twelve thousand three hundred nine pesos and fifty-two centavos (PhP 112,309.52)** plus interest and penalty charges of 2% per month from January 5, 2004 until fully paid;

(2) PhP10,000 as and by way of attorney's fees; and

(3) Cost of suit.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 176014. September 17, 2009]

ALICE VITANGCOL and NORBERTO VITANGCOL, *petitioners, vs.* **NEW VISTA PROPERTIES, INC., MARIA ALIPIT, REGISTER OF DEEDS OF CALAMBA, LAGUNA, and the HONORABLE COURT OF APPEALS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; CAUSE OF ACTION; DEFINED; ELEMENTS.— The Rules of Court defines "cause of action" as the act or omission by which a party violates a right of another. It contains three elements: (1) a right existing in favor of the plaintiff; (2) a correlative duty on the part of

the defendant to respect that right; and (3) a breach of the defendant's duty. It is, thus, only upon the occurrence of the last element that a cause of action arises, giving the plaintiff a right to file an action in court for recovery of damages or other relief.

2. ID.; ID.; ID.; EFFECT OF A MOTION TO DISMISS COMPLAINT FOR FAILURE TO STATE A CAUSE OF ACTION.—Lack of cause of action is, however, not a ground for a dismissal of the complaint through a motion to dismiss under Rule 16 of the Rules of Court, for the determination of a lack of cause of action can only be made during and/or after trial. What is dismissible via that mode is failure of the complaint to state a cause of action. Sec. 1(g) of Rule 16 of the Rules of Court provides that a motion may be made on the ground "that the pleading asserting the claim states no cause of action." The rule is that in a motion to dismiss, a defendant hypothetically admits the truth of the material allegations of the ultimate facts contained in the plaintiff's complaint. When a motion to dismiss is grounded on the failure to state a cause of action, a ruling thereon should, as rule, be based only on the facts alleged in the complaint.

3. ID.; ID.; ID.; ID.; EXCEPTIONS TO THE PRINCIPLE OF HYPOTHETICAL ADMISSION.— [T]his principle of hypothetical admission admits of exceptions. Among others, there is no hypothetical admission of conclusions or interpretations of law which are false; legally impossible facts; facts inadmissible in evidence; facts which appear by record or document included in the pleadings to be unfounded; allegations which the court will take judicial notice are not true; and where the motion to dismiss was heard with submission of evidence which discloses facts sufficient to defeat the claim.

4. ID.; ID.; ID.; WHEN THE AMENDED COMPLAINT SUFFICIENTLY STATES A CAUSE OF ACTION.— New Vista's threshold contention that De Guzman's SPA to sell should not be considered for not having been incorporated as part of its amended complaint is incorrect since Vitangcol duly submitted that piece of document in court in the course of the June 7, 2004 hearing on the motion to dismiss. Thus, the trial court acted within its discretion in considering said SPA relative to the motion to dismiss the amended complaint. The trial court,

however, erred in ruling that, taking said SPA into account, the amended complaint stated no cause of action. Indeed, upon a consideration of the amended complaint, its annexes, with the June 18, 1989 SPA thus submitted, the Court is inclined, in the main, to agree with the appellate court that the amended complaint sufficiently states a cause of action.

5. ID.; ID.; ID.; TEST OF SUFFICIENCY OF FACTS CONSTITUTING A CAUSE OF ACTION.— In a motion to dismiss for failure to state a cause of action, the focus is on the sufficiency, not the veracity, of the material allegations. The test of sufficiency of facts alleged in the complaint constituting a cause of action lies on whether or not the court, admitting the facts alleged, could render a valid verdict in accordance with the prayer of the complaint. And to sustain a motion to dismiss for lack of cause of action, it must be shown that the claim for relief in the complaint does not exist, rather than that a claim has been defectively stated, or is ambiguous, indefinite, or uncertain.

6. CIVIL LAW; CONTRACTS; RATIFICATION; WHEN DEFECT IN THE SPECIAL POWER OF ATTORNEY WAS CURED BY THE RATIFICATION ACTS OF THE PARTIES.— [T]he sequence of coinciding events, starting from the payment by New Vista of the earnest money, to the execution of the final deed of sale and the delivery of the subject lot to New Vista would readily show the following: that Clemente and Maria Alipit executed the SPA for de Guzman to sell and to formalize, in a deed of absolute sale, the sale of the subject lot following the fulfillment of the terms and conditions envisaged in the Contract to Sell earlier entered into, and not some lot they co-owned, if there be any. Maria Alipit's utter failure to show in her motion to dismiss that she co-owns with her brother Clemente a similarly-sized 242,540-square-meter lot, denominated as Lot No. 1735 of the Calamba Estate and covered by TCT No. (25311) 2538, strongly suggests that no such separate property exists and that there is contextually only one property—Lot No. 1702. This reality would veritably make the lot and TCT designation and description entries in the SPA as a case of typographical errors. x x x Nonetheless, even if the SPA, *vis-à-vis* the deed of absolute in question, described a different lot and indicated a dissimilar TCT number, still, the hypothetically admitted allegation of New Vista that lot owners Clemente and Maria Alipit ratified the sale would cure the defect on New Vista's

claim for relief under its amended complaint. Stated a bit differently, the ratificatory acts of the Alipits would work to strengthen New Vista's cause of action impaired by what may be taken as typographical errors in the SPA. As deduced from the stipulations in the deed of absolute, lot owners Clemente and Maria Alipit doubtless benefited from the transaction. And most importantly, they turned possession of Lot No. 1702 over to New Vista in 1989. Since then, New Vista enjoyed undisturbed right of ownership over the property until the Vitangcol entered the picture. The delivery of the subject Lot No. 1702 to New Vista clearly evinces the intent to sell said lot and is ample proof of receipt of full payment therefor as indicated in the deed of absolute sale. For a span of more than 10 years after the execution of the contract of sale, neither Clemente nor Maria Alipit came forward to assail the conveyance they authorized De Guzman to effect, if they considered the same as suffering from some vitiating defect. What is more, if their intention were indeed to authorize De Guzman to sell a property other than Lot No. 1702, is it not but logical to surrender that "other" property to New Vista? And if New Vista employed illegal means to gain possession of subject property, a relatively valuable piece of real estate, why did Clemente and Maria Alipit, and their successors in interest, not institute any proceedings to oust or eject New Vista therefrom? Clemente and Maria Alipit's long inaction adverted to argues against the notion that what they sold to New Vista was a property other than Lot No. 1702 of the Calamba Estate.

7. ID.; LAND REGISTRATION; TWO VERSIONS OF TRANSFER CERTIFICATE OF TITLE COVERING THE SAME PROPERTY SHOW FRAUD.— Lest it be overlooked, the purported sale of Lot 1702 to Vitangcol was made by Maria Alipit alone, ostensibly utilizing another certificate of title bearing number "TCT No. (25311) 2528" with Maria Alipit appearing on its face as the sole owner. New Vista holds the original duplicate owner's copy of TCT No. (25311) 2528 in the names of Clemente and Maria Alipit. Evidently, two versions of same TCT bearing the same number and covering the subject property exist. This aberration doubtless is a triable factual issue. To be sure, one title is authentic and the other spurious. It is worth to mention at this juncture that the deed of absolute sale in favor of New Vista recited the following event: that the RTC, Branch 39 in

> Manila issued on June 30, 1989 in Civil Case No. 85-32311 (in re: liquidation PVB) an Order to release TCT No. (T-25311) 2528 in the names of Clemente Alipit, married to Milagros Alipit, and Maria Alipit. If this recital is true and there is no reason why it is not, then TCT No. (T-25311) 2528 in the name of Maria Alipit alone must, perforce, be a fake instrument. Accordingly, the subsequent sale of Lot No. 1702 to Vitangcol on August 14, 2001 by Maria Alipit with a bogus TCT would be ineffective and certainly fraudulent. Not lost on the Court, as badge of fraud, is, as New Vista points out, the issuance of a new TCT on August 15, 2001 or a day after the subject lot was purportedly sold to Vitangcol.

APPEARANCES OF COUNSEL

Chavez Miranda Aseoche Law Offices for Alice E. Vitangcol.

Manuel B. Imbong for Norberto A. Vitangcol, et al.

Poblador Bautista & Reyes for New Vista properties, Inc.

Andy S. De Vera for Maria Alipit.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

In this Petition for Review under Rule 45 of the Rules of Court, petitioners Alice Vitangcol and Norberto Vitangcol (collectively, Vitangcol) assail the August 14, 2006 Decision[1] and December 19, 2006 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 84205 which reversed the December 21, 2004 Order[3] of the Regional Trial Court (RTC), Branch 35, in Calamba City, Laguna, in Civil Case No. 3195-2001-C for

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[1] *Rollo*, pp. 29-56. Penned by Associate Justice Arturo G. Tayag and concurred in by Associate Justices Elvi John S. Asuncion and Jose C. Mendoza.

[2] *Id.* at 58-59.

[3] *Id.* at 65-68. Penned by Judge Romeo C. De Leon.

Quieting of Title entitled *New Vista Properties, Inc. v. Alice E. Vitangcol, Norberto A. Vitangcol, Maria L. Alipit and Register of Deeds of Calamba, Laguna*.

The Facts

Subject of the instant controversy is Lot No. 1702 covered by Transfer Certificate of Title (TCT) No. (25311) 2528 of the Calamba, Laguna Registry in the name of Maria A. Alipit and Clemente A. Alipit, married to Milagros.

On June 18, 1989, Maria and Clemente A. Alipit, with the marital consent of the latter's wife, executed a Special Power of Attorney[4] (SPA) constituting Milagros A. De Guzman as their attorney-in-fact to sell their property described in the SPA as "located at Bo. Latian, Calamba, Laguna covered by TCT No. (25311) 2538 with Lot No. 1735 consisting of 242,540 square meters more or less." Pursuant to her authority under the SPA, De Guzman executed on August 9, 1989 a Deed of Absolute Sale[5] conveying to New Vista Properties, Inc. (New Vista) a parcel of land with an area of 242,540 square meters situated in Calamba, Laguna. In the deed, however, the lot thus sold was described as:

> a parcel of land (Lot No. 1702 of the Calamba Estate, GLRO Rec. No. 8418) situated in the Calamba, Province of Laguna, x x x containing an area of [250,007 square meters], more or less. x x x That a portion of the above-described parcel of land was traversed by the South Expressway such that its original area of [250,007] SQUARE METERS was reduced to [242,540] SQUARE METERS, which is the subject of the sale.[6]

Following the sale, New Vista immediately entered the subject lot, fenced it with cement posts and barbed wires, and posted a security guard to deter trespassers.

We interpose at this point the observation that the property delivered to and occupied by New Vista was denominated in

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[4] *Id.* at 60-61.

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

[6] *Id.* at 62.

the SPA as **Lot No. 1735** covered by **TCT No. (25311) 2538**, while in the deed of absolute sale in favor of New Vista the object of the purchase is described as **Lot No. 1702** covered by **TCT No. (25311) 2528**.

The controversy arose more than a decade later when respondent New Vista learned that the parcel of land it paid for and occupied, *i.e.*, Lot No. 1702, was being claimed by petitioners Vitangcol on the strength of a Deed of Absolute Sale for Lot No. 1702 under TCT No. (25311) 2528 entered into on August 14, 2001 by and between Vitangcol and Maria Alipit. Consequent to the Vitangcol-Maria Alipit sale, TCT No. (25311) 2528 was canceled and TCT No. T-482731 issued in its stead in favor of Vitangcol on August 15, 2001.

Alarmed by the foregoing turn of events, New Vista lost no time in protecting its rights by, first, filing a notice of adverse claim over TCT No. T-482731, followed by commencing a suit for quieting of title before the RTC. Its complaint[7] was docketed as Civil Case No. 3195-2001-C before the RTC, Branch 92 in Calamba City. Therein, New Vista alleged paying, after its purchase of the subject lot in 1989, the requisite transfer and related taxes therefor, and thereafter the real estate taxes due on the land. New Vista also averred that its efforts to have the Torrens title transferred to its name proved unsuccessful owing to the on-going process of reclassification of the subject lot from agricultural to commercial/industrial. New Vista prayed, among others, for the cancellation of Vitangcol's TCT No. T-482731 and that it be declared the absolute owner of the subject lot.

On December 11, 2001, Vitangcol moved to dismiss[8] the complaint which New Vista duly opposed. An exchange of pleadings then ensued.

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[7] *Id.* at 264-285, dated November 27, 2001.

[8] *Id.* at 301-310, dated December 10, 2001 captioned "Motion to Dismiss and Comment and Motion to Deposit to the Honorable Court the alleged Owner's Copy of TCT No. (T-25311) T-2528 registered in the names of Clemente Alipit married to Milagros David and Maria L. Alipit (marked as Annex A of the Complaint) and for short, will be hereinafter referred to

On June 27, 2003, or before Maria Alipit and Vitangcol, as defendants *a quo*, could answer, New Vista filed an amended complaint,[9] appending thereto a copy of the 1989 deed of absolute sale De Guzman, as agent authorized agent of the Alipits, executed in its favor. Thereafter, Vitangcol filed a motion to dismiss, followed by a similar motion dated August 29, 2003 interposed by Maria Alipit which New Vista countered with an opposition.

Unlike in its original complaint, New Vista's amended complaint did not have, as attachment, the June 18, 1989 SPA. It, however, averred that Clemente and Maria Alipit had ratified and validated the sale of Lot No. 1702 covered by TCT No. (25311) 2528 by their having delivered possession of said lot to New Vista after receiving and retaining the purchase price therefor.

Ruling of the RTC

The Initial RTC Order

By Order of November 25, 2003, the trial court denied Vitangcol's and Maria Alipit's separate motions to dismiss the amended complaint. As there held by the RTC, the amended complaint[10] sufficiently stated a cause of action as shown therein

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as 'Falsified Title' and Motion to Order Plaintiff's Guards, Representatives, to terminate trespassing the northern western portion of Lot 1702 and to Remove Therefrom the two billboards announcing that Plaintiff is the owner of Lot 1702, that were posted therein on November 12, 2001 and Pending the Resolution of this Issue and the Motion to Dismiss, to allow Vitangcol to place billboards and assign guards at the southern western portion of Lot 1702 to prevent Plaintiff from placing Squatters on Lot 1702."

[9] *Id.* at 286-300, Amended Complaint dated June 25, 2003.

[10] The Amended Complaint dated June 25, 2003 pertinently alleges:

2.1. Clemente L. Alipit and defendant Maria L. Alipit are siblings who are previous owners of a parcel of land located in Calamba, Laguna with a previous area of approximately two hundred fifty thousand seven square meters (250,007 sq.m.) and previously covered by Transfer Certificate of Title No. T-(25311) 2528 in the names of Clemente L. Alipit married to Milagros David and Maria L. Alipit issued by the Registry of Dees of Laguna, x x x herein referred to as the "Subject Property". x x x

x x x x x x x x x

that after the purchase and compliance with its legal obligations relative thereto, New Vista was immediately placed in possession of the subject lot, but which Maria Alipit, by herself, later sold to Vitangcol to New Vista's prejudice.

2.2.3 On 04 April 1989, and pursuant to the Contract To Sell dated 27 March 1989, plaintiff paid Philippine Veterans Bank the redemption value of ts August 1989, plaintiff paid Clemente L. Alipit and defendant Maria L. Alipit the balance of the purchase price of the Subject Property in the amount of Six Million Five Hundred Twenty Three Thousand Eight Hundred Pesos (6,523,800.00). Upon payment of the balance, Clemente L. Alipit and defendant Maria L. Alipit, acting through their duly authorized agent and attorney-in-fact Milagros D. Alipit, executed a Deed of Absolute Sale dated 09 August 1989 over the Subject Property and gave the original owner's duplicate of Transfer Certificate of Title No. T-(25311) 2528.

2.2.4.1. Clemente L. Alipit and defendant Maria Alipit revalidated, confirmed and ratified the sale of the Subject Property to plaintiff by accepting and/or retaining the sums paid by plaintiff, giving the owner's duplicate of TCT No. T-(25311) 2528 to plaintiff, and turning over possession of the subject property to plaintiff who has present control and possession of the property.

2.3. Immediately after the execution of the Deed of Absolute Sale dated 09 August 1989, plaintiff took possession of the Subject Property and posted security guards and constructed barbed wire fences with cemented poles. Plaintiff continues to remain in possession to date. Clemente Alipit and Maria Alipt never questioned plaintiff's possession.

2.4. x x x Plaitiff then sought to transfer TCT No. T-(25311) 2528 in its name twice; first, on 06 February 1990, and again on 21 May 1990. Plaintiff failed on both attempts to register TCT No. T-(25311) 2528 in its name since the Subject Property was still in the process of being converted from agricultural to industrial/commercial. However, plaintiff was able to have the Deed of Absolute Sale annotated on the Primary Entry Book of the Registry of Deeds in 1990.

2.5. Sometime middle of October 2001, plaintiff was conducting a title search of a prospective parcel of land, which it intended to purchase in Calamba, Laguna. Plaintiff's representative was informed by a staff of the Registry of Deeds of Calamba, Laguna that the Subject Property had already been purchased by defendant Alice E. Vitangcol. Furthermore, plaintiff was also informed, much to its surprise, that a new transfer certificate of title in the name of defendant Alice E. Vitangcol had already been issued on 15 August 2001.

x x x x

The December 21, 2004 RTC Order

From the above order, Vitangcol sought reconsideration,[11] attaching to the motion a copy of the June 18, 1989 SPA which, in the hearing on June 7, 2004, was accepted as evidence pursuant to Sec. 8, Rule 10 of the Rules of Court.[12] By Order dated July 14, 2004, the RTC granted reconsideration and dismissed the amended complaint, disposing as follows:

In view of the foregoing, the court hereby set aside its Order dated November 25, 2003 and by virtue of this order, hereby finds that the Amended Complaint states no cause of action and that the claim of

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2.5.2. Plaintiff noticed that Transfer Certificate of Title No. T-482731 was issued on 15 August 2001 by the Registry of Deeds of Calamba, Laguna.

2.5.3. Attempting to find out how Transfer Certificate of Title No. T-482731 came to be issued, plaintiff was able to secure a copy of an alleged Deed of Absolute Sale dated 14 August 2001. x x x x

2.5.7. Third, the Deed of Absolute Sale dated 14 August 2001 was only between defendant Alice E. Vitangcol and defendant Maria L. Alipit. The Subject Property was previously co-owned by Clemente L. Alipit and defendant Maria L. Alipit and not Maria L. Alipit alone. Plaintiff has obtained from the Land Registration Commission a certified true copy of the Transfer Certificate of Title No. T-(25311) 2528 registered in the names of Clemente L. Alipit and Maria L. Alipit, a copy of which is hereto attached as **Annex "E".**

2.5.8. A certified true copy of Transfer Certificate of Title No. T-(25311) 2528 dated 8 September 1999 (a copy of which is attached as **Annex "F"**) was also certified by Atty. Casiano Arcilla, the then Register of Deeds of Calamba, Laguna. As shown by the said certified true copy, the subject property covered by TCT No. T-(25311) 2528 was registered in the names of **both** Clemente L. Alipit and Maria L. Alipit.

2.5.9. At the time of the execution of the Deed of Absolute Sale dated 14 August 2001, defendant Maria L. Alipit was already about ninety (90) years old and bed-ridden. Her signature appearing on the Deed of Absolute Sale dated 14 August 2001 appears to be totally different and is superimposed by a thumb mark.

[11] *Rollo*, pp. 324-328, dated December 26, 2003.

[12] Sec. 8. Effect of amended pleadings. – An amended pleading supersedes the pleading it amends. However, admissions in superseded pleadings may be received in evidence against the pleader; claims and defenses alleged therein not incorporated in the amended pleadings shall be deemed waived.

the plaintiff in the present action is unenforceable under the provisions of the statue [sic] of frauds, hence, the Amended Complaint is hereby ordered DISMISSED, pursuant to Rule 16, Section 1, paragraph g and i.

SO ORDERED.[13]

In reversing itself, the RTC made much of the fact that New Vista did not attach the SPA to the amended complaint. To the RTC, this omission is fatal to New Vista's cause of action for quieting of title, citing in this regard the pertinent rule when an action is based on a document.[14]

The RTC also stated the observation that New Vista's act of not directly mentioning the SPA and the non-attachment of a copy thereof in the amended complaint constituted an attempt "to hide the fact that Milagros Alipit-de Guzman is only authorized to sell a parcel of land denominated as Lot No. 1735 of the Calamba Estate, *and not* Lot No. 1702 of the Calamba Estate, which is the subject matter of the Deed of Absolute Sale (Annex B of the Amended Complaint)."[15] According to the RTC, what the agent (De Guzman) sold to New Vista was Lot No. 1702 which she was not authorized to sell.

Aggrieved, New Vista interposed an appeal before the CA, its recourse docketed as CA-G.R. CV No. 84205.

Ruling of the CA

On August 14, 2006, the appellate court rendered the assailed Decision reversing the December 21, 2004 RTC Order, reinstating New Vista's amended complaint for quieting of title, and directing Vitangcol and Maria Alipit to file their respective answers thereto. The decretal portion of the CA's decision reads:

WHEREFORE, premises considered, the 21 December 2004 Order of the court *a quo* is hereby REVERSED and SET ASIDE, and the

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[13] *Rollo*, p. 68.

[14] RULES OF COURT, Rule 8, Sec. 7.

[15] *Rollo*, p. 66.

Amended Complaint is hereby REINSTATED. The defendants-appellees are hereby directed to file their respective answers/responsive pleadings within the time prescribed under the Rules of Court.

SO ORDERED.[16]

The CA faulted the RTC for dismissing the amended complaint, observing that it was absurd for the RTC to require a copy of the SPA which was not even mentioned in the amended complaint. Pushing this observation further, the CA held that the amended complaint, filed as it were before responsive pleadings could be filed by the defendants below, superseded the original complaint. As thus superseded, the original complaint and all documents appended thereto, such as the SPA, may no longer be taken cognizance of in determining whether the amended complaint sufficiently states a cause of action. It, thus, concluded that the RTC erred in looking beyond the four corners of the amended complaint in resolving the motion to dismiss on the ground of its failing to state a cause of action.

And citing jurisprudence,[17] the CA ruled that even if the SPA were considered, still the discrepancy thereof relative to the deed of absolute sale—in terms of lot and title numbers—is evidentiary in nature and is simply a matter of defense, and not a ground to dismiss the amended complaint.

Finally, the CA held that the real question in the case boiled down as to whose title is genuine or spurious, which is obviously a triable issue of fact which can only be threshed out in a trial on the merits.

Through the equally assailed December 19, 2006 Resolution, the CA denied Vitangcol's motion for reconsideration.

Hence, the instant petition.

The Issue

Petitioners Vitangcol raise as ground for review the sole assignment of error in that:

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[16] *Id.* at 55.

[17] *World Wide Ins. & Surety Co., Inc. v. Manuel*, 98 Phil. 47 (1955).

THE DECISION AND THE RESOLUTION OF THE TWELFTH DIVISION OF THE COURT OF APPEALS UNDER CHALLENGE ARE CONTRARY TO LAW[18]

The Court's Ruling

The petition is bereft of merit.

The sole issue tendered for consideration is whether the Amended Complaint, with the June 18, 1989 SPA—submitted by petitioners Vitangcol—duly considered, sufficiently states a cause of action. It is Vitangcol's posture that it does not sufficiently state a cause of action. New Vista is of course of a different view.

Amended Complaint Sufficiently States a Cause of Action

The Rules of Court defines "cause of action" as the act or omission by which a party violates a right of another. It contains three elements: (1) a right existing in favor of the plaintiff; (2) a correlative duty on the part of the defendant to respect that right; and (3) a breach of the defendant's duty.[19] It is, thus, only upon the occurrence of the last element that a cause of action arises, giving the plaintiff a right to file an action in court for recovery of damages or other relief.[20]

Lack of cause of action is, however, not a ground for a dismissal of the complaint through a motion to dismiss under Rule 16 of the Rules of Court, for the determination of a lack of cause of action can only be made during and/or after trial. What is dismissible via that mode is failure of the complaint to state a cause of action. Sec. 1(g) of Rule 16 of the Rules of Court provides that a motion may be made on the ground "that the pleading asserting the claim states no cause of action."

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[18] *Rollo,* p. 10.

[19] *Balanay v. Paderanga*, G.R. No. 136963, August 28, 2006, 499 SCRA 670, 675; *AC Enterprises, Inc. v. Frabelle Properties Corporation*, G.R. No. 166744, 506 SCRA 625, 665-666 (citations omitted).

[20] *Fluor Daniel, Inc.-Philippines v. E.B. Villarosa & Partners Co., Ltd.*, G.R. No. 159648, July 27, 2007, 528 SCRA 321, 327.

The rule is that in a motion to dismiss, a defendant hypothetically admits the truth of the material allegations of the ultimate facts contained in the plaintiff's complaint.[21] When a motion to dismiss is grounded on the failure to state a cause of action, a ruling thereon should, as rule, be based only on the facts alleged in the complaint.[22] However, this principle of hypothetical admission admits of exceptions. Among others, there is no hypothetical admission of conclusions or interpretations of law which are false; legally impossible facts; facts inadmissible in evidence; facts which appear by record or document included in the pleadings to be unfounded;[23] allegations which the court will take judicial notice are not true;[24] and where the motion to dismiss was heard with submission of evidence which discloses facts sufficient to defeat the claim.[25]

New Vista's threshold contention that De Guzman's SPA to sell should not be considered for not having been incorporated as part of its amended complaint is incorrect since Vitangcol duly submitted that piece of document in court in the course of the June 7, 2004 hearing on the motion to dismiss. Thus, the trial court acted within its discretion in considering said SPA relative to the motion to dismiss the amended complaint.

The trial court, however, erred in ruling that, taking said SPA into account, the amended complaint stated no cause of action. Indeed, upon a consideration of the amended complaint,

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[21] *Davao Light & Power Co., Inc. v. Judge, Regional Trial Court, Davao City, Br. 8*, G.R. No. 147058, March 10, 2006, 484 SCRA 272, 284.

[22] *Perkin Elmer Singapore Pte Ltd. v. Dakila Trading Corporation*, G.R. No. 172242, August 14, 2007, 530 SCRA 170, 196.

[23] See *Tan v. Director of Forestry*, No. L-24548, October 27, 1983, 125 SCRA 302.

[24] See *Marcopper Corporation v. Garcia*, G.R. No. L-55935, July 30, 1986, 143 SCRA 178; *U. Bañez Electric Light Company v. Abra Electric Cooperative, Inc.*, No. L-59480, December 8, 1982, 119 SCRA 90; *Mathay v. Consolidated Bank and Trust Company*, No. L-23136, August 26, 1974, 58 SCRA 560; *Dalandan v. Julio*, No. L-19101, February 29, 1964, 10 SCRA 400.

[25] *Tan*, *supra* note 23.

its annexes, with the June 18, 1989 SPA thus submitted, the Court is inclined, in the main, to agree with the appellate court that the amended complaint sufficiently states a cause of action.

Hypothetical Admission Supports Statement of Cause of Action

Thus, the next query is: Assuming hypothetically the veracity of the material allegations in the amended complaint, but taking into consideration the SPA, would New Vista still have a cause of action against Vitangcol and Maria Alipit sufficient to support its claim for relief consisting primarily of quieting of title?

The poser should hypothetically be answered in the affirmative.

In a motion to dismiss for failure to state a cause of action, the focus is on the sufficiency, not the veracity, of the material allegations.[26] The test of sufficiency of facts alleged in the complaint constituting a cause of action lies on whether or not the court, admitting the facts alleged, could render a valid verdict in accordance with the prayer of the complaint.[27] And to sustain a motion to dismiss for lack of cause of action, it must be shown that the claim for relief in the complaint does not exist, rather than that a claim has been defectively stated, or is ambiguous, indefinite, or uncertain.[28]

Ratification Would Cure Defect in the SPA

There can be quibbling about the lot covered by the deed of absolute sale De Guzman executed in New Vista's favor being different from that referred to in her enabling power of attorney to sell in terms of lot number and lot title number. The flaw stemmed from the faulty preparation of the SPA. Notwithstanding

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[26] *Malicdem v. Flores*, G.R. No. 151001, September 8, 2006, 501 SCRA 248, 259.

[27] *Universal Aquarius, Inc. v. Q.C. Human Resources Management Corp.*, G.R. No. 155990, September 12, 2007, 533 SCRA 38; *Fluor Daniel, Inc.-Philippines*, *supra* note 20; *Malicdem*, *id.* at 260.

[28] *Pioneer Concrete Philippines, Inc. v. Todaro*, G.R. No. 154830, June 8, 2007, 524 SCRA 153, 162 (citations omitted).

the variance in lot descriptions, as indicated above, the amended complaint contained, as it were, a clear statement of New Vista's cause of action. New Vista, in fact, alleged that the intended sale of Lot No. 1702 effected by De Guzman had been ratified by her principals, lot owners Clemente and Maria Alipit. Consider the ensuing clear stipulations in the August 9, 1989 Deed of Absolute Sale:

> That on March 27, 1989, the SELLERS [the Alipits] entered into a Contract to Sell with the BUYER [New Vista], after they had previously received on February 11, 1989 an earnest money of TEN THOUSAND PESOS (P10,000.00), wherein they (Sellers) agreed to sell to the BUYER the above-described parcel of land (in the reduced area of 242,540 square meters) for P60.00 per square meter or for a total price consideration of FOURTEEN MILLION FIVE HUNDRED FIFTY TWO THOUSAND FOUR HUNDRED PESOS (P14,552,400.00) under the other terms and conditions stipulated therein;
>
> That on April 4, 1989, the BUYER had advanced the amount of SEVEN MILLION FIVE HUNDRED EIGHTEEN THOUSAND SIX HUNDRED PESOS (7,518,600.00) and paid the Philippine Veterans Bank [PVB] in the same amount by way of redemption of the above-described property from its mortgage, all in accordance with the stipulation in the Contract to Sell dated March 27, 1989, making the advances made by the BUYER to the SELLERS namely: ₱10,000.00 Earnest Money; ₱500,000.00 Advances; and ₱7,518,600.00 Redemption Money; in the total amount of EIGHT MILLION TWENTY EIGHT THOUSAND SIX HUNDRED PESOS (₱8,028,600.00) which per agreement has formed part of the payment of the purchase price of ₱14,550,000.00 thereby leaving a balance of SIX MILLION FIVE HUNDRED TWENTY THREE THOUSAND EIGHT HUNDRED PESOS (₱6,523,800.00);
>
> That in line with the Resolution dated June 1, 1989 of the Honorable Supreme Court in GR. No. L-_____ the Honorable [RTC], National Capital Judicial Region, Branch 39, Manila, issued an Order on June 30, 1989 in Civil Case No. 85-32311 entitled, "IN RE: IN THE MATTER OF THE PETITION FOR LIQUIDATION OF THE PHILIPPINE VETERANS BANK, CENTRAL BANK OF THE PHILIPPINES, Petitioner", the dispositive portion of which reads as follows:
>
> "WHEREFORE, the petitioner Central Bank of the Philippines, the Acting Liquidator of the Philippine Veterans Bank is hereby

ordered to release to the movants-claimants, Spouses Clemente and Milagros Alipit and Maria Alipit the latter's Certificate of Title, TCT No. (T-25311) 2528 within three (3) days from receipt hereof.

SO ORDERED."

thus, paving the way for the execution of the foregoing Final Deed of Sale.

NOW, THEREFORE, in view of the foregoing facts and circumstances, and for and in consideration of the sum of [P14,552,400.00] of which had been previously paid by the BUYER to the SELLERS in the manner stated above, and the remaining sum of x x x (P6,523,800.00), likewise Philippine Currency, to the SELLERS now in hand paid and receipt whereof is hereby acknowledged and expressed to their entire satisfaction from the BUYER THEREBY completing payment of the entire price consideration of this sale, the SELLERS do hereby sell, transfer and convey, in the manner absolute and irrevocable, unto the BUYER, its successors, administrators and assigns, the above-described parcel of land in its reduced area of 242,540 square meters, more or less, free from all liens and encumbrances.[29]

As may clearly be noted, the transfer of the lot covered by TCT No. (25311) 2528 or, in fine Lot No. 1702 of the Calamba Estate, in favor of New Vista, came not as the result of simple, single transaction involving a piece of land with a clean title where the vendor, for a sum certain received, delivers ownership of the property upon contract signing. As things stand, the execution of the deed of absolute sale completed a negotiated contractual package, the culmination of a series of side but closely interrelated transactions involving several payments and remittances of what turned out to be the total purchase price for the lot envisaged to be purchased and sold, to wit: PhP 10,000 earnest money payment on February 11, 1989; an advance of half a million (no date provided); settlement of a mortgage loan with Philippine Veterans Bank (PVB) of over PhP 7.5 million on April 4, 1989; and the final payment of the balance of the total purchase price amounting to over PhP 6.5 million

[29] *Rollo*, pp. 62-64.

on August 9, 1989—the date of the execution of the Deed of Absolute Sale. For proper perspective, it may be mentioned that the Alipits and New Vista executed the Contract to Sell on March 27, 1989 after the payment of the earnest money and before the settlement of the mortgage loan with the PVB; and the SPA executed by Clemente and Maria Alipit on June 18, 1989 or more than a month before the execution of the Deed of Absolute Sale.

Taking the foregoing events set forth in the 1989 deed of absolute sale, as hypothetically admitted, it is fairly evident that the property the Alipits intended to sell and in fact sold was the lot covered by TCT No. (25311) 2528, which, doubtless, is Lot No. 1702. As aptly argued by New Vista, the purchase of the parcel of land in question was mainly dictated by its actual location and its metes and bounds and not by mere lot number assigned to it in the certificate of title. This is not to say that the TCT covering the property is of little importance. But what can be gleaned is that New Vista paid and acquired Lot No. 1702 which it redeemed, for the Alipits, by paying their mortgage obligations with the PVB. It could not have bought and the Alipits could not have sold another property.

No Showing of Existence of Lot Subject of the SPA

As to how the SPA mentioned a lot, *i.e.*, Lot No. 1735 covered by TCT No. (25311) 2538, different from what is stated, *i.e.*, Lot No. 1702, in the 1989 deed of absolute sale in question, is not sufficiently explained by the parties. But what can be gathered from the records is that what were denominated as Lot No. 1735 and Lot No. 1702 have the same area and location: 242,540 square meters in Calamba. Moreover, if indeed the SPA authorized De Guzman to sell Lot No. 1735 covered by TCT No. (25311) 2538 and not the subject Lot No. 1702, the question begging for an answer is how come Maria Alipit never presented a copy of TCT No. (25311) 2538 covering Lot No. 1735 with an area of 242,540 square meters to prove her being a co-owner thereof? We note that Maria Alipit's motion to dismiss merely adopted the grounds raised in the parallel motion filed by Vitangcol.

Moreover, the sequence of coinciding events, starting from the payment by New Vista of the earnest money, to the execution of the final deed of sale and the delivery of the subject lot to New Vista would readily show the following: that Clemente and Maria Alipit executed the SPA for de Guzman to sell and to formalize, in a deed of absolute sale, the sale of the subject lot following the fulfillment of the terms and conditions envisaged in the Contract to Sell earlier entered into, and not some lot they co-owned, if there be any. Maria Alipit's utter failure to show in her motion to dismiss that she co-owns with her brother Clemente a similarly-sized 242,540-square-meter lot, denominated as Lot No. 1735 of the Calamba Estate and covered by TCT No. (25311) 2538, strongly suggests that no such separate property exists and that there is contextually only one property—Lot No. 1702. This reality would veritably make the lot and TCT designation and description entries in the SPA as a case of typographical errors.

Ratification: Delivery and Not Questioning Deed of Absolute Sale

Nonetheless, even if the SPA, vis-à-vis the deed of absolute sale in question, described a different lot and indicated a dissimilar TCT number, still, the hypothetically admitted allegation of New Vista that lot owners Clemente and Maria Alipit ratified the sale would cure the defect on New Vista's claim for relief under its amended complaint. Stated a bit differently, the ratificatory acts of the Alipits would work to strengthen New Vista's cause of action impaired by what may be taken as typographical errors in the SPA. As deduced from the stipulations in the deed of absolute sale, lot owners Clemente and Maria Alipit doubtless benefited from the transaction. And most importantly, they turned possession of Lot No. 1702 over to New Vista in 1989. Since then, New Vista enjoyed undisturbed right of ownership over the property until the Vitangcol entered the picture.

The delivery of the subject Lot No. 1702 to New Vista clearly evinces the intent to sell said lot and is ample proof of receipt of full payment therefor as indicated in the deed of absolute

sale. For a span of more than 10 years after the execution of the contract of sale, neither Clemente nor Maria Alipit came forward to assail the conveyance they authorized De Guzman to effect, if they considered the same as suffering from some vitiating defect. What is more, if their intention were indeed to authorize De Guzman to sell a property other than Lot No. 1702, is it not but logical to surrender that "other" property to New Vista? And if New Vista employed illegal means to gain possession of subject property, a relatively valuable piece of real estate, why did Clemente and Maria Alipit, and their successors in interest, not institute any proceedings to oust or eject New Vista therefrom?

Clemente and Maria Alipit's long inaction adverted to argues against the notion that what they sold to New Vista was a property other than Lot No. 1702 of the Calamba Estate.

Two Versions of TCT Covering Subject Lot Show Fraud

Lest it be overlooked, the purported sale of Lot 1702 to Vitangcol was made by Maria Alipit alone, ostensibly utilizing another certificate of title bearing number "TCT No. (25311) 2528" with Maria Alipit appearing on its face as the sole owner. New Vista holds the original duplicate owner's copy of TCT No. (25311) 2528 in the names of Clemente and Maria Alipit. Evidently, two versions of same TCT bearing the same number and covering the subject property exist. This aberration doubtless is a triable factual issue. To be sure, one title is authentic and the other spurious.

It is worth to mention at this juncture that the deed of absolute sale in favor of New Vista recited the following event: that the RTC, Branch 39 in Manila issued on June 30, 1989 in Civil Case No. 85-32311 (in re: liquidation PVB) an Order to release TCT No. (T-25311) 2528 in the names of Clemente Alipit, married to Milagros Alipit, and Maria Alipit. If this recital is true and there is no reason why it is not, then TCT No. (T-25311) 2528 in the name of Maria Alipit alone must, perforce, be a fake instrument. Accordingly, the subsequent sale of Lot No. 1702 to Vitangcol on August 14, 2001 by Maria Alipit with a bogus TCT would be ineffective and certainly fraudulent. Not lost on

the Court, as badge of fraud, is, as New Vista points out, the issuance of a new TCT on August 15, 2001 or a day after the subject lot was purportedly sold to Vitangcol.

As found by the RTC in its initial November 25, 2003 order, virtually all the material allegations in the amended complaint are triable issues of facts, a reality indicating that it sufficiently states a cause or causes of action. If the allegations in the complaint furnish sufficient basis on which it can be maintained, it should not be dismissed regardless of the defense that may be presented by the defendants.[30]

On July 15, 2009, the parties filed a Joint Motion to Dismiss informing the Court that they have amicably settled their differences and have filed a Joint Motion for Judgment Based on Compromise Agreement before the RTC, Branch 35 in Calamba City, Laguna, in Civil Case No. 3195-2001-C. A judgment on said compromise would have preempted the resolution of the instant petition.

WHEREFORE, this petition is hereby *DENIED* for lack of merit. The records of the case are immediately remanded to the RTC, Branch 35 in Calamba City, Laguna for appropriate action on the Compromise Agreement submitted by the parties.

Let the entry of judgment be made. No costs.

SO ORDERED.

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

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[30] *Jan-Dec Construction Corporation v. Court of Appeals*, G.R. No. 146818, February 6, 2006, 481 SCRA 556, 567 (citation omitted).

EN BANC

[G.R. Nos. 177857-58. September 17, 2009]

PHILIPPINE COCONUT PRODUCERS FEDERATION, INC. (COCOFED), MANUEL V. DEL ROSARIO, DOMINGO P. ESPINA, SALVADOR P. BALLARES, JOSELITO A. MORALEDA, PAZ M. YASON, VICENTE A. CADIZ, CESARIA DE LUNA TITULAR, and RAYMUNDO C. DE VILLA, *petitioners, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

JOVITO R. SALONGA, WIGBERTO E. TAÑADA, OSCAR F. SANTOS, ANA THERESIA HONTIVEROS, and TEOFISTO L. GUINGONA III, *oppositors-intervenors.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG); HAS THE AUTHORITY TO SEEK THE COURT'S APPROVAL FOR THE CONVERSION OF THE SEQUESTERED SAN MIGUEL CORPORATION (SMC) COMMON SHARES INTO PREFERRED SHARES.— On the preliminary issue as to the proper party to seek the imprimatur on the conversion, the Court rules that it is the PCGG, not COCOFED, that is authorized to seek the approval of the Court of the Series 1 preferred shares conversion. As records show, PCGG sequestered the 753,848,312 SMC common shares registered in the name of CIIF companies on April 7, 1986. From that time on, these sequestered shares became subject to the management, supervision, and control of PCGG, pursuant to Executive Order No. (EO) 1, Series of 1986 x x x The PCGG, therefore, as the "receiver" of sequestered assets and in consonance with its duty under EO 1, Series of 1986, to protect and preserve them, has the power to exercise acts of dominion provided that those acts are approved by the proper court. From the foregoing discussion, it is clear that it is the PCGG—not COCOFED or the CIIF companies—that has the right

and/or authority during sequestration to seek this Court's approval for the proposed conversion.

2. ID.; ID.; ID.; COURT'S APPROVAL ON THE CONVERSION OF SEQUESTERED SMC COMMON SHARES INTO PREFERRED SHARES, OBTAINED; REASONS, EXPLAINED.— After a circumspect evaluation of the incident at bar, we resolve to *approve* the conversion, taking into account certain circumstances and hard economic realities as discussed below: x x x respondent Republic has satisfactorily demonstrated that the conversion will redound to the clear advantage and material benefit of the eventual owner of the CIIF SMC shares in question. Positive action must be taken in order to preserve the value of the sequestered CIIF SMC common shares. The worldwide economic crisis that started last year affected the Philippines and adversely impacted on several banks and financial institutions, resulting in billions of loses. The Philippine Stock Exchange Index retreated x x x. [T]he CIIF SMC shares traded in the local bourse have substantially dropped in value in the last two (2) years. x x x No doubt shares of stock are not the safest of investments, moored as they are on the ever changing worldwide and local financial conditions. The proposed conversion would provide better protection either to the government or to the eventually declared real stock owners, depending on the final ruling on the ownership issue. In the event SMC suffers serious financial reverses in the short or long term and seeks insolvency protection, the owners of the preferred shares, being considered creditors, shall have, vis-à-vis common stock shareholders, preference in the corporate assets of the insolvent or dissolved corporation. In the case of the SMC Series 1 Preferred Shares, these preferential features are made available to buyers of said shares and are amply protected in the investment. More importantly, the conversion will ensure a higher cumulative and fixed dividend rate of 8% per annum computed at an issue price of PhP 75 per share, a yield not currently available to common shareholders. x x x The redemption value of the preferred shares depends upon and is actually tied up with the issue price plus all the cumulated and unpaid dividends. This redemption feature is envisaged to effectively eliminate the market volatility risks on the side of the share owners. Undoubtedly, these are clear advantages and benefits that inure to the share owners who, on one hand, prefer a stable dividend yield on their investments and, on the

other hand, want security from the uncertainty of market forces over which they do not have control. Recent developments saw SMC venturing and diversifying into several huge projects (*i.e.*, oil, power, telecommunications), business moves which understandably have caused some critics to raise the concern over a possible prejudice to the CIIF SMC common shares presently under sequestration should such investments turn sour. A number of people claim these new acquisitions are likely to dissipate the assets of SMC. Some sectors ratiocinate that the huge capital investments poured into these projects may substantially erode SMC's profitability in the next few years, resulting in diminished dividends declaration. The proposed conversion will address the concerns and allay the fears of well meaning sectors, and insulate and protect the sequestered CIIF SMC shares from potential damage or loss. Moreover, the conversion may be viewed as a sound business strategy to preserve and conserve the value of the government's interests in CIIF SMC shares. Preservation is attained by fixing the value today at a significant premium over the market price and ensuring that such value is not going to decline despite negative market conditions. Conservation is realized thru an improvement in the earnings value *via* the 8% per annum dividends versus the uncertain and most likely lower dividends on common shares. A fixed dividend rate of 8% per annum translates to PhP 6 per preferred share or a guaranteed yearly dividend of PhP4,523,308,987.20 for the entire sequestered CIIF SMC shares. The figures jibe with the estimate made by intervenors Salonga, *et al.* Compare this amount to the dividends declared for common shares for the recent past years which are in the vicinity of PhP1.40 per unit share or a total amount of PhP1,055,387,636.80 per annum. The whopping difference is around PhP 3.5 billion annually or PhP 10.5 billion in three (3) years. On a year-to-year basis, the difference reflects an estimated increase of 77% in dividend earnings. With the bold investments of SMC in various lines of business, there is no assurance of substantial earnings in the coming years. There may even be no earnings. The modest dividends that accrue to the common shares in the recent years may be a thing of the past and may even be obliterated by poor or unstable performance in the initial years of operation of newly-acquired ventures. In the light of the above findings, the Court holds that respondent Republic has satisfactorily hurdled the *onus*

of showing that the conversion is advantageous to the public interest or will result in clear and material benefit to the eventually declared stock owners, be they the coconut farmers or the government itself.

3. ID.; ID.; ID.; THE ONLY INTEREST OF PCGG IN SMC IS TO PROTECT THE SEQUESTERED SMC COMMON SHARES FROM DISSIPATION.— The Court can perhaps take judicial notice of the government's enunciated policy to reduce, if not eliminate, its exposure to business. The PCGG has held on to the sequestered shares for more than 20 years and this may be the opportune time to do away with its participation in SMC, especially considering the claim that the sequestration of the CIIF SMC common shares has frightened away investors and stunted growth of the company. The only interest of PCGG in SMC is to protect the CIIF SMC common shares from dissipation. PCGG is neither tasked to bar Cojuangco, Jr., or any individual for that matter, from securing domination of the SMC Board, nor avert Cojuangco, Jr.'s acquisition of the CIIF SMC common shares once released from sequestration. Even if the conversion is approved, nothing can prevent the government from prosecuting the people whom intervenors tag as responsible for "greasing the government and the coconut farmers of billions of pesos."

4. ID.; ID.; ID.; THE DECISION ON WHETHER TO PROCEED WITH THE CONVERSION OR DEFER ACTION THEREON UNTIL FINAL ADJUDICATION OF THE ISSUE OF OWNERSHIP OVER THE SEQUESTERED SHARES PERTAINS TO THE EXECUTIVE BRANCH THROUGH THE PCGG.— [T]he decision on whether to proceed with the conversion or defer action thereon until final adjudication of the issue of ownership over the sequestered shares properly pertains to the executive branch, represented by the PCGG. Just as it cannot look into the wisdom behind the enactment of a law, the Court cannot question the wisdom and reasons behind the decision of the executive branch to ask for the conversion of the common shares to preferred shares. Else, the Court would be trenching on the well-settled doctrine of separation of powers. The cardinal postulate explains that the three branches must discharge their respective functions within the limits of authority conferred by the Constitution. Under the principle of separation of powers, neither Congress, the President, nor the Judiciary may encroach

on fields allocated to the other branches of government. The legislature is generally limited to the enactment of laws, the executive to the enforcement of laws, and the judiciary to their interpretation and application to cases and controversies.

5. ID.; ID.; ID.; THE PCGG'S APPROVAL OF THE CONVERSION IS A POLICY DECISION THAT CANNOT BE INTERFERED WITH IN THE ABSENCE OF GRAVE ABUSE OF DISCRETION.— The approval by the PCGG, for respondent Republic, of the conversion is a policy decision which cannot be interfered with in the absence of a showing or proof, as here, that PCGG committed grave abuse of discretion. In the similar *Palm Avenue Realty Development Corporation v. PCGG*, the Court ruled that the approval by PCGG of the sale of the sequestered shares of petitioner corporations allegedly owned and controlled by Kokoy Romualdez was legal and could not be the subject of a writ of *certiorari* or prohibition, absent proof that PCGG committed a grave abuse of discretion. The price of PhP29 per share approved by the PCGG was even below the prevailing price of PhP43 per share.

6. ID.; ID.; ID.; THE LOSS OF VOTING RIGHTS IN THE SMC THROUGH THE CONVERSION HAS NO SIGNIFICANT EFFECT ON PCGG'S FUNCTION TO RECOVER ILL-GOTTEN WEALTH OR PREVENT DISSIPATION OF SEQUESTERED ASSETS.— By relinquishing its voting rights in the SMC Board through the conversion, the government, it is argued, would be surrendering its final arsenal in combating the maneuverings to frustrate the recovery of ill-gotten wealth. It may, as feared, be rendered helpless in preventing an impending peril of a "lurking dissipation." This contention has no merit. The mere presence of four (4) PCGG nominated directors in the SMC Board does not mean it can prevent board actions that are viewed to fritter away the company assets. Even under the *status quo*, PCGG has no controlling sway in the SMC Board, let alone a veto power at 24% of the stockholdings. In relinquishing the voting rights, the government, through PCGG, is not in reality ceding control. Moreover, PCGG has ample powers to address alleged strategies to thwart recovery of ill-gotten wealth. Thus, the loss of voting rights has no significant effect on PCGG's function to recover ill-gotten wealth or prevent dissipation of sequestered assets.

7. ID.; ID.; ID.; THE PCGG DOES NOT EXERCISE ACTS OF OWNERSHIP OVER SEQUESTERED ASSETS BUT IT MAY SEEK THE APPROVAL OF THE PROPER COURT FOR THE SALE OF THE SAID ASSETS.— Salonga, et al. also contend that PCGG cannot pursue the exchange offer of SMC for want of power to exercise acts of strict dominion over the sequestered shares. This is incorrect. The Court, to be sure, has not barred the conversion of any sequestered common shares of a corporation into preferred shares. It may be argued that the conversion scheme under consideration may later on be treated as an indirect sale of the common shares from the registered owner to another person if and when SMC decides to redeem the Series 1 preferred shares on the third anniversary from the issue date of the preferred shares. Still, given the circumstances of the pending incident, the Court can validly allow the proposed conversion in accordance with Rule 57, Sec. 11, in relation to Rule 59, Sec. 6 of the Rules of Court. x x x Even if the conversion-cum-redemption partakes of an indirect sale, PCGG can be allowed to approve the conversion in line with our ruling in *Palm Avenue Realty Development Corporation*, subject to the approval of the Court. Evidently, as long as the interests of all the parties will be subserved by the sale of the sequestered properties, the Court may allow the properties to be sold. More so, the Rules would allow the mere conversion of the shares of stock given the evident benefit that all the parties would receive from such conversion that far outweighs any perceived disadvantage. Thus, the Court is clearly empowered to allow the conversion herein pressed by the PCGG. While the PCGG, as sequestrator, does not exercise acts of ownership over sequestered assets, the proper court, where the case involving the sequestered asset is pending, may, nevertheless, issue a positive and definite order authorizing the sale of said assets.

CARPIO MORALES, *J., dissenting opinion:*

1. POLITICAL LAW; ADMINISTRATIVE LAW; PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG); AS A TRUSTEE, PCGG IS NOT ALLOWED BY LAW TO DISPOSE TRUST ASSETS BELOW THE ACTUAL MARKET VALUE.— The subject block of shares is sufficient to elect four of the 15 members of the SMC Board of Directors. There is always a premium or added intrinsic value whenever a block of shares

that is sufficient to elect a director is transacted. The owner of such block of shares will not dispose them of at the same price per share. The conversion value for the shares should include a professional valuation of the premium that should be part of the consideration and factored in the actual market price. Without considering the premium inherent in this block of shares, the subject block of shares would be perpetually locked or impounded to a value much lower than the actual market value. In effect, the PCGG would be downgrading the value of the trust assets. Moreover, one of the features of the conversion is an optional redemption and purchase. The terms provide that "SMC has the option, but not the obligation, to redeem all or part of the Series 1 Preferred Shares *on the third anniversary from the Issue Date* or on any Dividend Date thereafter at a *redemption price equal to the Issue Price* of the Preferred Shares plus all cumulated and unpaid cash dividends." The majority opinion observes that the share prices of Class "A" and "B" common shares of SMC have been declining for the past three years, and closed in the local bourse at ₱53.50 and ₱54 as of June 1, 2009 compared to their 2006 prices of ₱65 and ₱74.50, respectively. With the conversion, the issue price is pegged at ₱75. If at the time of redemption, however, the prevailing market price is higher than the issue price, then the redemption price is below the actual market price. In such instance and for apparent reasons, SMC could readily exercise its option. The PCGG would then be disposing of the trust assets below the actual market value. If the reverse situation occurs, SMC could forego its option on the third year and exercise it on a future dividend date. *SMC's availment of its optional redemption and purchase is thus risk-free*. A trustee and conservator, of whom the highest degree of diligence and rectitude is required, is not allowed by law to dispose of the assets held in trust below the actual market value. The redemption price should be the issue price or the then prevailing market price, whichever is higher, plus any unpaid cumulative dividends.

2. ID.; ID.; ID.; THE REPUBLIC, REPRESENTED BY THE PCGG, SURRENDERS ITS FINAL ARSENAL IN COMBATING THE MANEUVERINGS TO FRUSTRATE THE RECOVERY OF ILL-GOTTEN WEALTH ONCE THE CONVESION OF THE SEQUESTERED SMC COMMON SHARES IS ACCOMPLISHED.— [T]he subject block of shares is sufficient

to elect four directors. The majority opinion discusses that the only disadvantage of the conversion scheme is the *loss of the voting rights* that common shareholders have. It dismisses this loss by resorting to sophistry and instead vividly depicts a financial windfall. *Once the conversion is accomplished, the Republic surrenders its final arsenal in combating the maneuverings to frustrate the recovery of ill-gotten wealth.* The right to vote the sequestered shares, when proper under the circumstances, may only be exercised within the parameters and context of the stated purposes of sequestration or provisional takeover, *i.e.*, to prevent the dispersion or undue disposal of the corporate assets. It was in [*Republic v. COCOFED*] that the Court ruled that for purposes of determining the right to vote the shares *pendente lite*, the coconut levy funds are not only affected with public interest; they are, in fact, *prima facie* public funds. The crucial question left, for purposes of exercising the right to vote, is whether there is immediate danger of dissipation. In the present case, in the event of an immediate danger of dissipation after the proposed conversion, the Republic can no longer move to vote the sequestered shares and prevent the impending peril. *In case the conversion pushes through, the hands of the Republic are tied and helpless in the face of a lurking dissipation.* While the promise of financial gains is alluring with the fixed dividend rate of 8% and preference in the liquidation of assets, there is nothing left to prevent the SMC from diluting its corporate assets, diversifying into risky ventures, and consequently depreciating the market value of the shares. After all, SMC could not be forced to redeem the shares at the issue price of ₱75 when the market value is plummeting. Of course, there is that preference in the liquidation of assets that it can go after. By that time, the percentage in the total shareholdings may remain the same, but its equivalence in pecuniary terms, however, would have been watered down or devaluated. It bears noting that *what sequestration is guarding against is more on the dissipation of the corporate assets than the decrease of the share value.* The law cannot possibly control the infinite market forces affecting the value of the stocks, but it can see to it that the corporate assets that these stocks represent remain intact.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala and Cruz for COCOFED, *et al.*
The Solicitor General for public respondent.
Estelito P. Mendoza for Eduardo M. Cojuangco, Jr.

R E S O L U T I O N

VELASCO, JR., *J.*:

For consideration is the *Urgent Motion to Approve the Conversion of the SMC Common Shares into SMC Series 1 Preferred Shares* dated July 24, 2009 (Motion) interposed by petitioners Philippine Coconut Producers Federation, Inc., et al. (collectively, COCOFED). COCOFED seeks the Court's approval of the conversion of 753,848,312 Class "A" and Class "B" common shares of San Miguel Corporation (SMC) registered in the names of Coconut Industry Investment Fund and the so-called "14 Holding Companies" (collectively known as "CIIF companies") into 753,848,312 SMC Series 1 Preferred Shares (hereinafter, the Conversion).

SMC's conversion or stock exchange offer is embodied in its *Information Statement*[1] and yields the following relevant features:

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[1] Annex "A," Urgent Motion: To Approve the Conversion of the SMC Common Shares into SMC Series 1 Preferred Shares, pp. 15-16 provides:

Description of the New Securities

The Series "I" Preferred Shares will be Philippine Peso-denominated, perpetual, cumulative and non-voting. The shares will have a par value of Five Pesos (P5.00) per share and the following features;

(a) Dividends – The Board of Directors of the Company shall have the sole discretion to declare dividends on the Series "I" Preferred shares. The annual dividends shall be based on the five (5)- year Philippine Dealing System Treasury Fixing treasury securities benchmark rate ("PDST-F Rate"), plus a spread which the Board of Directors of the Company has authorized Management to determine ("Dividend Rate"). On this basis and pursuant to such authority granted to Management, the dividend Rate has been determined to be eight percent (8%) per annum. The dividends are payable

Instrument - Peso denominated, perpetual, cumulative, **non-voting preferred shares with a par value of Php 5.00 per share and Issue Price of Php75 per share.**

quarterly, beginning on the third month after the issue date thereof ("Issue Date") and every three months thereafter ("Dividend Payment Date") and calculated by reference to the Issue Price. Unless the Series "I" Preferred shares are redeemed by the Company at the end of the fifth year from the Issue Date, the Dividend Rate shall be adjusted at the end of the fifth year to the higher of (a) the Dividend Rate, and (b) the prevailing ten (10)-year PDST-F Rate (or such successor benchmark rate) as displayed under the heading "Bid Yield" as published on the PDEx Page (or such successor page) of Bloomberg (or such successor electronic service provider) at approximately 11:30 a.m. Manila time on the date corresponding to the end of the fifth year from the Issue Date (or if not available, the PDST-F Rate on the banking day prior to such date, or if still not available, the nearest preceding date on which the PDST-F Rate is available, but if such nearest preceding date is more than five [5] days prior to the date corresponding to the end of the fifth year from the Issue Date, the Board of Directors, at its reasonable discretion, shall determine the appropriate substitute rate) plus a spread of up to 300 basis points. The holders of Series "I" Preferred shares shall not be entitled to any participation or share in the retained earnings remaining after dividend payment shall have been made on the said shares.

(b) Redemption – The Company has the option, but not the obligation, to redeem all or part of the Series "I" Preferred shares on the third anniversary from the Issue Date or on any Dividend Payment Date thereafter, at a redemption price equal to the Issue Price of the Series "I" Preferred shares plus all accumulated and unpaid cash dividends. The Series "I" Preferred shares, when redeemed, shall not be considered retired and may be re-issued by the Company at a price to be determined by the board of Directors.

(c) Liquidation – In the event of liquidation, dissolution, bankruptcy or winding up of the Company, the Series "I" Preferred shares shall have preference in payment, in full or, if the assets of the Company are insufficient, on a pro-rata basis as among holders of Series "I" Preferred shares, of the Issue Price of their shares plus any previously declared and unpaid dividends, before any asset of the Company is paid or distributed to holders of the common shares of the Company.

(d) Voting Rights – Holders of the Series "I" Preferred shares shall not be entitled to vote except in cases expressly provided by law.

(e) Pre-emptive Rights – Holders of the Series "I" Preferred shares shall have no pre-emptive right to any issue or disposition of any class of the Company.

The Series "I" Preferred shares will be listed on The Philippine Stock Exchange, Inc. within one year from the date of their issuance.

Dividend Rate - The SMC Board of Directors shall have the sole discretion to declare dividends on the Series 1 Preferred Shares as redeemed by SMC, the **dividend rate shall be at a fixed rate of 8% per annum,** payable quarterly and **calculated by reference to the issue price**.

Dividend Rate Step Up - Unless the Series 1 Preferred Shares are redeemed by SMC, the **Dividend Rate shall be adjusted at the end of the fifth year** to the higher of (a) the Dividend Rate or (b) the prevailing 10-year PDSTF rate plus a spread of 300 bps.

Optional Redemption and Purchase - SMC has the option, but not the obligation, to redeem all or part of the Series 1 Preferred Shares on the third anniversary from the Issue Date or on any Dividend Date thereafter at a redemption price equal to the Issue price of the Preferred Shares plus all cumulated and unpaid cash dividends.

Preference in the event of the liquidation of SMC - The Series 1 Preferred Shares shall have preference over the common shares.

Selling costs - All selling costs pertaining to the Common Shares shall be borne by the common shareholders. x x x (Emphasis added.)

COCOFED proposes to constitute a trust fund to be known as the "Coconut Industry Trust Fund (CITF) for the Benefit of the Coconut Farmers," with respondent Republic, acting through the Philippine Coconut Authority (PCA), as trustee. As proposed, the constitution of the CITF shall be subject to terms and conditions which, for the most part, reiterate the features of SMC's conversion offer, albeit specific reference is made to the shares of the 14 CIIF companies. Among the terms and conditions are the following:

Standard 1. There must be a prior approval by this Honorable Court in this instant case G.R. No. 177857-58 entitled "*COCOFED, et. al. vs. Republic of the Philippines*," of the conversion of the sequestered SMC Common Shares, Both Class "A" and Class "B", registered in the respective names of the 14 CIIF Holding Companies, into SMC Series 1 Preferred Shares.

Standard 2. The SMC shares to be exchanged are all the shares of stock of SMC that are presently sequestered and registered in the respective names of the 14 CIIF Holding Companies in the total number of 753,848,312, both Class "A" and Class "B" shares x x x (hereinafter, collectively referred to as the "SMC Common Shares").

x x x x x x x x x

Standard 4. The SMC Common Shares shall be converted at an exchange ratio of one (1) SMC Series 1 Preferred Share (hereinafter, "SMC Series 1 Preferred Share") for every one (1) SMC Common Share tendered. Each SMC Series 1 Preferred Share shall have a par value of (P5.00) per share and an Issue Price of Seventy Five Pesos per share (P75.00). Dividends on the SMC Series 1 Preferred Share shall be cumulative and with dividend rate of 8% per annum computed on the Issue Price of Seventy Five Pesos (₱75.00) per share.

x x x x x x x x x

Standard 6. If and when SMC exercises its right, but not an obligation, to redeem after a period of three (3) years the SMC Series 1 Preferred Shares, the redemption shall in no case be less than the Issue Price of Seventy Five Pesos (₱75.00) per share plus unpaid cumulative dividends.

x x x x x x x x x

Standard 8. Upon written appointment to the Board of Governors of the [PCA] of the three (3) nominees submitted to the President of the Philippines by the [COCOFED], as required by PD 1468, a trust fund is thereby automatically created to be identified and known as the "Coconut Industry Trust Fund (CITF) For the Benefit of the Coconut Farmers" and the trustee of the Coconut Industry Trust fund shall be: "The Republic of the Philippines Acting Through the Philippine Coconut Authority for the Benefit of the Coconut Farmers."

Standard 9. The initial capital of the [CITF] shall be the SMC Series 1 Preferred Shares that will be issued by SMC as herein described.

Standard 10. Within ten (10) days from and after the date of the final approval by this Honorable Court of the Conversion, the Republic of the Philippines, acting through the Presidential Commission on Good Government through its duly authorized Chairman, shall deliver to SMC these documents.

x x x x x x x x x

Standard 11. As the issuer, SMC shall within a reasonable period from a trade, or exchange, of the SMC Common Shares into 753,848,312 SMC Series 1 Preferred Shares through the facilities of the Philippine Stock Exchange, deliver duly-signed and issued SMC Series 1 Preferred Stock Certificate(s) in the name of "The Republic of the Philippines acting though the Philippine Coconut Authority as Trustee of the Coconut Industry Trust Fund (CITF) For the Benefit of the Coconut Farmers."

Standard 12. Upon compliance by the SMC with its reciprocal obligations according to the terms and intent of the approval by this Honorable Court, then it shall acquire absolute ownership of the SMC Common Shares free from all liens, writs, demands, or claims x x x.

Standard 13. The trustee of the [CITF] shall have no authority to sell, dispose, assign, encumber or otherwise impair the value of the SMC Series 1 Preferred Shares, unless the same are redeemed by SMC in accordance with its Articles of Incorporation, as amended.

Standard 14. For purposes of ascertaining x x x the identities and addresses of coconut farmers, the beneficiaries of the developmental projects herein authorized to be financed, a ground survey of coconut farmers as presently defined, or hereafter defined, by the [PCA], shall be conducted by the [PCA] x x x.

Standard 15. Thirty (30) days after the receipt of any dividend paid on the SMC Series 1 preferred Shares, the net proceeds x x x shall be disbursed by the Trustee in favor of these entities in these proportions:

a. Forty percent (40%) – Coconut Industry Trust Fund constituted under Paragraph 11, Standard 8 and Standard 9 hereof which the Trustee should invest and re-invest only in the permissible investments authorized under Paragraph 11, Standard 16.

b. Twenty percent (20%) – To the (PCA) "in trust and for the benefit of the coconut farmers", being the governmental agency designated by law to implement projects for the coconut industry.

c. Twenty percent (20%) – To the [COCOFED], in its capacity as the duly recognized organization of the coconut farmers with the highest membership.

d. Twenty percent (20%) – To the PCA Accredited Other Coconut Farmers' organizations – The trustee shall disburse this allocation to each and all of those PCA Accredited Other Coconut Farmers Organizations.

Standard 16. In the event of redemption of the SMC Series 1 Preferred Shares, whether in full or in part, the proceeds of such redemption shall form part of the capital of the [CITF] which the Trustee shall invest, within a period of forty eight (48) hours from receipt of the proceeds of such redemption, and reinvest in these permissible investments x x x.[2]

To the basic motion, respondent Republic filed its Comment questioning COCOFED's personality to seek the Court's approval of the desired conversion. Respondent Republic also disputes COCOFED's right to impose and prescribe terms and conditions on the proposed conversion, maintaining that the CIIF SMC common shares are sequestered assets and are in *custodia legis* under Presidential Commission on Good Government's (PCGG's) administration. It postulates that, owing to the sequestrated status of the said common shares, only PCGG has the authority to approve the proposed conversion and seek the necessary Court approval. In this connection, respondent Republic cites *Republic v. Sandiganbayan*[3] where the coconut levy funds were declared as *prima facie* public funds, thus reinforcing its position that only PCGG, a government agency, can ask for approval of the conversion.

On September 4, 2009, Jovito R. Salonga and four others sought leave to intervene. Attached to the motion was their Comment/Opposition-in-Intervention, asserting that "the government bears the burden of showing that the conversion is indubitably advantageous to the public interest or will result in clear and material benefit. Failure of the government to carry the burden means that the current status of the sequestered stocks should be maintained pending final disposition of G.R. Nos. 177857-58." They further postulate that "even assuming that the proposal to convert the SMC shares

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[2] *Id.*

[3] G.R. No. 88336, December 26, 1990, 192 SCRA 743.

is beneficial to the government, it cannot pursue the exchange offer because it is without power to exercise acts of strict dominion over the sequestered shares." Lastly, they argue that "the proposed conversion x x x is not only not advantageous to the public interest but is in fact positively disadvantageous."

On September 4, 2009, respondent Republic filed a Supplemental Comment in which it cited the Partial Summary Judgment rendered by the Sandiganbayan on May 27, 2004 in Civil Case No. 33-F, declaring the Republic as owner, in trust for the coconut farmers, of the subject CIIF SMC shares (27%). The same comment also referred to Resolution No. 365-2009 passed on August 28, 2009 by the United Coconut Planters Bank (UCPB) Board of Directors expressing the sense that "the proposed conversion of the CIIF SMC common shares to SMC Series I preferred shares is financially beneficial."[4] Reference was also made to PCGG Resolution 2009-037-756 dated September 2, 2009, requesting the Office of the Solicitor General (OSG) to seek approval of this Court for the proposed conversion.[5] By way of relief, respondent Republic prayed that the PCGG be allowed to proceed and effect the conversion.

On the preliminary issue as to the proper party to seek the imprimatur on the conversion, the Court rules that it is the PCGG, not COCOFED, that is authorized to seek the approval of the Court of the Series 1 preferred shares conversion.

As records show, PCGG sequestered the 753,848,312 SMC common shares registered in the name of CIIF companies on April 7, 1986.[6] From that time on, these sequestered shares became subject to the management, supervision, and control of PCGG, pursuant to Executive Order No. (EO) 1, Series of 1986, creating that commission and vesting it with the following powers:

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[4] Annex "A," Supplemental Comment of respondent Republic, p. 6.

[5] Annex "B," *id.* at 7.

[6] *Republic v. Sandiganbayan*, G.R. No. 118661, January 22, 2007, 514 SCRA 25, 34.

Sec. 3. The Commission shall have the power and authority:

x x x x x x x x x

(b) To sequester or place or cause to be placed under its control or possession any building or office wherein any ill-gotten wealth or properties may be found, and any records pertaining thereto, in order to prevent their destruction, concealment or disappearance which would frustrate or hamper the investigation or otherwise prevent the Commission from accomplishing its task.

(c) To provisionally take over in the public interest or to prevent its disposal or dissipation, business enterprises and properties taken over by the government of the Marcos Administration or by entities or persons close to former President Marcos, until the transactions leading to such acquisition by the latter can be disposed of by the appropriate authorities.

Eventually, the coconut levy funds that were used to acquire the sequestered CIIF SMC common shares in question were peremptorily determined to be *prima facie* public funds. The Court, in *Republic v. COCOFED*,[7] elucidated on the nature of the coconut levy funds:

Coconut Levy Funds Are Prima Facie Public Funds

To avoid misunderstanding and confusion, this Court will even be more categorical and positive than its earlier pronouncements: the coconut levy funds are not only affected with public interest; they are, in fact, prima facie public funds.

Public funds are those moneys belonging to the State or to any political subdivision of the State; more specifically, taxes, customs duties and moneys raised by operation of law for the support of the government or for the discharge of its obligations. Undeniably, coconut levy funds satisfy this general definition of public funds, because of the following reasons:

1. Coconut levy funds are raised with the use of the police and taxing powers of the State.

2. They are levies imposed by the State for the benefit of the coconut industry and its farmers.

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[7] G.R. Nos. 147062-64, December 14, 2001, 372 SCRA 462.

3. Respondents have judicially admitted that the sequestered shares were purchased with public funds.

x x x x x x x x x

6. The very laws governing coconut levies recognize their public character.[8]

x x x x x x x x x

2. Coconut Funds Are Levied for the Benefit of the Coconut Industry and Its Farmers.

x x x x x x x x x

And explaining the PCGG's authority to vote the sequestered shares acquired from the coconut levy, the Court further wrote:

Having Been Acquired With Public Funds, UCPB Shares Belong, Prima Facie, to the Government

Having shown that the coconut levy funds are not only affected with public interest, but are in fact *prima facie* public funds, this Court believes that the government should be allowed to vote the questioned shares, because they belong to it as the *prima facie* beneficial and true owner.

As stated at the beginning, voting is an act of dominion that should be exercised by the share owner. One of the recognized rights of an owner is the right to vote at meetings of the corporation. The right to vote is classified as the right to control. Voting rights may be for the purpose of, among others, electing or removing directors, amending a charter, or making or amending by laws. Because the subject UCPB shares were acquired with government funds, the government becomes their *prima facie* beneficial and true owner.

Ownership includes the right to enjoy, dispose of, exclude and recover a thing without limitations other than those established by law or by the owner. x x x And the right to vote shares is a mere incident of ownership. In the present case, the government has been shown to be the *prima facie* owner of the funds used to purchase the shares. Hence, it should be allowed the rights and privileges flowing from such fact.[9]

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[8] *Id.* at 481-482.

[9] *Id.* at 491-492.

Time and again, the Court has likened sequestration to preliminary attachment and receivership under Rules 57 and 59 of the Rules of Court and has accordingly applied the said rules to sequestration cases. So it was that in *Republic v. Sandiganbayan*[10] the Court noted that the powers and duties of the PCGG as conservator and protector of sequestered assets are virtually the same as those possessed by a receiver under Rule 59, Section 6:

> SEC. 6. *General powers of receiver*.—Subject to the control of the court in which the action or proceeding is pending, a receiver shall have the power to bring and defend, in such capacity, actions in his own name; to take and keep possession of the property in controversy; to receive rents; to collect debts due to himself as receiver or to the fund, property, estate, person, or corporation of which he is the receiver; to compound for and compromise the same; to make transfers; to pay outstanding debts; to divide the money and other property that shall remain among the persons legally entitled to receive the same; and **generally to do such acts respecting the property as the court may authorize**. However, funds in the hands of a receiver may be invested only by order of the court upon the written consent of all the parties to the action.
>
> No action may be filed by or against a receiver without leave of the court which appointed him. (Emphasis supplied.)

And in *Republic v. Sandiganbayan*,[11] the Court observed that "the PCGG's power to sequester alleged ill-gotten properties is likened to the provisional remedies of preliminary attachment or receivership which are always subject to the control of the court."

The PCGG, therefore, as the "receiver" of sequestered assets and in consonance with its duty under EO 1, Series of 1986, to protect and preserve them, has the power to exercise acts of dominion provided that those acts are approved by the proper court.

From the foregoing discussion, it is clear that it is the PCGG—not COCOFED or the CIIF companies—that has

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[10] *Supra* note 3, at 753-754.

[11] G.R. No. 88228, June 27, 1990, 186 SCRA 864, 871.

the right and/or authority during sequestration to seek this Court's approval for the proposed conversion. Consequently, the terms and conditions sought by COCOFED for the conversion are not material to the proposed conversion. At most, COCOFED's prayer for approval of the conversion reflects its conformity to said transfiguration.

After a circumspect evaluation of the incident at bar, we resolve to **approve** the conversion, taking into account certain circumstances and hard economic realities as discussed below:

Contrary to the assertion of intervenors Salonga, et al., respondent Republic has satisfactorily demonstrated that the conversion will redound to the clear advantage and material benefit of the eventual owner of the CIIF SMC shares in question.

Positive action must be taken in order to preserve the value of the sequestered CIIF SMC common shares. The worldwide economic crisis that started last year affected the Philippines and adversely impacted on several banks and financial institutions, resulting in billions of loses. The Philippine Stock Exchange Index retreated by a record 12.3% on October 27, 2008, the biggest single day fall since July 24, 1987. This year, 2009, the recorded index of 2,859 has not regained the pre-October 27, 2008 level of 3,837.89.

Moreover, the CIIF SMC shares traded in the local bourse have substantially dropped in value in the last two (2) years. The SMC Class "A" shares, which commanded the unit price of PhP 48 per share as of November 6, 2008, were trading at PhP 57.50 in 2007 and PhP 65 in 2006. SMC Class "B" shares, on the other hand, which fetched a price of PhP 49 per share on November 6, 2008, were priced at PhP 61 in 2007 and PhP 74.50 in 2006. As of June 1, 2009, Class "A" and Class "B" common shares of CIIF SMC closed at PhP 53.50 and PhP 54 per unit, respectively. CIIF SMC share prices may decline over the years.

No doubt shares of stock are not the safest of investments, moored as they are on the ever changing worldwide and local financial conditions. The proposed conversion would provide

better protection either to the government or to the eventually declared real stock owners, depending on the final ruling on the ownership issue. In the event SMC suffers serious financial reverses in the short or long term and seeks insolvency protection, the owners of the preferred shares, being considered creditors, shall have, *vis-à-vis* common stock shareholders, preference in the corporate assets of the insolvent or dissolved corporation. In the case of the SMC Series 1 Preferred Shares, these preferential features are made available to buyers of said shares and are amply protected in the investment.[12]

More importantly, the conversion will ensure a higher cumulative and fixed dividend rate of 8% per annum computed at an issue price of PhP 75 per share, a yield not currently available to common shareholders. The OSG succinctly explained the undeniable advantages to be gained from the conversion, thus:

> Assuming that the data contained in the SMC Information Sheet is accurate and true, the closing prices of SMC Common Class "A" and "B" Shares, as of June 1, 2009, are Fifty-three pesos and 50/100 (P53.50) and Fifty-four Pesos (P54.00), respectively. The proposed conversion into Series 1 Preferred Shares would give said share an issue price of seventy-five pesos (P75.00) per share. Corollarily, while the current SMC Common shares have no fixed dividend rate, the Series 1 Preferred Shares have a determined dividend rate of eight percent (8%) per annum. On these points alone, **the benefits to the shareholders are clearly quantifiable.**
>
> Further still, the SMC Series 1 Preferred Shares are deemed cumulative. As a cumulative share with preference in the payment of dividends, it is entitled to cumulate the dividends in those years where no dividend is declared. Thus, if a cumulative share is entitled to 10% of par value as cumulative dividend yearly, where no dividends are declared in 1989, 1990 and 1991 because there are no profits, and dividends are declared in 1992 because of surplus or unrestricted earnings, the holder of the preferred cumulative shares is entitled to receive 40% of par value as his cumulative dividends for the years 1989 to 1991.

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[12] Annex "A" of COCOFED's Urgent Motion to Approve the Conversion of the SMC Common Shares into Series 1 Preferred Shares, p. 20.s

The declaration of dividends is still generally subject to the discretion of the board but once dividends are declared, the cumulative preferred shareholders are entitled to receive the dividends for the years when no declaration was made. When dividends are declared, cumulative dividends must be paid regardless of the year in which they are earned. Therefore, holders of the converted preferred shares are assured of accumulated annual dividends.[13] (Emphasis added.)

As it were, the issue price of PhP 75 per share represents a 40% premium, more or less, over the prevailing market price, *i.e.*, about PhP 54 per share, of the CIIF SMC common shares as of June 1, 2009. The 40% premium amply covers the "block" and "control" features of the CIIF SMC common shares. These shares below 33.33% are, to many, not even considered vested with "control" premium. It can be safely assumed that the issue price of PhP 75 per share was based on an independent valuation of the CIIF SMC shares, a requisite usually prescribed as a prelude to Board approval.

The redemption value of the preferred shares depends upon and is actually tied up with the issue price plus all the cumulated and unpaid dividends. This redemption feature is envisaged to effectively eliminate the market volatility risks on the side of the share owners. Undoubtedly, these are clear advantages and benefits that inure to the share owners who, on one hand, prefer a stable dividend yield on their investments and, on the other hand, want security from the uncertainty of market forces over which they do not have control.

Recent developments saw SMC venturing and diversifying into several huge projects (*i.e.*, oil, power, telecommunications), business moves which understandably have caused some critics to raise the concern over a possible prejudice to the CIIF SMC common shares presently under sequestration should such investments turn sour. A number of people claim these new acquisitions are likely to dissipate the assets of SMC. Some sectors ratiocinate that the huge capital investments poured into these projects may substantially erode SMC's profitability

[13] Republic's Comment dated August 14, 2009, pp. 23-24.

in the next few years, resulting in diminished dividends declaration. The proposed conversion will address the concerns and allay the fears of well meaning sectors, and insulate and protect the sequestered CIIF SMC shares from potential damage or loss.

Moreover, the conversion may be viewed as a sound business strategy to preserve and conserve the value of the government's interests in CIIF SMC shares. Preservation is attained by fixing the value today at a significant premium over the market price and ensuring that such value is not going to decline despite negative market conditions. Conservation is realized thru an improvement in the earnings value via the 8% per annum dividends versus the uncertain and most likely lower dividends on common shares.

A fixed dividend rate of 8% per annum translates to PhP6 per preferred share or a guaranteed yearly dividend of PhP4,523,308,987.20 for the entire sequestered CIIF SMC shares. The figures jibe with the estimate made by intervenors Salonga, *et al.*[14] Compare this amount to the dividends declared for common shares for the recent past years which are in the vicinity of PhP1.40 per unit share or a total amount of PhP1,055,387,636.80 per annum. The whopping difference is around PhP 3.5 billion annually or PhP 10.5 billion in three (3) years. On a year-to-year basis, the difference reflects an estimated increase of 77% in dividend earnings. With the bold investments of SMC in various lines of business, there is no assurance of substantial earnings in the coming years. There may even be no earnings. The modest dividends that accrue to the common shares in the recent years may be a thing of the past and may even be obliterated by poor or unstable performance in the initial years of operation of newly-acquired ventures.

In the light of the above findings, the Court holds that respondent Republic has satisfactorily hurdled the *onus* of showing that the conversion is advantageous to the public interest or will result in clear and material benefit to the eventually declared

[14] Comment/Opposition in Intervention, p. 23.

stock owners, be they the coconut farmers or the government itself.

In their Comment/Opposition in Intervention, intervenors Salonga, et al., however, assert that the proposed conversion is positively disadvantageous to respondent. They label the conversion as a "devious compromise favorable only to COCOFED and Cojuangco, Jr." This allegation is simply conjectural. No evidence of the alleged compromise was presented, as it was only COCOFED that initiated the proposal for conversion.

The claim that the Cojuangco, Jr. group will be able to oust the government nominees from the SMC Board, buy the sequestered shares without encumbrances, and do so with SMC funds is inaccurate and even speculative. Intervenors completely miss the point. The genuine issue is whether or not the desired conversion will be beneficial and advantageous to the government or the eventual owners of the shares. The perceived full control by Cojuangco, Jr. over SMC after the common shares are released from sequestration is hardly relevant to the propriety of the conversion. Intervenors have not been able to demonstrate how the domination of SMC by Cojuangco, Jr., if that should come to pass, will prejudice or impair the interests of respondent Republic in the preferred shares. The more important consideration in the exercise at hand is the preservation and conservation of the preferred shares and the innumerable benefits and substantial financial gains that will redound to the owner of these shares.

The conversion, so intervenors claim, will result in the loss of voting rights of PCGG in SMC and enable Cojuangco, Jr. to acquire the sequestered shares, without encumbrances, using SMC funds. This is incorrect. The common shares after conversion and release from sequestration become treasury stocks or shares. Treasury shares under Sec. 9 of the Corporation Code (*Batas Pambansa Blg*. 68) are "shares of stock which have been issued and fully paid for, but subsequently reacquired by the issuing corporation by purchase, redemption, donation or through some other lawful means. Such shares may again

be disposed of for a reasonable price fixed by the board of directors."

A treasury share or stock, which may be common or preferred, may be used for a variety of corporate purposes, such as for a stock bonus plan for management and employees or for acquiring another company. It may be held indefinitely, resold or retired. While held in the company's treasury, the stock earns no dividends and has no vote in company affairs.[15] Thus, the CIIF common shares that would become treasury shares are not entitled to voting rights. And should conversion push through, SMC, not Cojuangco, Jr., becomes the owner of the reacquired sequestered CIIF SMC common shares. Should SMC opt, however, to sell said shares in the future, prospective buyers, including possibly Cojuangco, Jr., have to put up their own money to acquire said common shares. Thus, it is erroneous for intervenors to say that Cojuangco, Jr., with the use of SMC funds, will be acquiring the CIIF SMC common shares.

It bears to stress that it was SMC which amended its articles of incorporation, reclassifying the existing composition of the authorized capital stock from PhP4.5 billion common shares to PhP 3.39 billion common shares and PhP1.11 billion Series 1 Preferred Shares. The conversion in question is a legitimate exercise of corporate powers under the Corporation Code. The shares in question will not be acquired with SMC funds but by reason of the reconfiguration of said shares to preferred shares.

The Court can perhaps take judicial notice of the government's enunciated policy to reduce, if not eliminate, its exposure to business. The PCGG has held on to the sequestered shares for more than 20 years and this may be the opportune time to do away with its participation in SMC, especially considering the claim that the sequestration of the CIIF SMC common shares has frightened away investors and stunted growth of the company.

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[15] S.H. Gufis, BARON'S DICTIONARY OF LEGAL TERMS 508 (3rd ed., 1998).

The only interest of PCGG in SMC is to protect the CIIF SMC common shares from dissipation. PCGG is neither tasked to bar Cojuangco, Jr., or any individual for that matter, from securing domination of the SMC Board, nor avert Cojuangco, Jr.'s acquisition of the CIIF SMC common shares once released from sequestration. Even if the conversion is approved, nothing can prevent the government from prosecuting the people whom intervenors tag as responsible for "greasing the government and the coconut farmers of billions of pesos."

On the other hand, COCOFED does not stand to benefit from the conversion, because portions of the dividends or proceeds from the redemption cannot be allocated directly to proposed beneficiaries, as this will be contrary to Sec. 2 of Presidential Decree No. (PD) 961,[16] as amended by PD 1468. In addition, the preferred shares which will be placed in the names of the CIIF companies, or the dividends derived from said shares, shall remain as sequestered assets until final resolution of the ownership issue.

Intervenors suggest a deferment of any action on the conversion until the CIIF SMC shares ownership issue is settled. The General Offer of conversion, originally expiring on August 24, 2009, was extended up to September 21, 2009. Availment of the conversion calls for immediate action. Almost all of the parties-in-interest—COCOFED, UCPB as administrator of the CIIF, and respondent Republic through PCGG—have in one way or another signified their assent to the conversion.

It has not successfully been demonstrated, however, how the alleged eventual ownership by Cojuangco, Jr. of the sequestered shares will prejudice the interests of respondent Republic in the preferred shares. It cannot likewise be figured out what distinct benefits the government will obtain if the common shares are converted to preferred shares or used in another manner after final resolution of the ownership issue.

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[16] An Act to Codify the Laws Dealing with the Development of the Coconut and Other Palm Oil Industry and for Other Purposes (1976).

The indicated advantages of conversion, if accomplished now, will surely make up for the apprehensions arising from the possible domination by Cojuangco, Jr. of the SMC in the future. The primordial consideration is that the shares be shielded from dissipation and potential risks that may arise from uncertainty of market and business conditions. The conversion will ensure stable share value and enhanced earnings of the shares.

Lest it be overlooked, the decision on whether to proceed with the conversion or defer action thereon until final adjudication of the issue of ownership over the sequestered shares properly pertains to the executive branch, represented by the PCGG. Just as it cannot look into the wisdom behind the enactment of a law, the Court cannot question the wisdom and reasons behind the decision of the executive branch to ask for the conversion of the common shares to preferred shares. Else, the Court would be trenching on the well-settled doctrine of separation of powers. The cardinal postulate explains that the three branches must discharge their respective functions within the limits of authority conferred by the Constitution. Under the principle of separation of powers, neither Congress, the President, nor the Judiciary may encroach on fields allocated to the other branches of government. The legislature is generally limited to the enactment of laws, the executive to the enforcement of laws, and the judiciary to their interpretation and application to cases and controversies.[17]

Jurisprudence is well-established that the courts cannot intervene or interfere with executive or legislative discretion exercised within constitutional limits. In *JG Summit Holdings, Inc. v. Court of Appeals*,[18] the Court explained:

> The discretion to accept or reject a bid and award contracts is vested in the Government agencies entrusted with that function. The discretion given to the authorities on this matter is of such wide

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[17] *Bengzon v. Drilon*, G.R. No. 103524, April 15, 1992, 208 SCRA 133.

[18] G.R. No. 124293, January 31, 2005, 450 SCRA 169; citing *Bureau Veritas v. Office of the President*, G.R. No. 101678, February 3, 1992, 205 SCRA 705, 717-719.

latitude that the Courts will not interfere therewith, unless it is apparent that it is used as a shield to a fraudulent award (*Jalandoni v. NARRA,* 108 Phil. 486 [1960]). x x x The exercise of this discretion is a policy decision that necessitates prior inquiry, investigation, comparison, evaluation, and deliberation. This task can best be discharged by the Government agencies x x x. The role of the Courts is to ascertain whether a branch or instrumentality of the Government has transgressed its constitutional boundaries. But the Courts will not interfere with executive or legislative discretion exercised within those boundaries. **Otherwise, it strays into the realm of policy decision-making**.

It is only upon a clear showing of grave abuse of discretion that the Courts will set aside the award of a contract made by a government entity. Grave abuse of discretion implies a capricious, arbitrary and whimsical exercise of power (*Filinvest Credit Corp. v. Intermediate Appellate Court,* No. 65935, 30 September 1988, 166 SCRA 155). The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, as to act at all in contemplation of law, where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility (*Litton Mills, Inc. v. Galleon Trader, Inc., et al.*, L-40867, 26 July 1988, 163 SCRA 489). (Emphasis supplied.)

In *Ledesma v. Court of Appeals*,[19] the Court added:

x x x [A] court is without power to directly decide matters over which full discretionary authority has been delegated to the legislative or executive branch of the government. It is not empowered to substitute its judgment for that of Congress or of the President. It may, however, look into the question of whether such exercise has been made in grave abuse of discretion.

In *Francisco, Jr. v. UEM-MARA Philippines Corporation*,[20] the Court elucidated the co-equal status of the three branches of government:

Considering the co-equal status of the three branches of government, courts may not tread into matters requiring the **exercise of discretion** of a functionary or office in the executive and legislative

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[19] G.R. No. 113216, September 5, 1997, 278 SCRA 656.

[20] G.R. Nos. 135688-89, October 18, 2007, 536 SCRA 518, 530.

branches, unless it is clearly shown that the government official or office concerned abused his or its discretion. x x x

Furthermore,

> "x x x courts, as a rule, refuse to interfere with proceedings undertaken by administrative bodies or officials in the exercise of administrative functions. This is so because such bodies are generally better equipped technically to decide administrative questions and that non-legal factors, such as government policy on the matter, are usually involved in the decisions." (Emphasis supplied.)

Corollary to the principle of separation of powers is the doctrine of primary jurisdiction that the courts will DEFER to the decisions of the administrative offices and agencies by reason of their expertise and experience in the matters assigned to them. Administrative decisions on matters within the jurisdiction of administrative bodies are to be respected and can only be set aside on proof of grave abuse of discretion, fraud, or error of law.[21]

The only instance when the Courts ought to interfere is when a department or an agency has acted with grave abuse of discretion or violated a law. A circumspect review of the pleadings and evidence extant on record shows that the PCGG approved the conversion only after it conducted an in-depth inquiry, thorough study, and judicious evaluation of the pros and cons of the proposed conversion. PCGG took into consideration the following:

(1) Resolution of the UCPB Board of Directors approved during its July 20, 2009 special meeting, where it categorically decided and concluded that it is financially beneficial to convert the CIIF SMC shares as offered by the SMC.

(2) Resolution No. 365-2009 of the UCPB Board of Directors issued on August 28, 2009 reiterating its position that the proposed conversion is financially beneficial, thus:

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[21] *Celestial Nickel Mining Exploration Corporation v. Macroasia Corporation*, G.R. Nos. 169080, 172936, 176226 & 176319, December 19, 2007, 541 SCRA 166, 209.

WHEREAS, in its regular meeting on June 26, 2009, the UCPB Board of Directors instructed the UCPB-TBG to undertake a study on the financial and economic viability of the proposed SMC share conversion;

WHEREAS, the UCPB Board of Directors in a special meeting on July 16, 2009 noted and referred to the PCGG and CIIF 14 Holding Companies for appropriate action UCPB-TBG's study on the financial and economic viability of the proposed SMC share conversion, which states that, "x x x it would be more advantageous to convert the CIIF's SMC common shares to the proposed SMC Series "1" Preferred Shares.";

WHEREAS, during a special meeting on July 20, 2009 among the UCPB committee, PCGG and CIIF 14 Holding Companies, **UCPB-TBG's study on the financial and economic viability of the proposed SMC share conversion was affirmed and endorsed to the PCGG and CIIF 14 Holding Companies for appropriate action**;

WHEREAS, apart from the legal issues surrounding the CIIF SMC shares and **considering the immediate concern to preserve the value of the said shares, taking into account the current global financial crisis and its effects on the Philippine financial situation, and as recommended by the UCPB-TBG, the proposed SMC share conversion is financially and economically advantageous**;

WHEREAS, in addition, **given the dynamic market environment, when the shares are converted, the shareholders will no longer gain from any profits or suffer from any losses resulting from the change in business strategy of SMC, or from any change in the economic situation or market developments**;

BE IT RESOLVED, That, **based on the facts and circumstances prevailing as of even date and the results of the study conducted by the UCPB-TBG, UCPB, as the administrator of the CIIF and in compliance with its mandate under PD 1468, concluded that it is financially beneficial to convert the CIIF SMC shares as offered by the San Miguel Corporation**. (Emphasis supplied.)

(3) The Department of Finance, through Secretary Margarito B. Teves, upon the recommendation of the Development Bank of the Philippines, confirmed that the CIIF SMC shares conversion is financially and economically advantageous and that it shall

work for the best interest of the farmers who are the ultimate and beneficial owners of said shares.

(4) The letter of the OSG dated July 30, 2009 opined that the proposed conversion is legally allowable as long as PCGG approval is obtained, thus:

> Parenthetically, x x x our Office received a copy of COCOFED, et al.'s Urgent Motion To Approve the Conversion of the SMC Common Share Into SMC Series 1 Preferred Shares dated July 24, 2009. Attached therewith is the SMC Notice of Regular Meeting and Information Statement dated July 23, 2009 which discusses and compares the common shares and Series 1 preferred shares. As can be gleaned from the x x x Information Statement dated July 23, 2009, the advantages of conversion of the common shares to Series 1 preferred shares are as follows:
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> 1. The Series 1 preferred shares shall be entitled to receive cash dividends upon declaration made at the sole option of the Board of Directors, fixed at 8% per annum as determined by Management. On the other hand, there is no fixed dividend rate for common shares. Further, no dividend shall be declared and paid to holders of common shares unless cash dividends shall have been declared and paid to all holders of the Series 1 preferred shares. Moreover, the Series 1 preferred shares are cumulative, which means that should dividend payments get delayed, it would eventually be paid in the future. This feature is not available for common shareholders.
>
> 2. The Series 1 preferred shares are redeemable in whole or in part, at the sole option of the Company (SMC), at the end of three (3) years from the Issue Date or on any Dividend Payment Date thereafter, at the price equal to the Issue Price plus any accumulated unpaid cash dividends. Series 1 preferred shares are also perpetual or have no stated maturity.
>
> 3. Should SMC decide not to redeem the Series 1 preferred shares at the end of the fifth year from Issue Date, the Dividend Rate will be adjusted to the higher of 8% per annum, and the prevailing 10-year Philippine Dealing System Treasury Fixing (PDST-F) Rate plus a spread of up to 300 basis points. This is an advantage because there is the opportunity for the Series 1 Preferred Shareholders to enjoy a higher dividend rate.

4. The Series 1 preferred shares have preference over common shares upon liquidation.

5. The Series 1 preferred shares shall be listed with the Philippine Stock Exchange within one year from issue date which should provide liquidity to the issue.

On the other hand, the disadvantages to the conversion are as follows:

1. Holders of Series 1 preferred shares will have no voting rights except as provided by law. Thus, the PCGG's representatives in the SMC Board will have been effectively removed from participating in the management of the SMC.

2. Series 1 preferred shares have no maturing date as these are perpetual shares. There is no definite assurance that the SMC will exercise its option of redemption.

3. Holders of the Series 1 preferred shares shall not be entitled to any participation or share in the retained earnings remaining after dividend payment shall have been made on Series 1 preferred shares.

4. There is no expiry date on the SMC's option to redeem the Series 1 Preferred Shares. Should market interest rates fall below the Dividend Rate, on or after the 3rd anniversary from Issue Date, the SMC may exercise the option to redeem the Series 1 Preferred Shares.

It is also our considered view that the conversion of the CIIF SMC common shares to SMC Series 1 preferred shares does not take them away from the jurisdiction of the courts. In conversion, the SMC common shares are merely reclassified into SMC Series 1 preferred shares without changing the proportional interest of the stockholder in San Miguel Corporation. Verily, the conversion of the SMC common shares to SMC Series 1 preferred shares does not involve a change in the condition of said shares.

The conversion of the SMC common shares to SMC Series 1 preferred shares and its eventual redemption is legally allowable as long as the approval of the PCGG is obtained for the amendment of the Articles of Incorporation of SMC, to allow the creation of the proposed preferred share with its various features. As long as the PCGG approval is obtained, the exercise of the redemption feature of the SMC in accordance with the Amended Articles of Incorporation

would not constitute a "sale" of the sequestered asset that is prohibited.

Hence, on September 2, 2009, the PCGG issued Resolution No. 2009-037-756 approving the proposed conversion:

WHEREAS, guided by the foregoing, the Commission interposes no objection to the conversion of the CIIF shares in SMC, as well as the PCGG ITF-CARP shares, including the qualifying shares issued to PCGG/government nominee-directors, to Series "1" Preferred shares.

NOW, THEREFORE, be it RESOLVED, as it is hereby RESOLVED, that the Commission hereby APPROVES, as it is hereby APPROVED, the conversion of the CIIF owned common shares, as well as the PCGG ITF-CARP common shares, including the qualifying shares issued to PCGG/government nominee-directors in San Miguel Corporation (SMC), to Series "1" Preferred Shares, **PURSUANT to the confirmation of the Department of Finance (DOF) and legal opinion of the Office of the Solicitor General (OSG), and SUBJECT to the conditions set forth in the said OSG opinion and requests of the OSG to seek the approval of the Honorable Supreme Court for the said proposed conversion**. (Emphasis supplied.)

The approval by the PCGG, for respondent Republic, of the conversion is a policy decision which cannot be interfered with in the absence of a showing or proof, as here, that PCGG committed grave abuse of discretion.

In the similar *Palm Avenue Realty Development Corporation v. PCGG*,[22] the Court ruled that the approval by PCGG of the sale of the sequestered shares of petitioner corporations allegedly owned and controlled by Kokoy Romualdez was legal and could not be the subject of a writ of certiorari or prohibition, absent proof that PCGG committed a grave abuse of discretion. The price of PhP 29 per share approved by the PCGG was even below the prevailing price of PhP 43 per share.

The Court ratiocinated in that case, thus:

It was no doubt in the light of these undeniable actualities, and in an attempt to discharge its responsibility to preserve the sequestered

[22] No. 76296, August 31, 1987, 153 SCRA 579.

stock and put an end to its continuing and inexorable depreciation, that the PCGG performed the acts now subject of attack in the case at bar. **Upon these facts and considerations, it cannot be said that the PCGG acted beyond the scope of the power conferred upon it by law. Indeed, it would appear that its acts were motivated and guided by the law creating it and prescribing its powers, functions, duties and responsibilities. Neither can it be said that it acted with grave abuse of discretion. It evidently considered and assessed the facts, the conflicting positions of the parties concerned, and the options open to it, before taking the course of action that it did. The possibility that it has erred cannot, to be sure, be completely eliminated. As above stated, it is entirely possible that a better bargain might have been struck with someone else. What cannot be denied is that the arrangement actually adopted and implemented has resulted in the satisfactory reconciliation of the conflicting facts in the case and the preservation of the stock for the benefit of the party that may finally be adjudged by competent court to be the owner thereof, and to a certain extent, to the advantage of numerous employees**.

The petitioners have failed to demonstrate that respondent PCGG has acted without or in excess of the authority granted to it by law, or with grave abuse of discretion, or that it had exercised judicial or quasi-judicial functions in this case, correctible by *certiorari*. The Court thus finds itself bereft of any justification to issue the prerogative writ of *certiorari* or prohibition that petitioners seek. (Emphasis supplied.)

Salonga, et al. question the position of respondent Republic that the benefits derived from the conversion are clearly quantifiable. As they claim, the price differential of PhP 21 per share is only profit on paper and at the price of losing membership in the SMC Board. Moreover, they point out that the dividends to be distributed to the common shares may even be higher than the guaranteed 8% dividends.

These contentions are specious. While it is conceded that the price differential of PhP 21 is an unrealized gain, the clear financial advantage derived from the transaction is not the price differential but the guaranteed 8% dividend per annum based on the issue price of PhP 75 per share as compared to a much lower dividend rate that common shares may earn. Worse, there

may even be no dividends for the common shares after distribution of the dividends to the holders of the preferred shares in the event of poor or weak business performance. In addition, unless the Series 1 Preferred Shares are redeemed at the end of the fifth year from issue date, the dividend rate of 8% shall be increased based on the following formula:

> [T]he dividend rate shall be adjusted to the higher of (i) the Dividend Rate, and (ii) the prevailing 10-year PDST-F Rate (or such successor benchmark rate) as displayed under the heading "Bid Yield" as published on the PDEx Page (or such successor page) of Bloomberg (or such successor electronic service provider) at approximately 11:30 a.m. Manila time on the date corresponding to the end of the fifth year from the Issue Date (or if not available, the PDST-F Rate on the banking day prior to such date, or if still not available, the nearest preceding date on which the PDST-F Rate is available, but if such nearest preceding date is more than five days prior to the date corresponding to the end of the fifth year from the Issue Date, the Board of Directors at its reasonable discretion shall determine the appropriate substitute rate), plus a spread of up to 300 basis points, in either case calculated in respect of each share by reference to the Issue Price.[23]

Undoubtedly, the holders of preferred shares will have distinct advantages over common shareholders.

By relinquishing its voting rights in the SMC Board through the conversion, the government, it is argued, would be surrendering its final arsenal in combating the maneuverings to frustrate the recovery of ill-gotten wealth. It may, as feared, be rendered helpless in preventing an impending peril of a "lurking dissipation."

This contention has no merit.

The mere presence of four (4) PCGG nominated directors in the SMC Board does not mean it can prevent board actions that are viewed to fritter away the company assets. Even under the status quo, PCGG has no controlling sway in the SMC Board, let alone a veto power at 24% of the stockholdings. In relinquishing

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[23] Annex "A," Urgent Motion: To Approve the Conversion of the SMC Common Shares into SMC Series 1 Preferred Shares.

the voting rights, the government, through PCGG, is not in reality ceding control.

Moreover, PCGG has ample powers to address alleged strategies to thwart recovery of ill-gotten wealth. Thus, the loss of voting rights has no significant effect on PCGG's function to recover ill-gotten wealth or prevent dissipation of sequestered assets.

It is also not correct to say that the holders of the preferred shares lose all their voting rights. Sec. 6 of the Corporation Code provides for the situations where non-voting shares like preferred shares are granted voting rights, *viz*:

> Section 6. *Classification of shares*.—The shares of stock in corporations may be divided into classes or series of shares, or both, any of which classes or series of shares may have such rights, privileges or restrictions as may be stated in the articles of incorporation: ***Provided,* That no share may be deprived of voting rights except those classified and issues as "preferred" or "redeemable" shares, unless otherwise provided in this Code**: *Provided, further*, That there shall always be a class or series of shares which have complete voting rights.
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> x x x x x x x x x
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> Where the articles of incorporation provide for non-voting shares in the cases allowed by this Code, the holders of such shares shall nevertheless be entitled to vote on the following matters:
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> 1. Amendment of the articles of incorporation;
> 2. Adoption and amendment of by-laws;
> 3. Sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all of the corporation property;
> 4. Incurring, creating or increasing bonded indebtedness;
> 5. Increase or decrease of capital stock;
> 6. Merger or consolidation of the corporation with another corporation or other corporations;
> 7. Investment of corporate funds in another corporation or business in accordance with this Code; and

8. Dissolution of the corporation.

Except as provided in the immediately preceding paragraph, the vote necessary to approve a particular corporate act as provided in this Code shall be deemed to refer only to stocks with voting rights.

In addition, the holders of the preferred shares retain the right to dissent and demand payment of the fair value of their shares, to wit:

Sec. 81. *Instances of appraisal right*.—Any stockholder of a corporation shall have the right to dissent and demand payment of the fair value of his shares in the following instances:

1. In case any amendment to the articles of incorporation has the effect of changing or restricting the rights of any stockholders or class of shares, or of authorizing preferences in any respect superior to those of outstanding shares of any class, or of extending or shortening the term of corporate existence;

2. In case of sale, lease, exchange, transfer, mortgage, pledge or other disposition of all or substantially all of the corporate property and assets as provided in this Code, and

3. In case of merger or consolidation.

Lastly, the preferred shares will be placed under sequestration and management of PCGG. It has powers to protect and preserve the sequestered preferred shares even if there are no government-nominated directors in the SMC Board.

Thus, the loss of four (4) board seats would not in reality prejudice the rights and interests of the holders of the preferred shares. And such loss is compensated by the tremendous financial gains and benefits and enormous protection from loss or deterioration of the value of the CIIF SMC shares. The advantages accorded to the preferred shares are undeniable, namely: the significant premium in the price being offered; the preference enjoyed in the dividends as well as in the liquidation of assets; and the voting rights still retained by preferred shares in major corporate actions. All things considered, conversion to preferred shares would best serve the interests and rights

of the government or the eventual owner of the CIIF SMC shares.

It is likewise postulated that the dividends distributed to the common shares may end up higher than 8% guaranteed to preferred shares. This assumption is speculative. With the huge investments SMC poured into several big ticket projects, it is unlikely that there will be much earnings left to be distributed to common shareholders. And to reiterate, the decision to convert is best left to the sound business discretion of the government agencies concerned.

Salonga, et al. also argue that the proposed redemption is a right to buy the preferred shares at less than the market value. That the market value of the preferred shares may be higher than the issue price of PhP 75 per share at the time of redemption is possible. But then the opposite scenario is also possible. Again, the Court need not delve into policy decisions of government agencies because of their expertise and special knowledge of these matters. Suffice it to say that all indications show that SMC will redeem said preferred shares in the third year and not later because the dividend rate of 8% it has to pay on said shares is higher than the interest it will pay to the banks in case it simply obtains a loan. When market prices of shares are low, it is possible that interest rate on loans will likewise be low. On the other hand, if SMC has available cash, it would be prudent for it to use such cash to redeem the shares than place it in a regular bank deposit which will earn lower interests. It is plainly expensive and costly for SMC to keep on paying the 8% dividend rate annually in the hope that the market value of the shares will go up before it redeems the shares. Likewise, the conclusion that respondent Republic will suffer a loss corresponding to the difference between a high market value and the issue price does not take into account the dividends to be earned by the preferred shares for the three years prior to redemption. The guaranteed PhP 6 per share dividend multiplied by three years will amount to PhP 18. If one adds PhP 18 to the issue price of PhP 75, then the holders of the preferred shares will have actually attained a price of PhP 93 which hews closely to the speculative PhP 100 per share price indicated

by movants-intervenors. In effect, there will not be much prejudice to respondent on the assumption that the speculative PhP 100 per share will be attained.

On the issue of the net dividends accruing to COCOFED, the Court rules that the dividends shall be placed in escrow either at the Land Bank of the Philippines or at the Development Bank of the Philippines in the name of respondent Republic and not COCOFED.

Salonga, et al. also contend that PCGG cannot pursue the exchange offer of SMC for want of power to exercise acts of strict dominion over the sequestered shares.

This is incorrect.

The Court, to be sure, has not barred the conversion of any sequestered common shares of a corporation into preferred shares. It may be argued that the conversion scheme under consideration may later on be treated as an indirect sale of the common shares from the registered owner to another person if and when SMC decides to redeem the Series 1 preferred shares on the third anniversary from the issue date of the preferred shares. Still, given the circumstances of the pending incident, the Court can validly allow the proposed conversion in accordance with Rule 57, Sec. 11, in relation to Rule 59, Sec. 6 of the Rules of Court. Sec. 11 reads:

> SEC. 11. *When attached property may be sold after levy on attachment and before entry of judgment.*—Whenever it shall be made to appear to the court in which the action is pending, upon hearing with notice to both parties, that the property attached is perishable, or **that the interests of all the parties to the action will be subserved by the sale thereof, the court may order such property to be sold at public auction in such manner as it may direct, and the proceeds of such sale to be deposited in court to abide the judgment in the action**. (Emphasis supplied.)

Republic v. Sandiganbayan[24] teaches that sequestration is akin to preliminary attachment or receivership, thus:

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[24] *Supra* note 3.

As thus described, sequestration, freezing and provisional takeover are akin to the provisional remedy of preliminary attachment, or receivership. x x x By attachment, a sheriff seizes property of a defendant in a civil suit so that it may stand as security for the satisfaction of any judgment that may be obtained, and not disposed of, or dissipated, or lost intentionally or otherwise, pending the action. x x x By receivership, property, real or personal, which is subject of litigation, is placed in the possession and control of a receiver appointed by the Court, who shall conserve it pending final determination of the title or right of possession over it. x x x All these remedies—sequestration, freezing, provisional, takeover, attachment and receivership—are provisional, temporary, designed for particular exigencies, attended by no character of permanency or finality, and **always subject to the control of the issuing court or agency**. (Emphasis supplied.)

Even if the conversion-cum-redemption partakes of an indirect sale, PCGG can be allowed to approve the conversion in line with our ruling in *Palm Avenue Realty Development Corporation*,[25] subject to the approval of the Court.

Evidently, as long as the interests of all the parties will be subserved by the sale of the sequestered properties, the Court may allow the properties to be sold. More so, the Rules would allow the mere conversion of the shares of stock given the evident benefit that all the parties would receive from such conversion that far outweighs any perceived disadvantage. Thus, the Court is clearly empowered to allow the conversion herein pressed by the PCGG.

While the PCGG, as sequestrator, does not exercise acts of ownership over sequestered assets, the proper court, where the case involving the sequestered asset is pending, may, nevertheless, issue a positive and definite order authorizing the sale of said assets. As we held in *Republic v. Sandiganbayan*:

Our temporary restraining order lifting the Sandiganbayan restraining order did not, by any stretch of the imagination, authorize PCGG to sell the Falcon aircraft. A *definite and positive order* of a court is needed before the jet plane may be sold. The proper procedure

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[25] *Supra* note 22.

after the lifting of the restraining order was for PCGG to go to Sandiganbayan and ask for *formal authority* to sell the aircraft.[26] x x x

The ruling in *Republic v. Sandiganbayan* voiding the sale by PCGG of a sequestered jet does not apply squarely to the incident at bar, because PCGG did not, in that case, seek court approval before the sale. Moreover, PCGG was not able to provide any justification for the seizure of the jet from the lessee. In the pending incident before the Court, it has long been settled that the CIIF SMC common shares were bought by what have been declared as *prima facie* public funds. Thus, the sequestration is justified. More importantly, respondent Republic, as contained in the Supplemental Comment filed by the OSG dated September 4, 2009, has adopted Resolution No. 2009-037-756 approving the conversion of the shares, and has prayed for the approval by the Court of such conversion.

In sum, the conversion of the CIIF SMC Common Shares to Series 1 Preferred Shares should be approved in the best interests of everyone concerned including the government and the Filipino people.

Once the subject conversion is accomplished, the preferred shares shall remain in *custodia legis* and their ownership shall be subject to final ownership determination by the Court. In addition, the preferred shares shall be registered in the name of the CIIF companies until the final adjudication of the issue as to the true and legal owners of said shares. Unless and until the ownership issue shall have been resolved with finality, said preferred shares shall remain under sequestration and PCGG management.[27]

WHEREFORE, the Court *APPROVES* the conversion of the 753,848,312 SMC Common Shares registered in the name of CIIF companies to *SMC SERIES 1 PREFERRED SHARES* of 753,848,312, the converted shares to be registered in the names of CIIF companies in accordance with the terms and

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[26] *Supra* note 3, at 766.

[27] *Uy v. Sandiganbayan*, G.R. No. 111544, July 6, 2004, 433 SCRA 424, 431.

conditions specified in the conversion offer set forth in SMC's Information Statement and appended as Annex "A" of COCOFED's Urgent Motion to Approve the Conversion of the CIIF SMC Common Shares into SMC Series 1 Preferred Shares. The preferred shares shall remain in *custodia legis* and their ownership shall be subject to the final ownership determination of the Court. Until the ownership issue has been resolved, the preferred shares in the name of the CIIF companies shall be placed under sequestration and PCGG management.

The net dividend earnings and/or redemption proceeds from the Series 1 Preferred Shares shall be deposited in an escrow account with the Land Bank of the Philippines or the Development Bank of the Philippines.

Respondent Republic, thru the PCGG, is hereby directed to cause the CIIF companies, including their respective directors, officers, employees, agents, and all other persons acting in their behalf, to perform such acts and execute such documents as required to effectuate the conversion of the common shares into SMC Series 1 Preferred Shares, within ten (10) days from receipt of this Resolution.

Once the conversion is accomplished, the SMC Common Shares previously registered in the names of the CIIF companies shall be released from sequestration.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Corona, Chico-Nazario, Nachura, Bersamin, Del Castillo, and *Abad, JJ.,* concur.

Quisumbing and *Carpio, JJ.,* are on official leave.

Carpio Morales, J., please see dissenting opinion.

Leonardo-De Castro and *Peralta, JJ.*, took no part.

Brion, J., joins the dissent of *J.* Conchita Carpio Morales.

DISSENTING OPINION

CARPIO MORALES, *J.*:

Petitioner Philippine Coconut Producers Federation, Inc. (Cocofed) and its individual co-petitioners filed an Urgent Motion to Approve the Conversion of the San Miguel Corporation (SMC) Common Shares into SMC Series 1 Preferred Shares of July 24, 2009 (Motion).

Involved in the conversion into Series 1 Preferred Shares are 753,848,312 Class "A" and "B" common shares of SMC registered in the name of the Coconut Industry Investment Fund (CIIF) Holding Companies representing around 24% of the total SMC voting shares.

A trustee is not allowed by law to dispose of or deal with the trust assets below the actual market value

The subject block of shares is sufficient to elect four of the 15 members of the SMC Board of Directors. There is always a premium or added intrinsic value whenever a block of shares that is sufficient to elect a director is transacted. The owner of such block of shares will not dispose them of at the same price per share. The conversion value for the shares should include a professional valuation of the premium that should be part of the consideration and factored in the actual market price.

Without considering the premium inherent in this block of shares, the subject block of shares would be perpetually locked or impounded to a value much lower than the actual market value. In effect, the PCGG would be downgrading the value of the trust assets.

Moreover, one of the features of the conversion is an optional redemption and purchase. The terms provide that "SMC has the option, but not the obligation, to redeem all or part of the Series 1 Preferred Shares on the third anniversary from the Issue Date or on any Dividend Date thereafter at a redemption

price equal to the Issue Price of the Preferred Shares plus all cumulated and unpaid cash dividends."

The majority opinion observes that the share prices of Class "A" and "B" common shares of SMC have been declining for the past three years, and closed in the local bourse at ₱53.50 and ₱54 as of June 1, 2009 compared to their 2006 prices of ₱65 and ₱74.50, respectively. With the conversion, the issue price is pegged at ₱75.

If at the time of redemption, however, the prevailing market price is higher than the issue price, then the redemption price is below the actual market price. In such instance and for apparent reasons, SMC could readily exercise its option. The PCGG would then be disposing of the trust assets below the actual market value.

If the reverse situation occurs, SMC could forego its option on the third year and exercise it on a future dividend date. SMC's availment of its optional redemption and purchase is thus risk-free.

A trustee and conservator, of whom the highest degree of diligence and rectitude is required, is not allowed by law to dispose of the assets held in trust below the actual market value. The redemption price should be the issue price or the then prevailing market price, whichever is higher, plus any unpaid cumulative dividends.

There is nothing urgent with the Urgent Motion

Petitioners denominated their Motion as urgent, albeit the original draft Resolution-basis of this Court's deliberative discussion, did not state the pressing need for the approval of the conversion. And considering that as of April 11, 2008, the Republic already filed its Comment on the Petition, there is no basis for the Court to immediately act on the motion to preserve the value of the SMC common shares or to protect the interest of the rightful owners *pendente lite*.

Since the case already reached this Court on its terminal phase, it is incredulous for the parties to devise on the drawing board a scheme that will last beyond the next three years when a final decision is forthcoming in the next few months. The rhetorical speculation over the business climate during the remaining period of the final leg of the case is inconsequential compared to the assumption of greater risks from the conversion of the shares. The fleeting calvary of momentary waiting outweighs the eternal condemnation of a shortchanged transaction.

After the filing of the present Urgent Motion *and* the circulation by the *ponente* of the original draft Resolution thereon, the undersigned in her Reflections observed that the draft Resolution "effectively bars the PCGG from objecting to or even renegotiating the terms and conditions of the conversion."

In the final Resolution, the *ponente* relates that respondent Republic, this time **represented by the PCGG**, filed a Supplemental Comment reiterating its prayer for the approval of the present motion.

The majority opinion thus points out that the Republic, through the Office of the Solicitor General (OSG) and the PCGG, prays for the approval of the proposed conversion although it questions the personality of the Cocofed as movant. The assent of the parties, however, does not reduce the Court into a mere stamping pad.

The majority opinion concedes that all incidents arising from the sequestration case are always subject to the control of the court. The power to control the proceedings refers to the issuance of ancillary orders or writs to effectuate its judgment.[1]

It extends not only to the principal causes of action, *i.e.*, the recovery of ill-gotten wealth, but also to all incidents arising from, incidental to, or related to, such cases, such as the dispute over the sale of the shares, the propriety of the issuance of ancillary writs or provisional remedies relative thereto, and the

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[1] *Vide Republic v. Sandiganbayan*, G.R. No. 88126, July 12, 1996, 258 SCRA 685, 698.

sequestration thereof.[2] Indeed, the court has ample power to make such interlocutory orders as may be necessary to ensure that its judgment would not be rendered ineffective.[3]

The principle is not a license, however, for the Court to issue every order the parties commonly deem fit. Recall that the remedies are intended to be *preservative* or *conservative* in nature, so that in any event, the assets may be returned to the rightful owner as far as possible in the **same condition** as it was at the time of sequestration.[4] In the present case, the rightful owner's business options would be tied with the terms and conditions of the conversion.

The majority opinion relies on *Republic v. Sandiganbayan*[5] on the Court's power to sanction a sale of a sequestered asset. There is no dispute that a proper court authority is a condition *sine qua non* to the sale of a sequestered property. The Court in said case added, however, that the PCGG may perform such acts of strict ownership only as may necessarily be required by or result from the exercise of its vested power to vote on the sequestered shares of stock of a corporation; and secondly, such act is essential to the attainment of the PCGG's stated purpose for sequestration, *i.e.*, to prevent the dissipation of the corporate assets.[6]

Far from complying with the strict and limited interpretation of the exercise of acts of ownership, the proposed conversion sells out the only recognized means by which the PCGG may exercise future acts of strict ownership (*i.e.*, through the right

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[2] *Soriano III v. Yuson*, No. L-74910, August 10, 1988, 164 SCRA 226.

[3] *Republic v. Sandiganbayan*, G.R. No. 88228, June 27, 1990, 186 SCRA 864 where the Sandiganbayan, upon motion, placed the cash dividends of a sequestered corporation in *custodia legis* instead of allowing them to remain in the name and under the control of one of the litigants.

[4] *Bataan Shipyard and Engineering Co., Inc. (BASECO) v. PCGG*, 234 Phil. 180, 234 (1987).

[5] G.R. No. 88336, December 26, 1990, 192 SCRA 743.

[6] *Id.* at 755.

to vote) and, as will be discussed hereafter, bargains away the safeguard against the dissipation of corporate assets.

The right to vote the sequestered shares to avoid dissipation of assets

As earlier stated, the subject block of shares is sufficient to elect four directors. The majority opinion discusses that the only disadvantage of the conversion scheme is the loss of the voting rights that common shareholders have.[7] It dismisses this loss by resorting to sophistry and instead vividly depicts a financial windfall.

Once the conversion is accomplished, the Republic surrenders its final arsenal in combating the maneuverings to frustrate the recovery of ill-gotten wealth.

The right to vote the sequestered shares, when proper under the circumstances, may only be exercised within the parameters and context of the stated purposes of sequestration or provisional takeover, *i.e.*, to prevent the dispersion or undue disposal of the corporate assets.[8]

Republic v. COCOFED[9] further elucidates this essential right. The Court therein explained that the PCGG generally cannot perform acts of strict ownership including the right to vote the sequestered shares and elect members of the board of directors. The only conceivable exception is in a case of takeover of a business belonging to the government or whose capital comes from public funds but which landed in private hands. There are two clear "public character" exceptions: (a) where government shares are taken over by private persons/ entities who/which registered them in their own names, and (b) where the capitalization or shares that were acquired with public funds but somehow landed in private hands. The *prima facie* beneficial owner should be given the privilege of enjoying

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[7] Except as provided by law.

[8] *Bataan Shipyard and Engineering Co., Inc. (BASECO) v. PCGG*, supra at 236.

[9] G.R. Nos. 147062-64, December 14, 2001, 372 SCRA 462.

the rights flowing from the *prima facie* fact of ownership. When the sequestered shares are alleged to have been acquired with ill-gotten wealth, then the "two-tiered test" is applied, to wit: (a) there is *prima facie* evidence showing that the said shares are ill-gotten and thus belong to the state, and (b) there is immediate danger of dissipation thus necessitating their continued sequestration and voting by the PCGG while the main issue pends.

It was in that immediately-cited case that the Court ruled that for purposes of determining the right to vote the shares *pendente lite*, the coconut levy funds are not only affected with public interest; they are, in fact, *prima facie* public funds. The crucial question left, for purposes of exercising the right to vote, is whether there is immediate danger of dissipation.

In the present case, in the event of an immediate danger of dissipation after the proposed conversion, the Republic can no longer move to vote the sequestered shares and prevent the impending peril. **In case the conversion pushes through, the hands of the Republic are tied and helpless in the face of a lurking dissipation**.

While the promise of financial gains is alluring with the fixed dividend rate of 8% and preference in the liquidation of assets, there is nothing left to prevent the SMC from diluting its corporate assets, diversifying into risky ventures,[10] and consequently depreciating the market value of the shares. After all, SMC could not be forced to redeem the shares at the issue price of ₱75 when the market value is plummeting. Of course, there is that preference in the liquidation of assets that it can go after. By that time, the percentage in the total shareholdings may remain the same, but its equivalence in pecuniary terms, however, would have been watered down or devaluated.

It bears noting that what sequestration is guarding against is more on the dissipation of the corporate assets *than* the

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[10] The majority opinion, in fact, recognizes this aggressive policy of the SMC (Resolution, p. 13.).

decrease of the share value. The law cannot possibly control the infinite market forces affecting the value of the stocks, but it can see to it that the corporate assets that these stocks represent remain intact.

I, therefore, vote to DENY the Urgent Motion.

THIRD DIVISION

[G.R. No. 179103. September 17, 2009]

NATIONAL POWER CORPORATION, *petitioner, vs.* **PREMIER SHIPPING LINES, INC.,** *respondent.*

[G.R. No. 180209. September 17, 2009]

PREMIER SHIPPING LINES, INC., *petitioner, vs.* **NATIONAL POWER CORPORATION,** *respondent.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; GOVERNMENT CONTRACT CONSTRUED; CLAIM FOR ADDITIONAL COST INCURRED FOR THE SEGREGATION OF THE DELIVERED ITEMS AT THE DELIVERY POINTS HELD IMPROPER.— Number 4, Article II (Scope of Work) of the contract provides that the contractor (Premier) shall provide labor and all necessary equipment for the *proper segregation of the delivered items at the designated stockyards*. This provision, according to Premier, shows that segregation could only be made at the port of destination and not at the port of origin. We do not subscribe to such explanation. There is nothing in said provision that limits or confines the segregation of the wood poles at the delivery points. What is clear from said provision is that the wood poles, when delivered at the points of destination, should have already been segregated as specified in the contract. Thus, it was up to the service provider/contractor to choose

where it wanted to perform the segregation of the poles, whether it be at the port of origin or at the port of destination, as long as the wood poles were segregated when left at the delivery points. Neither does the phrase "delivered items" restrict where segregation may be performed. As explained above, the wood poles should be segregated upon delivery at the delivery points. x x x We rule that the segregation of the serviceable poles from the unserviceable ones in whatever port it may be undertaken, whether it was in the port of origin or in the port of destination, was within the coverage of the original contract. The contract plainly obligated Premier to transfer or haul the 924 wood poles on a door-to-door basis. It is to be noted that the wood poles to be hauled or delivered were already segregated according to size at the port or stockyard of origin. In performing its task to deliver or transfer said wood poles, it was Premier's duty to do so without causing damage to the same. It knew fully well that damage to the cargo, total or partial, would constitute breach of the contract and would subject it to liability. It therefore follows that Premier should be careful in the hauling of the wood poles. Thus, only by segregating the serviceable poles from the unserviceable ones could it do its job properly.

2. ID.; ID.; ID.; CLAIM FOR ADDITIONAL EXPENSES INCURRED FOR THE EXTENDED DAYS IN HAULING THE ITEMS DISALLOWED.— Premier's schedule for the hauling of the wood poles from the Mansilingan Stockyard was eight days. This period was extended to 18 days, because it had to be careful since not all the logs were serviceable. The expenses (₱964,900.00) allegedly incurred during those additional ten days are what Premier is billing NAPOCOR for. Is it proper to bill NAPOCOR for these additional days? No, it is not. The fact that Premier needed to separate the serviceable poles from the unserviceable ones was part of the scope of its work, which was to deliver the poles on a door-to-door basis. It cannot charge extra for what is within the parameters set forth in the contract. If Premier did not perform the segregation and lifted three to five poles at a time as it had planned, damage to the poles would have unavoidably happened. This, it did not want to happen. As an entity dealing with NAPOCOR for the past fifteen years, the schedule and the costing it had prepared should have anticipated situations that would alter its timetable and go beyond its estimated expenses, as in this case. It did not. When the hauling from the Mansilingan Stockyard went

beyond its timetable, Premier wanted to charge NAPOCOR for the excess days. This cannot be. x x x The supposed instruction of the NAPOCOR official to segregate the serviceable poles from the unserviceable ones and the certification issued to this effect, as well as the certification stating that Premier rendered overtime service for thirty-six (36) hours, will not entitle it to be paid the additional ₱964,900.00. As already explained, the segregation it undertook was part of the contract. As to the alleged overtime service of three days, the same has no basis. Since the contract was for forty days, it cannot therefore charge any service done within the contract period. If there was any delay in the performance of its obligation, it would be the contractor that should be held liable therefor.

3. ID.; ID.; ID.; CLAIM FOR ADDITIONAL PAYMENT DUE TO CHANGE IN DELIVERY POINT NOT ALLOWED.— For the additional distance of nine kilometers from the pier to the stockyard in San Jose, Mindoro where the wood poles were delivered, Premier is asking for an additional ₱243,777.26 because the distance as allegedly stipulated in the contract was only for eight and not for 17 kilometers. This amount is on top of the ₱65,000.00, which Premier asked as payment for its fuel and lube oil consumption by reason of the change in the delivery point. x x x After going over the original and supplemental contracts, we do not find any provision providing for the exact distances between the point of origin and any of the points of delivery or destination. This being the case, Premier should have done its job by determining for itself the distance involved by reason of the change in delivery point. This, it did not do. It was only when it was already in the process of delivering the wood poles in San Jose, Mindoro that Premiere discovered that the distance from the pier to the stockyard was farther. Despite having the opportunity to include all expenses that it may incur due to the change of stockyard, it did not act like an entity that had been in the business of hauling cargo for a long time. The fault lies in Premier due to its failure to inspect and check out the complete route to be taken in the delivery of the wood poles to the stockyard in San Jose, Mindoro, prior to agreeing to the amount of ₱65,000.00. As the Court of Appeals explained, it would be unfair for NAPOCOR if Premier would quote some more expenses that could have been anticipated when it made the valuation for the change of one of the delivery points, for it was given all the chances to do

so. x x x As the Court sees it, Premier failed to anticipate all expenses that may be incurred in the hauling and the delivery of the wood poles. The bid Premier submitted was sufficient for it to be declared the winner. However, when it incurred expenses it failed to foresee, Premier began charging NAPOCOR for the additional expenses that were part and parcel of the service it contracted to provide. The contract it entered into turned out to be a disastrous deal or an unwise investment. This Court will not allow Premier to recover from NAPOCOR the expenses Premier sustained for an undertaking it was bound to perform. There is no one to blame but Premier for plunging into an undertaking without fully studying it in its entirety. Concomitantly, there can be no unjust enrichment on the part of NAPOCOR, because the services rendered in its favor are included in the contract it entered into with Premier.

4. ID.; ID.; ID.; WHEN THE NON-DELIVERY OF THE ITEMS CANNOT BE CONSIDERED AS A BREACH OF CONTRACT.— NAPOCOR contends that it was justified in deducting the amount of ₱23,150.25 from the contract price, representing liquidated damages brought about by Premier's failure to complete its work when it failed to deliver 45 wood poles. Being justified to withhold said amount, NAPOCOR contends it should be awarded attorney's fees and litigation costs, and not Premier, for the former was compelled to litigate and incur expenses to protect its interest against the latter's unfounded claim. There is no dispute that the undertaking in the amount of ₱2,398,000.00 was a lot price. We agree with both lower courts that, regardless of the number of wood poles hauled and delivered, Premier shall be paid the whole amount. Moreover, it is not the fault of Premier that not all the wood poles were delivered. As testified to by Mr. Gerardo Cabatingan, Assistant Field Supervisor of Premier, the NAPOCOR personnel at the stockyard of origin wanted only the serviceable poles to be loaded into the truck for hauling and delivery to the ports of destination. Thus, the non-delivery of the 45 wood poles, which was upon orders of the personnel of NAPOCOR, cannot be considered a breach of contract for which Premier can be held liable.

APPEARANCES OF COUNSEL

The Solicitor General for National Power Corporation.
Reales Law Office for Premier Shipping Lines, Inc.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before Us are Petitions for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure filed by Premier Shipping Lines, Inc. (Premier) and National Power Corporation (NAPOCOR) assailing the Decision[1] of the Court of Appeals[2] dated 19 July 2007 in CA-G.R. CV No. 73650 which set aside the Decision[3] of the Regional Trial Court (RTC) of Cebu City, Branch 11. Premier filed a Motion for Reconsideration which the Court of Appeals denied in a Resolution[4] dated 12 September 2007.

The factual antecedents of this case are as follows:

NAPOCOR is a public corporation duly organized and existing under and by virtue of Republic Act No. 6395, as amended, while Premier is a private corporation engaged in the domestic transport of cargo duly registered and existing under and by virtue of the laws of the Republic of the Philippines.

On 18 June 1996, NAPOCOR conducted a public bidding to procure the services of a contractor that would haul/deliver nine hundred twenty-four (924) wood poles from Bacolod to Masbate, Mindoro, Marinduque and Catanduanes. In a pre-bidding conference, the participants, one of which was Premier, were informed that, if awarded the job, it would provide labor, materials, tools and equipment to carry out the job; that the delivery of the wood poles would be on a door-to-door basis; that the wood poles were already segregated according to size in the port of origin; and, that the bid price was a lot price.

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[1] Penned by Associate Justice Francisco P. Acosta with Associate Justices Pampio A. Abarintos and Agustin S. Dizon, concurring; CA *rollo*, pp. 106-119.

[2] Cebu City.

[3] Records, pp. 159-166.

[4] CA *rollo*, pp.127-128.

Premier won the public bidding with a bid of ₱2,398,000.00. A Notice of Award[5] dated 25 June 1996 signed by Salvador D. Faelnar, OIC – RAFS[6] was issued to Premier under Job Order No. ADM-TWSS-96-03-28. On 2 August 1996, NAPOCOR and Premier entered into a contract[7] for the said service. Thereafter, a Notice to Proceed[8] dated 5 August 1996 signed by Jose C. Troyo, Group Manager-RAFS, was issued to Premier, advising the latter to commence the work to provide labor, materials, tools and equipment, including payments of all taxes, fees, insurance and freight, thru government and private agencies.

On 13 August 1996, Premier received a fax message[9] from NAPOCOR's Island Grid Project Office in Quezon City requesting some revision of the delivery point due to a change in priority of construction. One of the requested changes was the delivery of wood poles from Bacolod City to San Jose, Mindoro instead of Bacolod City to Calapan, Mindoro. On account thereof, in a letter[10] dated 15 August 1996 signed by Benson E. Go, General Manager/President of Premier, Premier asked for the time suspension of the contract. It informed NAPOCOR that such a revision would entail additional expenses, since the number of ports would increase from four to five, together with the number of days of usage of the vessel. The change would mean additional 70 nautical miles in distance and ten hours of travel time.

In a meeting on 19 August 1996, NAPOCOR agreed to pay Premier ₱65,000.00, representing costs of fuel oil and lube oil,

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[5] Records, p. 97.

[6] Officer-In-Charge – Regional Administrative & Financial Services.

[7] Exh. B; Records, pp. 7-11. Contract to Provide Labor, Materials, Tools and Equipment Including Payments of All Taxes Fees, Insurance and Freight Thru Government and Private Agencies for the Hauling Delivery of 924 Woodpoles From Bacolod to Masbate, Mindoro, Marinduque and Catanduanes on a Door to Door Basis.

[8] Records, p. 98.

[9] *Id.* at 12.

[10] *Id.* at 13.

for the change of delivery point from Calapan, Mindoro to San Jose, Mindoro. In a letter[11] dated 20 August 1996 of Jose C. Troyo to Mr. Benson E. Go regarding the amount agreed upon during the aforesaid meeting, the latter gave his conforme by affixing his signature thereto. The changes in the quantities of the wood poles and their delivery locations were contained in a letter dated 20 August 1996 of J.D. de Mesa, Project Manager, Island Grid Project.[12] A Supplemental Contract[13] involving the aforesaid agreement was entered into by NAPOCOR and Premier on 10 June 1997. Said Supplemental Contract was incorporated into and made part of the original contract.

After threshing out with NAPOCOR the changes in quantity and delivery locations, Premier sent its motor vessel, M/V Arthur II, to Bacolod City in order to load thereon the wood poles for delivery to the different points of destination. The vessel arrived in Bacolod City on 31 August 1996, and Premier's personnel began loading the wood poles on 3 September 1996. As testified to by Mr. Go, they were surprised to discover that some of the poles at the stockyard at Mansilingan, Bacolod City were already rotten and about to break. This gave them a problem, for it would cause considerable delay in the loading of the poles to the vessel. Without such rotten poles, three to five poles could be lifted at a time and it would take from five to eight days to finish the loading of all the poles; however, with some rotten poles, they could not lift three to five poles at a time. They had to segregate one by one the serviceable poles from the unserviceable ones. This segregation, according to Mr. Go, was not part of the original and supplemental contracts between NAPOCOR and Premier. They, nevertheless, performed the segregation per instruction given by defendant, acting through its Island Grid Project Manager. A certification to this effect was issued by J. D. de Mesa.[14] After segregating the serviceable from the unserviceable wood poles, Premier loaded to its vessels

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[11] *Id.* at 14.

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

[13] *Id.* at 131-133.

[14] *Id.* at 100.

879 out of the 924 poles, the difference being the unserviceable ones. Premier took eighteen (18) days to load the poles, allegedly resulting in Premier's incurring an additional cost in the sum of ₱ 964,900.00, broken down as follows:[15]

1. 1 Prime mover w/ trailer @ ₱1,200.00/hr. x 10 days	=	₱ 96,000.00
2. 1 Trailer @ ₱750.00/hr. x 10 days	=	60,000.00
3. 1 Crane @ ₱1,500.00/hr. x 10 days	=	120,000.00
4. 1 Crane Operator @ ₱150.00/day x 10 days	=	1,500.00
5. 1 Driver (Prime Mover) @ ₱150.00/day x 10 days	=	1,500.00
6. 1 Auto Mechanic @ ₱150.00/day x 10 days	=	1,500.00
7. 23 Laborers @ ₱120.00/day x 10 days	=	27,600.00
8. 1 Supervisor @ ₱250.00/day x 10 days	=	2,500.00
9. Meals for 27 persons @ ₱90.00/day/person x 10 days	=	24,300.00
10. Vessel @ ₱90,000.00/day x 7 days	=	630,000.00
	₱	964,900.00

Upon delivering the wood poles at the port of San Jose, Mindoro, Premier claimed that it incurred an additional cost amounting to ₱243,777.26, because the distance from the pier to the stockyard where the poles were delivered was 17 kilometers, which was nine kilometers more than the distance **as stipulated in the contract**. The situation was compounded by the fact that the stockyard was not cleared, and that it was Premier that did the job of clearing the area. It took two days to clear the area. The clearing job was confirmed by a certification dated 2 October 1996 issued by A.C. Villanueva, Property Officer A, Island Grid Project.[16] A Certification[17] dated 14 January 1997 was also issued by A.C. Villanueva stating that Premier rendered overtime service for three days in connection with the hauling of the wood poles from the Mansilingan Stockyard at Bacolod City.

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[15] *Id.* at 103-105.

[16] *Id.* at 102.

[17] *Id.* at 101.

In a letter[18] dated 30 January 1997 sent to NAPOCOR, Premier asked for the settlement of an additional billing amounting to ₱1,208,677.26 [(₱964,900.00 – segregation of serviceable from unserviceable poles at the Mansilingan Stockyard) + (₱243,777.26 – additional distance of 9 kilometers from the pier to the stockyard in San Jose, Mindoro)] representing additional costs incurred in the hauling and delivery of the wood poles.

NAPOCOR did not pay the additional billing. As a consequence, Premier, through its counsel, sent a demand letter to NAPOCOR on 2 October 1997.[19] With NAPOCOR's refusal to pay, Premier was constrained to file the instant case for collection of sum of money, with damages and attorney's fees, before the RTC of Cebu City.

In its complaint, Premier asked that, after trial on the merits, NAPOCOR be ordered to pay the following: (a) ₱1,208,677.26 – representing the unpaid bill for additional service; (b) ₱23,000.00 – amount withheld on the contract since only 879 out of 924 poles were delivered; (c) ₱50,000.00 as attorney's fees; (d) ₱10,000.00 – litigation expenses; (e) interest from the time of the demand; and (f) costs of suit.[20] The case was raffled to Branch 11 and docketed as Civil Case No. CEB-24636.

NAPOCOR filed its Answer,[21] arguing that the additional service allegedly costing ₱1,208,677.26, was actually contained in the contract, while the withholding of ₱23,000.00 was justified because only 879 out of the 924 poles were delivered. It asked that the complaint be dismissed, and, in its counterclaim, it asked that Premier be ordered to pay exemplary damages in the amount of ₱500,000.00, ₱300,000.00 as attorney's fees, and ₱150,000.00 as expenses of litigation. Premier filed its Reply.[22]

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[18] *Id.* at 103-105.

[19] *Id.* at 106-107.

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

[21] *Id.* at 30-35.

[22] *Id.* at 36.

Pre-trial was conducted on 8 November 2000 with the parties manifesting that there was no possibility of amicable settlement. The parties did not stipulate any other facts, except that Premier's admission that the segregation work was included in the scope of works that the contractor was bound to perform, with the qualification that the definite number of wood poles segregated was only 879 and not 924. The parties agreed that the issues to be tried and resolved were: (1) whether or not the plaintiff had valid causes of action against the defendant for the sum of money and damages; (2) whether or not the withholding of the ₱23,000.00 of the lot price was valid or legal; and (3) whether or not the plaintiff was liable to the defendant for the latter's counterclaim.[23]

Mr. Benson Go,[24] General Manager/President of Premier, and Mr. Gerardo Cabatingan,[25] Assistant Field Supervisor of Premier, testified for the plaintiff.

Mr. Go testified that Premier had been performing hauling jobs for NAPOCOR for the last fifteen years. He was a signatory to the contract between NAPOCOR and Premier for the hauling and delivery of nine hundred twenty-four (924) of NAPOCOR's wood poles from Bacolod to Masbate, Mindoro, Marinduque and Catanduanes. He explained that the segregation for which Premier was claiming ₱964,900.00 was for the segregation of the serviceable wood poles from the unserviceable ones at the port of origin at the Mansilingan Stockyard in Bacolod City, and not at the port of delivery in San Jose, Mindoro. He further testified that Premier incurred additional cost in San Jose, Mindoro because the distance from the pier to the stockyard was 17 kilometers as against the 8 kilometers contained in the contract. He added that the stockyard in San Jose, Mindoro was not ready to receive the wood poles, and that they conducted the cleaning of the area where the poles were to be delivered. He said Premier

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[23] *Id.* at 72.

[24] TSN, 17 January 2001, 1 February 2001.

[25] TSN, 22 February 2001.

was not in direct control of the delivery, and the delay was due to the fault of NAPOCOR.

Mr. Cabatingan testified that he discovered that some poles were already rotten and about to break up. When he informed NAPOCOR's representative of this, the latter told him that only serviceable poles should be loaded into the vessel, and that they should segregate the serviceable poles from the unserviceable ones. They sorted the poles one by one, and it took them 18 days to finish the loading instead of the targeted 5 to 8 days. Another delay was caused in the delivery of the poles to San Jose, Mindoro, because the distance from the pier to the stockyard was 17 to 18 kilometers, and not 8 kilometers as contained in the contract. Thereafter, they had to clear the area because the stockyard was not ready to receive the poles. This resulted in another two-day delay in the delivery of the poles.

For the defendant, Mr. Salvador Faelnar,[26] Regional Administration Manager of the Finance Group of NAPOCOR, and Atty. Marianito de los Santos,[27] Regional Legal Counsel of NAPOCOR Visayas, took the witness stand.

Mr. Faelnar testified that the segregation job adverted to in Article II(4) of the contract included the segregation at the point of origin of the poles to be hauled and delivered. He was not aware that Premier performed a segregation job at the port of origin in Bacolod City. It was his belief that the ₱65,000.00 stipulated in the Supplemental Contract[28] covered all costs arising from the change of location of the delivery point of the poles hauled from Bacolod City to San Jose, Mindoro.

Atty. De los Santos disclosed that he came across the contract involved in this case and the claim of Premier for ₱1,208,677.26 for incremental costs in the implementation of the contract. He was aware of Mr. J.D. de Mesa's query to the General

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[26] TSN, 18 April 2001.

[27] TSN, 24 May 2001.

[28] Records, pp. 156-158.

Counsel of NAPOCOR on whether Premier's claim should be paid. The General Counsel, he said, answered the query in the negative.[29] He added that he was aware of the letter[30] of Jose C. Troyo dated 29 May 1997 sent to Mr. Go of Premier, where Mr. Troyo denied the claims of Mr. Go. Atty. De los Santos declared that Premier's claims were without legal basis.

In its Decision dated 29 November 2001, the trial court ruled in favor of Premier, disposing of the case as follows:

> WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by the Court in this case ordering the defendant to pay to the plaintiff the sum of ₱1,208,677.26 representing unpaid bill for additional works performed by it and the sum of ₱23,150.25 representing the amount deducted or withheld from the contract price due to the plaintiff, together with interests thereon at the rate of 6% per annum to be computed from the date of filing of the complaint in this case until the full payment of said sums before finality of judgment. Thereafter, i[f] the amount adjudged remains unpaid, the interest rate shall be 12% per annum computed from the time when the judgment becomes final and executory until fully satisfied (pursuant to the ruling laid down in Eastern Shipping Lines, Inc. vs. Court of Appeals, 234 SCRA 88)
>
> The Court also hereby orders the defendant to pay to the plaintiff the sums of ₱10,000.00 as attorney's fees and ₱4,000.00 as expenses of litigation.
>
> No pronouncement is hereby made as to cost of this suit.[31]

The trial court found NAPOCOR liable to pay for the costs of the segregation of the unserviceable poles from the serviceable ones at the Mansilingan Stockyard in Bacolod City (port of origin); for the clearing of the stockyard in San Jose, Mindoro; and for the extended time to effect the delivery of about 435 wood poles from the pier in San Jose, Mindoro to the stockyard in Pulang Lupa Diesel Power Plant caused by the longer distance of 17 kilometers as compared with eight kilometers, which was

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[29] *Id.* at 134-136.

[30] *Id.* at 137-138.

[31] *Id.* at 166.

stipulated in the contract. It likewise ruled that the ₱23,051.25, withheld or deducted by NAPOCOR from the contract price, should be given to Premier because the contract price was a lot price. It explained:

> In the first place, the segregation of poles at the point of origin does not appear to be included in, or covered by, the contract entered into and executed by and between the parties on August 2, 1996. What is included in the said contract is segregation of "delivered items at the designated stockyards." So, what is stipulated in the contract is segregation of delivered poles at the delivery points or points of destination. The said provision in the contract clearly does not cover segregation of poles to be delivered from the hauling point or point of origin. Indeed, there is a world of difference between poles to be delivered and poles already delivered. Since the plaintiff was made by the defendant to perform segregation of serviceable poles from the unserviceable ones at the point of hauling or origin, the defendant must pay the plaintiff for the performance of said job or services. The plaintiff is entitled to compensation because of *facio ut des* which, i[f] translated into English, means "I do that you may give" (*Perez vs. Pomar*, 2 Phil. 682). In other words, the defendant is contractually liable to pay the plaintiff for such segregation job the total cost of which is ₱964,900.00, and the defendant significantly has not bothered to contest or question the computation of such cost.
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> However, even if it be granted arguendo that the plaintiff was not asked by the defendant to do the segregation works at Mansilingan, Bacolod City, still the defendant must compensate the plaintiff for such works for its benefit because of the principle that no one must be unjustly enriched or benefited at the expense of another (Article 2142 of the New Civil Code of the Philippines).
>
> In the second place, it appears also that the clearing job performed by the plaintiff in the stockyard of the defendant in the latter's Pulang-Lupa Diesel Power Plant in Mindoro and the extended time to effect the delivery of 435 poles from the pier in San Jose, Mindoro to its stockyard there are not covered by the contract executed by and between the plaintiff and the defendant on August 2, 1996, as supplemented by an agreement signed by them on June 10, 1997 (Exhibit 2). A reading of said contract will bear this out. It is not

true that the sum of ₱65,000.00 as agreed upon by the defendant on August 19, 1996 to be paid additionally to the plaintiff for the change of delivery point in Mindoro took care of all cost incurred by the said change-order. The sum of ₱65,000.00 only represented the costs of additional fuel oil and lube oil. This fact is unmistakably borne by the defendant's communication to the plaintiff dated August 20, 1996 (Exhibit F) and the supplemental Agreement signed by the parties on June 10, 1997 (Exhibit 2). Of course, the defendant cannot deny that it asked the plaintiff to perform the revised hauling and delivery jobs in San Jose, Mindoro. The defendant really asked the plaintiff to perform the said revised hauling and delivery jobs, as can be gleaned from the defendant's communications to the plaintiff dated August 13, 1996 (Exhibit D) and August 20, 1996 (Exhibit G) and the certifications issued by Mr. De Mesa, the Island Grid Project Manager of the defendant, and Mr. Villanueva, the Island Grid Project Property Officer of the defendant, on November 7, 1996 (Exhibit H) and October 2, 1996 (Exhibit J). So, the defendant is contractually liable to pay to the plaintiff for performing the revised hauling and delivery jobs in San Jose, Mindoro which entailed an additional cost of ₱243,777.26. The revision of delivery point asked by the defendant for the delivery of poles in Mindoro partakes of a change-order in contract's parlance. As the defendant did not bother to contest the computation of said additional cost, the Court considers the said computation of cost as accurate.

Thirdly and lastly, the defendant has no legal basis to deduct or withhold the sum of ₱23,150.25 from the contract price of ₱2,398,000.00. As it may be significantly noted, the contract price of ₱2,398,000.00 is a lot price as stated very clearly and categorically in the Notice of Award (Exhibit A) and Notice to Proceed (Exhibit C) issued by the defendant to the plaintiff and as testified to by Mr. Benson Go. A lot price is due to the plaintiff for as long as it has fully performed the works stipulated upon in the contract. This is regardless of the number of serviceable poles hailed and delivered by the plaintiff for the defendant. In other words, if the plaintiff was able to haul and deliver only 879 poles out of the 924 poles stocked in Mansilingan, Bacolod City, it still has to be paid the full contract price of ₱2,398,000.00. This is because it was not the fault of the plaintiff not to be able to haul and deliver the other 45 poles because it was told not to haul them for they were found to be unserviceable.[32]

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[32] *Id.* at 165-166.

On 11 December 2001, NAPOCOR filed a Notice of Appeal.[33] With the timely filing of the notice of appeal and the payment of appellate docket fees, the trial court ordered the transmittal of the records of the case to the Court of Appeals.[34] The appeal was docketed as CA-G.R. CV No. 73650.

On 19 July 2007, the Court of Appeals rendered its decision setting aside the decision of the trial court, its dispositive portion reading:

> WHEREFORE, IN THE LIGHT OF THE FOREGOING, the challenged Decision of the Regional Trial Court of Cebu-Branch 11 in Civil Case No. CEB-24636 is hereby set aside. Plaintiff-appellee PREMIER's claim of ₱1,208,677.26 for the segregation job and the additional expenses it allegedly incurred is denied, but defendant-appellant NAPOCOR is hereby ordered to pay plaintiff-appellee PREMIER the sum of ₱23,150.25, representing the amount withheld or deducted by defendant-appellant NAPOCOR from the contract price, together with interests thereon at the rate of 6% per annum to be computed from the date of filing of the complaint until the full payment of said sums before finality of judgment. Thereafter, if the amount adjudged remains unpaid, the interest rate shall be 12% per annum computed from the time when the judgment becomes final and executory until fully satisfied.
>
> The Court also hereby orders defendant-appellant NAPOCOR to pay plaintiff-appellee PREMIER the sums of ₱10,000.00 as attorney's fee and ₱4,000.00 as expenses of litigation.
>
> No pronouncement as to costs.[35]

The Court of Appeals ruled that Premier was not entitled to an additional payment of ₱964,900.00 for the segregation job it undertook at the port of origin, because the contract entered into by the parties did not limit or define the designated stockyards of NAPOCOR where segregation work may be performed. The contract did not limit the performance of such job at the point of destination. Since the segregation was performed at

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[33] *Id.* at 168.

[34] *Id.* at 170.

[35] CA *rollo,* pp. 118-119.

a designated stockyard, it declared that said job was within the "Scope of Works" stipulated in No. 4, Article II of the contract. It likewise found Premier's allegation that the word "delivered items" in No. 4 of Article II limited the segregation work to be done at the stockyards where the wood poles were to be delivered, and not at the port of origin, to be without merit. It explained that the phrase "segregation of the delivered items at the designated stockyards" referred to the requirement that the wood poles, upon delivery, should already have been segregated, but it did not serve to limit the designated stockyards where the segregation job may be performed. It pronounced that Premier was also not entitled to an additional payment of ₱243,777.26 for the additional distance and time incurred due to the change of delivery points. It stressed that the contract between the parties was for the hauling of 924 wood poles from Bacolod to Masbate, Mindoro, Marinduque and Catanduanes on a door-to-door basis. Since no particular point in any of the destination points was mentioned in the contract, the change in the delivery point (from Calapan, Mindoro to San Jose, Mindoro, which was still within Mindoro) did not require any additional payment therefor. It, however, conceded to Premier the additional charge amounting to ₱65,000.00 for fuel and lube oil for the change of delivery point, which the parties agreed upon. It added that Premier, which was given the chance to anticipate and to include any and all additional expenses for the change in the delivery point, could no longer quote some more expenses in addition to the ₱65,000.00 which it had submitted to NAPOCOR, and which the latter agreed to and accepted as additional expense. As to the ₱23,051.25 withheld by NAPOCOR from the contract price, the Court of Appeals agreed with the trial court that the same should be awarded to Premier despite the non-delivery of 45 unserviceable wood poles. The non-delivery thereof, it said, was not due to Premier's fault. The appellate court ruled that the contract price of ₱2,398,000.00 was a "lot price" which should be paid in full regardless of whether or not all the 924 wood poles were delivered. For its withholding of the ₱23,051.25, the award of attorney's fees and litigation expenses to Premier was justified.

On 7 August 2007, Premier filed a Motion for Reconsideration,[36] which the Court of Appeals denied in a Resolution dated 12 September 2007.[37]

Both NAPOCOR and Premier are before us *via* petitions for review on *certiorari* under Rule 45 of the Rules of Court. NAPOCOR's petition was docketed as G.R. No. 179103, while Premier's petition was docketed as G.R. No. 180209. On 5 March 2008, G.R. No. 179103 was consolidated with G.R. No. 180209, because said cases involved the same set of facts, raised inter-related issues and assailed the same Court of Appeals decision.[38]

Premier raises the following issues:

A

THE HONORABLE COURT OF APPEALS IN OBVIOUS GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION MISCONSTRUED THE SCOPE OF WORK AND THE SUPPLEMENTAL AGREEMENT DISREGARDING ADDITIONAL EXPENSE OF THE DELIVERY TO THE POINT OF THE AGREED DESTINATION.

B

THERE IS SERIOUS MISAPPREHENSION OF FACTS.

On the other hand, NAPOCOR raises the following issues:

I

WHETHER OR NOT THE COURT OF APPEALS ERRED IN ORDERING NPC TO PAY PREMIER THE SUM OF ₱23,150.25, REPRESENTING THE AMOUNT NPC DEDUCTED FROM THE CONTRACT PRICE FOR DELIVERY SHORTAGE.

II

WHETHER OR NOT THE COURT OF APPEALS ERRED IN AWARDING ATTORNEY'S AND LITIGATION COSTS IN FAVOR OF PREMIER.

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

[37] *Id.* at 127-128.

[38] *Rollo* (G.R. No. 179103), p. 76.

As required, NAPOCOR and Premier submitted their respective memoranda.[39]

In resolving the case on hand, we have to look at both the original and supplemental contracts entered into by the parties. The pertinent provisions of the original contract read:

ARTICLE II
SCOPE OF WORK AND CONTRACT DURATION

CONTRACTOR shall, in accordance with the provisions of this Contract and the Contract Documents, **fully and faithfully furnish all vessels/cargo trucks, equipment and other incidentals necessary for the effective transfer/hauling of Nine Hundred Twenty-Four (924) Woodpoles from Bacolod to Masbate, Mindoro, Marinduque and Catanduanes on a Door to Door Basis**. The works and services to be performed by the CONTRACTOR shall essentially consist of but not limited to the following features:

1. To haul and deliver wood poles from Bacolod to Masbate, Mindoro, Marinduque and Catanduanes;
2. To secure all necessary permits and necessary documents related to the execution of the project, including permits from DENR, CENRO for transporting the materials from Bacolod to Masbate, Mindoro, Marinduque and Catanduanes;
3. To provide all necessary equipment for the hauling/ loading/shipment such as: Mobile crane, high bed trailer, 10 wheeler truck, including labor, related expenses to be incurred, etc.
4. **To provide labor and all necessary equipment for the proper segregation of the delivered items at the designated stockyards, including all expenses to be incurred**;
5. To provide one (1) unit vessel with a minimum capacity of 1,800 gross tonnage and with necessary loading and unloading equipment, including all related and necessary expenses for port charges.[40]

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[39] *Id.* at 99-121, 122-128.

[40] Records, pp. 8-9.

The relevant provisions of the Supplemental Contract provide:

WHEREFORE, during the mobilization stage, it was learned that a major rerouting had been made on the proposed construction/ installation of the Bansud-San Jose Line, that is, instead of Calapan, Mindoro, the new point of delivery is thereby changed to San Jose, Mindoro, as contained in the Letter of the Project Manager, Island Grid Project, Mr. J.D. Demesa, dated August 20, 1996, confirming the aforementioned developments;

WHEREAS, the said change in the delivery point, which CONTRACTOR agreed to undertake, caused additional expense on the part of the CONTRACTOR/HAULER, in terms of its fuel and lube oil consumption, thereby necessitating the execution of this Supplemental Agreement;

NOW, THEREFORE, in view of the foregoing premises and for and in consideration of the mutual covenants and stipulations hereinafter provided, CONTRACTOR hereto ha[s] agreed as follows:

1. **For and in consideration of the additional expenses which CONTRACTOR had to bear for its fuel and lube oil consumption by reason of the change in the delivery point, CORPORATION shall pay an additional amount of PESOS: SIXTY FIVE THOUSAND (65,000.00), Philippine currency**.

PROVIDED, that the terms and conditions of the original contract shall remain in full force and effect unless revised and/or amended by this supplemental contract and that this supplemental contract is hereby incorporated and made part of the original contract as though fully written out and set forth therein.[41]

Premiere argues that the Court of Appeals erred in disregarding the additional expenses the former was claiming for the delivery of the wood poles to the point of the agreed destination, because the latter misconstrued the scope of work in the original contract and in the supplemental agreement entered into by the parties. Premiere is asking for an additional ₱1,208,677.26 representing additional costs incurred in the hauling and delivery of the wood poles, broken down as follows: (a) ₱964,900.00 for the segregation of the serviceable from

[41] *Id.* at 132.

the unserviceable poles at the Mansilingan Stockyard; and (b) ₱243,777.26 for the additional distance of 9 kilometers from the pier to the stockyard at San Jose, Mindoro.

Premiere contends that it should be paid the ₱964,900.00 for the segregation job (segregation of the serviceable wood poles from the unserviceable ones) it performed at the point of origin (Bacolod), because such segregation work at the port of origin was not embodied or contained in their contract. It is its contention that any act of segregation should have only been done at the point of delivery. NAPOCOR disagrees with such contention arguing that said job was within the scope of work agreed upon, and that segregation may be performed at the port of origin, that port being one of NAPOCOR's designated stockyards.

We agree with the Court of Appeals.

Number 4, Article II (Scope of Work) of the contract provides that the contractor (Premier) shall provide labor and all necessary equipment for the *proper segregation of the delivered items at the designated stockyards*. This provision, according to Premier, shows that segregation could only be made at the port of destination and not at the port of origin. We do not subscribe to such explanation. There is nothing in said provision that limits or confines the segregation of the wood poles at the delivery points. What is clear from said provision is that the wood poles, when delivered at the points of destination, should have already been segregated as specified in the contract. Thus, it was up to the service provider/contractor to choose where it wanted to perform the segregation of the poles, whether it be at the port of origin or at the port of destination, as long as the wood poles were segregated when left at the delivery points. Neither does the phrase "delivered items" restrict where segregation may be performed. As explained above, the wood poles should be segregated upon delivery at the delivery points.

The Court of Appeals aptly explained the point in this wise:

The aforequoted contested clause in the contract does not limit or define the designated stockyards of NAPOCOR where segregation

work may be performed. Nowhere does the contract limit the performance of such job at the points of destination. What is clear is that PREMIER was contracted for the hauling and/or delivery of NAPOCOR's wood poles, part of which shall include the segregation of said wool poles at the designated stockyards. The stockyard at Bacolod City is one of the designated stockyards of NAPOCOR. Therefore considering that the segregation was performed at a designated stockyard, such job was well within the "Scope of Works" stipulated in paragraph 4, Article II of the Contract.

There is no merit in PREMIER's argument that the word "delivered items" in paragraph 4 of the Contract limited the segregation work to be done at the stockyards where the items or wood poles are to be delivered, and not at the port of origin. At best, the phrase, "segregation of the delivered items at the designated stockyards" simply refers to the requirement that the wood poles, upon delivery, should already have been segregated, but it does not serve to limit the designated stockyards where segregation job may be performed. It must likewise be emphasized that Article II of the Contract provides that "The works and services to be performed by the contractor shall essentially consist of but not limited (sic) to the following features: x x x." Clearly, the contract itself does not limit the designated stockyards as well as the services to be rendered, for as long as it is incidental to the effective hauling and transfer of the poles.

The lower court, in its Decision, cited the case of *Perez v. Pomar, 2 Phil. 682*, which enunciates the principle of *facio ut des* ("I do that you may give"), and which incidentally touches on the proscription against unjust enrichment at the expense of another (Article 2142 of the New Civil Code of the Philippines). The said case, however, as well as the principles alluded to therein, find application only in situations where there is no contract expressly entered into by the parties. In the instant case however, there is a contract which governs the rights and obligations of the parties; thus, the aforecited equitable principles of *facio ut des* and *solutio indebiti* are not applicable.

Furthermore, the contract cannot be unilaterally modified by any of the parties to it, without the express agreement of the other party. The instruction, if any, of the NAPOCOR's Property Officer cannot, in any way, amend or supplement the original contract. Assuming arguendo that the segregation done at the port of origin is not part of the contract, the same to be compensable should have been the

subject of a supplemental contract akin to the Supplemental Agreement entered into by the parties in relation to the change of destination.

PREMIER's claim is not covered by Change Order or Supplemental Agreement to the contract. It is noteworthy that in paragraph 2.5 of its Complaint, PREMIER alleged that on September 4, 1996, it wrote NAPOCOR a letter informing the latter that "the poles subject of the contract are soft and of poor quality." Thus, prior to the execution of the Supplemental Contract on June 10, 1997 involving a change in destination, PREMIER was well aware of the rotten wooden poles which purportedly caused delay in the hauling of the poles. It could have, thus, asked for the incorporation in the Supplemental Contract of any additional cost appertaining to the delay which the segregation of the rotten poles allegedly caused, which action, however, PREMIER was not minded to do. PREMIER therefore is now barred from claiming any other additional compensation. In the same way that PREMIER claims an additional payment for the segregation work done in Bacolod City based on the argument that such was not covered by the contract, the same line of reasoning may well be applied to defeat its claim.[42]

We rule that the segregation of the serviceable poles from the unserviceable ones in whatever port it may be undertaken, whether it was in the port of origin or in the port of destination, was within the coverage of the original contract. The contract plainly obligated Premier to transfer or haul the 924 wood poles on a door-to-door basis. It is to be noted that the wood poles to be hauled or delivered were already segregated according to size at the port or stockyard of origin. In performing its task to deliver or transfer said wood poles, it was Premier's duty to do so without causing damage to the same. It knew fully well that damage to the cargo, total or partial, would constitute breach of the contract and would subject it to liability. It therefore follows that Premier should be careful in the hauling of the wood poles. Thus, only by segregating the serviceable poles from the unserviceable ones could it do its job properly.

Premier's schedule for the hauling of the wood poles from the Mansilingan Stockyard was eight days. This period was extended to 18 days, because it had to be careful since not all

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[42] CA *rollo*, pp. 111-113.

the logs were serviceable. The expenses (₱964,900.00) allegedly incurred during those additional ten days are what Premier is billing NAPOCOR for. Is it proper to bill NAPOCOR for these additional days? No, it is not. The fact that Premier needed to separate the serviceable poles from the unserviceable ones was part of the scope of its work, which was to deliver the poles on a door-to-door basis. It cannot charge extra for what is within the parameters set forth in the contract. If Premier did not perform the segregation and lifted three to five poles at a time as it had planned, damage to the poles would have unavoidably happened. This, it did not want to happen. As an entity dealing with NAPOCOR for the past fifteen years, the schedule and the costing it had prepared should have anticipated situations that would alter its timetable and go beyond its estimated expenses, as in this case. It did not. When the hauling from the Mansilingan Stockyard went beyond its timetable, Premier wanted to charge NAPOCOR for the excess days. This cannot be. Furthermore, following the reasoning of Premier that NAPOCOR should be charged for the additional ten days because the latter overshot its schedule, what should happen in the event the hauling did not consume the eight days allotted for the task? Should NAPOCOR get a price cut?

The supposed instruction of the NAPOCOR official to segregate the serviceable poles from the unserviceable ones and the certification[43] issued to this effect, as well as the certification[44] stating that Premier rendered overtime service for thirty-six (36) hours, will not entitle it to be paid the additional ₱964,900.00. As already explained, the segregation it undertook was part of the contract. As to the alleged overtime service of three days, the same has no basis. Since the contract was for forty days, it cannot therefore charge any service done within the contract period. If there was any delay in the performance of its obligation, it would be the contractor that should be held liable therefor.

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[43] Records, p. 100.

[44] *Id.* at 101.

For the additional distance of nine kilometers from the pier to the stockyard in San Jose, Mindoro where the wood poles were delivered, Premier is asking for an additional ₱243,777.26 because the distance as allegedly stipulated in the contract was only for eight and not for 17 kilometers. This amount is on top of the ₱65,000.00, which Premier asked as payment for its fuel and lube oil consumption by reason of the change in the delivery point (Calapan, Mindoro to San Jose, Mindoro), as contained in the supplemental contract[45] and letter dated 20 August 1996 of Jose C. Troyo addressed to Benson E. Go. NAPOCOR opposes this, arguing that the ₱65,000.00 to which Mr. Go agreed covered all expenses for the change in the delivery point.

We agree with NAPOCOR that the ₱65,000.00 covered all the expenses for the change of one of the delivery points. After going over the original and supplemental contracts, we do not find any provision providing for the exact distances between the point of origin and any of the points of delivery or destination. This being the case, Premier should have done its job by determining for itself the distance involved by reason of the change in delivery point. This, it did not do. It was only when it was already in the process of delivering the wood poles in San Jose, Mindoro that Premiere discovered that the distance from the pier to the stockyard was farther. Despite having the opportunity to include all expenses that it may incur due to the change of stockyard, it did not act like an entity that had been in the business of hauling cargo for a long time. The fault lies in Premier due to its failure to inspect and check out the complete route to be taken in the delivery of the wood poles to the stockyard in San Jose, Mindoro, prior to agreeing to the amount of ₱65,000.00. As the Court of Appeals explained, it would be unfair for NAPOCOR if Premier would quote some more expenses that could have been anticipated when it made the valuation for the change of one of the delivery points, for it was given all the chances to do so.

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[45] *Id.* at 131-133.

It is basic that a contract is the law between the parties, and the stipulations therein — provided that they are not contrary to law, morals, good customs, public order or public policy — shall be binding as between the parties.[46] In contractual relations, the law allows the parties much leeway and considers their agreement to be the law between them. This is because "courts cannot follow one every step of his life and extricate him from bad bargains x x x relieve him from one-sided contracts, or annul the effects of foolish acts."[47] The Courts are obliged to give effect to the agreement and enforce the contract to the letter. In the case at bar, the parties entered into a contract for the hauling and delivery of wood poles. By reason of a change in one of the delivery points, they executed a supplemental contract that embodied said change. The terms and conditions were clear. In both contracts, the parties voluntarily and freely affixed their signatures thereto without objection. Thus, the terms contained therein are the law between them.

As the Court sees it, Premier failed to anticipate all expenses that may be incurred in the hauling and the delivery of the wood poles. The bid Premier submitted was sufficient for it to be declared the winner. However, when it incurred expenses it failed to foresee, Premier began charging NAPOCOR for the additional expenses that were part and parcel of the service it contracted to provide. The contract it entered into turned out to be a disastrous deal or an unwise investment. This Court will not allow Premier to recover from NAPOCOR the expenses Premier sustained for an undertaking it was bound to perform. There is no one to blame but Premier for plunging into an undertaking without fully studying it in its entirety. Concomitantly, there can be no unjust enrichment on the part of NAPOCOR, because the services rendered in its favor are included in the contract it entered into with Premier.

On its part, NAPOCOR contends that it was justified in deducting the amount of ₱23,150.25 from the contract price,

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[46] Meralco Industrial Engineering Services Corporation v. National Labor Relations Commission, *G.R. No. 145402, 14 March 2008, 548 SCRA 315, 334.*

[47] *Vda. de Jayme v. Court of Appeals*, 439 Phil. 192, 209 (2002).

representing liquidated damages brought about by Premier's failure to complete its work when it failed to deliver 45 wood poles. Being justified to withhold said amount, NAPOCOR contends it should be awarded attorney's fees and litigation costs, and not Premier, for the former was compelled to litigate and incur expenses to protect its interest against the latter's unfounded claim.

There is no dispute that the undertaking in the amount of ₱2,398,000.00 was a lot price.[48] We agree with both lower courts that, regardless of the number of wood poles hauled and delivered, Premier shall be paid the whole amount. Moreover, it is not the fault of Premier that not all the wood poles were delivered. As testified to by Mr. Gerardo Cabatingan, Assistant Field Supervisor of Premier, the NAPOCOR personnel at the stockyard of origin wanted only the serviceable poles to be loaded into the truck for hauling and delivery to the ports of destination.[49] Thus, the non-delivery of the 45 wood poles, which was upon orders of the personnel of NAPOCOR, cannot be considered a breach of contract for which Premier can be held liable.

Having been unjustifiably deprived of the amount of ₱23,150.25 of the contract price, Premier is entitled to attorney's fees and costs of litigation. We find the amounts of ₱10,000.00 and ₱4,000.00, awarded by the lower courts as attorney's fees and costs of litigation, respectively, to be reasonable under the premises, and the interests thereon, proper.

WHEREFORE, all the foregoing considered, the decision of the Court of Appeals dated 19 July 2007 in CA-G.R. CV No. 73650 is hereby *AFFIRMED in toto.*

SO ORDERED.

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

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[48] Records, pp. 97-98.

[49] TSN, 22 February 2001, p. 7.

EN BANC

[G.R. No. 179313. September 17, 2009]

MAKIL U. PUNDAODAYA, *petitioner, vs.* **COMMISSION ON ELECTIONS and ARSENIO DENSING NOBLE,** *respondents.*

SYLLABUS

1. POLITICAL LAW; LOCAL GOVERNMENT CODE; THREE REQUIREMENTS TO SUCCESSFULLY EFFECT A CHANGE OF DOMICILE, NOT COMPLIED WITH.— Section 39 of Republic Act No. 7160, otherwise known as the Local Government Code, requires that an elective local official must be a resident in the *barangay*, municipality, city or province where he intends to serve for at least one year immediately preceding the election. x x x If one wishes to successfully effect a change of domicile, he must demonstrate an actual removal or an actual change of domicile, a *bona fide* intention of abandoning the former place of residence and establishing a new one, and definite acts which correspond with the purpose. Without clear and positive proof of the concurrence of these three requirements, the domicile of origin continues. x x x The x x x documentary evidence, however, fail to convince us that Noble successfully effected a change of domicile. As correctly ruled by the COMELEC Second Division, private respondent's claim that he is a registered voter and has actually voted in the past 3 elections in Kinoguitan, Misamis Oriental do not sufficiently establish that he has actually elected residency in the said municipality. Indeed, while we have ruled in the past that voting gives rise to a strong presumption of residence, it is not conclusive evidence thereof. Thus, in *Perez v. Commission on Elections*, we held that a person's registration as voter in one district is not proof that he is not domiciled in another district. The registration of a voter in a place other than his residence of origin is not sufficient to consider him to have abandoned or lost his residence. To establish a new domicile of choice, personal presence in the place must be coupled with conduct indicative of that intention. It requires not only such bodily presence in that place but also a declared and probable

intent to make it one's fixed and permanent place of abode. In this case, Noble's marriage to Bernadith Go does not establish his actual physical presence in Kinoguitan, Misamis Oriental. Neither does it prove an intention to make it his permanent place of residence. We are also not persuaded by his alleged payment of water bills in the absence of evidence showing to which specific properties they pertain. And while Noble presented a Deed of Sale for real property, the veracity of this document is belied by his own admission that he does not own property in Kinoguitan, Misamis Oriental. x x x From the foregoing, we find that Noble's alleged change of domicile was effected solely for the purpose of qualifying as a candidate in the 2007 elections. This we cannot allow.

2. ID.; ID.; RULE ON SUCCESSION IN MAYORALTY POSITION, APPLIED.— Notwithstanding Noble's disqualification, we find no basis for the proclamation of Judith Pundaodaya, as mayor. The rules on succession under the Local Government Code, explicitly provides: SECTION 44. Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor. – If a permanent vacancy occurs in the office of the xxx mayor, the xxx vice-mayor concerned shall become the xxx mayor. x x x For purposes of this Chapter, a permanent vacancy arises when an elective local official fills a higher vacant office, refuses to assume office, **fails to qualify or is removed from office,** voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office. x x x Thus, considering the permanent vacancy in the Office of the Mayor of Kinoguitan, Misamis Oriental occasioned by Noble's disqualification, the proclaimed Vice-Mayor shall then succeed as mayor.

APPEARANCES OF COUNSEL

Sibayan Lumbos & Associates Law Office for petitioner.
The Solicitor General for public respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This petition[1] for *certiorari* under Rule 65 assails the August 3, 2007 Resolution[2] of the Commission on Elections (COMELEC) *En Banc* in SPA No. 07-202, which declared private respondent Arsenio Densing Noble (Noble) qualified to run for municipal mayor of Kinoguitan, Misamis Oriental, in the May 14, 2007 Synchronized National and Local Elections.

The facts are as follows:

Petitioner Makil U. Pundaodaya (Pundaodaya) is married to Judith Pundaodaya, who ran against Noble for the position of municipal mayor of Kinoguitan, Misamis Oriental in the 2007 elections.

On March 27, 2007, Noble filed his Certificate of Candidacy, indicating therein that he has been a resident of Purok 3, Barangay Esperanza, Kinoguitan, Misamis Oriental for 15 years.

On April 3, 2007, Pundaodaya filed a petition for disqualification[3] against Noble docketed as SPA No. 07-202, alleging that the latter lacks the residency qualification prescribed by existing laws for elective local officials; that he never resided nor had any physical presence at a fixed place in Purok 3, Barangay Esperanza, Kinoguitan, Misamis Oriental; and that he does not appear to have the intention of residing therein permanently. Pundaodaya claimed that Noble is in fact a resident of Lapasan, Cagayan de Oro City, where he also maintains a business called OBERT Construction Supply.

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[1] *Rollo*, pp. 9-35.

[2] *Id.* at 58-64. Penned by Commissioner Resurreccion Z. Borra and concurred in by Commissioners Benjamin S. Abalos, Sr., Romeo A. Brawner, and Nicodemo T. Ferrer. Commissioners Florentino A. Tuason, Jr. and Rene V. Sarmiento dissented.

[3] *Comelec Records*, pp. 1-11.

In his Answer,[4] Noble averred that he is a registered voter and resident of Barangay Esperanza, Kinoguitan, Misamis Oriental; that on January 18, 1992, he married Bernadith Go, the daughter of then Mayor Narciso Go of Kinoguitan, Misamis Oriental; that he has been engaged in electoral activities since his marriage; and that he voted in the said municipality in the 1998, 2001 and 2004 elections.

In a resolution dated May 13, 2007,[5] the Second Division of the COMELEC ruled in favor of Pundaodaya and disqualified Noble from running as mayor, thus:

> Respondent Noble's claim that he is a registered voter and has actually voted in the past three (3) elections in the said municipality does not sufficiently establish that he has actually elected residency at Kinoguitan, Misamis Oriental. Neither does campaigning in previous elections sufficiently establish residence.
>
> Respondent Noble failed to show that he has indeed acquired domicile at Kinoguitan, Misamis Oriental. He failed to prove not only his bodily presence in the new locality but has likewise failed to show that he intends to remain at Kinoguitan, Misamis Oriental and abandon his residency at Lapasan, Cagayan de Oro City.
>
> WHEREFORE, premises considered, the instant Petition to Disqualify Aresnio Densing Noble is hereby GRANTED.
>
> SO ORDERED.[6]

Noble filed a motion for reconsideration of the above resolution. In the meantime, he garnered the highest number of votes and was proclaimed the winning candidate on May 15, 2007. Pundaodaya then filed an Urgent Motion to Annul Proclamation.[7]

On August 3, 2007, the COMELEC *En Banc* reversed the decision of the Second Division and declared Noble qualified to run for the mayoralty position.

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[4] *Id.* at 27-41.

[5] *Rollo*, pp. 50-57. Penned by Commissioner Florentino A. Tuason, Jr.

[6] *Id.* at 56.

[7] *Id.* at 59.

The COMELEC *En Banc* held that when Noble married Bernadith Go on January 18, 1992, the couple has since resided in Kinoguitan, Misamis Oriental; that he was a registered voter and that he participated in the last three elections; and although he is engaged in business in Cagayan de Oro City, the fact that he *resides in Kinoguitan and is a registered voter and owns property thereat, sufficiently meet the residency requirement*.[8] Thus:

> WHEREFORE, premises considered, the Commission (*en banc*) RESOLVED, as it hereby RESOLVES, to GRANT the instant Motion for Reconsideration and to REVERSE AND SET ASIDE the Resolution promulgated on May 13, 2007 issued by the Commission (Second Division).
>
> ACCORDINGLY, respondent ARSENIO DENSING NOBLE is QUALIFIED to run for the local elective position of Municipal Mayor of the Municipality of Kinoguitan, Misamis Oriental in the May 14, 2007 Synchronized National and Local Elections.
>
> SO ORDERED.[9]

Pundaodaya filed the instant petition for *certiorari*, alleging that the COMELEC *En Banc* acted with grave abuse of discretion when it declared Noble qualified to run; when it did not annul Noble's proclamation; and when it failed to proclaim the true winning candidate, Judith Pundaodaya.

In a resolution dated November 13, 2007,[10] the Court required the respondents to comment on the petition.

Public respondent, through the Office of the Solicitor General, filed a Manifestation and Motion[11] praying that it be excused from filing a separate comment and that the said pleading be considered sufficient compliance with the November 13, 2007 Resolution.

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[8] *Id.* at 62.

[9] *Id.* at 63.

[10] *Id.* at 65.

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

Meanwhile, for Noble's failure to comply, the Court issued Resolutions[12] dated July 15, 2008 and December 9, 2008 requiring him to show cause why he should not be disciplinarily dealt with or held in contempt, imposing a fine of ₱1,000.00, and requiring him to file a comment. On June 2, 2009, the Court deemed Noble to have waived the filing of the comment.[13]

The issues for resolution are: whether the COMELEC *En Banc* gravely abused its discretion: 1) in declaring Noble qualified to run for the mayoralty position; and 2) in failing to order the annulment of Noble's proclamation and refusing to proclaim Judith Pundaodaya as the winning candidate.

Section 39 of Republic Act No. 7160, otherwise known as the Local Government Code, requires that an elective local official must be a resident in the *barangay*, municipality, city or province where he intends to serve for at least one year immediately preceding the election.[14]

In *Japzon v. Commission on Elections*,[15] it was held that the term "residence" is to be understood not in its common acceptation as referring to "dwelling" or "habitation," but rather to "domicile" or legal residence, that is, "the place where a party actually or constructively has his permanent home, where he, no matter where he may be found at any given time, eventually intends to return and remain (*animus manendi*)."

In *Domino v. Commission on Elections*,[16] the Court explained that domicile denotes a fixed permanent residence to which, whenever absent for business, pleasure, or some other reasons,

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[12] *Id.* at 71 and 73.

[13] *Id.* at 75.

[14] (a) An elective local official must be a citizen of the Philippines; a registered voter in the *barangay*, municipality, city, or province or, in the case of a member of the sangguniang panlalawigan, sangguniang panlungsod, or sangguniang bayan, the district where he intends to be elected; a resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or any other local language or dialect.

[15] G.R. No. 180088, January 19, 2009.

[16] 369 Phil. 798, 818 (1999).

one intends to return. It is a question of intention and circumstances. In the consideration of circumstances, three rules must be borne in mind, namely: (1) that a man must have a residence or domicile somewhere; (2) when once established it remains until a new one is acquired; and (3) a man can have but one residence or domicile at a time.

If one wishes to successfully effect a change of domicile, he must demonstrate an actual removal or an actual change of domicile, a *bona fide* intention of abandoning the former place of residence and establishing a new one, and definite acts which correspond with the purpose.[17] Without clear and positive proof of the concurrence of these three requirements, the domicile of origin continues.[18]

Records show that Noble's domicile of origin was Lapasan, Cagayan de Oro City. However, he claims to have chosen Kinoguitan, Misamis Oriental as his new domicile. To substantiate this, he presented before the COMELEC his voter registration records;[19] a Certification dated April 25, 2007 from Election Officer II Clavel Z. Tabada;[20] his Marriage Certificate;[21] and affidavits of residents of Kinoguitan[22] attesting that he established residence in the municipality after his marriage to Bernadith Go. In addition, he presented receipts[23] from the Provincial Treasurer for payment of his water bills, and Certifications from the Municipal Treasurer and Municipal Engineer that he has been a consumer of the Municipal Water System since June 2003. To prove ownership of property, he also presented a Deed of Sale[24] over a real property dated June 3, 1996.

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[17] *Id.* at 819.

[18] *In the Matter of the Petition for Disqualification of Tess Dumpit-Michelena*, G.R. Nos. 163619-20, November 17, 2005, 475 SCRA 290, 303.

[19] *Comelec Records*, pp. 44-45.

[20] *Id.* at 43.

[21] *Id.* at 75.

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

[23] *Id.* at 49-73.

[24] *Id.* at 74.

The above pieces of documentary evidence, however, fail to convince us that Noble successfully effected a change of domicile. As correctly ruled by the COMELEC Second Division, private respondent's claim that he is a registered voter and has actually voted in the past 3 elections in Kinoguitan, Misamis Oriental do not sufficiently establish that he has actually elected residency in the said municipality. Indeed, while we have ruled in the past that voting gives rise to a strong presumption of residence, it is not conclusive evidence thereof.[25] Thus, in *Perez v. Commission on Elections*,[26] we held that a person's registration as voter in one district is not proof that he is not domiciled in another district. The registration of a voter in a place other than his residence of origin is not sufficient to consider him to have abandoned or lost his residence.[27]

To establish a new domicile of choice, personal presence in the place must be coupled with conduct indicative of that intention. It requires not only such bodily presence in that place but also a declared and probable intent to make it one's fixed and permanent place of abode.[28]

In this case, Noble's marriage to Bernadith Go does not establish his actual physical presence in Kinoguitan, Misamis Oriental. Neither does it prove an intention to make it his permanent place of residence. We are also not persuaded by his alleged payment of water bills in the absence of evidence showing to which specific properties they pertain. And while Noble presented a Deed of Sale for real property, the veracity of this document is belied by his own admission that he does not own property in Kinoguitan, Misamis Oriental.[29]

On the contrary, we find that Noble has not abandoned his original domicile as shown by the following: a) Certification

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[25] *Domino v. Commission on Elections, supra* note 16 at 820.

[26] 375 Phil. 1106 (1999).

[27] *Id.* at 1118, citing *Faypon v. Quirino*, 96 Phil. 294 (1954).

[28] *Domino v. Commission on Elections, supra* note 16 at 819.

[29] *Comelec Records*, p. 33.

dated April 12, 2007 of the *Barangay Kagawad* of Barangay Lapasan, Cagayan de Oro City stating that Noble is a resident of the *barangay*;[30] b) Affidavit[31] of the *Barangay Kagawad* of Esperanza, Kinoguitan, Misamis Oriental dated April 14, 2007, attesting that Noble has not resided in Barangay Esperanza in Kinoguitan; c) photos[32] and official receipts[33] showing that Noble and his wife maintain their residence and businesses in Lapasan; d) tax declarations[34] of real properties in Cagayan de Oro City under the name of Noble; and e) the "Household Record of *Barangay* Inhabitants"[35] of Mayor Narciso Go, which did not include Noble or his wife, Bernadith Go, which disproves Noble's claim that he resides with his father-in-law.

From the foregoing, we find that Noble's alleged change of domicile was effected solely for the purpose of qualifying as a candidate in the 2007 elections. This we cannot allow. In *Torayno, Sr. v. Commission on Elections*,[36] we held that the one-year residency requirement is aimed at excluding outsiders "from taking advantage of favorable circumstances existing in that community for electoral gain." Establishing residence in a community merely to meet an election law requirement defeats the purpose of representation: to elect through the assent of voters those most cognizant and sensitive to the needs of the community.[37] Thus, we find Noble disqualified from running as municipal mayor of Kinoguitan, Misamis Oriental in the 2007 elections.

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[30] *Rollo*, p. 36.

[31] *Id.* at 40.

[32] *Id.* at 37, 43.

[33] *Id.* at 37, 44.

[34] *Id.* at 45-49.

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

[36] G.R. No. 137329, August 9, 2000, 337 SCRA 574.

[37] *Id.* at 584, citing *Aquino v. Commission on Elections*, G.R. No. 120265, September 18, 1995, 248 SCRA 400, 420-421.

Notwithstanding Noble's disqualification, we find no basis for the proclamation of Judith Pundaodaya, as mayor. The rules on succession under the Local Government Code, explicitly provides:

> SECTION 44. Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor. – If a permanent vacancy occurs in the office of the xxx mayor, the xxx vice-mayor concerned shall become the xxx mayor.
>
> x x x x x x x x x
>
> For purposes of this Chapter, a permanent vacancy arises when an elective local official fills a higher vacant office, refuses to assume office, **fails to qualify or is removed from office**, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office.
>
> x x x (Emphasis ours)

Thus, considering the permanent vacancy in the Office of the Mayor of Kinoguitan, Misamis Oriental occasioned by Noble's disqualification, the proclaimed Vice-Mayor shall then succeed as mayor.[38]

WHEREFORE, the petition is *GRANTED*. The August 3, 2007 Resolution of the COMELEC *En Banc* in SPA No. 07-202 declaring respondent Arsenio Densing Noble qualified to run as Mayor of Kinoguitan, Misamis Oriental, is *REVERSED AND SET ASIDE*. In view of the permanent vacancy in the Office of the Mayor of Kinoguitan, Misamis Oriental, the proclaimed Vice-Mayor is *ORDERED* to succeed as Mayor.

SO ORDERED.

Puno, C.J., Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, Peralta, Bersamin, Del Castillo, and *Abad, JJ.,* concur.

Quisumbing and *Carpio, JJ.,* on official leave.

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[38] *Limbona v. Commission on Elections*, G.R. No. 181097, June 25, 2008, 555 SCRA 391, 404.

THIRD DIVISION

[G.R. No. 181303. September 17, 2009]

CARMEN DANAO MALANA, MARIA DANAO ACORDA, EVELYN DANAO, FERMINA DANAO, LETICIA DANAO and LEONORA DANAO, the last two are represented herein by their Attorney-in-Fact, MARIA DANAO ACORDA, *petitioners, vs.* **BENIGNO TAPPA, JERRY REYNA, SATURNINO CAMBRI and SPOUSES FRANCISCO AND MARIA LIGUTAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; DECLARATORY RELIEF; NATURE.— An action for declaratory relief should be filed by a person interested under a deed, a will, a contract or other written instrument, and whose rights are affected by a statute, an executive order, a regulation or an ordinance. The relief sought under this remedy includes the interpretation and determination of the validity of the written instrument and the judicial declaration of the parties' rights or duties thereunder. Petitions for declaratory relief are governed by Rule 63 of the Rules of Court.

2. ID.; ID.; ID.; DECLARATORY RELIEF UNDER THE FIRST AND SECOND PARAGRAPHS OF SECTION 1, RULE 63 DISTINGUISHED.— The RTC correctly made a distinction between the first and the second paragraphs of Section 1, Rule 63 of the Rules of Court. The first paragraph of Section 1, Rule 63 of the Rules of Court, describes the general circumstances in which a person may file a petition for declaratory relief, to wit: x x x As the afore-quoted provision states, a petition for declaratory relief under the first paragraph of Section 1, Rule 63 may be brought before the appropriate RTC. Section 1, Rule 63 of the Rules of Court further provides in its second paragraph that: x x x The second paragraph of Section 1, Rule 63 of the Rules of Court specifically refers to (1) an action for the reformation of an instrument, recognized under Articles 1359 to 1369 of the Civil Code; (2) an action to

quiet title, authorized by Articles 476 to 481 of the Civil Code; and (3) an action to consolidate ownership required by Article 1607 of the Civil Code in a sale with a right to repurchase. These three remedies are considered similar to declaratory relief because they also result in the adjudication of the legal rights of the litigants, often without the need of execution to carry the judgment into effect.

3. ID.; ID.; ID.; TO DETERMINE WHICH COURT HAS JURISDICTION OVER THE ACTIONS UNDER THE SECOND PARAGRAPH OF SECTION 1, RULE 63 IT MUST BE READ TOGETHER WITH THE JUDICIARY REORGANIZATION ACT OF 1980, AS AMENDED; APPLICATION.— To determine which court has jurisdiction over the actions identified in the second paragraph of Section 1, Rule 63 of the Rules of Court, said provision must be read together with those of the Judiciary Reorganization Act of 1980, as amended. It is important to note that Section 1, Rule 63 of the Rules of Court does not categorically require that an action to quiet title be filed before the RTC. It repeatedly uses the word "may" – that an action for quieting of title "may be brought under [the] Rule" on petitions for declaratory relief, and a person desiring to file a petition for declaratory relief "may x x x bring an action in the appropriate Regional Trial Court." The use of the word "may" in a statute denotes that the provision is merely permissive and indicates a mere possibility, an opportunity or an option. In contrast, the mandatory provision of the Judiciary Reorganization Act of 1980, as amended, uses the word "shall" and explicitly requires the MTC to exercise *exclusive original jurisdiction* over all civil actions which involve title to or possession of real property where the assessed value does not exceed ₱20,000.00 x x x As found by the RTC, the assessed value of the subject property as stated in Tax Declaration No. 02-48386 is only ₱410.00; therefore, petitioners' Complaint involving title to and possession of the said property is within the exclusive original jurisdiction of the MTC, not the RTC.

4. ID.; ID.; ID.; AN ACTION FOR DECLARATORY RELIEF MAYB E ENTERTAINED ONLY BEFORE THE BREACH OF VIOLATION OF THE STATUTE, DEED OR CONTRACT TO WHICH IT REFERS.— [A]n action for declaratory relief presupposes that there has been no actual breach of the instruments involved or of rights arising thereunder. Since the

purpose of an action for declaratory relief is to secure an authoritative statement of the rights and obligations of the parties under a statute, deed, or contract for their guidance in the enforcement thereof, or compliance therewith, and not to settle issues arising from an alleged breach thereof, it may be entertained only *before* the breach or violation of the statute, deed, or contract to which it refers. A petition for declaratory relief gives a practical remedy for ending controversies that have not reached the state where another relief is immediately available; and supplies the need for a form of action that will set controversies at rest *before they lead to a repudiation of obligations, an invasion of rights, and a commission of wrongs*. Where the law or contract has already been contravened prior to the filing of an action for declaratory relief, the courts can no longer assume jurisdiction over the action. In other words, a court has no more jurisdiction over an action for declaratory relief if its subject has already been infringed or transgressed before the institution of the action.

5. ID.; ID.; ID.; ID.; APPLICATION.— In the present case, petitioners' Complaint for quieting of title was filed *after* petitioners already demanded and respondents refused to vacate the subject property. In fact, said Complaint was filed only subsequent to the latter's express claim of ownership over the subject property before the *Lupong Tagapamayapa*, in direct challenge to petitioners' title. Since petitioners averred in the Complaint that they had already been deprived of the possession of their property, the proper remedy for them is the filing of an *accion publiciana* or an *accion reivindicatoria*, not a case for declaratory relief. An *accion publiciana* is a suit for the recovery of possession, filed one year after the occurrence of the cause of action or from the unlawful withholding of possession of the realty. An *accion reivindicatoria* is a suit that has for its object one's recovery of possession over the real property as owner. Petitioners' Complaint contained sufficient allegations for an *accion reivindicatoria*. Jurisdiction over such an action would depend on the value of the property involved. Given that the subject property herein is valued only at ₱410.00, then the MTC, not the RTC, has jurisdiction over an action to recover the same. The RTC, therefore, did not commit grave abuse of discretion in dismissing, without prejudice, petitioners' Complaint in Civil Case No. 6868 for lack of jurisdiction.

6. ID.; ID.; *CERTIORARI*; GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION, NOT A CASE OF.— Since the RTC, in dismissing petitioners' Complaint, acted in complete accord with law and jurisprudence, it cannot be said to have done so with grave abuse of discretion amounting to lack or excess of jurisdiction. An act of a court or tribunal may only be considered to have been committed in grave abuse of discretion when the same was performed in a capricious or whimsical exercise of judgment, which is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility. No such circumstances exist herein as to justify the issuance of a writ of *certiorari*.

APPEARANCES OF COUNSEL

Perez and Calagui Law Office for petitioners.
Public Attorney's Office for respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for *Certiorari* under Rule 65 of the Rules of Court, assailing the Orders[1] dated 4 May 2007, 30 May 2007, and 31 October 2007, rendered by Branch 3 of the Regional Trial Court (RTC) of Tuguegarao City, which dismissed, for lack of jurisdiction, the Complaint of petitioners Carmen Danao Malana, Leticia Danao, Maria Danao Accorda, Evelyn Danao, Fermina Danao, and Leonora Danao, against respondents Benigno Tappa, Jerry Reyna, Saturnino Cambri, Francisco Ligutan and Maria Ligutan, in Civil Case No. 6868.

Petitioners filed before the RTC their Complaint for Reivindicacion, Quieting of Title, and Damages[2] against

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[1] Penned by Judge Marivic Cacatian-Beltran; *rollo*, pp. 25-28.

[2] *Rollo*, pp. 50-54.

respondents on 27 March 2007, docketed as Civil Case No. 6868. Petitioners alleged in their Complaint that they are the owners of a parcel of land covered by Transfer Certificate of Title (TCT) No. T-127937[3] situated in Tuguegarao City, Cagayan (subject property). Petitioners inherited the subject property from Anastacio Danao (Anastacio), who died intestate.[4] During the lifetime of Anastacio, he had allowed Consuelo Pauig (Consuelo), who was married to Joaquin Boncad, to build on and occupy the southern portion of the subject property. Anastacio and Consuelo agreed that the latter would vacate the said land at any time that Anastacio and his heirs might need it.[5]

Petitioners claimed that respondents, Consuelo's family members,[6] continued to occupy the subject property even after her death, already building their residences thereon using permanent materials. Petitioners also learned that respondents were claiming ownership over the subject property. Averring that they already needed it, petitioners demanded that respondents

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[3] *Id.* at 56.

[4] The records fail to state the exact relationship between petitioners and Anastacio Danao, apart from the allegation in the Complaint that the former are heirs of the latter.

[5] *Rollo*, p. 51.

[6] *Id.* at 52. In their complaint petitioners identified each of the respondents' relationship to Consuelo:

(a) Benigno Tappa is the son-in-law of Consuelo and the husband of the latter's deceased daughter. He built his house on the disputed property and leased it to an unidentified individual.

(b) Jerry Reyna is the grandson of Consuelo. He built a house of permanent materials on the subject land where he and his family reside.

(c) Saturnino Cambri is married to Nelly Quizan Cambri, the granddaughter of Consuelo. He built a house within the subject land occupied by him and his family.

(d) Spouses Francisco and Maria Ligutan, the latter being the daughter of Consuelo, also live in a house of permanent materials situated on the subject lot.

vacate the same. Respondents, however, refused to heed petitioners' demand.[7]

Petitioners referred their land dispute with respondents to the *Lupong Tagapamayapa* of Barangay Annafunan West for conciliation. During the conciliation proceedings, respondents asserted that they owned the subject property and presented documents ostensibly supporting their claim of ownership.

According to petitioners, respondents' documents were highly dubious, falsified, and incapable of proving the latter's claim of ownership over the subject property; nevertheless, they created a cloud upon petitioners' title to the property. Thus, petitioners were compelled to file before the RTC a Complaint to remove such cloud from their title.[8] Petitioners additionally sought in their Complaint an award against respondents for actual damages, in the amount of ₱50,000.00, resulting from the latter's baseless claim over the subject property that did not actually belong to them, in violation of Article 19 of the Civil Code on Human Relations.[9] Petitioners likewise prayed for an award against respondents for exemplary damages, in the amount of ₱50,000.00, since the latter had acted in bad faith and resorted to unlawful means to establish their claim over the subject property. Finally, petitioners asked to recover from respondents ₱50,000.00 as attorney's fees, because the latter's refusal to vacate the property constrained petitioners to engage the services of a lawyer.[10]

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[7] *Id.* at 52.

[8] *Id.* at 52 and 53, 57

[9] Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

In claims for damages, Article 19 of the Civil Code is read in relation with Article 21 of the same, to wit:

Art. 21. Any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

[10] *Rollo,* p. 53-54.

Before respondents could file their answer, the RTC issued an Order dated 4 May 2007 dismissing petitioners' Complaint on the ground of lack of jurisdiction. The RTC referred to Republic Act No. 7691,[11] amending Batas Pambansa Blg. 129, otherwise known as the Judiciary Reorganization Act of 1980, which vests the RTC with jurisdiction over real actions, where the assessed value of the property involved exceeds ₱20,000.00. It found that the subject property had a value of less than ₱20,000.00; hence, petitioners' action to recover the same was outside the jurisdiction of the RTC. The RTC decreed in its 4 May 2007 Order that:

> The Court has no jurisdiction over the action, it being a real action involving a real property with assessed value less than ₱20,000.00 and hereby dismisses the same without prejudice.[12]

Petitioners filed a Motion for Reconsideration of the aforementioned RTC Order dismissing their Complaint. They argued that their principal cause of action was for quieting of title; the *accion reivindicacion* was included merely to enable them to seek complete relief from respondents. Petitioner's Complaint should not have been dismissed, since Section 1,

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[11] The RTC's reasoning was based on Section 1 of Republic Act No. 7691:

> SECTION 1. Section 19 of Batas Pambansa Blg. 129, otherwise known as the "Judiciary Reorganization Act of 1980," is hereby amended to read as follows:
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> Section 19. *Jurisdiction in civil cases*.—Regional Trial Courts shall exercise exclusive original jurisdiction:
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> x x x x x x x x x
>
> (2) In all civil actions which involve the title to, or possession of, real property or any interest therein, where the assessed value of the property involved exceeds Twenty thousand pesos (₱20,000.00) or for civil actions in Metro Manila, where such value exceeds Fifty thousand pesos (₱50,000.00) except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts.

[12] *Rollo*, p. 25.

Rule 63 of the Rules of Court[13] states that an action to quiet title falls under the jurisdiction of the RTC.[14]

In an Order dated 30 May 2007, the RTC denied petitioners' Motion for Reconsideration. It reasoned that an action to quiet title is a real action. Pursuant to Republic Act No. 7691, it is the Municipal Trial Court (MTC) that exercises exclusive jurisdiction over real actions where the assessed value of real property does not exceed ₱20,000.00. Since the assessed value of subject property per Tax Declaration No, 02-48386 was ₱410.00, the real action involving the same was outside the jurisdiction of the RTC.[15]

Petitioners filed another pleading, simply designated as Motion, in which they prayed that the RTC Orders dated 4 May 2007 and 30 May 2007, dismissing their Complaint, be set aside. They reiterated their earlier argument that Section 1, Rule 63 of the Rules of Court states that an action to quiet title falls under the exclusive jurisdiction of the RTC. They also contended that there was no obstacle to their joining the two causes of action, *i.e.*, quieting of title and *reivindicacion*, in a single Complaint, citing *Rumarate v. Hernandez*.[16] And even if the two causes of action could not be joined, petitioners maintained that the misjoinder of said causes of action was not a ground for the dismissal of their Complaint.[17]

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[13] Section 1. *Who may file petition.* Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.

An action for the reformation of an instrument, to quiet title to real property or remove clouds therefrom, or to consolidate ownership under Article 1607 of the Civil Code, may be brought under this Rule.

[14] *Rollo,* pp. 33 and 34.

[15] *Id.* at 26-27.

[16] G.R. No. 168222, 18 April 2006, 487 SCRA 317.

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

The RTC issued an Order dated 31 October 2007 denying petitioners' Motion. It clarified that their Complaint was dismissed, not on the ground of misjoinder of causes of action, but for lack of jurisdiction. The RTC dissected Section 1, Rule 63 of the Rules of Court, which provides:

> Section 1. *Who may file petition*. Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.
>
> An action for the reformation of an instrument, to quiet title to real property or remove clouds therefrom, or to consolidate ownership under Article 1607 of the Civil Code, may be brought under this Rule.

The RTC differentiated between the first and the second paragraphs of Section 1, Rule 63 of the Rules of Court. The first paragraph refers to an action for declaratory relief, which should be brought before the RTC. The second paragraph, however, refers to a different set of remedies, which includes an action to quiet title to real property. The second paragraph must be read in relation to Republic Act No. 7691, which vests the MTC with jurisdiction over real actions, where the assessed value of the real property involved does not exceed ₱50,000.00 in Metro Manila and ₱20,000.00 in all other places.[18] The dispositive part of the 31 October 2007 Order of the RTC reads:

> This Court maintains that an action to quiet title is a real action. [Herein petitioners] do not dispute the assessed value of the property at ₱410.00 under Tax Declaration No. 02-48386. Hence, it has no jurisdiction over the action.
>
> In view of the foregoing considerations, the Motion is hereby denied.[19]

Hence, the present Petition, where petitioners raise the sole issue of:

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[18] *Id.* at 28.

[19] *Id.*

I

WHETHER OR NOT THE RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION IN DISMISSING THE COMPLAINT OF THE PETITIONERS MOTU PROPRIO.[20]

Petitioners' statement of the issue is misleading. It would seem that they are only challenging the fact that their Complaint was dismissed by the RTC *motu proprio*. Based on the facts and arguments set forth in the instant Petition, however, the Court determines that the fundamental issue for its resolution is whether the RTC committed grave abuse of discretion in dismissing petitioners' Complaint for lack of jurisdiction.

The Court rules in the negative.

An action for declaratory relief should be filed by a person interested under a deed, a will, a contract or other written instrument, and whose rights are affected by a statute, an executive order, a regulation or an ordinance. The relief sought under this remedy includes the interpretation and determination of the validity of the written instrument and the judicial declaration of the parties' rights or duties thereunder.[21]

Petitions for declaratory relief are governed by Rule 63 of the Rules of Court. The RTC correctly made a distinction between the first and the second paragraphs of Section 1, Rule 63 of the Rules of Court.

The first paragraph of Section 1, Rule 63 of the Rules of Court, describes the general circumstances in which a person may file a petition for declaratory relief, to wit:

> Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation **may**, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or

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[20] *Id.* at 338-339.

[21] *Velarde v. Social Justice Society*, G.R. No. 159357, 28 April 2004, 428 SCRA 283, 290.

validity arising, and for a declaration of his rights or duties, thereunder. (Emphasis ours.)

As the afore-quoted provision states, a petition for declaratory relief under the first paragraph of Section 1, Rule 63 may be brought before the appropriate RTC.

Section 1, Rule 63 of the Rules of Court further provides in its second paragraph that:

> An action for the reformation of an instrument, to quiet title to real property or remove clouds therefrom, or to consolidate ownership under Article 1607 of the Civil Code, **may** be brought under this Rule. (Emphasis ours.)

The second paragraph of Section 1, Rule 63 of the Rules of Court specifically refers to (1) an action for the reformation of an instrument, recognized under Articles 1359 to 1369 of the Civil Code; (2) an action to quiet title, authorized by Articles 476 to 481 of the Civil Code; and (3) an action to consolidate ownership required by Article 1607 of the Civil Code in a sale with a right to repurchase. These three remedies are considered similar to declaratory relief because they also result in the adjudication of the legal rights of the litigants, often without the need of execution to carry the judgment into effect.[22]

To determine which court has jurisdiction over the actions identified in the second paragraph of Section 1, Rule 63 of the Rules of Court, said provision must be read together with those of the Judiciary Reorganization Act of 1980, as amended.

It is important to note that Section 1, Rule 63 of the Rules of Court does not categorically require that an action to quiet title be filed before the RTC. It repeatedly uses the word "may" – that an action for quieting of title "may be brought under [the] Rule" on petitions for declaratory relief, and a person desiring to file a petition for declaratory relief "may x x x bring an action in the appropriate Regional Trial Court." The use of the word "may" in a statute denotes that the provision is merely

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[22] Regalado, REMEDIAL LAW COMPENDIUM (6th revised ed.), p. 692.

permissive and indicates a mere possibility, an opportunity or an option.[23]

In contrast, the mandatory provision of the Judiciary Reorganization Act of 1980, as amended, uses the word "shall" and explicitly requires the MTC to exercise **exclusive original jurisdiction** over all civil actions which involve title to or possession of real property where the assessed value does not exceed ₱20,000.00, thus:

> Section 33. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Civil Cases.*— Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts **shall** exercise:
>
> x x x x x x x x x
>
> (3) Exclusive original jurisdiction in all civil actions which involve title to, possession of, real property, or any interest therein where the assessed value of the property or interest therein does not exceed Twenty thousand pesos (₱20,000.00) or, in civil actions in Metro Manila, where such assessed value does not exceeds Fifty thousand pesos (₱50,000.00) exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs: x x x (Emphasis ours.)

As found by the RTC, the assessed value of the subject property as stated in Tax Declaration No. 02-48386 is only ₱410.00; therefore, petitioners' Complaint involving title to and possession of the said property is within the exclusive original jurisdiction of the MTC, not the RTC.

Furthermore, an action for declaratory relief presupposes that there has been no actual breach of the instruments involved or of rights arising thereunder.[24] Since the purpose of an action for declaratory relief is to secure an authoritative statement of the rights and obligations of the parties under a statute, deed, or contract for their guidance in the enforcement thereof, or

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[23] *De Ocampo v. Secretary of Justice*, G.R. No. 147932, 25 January 2006, 480 SCRA 71, 80; *Melchor v. Gironella*, 491 Phil. 653, 658-659 (2005); *Social Security Commission v. Court of Appeals*, 482 Phil. 449, 462 (2004).

[24] *Velarde v. Social Justice Society*, *supra* note 21 at 294.

compliance therewith, and not to settle issues arising from an alleged breach thereof, it may be entertained only **before** the breach or violation of the statute, deed, or contract to which it refers. A petition for declaratory relief gives a practical remedy for ending controversies that have not reached the state where another relief is immediately available; and supplies the need for a form of action that will set controversies at rest **before they lead to a repudiation of obligations, an invasion of rights, and a commission of wrongs.**[25]

Where the law or contract has already been contravened prior to the filing of an action for declaratory relief, the courts can no longer assume jurisdiction over the action. In other words, a court has no more jurisdiction over an action for declaratory relief if its subject has already been infringed or transgressed before the institution of the action.[26]

In the present case, petitioners' Complaint for quieting of title was filed **after** petitioners already demanded and respondents refused to vacate the subject property. In fact, said Complaint was filed only subsequent to the latter's express claim of ownership over the subject property before the *Lupong Tagapamayapa*, in direct challenge to petitioners' title.

Since petitioners averred in the Complaint that they had already been deprived of the possession of their property, the proper remedy for them is the filing of an *accion publiciana* or an *accion reivindicatoria*, not a case for declaratory relief. An *accion publiciana* is a suit for the recovery of possession, filed one year after the occurrence of the cause of action or from the unlawful withholding of possession of the realty. An *accion reivindicatoria* is a suit that has for its object one's recovery of possession over the real property as owner.[27]

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[25] *Manila Electric Company v. Philippine Consumers Foundation, Inc.*, 425 Phil. 65, 82 (2002); *Rosello-Bentir v. Leanda*, 386 Phil. 802, 813-814 (2000).

[26] *Tambunting, Jr. v. Sumabat*, G.R. 144101, 16 September 2005, 470 SCRA 92, 96.

[27] *Hilario v. Salvador*, G.R. No. 160384, 29 April 2005, 457 SCRA 815, 824-825.

Petitioners' Complaint contained sufficient allegations for an *accion reivindicatoria*. Jurisdiction over such an action would depend on the value of the property involved. Given that the subject property herein is valued only at ₱410.00, then the MTC, not the RTC, has jurisdiction over an action to recover the same. The RTC, therefore, did not commit grave abuse of discretion in dismissing, without prejudice, petitioners' Complaint in Civil Case No. 6868 for lack of jurisdiction.

As for the RTC dismissing petitioners' Complaint *motu proprio*, the following pronouncements of the Court in *Laresma v. Abellana*[28] proves instructive:

> It is axiomatic that the nature of an action and the jurisdiction of a tribunal are determined by the material allegations of the complaint and the law at the time the action was commenced. Jurisdiction of the tribunal over the subject matter or nature of an action is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. **If the court has no jurisdiction over the nature of an action, it may dismiss the same *ex mero motu* or *motu proprio*.** x x x. (Emphasis supplied.)

Since the RTC, in dismissing petitioners' Complaint, acted in complete accord with law and jurisprudence, it cannot be said to have done so with grave abuse of discretion amounting to lack or excess of jurisdiction. An act of a court or tribunal may only be considered to have been committed in grave abuse of discretion when the same was performed in a capricious or whimsical exercise of judgment, which is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility.[29] No such circumstances exist herein as to justify the issuance of a writ of *certiorari*.

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[28] 484 Phil. 766, 778-779 (2004).

[29] *Yee v. Bernabe*, G.R. No. 141393, 19 April 2006, 487 SCRA 385, 393.

IN VIEW OF THE FOREGOING, the instant Petition is *DISMISSED*. The Orders dated 4 May 2007, 30 May 2007 and 31 October 2007 of the Regional Trial Court of Tuguegarao City, Branch 3, dismissing the Complaint in Civil Case No. 6868, without prejudice, are *AFFIRMED*. The Regional Trial Court is ordered to *REMAND* the records of this case to the Municipal Trial Court or the court of proper jurisdiction for proper disposition. Costs against the petitioners.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 183088. September 17, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DONATO CAPCO *y* SABADLAB,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); RATIONALE BEHIND THE ACCEPTED PRACTICE OF NON-PRESENTATION OF INFORMANT AS WITNESS.— There is a logical and critical rationale behind the accepted practice of leaving out a confidential informant from the prosecution's roster of witnesses. As held in *People v. Peñaflorida, Jr.*, the presentation of an informant is not essential for conviction nor is it indispensable for a successful prosecution because his testimony would merely be corroborative and cumulative. More importantly, as *Peñaflorida, Jr.* and other similar drug cases teach, informants are by and large not presented as witnesses in court as there is a need to

conceal their identity and protect their important service to law enforcement. Living in the fringes of the underworld, these police assets may well be unwilling to expose themselves to possible liquidation by drug syndicates and their allies should their identities be revealed.

2. ID.; ID.; NON-COMPLIANCE WITH SECTION 21 OF R.A. 9165 WILL NOT RENDER THE SEIZED OR CONFISCATED ITEMS INADMISSIBLE AS EVIDENCE.— [N]on-compliance with Sec. 21 will not render an accused's arrest illegal or the items seized or confiscated from the accused inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as they would be utilized in the determination of the guilt or innocence of the accused. As we shall later discuss, the integrity and evidentiary value of the seized drugs were preserved. We, thus, cannot sustain Capco's claim of inadmissibility of the drug.

3. ID.; ID.; CIRCUMSTANCES SHOWING THAT THE CHAIN OF CUSTODY OF THE OBJECT EVIDENCE WAS NEVER BROKEN.— We agree with the appellate court's conclusion that the prosecution was able to show that the chain of custody was never broken. A careful review of the records supports this finding. Following the successful drug transaction with Capco, PO2 Barrameda marked the plastic sachet of suspected *shabu* with "DSC." A letter-request, signed by Police Superintendent Jose Ramon Q. Salido, was then sent to the PNP Crime Laboratory for an examination of the seized drugs. Forensic Chemist Grace M. Eustaquio later filed Chemistry Report No. D-1049-03, finding the white crystalline substance in the plastic sachet marked "DSC" positive for methylamphetamine hydrochloride or *shabu.* During trial, PO2 Barrameda identified the same specimen as the *shabu* their team had seized from Capco and he had later marked with "DSC." PO1 Santos corroborated PO2 Barrameda's testimony by testifying that the specimen marked "DSC" was indeed the product of their buy-bust operation against Capco. In the prosecution for illegal sale of dangerous drugs, what is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the traded substance—the object evidence which is the core of the *corpus delicti*. These requirements have been sufficiently established in the instant case.

4. ID.; ID.; THE PRESUMPTIONS THAT THE INTEGRITY OF THE EVIDENCE IS PRESERVED AND THAT THE OFFICIAL DUTY HAS BEEN REGULARLY PERFORMED, APPLIED.— [T]he integrity of the evidence is presumed to be preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. Capco has the burden to show that the evidence was tampered or meddled with to overcome a presumption of regularity in the handling of exhibits by public officers. Capco failed in this respect. Another presumption Capco failed to overcome relates to the prosecution's witnesses. Decisive in a prosecution for drug pushing or possession is the testimony of the police officers on what transpired before, during, and after the accused was caught and how the evidence was preserved. Their testimonies in open court are considered in line with the presumption that law enforcement officers have performed their duties in a regular manner, absent evidence to the contrary. In the absence of proof of motive to falsely impute a crime as serious as drug pushing against Capco, the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of witnesses, shall prevail over Capco's self-serving and uncorroborated denial. This presumption holds true for the police officers in this case, as Capco could not provide a credible and believable account on why he was being falsely accused.

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.*:

Assailed before the Court is the Decision dated December 28, 2007 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02213 affirming the February 1, 2006 Decision in Criminal Case Nos. 03-3233 and 03-3561 of the Regional Trial Court (RTC), Branch 64 in Makati City. The RTC found accused-appellant Donato Capco liable for violation of certain provisions

of Republic Act No. (RA) 9165 or *The Comprehensive Dangerous Drugs Act of 2002*.

The Facts

The records show that, in two separate informations filed before the RTC of Makati City, Capco was charged with violation of Section 5, Art. II of RA 9165 (illegal sale of dangerous drugs) and Sec. 15, Art. II of the same law (use of dangerous drugs), respectively, allegedly committed as follows:

Criminal Case No. 03-3233

That on or about the 21st day of August 2003, in the city of Makati, Philippines and a place within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously without being authorized by law, sell, distribute and transport zero point zero three (0.03) gram of Methylamphetamine Hydrochloride (*shabu*) which is a dangerous drug in consideration of one hundred (₱100.00) pesos.

CONTRARY TO LAW.[1]

Criminal Case No. 03-3561

That on or about the 21st day of August 2003, in the City of Makati Philippines and a place within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to use, administer and take any dangerous drugs, after confirmatory test was found to be positive for the use of Methylamphetamine which is [a] dangerous drug.

CONTRARY TO LAW.[2]

When arraigned on September 10, 2003 for violation of Sec. 5,[3] Art. II of RA 9165, Capco, assisted by counsel, entered

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[1] CA *rollo*, p. 100.

[2] *Id.* at 101.

[3] Sec. 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. — The penalty of life imprisonment to death and a fine ranging from [₱500,000.00] to [₱10,000,000.00] shall be imposed upon any person, who, unless authorized by law, shall sell,

a not guilty plea. He pleaded guilty, however, when later arraigned for the other charge of violation of Sec. 15[4] of RA 9165 and was, accordingly, sentenced to undergo a six-month rehabilitation, the execution of which, however, was deferred due to the pendency of Criminal Case No. 03-3233.

In the ensuing trial, the prosecution presented as witnesses PO2 Vicente Barrameda and PO1 Randy Santos. The defense lined up Capco and Ace Bernal as witnesses.

The CA's decision under review summarizes the People's version of the events, as follows:

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trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, x x x or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

x x x x x x x x x

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

[4] Sec. 15. Use of Dangerous Drugs. – A person apprehended or arrested, who is found to be positive for use of any dangerous drug, after a confirmatory test, shall be imposed a penalty of a minimum of six (6) months rehabilitation in a government center for the first offense, subject to the provisions of Article VIII of this Act. If apprehended using any dangerous drug for the second time, he/she shall suffer the penalty of imprisonment x x x: Provided, That this Section shall not be applicable where the person tested is also found to have in his/her possession such quantity of any dangerous drug provided for under Section 11 of this Act, in which case the provisions stated therein shall apply.

At about 8:30 in the evening of August 21, 2003, operatives from the Makati City Anti-Illegal Drugs Special Operation Task Force (AID-SOTF), acting on a confidential informant's tip, conducted a buy-bust operation in the vicinity of Dapitan St., Brgy. Guadalupe Nuevo, Makati City. The operation had for its subject, Capco. Acting as poseur-buyer, PO2 Barrameda, accompanied by the informant, was able to purchase one plastic sachet containing white crystalline substance with the use of PhP 100 in marked money. After the completion of the sale, PO2 Barrameda gave the operation's pre-arranged signal by ringing back-up PO1 Santos' mobile phone. The rest of the team then helped in arresting Capco who was then brought to the Makati AID-SOTF station. From there, appellant and the item subject matter of the sale were then brought to the Philippine National Police (PNP) Crime Laboratory in Camp Crame, Quezon City, for drug test and qualitative examination, respectively. As the chemistry report would later indicate, the urine taken from Capco and the specimen submitted were both found positive for the presence of methylamphetamine hydrochloride or *shabu*.[5]

On the other hand, the defense is grounded mainly on denial. To show his innocence, Capco claimed that when he alighted from a tricycle in front of his house coming from Guadalupe Market on August 23, 2003, he observed a commotion and saw four men chasing some people in the basketball court on Dapitan Street, Makati City. Suddenly he was dragged by unidentified persons inside a vehicle parked at Kalayaan Avenue and asked about a certain "Gary" whom he does not know. When they could not obtain any information from Capco, they brought him to the Office of the Drug Enforcement Unit (DEU). There the DEU Chief asked PhP 10,000 for his release.

Capco's story was collaborated by witness Bernal.[6] While Bernal was playing basketball with his cousins on Dapitan Street, Makati City, several men disembarked from a taxi and inquired on the whereabouts of "Gary." Then they suddenly chased

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[5] CA *rollo*, p. 17.

[6] *Id.* at 17-18.

somebody who was able to escape in an alley. After that, they saw two men went inside the house of Capco, who was later brought out and taken to a parked vehicle at Kalayaan Ave., Makati City.

In its decision of February 1, 2006, the RTC found Capco guilty beyond reasonable of the crime (illegal sale of *shabu*) charged in Criminal Case No. 03-3233. The *fallo* of the RTC's decision, which also included a portion to implement its ruling in Criminal Case 03-3561, reads:

> WHEREFORE, in view of the foregoing, judgment is rendered against the accused DONATO CAPCO y SABADLAD finding him GUILTY beyond reasonable doubt of violation of Sec. 5, Art. II, Republic Act No. 9165 and sentencing him to suffer life imprisonment and to pay a fine of ₱500,000.00.
>
> As regards the implementation of the judgment which this Court renders in Criminal Case No. 03-3561 for violation of Sec. 15, Art. II, RA 9165 and considering the aforestated sentence for violation of Sec. 5, Art. II, the accused is sentenced to undergo rehabilitation for at least six (6) months in a drug rehabilitation program under the auspices of the Bureau of Correction.
>
> The Branch Clerk of Court is directed to transmit to the Philippine Drug Enforcement Agency (PDEA) the one (1) piece of plastic sachet of *shabu* weighing 0.03 gram subject matter of these cases, for said agency's appropriate disposition.
>
> SO ORDERED.[7]

On appeal, Capco questioned the RTC's decision on the ground that it convicted him in spite of the inadmissibility of the evidence against him and notwithstanding the prosecution's failure to present the alleged confidential informant. He, too, raised, as issues, the prosecution's failure to establish the prohibited nature, and the chain of custody, of the seized item.

Unconvinced, the CA, by decision dated December 28, 2007, affirmed that of the trial court, noting, among other things, that the informant was not an indispensable witness. Apropos the

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[7] *Id.* at 104-105. Penned by Judge Delia H. Panganiban.

custodial chain, the CA held that the non-presentation of the police investigator and the PNP Crime Laboratory personnel who received the *shabu* did not affect the People's case, as the prosecution witnesses presented sufficiently proved that the chain of custody of the seized *shabu* was never broken.

The decretal portion of the CA's decision reads:

> WHEREFORE, in view of the foregoing, the appealed Decision dated February 1, 2006 of the Regional Trial Court of Makati, Branch 64 in Crim. Cases Nos. 03-3233 and 03-3561 is hereby **AFFIRMED**.
>
> SO ORDERED.[8]

Capco subsequently filed, and the CA gave due course to, his notice of appeal from the decision of December 28, 2007.

On August 6, 2008, this Court required the parties to submit supplemental briefs if they so desired. They manifested, however, their amenability to submit the case on the basis of the records already on file.

As it was in the CA, Capco now asks the Court to overturn his conviction on the following issues which may be formulated, as follows:

> 1. The CA erred in affirming the appellant's conviction despite failure of the prosecution to present the alleged informant;
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> 2. The evidence against appellant is inadmissible for having been obtained in violation of Sec. 21 of RA No. 9165; and
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> 3. The prosecution failed to establish: (1) the item allegedly confiscated was indeed a prohibited drug and (2) the chain of custody of the specimen.

The Court's Ruling

We affirm the ruling of the CA.

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[8] *Rollo*, p. 15. Penned by Associate Justice Jose C. Reyes, Jr. and concurred in by Associate Justices Lucenito N. Tagle and Myrna Dimaranan Vidal.concurred in by Associate Justices Lucenito N. Tagle and Myrna Dimaranan Vidal.

Non-Presentation of Informant

Capco argues that the prosecution should have presented the informant or at least explained to the court's satisfaction why he was not made to testify. The informant's non-presentation, so he claims, is equivalent to suppression of evidence.

There is a logical and critical rationale behind the accepted practice of leaving out a confidential informant from the prosecution's roster of witnesses. As held in *People v. Peñaflorida, Jr.*,[9] the presentation of an informant is not essential for conviction nor is it indispensable for a successful prosecution because his testimony would merely be corroborative and cumulative. More importantly, as *Peñaflorida, Jr.* and other similar drug cases teach, informants are by and large not presented as witnesses in court as there is a need to conceal their identity and protect their important service to law enforcement. Living in the fringes of the underworld, these police assets may well be unwilling to expose themselves to possible liquidation by drug syndicates and their allies should their identities be revealed.

Violation of Sec. 21 of RA 9165

Capco next alleges that the buy-bust team violated Sec. 21(1) of RA 9165, quoted below, on the matter of handling the contraband after a buy-bust operation:

> Sec. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment. – The PDEA shall take charge and have custody of all dangerous drugs, x x x as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative

[9] G.R. No. 175604, April 10, 2008, 551 SCRA 111, 121.

> 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.

Capco asserts that, in breach of what the aforequoted provision mandates, the apprehending police operatives did not, upon his arrest, take his photograph together with the alleged *shabu* sold. There was likewise no physical inventory of the seized item conducted in his presence or before his representative or counsel, and before representatives from the media and the Department of Justice as well as an elected public official.

Generally, non-compliance with Sec. 21 will not render an accused's arrest illegal or the items seized or confiscated from the accused inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as they would be utilized in the determination of the guilt or innocence of the accused.[10] As we shall later discuss, the integrity and evidentiary value of the seized drugs were preserved. We, thus, cannot sustain Capco's claim of inadmissibility of the drug.

Hiatus in Chain of Custody

Capco's last argument dwells on the prosecution's non-presentation of the personnel who touched or had physical possession of the suspected illegal item from the time it was seized up to the moment it was presented in court, or at least until it was examined by the forensic chemist. He claims that this non-presentation casts doubt on the accuracy of the chain of custody of the object evidence.

We agree with the appellate court's conclusion that the prosecution was able to show that the chain of custody was never broken. A careful review of the records supports this finding.

Following the successful drug transaction with Capco, PO2 Barrameda marked the plastic sachet of suspected *shabu* with

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[10] *People v. Teodoro*, G.R. No. 185164, June 22, 2009.

"DSC."[11] A letter-request, signed by Police Superintendent Jose Ramon Q. Salido, was then sent to the PNP Crime Laboratory for an examination of the seized drugs.[12] Forensic Chemist Grace M. Eustaquio later filed Chemistry Report No. D-1049-03,[13] finding the white crystalline substance in the plastic sachet marked "DSC" positive for methylamphetamine hydrochloride or *shabu*. During trial, PO2 Barrameda[14] identified the same specimen as the *shabu* their team had seized from Capco and he had later marked with "DSC." PO1 Santos corroborated PO2 Barrameda's testimony by testifying that the specimen marked "DSC" was indeed the product of their buy-bust operation against Capco.[15]

In the prosecution for illegal sale of dangerous drugs, what is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the traded substance—the object evidence which is the core of the *corpus delicti*.[16] These requirements have been sufficiently established in the instant case. What is more, the integrity of the evidence is presumed to be preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. Capco has the burden to show that the evidence was tampered or meddled with to overcome a presumption of regularity in the handling of exhibits by public officers.[17] Capco failed in this respect.

Another presumption Capco failed to overcome relates to the prosecution's witnesses. Decisive in a prosecution for drug pushing or possession is the testimony of the police officers on what transpired before, during, and after the accused was caught

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[11] TSN, June 15, 2004, p. 11.

[12] Records, p. 9.

[13] *Id.* at 10.

[14] TSN, January 25, 2005, p. 68.

[15] TSN, June 15, 2004, p. 11.

[16] *People v. Santos*, G.R. No. 176735, June 26, 2008, 555 SCRA 578, 593.

[17] *People v. Macatingag*, G.R. No. 181037, January 19, 2009.

and how the evidence was preserved. Their testimonies in open court are considered in line with the presumption that law enforcement officers have performed their duties in a regular manner, absent evidence to the contrary. In the absence of proof of motive to falsely impute a crime as serious as drug pushing against Capco, the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of witnesses, shall prevail over Capco's self-serving and uncorroborated denial.[18] This presumption holds true for the police officers in this case, as Capco could not provide a credible and believable account on why he was being falsely accused.

In sum, proof beyond reasonable doubt, as found by the RTC and affirmed by the CA, was established against Capco. Finding no showing that certain facts of relevance and substance bearing on the elements of the crime have been overlooked, misapprehended, or misapplied,[19] we affirm these courts' judgments.

Penalty Imposed

Capco was charged with violating Sec. 5, Art. II of RA 9165. For clarity we quote said provision again, which states:

> Sec. 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.—The penalty of life imprisonment to death and a fine ranging from x x x (₱500,000.00) to x x x (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, x x x or shall act as a broker in any of such transactions. x x x

We find the penalty of life imprisonment and a fine of PhP 500,000 in accordance with the penal provisions of RA 9165.

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[18] *People v. Llamado*, G.R. No. 185278, March 13, 2009.

[19] *People v. Darisan*, G.R. No. 176151, January 30, 2009.

WHEREFORE, the appeal is *DENIED*. The CA Decision in CA-G.R. CR-H.C. No. 02213 is hereby *AFFIRMED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 183142. September 17, 2009]

ROSITA A. MONTANEZ, *petitioner, vs.* **PROVINCIAL AGRARIAN REFORM ADJUDICATOR (PARAD), NEGROS OCCIDENTAL, GIL A. ALEGARIO, DEPARTMENT OF AGRARIAN REFORM (DAR), as represented by the MUNICIPAL AGRARIAN REFORM OFFICER (MARO) OF LA CASTELLANA, NEGROS OCCIDENTAL and PROVINCIAL AGRARIAN REFORM OFFICER OF NEGROS OCCIDENTAL, THE LANDBANK OF THE PHILIPPINES, MAURO T. ALFONSO, REMEGIO S. ALFONSO, MARIA AMAR, ANDREA T. AMBAHAN, ENRIQUE S. BARONG, JR., ENRIQUE B. BARONG, GEMMA CARREON, LORETO T. CARREON, SR., LORETO M. CARREON, JR., EDITHA CHAVEZ, SATURNINA A. CABRERA, PROMECIO M. LACHICA, ALLAN O. LACHICA, RAUL O. LACHICA, BUENA PARNICIO, CARLOS O. DE LOS REYES, ENRIQUE C. KANILOG, SR., ROMEO T. PARNICIO, ROSALINDA MURILLO, WILFREDO B. ORTEGA, FERNANDO M. PARDILLO, JR., JOCELYN SEMILLANO, ADELINA SAMSON, and**

CONCEPCION SEMILLANO, as represented by the LEGAL ASSISTANCE DIVISION, DAR, BACOLOD CITY, *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE REMEDIES, NON-EXHAUSTION OF; CASE AT BAR.— For the purpose of applying the rule on exhaustion, the remedies available to the petitioner are clearly set out in the *DARAB 2003 Rules of Procedure*, x x x. Under Section 1.6, Rule II, the "*adjudicator shall have primary and exclusive jurisdiction to determine and adjudicate* x x x *cases* x x x *involving the correction,* x x x *cancellation, secondary and subsequent issuances of [CLOAs] and [EPs] which are registered with the Land Registration Authority*." According to the succeeding Section 2 in relation to Rule XIV, the proper remedy from an adverse final resolution, order, or resolution on the merits of the adjudicator is an appeal to the DARAB Proper which, among others, require the filing of a notice of appeal and payment of an appeal fee. And from the decision of the DARAB Proper, an appeal may be taken to the CA pursuant to Rule XV. x x x There is no question then that petitioner, in seeking recourse with the CA from the decision of the PARAD, failed to exhaust administrative remedies. The eventual dismissal by the CA of her petition on that ground stands on legal ground. To recall what we said in *Paat*, "the premature invocation of court's intervention is fatal to one's cause. x x x The case is susceptible of dismissal for lack of cause of action." It is true that the rule on exhaustion of administrative remedies admits of several exceptions. Not one, however, obtains under the premises. What comes close is the reason given originally by the CA and which petitioner made capital of—that an appeal to the DARAB would be useless. x x x Bare misgivings about the ability of a quasi-judicial agency to render impartial justice would not, standing alone, be a sufficient reason to dispense with the exhaustion of administrative remedies doctrine. As it were, the doctrine ensures the efficient and speedy disposition of cases.

2. ID.; ID.; ID.; EFFECTS OF FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES.— [W]e find that petitioner had, without reason, let alone explanation, failed to exhaust

administrative remedies provided by law. Such lapse, by weight of established jurisprudence, is fatal to her petition. Due to petitioner's resort to an improper remedy, the filing of the petition before the CA did not toll the reglementary period for filing an appeal with the DARAB. As such, the decision of the PARAD should ordinarily be considered as final and executory.

3. ID.; ID.; ID.; CIRCUMSTANCES JUSTIFYING THE REMAND OF THE CASE TO THE DARAB INSTEAD OF DISMISSING THE SAME FOR NON-EXHAUSTION OF ADMINISTRATIVE REMEDIES.— But the Court need not rub it in all the more by depriving petitioner of any remedy. The nature of the issues raised by petitioner before the PARAD—such as, but not limited to, the irregularity in the initial acquisition proceedings, the undue haste in the issuance of the TCT-CLOAs, and the consequent cloud that hangs over the CLOAs in question—needs to be addressed. The PARAD no less admitted that the entries and annotations made in the CLOAs were erroneous and adverse to the interest of petitioner, who it seems has yet to receive just compensation for her two parcels of land. The inequity of barring petitioner from vindicating her right is rendered more acute in the face of the undisputed fact that the DAR has taken her property for CARP purposes ostensibly with their agents in the field not hewing strictly with the requirements of the law and whose negligence tainted the CLOAs thus issued. The purpose behind the passage of the CARP law would not be compromised should petitioner be allowed to pursue her case before the right forum. With this in mind, we remand the instant case to the DARAB for proper disposition of the issues raised by petitioner.

APPEARANCES OF COUNSEL

Capanas (+) Solidum & Capanas Law Offices for petitioner.
LBP Legal Services Group for Land Bank of the Philippines.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This petition for review under Rule 45 assails and seeks to set aside the Amended Decision[1] dated April 18, 2008 of the Court of Appeals (CA) in CA-G.R. CEB-SP No. 00229, entitled *Rosita A. Montanez v. Provincial Agrarian Reform Adjudicator (PARAD), Negros Occidental, Gil A. Alegario, Department Of Agrarian Reform (DAR), as represented by the Municipal Agrarian Reform Officer (MARO) of La Castellana, et al.*

The Facts

Petitioner Rosita A. Montanez was the owner of two (2) parcels of land with an aggregate area of 35.5998 hectares, both located at La Castellana, Negros Occidental, the first denominated as Lot 750-A and registered under Transfer Certificate of Title (TCT) No. T-71582,[2] with an area of 21.9586 hectares. The second, denominated as Lot 850-A, had an area of 13.6412 hectares and was then covered by TCT No. T-71583.[3]

In October 1999, the DAR caused the publication of a Notice of Land Coverage for Negros Occidental,[4] which included the two parcels of land referred to above. The notice, however, erroneously identified one of the lots as covered by TCT No. T-71589, instead of by T-71583. Later, the DAR notified[5]

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[1] *Rollo*, pp. 67-75. Penned by Associate Justice Priscilla Baltazar-Padilla (Chairperson) and concurred in by Associate Justices Franchito N. Diamante and Florito S. Macalino.

[2] *Id.* at 123-126.

[3] *Id.* at 116-122.

[4] *Id.* at 127.

[5] *Id.* at 128. Per Notice of Land Valuation and Acquisition dated March 31, 2000.

petitioner that her property, to the extent of 32.4257 hectares, has been placed under the Comprehensive Agrarian Reform Program (CARP) and offered to compensate her the amount of PhP 5,592,3001.60 based on the valuation of the Land Bank of the Philippines (LBP), subject to price adjustment to conform to the actual area coverage. Albeit petitioner rejected the offer, it would appear that the LBP later issued in her favor a certification of deposit, in cash and in bonds, corresponding to the amount aforestated.[6]

On June 28, 2000, the DAR secured from the Negros Occidental Registry the cancellation of petitioner's TCT Nos. T-71583 and T-71582 and the issuance, in lieu thereof, of TCT Nos. T-205481[7] and T-205482[8] respectively, in the name of the Republic of the Philippines (Republic). On its face, TCT No. T-205481 identified the Republic and the petitioner as owners of 11.4654 hectares and 2.1758 hectares, respectively, of the registered land. In TCT No. 205482, the Republic and the petitioner are shown as owning 20.9603 and .9983 hectares, respectively.

Later on the same day, TCT No. CLOA (Certificate of Land Ownership Award) 8434[9] covering an area of 21.9586 hectares was issued, purportedly as a transfer from "TCT Nos. T-715831/ T-205482." On the other hand, TCT No. CLOA-8435[10] for an area of 13.6412 hectares was issued, purportedly as a transfer from "TCT Nos. T-715832/T-205481." Evidently, such notations on the CLOAs were erroneous, the aggregate land area stated in the CLOAs being larger than what was reflected in the titles whence the CLOAs emanate. In any event, said CLOAs were registered in the name of, and delivered to, individual respondents as CARP beneficiaries.

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[6] *Id.* at 54.

[7] *Id.* at 133-137.

[8] *Id.* at 129-132.

[9] *Id.* at 138-141.

[10] *Id.* at 142-147.

Petitioner forthwith filed a Petition[11] with the Provincial Agrarian Reform Adjudication Board (PARAB) of Negros Occidental for the annulment/cancellation of TCT Nos. CLOA-8434, CLOA-8435, T-205481 and T-205482 on the ground of irregular and anomalous issuance thereof. The case was docketed as DARAB Case No. R-0605-1707-03.

By Decision[12] dated October 18, 2004, Provincial Agrarian Reform Adjudicator (PARAD) Gil Alegario gave the petition a short shrift, stating that petitioner based "her action [for annulment/cancellation] on purely technical grounds" referring to the discrepancy between the area coverage stated in the CLOAs and that stated in the TCTs. These grounds, according to the PARAD, are beyond the ambit of, and are not among those enumerated in DAR Administrative Order No. 2,[13] Series of 1994, for the cancellation of CLOAs and emancipation patents (EPs). PARAD Alegario, however, stated the observation that the aberration is correctible administratively and that the DAR has effectively acknowledged the fact of discrepancy by inscribing at the back of the CLOAs the condition that the CARP award is subject to "segregation and reconveyance."

Therefrom, petitioner went straight to the CA via a petition for certiorari under Section 54 of Republic Act No. (RA) 6657,[14] docketed as CA-G.R. CEB-SP No. 00229. Public respondents sought the dismissal of this recourse on the ground of non-exhaustion of administrative remedies. In the meantime, the CA, by Resolution[15] of February 7, 2005, ordered the PARAD of Negros Occidental and other agrarian officers "to maintain

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[11] *Id.* at 109-115.

[12] *Id.* at 99-108.

[13] Entitled "Rules Governing the Correction and Cancellation of Registered/Unregistered Emancipation Patents (EPs), and Certificates of Land Ownership Award (CLOAs) Due to Unlawful Acts and Omissions or Breach of Obligations of Agrarian Reform Beneficiaries (ARBs) and for Other Causes."

[14] The Comprehensive Agrarian Reform Law, as amended.

[15] *Rollo*, p. 196.

a *status quo* including the non-enforcement of the PARAD decision in DARAB Case No. R-0605-1707-03 until further order from [the] Court."

On December 27, 2005, the CA, on the holding that the petitioner is entitled to the rectification of the technical error referred to above, but that the DAR is the proper office to effect the correction, rendered a decision, the dispositive portion of which states:

> WHEREFORE, the petition for certiorari is hereby GRANTED.
>
> The Decision dated October 18, 2004 issued by PARAD Gil A. Alegario in DARAB Case No. R-0605-1707-03 is hereby SET ASIDE.
>
> The original petition is hereby referred to the Department of Agrarian Reform for correction of the technical description in TCT No. CLOA-8434 and TCT No. CLOA-8435, and to take such action as may be necessary and desirable to put into effect the directive herein.
>
> SO ORDERED.[16]

To the CA, the DARAB—and necessarily its provincial and regional adjudication boards—cannot take cognizance of the case owing to the absence of tenancy relationship between the private parties. This jurisdictional determination notwithstanding, the CA still ruled that there was no violation of the exhaustion of administrative remedies doctrine.[17]

From the above decision, the DAR sought reconsideration while the petitioner interposed apartial motion for reconsideration.[18] On April 18, 2008, the appellate court rendered the assailed Amended Decision, disposing as follows:

> WHEREFORE, prescinding from all of the foregoing considerations, public respondent DAR's Motion for Reconsideration is hereby **GRANTED**, the Decision of this court dated 27 December 2005 is **SET ASIDE** and the present petition

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[16] *Id.* at 56-57.

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

[18] *Id.* at 58-65.

for certiorari is **DISMISSED**. Accordingly, the *status quo* order issued by this Court on 7 February 2005 is revoked and rendered without force and effect.

Petitioner's Partial Motion for Reconsideration is **PARTIALLY GRANTED** insofar as the issue of the jurisdiction of public respondent PARAD over petitioner's complaint is concerned which is also in consonance with public respondent DAR's contention. Her prayer for this Court to declare as null the subject CLOAs and the land titles issued pursuant thereto is, however, **DENIED**.

SO ORDERED.[19]

The amended decision, in essence, held: the underlying DARAB Case No. R-0605-1707-03 is cognizable by the PARAB whose decision is appealable to DARAB Proper. As a necessary consequence, petitioner breached the rules on exhaustion when she went directly to the CA to challenge PARAD Alegario's decision. The CA wrote:

x x x This Court's ruling in the challenged Decision is certainly erroneous pertaining to the pronouncement that since there was no tenancy relationship between petitioner and private respondents, public respondent PARAD had no jurisdiction over petitioner's complaint for annulment of CLOAs. Under the DARAB Rules of Procedure, it is expressly stated that cases involving the issuance, correction and cancellation of CLOAs are within the DARAB's jurisdiction. x x x

x x x x x x x x x

Proceeding to the second issue, WE believe that, at the outset, petitioner availed of the wrong remedy when she filed the instant petition for certiorari with this Court and it was a mistake that due course was given to it. Well-settled is the rule that "the proper remedy from a decision of the PARAD was an appeal to the DARAB." x x x

x x x x x x x x x

Verily, x x x petitioner's proper recourse of public respondent PARAD's decision should have been to file an appeal with the DARAB and not a petition for certiorari with this Court. "Prior resort to these administrative bodies will not only satisfy the rule on

[19] *Id.* at 74.

exhaustion of administrative remedies, but may likewise prove advantageous to the parties as the proceedings will be conducted by experts and will not be limited by the technical rules of procedure and evidence."

x x x x x x x x x

Therefore, the Court is, in the first place, not in the position to declare the CLOAs null and void owing to the incorrect remedy sought by petitioner. The procedural shortcut taken by her does not find basis in law and jurisprudence x x x. Furthermore, even assuming arguendo that the petition for certiorari is properly filed, to declare the CLOA's as null and void is still not within OUR province. "In a petition for certiorari, the jurisdiction of the appellate court is narrow in scope. It is limited to solving only errors of jurisdiction. It is not to stray at will and resolve questions or issues beyond its competence, such as an error of judgment which is defined as one in which the court or quasi-judicial body may commit in the exercise of its jurisdiction x x x."[20]

Hence, the instant petition predicated on twelve (12) main and five (5) subordinate grounds,[21] not one of which touching

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[20] *Id.* at 72-74.

[21] 1. Whether or not a status quo order or TRO and preliminary injunction should be issued to prevent the following: 1) violations of the Constitution of the Republic of the Philippines, particularly Section 1 and 9; 2) violation of the Comprehensive Agrarian Reform Law, and 3) violation of the New Civil Code of the Philippines, as well as, 4) to protect the rights and interest of the petitioner and her children over the subject land and the standing sugarcane crops thereon, and, 5) to prevent irreparable damages to the petitioner;

2. Whether or not the findings of the Court of Appeals in its Decision, dated December 27, 2005, that "the subject CLOAs cannot cover an area bigger and larger in size that the titles from which these emanate and to allow the erroneous designation to remain in the CLOAs would be condoning the taking of property without due process and without just compensation", still remain as conclusion of facts considering that said findings were not specifically reversed in the Decision dated April 18, 2008;

3. Whether or not the Decision, dated April 18, 2008, of the Court of Appeals, is in effect tantamount to condoning the taking of property of the petitioner without due process and without just compensation, in violation of the Constitutional mandate that no person shall be deprived

on the matter of exhaustion of administrative remedies when the *ratio* of the CA's dismissal action in CA G.R. CEB-SP No. 00229 pivots on the issue of non-exhaustion. Before anything

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of property without due process of law and that no private property shall be taken for public use without just compensation;

4. Whether or not the filing before the Court of Appeals of the petition for certiorari questioning the Decision, dated October 18, 2004 of the Provincial Agrarian Reform Adjudicator, Gil A. Alegario, pertaining to the application, implementation, enforcement or interpretation of the Comprehensive Agrarian Reform Law is in accordance with Sec. 54, Chapter XIII of the Comprehensive Agrarian Reform Law;

5. Whether or not the DAR had the authority and jurisdiction to commence the coverage and acquisition of the land of the petitioner on October 12, 1999, after the expiration of the ten year period provided for by the Comprehensive Agrarian Reform Law;

6. Whether or not Republic Act No. 8532 which provides for funding for land acquisition for another ten years gave the DAR authority to commence coverage and acquisition of private agricultural lands after the expiration of ten-year period provided for by Republic Act No. 6657;

7. Whether or not the CLOAs which contain an area bigger and larger than the title from, which they emanate and were issued and registered without payment of just compensation nor summary administrative proceedings for just compensation, null and void;

8. Whether or not the improper identification of Lot No. 850-A in the Notice of Coverage dated October 12, 1999 which was published in a newspaper by the DAR, invalidates the coverage and acquisition by the DAR of Lot No. 850-A of the Petitioner and TCT No. CLOA-8435 and RP TCT No. T-205482 issued in lieu thereof, null and void;

9. Whether or not the coverage and acquisition of Lot No. 750-A and Lot No. 850-A by the DAR, after the expiration of the ten year period authorizing the DAR to acquire agricultural lands provided for by the Comprehensive Agrarian Reform Law, null and void, and whether the CLOAs and the RP titles issued and registered in lieu thereof, null and void;

10. That granting the DAR had jurisdiction to commence the coverage and acquisition of the land of the petitioner after the expiration of the period of authority of the DAR to acquire agricultural lands as provided for by Republic Act 6657 or CARP Law:

A. Whether or not the CLOAs and RP titles are null and void considering the following:

I. The DAR had no jurisdiction to issue the CLOAs ahead of the issuance and registration of the titles in the names of the Republic of the Philippines from where the CLOAs should emanate and before the summary

else, therefore, the issue to be addressed should be whether or not petitioner failed to observe the doctrine of exhaustion of administrative remedies and, if so, what is the effect of such failure?

Exhaustion of administrative remedies is a doctrine of long standing and the Court has set out clear guidelines on the matter. *Paat v. Court of Appeals* expounded on the doctrine, the recognized exceptions thereto, and the effect on non-compliance therewith in the following wise:

> This Court in a long line of cases has consistently held that before a party is allowed to seek the intervention of the court, it is a pre-condition that he should have availed of all the means of administrative processes afforded him. Hence, if a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction then such remedy should be exhausted first before court's judicial power can be sought. **The premature invocation of court's intervention is fatal to one's cause of action.** Accordingly, absent any finding of waiver or *estoppel* **the case is susceptible of dismissal for lack of cause of action.** This doctrine of exhaustion x x x was not without its practical and legal reasons, for one thing, availment of administrative remedy entails

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administrative proceedings for just compensation in violation of Sec. 16 of the Comprehensive Agrarian Reform Law;

II. The CLOAs cannot be bigger and larger in size than the titles from which these emanate;

III. The CLOAs were issued in violation of the Constitution of the Republic of the Philippines since there was no due process and no just compensation;

IV. That since there was no actual survey made by the DAR, there was no segregation of the land that are not actually used for agricultural purposes such as the residential portions thereof and portions that are not CARPable such as those area planted to fruit tees and timbers;

V. There is no segregation of the retention area of five hectares awarded to the petitioner in Lot 750-A and Lot 850-A;

11. Whether or not the mortgage of CLOAs with the Landbank, null and void;

12. Whether or not the petitioner shall be entitled to damages under the New Civil Code of the Philippines.

lesser expenses and provides for a speedier disposition of controversies. It is no less true to state that the courts of justice for reasons of comity and convenience will shy away from a dispute until the system of administrative redress has been completed and complied with so as to give the administrative agency concerned every opportunity to correct its error and to dispose of the case. However, x x x the principle of exhaustion of administrative remedies as tested by a battery of cases is not an ironclad rule. This doctrine is a relative one and its flexibility is called upon by the peculiarity and uniqueness of the factual and circumstantial settings of a case. Hence, it is disregarded (1) when there is a violation of due process, (2) when the issue involved is purely a legal question, (3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction, (4) when there is *estoppel* on the part of the administrative agency concerned, (5) when there is irreparable injury, (6) when the respondent is a department secretary whose acts as an alter ego of the President bears the implied and assumed approval of the latter, (7) when to require exhaustion of administrative remedies would be unreasonable, (8) when it would amount to a nullification of a claim, (9) when the subject matter is a private land in land case proceedings, (10) when the rule does not provide a plain, speedy and adequate remedy, and (11) when there are circumstances indicating the urgency of judicial intervention.[22] (Emphasis in the original.)

Of the same tenor, sans an enumeration of the exceptions, is what the Court said in *Asia International Auctioneers, Inc. v. Parayno*,[23] viz:

Petitioner's failure to ask the CIR for a reconsideration… is another reason why the instant case should be dismissed. It is settled that the premature invocation of the court's intervention is fatal to one's cause of action. If a remedy within the administrative machinery can still be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must first be exhausted before the courts power of judicial review can be sought. The party with an administrative remedy must not only initiate the prescribed administrative procedure to obtain relief but also pursue it to its appropriate conclusion before

[22] G.R. No. 111107, January 10, 1997, 266 SCRA 167.

[23] G.R. No. 163445, December 18, 2007, 540 SCRA 536, 552.

seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to the court.

Corollary to the exhaustion rule is the doctrine of primary jurisdiction, a basic postulate which precludes courts from resolving a controversy over which jurisdiction has initially been lodged with an administrative body of special competence.[24]

The Court's Ruling

Following the lessons of *Paat* and *Asia International Auctioneers, Inc.*, the denial of the instant petition is clearly indicated. It bears to stress at the outset that, as aptly observed by the CA,[25] there is no challenge from either of the parties to the jurisdiction of the PARAB or the provincial agrarian adjudicator to take cognizance of the basic petition of petitioner for annulment/cancellation of TCT Nos. CLOA-8434, CLOA-8435, T-205481 and T-205482. Just as well. For, the DARAB and its regional and provincial adjudication boards have jurisdiction to adjudicate all agrarian disputes and controversies or incidents involving the implementation of CARP under RA 6657 and other agrarian law and their implementing rules and regulations.[26] Such jurisdiction of DARAB includes cases involving the issuance, correction, and cancellation of CLOAs and EPs which are registered with the Land Registration Authority.[27]

For the purpose of applying the rule on exhaustion, the remedies available to the petitioner are clearly set out in the *DARAB 2003 Rules of Procedure*, which took effect on January 17, 2004.[28] Under Section 1.6, Rule II, the "*adjudicator shall*

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[24] *Bautista v. Mag-isa Vda. De Villena*, G. R. No. 152564, September 13, 2004, 438 SCRA 259.

[25] *Rollo*, p. 71.

[26] *Hermoso v. C.L. Realty Corporation*, G.R. No. 140319, May 5, 2006, 489 SCRA 556.

[27] *Bautista*, *supra* note 24.

[28] *LBP v. Martinez*, G.R. No. 169008, August 14, 2007, 530 SCRA 158, 168.

have primary and exclusive jurisdiction to determine and adjudicate x x x *cases* x x x *involving the correction,* x x x *cancellation, secondary and subsequent issuances of [CLOAs] and [EPs] which are registered with the Land Registration Authority*."[29] According to the succeeding Section 2[30] in relation to Rule XIV,[31] the proper remedy from an adverse final resolution, order, or resolution on the merits of the adjudicator is an appeal to the DARAB Proper which, among others, require the filing of a notice of appeal and payment of an appeal fee. And from the decision of the DARAB Proper, an appeal may be taken to the CA pursuant to Rule XV.[32]

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[29] An almost similar provision is found in the *DARAB New Rules of Procedure* adopted on May 30, 1994.

[30] SECTION 2. Appellate Jurisdiction of the Board. The Board shall have exclusive appellate jurisdiction to review, reverse, modify, alter, or affirm resolutions, orders, and decisions of its Adjudicators.

No order of the Adjudicators on any issue, question, matter, or incident raised before them shall be elevated to the Board until the hearing shall have been terminated and the case decided on the merits.

[31] SECTION 1. Appeal to the Board. **An appeal may be taken to the Board from a resolution, decision or final order of the Adjudicator that completely disposes of the case x x x within a period of fifteen (15) days from receipt of the resolution/decision/final order appealed from or of the denial of the movant's** motion for reconsideration in accordance with Section 12, Rule IX by:

1.1 filing a Notice of Appeal with the Adjudicator who rendered the decision or final order appealed from;

1.2 furnishing copies of said Notice of Appeal to all parties and the Board; and

1.3 paying an appeal fee of x x x (PhP700.00) to the DAR Cashier where the Office of the Adjudicator is situated or through postal money order, payable to the DAR Cashier where the Office of the Adjudicator is situated x x x.

[32] SECTION 1. Appeal to the Court of Appeals. Any decision, order, resolution, award or ruling of the Board on any agrarian dispute or any matter pertaining to the application, implementation, enforcement, interpretation of agrarian reform laws or rules and regulations promulgated thereunder, may be brought on appeal within fifteen (15) days from receipt of a copy thereof, to the Court of Appeals in accordance with the Rules of Court.

Given the above perspective, the CA acted correctly and certainly within its sound discretion when it denied, in its amended decision, petitioner's petition for certiorari to nullify the PARAD's decision. Under the grievance procedure set forth in the DARAB Rules of Procedure, PARAD Alegario's decision was appealable to the DARAB Proper. The CA's appellate task comes later––to review the case disposition of the DARAB Proper when properly challenged.

In this recourse, petitioner makes little of the clear provisions of the DARAB Rules on the right appellate forum and correct mode of appeal. As she argues, the filing of her petition for certiorari after the issuance of the PARAD Decision was but proper as the PARAD Decision was that of the DAR itself, hence may be elevated to the CA pursuant to Section 54 of RA 6657 which states:

> SEC. 54. *Certiorari*. - Any decision, order, award or ruling of the DAR on any agrarian dispute or on any matter pertaining to the application, implementation, enforcement, or interpretation of this Act and other pertinent laws on agrarian reform may be brought to the Court of Appeals by certiorari except as otherwise provided in this Act within fifteen (15) days from receipt of a copy thereof.
>
> The findings of fact of the DAR shall be final and conclusive if based on substantial evidence.

Petitioner is now assuming a contradictory posture. As a matter of record, her partial motion for reconsideration[33] of the original CA decision recognized the applicability of the DARAB Rules of Procedure to the instant case. Now then, the DARAB Rules defines the jurisdiction of PARAD and prescribes the rules on appeals from the PARAD decision. In that partial motion, she stated:

> While it is true that there is no tenancy relationship that was raised as an issue, the PARAD has the jurisdiction to hear, determine and adjudicate this case involving the cancellation and annulment of the subject CLOAs which were registered before the Register of Deeds of the Province of Negros Occidental.

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[33] *Rollo*, pp. 58-65.

The jurisdiction of the PARAD over the instant case is conferred by the DARAB New Rules of Procedures x x x.[34]

In a real sense, petitioner is estopped at this stage to downplay the applicability of the DARAB rules. She cannot be allowed to invoked the rules when convenient, and disregard the same when its application is adverse to her cause. Raising the PARAD's decision to the level of that of the DAR Secretary strikes us as a strained rationalization to lend tenability to an erroneous choice of a reviewing forum. While the DARAB, provincial and central, is the DAR's adjudicative arm,[35] the respective jurisdictions of DAR and DARAB are distinct and separate. *Nuesa v. Court of Appeals* delineated the boundaries of their adjudicative competence in the field of land reform in the following manner:

As held by this Court in *Centeno v. Centeno*, "the DAR is vested with the primary jurisdiction to determine and adjudicate agrarian reform matters and shall have the exclusive jurisdiction over all matters involving the implementation of the agrarian reform program." The DARAB has primary, original and appellate jurisdiction "to determine and adjudicate all agrarian disputes, cases, controversies, and matters or incidents involving the implementation of the [CARP] under R.A. 6657, E.O. Nos. 229, 228 and 129-A, R.A. 3844 as amended by R.A. 6389, P.D. No. 27 and other agrarian laws and their implementing rules." (Citation omitted.)

While not determinative of the issue at hand, the decision of the DAR may initially be appealed to the Office of the President, while that of the DARAB Proper is appealable only to the court.

In its December 27, 2005 decision, the CA wrote:

In this case**, an appeal to the DARAB would have been an exercise in futility** for the petitioner and would only serve to add a bureaucratic layer to the case. The (public) respondents have revealed that petitioner had filed petitions for retention and inclusion of her farm workers as beneficiaries before the DAR. **An Order dated September**

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[34] *Id.* at 60.

[35] *Hermoso, supra* note 26.

2, 2003 was issued by the DAR Regional Director denying the petition for utter lack of merit and on the ground that the petitioner has no legal capacity to file, not being a party-in-interest. Her petitioner before the PARAD was also dismissed.[36] (Emphasis ours.)

Petitioner's invocation of the foregoing CA pronouncement to justify her elevation of the PARAD decision to the appellate court instead of to the DARAB is misplaced. For one, the aforequoted holding is without any binding effect, having effectively been superseded by the issuance of the Amended Decision. And for another, only decisions of the Court have the force of precedents and form part of the legal system.[37]

There is no question then that petitioner, in seeking recourse with the CA from the decision of the PARAD, failed to exhaust administrative remedies. The eventual dismissal by the CA of her petition on that ground stands on legal ground. To recall what we said in *Paat*, "the premature invocation of court's intervention is fatal to one's cause. x x x The case is susceptible of dismissal for lack of cause of action."

It is true that the rule on exhaustion of administrative remedies admits of several exceptions. Not one, however, obtains under the premises. What comes close is the reason given originally by the CA and which petitioner made capital of—that an appeal to the DARAB would be useless.

We are not persuaded. Other than its *non-sequitur* line that "*petitioner had filed petitions for retention and inclusion of her farm workers as beneficiaries before the DAR*" and that in an Order dated September 2, 2003, the "*DAR Regional Director [has denied the petition] for utter lack of merit*,"[38] the CA had not explained with some measure of plausibility how it arrived at its conclusion on the futility of an appeal to the DARAB. Petitioner fares no better. Absent such explanation,

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[36] *Rollo*, pp. 54-55.

[37] *Government Service Insurance System v. Cadiz*, G.R. No. 154093, July 8, 2003, 405 SCRA 450, 456.

[38] *Rollo*, p. 55.

the conclusion must be rejected as an arrant presumption. And it cannot be over-emphasized that the adverted Order of September 2, 2003 referred to in the CA's original decision denied petitioner's petitions for retention and inclusion, while, in the instant case, the main thrust of her petition is for the annulment of the CLOAs. There is, therefore, no logical basis for the conclusion that the DARAB, which counts the DAR Secretary as a member, would rule similarly in patently and completely different cases.

Bare misgivings about the ability of a quasi-judicial agency to render impartial justice would not, standing alone, be a sufficient reason to dispense with the exhaustion of administrative remedies doctrine. As it were, the doctrine ensures the efficient and speedy disposition of cases.

In all then, we find that petitioner had, without reason, let alone explanation, failed to exhaust administrative remedies provided by law. Such lapse, by weight of established jurisprudence, is fatal to her petition.

Due to petitioner's resort to an improper remedy, the filing of the petition before the CA did not toll the reglementary period for filing an appeal with the DARAB.[39] As such, the decision of the PARAD should ordinarily be considered as final and executory. But the Court need not rub it in all the more by depriving petitioner of any remedy. The nature of the issues raised by petitioner before the PARAD—such as, but not limited to, the irregularity in the initial acquisition proceedings, the undue haste in the issuance of the TCT-CLOAs, and the consequent cloud that hangs over the CLOAs in question—needs to be addressed. The PARAD no less admitted that the entries and annotations made in the CLOAs were erroneous and adverse to the interest of petitioner, who it seems has yet to receive just compensation for her two parcels of land. The inequity of barring petitioner from vindicating her right is rendered more acute in the face of the undisputed fact that the DAR has

[39] *Aguila v. Baldovizo*, G.R. No. 163186, February 28, 2007, 517 SCRA 91, 98.

taken her property for CARP purposes ostensibly with their agents in the field not hewing strictly with the requirements of the law and whose negligence tainted the CLOAs thus issued. The purpose behind the passage of the CARP law would not be compromised should petitioner be allowed to pursue her case before the right forum. With this in mind, we remand the instant case to the DARAB for proper disposition of the issues raised by petitioner.

WHEREFORE, the petition is hereby *DENIED*. The CA's April 18, 2008 Amended Decision in CA-G.R. CEB-SP No. 00229 is *AFFIRMED*. The case is remanded to the DARAB for the disposition of the issues raised by petitioner.

Costs against petitioner.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 183457. September 17, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROEL ARBALATE AND RAMIL ARBALATE (AL2), RUPERTO ARBALATE (DET.),** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS.— The appellate and trial courts correctly rejected Ruperto's theory of self-defense. When he admitted authorship of the crime, the burden of proof shifted

to him to establish all the elements of self-defense. He must rely on the strength of his own evidence and not on the weakness of the prosecution, for even if the prosecution evidence is weak, it cannot be disbelieved after the accused himself has admitted the killing. Thus, he must meet the requisites of self-defense, prescribed by Article 11 of the Revised Penal Code, which are: (1) unlawful aggression; (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.

2. ID.; ID.; ID.; ID.; ABSENCE OF UNLAWFUL AGGRESSION; CASE AT BAR.— Unlawful aggression is an actual physical assault, or at least a threat to inflict real imminent injury, upon a person. There must be an actual, sudden, unexpected attack or imminent danger, which puts the defendant's life in real peril. In the case at bar, there was no unlawful aggression shown by the victim. x x x It is evident that the incident began with mere jokes between Ruperto and the victim while they were intoxicated. When Ruperto struck the victim with a piece of wood, the victim retaliated by pushing Ruperto, further infuriating the latter. From Quijano's testimony, it was Ruperto who struck first, not the victim. Furthermore, after the victim pushed Ruperto, the fight was stopped and Ruperto went home. At this point, there was no threat or aggression to repel anymore, assuming there was one in the first place. The victim's action hardly constitutes unlawful aggression since it was a reaction to Ruperto's assault with a piece of wood. After that push, the victim ceased to attack him. Where the inceptual unlawful aggression of the victim had already ceased, the accused had no more right to kill the victim. To support a claim of self-defense, it is essential that the killing of the victim be simultaneous with the attack on the accused, or at least both acts succeeded each other without appreciable interval of time. This was not met in this case. Based on the testimonial evidence, there was a lapse of time between the altercation with the victim and his murder.

3. ID.; ID.; ID.; THE NATURE OF THE WOUNDS AND THE ACT OF BEHEADING THE VICTIM BELIE SELF-DEFENSE.— [W]e find Ruperto's theory of self-defense to be incredulous in light of the physical evidence, *i.e.*, the nature, character, location, and extent of the wounds inflicted on the victim. The death certificate, the due execution of which was admitted by the

defense; and the photographs of the victim show that he sustained multiple hacking and stab wounds. The cause of his death was severe hemorrhage secondary to irreversible shock. The wounds as well as the act of beheading the victim clearly belie self-defense. The Arbalates' purpose was to exact vengeance and nothing more. We agree with the trial court's pronouncement that "a fist delivered is not in proportion to the act of finally decapitating the deceased, coupled by the superiority of the aggressors who were all armed and who acted in unison." The court *a quo* also held that Ruperto's acts of carrying the head of the victim from the rice field to the highway and calling it the "head of an Abu Sayyaf" were acts of scoffing at the corpse of the deceased.

4. ID.; QUALIFYING CIRCUMSTANCES; WHEN ABUSE OF SUPERIOR STRENGTH IS ABSORBED BY TREACHERY.— [T]he appellate and trial courts correctly held that there is no homicide since there was the qualifying circumstance of abuse of superior strength. Abuse of superior strength is present when the attackers cooperated in such a way as to secure advantage of their combined strength to perpetrate the crime with impunity. It is considered whenever there is a notorious inequality of forces between the victim and the aggressors, assessing a superiority of strength notoriously advantageous for the aggressors which is selected or taken advantage of by them in the commission of the crime. Such aggravating circumstance was perpetrated by Ruperto and his two sons in chasing the victim with bolos. The unarmed victim did not stand a chance against these three men. According to the prosecution witness, Quijano, the Arbalates even positioned themselves strategically outside their house: Ruperto and Ramil stood by the stairs in front of the house while Roel waited at the back. The victim jumped out of the window but he was met by Roel who instantly hacked him. Thereafter, Ruperto and Ramil joined Roel in hacking the victim to death. The concurrence of a common purpose is apparent in cornering the victim in his house, chasing him to the rice field, and hacking him to death. Treachery and conspiracy were, therefore, present. Although the presence of abuse of superior strength alone qualifies the killing to murder, in the presence of both treachery and abuse of superior strength, the latter is absorbed by treachery.

5. ID.; MURDER; PENALTY THEREOF AFTER CONSIDERING ONE GENERIC MITIGATING CIRCUMSTANCE.— We also find Ruperto's voluntary surrender as a mitigating circumstance, since he gave himself up to the police when the latter arrived at his house. Under Article 248 of the Revised Penal Code, as amended by Republic Act No. (RA) 7659, murder is punishable by *reclusion perpetua* to death. With no generic aggravating circumstance and one generic mitigating circumstance of voluntary surrender, the penalty imposable on accused-appellant, in accordance with Art. 63(3) of the Revised Penal Code, should be the minimum period, which is *reclusion perpetua*.

6. ID.; ID.; AWARD OF DAMAGES.— As regards damages, we find it proper to award the following: PhP 75,000 as civil indemnity; PhP 75,000 as moral damages; and PhP 30,000 as exemplary damages without proof or pleading. These amounts should be awarded when the accused is adjudged guilty of a crime covered by RA 7659 regardless of aggravating or mitigating circumstances. Thus, where the penalty prescribed by law is death or *reclusion perpetua* to death, the damages should be in the abovementioned amounts.

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 September 17, 2007 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00162 which upheld the conviction of accused-appellant Ruperto Arbalate for murder adjudged by the Regional Trial Court (RTC), Branch 33 in Calbiga, Samar on September 18, 2003 in Criminal Case No. CC-2003-1403.[2]

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[1] *Rollo*, pp. 5-24. Penned by Associate Justice Priscilla Baltazar Padilla and concurred by Associate Justices Pampio A. Abarintos and Stephen C. Cruz.

[2] CA *rollo*, pp. 18-34. The Decision was penned by Judge Carmelita T. Cuares.

The Facts

Ruperto Arbalate and his sons Roel and Ramil Arbalate were charged with murder in an information dated January 27, 2003 which reads:

> That on or about the 7th day of July, 2002, at around 8:00 P.M., more or less, in Barangay Obayan, Municipality of Pinabacdao, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, with deliberate intent to kill, with treachery and abuse of superior strength, thereby qualifying the killing to murder, did, then and there, willfully unlawfully and feloniously attack, assault, chase, strike with a piece of wood, stab and hack several times and behead one Gualberto T. Selemen with the use of bladed weapons which the accused have provided themselves for the purpose, thereby inflicting upon the victim multiple stab and hack wounds which resulted to his instantaneous death.
>
> CONTRARY TO LAW.[3]

Roel and Ramil Arbalate were able to evade arrest and remain at large. Hence, only Ruperto faced trial. During the arraignment, Ruperto pleaded not guilty.

The People's version of the facts[4] is as follows:

On July 7, 2002, around 3:00 p.m., Gualberto Selemen started to drink alcohol known as *sioktong* with Jose Ragasa and Nilo Abonge at Selemen's home in Purok 4, Obayan, Pinabacdao, Samar. When Abonge left at 6:00 p.m., Selemen and Ragasa invited accused-appellant Ruperto to join their drinking session. Two hours later, when they were already intoxicated, good-natured teasing turned into an altercation. Alarmed, Selemen's common law wife, Jovita Quijano, hurried to the houses of Ruperto and Ragasa to seek help from their wives but Quijano came back with Ruperto's wife only. When the two wives reached Selemen's house, Selemen and Ruperto were already engaged in a fight. They saw Ruperto strike Selemen's hand with a

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[3] *Id.* at 9.

[4] *Id.* at 93-125. Appellee's Brief.

piece of wood. Ruperto's wife immediately intervened and prevailed upon Ruperto to head home. After Ruperto and his wife left, appellant's son, Roel, went to Selemen's house. Quijano met him and advised him to go home.[5]

Shortly thereafter, Ruperto came back with his sons, Roel and Ramil, all armed with bladed instruments or bolos. Selemen was outside his house when the Arbalates arrived. Roel traced Selemen's face with his flashlight and instantaneously hacked him with his bolo, wounding Selemen's right shoulder. Ruperto and Ramil followed by striking Selemen in his stomach with their bolos. Selemen ran to the nearby rice field to escape his assailants but the Arbalates chased him.[6]

Badly injured, Selemen fell to the ground. Ruperto and his sons then took turns in stabbing and hacking Selemen until he was lifeless. Thereafter, Ramil beheaded Selemen. Ruperto carried the victim's head from the rice field and approached Quijano, saying, "I am sorry Obet, I already have the head of your husband." Still carrying the severed head, the Arbalates took the road that leads to their house. Before reaching their home, Ruperto left the severed head on the ground.[7]

In his defense, Ruperto invoked self-defense and presented the following version of the story: On July 7, 2002, he was invited by Selemen to a drinking session at the latter's house. When Ruperto arrived, he heard Selemen and his wife quarreling and saw Selemen jumped towards his wife. When Selemen's wife asked for help, Ruperto told her to run. Selemen then punched him in the face and went inside the house to get a bladed weapon or a *sipol*. Upon seeing Selemen, Ruperto grabbed the bolo of Nilo Abonge and ran to the rice field. Selemen chased him and they fought. Ruperto alleged that he hacked Selemen in self-defense until the latter could not stand anymore. Ruperto thereafter went home and later surrendered to the

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[5] *Id.* at 100-101.

[6] *Id.* at 101-102.

[7] *Id.* at 102.

police who came to his house. He was brought to the municipal hall where he saw Selemen's head.[8]

The trial court found Ruperto guilty of murder beyond reasonable doubt. The dispositive portion of the judgment reads:

> WHEREFORE, Premises Considered, accused RUPERTO ARBALATE is found guilty of the charge of Murder punished under Article 248 of the Revised Penal Code as amended by Republic Act No. 7659, and is hereby sentenced to suffer the penalty of RECLUSION PERPETUA, with all its accessory penalties, to indemnify the heirs of the deceased in the amount of Fifty Thousand Pesos (Php50,000.00), to pay the amount of Thirty Thousand Pesos (Php 30,000.00) in exemplary damages and to pay the costs.
>
> Ruperto Arbalate's detention is ordered to the Abuyog, Leyte Penal Farms as soon as possible.
>
> Let the case against co-accused Roel Arbalate and Ramil Arbalate, be sent to the Archives without prejudice. Issue the corresponding alias Order for their arrest accordingly.[9]

In his appellant's brief, Ruperto asserted as follows: The trial court erred in believing the testimony of the prosecution witness, Benedicto Dacca, despite the inconsistencies in his account. Also, the trial court erred in finding that there was abuse of superior strength. The presence of two or more aggressors does not necessarily create such aggravating circumstance; there must be proof of superiority of strength notoriously advantageous for the aggressors. In this case, the attack of the three accused was not clearly shown. Without clear proof of this qualifying circumstance, he must be convicted of homicide only.[10]

The CA's Ruling

The appellate court upheld the trial court's findings of facts and ruled that there was indeed no unlawful aggression on the part of the victim. Thus, Ruperto's claim of self-defense must

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[8] *Id.* at 61.

[9] *Id.* at 34.

[10] *Id.* at 64-65.

fail. The CA relied on the testimonies of Jovita Quijano, the victim's common law wife, and Benedicto Dacca, an impartial witness; the victim's death certificate; and the pictures taken of the cadaver which all establish Ruperto's culpability. The CA further held that there was abuse of superior strength in the manner of killing, which cannot be offset by the mitigating circumstance of voluntary surrender to the police. The trial court's judgment was modified to include the award of moral damages of PhP 50,000. Thus, the dispositive portion reads:

> WHEREFORE, the appeal at bench is **DENIED**. The Decision of the court a quo is **AFFIRMED** with modification. Accused-appellant is directed to pay the sum of ₱50,000.00 as moral damages in addition to the civil indemnity of ₱50,000.00 and exemplary damages of P30,000.00 awarded by the trial court to the victim's heirs.[11]

Assignment of Errors

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE APPELLANT DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT

ASSUMING ARGUENDO THAT APPELLANT IS GUILTY, HE SHOULD BE CONVICTED OF HOMICIDE ONLY AND NOT MURDER

The Court's Ruling

The appeal has no merit.

The appellate and trial courts correctly rejected Ruperto's theory of self-defense. When he admitted authorship of the crime, the burden of proof shifted to him to establish all the elements of self-defense.[12] He must rely on the strength of his own evidence and not on the weakness of the prosecution, for even if the prosecution evidence is weak, it cannot be disbelieved after the accused himself has admitted the killing.[13] Thus, he

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[11] *Rollo*, p. 23.

[12] *People v. Astudillo*, G.R. No. 141518, April 29, 2003, 401 SCRA 723, 734; citing *People v. Obzunar*, 333 Phil. 395, 416 (1996).

[13] *People v. Albarico*, G.R. Nos. 108596-97, November 17, 1994, 238 SCRA 203, 211.

must meet the requisites of self-defense, prescribed by Article 11 of the Revised Penal Code, which are: (1) unlawful aggression; (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.

Unlawful aggression is an actual physical assault, or at least a threat to inflict real imminent injury, upon a person. There must be an actual, sudden, unexpected attack or imminent danger, which puts the defendant's life in real peril.[14] In the case at bar, there was no unlawful aggression shown by the victim. According to Quijano, an eyewitness, Ruperto and the victim started joking until they fought:

Q: You said that they were joking, now you said they were drinking why? Where were they at that time instead they were joking and now you said they were drinking?
A: They were drinking at our house first, initially they were joking while drinking.

Q: Why did you say that they were joking at each other?
A: Because I can hear them joking and I can hear Jose Ragasa who was joking to my husband and asking if my husband is a jealous person.

Q: So as they were joking, what happened next if any?
A: While they were joking, I called the wives of these persons Ruperto Arbalate and Jose Ragasa, I can hear them, they were badly joking each other.

Q: Were you able to [inform] the wives of the two Jose and Ruperto?
A: Yes, Sir.

Q: So, after that, what happened next if any?
A: The wife of Ruperto accompanied me in going to our house and also the wife of Jose, as we arrived to our house my husband get out from our house and then Ruperto followed.

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[14] *Manaban v. CA*, G.R. No. 150723, July 11, 2006, 494 SCRA 503, 517; *People v. Catbagan*, G.R. Nos. 149430-32, February 23, 2004, 423 SCRA 535.

Q: You said they were badly joking, why for how long they were drinking in your house?

A: This Jose Ragasa who brought the liquor to our house, it was only 3:00 o'clock in the afternoon.

Q: So, as Ruperto and his wife followed, what happened next in your house?

A: My husband was followed by Ruperto Arbalate to the other side of our house and struck him with a piece of wood.

Q: So, what did your husband do when he was [struck] by a piece of wood in his hand?

A: Ruperto Arbalate pushed my husband and he [fell] on his buttocks.

Q: After Ruperto Arbalate fell on his buttocks, what happened next if any?

A: Ruperto Arbalate was [fetched] by his wife and they went home.

Q: So, after that what happened next?

A: The son of Ruperto Arbalate, Roel Arbalate went back.

x x x x x x x x x

A: As I went home not for long, I met Ruperto and Ramil.

Q: What is Ramil Arbalate to Ruperto Arbalate whom Roel met?

A: Ramil and Roel are the sons of Ruperto Arbalate.

Q: After the three (3) met what happened next if any?

A: They went to our house: Ruperto Arbalate positioned himself at the other side at the back: Roel and Ramil passed by in our house near the stairs and Roel Arbalate position himself at the hilly (tayod) area near our house, while Ruperto and Ramil position themselves near our stairs.

Q: So, if they position themselves Roel at the back of your house and the two (2) Ruperto and Ramil on the front of the door, what happened next if any?

A: My husband jumped by passing through the window and when he reached to the hilly (tayod) area near our house he was met by Roel and hacked him at the right shoulder.

INTERPRETER:

(The witness demonstrated by hacking the shoulder.)

Q: With what he was hacked by Roel?
A: He was hacked by a bolo.

Q: Was he hit?
A: Yes, Sir.

Q: Will you please describe how long was the bolo of Roel?
A: Yes, Sir, I can.

INTERPRETER:

(The witness demonstrated to the Court the bolo used by Roel which was about 18 inches long.)

Q: After this, what happened next if any, what did Ruperto and Ramil do as they were called by Roel?
A: They also met my husband because my husband ran towards our house.

Q: What happened next if any?
A: Since he was also about to run, at first he was already injured he fell down in the rice field.

x x x x x x x x x

A: As my husband was lying in the field that's the time they hacked and stabbed my husband several times.

INTERPRETER:

(Witness demonstrating that he was hacked many times by pointing the different parts of the body, he was hacked at the left of his stomach, at the back, on his left waist, at the side of his right thigh, at the upper right thigh and pointed on the different parts of her body.)

Q: Why, what was used by Ruperto and Ramil in doing so?
A: They used the same, they were armed with bolos.

Q: When you said "they", who helped each other in stabbing and hacking your husband, you mean the three (3) of them?
A: Yes, Sir, all of them.

Q: So, what happened to your husband?
A: When my husband was already dead, Ramil beheaded my husband.

Q: After that what did they do?
A: Ruperto Arbalate brought the head of my husband to the street.

Q: How did he carry it if you saw?
A: The head of my husband was already carried by Ruperto by his three (3) fingers and he told me: "I am sorry Obet, I have already the head of your husband."[15]

It is evident that the incident began with mere jokes between Ruperto and the victim while they were intoxicated. When Ruperto struck the victim with a piece of wood, the victim retaliated by pushing Ruperto, further infuriating the latter. From Quijano's testimony, it was Ruperto who struck first, not the victim. Furthermore, after the victim pushed Ruperto, the fight was stopped and Ruperto went home. At this point, there was no threat or aggression to repel anymore, assuming there was one in the first place. The victim's action hardly constitutes unlawful aggression since it was a reaction to Ruperto's assault with a piece of wood. After that push, the victim ceased to attack him. Where the inceptual unlawful aggression of the victim had already ceased, the accused had no more right to kill the victim.[16] To support a claim of self-defense, it is essential that the killing of the victim be simultaneous with the attack on the accused, or at least both acts succeeded each other without appreciable interval of time.[17] This was not met in this case. Based on the testimonial evidence, there was a lapse of time between the altercation with the victim and his murder.

The prosecution's testimonial evidence was not refuted by the defense. Notably, only Ruperto testified on his behalf. He failed to present any corroborating witness despite his assertion that there were other persons around when the incident happened. He did not even present his own wife to refute Quijano's testimony. Also, a defense witness who was subpoenaed, Jose

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[15] TSN, April 3, 2003.

[16] *People v. Caabay*, G.R. Nos. 129961-62, August 25, 2003, 409 SCRA 486, 512 (citation omitted).

[17] *U.S. v. Ferrer*, 1 Phil. 56 (1901).

Ragasa, was not presented upon discovery that he was hostile to the cause of the defense.[18] Without any support to his testimony, Ruperto's claims of unlawful aggression and self-defense are self-serving.

In contrast, the prosecution presented Benedicto Dacca in support of Quijano's testimony. Dacca testified as follows:

Q: So, while buying this tobacco in the house of Feliciano, what, if any unusual incident occurred?
A: I was able to see Ruperto Arbalate, Roel Arbalate and Ramil Arbalate carrying bolos.

Q: Do you know these persons that you have mentioned?
A: Yes, Sir.

Q: Why do you know them?
A: Because they are residing in our barangay.

x x x x x x x x x

Q: At the time when you saw them carrying arms, what direction were they going?
A: They were going to the house of Gualberto T. Selemen.

Q: Did you see them reach the house of Gualberto Selemen since they were going to that direction?
A: Yes, Sir.

x x x x x x x x x

Q: So, when you saw them reached the house of Gualberto T. Selemen, what else did you see that happened, if any?

x x x x x x x x x

A: They lighted the face of Gualberto with a flashlight who was already outside of his house.

FISCAL AVILA:

Q: Who was the person who focused a flashlight to the face of Gualberto Selemen?
A: It was Roel.

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[18] CA *rollo*, p. 28.

Q: I am wondering when you said that the flashlight was focused to the face of Gualberto Selemen, if the beam or the ray was on?
A: Yes. Sir, the flashlight was on.

Q: On what part of the house Gualberto Selemen was when Roel focused his flashlight on his face?
A: He was already in the middle of the houses of Feliciano Dacallos and Gualberto Selemen.

Q: After Roel focused his flashlight on the face of Gualberto Selemen, what else transpired. If any?
A: Gualberto Selemen was hacked at his right hand.

Q: By whom?
A: It was Roel who hacked him.

Q: Was Gualberto Selemen hit on the right arm?
A: Yes, sir, he was hit.

Q: After he was hacked by Roel, what happened next, if any?
A: Gualberto Selemen ran towards the lower portion and he was met and stabbed by Ramil and it was also followed by a stabbing blow of Ruperto.

Q: Was Ramil able to hit the stabbing blow on Gualberto?
A: Yes, sir, he hit Gualberto.

Q: On what part of his body?
A: He was hit on the stomach.

(Witness pointing and illustrating that he was hit on his stomach.)

Q: How about Ruperto, was he able to hit Gualberto?
A: Yes, sir, he also hit Gualberto at his stomach.

(Witness also pointing to his stomach)

Q: What were used as weapons by Roel, Ramil and Ruperto?
A: Bolos, sir.

Q: You said Gualberto ran to a lower portion, why could you see him being focused by a beam of a flashlight, is that portion elevated?
A: Yes, sir, it was.

Q: You said Gualberto T. Selemen ran to a lower portion, what did Roel, Ramil and Ruperto do when Gualberto ran to a lower portion after Ramil and Ruperto stabbed him?
A: They chased Gualberto while running to the lower portion.

Q: When they were already, as you said, in the lower portion, were you able to see them in the lower portion?
A: When they were still in the lower portion, I was not able to see them because it was already dark.

Q: Why were you able to see the incident when it was still near the house of Gualberto T. Selemen?
A: Because in that part when they were still in the vicinity of the house, it was well lighted.

x x x x x x x x x

Q: Thereafter, what else happened, if any?

x x x x x x x x x

A: After a lapse of about five (5) minutes, I saw Ruperto Arbalate carrying the head of Gualberto T. Selemen.

FISCAL AVILA:

Q: When you saw this Ruperto Arbalate carrying the head of Gualberto T. Selemen, from what direction did he come from?
A: They came from the lower portion which is the rice field.

x x x x x x x x x

Q: You said, Ruperto Arbalate was carrying the head, how did he carry when you saw him?
A: He was holding the hair.

(Witness demonstrating by holding his chin with his right thumb on the cheek and the remaining four fingers on the lower jaw by his right hand).

Q: To what direction was he going?
A: He was going to the road.

Q: How about Roel and Ramil?
A: They were together and Ruperto even told them by saying: "Boys, here it is, a good *pulutan*, the head of an Abusayaf."[19]

[19] TSN, May 27, 2003, pp. 5-12.

Ruperto's neighbor, Venancio Ocasla, also testified that on July 7, 2002 around 8:00 p.m., while he was fetching water in front of Ruperto's house, he saw the latter carrying the head of Selemen with his right hand. Ruperto rested the head on the ground with its right ear as its support. He also saw Ruperto carrying a bolo. He called a *barangay tanod* to pick up the head but it was a policeman who picked it up when the police arrived.[20] Ocasla's testimony corroborates and follows Dacca's account. Both Ocasla and Dacca were impartial eyewitnesses who lack any motive to testify falsely against Ruperto.

In addition, we find Ruperto's theory of self-defense to be incredulous in light of the physical evidence, i.e., the nature, character, location, and extent of the wounds inflicted on the victim. The death certificate, the due execution of which was admitted by the defense; and the photographs of the victim show that he sustained multiple hacking and stab wounds. The cause of his death was severe hemorrhage secondary to irreversible shock. The wounds as well as the act of beheading the victim clearly belie self-defense.[21] The Arbalates' purpose was to exact vengeance and nothing more. We agree with the trial court's pronouncement that "a fist delivered is not in proportion to the act of finally decapitating the deceased, coupled by the superiority of the aggressors who were all armed and who acted in unison."[22] The court *a quo* also held that Ruperto's acts of carrying the head of the victim from the rice field to the highway and calling it the "head of an Abu Sayyaf" were acts of scoffing at the corpse of the deceased.

Anent the second assigned error, the appellate and trial courts correctly held that there is no homicide since there was the qualifying circumstance of abuse of superior strength. Abuse of superior strength is present when the attackers cooperated in such a way as to secure advantage of their combined strength to perpetrate the crime with impunity. It is considered whenever

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[20] CA *rollo*, p. 24.

[21] *Rollo*, p. 20.

[22] CA *rollo*, p. 82.

there is a notorious inequality of forces between the victim and the aggressors, assessing a superiority of strength notoriously advantageous for the aggressors which is selected or taken advantage of by them in the commission of the crime.[23] Such aggravating circumstance was perpetrated by Ruperto and his two sons in chasing the victim with bolos. The unarmed victim did not stand a chance against these three men.

According to the prosecution witness, Quijano, the Arbalates even positioned themselves strategically outside their house: Ruperto and Ramil stood by the stairs in front of the house while Roel waited at the back. The victim jumped out of the window but he was met by Roel who instantly hacked him. Thereafter, Ruperto and Ramil joined Roel in hacking the victim to death. The concurrence of a common purpose is apparent in cornering the victim in his house, chasing him to the rice field, and hacking him to death. Treachery and conspiracy were, therefore, present.

Although the presence of abuse of superior strength alone qualifies the killing to murder, in the presence of both treachery and abuse of superior strength, the latter is absorbed by treachery.[24] We also find Ruperto's voluntary surrender as a mitigating circumstance, since he gave himself up to the police when the latter arrived at his house.

Under Article 248 of the Revised Penal Code, as amended by Republic Act No. (RA) 7659, murder is punishable by *reclusion perpetua* to death. With no generic aggravating circumstance and one generic mitigating circumstance of voluntary surrender, the penalty imposable on accused-appellant, in accordance with Art. 63(3) of the Revised Penal Code, should be the minimum period, which is *reclusion perpetua*.[25]

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[23] *People v. Mindac*, G.R. No. 83030, December 14, 1992, 216 SCRA 558, 570 (citations omitted).

[24] *People v. Naag*, G.R. No. 123860, January 20, 2000, 322 SCRA 716, 739 (citation omitted).

[25] *Astudillo, supra* note 12, at 739; citing *People v. Saure*, G.R. No. 135848, March 12, 2002, 379 SCRA 128.

As regards damages, we find it proper to award the following: PhP 75,000 as civil indemnity;[26] PhP 75,000 as moral damages; and PhP 30,000 as exemplary damages without proof or pleading. These amounts should be awarded when the accused is adjudged guilty of a crime covered by RA 7659 regardless of aggravating or mitigating circumstances. Thus, where the penalty prescribed by law is death or *reclusion perpetua* to death, the damages should be in the abovementioned amounts.

WHEREFORE, the appeal is *DENIED*. The September 17, 2007 CA Decision in CA-G.R. CR-H.C. No. 00162 finding accused-appellant Ruperto Arbalate guilty of murder and sentencing him to suffer the penalty of *reclusion perpetua* with all its accessory penalties is *AFFIRMED* with *MODIFICATION* that accused-appellant pay the heirs of the deceased PhP 75,000 as civil indemnity, PhP 75,000 as moral damages, and PhP 30,000 as exemplary damages. Costs against accused-appellant.

SO ORDERED.

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

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[26] *People v. Brodett*, G.R. No. 170136, January 18, 2008, 542 SCRA 88, 94; citing *People v. Dela Cruz*, G.R. No. 171272, June 7, 2007, 523 SCRA 433; *People v. Buban*, G.R. No. 170471, May 11, 2007, 523 SCRA 118; and *People v. Taan*, G.R. No. 169432, October 30, 2006, 506 SCRA 219.

THIRD DIVISION

[G.R. No. 183802. September 17, 2009]

ALEXANDER TAM WONG, *petitioner, vs.* **CATHERINE FACTOR-KOYAMA,** *respondent.*[*]

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SERVICE OF SUMMONS; HOW MADE.— Summons is a writ by which the defendant is notified of the action brought against him or her. In a civil action, jurisdiction over the defendant is acquired either upon a valid service of summons or the defendant's voluntary appearance in court. When the defendant does not voluntarily submit to the court's jurisdiction or when there is no valid service of summons, any judgment of the court, which has no jurisdiction over the person of the defendant, is null and void. Where the action is *in personam*, *i.e.*, one that seeks to impose some responsibility or liability directly upon the person of the defendant through the judgment of a court, and the defendant is in the Philippines, the service of summons may be made through personal or substituted service in the manner described in Sections 6 and 7, Rule 14 of the Revised Rules of Court. x x x It is well-established that a summons upon a respondent or a defendant must be served by handing a copy thereof to him in person or, if he refuses to receive it, by tendering it to him. Personal service of summons most effectively ensures that the notice desired under the constitutional requirement of due process is accomplished. The essence of personal service is the handing or tendering of a copy of the summons to the defendant himself. Under our procedural rules, service of summons in person of defendants is generally preferred over substituted service. Substituted service derogates the regular method of personal service. It is an extraordinary method since it seeks to bind the respondent or the defendant

[*] The name of Hon. Adoracion Angeles, in her capacity as Presiding Judge of the Regional Trial Court Caloocan City, Br. 121, is deleted pursuant to Rule 45, Section 4 of the Revised Rules of Court which provides that lower courts or judges shall not be impleaded in the petition either as petitioners or respondents.

to the consequences of a suit even though notice of such action is served not upon him but upon another to whom the law could only presume would notify him of the pending proceedings.

2. ID.; ID.; ID.; PROOF OF SERVICE OF SUMMONS, REQUIRED.— The Court requires that the Sheriff's Return clearly and convincingly show the impracticability or hopelessness of personal service. Proof of service of summons must (a) indicate the impossibility of service of summons within a reasonable time; (b) specify the efforts exerted to locate the defendant; and (c) state that the summons was served upon a person of sufficient age and discretion who is residing in the address, or who is in charge of the office or regular place of business, of the defendant. It is likewise required that the pertinent facts proving these circumstances be stated in the proof of service or in the officer's return. The failure to comply faithfully, strictly and fully with all the foregoing requirements of substituted service renders the service of summons ineffective.

3. ID.; ID.; ID.; RESORT TO SUBSTITUTED SERVICE OF SUMMONS IS IMPROPER IN THE ABSENCE OF SUFFICIENT EFFORTS TO SERVE IT PERSONALLY.— The Court, after a careful study of Sheriff Baloloy's x x x Return, finds that he improperly resorted to substituted service upon Wong of the summons for Civil Case No. C-21860. Apart from establishing that Sheriff Baloloy went to Wong's residence on three different dates, and that the latter was not around every time, there is nothing else in the Sheriff's Return to establish that Sheriff Baloloy exerted extraordinary efforts to locate Wong. During his visits to Wong's residence on 27 July 2007 and 10 August 2007, Sheriff Baloloy was informed by the housemaids that Wong was at his office. There is no showing, however, that Sheriff Baloloy exerted effort to know Wong's office address, verify his presence thereat, and/or personally serve the summons upon him at his office. Although Wong was out of town when Sheriff Baloloy attempted to serve the summons at the former's residence on 8 August 2007, there was no indication that Wong's absence was other than temporary or that he would not soon return. Evidently, the Return failed to relay if sufficient efforts were exerted by Sheriff Baloloy to locate Wong, as well as the impossibility of personal service of summons upon Wong within a reasonable time. Sheriff Baloloy's three visits to Wong's residence hardly constitute effort on his part to locate Wong;

and Wong's absence from his residence during Sheriff Baloloy's visits, since Wong was at the office or out-of-town, does not connote impossibility of personal service of summons upon him. It must be stressed that, before resorting to substituted service, a sheriff is enjoined to try his best efforts to accomplish personal service on the defendant. And 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.

4. ID.; ID.; ID.; THE COURT STILL ACQUIRE JURISDICTION OVER THE PERSON OF THE DEFENDANT DESPITE ABSENCE OF A VALID SERVICE OF SUMMONS IF HE VOLUNTARILY APPEARS BEFORE IT; APPLICATION.— [E]ven without valid service of summons, a court may still acquire jurisdiction over the person of the defendant, if the latter voluntarily appears before it. x x x The RTC acquired jurisdiction over Wong by virtue of his voluntary appearance before it in Civil Case No. C-21860. The Court is not referring to Wong's filing of his Motion to Dismiss the Complaint in Civil Case No. C-21860, on the ground of lack of jurisdiction of the RTC over his person, because that clearly does not constitute voluntary appearance. The Court, instead, calls attention to the RTC Order dated 20 November 2008 allowing Wong to cross-examine Koyama. Wong, through his counsel, took advantage of the opportunity opened to him by the said Order and aggressively questioned her during the 23 January 2009 hearing, despite his knowledge that the RTC had not yet lifted the 25 September 2007 Order declaring him in default. By actively participating in the 23 January 2009 hearing, he effectively acknowledged full control of the RTC over Civil Case No. C-21860 and over his person as the defendant therein; he is, thus, deemed to have voluntarily submitted himself to the jurisdiction of said trial court.

APPEARANCES OF COUNSEL

Clarissa A. Castro for petitioner.
Manuel Y. Fausto, Sr. for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

For Review on *Certiorari*, under Rule 45 of the Revised Rules of Court, are the Resolutions dated 17 January 2008[1] and 18 July 2008[2] of the Court of Appeals dismissing outright the Petition for *Certiorari*, under Rule 65 of the same Rules, of Alexander Tam Wong (Wong) in CA-G.R. SP No. 101860, for being the wrong remedy. Wong intended to assail before the appellate court the Orders dated 25 September 2007[3] and 18 December 2007[4] of the Regional Trial Court (RTC), Branch 121 of Caloocan City, which, respectively, declared him in default in Civil Case No. C-21860 and denied his Motion to Dismiss the Complaint in said case.

The present controversy originates from a Complaint[5] dated 17 July 2007, for specific performance, sum of money, and damages, filed with the RTC by private respondent Catherine Factor-Koyama (Koyama) against Wong, docketed as Civil Case No. C-21860. Koyama alleged in her Complaint that Wong deliberately refused to execute and deliver a deed of absolute sale, and to surrender the condominium certificate of title (CCT) pertaining to a condominium unit, particularly described as A3-4B California Garden Square, with an area of 57.5 square meters and located at Libertad Street corner Calbayog Street, Mandaluyong City, Metro Manila (subject property), which she had already bought from him. Koyama further averred that she had been renting out the subject property to foreign tourists, but Wong padlocked the same while she was in Japan attending to her business. When she requested him to open the subject

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[1] Penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Regalado E. Maambong and Sixto C. Marella, Jr., concurring; *rollo*, pp. 25-28.

[2] *Rollo,* pp. 22-23.

[3] Records, p. 43.

[4] Penned by Judge Adoracion G. Angeles; records, pp. 69-70.

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

property, he reportedly mauled her, causing her physical injuries, and also took her personal belongings.

On 24 July 2007, the RTC issued summons[6] addressed to Wong at his residence, No. 21 West Riverside Street, San Francisco Del Monte, Quezon City. However, the original summons and the accompanying copy of the Complaint and its Annexes were eventually returned to the RTC by Sheriff IV Renebert B. Baloloy (Sheriff Baloloy), who indicated in his Sheriff's Return dated 14 August 2007 that said court process should already be deemed "DULY SERVED." According to his Return,[7] Sheriff Baloloy had repeatedly attempted to serve the summons at Wong's residential address on 27 July 2007, 8 August 2007, and 10 August 2007, but Wong was always not around according to the latter's housemaids, Marie Sandoval (Sandoval) and Loren Lopez (Lopez). Sheriff Baloloy then attempted to leave the summons with Criz Mira (Mira), Wong's caretaker, who is of legal age, and residing at the same address for two and a half years, but Mira refused to acknowledge or receive the same.

On 25 September 2007, after the lapse of the 15-day reglementary period[8] without Wong filing an answer to the Complaint in Civil Case No. C-21860, Koyama moved for the RTC to declare him in default, and to allow her to present her evidence *ex parte* and/or to render judgment in her favor. The RTC set Koyama's Motion for hearing on 25 October 2007 at 8:30 in the morning or as soon as counsel and the matter may be heard.[9]

On 25 September 2007, the RTC, presided by public respondent Hon. Adoracion Angeles, issued an Order[10] declaring Wong in default.

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[6] *Id.* at 19.

[7] *Id.* at 18.

[8] According to Section 1, Rule 11 of the Revised Rules of Court:

Section 1. *Answer to the complaint.*—The defendant shall file his answer to the complaint **within fifteen (15) days after service of summons**, unless a different period is fixed by the court. (Emphasis ours.)

[9] Records, pp. 39-40.

[10] *Id.* at 43.

Wong subsequently filed with the RTC, by registered mail sent on 5 October 2007, a Manifestation[11] claiming that he did not receive any summons from said court. According to him, he was only informed unofficially by a tricycle driver on 27 September 2007 regarding papers from a court in Caloocan City, which the tricycle driver returned to the court after failing to locate Wong. This prompted Wong to file an inquiry[12] dated 28 September 2007 with the Office of the Clerk of Court of the RTC of Caloocan City as regards any case that might have been filed against him. In response, the Office of the Clerk of Court of the RTC of Caloocan City issued a Certification[13] dated 3 October 2007 bearing the details of Civil Case No. C-21860, which Koyama had instituted against him. Wong asserted that he would not hesitate to submit himself to the jurisdiction of the RTC, should the proper procedure be observed.

In its Order[14] dated 9 October 2007, the RTC stressed that, as early as 25 September 2007, Wong had been declared in default.

Wong, by special appearance of counsel, then filed with the RTC on 22 October 2007 a Motion to Dismiss[15] Civil Case No. C-21860, asserting, among other grounds, that there was no service of summons upon him, hence, the RTC did not acquire jurisdiction over his person; and that he was not given the opportunity to oppose Koyama's Motion to have him declared in default.

In her Opposition[16] to the Motion to Dismiss, filed on 5 November 2007, Koyama maintained that there was a proper substituted service of the summons, consequently, the RTC

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[11] *Id.* at 44-45.

[12] *Id.* at 46.

[13] *Id.* at 49.

[14] *Id.* at 52.

[15] *Id.* at 57-59.

[16] *Id.* at 61-63.

acquired jurisdiction over the person of Wong; and that Wong was served a copy of the Motion to have him declared in default on 3 October 2007, as evidenced by the Registry Return Card.[17]

Wong filed a Reply[18] on 7 November 2007 to Koyama's aforementioned Opposition, denying that a Loren Lopez or Criz Mira resided at his home address. Said housemaids were fictitious, as proven by the Certificate[19] issued by Junn L. Sta. Maria, *Punong Barangay* of San Francisco Del Monte, Quezon City on 7 November 2007, stating that Loren Lopez and Criz Mira were not residents of 21-B West Riverside St., San Francisco Del Monte, Quezon City.

The RTC denied Wong's Motion to Dismiss for lack of merit. In its Order[20] dated 18 December 2007, the RTC declared that Sheriff Baloloy validly resorted to a substituted service of the summons, pursuant to Section 7, Rule 14 of the Revised Rules of Court.[21] Sheriff Baloloy's performance of his official duty enjoyed the presumption of regularity, and Wong failed to rebut the same by merely presenting the *Barangay* Certificate, which is "not a role model of accuracy," especially when referring to mere transient residents in the area, such as lessees, housemaids or caretakers.

Wong went before the Court of Appeals via a Petition for *Certiorari*[22] under Rule 65 of the Revised Rules of Court contending that the RTC committed grave abuse of discretion, amounting to lack or excess of jurisdiction, in issuing its Orders

[17] *Id.* at 64.

[18] *Id.* at 65.

[19] *Id.* at 66.

[20] *Id.* at 69-70.

[21] Section 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 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.

[22] Records, pp. 72-85.

dated 25 September 2007 and 18 October 2007 in which it, respectively, declared Wong in default in Civil Case No. C-21860 and denied his Motion to Dismiss the Complaint in the same case. Wong insisted that there was no valid service of summons upon him, and that he was not notified of Koyama's Motion to have him declared in default.

The Court of Appeals, in a Resolution[23] dated 17 January 2008, dismissed Wong's Petition for *Certiorari* outright for being the improper remedy.

According to the Court of Appeals, Wong should have availed himself of the following remedies for RTC Order dated 25 September 2007, declaring him in default:

> As to the first assailed Order declaring [Wong] in default, the remedies available to a party declared in default were reiterated in *Cerezo v. Tuazon, viz*:
>
> a) The defendant in default may, at any time after discovery thereof and before judgment, file a motion under oath to set aside the order of default on the ground that his failure to answer was due to fraud, accident, mistake or excusable negligence, and that he has a meritorious defense (Sec. 3, Rule 18 [now Sec. 3(b), Rule 9]);
>
> b) If the judgment has already been rendered when the defendant discovered the default, but before the same has become final and executory, he may file a motion for new trial under Section 1(a) of Rule 37;
>
> c) If the defendant discovered the default after the judgment has become final and executory, he may file a petition for relief under Section 2 [now Section 1] of Rule 38; and
>
> d) He may also appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition to set aside the order of default has been presented by him (Sec. 2, Rule 41).

Moreover, a petition for *certiorari* to declare the nullity of a judgment by default is also available if the trial court improperly declared a

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[23] *Id.* at 88-91.

party in default, or even if the trial court properly declared a party in default, if grave abuse of discretion attended such declaration.[24]

As for the 18 December 2007 Order of the RTC denying Wong's Motion to Dismiss, the appellate court held:

> As to the second assailed Order denying petitioner's Motion to Dismiss, the said Order is interlocutory and is not a proper subject of a petition for *certiorari*. Even in the face of an error of judgment on the part of a judge denying the motion to dismiss, *certiorari* will not lie. *Certiorari* is not a remedy to correct errors of procedure.
>
> Let it be stressed at this point that basic rule that when a motion to dismiss is denied by the trial court, the remedy is not to file a petition for *certiorari*, but to appeal after a decision has been rendered. An order denying a motion to dismiss is interlocutory, and so the proper remedy in such a case is to appeal after a decision has been rendered. A writ of *certiorari* is not intended to correct every controversial interlocutory ruling; it is resorted only to correct a grave abuse of discretion or a whimsical exercise of judgment equivalent to lack of jurisdiction. Its function is limited to keeping an inferior court within its jurisdiction and to relieve persons from arbitrary acts—acts which courts or judges have no power or authority in law to perform. It is not designed to correct erroneous findings and conclusions made by the courts.[25]

Ultimately, the Court of Appeals decreed:

> WHEREFORE, premises considered, the Petition is **DISMISSED** outright.[26]

Wong filed a Motion for Reconsideration[27] of the foregoing Resolution on 6 February 2008, but the Court of Appeals denied the same for lack of merit in a Resolution[28] dated 18 July 2008.

Hence, Wong filed the instant Petition before this Court.

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[24] *Id.* at 90.

[25] *Id.* at 90-91.

[26] *Id.* at 91.

[27] *Id.* at 94-99.

[28] *Id.* at 114-115.

In the meantime, since neither the Court of Appeals nor this Court issued a Temporary Restraining Order (TRO) or writ of preliminary injunction enjoining the proceedings in Civil Case No. C-21860, the RTC continued hearing the said case. In an Order[29] dated 20 November 2008, the RTC *motu proprio* allowed Wong to cross-examine Koyama during the hearing on 23 January 2009, even though it did not lift its 25 September 2007 Order, which had declared him in default. The RTC reasoned:

> The Court believes that the interest of justice and fair play would be better served if the [herein petitioner Wong] would be given the chance to cross examine the witness, and for which reason the Court suspends the proceedings and resets the continuation of the hearing of this case on January 23, 2009 at 8:30 a.m.

Wong, through counsel, actively participated in the hearing held on 23 January 2009 by extensively cross-examining Koyama.[30] After said hearing, he filed before this Court, on 18 February 2009, a Motion for Clarification[31] as to the validity of the RTC Order dated 20 November 2008 allowing him to cross-examine Koyama, but without lifting the Order of Default.

On 8 July 2009, the RTC rendered its Decision[32] in Civil Case No. C-21860, the dispositive of which reads:

> WHEREFORE, premises considered, the contract of sale between the parties relative to the sale of the condominium unit is hereby RESCINDED and the [herein petitioner Wong] is ordered to pay the [herein respondent Koyama] the sum of TWO MILLION TWO HUNDRED FOUR THOUSAND (Php2,204,000.00) PESOS with legal rate of interest from the date of demand on May 25, 2007; to pay the plaintiff the sum of TWO HUNDRED THOUSAND (Php200,000.00) PESOS as and for attorney's fees; to pay another sum of TWO THOUSAND FIVE HUNDRED (Php2,500.00) PESOS per court appearance for six (6) times and to pay the costs of suit.

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[29] *Id.* at 179.

[30] TSN, 23 January 2009.

[31] Records, pp. 191-195.

[32] *Id.* at 246-252.

Wong avers herein that the RTC did not acquire jurisdiction over his person since he was not served the summons.

Summons is a writ by which the defendant is notified of the action brought against him or her. In a civil action, jurisdiction over the defendant is acquired either upon a valid service of summons or the defendant's voluntary appearance in court. When the defendant does not voluntarily submit to the court's jurisdiction or when there is no valid service of summons, any judgment of the court, which has no jurisdiction over the person of the defendant, is null and void.[33]

Where the action is *in personam*, *i.e.*, one that seeks to impose some responsibility or liability directly upon the person of the defendant through the judgment of a court,[34] and the defendant is in the Philippines, the service of summons may be made through personal or substituted service in the manner described in Sections 6 and 7, Rule 14 of the Revised Rules of Court, which provide:

SEC. 6. *Service in person on defendant*. – Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or if he refuses to receive and sign for it, by tendering it to him.

SEC. 7. *Substituted service*. – If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein; or (b) by leaving the copies at the defendant's office or regular place of business with some competent person in charge thereof.

It is well-established that a summons upon a respondent or a defendant must be served by handing a copy thereof to him in person or, if he refuses to receive it, by tendering it to him. Personal service of summons most effectively ensures that

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[33] *Manotoc v. Court of Appeals*, G.R. No. 130974, 16 August 2006, 499 SCRA 21, 33.

[34] *Domagas v. Jensen*, G.R. No. 158407, January 17, 2005, 448 SCRA 663, 673-674.

the notice desired under the constitutional requirement of due process is accomplished.[35] The essence of personal service is the handing or tendering of a copy of the summons to the defendant himself.[36]

Under our procedural rules, service of summons in person of defendants is generally preferred over substituted service.[37] Substituted service derogates the regular method of personal service. It is an extraordinary method since it seeks to bind the respondent or the defendant to the consequences of a suit even though notice of such action is served not upon him but upon another to whom the law could only presume would notify him of the pending proceedings.[38]

The Court requires that the Sheriff's Return clearly and convincingly show the impracticability or hopelessness of personal service.[39] Proof of service of summons must (a) indicate the impossibility of service of summons within a reasonable time; (b) specify the efforts exerted to locate the defendant; and (c) state that the summons was served upon a person of sufficient age and discretion who is residing in the address, or who is in charge of the office or regular place of business, of the defendant. It is likewise required that the pertinent facts proving these circumstances be stated in the proof of service or in the officer's return. The failure to comply faithfully, strictly and fully with all the foregoing requirements of substituted service renders the service of summons ineffective.[40]

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[35] *Sandoval II v. House of Representatives Electoral Tribunal*, 433 Phil. 290, 300-301 (2002).

[36] *Paluwagan Ng Bayan Savings Bank v. King*, 254 Phil. 56, 60-64 (1989).

[37] See *Robinson v. Miralles*, G.R. No. 163584, 12 December 2006, 510 SCRA 678, 683.

[38] *Sandoval II v. House of Representatives Electoral Tribunal, supra* note 35 at 301.

[39] *Id.*

[40] *Spouses Jose v. Spouses Boyon*, 460 Phil. 354, 363 (2003).

Sheriff Baloloy's Return dated 14 August 2007 described the circumstances surrounding the service of the summons upon Wong as follows:

> THIS IS TO CERTIFY that on August 27, 2007, the undersigned Sheriff IV was in receipt of a copy of summons, complaint together with annexes in the above-entitled case issued by this Honorable Court for service, below were the proceedings taken thereon, to wit:
>
> That on July 27, 2007, the undersigned went to the residence of the Defendant located at #21 West Riverside St. San Francisco Del Monte, Quezon City to serve the said summons, complaint and its annexes but Mr. Wong was not around. According to Ms. Marie Sandoval, housemaid, the subject was out (sic) for office;
>
> That on August 8, 2007, the undersigned tried to serve again the said summons, complaint and its annexes but according again to Ms. Sandoval, the subject was out of town;
>
> That on August 10, 2007, the undersigned went again to the said residence to serve the same summons, complaint and its annexes but Ms. Loren Lopez, another housemaid, said that Mr. Wong was out again (sic) for office; and
>
> That in the interest of justice, the undersigned left the said summons complaint and its annexes to Mr. Wong's caretaker, Mr. Criz Mira of legal age who reside at the said address for almost two and a half years but he refused to acknowledge/receive the said summons.
>
> WHEREFORE, the original summons, complaint and its annexes is hereby returned to this Honorable Court with the information DULY SERVED.[41]

The Court, after a careful study of Sheriff Baloloy's afore-quoted Return, finds that he improperly resorted to substituted service upon Wong of the summons for Civil Case No. C-21860.

Apart from establishing that Sheriff Baloloy went to Wong's residence on three different dates, and that the latter was not around every time, there is nothing else in the Sheriff's Return to establish that Sheriff Baloloy exerted extraordinary efforts

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[41] Records, p. 18.

to locate Wong. During his visits to Wong's residence on 27 July 2007 and 10 August 2007, Sheriff Baloloy was informed by the housemaids that Wong was at his office. There is no showing, however, that Sheriff Baloloy exerted effort to know Wong's office address, verify his presence thereat, and/or personally serve the summons upon him at his office.[42] Although Wong was out of town when Sheriff Baloloy attempted to serve the summons at the former's residence on 8 August 2007, there was no indication that Wong's absence was other than temporary or that he would not soon return.

Evidently, the Return failed to relay if sufficient efforts were exerted by Sheriff Baloloy to locate Wong, as well as the impossibility of personal service of summons upon Wong within a reasonable time. Sheriff Baloloy's three visits to Wong's residence hardly constitute effort on his part to locate Wong; and Wong's absence from his residence during Sheriff Baloloy's visits, since Wong was at the office or out-of-town, does not connote impossibility of personal service of summons upon him. It must be stressed that, before resorting to substituted service, a sheriff is enjoined to try his best efforts to accomplish personal service on the defendant. And 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.[43]

Nevertheless, even without valid service of summons, a court may still acquire jurisdiction over the person of the defendant, if the latter voluntarily appears before it. Section 20, Rule 14 of the Revised Rules of Court recognizes that:

> Section 20. Voluntary Appearance.— The defendant's voluntary appearance in the action shall be **equivalent to service of summons**.

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[42] Service of summons to be done personally does not mean that service is possible only at the defendant's actual residence. It is enough that the defendant is handed a copy of the summons in person by anyone authorized by law. (*Lazaro v. Rural Bank of Francisco Balagtas [Bulacan], Inc.*, 456 Phil. 414, 424 [2003].)

[43] *Manotoc v. Court of Appeals*, *supra* note 33 at 35-36.

The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance. (Emphasis ours.)

The RTC acquired jurisdiction over Wong by virtue of his voluntary appearance before it in Civil Case No. C-21860. The Court is not referring to Wong's filing of his Motion to Dismiss the Complaint in Civil Case No. C-21860, on the ground of lack of jurisdiction of the RTC over his person, because that clearly does not constitute voluntary appearance. The Court, instead, calls attention to the RTC Order dated 20 November 2008 allowing Wong to cross-examine Koyama. Wong, through his counsel, took advantage of the opportunity opened to him by the said Order and aggressively questioned her during the 23 January 2009 hearing, despite his knowledge that the RTC had not yet lifted the 25 September 2007 Order declaring him in default. By actively participating in the 23 January 2009 hearing, he effectively acknowledged full control of the RTC over Civil Case No. C-21860 and over his person as the defendant therein; he is, thus, deemed to have voluntarily submitted himself to the jurisdiction of said trial court.

The Court further stresses the fact that the RTC already rendered a Decision in Civil Case No. C-21860 on 8 July 2009. Wong filed with the RTC a Notice of Appeal on 10 August 2009. Given these developments, the Court deems it unnecessary to still address the issue of whether Wong was improperly declared in default by the RTC in its Order dated 25 September 2007. Following the remedies cited in *Cerezo v. Tuazon*,[44] Wong could already raise and include said issue in his appeal of the RTC Decision dated 8 July 2009 to the Court of Appeals. The Court can no longer grant him any remedy herein without preempting the action of the Court of Appeals on Wong's appeal of the RTC judgment.

IN VIEW WHEREOF, the Petition is *DENIED*. Costs against the petitioner.

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[44] 469 Phil. 1020 (2004).

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 184735. September 17, 2009]

MIRIAM B. ELLECCION *VDA. DE* LECCIONES, *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION, NNA PHILIPPINES CO., INC. and MS. KIMI KIMURA,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATIONS; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; DISMISSAL OF EMPLOYEE DUE TO REDUNDANCY, HELD VALID.— The separation of the petitioner by reason of redundancy was supported by the evidence on record. She was separated from the service after the respondent's reorganization where her position as Administrator was declared redundant. She was served notice within the statutory period of thirty (30) days and so was the DOLE-NCR. The petitioner was assured of all the benefits under the law. The petitioner imputes bad faith and malice on the respondent in declaring her position as Administrator redundant, but failed to present convincing proof that the respondent abused its prerogative in terminating her employment or that it was motivated by ill-will in doing so. It was a business decision arrived at in the face of financial losses being suffered by the company at the time. x x x We find no violations of law in the respondent's actions against the petitioner, nor was the respondent arbitrary or influenced by malice in terminating the petitioner's employment for redundancy. This ground for termination is a legitimate exercise of management prerogative unless attended to by arbitrariness

or by the failure to follow statutory requirements. No arbitrariness or any violations took place in the present case.

2. ID.; ID.; ID.; A MANAGERIAL EMPLOYEE IS NOT ENTITLED TO OVERTIME PAY.— On the petitioner's claim for overtime pay, the CA correctly took cognizance of the issue, since this was raised by the petitioner in her capacity as an employee, not as a corporate officer. At the same time, we affirm the CA's denial of the claim, as the petitioner was a managerial employee who is not entitled to such pay.

APPEARANCES OF COUNSEL

Dela Cruz Entero and Associates for petitioner.
Sycip Salazar Hernandez & Gatmaitan for NNA Philippines Co., Inc.

R E S O L U T I O N

BRION *J.*:

We resolve the motion for reconsideration[1] of our Resolution[2] dated December 8, 2008 denying the petition for review on *certiorari*[3] filed on November 10, 2004 by petitioner Miriam B. Elleccion *Vda. de* Lecciones.

The case arose on November 8, 2002 when the petitioner filed a complaint[4] for illegal dismissal with several money claims against the NNA Philippines Co., Inc. (*respondent*). The respondent, a research and translation service company with less than ten (10) employees, is a wholly-owned subsidiary of NNA Japan Co., Ltd.[5] (NNA Japan).

The respondent employed the petitioner on August 1, 1997, and she held various positions in the company, the latest of

[1] *Rollo*, pp. 87-100.

[2] *Id*., pp. 85-86.

[3] *Id*., pp. 10-29.

[4] NLRC Records, p. 2.

[5] *Id*., p. 148.

which as Administrator.[6] Additionally, she served as Corporate Secretary until July 3, 2002. She alleged that she usually worked from 9:00 a.m. to 10:00 p.m. - 12:00 midnight and sometimes even until 2:00 a.m. or 9:00 a.m.[7] She claimed that the respondent promised to compensate her for extra hours, as well as for doing tasks other than that what she was contracted for.

On May 17, 2002, the Board of Directors of NNA Japan decided to streamline the operations of its subsidiaries including the respondent, and thus issued a memorandum directing the respondent to transfer the corporate secretary's functions to the external counsel. The memorandum also gave management the discretion to determine which positions should be declared redundant.[8]

On July 4, 2002, the respondent's Board of Directors held an organizational meeting where the petitioner was not re-elected as corporate secretary. The board also directed the respondent's President at the time, Ms. Kimi Kimura (*Kimura*), to reorganize the corporation and abolish any redundant position.[9]

On October 17, 2002, the petitioner received a notice of termination of employment on the ground that her position as Administrator had been declared redundant.[10] On the same day, the respondent filed a report of the petitioner's separation from service with the Office of the Department of Labor and Employment in the National Capital Region (DOLE-NCR).[11]

On November 15, 2002, the respondent issued the petitioner a memorandum advising her of the release of checks in her favor representing her salary and accrued benefits including her separation pay.[12] On the same day, she accepted the checks

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[6] *Id.*, p. 38.

[7] *Id.*, pp. 57-87.

[8] *Id.*, p. 46.

[9] *Id.*, pp. 99-101.

[10] *Id.*, p. 50.

[11] *Id.*, pp. 47-49.

[12] *Id.*, p. 106.

for her last salary (₱23,097.13); 13th month pay (₱46,084.00); unused leave credits for seven (7) days (₱8,028.10); year-end tax refund (₱803.24); and reimbursement of advances made to the company (₱71,197.05). She refused to accept the check representing her separation pay in the amount of ₱244,182.07 (based on her salary and allowances).[13]

On January 16, 2004, Labor Arbiter Aliman D. Mangandog dismissed the complaint for lack of merit, but ordered the respondent to pay the petitioner separation pay computed at one (1) month's salary for every year of service.[14] The petitioner appealed the decision to the National Labor Relations Commission (*NLRC*).

In a decision promulgated on May 15, 2006,[15] the NLRC affirmed the petitioner's separation from the service; modified the monetary benefits awarded to her; and affirmed the Arbiter's denial of the petitioner's claim for additional compensation as corporate secretary on the ground that it was an intra-corporate matter. In addition to the separation pay of ₱244,182.07, the NLRC ordered the petitioner reimbursement of cash advances made by the petitioner to the company amounting to ₱248,712.72.

The petitioner moved for a partial reconsideration of the NLRC decision, but the NLRC denied the motion on June 30, 2006.[16] The petitioner then elevated the case to the Court of Appeals (*CA*) through a petition for *certiorari* under Rule 65 of the Rules of Court.

In its decision of August 28, 2008,[17] the CA denied the petition. The appellate court held that "the decision was rendered on the basis of credible evidence and existing law. Petitioner was

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[13] *Id.*, p. 107.

[14] *Rollo,* pp. 31-51.

[15] *Id.*, pp. 52-62.

[16] *Id.*, pp. 63-64.

[17] *Id.*, pp. 65-84; penned by Associate Justice Jose Catral Mendoza and concurred in by Associate Justice Andres B. Reyes, Jr. and Associate Justice Sesinando E. Villon.

validly terminated from employment." The CA set aside the NLRC's ruling that the petitioner's money claims involved an intra-corporate matter which was outside of its jurisdiction. It held that the labor tribunals had jurisdiction over the claim since it was made by the petitioner as an employee, not as a corporate officer. Nonetheless, the CA denied her claim for overtime pay on the main ground that, as a managerial employee, she is not entitled to overtime pay under the law and the rules.[18]

The petitioner moved for reconsideration of the CA's decision, but was denied through a resolution issued on September 26. 2008.[19] The petitioner appealed to this Court on November 10, 2008 pursuant to Rule 45 of the Rules of Court.[20]

In a Resolution dated December 8, 2008,[21] we denied the petition "for failure to sufficiently show any reversible error in the questioned judgment"; there was "failure [by] petitioner to show any cogent reason why the actions of the Labor Arbiter, the NLRC and the CA, which have passed upon the same issue, should be reversed. The petitioner failed to show that their findings are not based on substantial evidence, or that their decisions are contrary to applicable law and jurisprudence."

On February 17, 2009, the petitioner moved for reconsideration[22] of the Court's ruling, contending that: (1) the dismissal of an employee on the ground of the redundancy based on mere allegation and without supporting evidence is invalid; (2) the assailed decisions run counter to rulings of the Court that "failure to appraise the employee of a fair and reasonable criteria is a violation of due process," and; (3) the respondent terminated the employment of the petitioner not for any authorized cause but with evident malice and bad faith.

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[18] LABOR CODE, Article 82 and Implementing Rules, Book III, Rule I, Section 2 (C).

[19] *Rollo,* p. 30.

[20] *Id*., pp. 10-29.

[21] *Supra* note 2.

[22] *Id*., pp. 87-100.

In view of the motion for reconsideration, the Court required the respondent to file a comment,[23] which it did on June 1, 2009. The respondent, along with its co-respondent Kimura, prays for the denial of the motion for its failure to raise new arguments or compelling reasons to warrant a reversal of the Court's resolution.

We deny the motion for reconsideration.

The arguments raised by the petitioner are not materially different from those she presented in the compulsory arbitration and before the CA. Nonetheless, we again carefully examined the parties' submissions, and we are convinced that the rulings sought to be overturned are supported by substantial evidence and are not contrary to law and applicable jurisprudence, as we stressed in our Resolution of December 8, 2008.

The separation of the petitioner by reason of redundancy was supported by the evidence on record. She was separated from the service after the respondent's reorganization where her position as Administrator was declared redundant. She was served notice within the statutory period of thirty (30) days and so was the DOLE-NCR. The petitioner was assured of all the benefits under the law.

The petitioner imputes bad faith and malice on the respondent in declaring her position as Administrator redundant, but failed to present convincing proof that the respondent abused its prerogative in terminating her employment or that it was motivated by ill-will in doing so. It was a business decision arrived at in the face of financial losses being suffered by the company at the time.[24]

As aptly cited by the CA:

The general rule is that the characterization by an employer of an employee's services as no longer necessary or sustainable is an exercise of business judgment on the part of the employer. The wisdom or

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[23] *Id.*, pp. 113-132.

[24] *Id.*, pp. 173-177; Audited Financial Statement for 2001-2002.

soundness of such a characterization or decision is not, as a general rule, subject to discretionary review on the part of the Labor Arbiter, the NLRC and the CA. Such characterization may, however, be rejected if the same is found to be in violation of the law or is arbitrary or malicious.[25]

We find no violations of law in the respondent's actions against the petitioner, nor was the respondent arbitrary or influenced by malice in terminating the petitioner's employment for redundancy. This ground for termination is a legitimate exercise of management prerogative unless attended to by arbitrariness or by the failure to follow statutory requirements. No arbitrariness or any violations took place in the present case.

On the petitioner's claim for overtime pay, the CA correctly took cognizance of the issue, since this was raised by the petitioner in her capacity as an employee, not as a corporate officer. At the same time, we affirm the CA's denial of the claim, as the petitioner was a managerial employee who is not entitled to such pay.

Finally, as the CA did, we find no basis for the petitioner's claim for moral damages and attorney's fees.

WHEREFORE, premises considered, we hereby *DENY* the petitioner's motion for reconsideration for lack of substantial arguments to warrant a reconsideration of our ruling of December 8, 2008. This denial is immediately final, and we shall not entertain any further pleadings. Let entry of judgment be made in due course.

SO ORDERED.

Ynares-Santiago,[*] *Carpio Morales,*[**] *del Castillo,* and *Abad, JJ.,* concur.

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[25] *Lopez Sugar Corporation v. Franco,* G.R. No. 148195, May 16, 2005, 458 SCRA 515.

[*] Designated additional Member of the Second Division per Special Order No. 691 dated September 4, 2009.

[**] Designated Acting Chairperson of the Second Division per Special Order No. 690 dated September 4, 2009.

THIRD DIVISION

[G.R. No. 184958. September 17, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ANTHONY C. DOMINGO and GERRY DOMINGO,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL COURT.— We find no reason to disturb the findings of fact of the trial court. It is an established rule that findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight have been overlooked, misapprehended, or misinterpreted which would otherwise materially affect the disposition of the case. In this case, we do not see any reason to depart from this rule. The trial court gave credence to the testimony of the prosecution witnesses who positively identified Anthony as the culprit. Nida, Leopoldo, and Gina knew Anthony before the incident and ably recognized him at the time of the shooting. x x x It is doctrinal that the trial court's evaluation of the credibility of a witness and his or her testimony is accorded the highest respect because of the court's untrammeled opportunity to observe directly the demeanor of a witness and, thus, to determine whether he or she is telling the truth. It is also settled that when the trial court's findings have been affirmed by the appellate court, said findings are generally conclusive and binding upon this Court. In this case, both courts found that the eyewitnesses are credible. We do not see any reason to disregard such finding

2. ID.; ID.; ALIBI; FAILURE TO COMPLY WITH THE TIME AND DISTANCE REQUISITES.— Anthony's alibi, that he was at Alfredo Dalida's house, has no merit. Alibi is the weakest of defenses. To exonerate an accused, one must show that he was at some other place at the time of the commission of the offense and that he was so far removed from the crime scene or its immediate vicinity that it could not have been possible for him to have committed the crime. In this case, the trial court

found that the house of Alfredo Dalida, Sr. was only 200 meters away from the crime scene. Such short distance makes it physically possible for Anthony to be at the scene of the crime. The Court has patiently reiterated the requisites for alibi to prosper, that is, the accused was not at the *locus delicti* when the offense was committed and it was physically impossible for him to be at the scene of the crime at the approximate time of its commission. Anthony failed to comply with the time and distance requisites of alibi.

3. ID.; ID.; WITNESSES; ILL MOTIVE, ABSENCE OF.— Anthony further imputes ill motive on the prosecution witnesses, claiming that they blame him for the death of Nida's brother, Tenorio de Pedro; thus, their testimonies are not worthy of belief. x x x We concur with the trial court's findings: The Court cannot find any well-grounded basis that will indicate that these eyewitnesses were merely actuated by any improper motive. It is utterly preposterous for these relatives of the victims who are crying for justice to merely pretend to have seen the subject heinous event and then concoct a story that will allow the real culprits to remain free just to be able to callously implicate the innocent persons that they hate. Moreover, considering the dangerous trait of accused Anthony C. Domingo and the circumstance that Gerry C. Domingo is still at large, it is highly improbably that they would dare hurl false accusations against them.

4. CRIMINAL LAW; MURDER; AWARD OF DAMAGES TO THE HEIRS.— With regard to damages, we raise the award of civil indemnity from PhP 50,000 to PhP 75,000; and moral damages from PhP 50,000 to PhP 75,000 for the death of Rosemelyn de Pedro, consistent with prevailing jurisprudence. We affirm the trial court's award of PhP 10,805 as actual damages based on the supporting receipts. The trial court held that the aggravating circumstances of treachery and dwelling were present, but failed to award any exemplary damages. While the appellate court was correct in adding exemplary damages, we deem it proper to raise the award from PhP 25,000 to PhP 30,000.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

VELASCO, JR., *J.*:

This is an appeal by Anthony C. Domingo from the January 31, 2007 Decision[1] of the Court of Appeals (CA) in CA-G.R. CEB-CR-H.C. No. 00325. The CA affirmed the April 23, 2001 judgment[2] of the Regional Trial Court (RTC), Branch 2 in Kalibo, Aklan, which found accused-appellant Anthony Domingo guilty of murder with frustrated murder in Criminal Case No. 5517. Accused-appellant Gerry Domingo has neither been arrested nor arraigned.

The Facts

Anthony was charged with murder and frustrated murder in an information that reads as follows:

That on or about the 18th day of July, 1999, in the evening, in Barangay Cabugao, Municipality of Altavas, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a long firearm, conspiring, confederating and helping each other, with evident premeditation, treachery and with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and shoot one ROSEMELYN DE PEDRO, thereby inflicting upon the latter mortal gunshot wounds, to wit:

1. The body of the deceased is in a state of rigor mortis. The body is dressed in a hospital gown with the name "RAFAEL S. TUMBOKON MEMORIAL HOSPITAL" printed in front. The head has a bandage wrapped around the head. The right forearm has a small piece of plaster at the medial side at the level of the wrist.

2. Gunshot wound of entrance, 1 cm. in diameter and 17 cms. Deep, located at the posterior right parietal region of the head, directed anteriorly and to the left.

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[1] *Rollo*, pp. 3-24. Penned by Associate Justice Priscilla Baltazar-Padilla and concurred in by Associate Justices Arsenio J. Magpale and Romeo F. Barza.

[2] CA *rollo*, pp. 19-39. Penned by Judge Tomas R. Romaquin.

3. 1 pellet, measuring 1 cm. in diameter, flatted and with irregular rough edges, was found at the left frontal region of the brain.

as per Postmortem Examination Report issued by Dr. Gliceria A. Sucgang, Rural Health Physician, Altavas, Aklan, hereto attached as Annex "A" and forming an integral part of this Information, which gunshot wounds directly caused the death of said ROSEMELYN DE PEDRO, as per Certificate of Death issued by the same physician, likewise attached hereto as Annex "B".

That on the same incident and with the single act of the above-named accused, another victim, VIVIAN DOMINGO was hit, thereby inflicting upon the latter gunshot wounds, to wit:

1. Left shoulder with metallic foreign body
2. Left arm, lateral and posterior thru and thru
3. Left hand, 3rd finger proximal 3rd with fracture of proximal phalanx
4. Abdomen, hypogastric area left inferolateral portion with metallic foreign body abdominal wall.

as per Medico-Legal report on Physical Injuries issued by Dr. Victor A. Santamaria, Medical Officer IV of the Dr. Rafael S. Tumbokon Memorial Hospital, Kalibo, Aklan, hereto attached as Annex "G" and forming an integral part of this Information; the accused having thus performed all the acts of execution which would produce the felony of Murder but did not produce the same for causes other than their own spontaneous desistance, that is, the timely and able medical attendance rendered to the victim which prevented her death.

That as a result of the criminal acts of the accused, the heirs of the victim Rosemelyn De Pedro and private offended party Vivian Domingo suffered actual and compensatory damages in the amount of SEVENTY FIVE THOUSAND PESOS (₱75,000.00).

CONTRARY TO LAW.

Kalibo, Aklan, Philippines, September 29, 1999.[3]

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[3] *Id.* at 6.

The other accused, Gerry, went into hiding. Hence, only Anthony was arraigned on November 22, 1999. With the assistance of his counsel, he pleaded not guilty.[4]

The plaintiff-appellee, through the Solicitor General, presented its version of the facts as follows: On July 18, 1999, around 8:00 p.m., Nida de Pedro Domingo, her two children, and seven nephews and nieces were at home in *Barangay* Cabugao, Altavas, Aklan watching television. Their three dogs suddenly started to bark so Nida asked her niece, Rosemelyn de Pedro, to turn on the electric bulb that hang at the nearby mango tree beside the national road. When Rosemelyn did not budge, Nida herself turned on the lights, opened the bamboo window, and looked out of the window. She saw Anthony and Gerry, her brothers-in-law, standing under the mango tree. Without warning, Anthony and Gerry fired their *pugakhang* (homemade shotgun), hitting Nida in the right eyebrow. Rosemelyn, who was seated near the door with her back to the window, slumped on the floor with a wound in her head. Nida's daughter, Vivian, who was then combing her hair in front of the mirror, was hit on the left shoulder, left arm, left middle finger, and abdomen. When Vivian cried that she was hit, Nida immediately closed the window and shouted for help. The two accused fled towards Linayasan.[5]

Prior to the incident, Nida's older brother, Leopoldo de Pedro, was on his way to Nida's house to fetch his grandchildren. He was about 12 meters away from the house when the dogs barked. He saw the light and heard an explosion which he mistook for thunder until he saw accused-appellants standing near the mango tree and holding a shotgun. Leopoldo ducked behind a pile of soil. He saw the two escaped to Linayasan.[6]

Leopoldo, a certain Bobong, and Nonie were the first to respond to Nida's cries for help. Leopoldo testified that after the two accused left, he entered the house of Nida and saw his niece Rosemelyn lying on the floor while Vivian was assisted

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[4] *Id.* at 21.

[5] *Rollo*, p. 6.

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

by other people. The victims were brought to the hospital.[7] Leopoldo, Bobong, and Nonie went to the police station to report the matter while Vivian stayed in the Dr. Rafael S. Tumbokon Memorial Hospital for five days. Rosemelyn died due to cerebral hemorrhage.[8]

For the defense, Anthony testified that in the afternoon of July 18, 1999, he left his house with his two children and proceeded towards the house of his sister, Teresita Domingo, located in Cabugao, Altavas, Aklan, about half a kilometer away. Anthony's son stayed long at his sister's place as they were still going to Alfredo Dalida, Sr.'s house across the river.[9]

In the evening, Alfredo was engaged in a drinking session with his friends in a hut located in *Barangay* Cabugao, Altavas, Aklan. Gerry allegedly passed by the hut on his way to the house of his parent-in-law. Gerry refused the group's invitation to join the drinking session. Soon, Gerry's brother, Anthony, arrived at the hut. Alfredo accompanied Anthony to the former's house across the river of Dalipdip. Anthony wanted to talk to Alfredo's wife regarding the medical check-up of Anthony's wife in Manila who was due to arrive the following day. Since Anthony's children fell asleep while watching television, the Dalida spouses invited Anthony to pass the night in their house. Anthony and his children slept in the middle of the house which had no partition. Anthony alleged that he spent the entire night at the Dalida's.

The morning after the incident, Anthony learned that Ronnie Domingo alias "Kana" was the initial suspect. Anthony denied the charges and alleged that he had never been to the house of Nida since he was charged with killing Nida's brother, Tenorio de Pedro. Anthony said that he even avoided passing there since the de Pedros had said that they will kill him. He remained in Altavas and continued farming until he was arrested three months after the incident.[10]

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[7] CA *rollo*, p. 27.

[8] *Rollo*, p. 7.

[9] CA *rollo*, p. 57.

[10] *Id.* at 58.

Ronnie supported Anthony's defense and stated that he was the initial suspect in the shooting incident. He testified that on July 18, 1999, around 4:00 p.m., he was engaged in a drinking session at the store near councilwoman Gloria Marcelino's house. Because of drunkenness, he fell asleep at Gloria's place around 6:00 p.m. Around 7:00 p.m., he was awakened by Nida's shouts that it was "Kana" who shot her daughter and her niece. Ronnie was surprised at this accusation. Gloria told Nida not to suspect Ronnie because he was at her house sleeping at that time.[11]

On April 23, 2001, the court *a quo* found Anthony guilty of murder with frustrated murder. The *fallo* of the decision reads:

> WHEREFORE, the Court finds the accused ANTHONY C. DOMINGO GUILTY beyond reasonable doubt of the complex crime of MURDER WITH FRUSTRATED MURDER, and hereby imposes upon him the penalty of death.
>
> Further, the Court hereby orders the afore-named accused to pay the legal heirs of the victim ROSEMELYN DE PEDRO the following:
>
> a. ₱50,000.00 as civil indemnity ex delicto;
>
> b. ₱50,000.00 as moral damages; and
>
> c. ₱10,805.00 as actual damages supported with receipts only.
>
> Further, the Court hereby orders that the cases against GERRY C. DOMINGO be ARCHIVED until his arrest.
>
> With COSTS against Anthony C. Domingo.
>
> SO ORDERED.[12]

In view of the imposition of the death penalty, the case was forwarded to the CA for review.[13]

In the appellant's brief, [14] Anthony reiterated his alibi. He also pointed out the inconsistencies in the testimonies of

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[11] *Id.* at 58-59.

[12] *Id.* at 38-39.

[13] *People v. Mateo*, G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640; Resolution dated September 14, 2004.

[14] CA *rollo*, pp. 50-71.

prosecution witnesses. For one, Nida claimed that the window was open at the time of the shooting which contradicts Vivian's testimony that the window was closed. Also, according to Anthony, the inaction of Gina de Pedro, Nida's niece, during the incident was contrary to human nature. Gina's allegation that there was only one shot also contradicts the prosecution's evidence showing four gunshot wounds on Vivian, two deformed pellets, and one plastic cap recovered from the crime scene. He also contended that since Leopoldo was not among the first to respond to Nida's cries for help, he could not have been at the crime scene and witnessed the attack. Lastly, Anthony attributed ill motive to the prosecution witnesses since they charged him of killing Tenorio, Nida's brother.

The Ruling of the CA

The CA found no merit in Anthony's contentions. In reviewing the testimonies of the witnesses, the appellate court found no inconsistencies that would question their credibility. For one, the window was initially closed as testified to by Nida, but she later opened it when Rosemelyn did not follow her order. The CA also held that Gina's inaction when the shot was fired was also understandable since she was in shock. Gina's testimony that there was only one fire does not contradict the physical evidence, since a single bullet of a shotgun can fire several pellets that can cause multiple injuries. As to whether Leopoldo de Pedro was at the crime scene, the CA found that Leopoldo stayed behind a pile of soil for three more minutes after the attack for fear that accused-appellants might see him. The fact that he was not among the first to arrive at Nida's side does not mean that he was not at the crime scene or that he did not witness the attack. The CA also dismissed Anthony's alibi and imputation of ill motive on the prosecution witnesses.

With regard to the damages, however, the CA found it appropriate to order the payment of exemplary damages in the amount of PhP 25,000 since treachery was proved. Furthermore, in view of Republic Act No. 9346, the imposition of the death penalty was proscribed. Thus, the trial court's judgment was amended as follows:

WHEREFORE, the Decision of the Regional Trial Court of Kalibo, Aklan, Branch 2, dated 23 April 2003, in Criminal Case No. 5517 is **UPHELD** with modification only as to the penalty and award of civil damages. Accordingly, accused-appellant Anthony C. Domingo is hereby sentenced to suffer *Reclusion Perpetua* in lieu of death and is further ordered to pay the heirs of Rosemelyn De Pedro the amount of P25,000.00 as exemplary damages in addition to those awarded by the trial court.[15]

Assignment of Errors

THE COURT *A QUO* GRAVELY ERRED IN GIVING CREDENCE TO THE INCREDIBLE AND SELF-CONTRADICTORY TESTIMONIES OF THE PROSECUTION'S ALLEGED EYEWITNESSES.

THE COURT *A QUO* GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT AS ONE OF THE PERPETRATORS OF THE CRIME CHARGED HAS BEEN ESTABLISHED BEYOND REASONABLE DOUBT.

The Court's Ruling

The appeal lacks merit.

We find no reason to disturb the findings of fact of the trial court. It is an established rule that findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight have been overlooked, misapprehended, or misinterpreted which would otherwise materially affect the disposition of the case.[16] In this case, we do not see any reason to depart from this rule.

The trial court gave credence to the testimony of the prosecution witnesses who positively identified Anthony as the culprit. Nida, Leopoldo, and Gina knew Anthony before the incident and ably recognized him at the time of the shooting. Anthony claims, however, that Nida and Gina could not have seen the attacker since the window was closed as testified by

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[15] *Rollo,* p. 23.

[16] *People v. Viñas, Sr.*, G.R. Nos. 112070-71, June 29, 1995, 245 SCRA 448, 453; *People v. Pija*, G.R. No. 97285, June 16, 1995, 245 SCRA 80, 84.

Vivian. Leopoldo could not have also seen the attacker since he was not the first to arrive at Nida's house.

We agree with the appellate court that there is no contradiction in the testimonies of Vivian and Nida. Before the shooting, the window was indeed closed, but when Nida heard the dogs barked, Nida opened the window. Nida testified as follows:

PROSECUTOR DEL ROSARIO:

Q: Mrs. Witness, do you remember where [you were] in the evening of July 18, 1999 at around 8:00 o'clock?
A: I was in the house.

x x x x x x x x x

Q: What were you doing [in] your house?
A: I was watching T.V.

Q: Do you have companion in your house?
A: My children and some of my nephews and nieces.

Q: While you were watching T.V. was there any unusual incident that happened?
A: Yes, Sir.

Q: Please tell the Court what was that incident?
A: Our dog barked.

Q: After you heard your dog [barking], what did you do?
A: I asked Rosemelyn to switch on the light outside.

Q: [Was] Rosemelyn able to switch on the light as you instructed her?
A: She did not listen because she continued watching T.V.

Q: What did you do after Rosemelyn did not listen to you?
A: I was the one [who] stood up to switch on the light and to open the window.

Q: After you opened the window and switched the light, were you able to observe anything outside?
A: Yes, sir.

Q: Please tell the Court what you have observed?
A: I saw Gerry Domingo and Anthony Domingo outside.[17]

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[17] *Rollo*, p. 14; TSN, June 20, 2000, pp. 3-4.

The Solicitor General also points out that at the time of the shooting, Vivian was facing the mirror and combing her hair. It was Gina and Nida who were near the window. Thus, the latter's testimonies carry more weight than Vivian's. Assuming that such a discrepancy exists, it is trivial and does not warrant the reversal of judgment. In *People v. Ave*, we held:

> It is elementary that not all inconsistencies in the witnesses' testimony affect their credibility. Inconsistencies on minor details and collateral matters do not affect the substance of their declaration, their veracity, or the weight of their testimonies. Thus, although there may be inconsistencies on the testimonies of witnesses on minor details, the same do not impair the credibility of the witnesses where there is consistency in relating the principal occurrence and positive identification of the assailants.[18]

In this case, Nida firmly stated that she saw accused-appellants fire at her. She testified as follows:

> ATTY. IBUTNANDE:
>
> Q: How long have you noticed the presence of Gerry Domingo and Anthony Domingo before you heard the gunfire?
>
> A: Immediately after I opened the window, I saw them and thereafter I heard a gunfire.
>
> Q: So, when they fired the gun you are still standing by the window, that is what you are trying to say?
>
> A: The moment they fired and I was hit in my eye, I tried to sit on the chair.[19]

We further affirm the lower courts' reliance on the testimony of Leopoldo, specifically, that the latter was at the crime scene and witnessed the attack. He was not among the first to arrive at Nida's house because he hid behind a pile of soil for three minutes after the shooting incident. He testified as follows:

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[18] G.R. Nos. 137274-75, October 18, 2002, 391 SCRA 225, 243-244 (citations omitted).

[19] *Rollo*, p. 13; TSN, June 20, 2000, p. 8.

ATTY. IBUTNANDE:

Q: How long did you duck in that pile of soil before you stood up to go up of the house of your sister Nida Domingo?

A: Three (3) minutes, more or less.

Q: It took you three minutes, more or less, because you were afraid to show up by that pile of soil because you were afraid that you might be seen by Anthony Domingo and his companion, am I correct?

A: Yes, ma'am.[20]

Anthony further seeks to discredit Gina by pointing out her unnatural reaction to the shooting, *i.e.*, that she remained standing by the open window during and even after the shooting incident. The 12-year-old girl was simply in shock, as observed by the appellate court. In *People v. Muyco*, we held:

> Different people react differently to a given type of situation. There is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience. One person's spontaneous or unthinking, or even instinctive response to a horrid and repulsive stimulus may be aggression, while another person's reaction may be cold indifference. A witness' inability to move, help or even to run away when the incident occurs is not a ground to label his testimony as doubtful and unworthy of belief. There is no prescribed behavior when one is faced with a shocking event.[21]

Also, Gina's testimony that she heard only one shot does not contradict the physical evidence of four gunshot wounds and two pellet caps recovered from the crime scene. The CA correctly held that a shotgun can fire a single bullet with several pellets that can cause multiple injuries or deaths.[22]

Anthony's alibi, that he was at Alfredo Dalida's house, has no merit. Alibi is the weakest of defenses. To exonerate an

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[20] *Id.* at 15; TSN, May 24, 2000, p. 11.

[21] *People v. Roncal*, G.R. No. 94795, May 6, 1997, 272 SCRA 242.

[22] See *People v. Castillo*, G.R. No. 116748, June 2, 1997, 273 SCRA 22.

accused, one must show that he was at some other place at the time of the commission of the offense and that he was so far removed from the crime scene or its immediate vicinity that it could not have been possible for him to have committed the crime.[23] In this case, the trial court found that the house of Alfredo Dalida, Sr. was only 200 meters away from the crime scene. Such short distance makes it physically possible for Anthony to be at the scene of the crime. The Court has patiently reiterated the requisites for alibi to prosper, that is, the accused was not at the *locus delicti* when the offense was committed and it was physically impossible for him to be at the scene of the crime at the approximate time of its commission.[24] Anthony failed to comply with the time and distance requisites of alibi.

Anthony claims that Nida Domingo's initial suspect was Ronnie Domingo. He says that Nida went to the house of Gloria Marcelino after the incident to look for Ronnie. The Solicitor General points out, however, that at the time, Nida herself needed medical treatment for her injuries. Nida's daughter, Vivian, was also wounded and had to be rushed to the hospital. In rebuttal, Nida denied that she ever told Gloria that Ronnie shot Vivian and Rosemelyn. Considering these, we find that Anthony's claim is not worthy of belief.

Anthony further imputes ill motive on the prosecution witnesses, claiming that they blame him for the death of Nida's brother, Tenorio de Pedro; thus, their testimonies are not worthy of belief. It is doctrinal that the trial court's evaluation of the credibility of a witness and his or her testimony is accorded the highest respect because of the court's untrammeled opportunity to observe directly the demeanor of a witness and, thus, to determine whether he or she is telling the truth. It is also settled that when the trial court's findings have been affirmed by the appellate court, said findings are generally conclusive

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[23] *People v. Abundo,* G.R. No. 138233, January 18, 2001, 349 SCRA 577.

[24] *People v. Botona*, G.R. No. 115693, March 17, 1999, 304 SCRA 712, 736.

and binding upon this Court.[25] In this case, both courts found that the eyewitnesses are credible. We do not see any reason to disregard such finding. We concur with the trial court's findings:

> The Court cannot find any well-grounded basis that will indicate that these eyewitnesses were merely actuated by any improper motive.
>
> It is utterly preposterous for these relatives of the victims who are crying for justice to merely pretend to have seen the subject heinous event and then concoct a story that will allow the real culprits to remain free just to be able to callously implicate the innocent persons that they hate.
>
> Moreover, considering the dangerous trait of accused Anthony C. Domingo and the circumstance that Gerry C. Domingo is still at large, it is highly improbably that they would dare hurl false accusations against them.[26]

The Solicitor General also notes that at the time of the incident, there was already a criminal case against Anthony for the death of Tenorio de Pedro; hence, there was no need for the relatives to prosecute him anew if only to get even with him.[27] More significantly, settled is the rule that motive is not essential to conviction when there is no doubt as to the identity of the culprit. Motive is not essential when there are reliable eyewitnesses who fully identified the accused as the perpetrator of the offense,[28] as in the case at bar.

With regard to damages, we raise the award of civil indemnity from PhP 50,000 to PhP 75,000; and moral damages from PhP 50,000 to PhP 75,000 for the death of Rosemelyn de Pedro, consistent with prevailing jurisprudence. We affirm the trial court's award of PhP 10,805 as actual damages based on the supporting receipts. The trial court held that the aggravating

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[25] *People v. Ausa*, G.R. No. 174194, March 20, 2007, 518 SCRA 602, 610-611.

[26] CA *rollo*, p. 88.

[27] *Id.* at 114.

[28] *People v. Devaras*, No. L- 48009, February 3, 1992, 205 SCRA 676.

circumstances of treachery and dwelling were present, but failed to award any exemplary damages. While the appellate court was correct in adding exemplary damages, we deem it proper to raise the award from PhP 25,000 to PhP 30,000. Since the death penalty was proscribed by law, the sentence of *reclusion perpetua* was also correct.

WHEREFORE, the CA Decision dated January 31, 2007 in CA-G.R. CEB-CR-H.C. No. 00325 is *AFFIRMED* with *MODIFICATION*. Anthony C. Domingo is ordered to indemnify the victim's heirs with PhP 75,000 civil indemnity, PhP 75,000 moral damages, and PhP 30,000 exemplary damages. No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 185203. September 17, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DOMINGO ARAOJO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; GUIDING PRINCIPLES IN THE REVIEW OF RAPE CASES.— By the peculiar nature of rape cases, conviction thereon most often rests solely on the basis of the offended party's testimony, if 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, albeit 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 care; and (3) the evidence for the prosecution must succeed or fall on its own merits, and cannot be allowed to derive strength from the weakness of the evidence for the defense. Corollary to the foregoing principles is the rule that the credibility of the victim is always the single most important issue in prosecution for rape. Withal, in passing upon the credibility of witnesses, the highest degree of respect must be accorded to the findings of the trial court.

2. ID.; ID.; IN STATUTORY RAPE, ABSENCE OF STRUGGLE OR AN OUTCRY IS IMMATERIAL.— Where the victim is below 12 years old, the only subject of inquiry is whether "carnal knowledge" took place. Proof of force, threat or intimidation is unnecessary since none of these is an element of statutory rape. There is statutory rape where, as in this case, the offended party is below 12 years of age. In light of this perspective, the absence of a struggle or an outcry from AAA, if this really be the case, vis-à-vis the first three, *i.e.*, 1997, 1998 and 1999, dastardly attacks, would not carry the day for Araojo.

3. ID.; ID.; FULL PENILE PENETRATION IS NOT A CONSUMMATING INGREDIENT IN THE CRIME OF RAPE.— To start with, full penile penetration, which would ordinarily result in hymenal rupture or laceration of the vagina of a girl of tender years, is not a consummating ingredient in the crime of rape. The mere knocking at the door of the *pudenda* by the accused's penis suffices to constitute the crime of rape. And given AAA's unwavering testimony as to her ordeal in the hands of Araojo, the Court cannot accord merit to the argument that the lack of physical manifestation of rape weakens the case against Araojo. 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, hymenal laceration not being, to repeat, an element of the crime of rape. A healed or fresh laceration would of course be a compelling proof of defloration. What is more, the foremost consideration in the prosecution of 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. ID.; ID.; AWARD OF DAMAGES.— The award of PhP 75,000 as civil indemnity *ex delicto* for the victim and the same amount as moral damages for each count of statutory rape and statutory rape committed with the use of deadly weapon is in line with prevailing case law and is accordingly affirmed. The order for Araojo to pay AAA PhP 50,000 as civil indemnity and PhP 50,000 as moral damages for the crime of simple rape subject of Criminal Case No. RTC 03-812 is also proper. And while the award of exemplary damages is also called for to deter other individuals with aberrant sexual tendencies, the amount thus fixed therefor by the CA is increased from PhP 25,000 to PhP 30,000 for each count of statutory rape, pursuant to current jurisprudence. The award of moral damages in the amount fixed in the appealed decision to indemnify the offended party for the crime of acts of lasciviousness is in order.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL COURT.— As the Court has often repeated, the issue of credibility is a matter best addressed by the trial court which had the chance to observe the demeanor of the witnesses while testifying. For this reason, the Court, as earlier stressed, accords great weight and even finality to factual findings of the trial court, especially its assessments of the witnesses and their credibility, barring arbitrariness or oversight of some fact or circumstance of weight and substance. Testimonies of child-victims are normally given full weight and credit, since when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has in fact been committed. 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. Youth and immaturity are generally badges of truth and sincerity.

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.*:

On May 15, 2003, in the Regional Trial Court of Calabanga, Camarines Sur, four separate informations for rape and one for acts of lasciviousness were filed against accused-appellant Domingo Araojo. The informations for rape, docketed as Criminal Case Nos. RTC 03-809, 03-810, 03-811 and 03-812, and that for acts of lasciviousness, docketed as Criminal Case No. RTC 03-813, were eventually raffled to Branch 63 of the court.

The first information for rape in Criminal Case No. RTC 03-809 reads as follows:

> That sometime in the year 1997 at Sitio Caltigao, Bgy. Sumaoy, Municipality of Garchitorena, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a knife, with lewd designs, by means of force and intimidation, did then and there willfully, unlawfully and feloniously [succeeded in] having carnal knowledge with one AAA[1], a 7 year old minor, and the niece of the accused, which act of accused debase, degrade and demean the intrinsic worth and dignity of the child as a human being and prejudicial to the child's development to her damage and prejudice.
>
> ACTS CONTRARY TO LAW.[2]

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[1] The identity of the victims or any information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall be withheld pursuant to Republic Act No. (RA) 7610, *An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes*; RA 9262, *An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes*; and Sec. 40 of A.M. No. 04-10-11-SC, known as *Rule on Violence Against Women and Their Children* effective November 15, 2004; *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[2] *Rollo*, p. 3.

The other informations (Criminal Case Nos. 03-810, 03-811, and 03-812) for rape were worded similarly as above but reflected the dates 1998, 1999, and August 2002, and the corresponding age of AAA as 8, 9, and 12 years old, respectively.

The information for Criminal Case No. RTC 03-813 for acts of lasciviousness reads:

> That sometime in the year 2001 at Sitio Caltigao, Bgy. Sumaoy, Municipality of Garchitorena, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a knife, did then and there criminally abuse, with lewd designs sucking her breast and caressing her vagina of one AAA, a minor girl 11 year old and the niece of the accused, which act of accused debase, degrade and demeans the intrinsic worth and dignity of the child as a human being and prejudicial to the child's development to her damage and prejudice.
>
> ACTS CONTRARY TO LAW.[3]

When arraigned, Araojo pleaded not guilty to all the charges contained in the five (5) separate informations that were read to him in Bicol, a language he understood very well.[4]

During pre-trial, Araojo acknowledged that AAA's deceased father was his brother. He likewise admitted living in the same house with AAA's family when the alleged incidents happened.[5]

In the ensuing joint trial, the prosecution presented evidence to prove the following facts:[6]

AAA was born on December 1, 1989, the third child of BBB and CCC,[7] Araojo's brother. When CCC died in 1997, Araojo stayed with BBB and her family. AAA used to fondly call Araojo as "Papay Inggo."

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[3] *Id.* at 5.

[4] *Id.*

[5] *Id.*

[6] CA *rollo*, pp. 93-108.

[7] Identities withheld, *supra* note 1.

The first rape incident occurred sometime in 1997. On that fateful day in 1997, when BBB was out fishing with one of her sons, Araojo asked AAA to fetch water from a nearby river. AAA obeyed but it took her some time to accomplish her task. When AAA finally reached home, an irate Araojo, with a rope in his hand, reprimanded an apologetic niece. He made it plain that he would forgive her if she sucked his private organ. AAA obeyed out of fear. AAA, as later told, then removed her dress and parted her legs. Araojo then kissed her lips and inserted his finger into her vagina. He then placed himself on top of AAA, put saliva on his penis and started having sexual intercourse with AAA. Despite experiencing pain, AAA did not put up resistance for fear of being harmed. After satisfying his lust, he asked AAA to dress up after which he left the room. Alone in the room, AAA examined herself and noticed blood in her vagina. AAA later related her ordeal to her mother, who merely shrugged the matter off, but nonetheless assured AAA that she would ask Araojo not to do it again.

BBB's exhortation evidently went unheeded as, in 1998, appellant again raped AAA, with threats of physical harm. She reported the incident to her mother but the latter would not believe her.

One day the following year, AAA, now 9 years old, was again alone with her younger sister and Araojo in their small hut. He threatened AAA with a bolo to give in to his advances. What happened next was a virtual repeat of what he did the first and second molestation rounds. When he was done, he asked her if she was satisfied. Fearful of being abused again if she answered "no," AAA said "yes."

In 2001, Araojo again made an attempt to rape AAA. He first kissed AAA on the lips and cheeks and then asked her to undress. He, however, was unable to consummate his lust as BBB arrived at that point, thereby thwarting his evil designs. BBB stared at AAA as she wiped the saliva off her daughter's face. AAA confided anew to her mother, who again promised to talk to Araojo.

On August 16, 2002, Araojo raped AAA again, while BBB, with one of her sons, was out fishing. This time, Araojo poked a knife on AAA's neck before giving vent to his lustful desires, resorting to the same preliminary moves previously employed. After being done with AAA, he went to the basketball court. AAA reported the incident to her unbelieving mother, who tried to deflect her daughter's complaint by saying that Araojo had already promised to stop with his designs against AAA.

As her mother hardly exhibited concern about her plight, AAA decided to leave their house in Brgy. Sumaoy. By motorboat, she proceeded to Tamban, Camarines Sur to ask the help of her "*Ate*" Susan Fenes. Together, they approached a policeman who suggested that AAA be medically examined. With Fenes, AAA went to the *poblacion* of Garchitorena where she met social worker, Muriel Señar Berunio. Berunio later assisted AAA undergo a medical examination in Naga City.

Dr. Maria Medem Perez, Chief Resident of the Obstetrics and Gynecology Unit of the Bicol Medical Center, testified to the records of AAA's examining physician, who had meanwhile resigned. According to the medical report, AAA's external genitalia showed no visible abnormality, but her internal genitalia had hymenal lacerations. AAA's hymen was not intact and there were old incomplete lacerations at 5 o'clock and 9 o'clock positions. Said lacerations could have been caused by sexual assault or other causes that could have been inflicted months or even years before.

In lieu of the unavailable documents to establish AAA's birth date, namely her birth certificate, baptismal certificate and scholastic records, the court heard for the purpose the testimony of BBB. According to BBB, she gave birth to AAA on December 1, 1989 in Ibahoy, Lagonoy, Camarines Sur and had her baptized in Azon, Garchitorena.

In the witness box, BBB also admitted not taking AAA's complaints against Araojo for rape seriously in the face of the latter's denial of any wrongdoing. It was only when AAA left home that BBB became convinced of the veracity of AAA's complaints.

Only Araojo testified for the defense. He admitted cohabiting with BBB in 1998, or a year after his brother's death. This relationship, however, lasted only for about a year as he moved in 1999 to Nasugbu, Batangas to work in a sugarcane plantation from 2000 to 2001. He returned to Garchitorena in 2002. He professed innocence of the 1997 rape incident, being then in Manila working. Neither, according to him, could he have raped AAA in 1998 since he was busy taking care of the ailing BBB. In denying the occurrence of the alleged 1999 rape episode, he claimed that AAA stayed with the Barja family in 1999 and later with the family of a certain Willy in Caltigao, Garchitorena.

On rebuttal, AAA stated that the Barja's place in Caltigao, Garchitorena, Camarines Sur and that of Willy are near her house, enabling her to go home in the afternoon after her babysitting chores. She further stated that Araojo came home every month while he was working in Nasugbu in 2000.

On June 15, 2005, the trial court rendered a joint decision finding Araojo guilty as charged and accordingly sentenced him, thus:

> WHEREFORE, in view of the foregoing, the prosecution having proven the guilt of Domingo Araojo beyond reasonable doubt, he is guilty of statutory rape in Crim. Cases Nos. RTC 03-809 and RTC 03-810; rape with the use of a deadly weapon in Crim. Cases Nos. RTC 03-811 and RTC 03-812 and Acts of Lasciviousness in Crim. Case No. RTC 03-813. Thus, he is hereby sentenced to suffer the following penalties:
>
> 1. In Crim. Case No. RTC 03-809 for rape, accused Domingo Araojo is meted the penalty of reclusion perpetua. He is likewise ordered to pay the private complainant, AAA the amount of ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages, and to pay the cost.
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> 2. In Crim. Case No. RTC 03-810 for rape, accused Domingo Araojo is meted the penalty of reclusion perpetua. He is likewise ordered to pay the private complainant, AAA the amount of ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages, and to pay the cost.
>
> 3. In Crim. Case No. RTC 03-811 for rape, accused Domingo Araojo is meted the penalty of *reclusion perpetua*. He is likewise

ordered to pay the private complainant, AAA the amount of ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages, and to pay the cost.

4. In Crim. Case No. RTC 03-812 for rape, accused Domingo Araojo is meted the penalty of *reclusion perpetua*. He is likewise ordered to pay the private complainant, AAA the amount of ₱50,000.00 as civil indemnity; P50,000.00 as moral damages, and to pay the cost.

5. In Crim. Case No. RTC 03-813 for Acts of Lasciviousness, accused Domingo Araojo is meted the indeterminate penalty of SIX (6) MONTHS of arresto mayor as minimum to FOUR (4) YEARS and TWO (2) MONTHS of prision correccional as maximum. He is likewise ordered to pay the private complainant, AAA the amount of ₱30,000.00 as moral damages, and to pay the cost.

Accused is likewise meted the accessory penalty of perpetual absolute disqualification as provided for under Article 41 of the Revised Penal Code.

Considering that accused Domingo Araojo has undergone preventive imprisonment during the pendency of his case, he shall be credited in the services of his sentence with the time he has undergone preventive imprisonment subject to the conditions provided for in Article 29 of the Revised Penal Code.

SO ORDERED.[8]

The Ruling of the CA

From the RTC's decision, Araojo went to the Court of Appeals (CA) on the lone submission that:

THE TRIAL COURT GRAVELY ERRED IN CONVICTING [HIM] OF THE CRIMES CHARGED, WHEN THE GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.

Eventually, on July 9, 2008, the CA rendered judgment affirming Araojo's conviction but modified the penalty thus imposed by the trial court. The *fallo* of the appellant court's decision reads:

WHEREFORE, in view of the foregoing, the appeal is hereby **DISMISSED**. The Joint Decision of the Regional Trial Court of Calabanga, Camarines Sur, Branch 63, in Criminal Cases Nos. RTC

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[8] CA *rollo*, pp. 13-35. Penned by Judge Freddie D. Balonzo.

03-809, 810, 811, 812 and 813 is hereby **AFFIRMED with MODIFICATION**. Appellant Domingo Araojo is sentenced to suffer the following:

a) the penalty of *reclusion perpetua* for each count of Statutory Rape subject of Crim. Case Nos. RTC 03-809 and 810;

b) the penalty of *reclusion perpetua* for the crime of Statutory Rape committed with the use of a deadly weapon subject of Crim. Case No. RTC 03-811;

c) the penalty of *reclusion perpetua* for the crime of Simple Rape committed with the use of a deadly weapon subject of Crim. Case No. RTC 03-812;

d) the penalty of imprisonment of Six (6) Months of arresto mayor as minimum to Four (4) Years and Two (2) Months of *prision correccional* as maximum in Crim. Case No. RTC 03-813.

He is likewise ordered to pay the private complainant, the following:

a) the sum of ₱75,000.00 as moral damages, ₱75,000.00 as civil indemnity, and ₱25,000.00 as exemplary damages for each count of Statutory Rape and Statutory Rape committed with the use of a deadly weapon plus costs in Criminal Case Nos. RTC 03-809, RTC 03-810 and RTC 03-811;

b) the sum of ₱50,000.00 as moral damages, ₱50,000.00 as civil indemnity, and ₱25,000.00 as exemplary damages for the crime of Simple Rape committed with the use of a deadly weapon plus costs in Criminal Case No. RTC 03-812; and

c) the amount of ₱30,000.00 as moral damages for the crime of Acts of Lasciviousness in Criminal Case No. RTC 03-813.

SO ORDERED.[9]

Therefrom, appellant filed a notice of appeal to which the CA, per its resolution of July 31, 2008, gave due course.

In response to the Resolution of the Court for them to submit supplemental briefs if they so desired, the parties manifested

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[9] *Rollo*, pp. 2-21. Penned by Associate Justice Arcangelita M. Romilla-Lontok and concurred in by Associate Justices Mariano C. del Castillo (now a member of this Court) and Romeo F. Barza.

their willingness to have the case resolved on the basis of the records and pleadings already on file.

As before the CA, Araojo presently urges the Court to acquit him, predicating his plea on the issue of: (1) the credibility of the witnesses for the prosecution; and (2) the sufficiency of its evidence.

Araojo tags AAA's account of the alleged rape incidents, which, for the most part, consisted of the same details, as utterly incredulous. And evidently proceeding on the assumption that rape victims usually put up a struggle, he invites attention to AAA's failure to significantly resist the alleged sexual attack.

Focusing on another angle, Araojo maintains that the physical evidence ran counter to AAA's allegations of rape. If, as AAA alleged, she was raped, then the results of her medical examinations would have yielded complete hymenal lacerations, considering AAA's tender age and the manner of the sexual assault. Araojo theorizes that, since AAA had been hired as a babysitter, it is possible that she was exposed to various forms of exploitation.

The Ruling of the Court

The Court resolves to affirm the CA decision.

Penile or organ rape is committed when the accused has carnal knowledge of the victim by force, threat, or intimidation, or when the victim is deprived of reason or is unconscious, or when the victim is under 12 years of age.[10]

By the peculiar nature of rape cases, conviction thereon most often rests solely on the basis of the offended party's testimony, if credible, natural, convincing, and consistent with human nature and the normal course of things.[11] Accordingly, the Court has consistently adhered to the following guiding principles in the

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[10] REVISED PENAL CODE, Art. 266-A; *People v. Barangan*, G.R. No. 175480, October 2, 2007, 534 SCRA 570, 591-592.

[11] *People v. Corpuz*, G.R. No. 168101, February 13, 2006, 482 SCRA 435, 444.

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, albeit 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 care; and (3) the evidence for the prosecution must succeed or fall on its own merits, and cannot be allowed to derive strength from the weakness of the evidence for the defense.[12]

Corollary to the foregoing principles is the rule that the credibility of the victim is always the single most important issue in prosecution for rape.[13] Withal, in passing upon the credibility of witnesses, the highest degree of respect must be accorded to the findings of the trial court.[14]

AAA had pointed an accusing finger to Araojo, her "Papay Inggo," as the person who forced himself on her on at least four occasions and who caused her pain when he inserted his sex organ into her vagina. As an indication that she did not acquiesce to his beastly ways, she reported the incident to her mother, but her efforts turned out to be in vain. As determined by the trial court, AAA's testimony on the fact of molestation was positive and credible; there is neither cause nor reason to withhold credence on her testimonies.

As the Court has often repeated, the issue of credibility is a matter best addressed by the trial court which had the chance to observe the demeanor of the witnesses while testifying. For this reason, the Court, as earlier stressed, accords great weight

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[12] *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.

[13] *People v. Ceballos, Jr.*, G.R. No. 169642, September 14, 2007, 533 SCRA 493, 508.

[14] *People v. Balonzo*, G.R. No. 176153, September 21, 2007, 533 SCRA 760, 768.

and even finality to factual findings of the trial court, especially its assessments of the witnesses and their credibility, barring arbitrariness or oversight of some fact or circumstance of weight and substance.[15] Testimonies of child-victims are normally given full weight and credit, since when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has in fact been committed. 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.[16] Youth and immaturity are generally badges of truth and sincerity.[17]

Where the victim is below 12 years old, the only subject of inquiry is whether "carnal knowledge" took place. Proof of force, threat or intimidation is unnecessary since none of these is an element of statutory rape. There is statutory rape where, as in this case, the offended party is below 12 years of age.[18] In light of this perspective, the absence of a struggle or an outcry from AAA, if this really be the case, vis-à-vis the first three, i.e., 1997, 1998 and 1999, dastardly attacks, would not carry the day for Araojo.

Araojo has made much of the report on the medical examination conducted on AAA showing that she suffered incomplete hymenal laceration. To him, what the medical report yielded does not complement AAA's testimony of rape.[19]

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[15] *People v. Virrey*, G.R. No. 133910, November 14, 2001, 368 SCRA 623, 630.

[16] *Llave v. People*, G.R. No. 166040, April 26, 2006, 488 SCRA 376, 400.

[17] *People v. Guambor*, G.R. No. 152183, January 22, 2004, 420 SCRA 677, 682.

[18] *People v. Negosa*, G.R. Nos. 142856-57, August 25, 2003, 409 SCRA 539, 551; *People v. Aguiluz*, G.R. No. 133480, March 15, 2001, 354 SCRA 465.

[19] CA *rollo*, pp. 46-63.

The Court is not convinced. To start with, full penile penetration, which would ordinarily result in hymenal rupture or laceration of the vagina of a girl of tender years, is not a consummating ingredient in the crime of rape. The mere knocking at the door of the *pudenda* by the accused's penis suffices to constitute the crime of rape.[20] And given AAA's unwavering testimony as to her ordeal in the hands of Araojo, the Court cannot accord merit to the argument that the lack of physical manifestation of rape weakens the case against Araojo. 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,[21] hymenal laceration not being, to repeat, an element of the crime of rape.[22] A healed or fresh laceration would of course be a compelling proof of defloration.[23] What is more, the foremost consideration in the prosecution of 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. [24]

Araojo's defense of denial deserves scant consideration. Following his line, AAA virtually proved his case for him, for, as argued, AAA admitted that in 2002 she worked as a babysitter and yet she claimed that sometime in August 2002, he raped her.

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[20] *People v. Plurad*, G.R. Nos. 138361-63, December 2, 2002, 393 SCRA 306.

[21] *People v. Boromeo*, G.R. No. 150501, June 3, 2004, 430 SCRA 533, 546.

[22] *People v. Espino, Jr.*, G.R. No. 176742, June 17, 2008, 554 SCRA 682, 700; citing *People v. Esteves*, 438 Phil. 687, 699 (2002).

[23] *People v. Sambrano*, G.R. No. 143708, February 24, 2003, 398 SCRA 106, 113.

[24] *Boromeo*, *supra* note 21; *People v. Cea*, G.R. Nos. 146462-63, January 14, 2004, 419 SCRA 326; *People v. Pillas*, G.R. Nos. 138716-19, September 23, 2003, 411 SCRA 468; *People v. Tamsi*, G.R. Nos. 142928-29, September 11, 2002, 388 SCRA 604.

Araojo's argument is untenable. The fact that AAA worked as a babysitter for families living within a walking distance from her did not preclude the commission of rape against her. As it were, he had not demolished AAA's positive and consistent testimony about the several rape incidents and about his gestures constituting acts of lasciviousness.

In all then, we find no reason to disturb the ruling of the CA, confirmatory of that of the RTC, and the factual findings holding it together.

The award of PhP 75,000 as civil indemnity *ex delicto* for the victim and the same amount as moral damages for each count of statutory rape and statutory rape committed with the use of deadly weapon is in line with prevailing case law[25] and is accordingly affirmed. The order for Araojo to pay AAA PhP 50,000 as civil indemnity and PhP 50,000 as moral damages for the crime of simple rape subject of Criminal Case No. RTC 03-812 is also proper. And while the award of exemplary damages is also called for to deter other individuals with aberrant sexual tendencies, the amount thus fixed therefor by the CA is increased from PhP 25,000 to PhP 30,000 for each count of statutory rape, pursuant to current jurisprudence.[26]

The award of moral damages in the amount fixed in the appealed decision to indemnify the offended party for the crime of acts of lasciviousness is in order.

WHEREFORE, the appealed CA Decision dated July 9, 2008 is hereby *AFFIRMED* with the *MODIFICATION* that accused-appellant is ordered to pay AAA by way exemplary damages for each count of rape in Criminal Case Nos. RTC 03-809, 03-810, and 03-811 the amount of PhP 30,000. Costs against accused-appellant.

SO ORDERED.

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

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[25] *People v. Sia,* G.R. No. 174059, February 27, 2009.

[26] *Id.*

THIRD DIVISION

[G.R. No. 186497. September 17, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **HASANADDIN GUIARA y BANSIL,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; BUY-BUST OPERATION; A RECOGNIZED MEANS OF ENTRAPMENT IN ILLEGAL DRUG CASES.— In our jurisprudence, a buy-bust operation is a recognized means of entrapment using such ways and means devised by peace officers for the purpose of trapping or capturing a lawbreaker. It is legal and has been proved to be an effective method of apprehending drug peddlers, provided due regard to constitutional and legal safeguards is undertaken.

2. ID.; ILLEGAL SALE OF SHABU; ELEMENTS; ESTABLISHED IN CASE AT BAR.— In the prosecution of illegal sale of *shabu,* the essential elements have to be established, to wit: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and the payment therefor. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence. The delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction. In the instant case, the prosecution was able to establish these elements beyond moral certainty. Accused-appellant sold and delivered the *shabu* for PhP 500 to PO2 Concepcion posing as buyer; the said drug was seized and identified as a prohibited drug and subsequently presented in evidence; there was actual exchange of the marked money and contraband; and finally, accused-appellant was fully aware that he was selling and delivering a prohibited drug.

3. ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— x x x [I]n the prosecution for illegal possession of dangerous drugs, the following elements must be proved with moral certainty: (1) that the accused is in possession of the object identified as a prohibited or regulatory drug; (2) that

such possession is not authorized by law; and (3) that the accused freely and consciously possessed the said drug.

4. ID.; ID.; ID.; POSSESSION INCLUDES NOT ONLY ACTUAL POSSESSION BUT ALSO CONSTRUCTIVE POSSESSION; ACTUAL POSSESSION AND CONSTRUCTIVE POSSESSION, DISTINGUISHED.— x x x [P]ossession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused. Constructive possession, on the other hand, exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found.

5. ID.; ID.; ID.; *ANIMUS POSSIDENDI*; PROVEN IN CASE AT BAR.— x x x [T]he prosecution must prove that the accused had *animus possidendi* or the intent to possess the drugs. In *U.S. v. Bandoc*, the Court ruled that the finding of a dangerous drug in the house or within the premises of the house of the accused is *prima facie* evidence of knowledge or *animus possidendi* and is enough to convict in the absence of a satisfactory explanation. In the case at bar, accused-appellant was caught in actual possession of prohibited drugs without any showing that he was duly authorized by law to possess the same. Having been caught *in flagrante delicto*, there is, therefore, a *prima facie* evidence of *animus possidendi* on accused-appellant's part.

6. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; MINOR INCONSISTENCIES IN THE TESTIMONIES OF THE POLICE OFFICERS ARE NOT SUBSTANTIAL TO OVERTURN JUDGMENT OF CONVICTION.— x x x [C]ontrary to accused-appellant's contentions, the minor inconsistencies in the testimonies of the police officers are too insufficient or insubstantial to overturn the judgment of conviction against him, since those testimonies are consistent on material points. Time and time again, this Court has ruled that the witnesses' testimonies need only to corroborate one another on material details surrounding the actual commission of the crime. Questions as to the exact street where the illegal sale was consummated do not in any way impair the credibility of the witnesses. To secure a reversal of the appealed judgment, such

inconsistencies should pertain to that crucial moment when the accused was caught selling *shabu*, not to peripheral matters.

7. ID.; ID.; ID.; TRIAL COURT'S ASSESSMENT THEREON NOT DISTURBED ON APPEAL.— It should be noted that in passing upon the credibility of witnesses, the appellate court generally yields to the judgment of the trial courts since they are in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial. Thus, this Court finds no cogent reason to disturb the trial court's assessment of the credibility of the prosecution witnesses.

8. CRIMINAL LAW; ILLEGAL SALE OF PROHIBITED DRUGS; CHAIN OF CUSTODY; PROPERLY ESTABLISHED IN CASE AT BAR.— In every prosecution for the illegal sale of prohibited drugs, the presentation of the drug, *i.e.*, the *corpus delicti*, as evidence in court is material. In fact, the existence of the dangerous drug is crucial to a judgment of conviction. It is, therefore, indispensable that the identity of the prohibited drug be established beyond doubt. Even more than this, what must also be established is the fact that the substance bought during the buy-bust operation is the same substance offered in court as exhibit. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed. x x x A close reading of the law reveals that it allows certain exceptions. Thus, contrary to the assertions of accused-appellant, Section 21 need not be followed with pedantic rigor. Non-compliance with Sec. 21 does not render an accused's arrest illegal or the items seized/ confiscated from him inadmissible. What is essential is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused." In the instant case, there was substantial compliance with the law and the integrity of the drugs seized from accused-appellant was preserved. The chain of custody of the drugs subject matter of the case was shown not to have been broken. The factual milieu of the case reveals that the confiscated items were marked by PO2 Concepcion immediately after he arrested accused-appellant. Then, the said marked items were submitted to the PNP Crime

Laboratory for analysis and examination, and which was later on found to be positive for *shabu.*

9. REMEDIAL LAW; EVIDENCE; DENIAL AND FRAME-UP; NO CLEAR AND CONVINCING EVIDENCE TO PROVE SUCH DEFENSES IN CASE AT BAR.— Denial, as a defense, is an inherently weak one and has been viewed by this Court with disdain, for it can easily be concocted and is a very common line of defense in prosecutions arising from violations of RA 9165. Similarly, the defense of frame-up is also easily fabricated and commonly used in buy-bust cases. In order for the Court to appreciate such defenses, there must be clear and convincing evidence to prove such defense because in the absence of any intent on the part of the police authorities to falsely impute such crime against accused-appellant, the presumption of regularity in the performance of duty stands. In the case at bar, the defense failed to show any evidence of ill motive on the part of the police officers. Even accused-appellant himself declared that he did not know any of the police officers who arrested him. x x x [T]he categorical statements of the prosecution witnesses must prevail over the bare denials of the accused. Denial, if unsubstantiated by clear and convincing evidence, is a negative and self-serving evidence which deserves no weight in law and cannot be given greater evidentiary value over the testimony of the credible witnesses who testify on affirmative matters. Therefore, this Court upholds the presumption of regularity in the performance of official duties and finds that the prosecution has discharged its burden of proving the guilt of accused-appellant beyond reasonable doubt.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This is an appeal from the September 19, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02958 entitled *People of the Philippines v. Hasanaddin Guiara y Bansil* which affirmed the July 18, 2007 Joint Decision[2] of Branch 267 of the Regional Trial Court (RTC) of Pasig City in Criminal Case Nos. 14272-D-TG and 14273-D-TG, finding accused-appellant Hasanaddin Guiara y Bansil guilty of violations of Sections 5 and 11, Article II of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

The Facts

The charge against the accused-appellant stemmed from the following Information:

Criminal Case No. 14272-D-TG
(Violation of Section 5 [Sale], Article II of R.A. 9165)

That on or about the 24th day of August, 2005, in the City of Taguig, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there willfully, unlawfully and knowingly sell, deliver and give away to PO2 Rolly B. Concepcion, who acted as poseur-buyer, a total of 0.17 gram of white crystalline substance, which substance was found positive to the test for Methamphetamine Hydrochloride, also known as Shabu, a dangerous drug.

Contrary to law.[3]

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[1] *Rollo*, pp. 2-24. Penned by Associate Justice Martin S. Villarama, Jr. and concurred in by Associate Justices Noel G. Tijam and Arturo G. Tayag.

[2] CA *rollo*, pp. 13-24. Penned by Judge Florito S. Macalino.

[3] Records, p. 1.

Criminal Case No. 14273-D-TG

(Violation of Section 11 [Possession], Article II of R.A. 9165)

That on or about the 24th day of August, 2005, in the City of Taguig, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess any dangerous drug, did, then and there willfully, unlawfully and knowingly possesses and under his custody and control .23 gram of white crystalline substance contained in one (1) heat sealed transparent plastic sachet, which substance was found positive to the test for Methamphetamine Hydrochloride, also known as "Shabu", a dangerous drug, in violation of the above-cited law.

Contrary to law.[4]

On November 29, 2005, accused-appellant was arraigned and entered a plea of "not guilty" to the charges against him.

At the pre-trial conference, the prosecution and the defense stipulated on: (1) the identity of accused-appellant; (2) the jurisdiction of the trial court over the person of accused-appellant and the subject matter of the cases; (3) the date, place, and fact of the arrest; (4) the authority of the police officers as members of the Station Anti-Illegal Drugs-Special Operations Task Force (SAID-SOTF) of the Taguig City Police Station; (5) the existence of the subject specimens; (6) the fact that a request has been made by the arresting officers for the examination of the confiscated items; (7) the fact that the Forensic Chemist, Police Senior Inspector Maridel Rodis, examined the specimens and issued a laboratory report thereon; (8) the fact that the examining forensic chemist had no knowledge from whom the alleged specimens were taken; and (9) the fact that the subject specimens tested positive for methylamphetamine hydrochloride. Hence, after the stipulations were made, the testimony of the Forensic Chemist was dispensed with.

Thereafter, trial on the merits ensued.

During the trial, the prosecution presented as their witnesses PO2 Rolly B. Concepcion and PO2 Ronnie L. Fabroa. On the

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[4] *Id.* at 18.

other hand, the defense presented as its witnesses accused-appellant, Normina Piang, and Abdul Pattah.

Version of the Prosecution

The facts, according to the prosecution, are as follows:

On August 24, 2005, at about 3 o'clock in the afternoon, a confidential informant arrived at the Taguig City Police Station and reported the illegal drug peddling activities of one alias "Mads" on Zamboanga Street, Maharlika Village, Taguig City. Accordingly, the information was relayed to their Chief P/Insp. Ronaldo Pamor who then conducted a briefing.

During the briefing, PO2 Rolly B. Concepcion was designated as the *poseur-buyer*. He was given a five hundred peso (PhP 500) bill, which he marked with his initials, "RBC," and photocopied for record purposes, to be used as the buy-bust money during the entrapment.

After making the necessary coordination with the Philippine Drug Enforcement Agency, the police team, which was composed of P/Insp. Pamor, PO2 Concepcion, PO3 Arnulfo Vicuña, PO3 Danilo Arago, PO3 Santiago Cordova, PO3 Felipe Metrillo, PO2 Ronnie L. Fabroa, PO2 Remegio Aguinaldo, PO3 Antonio Reyes, and SPO1 Angelito Galang, with the informant, proceeded to their target area. Upon arriving at the target area, the team members positioned themselves strategically to observe the transaction, while PO2 Concepcion and the informant proceeded to the location of the *shabu* peddler where the informant introduced PO2 Concepcion to alias "Mads." He told "Mads" that his friend wanted to buy PhP 500 worth of *shabu*. "Mads" then replied, "*Limang-daang piso lang ba? Meron pa ako dito*." He then pulled out two (2) plastic sachets containing white crystalline substance and gave the smaller packet to PO2 Concepcion. In turn, PO2 Concepcion gave the marked money to "Mads." Thereafter, "Mads" handed a plastic sachet containing *shabu* to PO2 Concepcion, who upon receiving the same, executed the pre-arranged signal, by removing his ballcap, signifying that the transaction was already consummated. This prompted his team to rush to their position to assist in the arrest.

After the apprehension of "Mads," who was later identified as accused-appellant, the buy-bust money was recovered from the possession of accused-appellant, as well as another plastic sachet containing *shabu*. PO2 Concepcion then marked the confiscated pieces of evidence for future identification purposes. After marking, accused-appellant was brought to the police station.

Upon arrival at the police station, PO2 Concepcion turned over the confiscated items to the police investigator for the preparation of the necessary request for examination at the crime laboratory. Subsequently, the specimens subject of the buy-bust operation were forwarded to the Philippine National Police (PNP) Crime Laboratory in Camp Crame, Quezon City. Police Senior Inspector Maridel C. Rodis, Forensic Chemical Officer conducted a qualitative examination on the said specimens. The specimens gave positive result to the tests for Methamphetamine Hydrochloride, a dangerous drug. He issued Chemistry Report No. D-959-05 dated August 25, 2005, which showed the following results:

SPECIMEN SUBMITTED:

Two (2) heat-sealed transparent plastic sachets each containing white crystalline substance having the following markings and net weights:

A (HBG-1 8-24-05) – 0.17 gram

B (HBG-2 8-24-05) – 0.23 gram

x x x x

PURPOSE OF LABORATORY EXAMINATION:

To determine the presence of any dangerous drugs. x x x

FINDINGS:

Qualitative examination conducted on specimen A and B gave POSITIVE result to the tests for Methylamphetamine Hydrochloride, a dangerous drug.

x x x x x x x x x

CONCLUSION:

Specimen A and B contain Methylamphetamine Hydrochloride, a dangerous drug.[5] x x x

Version of the Defense

On the other hand, accused-appellant interposed the defenses of denial and frame-up.

He recounted that on August 24, 2005, at around 2:30 in the afternoon, while he was on his way to a billiard hall, a white motor vehicle suddenly stopped in front of him on Zamboanga Street, Maharlika Village, Taguig City. Immediately, three armed men with guns went out of the vehicle and approached him. After they introduced themselves as policemen, they held him and forced him to get inside their vehicle. He was then taken to the SAID-SOTF office at the Taguig police station.

While at the police station, accused-appellant inquired as to the reason why he was being detained. The police officers did not respond, instead they told him to call his parents or relatives and to tell them that he was caught by the police. PO2 Concepcion extorted him and told him to produce PhP 20,000 or else they would file a case against him for violation of the dangerous drugs law.

After having failed to produce the amount that the police were asking, accused-appellant was taken to the PNP Crime Laboratory in Camp Crame for drug testing. He was then taken back to Taguig City and presented for inquest.

The testimony of accused-appellant was corroborated by the testimonies of Normina Piang and Abdul Pattah to the extent of the manner in which the arrest of the accused-appellant was made by the police.

Ruling of the Trial Court

After trial, the RTC convicted accused-appellant. The dispositive portion of the Joint Decision reads:

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[5] *Id.* at 76.

WHEREFORE, in view of the foregoing considerations, the Court finds accused HASANADDIN GUIARA y Bansil in *Criminal Case No. 14272-D-TG* for Violation of Section 5, 1st paragraph, Article II of Republic Act No. 9165, otherwise known as "The Comprehensive Drugs Act of 2002", ***GUILTY*** beyond reasonable doubt. Hence, accused Hasanaddin Guiara y Bansil is hereby sentenced to suffer LIFE IMPRISONMENT and ordered to pay a fine of FIVE HUNDRED THOUSAND PESOS (PhP500,000.00).

Moreover, accused HASANADDIN GUIARA y Bansil is also found ***GUILTY*** beyond reasonable doubt in *Criminal Case No. 14273-D-TG* for Violation of Section 11, 2nd paragraph, No. 3 Article II of Republic Act No. 9165, otherwise known as "The Comprehensive Drugs Act of 2002". And since the quantity of methylamphetamine hydrochloride (shabu) found in the possession of the accused is only .23 gram, accused Hasanaddin Guiara *y* Bansil is hereby sentenced to suffer imprisonment ranging from TWELVE (12) YEARS and ONE (1) DAY as minimum -to- FOURTEEN (14) YEARS and TWENTY ONE (21) DAYS as maximum. Accused Hasanaddin Guiara y Bansil is further penalized to pay a fine in the amount of THREE HUNDRED THOUSAND PESOS (PhP300,000.00).

Accordingly, the Jail Warden of Taguig city Jail where accused Hasanaddin Guiara y Bansil is presently detained is hereby ordered to forthwith commit the person of convicted Hasanaddin Guiara y Bansil to the New Bilibid Prisons (NBP), Bureau of Corrections in Muntinlupa City, Metro Manila.

Upon the other hand, the *shabu* contained in two (2) heat-sealed transparent plastic sachets with a total weight of 0.40 gram which are the subject matter of the above-captioned cases, are hereby ordered transmitted and/or submitted to the custody of the Philippine Drug Enforcement Agency (PDEA) subject and/or pursuant to existing Rules and Regulations promulgated thereto for its proper disposition.

Costs *de oficio*.

SO ORDERED.[6]

On appeal to the CA, accused-appellant disputed the lower court's decision finding him guilty beyond reasonable doubt of the crime charged. He raised the issue that the police officers

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[6] CA *rollo*, pp. 23-24.

failed to conduct a legitimate and valid buy-bust operation. He also questioned whether the chain of custody of the *shabu* allegedly recovered from him was properly established arguing that the police officers failed to follow the established rules governing custodial procedures in drug cases without any justification for doing so.

Ruling of the Appellate Court

On September 19, 2008, the CA affirmed the judgment of the lower court. It ruled that all the elements of the crimes charged were aptly established by the prosecution, including the chain of custody, to wit:

> The foregoing testimony indubitably shows that a transaction involving *shabu* between appellant and the *poseur-buyer* actually took place. This is important because in prosecutions involving illegal sale of dangerous drugs, what is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence. The *corpus delicti* in this case was sufficiently established with the presentation of the specimen 'HBG-1' in court and the Chemistry Report No. D-959-05 which clearly states that the contents thereof were *shabu*.
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> x x x x x x x x x
>
> In the case at bar, appellant was caught in actual possession of prohibited drugs without any showing that he was duly authorized by law to possess the same. Having been caught *in flagrante delicto*, there is, therefore a *prima facie* evidence of *animus possidendi* on appellant's part.
>
> x x x x x x x x x
>
> On this aspect, [w]e find that the chain of custody of the seized substance was not broken and that the prosecution was able to properly identify the same. The confiscated items were marked by PO2 Concepcion immediately after he arrested appellant. Moreover, said marked items were the same items which were submitted to the PNP Crime Laboratory for analysis and examination, and which was later on found to be positive for *shabu*.[7]

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[7] *Rollo*, pp. 17-21.

The CA also dismissed the allegation of frame-up saying that the defense failed to establish any ulterior motive on the part of the arresting officers in deviation from the legitimate performance of their duties.

The dispositive portion of the CA Decision reads:

> WHEREFORE, premises considered, the Joint Decision of the Regional Trial Court of Pasig City, Branch 267, in *Criminal Case Nos. 14272-D-TG & 14273-D-TG*, promulgated on July 18, 2007, finding accused-appellant guilty beyond reasonable doubt of violating Secs. 5 and 11, Art. II of Republic Act No. 9165 (Comprehensive Dangerous Drugs Act of 2002), as amended, is hereby **AFFIRMED** and **UPHELD.**
>
> With costs against the accused-appellant.
>
> SO ORDERED.[8]

Accused-appellant filed a timely notice of appeal of the CA Decision.

The Issue

WHETHER OR NOT THE EVIDENCE ADDUCED BY THE PROSECUTION IS SUFFICIENT TO ESTABLISH THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT

Our Ruling

We sustain accused-appellant's conviction.

Buy-Bust Operation was Legitimate and Valid

Accused-appellant attacks the credibility of the police officers who conducted the buy-bust operation. He argues that the contradictory testimonies of the police show that no buy-bust operation was actually carried out and that it was merely fabricated or concocted by the police officers to maliciously charge accused-appellant.

We disagree.

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[8] *Id.* at 24.

In our jurisprudence, a buy-bust operation is a recognized means of entrapment using such ways and means devised by peace officers for the purpose of trapping or capturing a lawbreaker.[9] It is legal and has been proved to be an effective method of apprehending drug peddlers, provided due regard to constitutional and legal safeguards is undertaken.[10]

In the prosecution of illegal sale of *shabu*, the essential elements have to be established, to wit: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and the payment therefor.[11] What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence. The delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction.

In the instant case, the prosecution was able to establish these elements beyond moral certainty. Accused-appellant sold and delivered the *shabu* for PhP 500 to PO2 Concepcion posing as buyer; the said drug was seized and identified as a prohibited drug and subsequently presented in evidence; there was actual exchange of the marked money and contraband; and finally, accused-appellant was fully aware that he was selling and delivering a prohibited drug. In fact, PO2 Concepcion testified thus:

PROSEC. SANTOS: What time did your team arrive at Maharlika?

A: 5:45 p.m., sir.

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[9] *People v. Rumeral*, G.R. No. 86320, August 5, 1991, 200 SCRA 194; *People v. Castiller*, G.R. No. 87783, August 6, 1990, 188 SCRA 376; *People v. Gatong-o*, G.R. No. 78698, December 29, 1988, 168 SCRA 716.

[10] *People v. Herrera*, G.R. No. 93728, August 21, 1995, 247 SCRA 433; *People v. Tadepa*, G.R. No. 100354, May 26, 1995, 244 SCRA 339.

[11] *People v. Gonzales*, G.R. No. 143805, April 11, 2002, 380 SCRA 689; *People v. Bongalon*, G.R. No. 125025, January 23, 2002, 374 SCRA 289; *People v. Lacap*, G.R. No. 139114, October 23, 2001, 368 SCRA 124; *People v. Tan*, G.R. No. 133001, December, 14, 2000, 348 SCRA 116; *People v. Zheng Bai Hui*, G.R. No. 127580, August 22, 2000, 338 SCRA 420.

PROSEC. SANTOS: In what particular place in Maharlika did your team go?

A: At Zamboanga Street, Maharlika Village, Taguig City.

PROSEC. SANTOS: Upon arrival thereat, tell us what[,] if any[,] did you observe or see?

A: Upon arrival, sir, we walk towards the basketball court together with the confidential informant and readily saw alias "mads", sir.

PROSEC. SANTOS: So, your confidential informant readily saw alias "mads"?

A: Yes, sir.

PROSEC. SANTOS: After that, when you[r] CI saw this "mads", what did you do?

A: He talked to alias "mads" and he introduced me as [a] buyer of shabu.

PROSEC. SANTOS: Will you please repeat to us if possible[,] in verbatim[,] what your informant told alias "mads" about you?

A: They talked, sir, and he told him that I'm his friend and I'm going to buy shabu worth five hundred pesos and alias "mads" uttered "limang-daang piso lang ba? Meron pa ko dito".

PROSEC. SANTOS: Now, after that exchange [of] words, "limang-daan piso lang ba? Meron pa ko dito", what happened, Officer?

A: He asked for the five hundred pesos and he brought out two (2) plastic sachets, he chooses [one] and [gives] me the plastic sachet with a lesser contents.

PROSEC. SANTOS: And how many sachets did this alias "mads" give you during that time?

A: Only one (1) plastic sachet, sir.

PROSEC. SANTOS: So, after that exchange of that money and commodity has already taken place, what if any did you do then?

A: I gave the pre-arrange and I saw the immediate approach of PO2 Ronnie Fabroa, sir.

PROSEC. SANTOS: And what happened?

A: We arrested alias "mads" and I ask for his personal circumstances and I told him to bring out the contents of his pockets.

PROSEC. SANTOS: Did this alias "mads" obey your instructions to bring out the contents of his pockets?

A: Yes, sir, and I recovered the buy-bust money and another plastic sachet containing suspected shabu.[12]

The foregoing testimony indubitably shows that a transaction involving *shabu* actually took place between accused-appellant and the poseur-buyer. What is more, the *corpus delicti* in this case was sufficiently established with the presentation of the specimen "HBG-1" in court and Chemistry Report No. D-959-05 which clearly states that the contents were *shabu*.

Likewise, the foregoing testimony also establishes that accused-appellant was indeed found in possession of illegal drugs aside from what he sold to the poseur-buyer, without showing that accused-appellant had any authority to possess them.

On the other hand, in the prosecution for illegal possession of dangerous drugs, the following elements must be proved with moral certainty: (1) that the accused is in possession of the object identified as a prohibited or regulatory drug; (2) that such possession is not authorized by law; and (3) that the accused freely and consciously possessed the said drug.[13]

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[12] TSN, May 24, 2006, pp. 12-14.

[13] *People v. Del Norte*, G.R. No. 149462, March 29, 2004, 426 SCRA 383.

It bears stressing that this crime is *mala prohibita*, and as such, criminal intent is not an essential element. Further, possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused. Constructive possession, on the other hand, exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found.[14]

Also, the prosecution must prove that the accused had *animus possidendi* or the intent to possess the drugs. In *U.S. v. Bandoc*,[15] the Court ruled that the finding of a dangerous drug in the house or within the premises of the house of the accused is *prima facie* evidence of knowledge or *animus possidendi* and is enough to convict in the absence of a satisfactory explanation.[16]

In the case at bar, accused-appellant was caught in actual possession of prohibited drugs without any showing that he was duly authorized by law to possess the same. Having been caught *in flagrante delicto*, there is, therefore, a *prima facie* evidence of *animus possidendi* on accused-appellant's part.

As a matter of fact, the trial court, in disposing the case, said:

> The substance of the prosecution's evidence is to the effect that accused Hasanaddin Guiara y Bansil was arrested by the police because of the existence of the *shabu* he sold to PO2 Rolly B. Concepcion as well as the recovery of the buy-bust money from his possession, and the presence of another plastic sachet containing *shabu* that was also recovered from his person.
>
> To emphasize, the prosecution witnesses in the person of PO2 Rolly B. Concepcion and PO2 Ronnie L. Fabroa positively identified accused Hasanaddin Guiara *y* Bansil as the person they apprehended

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[14] *People v. Tira*, G.R. No. 139615, May 28, 2004, 430 SCRA 134. See *State v. Staley*, 123 Wash. 2d 794, 872 P.2d 502 (1994).

[15] 23 Phil. 14 (1912).

[16] *Id.* at 15.

on August 24, 2005 at Zamboanga Street, Maharlika Village, Taguig City. [They] arrested accused Hasanaddin B. Guiara because their team was able to procure *shabu* from him during the buy-bust operation they purposely conducted against the aforementioned accused.

The buy-bust money recovered by the arresting officers from the possession of the accused Hasanaddin Guiara y Bansil as well as the *shabu* they were able to purchase from the accused sufficiently constitute as the very *corpus delicti* of the crime of 'Violation of Section 5, 1st paragraph, Article II of Republic Act No. 9165', and the other plastic sachet containing *shabu* that was recovered from the accused Guiara similarly constitute as the *corpus delicti* of the crime of 'Violation of Section 11, 2nd paragraph, No. 3, Article II of Republic Act No. 9165'.[17] x x x

Clearly, the trial court found that the testimonies of both PO2 Concepcion and PO2 Ronnie L. Fabroa established the existence of a valid and legitimate buy-bust operation and all the essential elements of the crimes charged against accused-appellant.

Furthermore, contrary to accused-appellant's contentions, the minor inconsistencies in the testimonies of the police officers are too insufficient or insubstantial to overturn the judgment of conviction against him, since those testimonies are consistent on material points. Time and time again, this Court has ruled that the witnesses' testimonies need only to corroborate one another on material details surrounding the actual commission of the crime.[18] Questions as to the exact street where the illegal sale was consummated do not in any way impair the credibility of the witnesses. To secure a reversal of the appealed judgment, such inconsistencies should pertain to that crucial moment when the accused was caught selling *shabu*, not to peripheral matters.[19]

It should be noted that in passing upon the credibility of witnesses, the appellate court generally yields to the judgment

[17] CA *rollo*, p. 21.

[18] *People v. Gonzales*, G.R. No. 143805, April 11, 2002, 380 SCRA 689; *People v. Uy*, G.R. No. 129019, August 16, 2000, 338 SCRA 232.

[19] *People v. Chen Tiz Chang*, G.R. Nos. 131872-73, February 17, 2000, 325 SCRA 776.

of the trial courts since they are in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial.[20] Thus, this Court finds no cogent reason to disturb the trial court's assessment of the credibility of the prosecution witnesses.

Chain of Custody Was Properly Established

In every prosecution for the illegal sale of prohibited drugs, the presentation of the drug, i.e., the *corpus delicti*, as evidence in court is material.[21] In fact, the existence of the dangerous drug is crucial to a judgment of conviction. It is, therefore, indispensable that the identity of the prohibited drug be established beyond doubt. Even more than this, what must also be established is the fact that the substance bought during the buy-bust operation is the same substance offered in court as exhibit. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.[22]

To ensure that the chain of custody is established, the Implementing Rules and Regulations of RA 9165 provide:

SECTION 21. ***Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.*** – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

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[20] *People v. Appegu*, G.R. No. 130657, April 1, 2002, 379 SCRA 703; *People v. Julian-Fernandez*, G.R. Nos. 143850-53, December 18, 2001, 372 SCRA 608.

[21] *People v. Doria*, G.R. No. 125299, January 22, 1999, 301 SCRA 668, 718; citing *People v. Zervoulakos*, G.R. No. 103975, February 23, 1995, 241 SCRA 625 and *People v. Rigodon*, G.R. No. 111888, November 8, 1994, 238 SCRA 27.

[22] *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632.

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; ***Provided,*** **that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures**; ***Provided, further,*** **that non-compliance with these requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items**.[23] x x x (Emphasis and underscoring supplied.)

A close reading of the law reveals that it allows certain exceptions. Thus, contrary to the assertions of accused-appellant, Section 21 need not be followed with pedantic rigor. Non-compliance with Sec. 21 does not render an accused's arrest illegal or the items seized/confiscated from him inadmissible.[24] What is essential is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused."[25]

In the instant case, there was substantial compliance with the law and the integrity of the drugs seized from accused-appellant was preserved. The chain of custody of the drugs subject matter of the case was shown not to have been broken. The factual milieu of the case reveals that the confiscated items were marked by PO2 Concepcion immediately after he arrested

[23] Implementing Rules and Regulations of RA 9165, Sec. 21.

[24] *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 448; citing *People v. Del Monte*, G.R. No. 179940, April 23, 2008, 552 SCRA 627.

[25] *Id.* at 448; citing *People v. Concepcion*, G.R. No. 178876, June 27, 2008, 556 SCRA 421.

accused-appellant. Then, the said marked items were submitted to the PNP Crime Laboratory for analysis and examination, and which was later on found to be positive for *shabu*. PO2 Concepcion testified thus:

PROSEC. SANTOS: Now, you were telling us that your immediate back up, you saw him rushing to your place, what[,] if any[,] did your immediate backup do when he was already near you?

A: We arrested him and I [asked] for his personal circumstances and marked the evidence I confiscated from him and the shabu I bought, sir.

PROSEC. SANTOS: You said you marked the shabu that you bought from him and the shabu that was confiscated from his possession, tell us, what kind of marking did you put on the plastic sachet containing the shabu that you bought from him during that time?

A: HBG-1, the subject of the sale and HBG-2 the evidence confiscated from his possession.

PROSEC. SANTOS: Now, after you have marked the shabu or these plastic sachets containing the shabu that you bought and confiscated from him, what happened?

A: My companions [approached] us and we brought alias "mads" to the police station.

x x x x

PROSEC. SANTOS: Now after you have brought him to your station, what happened to the shabu that you bought and confiscated from him during that time?

A: We [turned] it over to the investigator and after that he prepared a request for laboratory examination.

PROSEC. SANTOS: So there was already a request for laboratory examination?

A: Yes, sir.

PROSEC. SANTOS: Now, you said you [turned] it over to the investigator, who among you transported these specimen to the crime laboratory for examination?

A: I and the investigator, sir.

PROSEC. SANTOS: So, you said that together with the investigator, you brought the specimens to the crime lab?

A: Yes, sir.

PROSEC. SANTOS: What happened at the crime lab?

A: They received the request for laboratory examination.

PROSEC. SANTOS: The request, how about the specimens?

A: Together with the specimens, sir.

PROSEC. SANTOS: Do you have any proof to show that the crime lab received the request and the specimens?

A: There was, sir.

PROSEC. SANTOS: What is that?

A: The stamp received, sir.

PROSEC. SANTOS: If you will see that document again, will you be able to identify it?

A: Yes, sir.

PROSEC. SANTOS: I'm showing to you Exhibit 'B', this is a request for laboratory examination, will you please examine the same and tell us the proof of the receipt of the request and the specimens?

A: It was recorded by PO1 Calimag, sir.

PROSEC. SANTOS: For the record, your Honor, the witness is referring to Exhibit "B-2", your Honor. Now, Officer, if you will see again the shabu that you bought and confiscated from the accused, will you be able to identify it?

A: Yes, sir.

PROSEC. SANTOS: Why do you say that you could identify the same?

A: Because there are my initials, sir.

PROSEC. SANTOS: I have here with me two (2) plastic sachets containing shabu, will you please carefully examine the same and point us the plastic sachet containing the shabu that you bought and the plastic sachet containing the shabu that you confiscated from the possession of the accused during that time? For the record, your Honor, the two (2) plastic sachets are contained in [a] small plastic bag. I'm showing to you these two (2) plastic sachets, Officer, and please [examine] it and tell us, which one of them is the subject of the sale and the confiscated shabu?

A: This one is the subject of the sale, HBG-1.

INTERPRETER: Witness is referring to Exhibit 'D-1'.

A: And HBG-2, this is the plastic sachet confiscated from the accused.

INTERPRETER: Witness is referring to Exhibit 'D-2'.[26]

Moreover, this Court held in *Malillin v. People*[27] that the testimonies of all persons who handled the specimen are important to establish the chain of custody. Thus, the prosecution offered

[26] Records, pp. 125-129. TSN, May 24, 2006, pp. 14-18.

[27] *Supra* note 22, at 632-633: "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 claim 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."

the testimony of PO2 Concepcion, the police officer who first handled the dangerous drug. The testimony of Police Senior Inspector Maridel C. Rodis, who handled the dangerous drug after PO2 Concepcion, was, however, dispensed with after the stipulations made by both the prosecution and the defense.

Undoubtedly, therefore, there was an unbroken chain in the custody of the illicit drug purchased from accused-appellant.

Defenses of Denial and Frame-Up Are Weak

Denial, as a defense, is an inherently weak one[28] and has been viewed by this Court with disdain, for it can easily be concocted and is a very common line of defense in prosecutions arising from violations of RA 9165.[29] Similarly, the defense of frame-up is also easily fabricated and commonly used in buy-bust cases.[30]

In order for the Court to appreciate such defenses, there must be clear and convincing evidence to prove such defense because in the absence of any intent on the part of the police authorities to falsely impute such crime against accused-appellant, the presumption of regularity in the performance of duty stands.

In the case at bar, the defense failed to show any evidence of ill motive on the part of the police officers. Even accused-appellant himself declared that he did not know any of the police officers who arrested him. During his direct examination, he testified, thus:

Q : While walking along Zamboanga Street going to the billiard hall, what happened?
A : A white Adventure blocked my way, sir.

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[28] *People v. Dulay*, G.R. No. 150624, February 24, 2004, 423 SCRA 652, 662; citing *People v. Arlee*, G.R. No. 113518, January 25, 2000, 323 SCRA 201, 214.

[29] *People v. Barita*, G.R. No. 123541, February 8, 2000, 325 SCRA 22, 38.

[30] *People v. Tiu*, G.R. No. 144545, March 10, 2004, 425 SCRA 207, 219; *People v. Cercado*, G.R. No. 144494, July 26, 2002, 385 SCRA 277.

Q : And after this vehicle blocked your way, what happened, Mr. Witness?

A : Three men in civilian clothes alighted from the vehicle and approached me. They held me and forced me to board their vehicle.

Q : Do you know any of the three individuals who got out and tried to force you inside the vehicle?

A : None, sir.

ATTY. GARLITOS : Did they tell you the reason why you are being forcibly taken inside the vehicle?

A : No sir.

Q : Did they introduce themselves to you?

A : They introduced themselves as policemen, sir.[31]

Likewise, the trial court held:

The testimony of PO2 Rolly B. Concepcion that was corroborated by PO2 Ronnie L. Fabroa, who have not shown and displayed any ill motive to arrest the accused is sufficient enough to convict the accused of the crimes charged against him. x x x As law enforcers, their narration of the incident is worthy of belief and as such they are presumed to have performed their duties in a regular manner, in the absence of any evidence to the contrary. To stress x x x testimony of arresting officers, with no motive or reason to falsely impute a serious charge against the accused is credible.[32]

Thus, the categorical statements of the prosecution witnesses must prevail over the bare denials of the accused.[33] Denial, if unsubstantiated by clear and convincing evidence, is a negative and self-serving evidence which deserves no weight and cannot be given greater evidentiary value over the testimony of the credible witnesses who testify on affirmative matters.[34]

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[31] Records, pp. 167-168. TSN, November 15, 2006, pp. 4-5.

[32] CA *rollo*, pp. 21-22.

[33] *People v. Bello*, G.R. No. 92597, October 4, 1994, 237 SCRA 347, 352.

[34] *People v. Belga*, G.R. Nos. 94376-77, July 11, 1996, 258 SCRA 583, 594; *Abadilla v. Tabiliran, Jr.*, A.M. No. MTJ-92-716, October 25, 1995, 249 SCRA 447.

Therefore, this Court upholds the presumption of regularity in the performance of official duties and finds that the prosecution has discharged its burden of proving the guilt of accused-appellant beyond reasonable doubt.

WHEREFORE, the appeal is *DISMISSED*. The CA Decision in CA-G.R. CR HC No. 02958 finding accused-appellant Hasanaddin Guiara guilty of the crimes charged is *AFFIRMED*.

SO ORDERED.

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

THIRD DIVISION

[A.C. No. 7910. September 18, 2009]

WEN MING W CHEN, *a.k.a.* DOMINGO TAN, *complainant, vs.* **ATTY. F.D. NICOLAS B. PICHAY,** *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; DISBARMENT AND DISCIPLINE OF ATTORNEYS; AN ERROR OF JUDGMENT WITHOUT BAD FAITH DOES NOT WARRANT DISCIPLINE; CASE AT BAR.— x x x [W]e cannot subscribe to Maala's findings that the DOJ complaints were intentionally filed to harass herein complainant. As previously stated, there was no reason for respondent to harass herein complainant, considering that the search warrants were successfully implemented and the counterfeit items were seized from complainant's residence. By filing the DOJ complaints, respondent was only taking the next step which in his opinion was the most logical remedy in protecting the interests of Gucci and LV. Even assuming that

the cases filed were civil actions for damages, the same does not merit respondent's disbarment or suspension. There is nothing on record to show that the filing of the cases was done for the purpose of harassment. The conclusion that the filing of the DOJ complaints was to harass complainant has no basis. If at all, it was an error of judgment sans bad faith. It has been held that not all mistakes of members of the Bar justify the imposition of disciplinary actions. An attorney-at-law is not expected to know all the law. For an honest mistake or error, an attorney is not liable. The alleged errors are not of such nature which would warrant the imposition of the penalty of suspension for one year.

APPEARANCES OF COUNSEL

Pizarras and Associates Law Office for complainant.
Sycip Salazar Hernandez and Gatmaitan for respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

On March 1, 2006, a complaint was filed by Wen Ming W Chen, also known as Domingo Tan, before the Integrated Bar of the Philippines (IBP) against Atty. F.D. Nicolas B. Pichay for (1) violation of Rule 1.01 of the Code of Professional Responsibility when he allegedly extorted money from the complainant; (2) gross misconduct amounting to gross inexcusable ignorance of the law when he filed complaints for damages before the Department of Justice (DOJ); and (3) violation of Rule 10.3 of the Code of Professional Responsibility when he filed a motion before the Regional Trial Court seeking the inclusion of complainant's name in the hold departure list of the Bureau of Immigration and Deportation (BID).

Atty. Pichay is the legal counsel of American Security Systems International (ASSI), an intellectual property consultancy firm incorporated under Philippine laws. ASSI is engaged in investigating and prosecuting violations of the intellectual property rights of its clients which include Guccio Gucci S.P.A. (Gucci) and Louis Vuitton (LV).

In February 2006, Branch 24 of the Manila Regional Trial Court issued six warrants upon the application of the National Bureau of Investigation (NBI), which included the search of the residence of Caili Zhen, *a.k.a.* Susan Chua, and herein complainant, located at Unit 15, Juan Luna Garden, 988 Juan Luna Street, Tondo, Manila. The application was based on the investigation previously conducted by the NBI on alleged rampant selling of counterfeit Gucci and LV items. On February 6, 2006, said search warrants were implemented and thousands of counterfeit Gucci and LV items were seized from complainant's residence.

At this point, the parties' respective versions of the events diverge materially.

Complainant alleged that on February 14, 2006, respondent requested a meeting during which he demanded ₱500,000 from complainant in return for not filing criminal charges against the latter. When complainant rejected respondent's proposal, the latter filed two complaints for damages before the DOJ. According to complainant, respondent ought to know that the DOJ has no jurisdiction over civil actions for damages.

Finally, complainant alleged that respondent applied for the issuance of a hold departure order against complainant despite the absence of a criminal case filed with the Regional Trial Court.

On the other hand, respondent alleged that after the implementation on February 6, 2006 of the search warrant and the seizure of the counterfeit Gucci and LV items, he received a call from Atty. Jose Justo Yap, Chief of the NBI Intellectual Property Rights Division, informing him that David Uy who is allegedly a friend of herein complainant is requesting a meeting. As relayed by Uy, complainant wanted to propose a settlement regarding the seized items. After conferring with representatives of Gucci and LV, respondent agreed to meet complainant and Uy, provided Atty. Yap would sit in as observer.

On February 14, 2006, at around 2:00 p.m., respondent arrived at the coffee shop of the Diamond Hotel and was introduced

by Atty. Yap to his companion, Atty. Saldana, and David Uy. Another man was also seated in their table but he could no longer recall his name.

During the meeting, Uy informed respondent that he was attending the meeting on behalf of complainant as the latter could not communicate well in English or Filipino. When asked if Tan was present, Uy informed respondent that the former was not around.

Uy then proceeded to ask respondent about Gucci and LV's proposals but respondent replied that since the meeting was initiated by Uy, then it would be more appropriate if he would be the one to submit proposals. Uy inquired if Gucci and LV would require payment of damages, to which respondent answered that based on previous experience, the two entities would require payment of damages. Uy then asked how much damages would Gucci and LV demand, but respondent replied that he was only authorized to receive proposals but not to suggest provisions for settlement. He informed Uy though that based on previous settlements, the damages would range from ₱500,000 to ₱1Million, depending on the quantity of the counterfeits seized. Uy also inquired whether the confiscated items would be returned to complainant but respondent informed him that the return of the seized items was non-negotiable.

There being no settlement reached, respondent filed two complaints before the DOJ upon instructions of Gucci and LV. Also, in good faith and in order to protect the interests of his clients, respondent filed a motion before the Regional Trial Court of Manila for the inclusion of complainant's name in the hold departure order list.

Respondent vehemently denied extorting money from complainant in exchange for Gucci's and LV's desistance. He emphasized that the meeting was not of his own initiative but upon the request of complainant and David Uy. He also insisted that until now, he never met complainant personally. As regards the cases filed before the DOJ, respondent explained that Gucci and LV intended to have the civil aspect of the case instituted along with the criminal aspect. In fact, the DOJ complaints

both pray that damages be awarded "after trial on the merits" and "for such other equitable reliefs and remedies which the Honorable Court may deem just and equitable." According to respondent, these are indications of his awareness of the limited jurisdiction of the DOJ. Even conceding that he erred in this regard, respondent maintained that such does not warrant his disbarment.

As regards the filing of the motion for inclusion of complainant's name in the hold departure list, respondent argued that the filing was done to protect the interests of his client moreso because complainant had been previously blacklisted and ordered for deportation by the BID. Besides, it was up to the trial court whether to grant the same or not. Respondent asserted that it would be absurd and highly oppressive if a lawyer would be subjected to administrative sanctions every time he commits mistakes albeit unintentional and in good faith.

Complainant thereafter filed his Reply reiterating his earlier arguments, but did not rebut respondent's allegations that David Uy, Atty. Saldana and Atty. Yap were likewise present during the meeting. As regards the allegation that he was not even present during the meeting, complainant claimed that "whether respondent has or has no knowledge of the presence of complainant in the said meeting does not change the circumstances of the case."

Thereafter, the parties submitted their respective position papers. For the first time, complainant admitted that he met respondent on February 14, 2006 accompanied by David Uy; however, he did not make any comment on Atty. Yap's presence thereat; he insisted that respondent extorted money from him; that respondent abused the rules of procedure when he filed actions for damages before the DOJ and erroneously applied for the issuance of a hold departure order before the Regional Trial Court.

In his Position Paper, respondent attached the affidavit of Atty. Yap, Chief of the Intellectual Property Rights Division of the NBI, who admitted that he was present during the February

14, 2006 meeting. At the same time, he corroborated in all material respects respondent's narration of what actually transpired during the said meeting.

On January 29, 2008, Investigating Commissioner Rebecca Maala of the IBP submitted her Report with recommendation that respondent be suspended for a period of four months "from the practice of law and as a member of the Bar." According to Maala, respondent's filing of two cases before the DOJ seeking for an award of damages demonstrates ignorance of the law and illustrates his intention to harass complainant; that the erroneous application for the hold departure order likewise exemplifies his ignorance of the law considering that no Information has been filed in Court. As regards the alleged extortion, Maala found that "no sufficient evidence was presented by both parties as to which of them is telling the truth."

By Resolution No. XVIII-2008-122, the IBP Board of Governors adopted Maala's findings with modification that respondent's period of suspension be increased to one year.

Hence this petition.[1] Respondent submits that at the heart of this case is the rancor of a disgruntled opponent who has

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[1] Pursuant to Section 12 (b) &(c) of Rule 139-B of the Rules of Court, as well as Section 1, as amended & Section 2(e), Rule III of the Rules of Procedure of the Commission on Bar Discipline, Integrated Bar of the Philippines.

Sec. 12 (b) & (c) of the Rules of Court provide:

Sec. 12. - *View and decision by the Board of Governors.*

x x x x x x x x x

(b) If the Board, by the vote of majority of its total membership, determines that the respondent should be suspended from the practice of law or disbarred, it shall issue a resolution setting forth its findings and recommendations which, together with the whole record of the case, shall be forthwith transmitted to the Supreme Court for final action.

(c) If the respondent is exonerated by the Board or the disciplinary sanction imposed by it is less that suspension or disbarment (such as admonition, reprimand, or fine) it shall issue a decision exonerating respondent or imposing such sanction. The case shall be deemed terminated unless upon petition of the complainant or other interested

been investigated for and charged with unfair competition or selling counterfeit items bearing the trademarks of Gucci and LV; a resident alien who has been blacklisted and previously ordered for deportation by the BID.

We find merit in the petition.

We cannot agree with Maala's findings that there is no evidence on record to disprove complainant's allegation of extortion. Interestingly, Maala never mentioned in her Report the Affidavit of Atty. Justo Yap, Chief of the Intellectual Property Rights Division of the NBI which substantially corroborated respondent's narration of what actually transpired during the February 14, 2006 meeting. At any rate, even without Atty. Yap's affidavit, we find it hard to believe complainant's well-crafted tale of extortion.

First, we cannot lend credence to complainant's allegation that it was respondent who requested a meeting. The facts show that it was complainant who was in quandary after the implementation of the search warrants in his residence, where thousands of counterfeit items were seized. Complainant never denied ownership of the seized items or that he wanted them back. Clearly, he has more reason to seek the help of respondent and thus initiate the meeting.

Second, complainant failed to mention in his complaint and in his Reply to respondent's Answer the presence of David

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party filed with the Supreme Court within fifteen (15) days from notice of the Board's resolution, the Supreme Court orders otherwise.

Section 1, as amended by Bar Matter No. 1755 – Re: Rules of Procedure of the Commission on Bar Discipline, and Section 2(e), Rule III of the Rules of Procedure of the Commission on Bar Discipline, Integrated Bar of the Philippines, provide:

Section 1. Pleadings. The only pleadings allowed are verified complaint, verified answer and verified position papers.

Sec. 2. Prohibited Pleadings. – The following pleadings shall not be allowed, to wit:

x x x x x x x x x

e. Motion for Reconsideration.

Uy during the meeting. He only admitted for the first time in his Position Paper the presence of Uy during the February 14, 2006 meeting. We find this odd considering that it was Uy who acted as his representative. Also, he could have submitted Uy's affidavit to substantiate his claim but did not.

Third, notwithstanding the several opportunities given him, complainant did not rebut or categorically deny the presence of Atty. Yap during the meeting. He also failed to deny the allegations of Atty. Yap in his affidavit. Complainant's silence means admission that indeed Atty. Yap was present during said meeting.

Fourth, there was no allegation that respondent was acquainted to complainant or David Uy prior to the meeting. Thus, we find it highly inconceivable for respondent who allegedly met complainant for the first time, to immediately demand money from him, moreso in the presence of the NBI Chief of the Intellectual Property Rights Division.

Fifth, complainant did not bother to present Uy to corroborate his version of the event.

Finally, we find it hard to believe that respondent, as counsel for ASSI, could unilaterally decide to desist from filing criminal charges against herein complainant without consultation or prior approval of his clients, Gucci and LV.

Viewed against complainant's bare and self-serving allegation that respondent extorted money from him, the foregoing clearly prove that no such extortion took place.

Next, we cannot subscribe to Maala's findings that the DOJ complaints were intentionally filed to harass herein complainant. As previously stated, there was no reason for respondent to harass herein complainant, considering that the search warrants were successfully implemented and the counterfeit items were seized from complainant's residence. By filing the DOJ complaints, respondent was only taking the next step which in his opinion was the most logical remedy in protecting the interests of Gucci and LV.

Even assuming that the cases filed were civil actions for damages, the same does not merit respondent's disbarment or suspension. There is nothing on record to show that the filing of the cases was done for the purpose of harassment. The conclusion that the filing of the DOJ complaints was to harass complainant has no basis. If at all, it was an error of judgment sans bad faith. It has been held that not all mistakes of members of the Bar justify the imposition of disciplinary actions. An attorney-at-law is not expected to know all the law. For an honest mistake or error, an attorney is not liable.[2] The alleged errors are not of such nature which would warrant the imposition of the penalty of suspension for one year.

Records show that on April 14, 2008, the DOJ resolved in I.S. No. 2006-192 to charge respondents therein, including herein complainant with Unfair Competition under Section 168.3(a) in relation to Section 170 of R.A. 8293. The corresponding Information has been filed in the Regional Trial Court of Manila docketed as Criminal Case No. 08264729.

WHEREFORE, the instant complaint filed against Atty. F.D. Nicolas B. Pichay is *DISMISSED* for lack of merit.

SO ORDERED.

Chico-Nazario, Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

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[2] *Mendoza v. Mercado,* A.C. No. 1484, June 19, 1980, 98 SCRA 45, 47.

EN BANC

[A.M. No. MTJ-06-1623. September 18, 2009]
(Formerly OCA IPI No. 04-1635-MTJ])

PROSECUTOR ROMANA R. REYES, *complainant, vs.* **JUDGE JULIA A. REYES, Metropolitan Trial Court, Branch 69, Pasig City,** *respondent.*

[A.M. No. MTJ-06-1624. September 18, 2009]
(Formerly OCA IPI No. 04-1636-MTJ)

TIMOTEO A. MIGRIÑO and DOMINGO S. CRUZ, *complainants, vs.* **JUDGE JULIA A. REYES, Presiding Judge of the Metropolitan Trial Court in Pasig City, Branch 69,** *respondent.*

[A.M. No. MTJ-06-1625. September 18, 2009]
(Formerly OCA IPI No. 04-1630-MTJ)

ARMI M. FLORDELIZA, JULIET C. VILLAR and MA. CONCEPCION LUCERO, all of the Metropolitan Trial Court, Branch 69, Pasig City, *complainants, vs.* **JUDGE JULIA A. REYES, Presiding Judge Metropolitan Trial Court, Branch 69, Pasig City,** *respondent.*

[A.M. No. MTJ-06-1627. September 18, 2009]
(Formerly OCA IPI No. 04-1661-MTJ)

ANDREE K. LAGDAMEO, *complainant, vs.* **JUDGE JULIA A. REYES, Metropolitan Trial Court, Branch 69, Pasig City,** *respondent.*

[A.M. No. P-09-2693. September 18, 2009]
(Formerly OCA IPI No. 04-2048-P)

TIMOTEO A. MIGRIÑO, Branch Clerk of Court, Metropolitan Trial Court, Branch 69, Pasig City,

complainant, vs. **JUDGE JULIA A. REYES,** *respondent.*

[A.M. No. MTJ-06-1638. September 18, 2009]
(Formerly OCA IPI No. 05-1746-MTJ)

FLORENCIO SEBASTIAN, JR., *complainant, vs.* **HON. JULIA A. REYES, Presiding Judge, Metropolitan Trial Court, Pasig City, Branch 69,** *respondent.*

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW; MUST BE COUPLED WITH BAD FAITH, FRAUD, DISHONESTY OR CORRUPTION; BAD FAITH APPARENT IN CARELESS EXERCISE OF CONTEMPT POWER; CASE AT BAR.—** To constitute gross ignorance of the law or procedure, the subject decision, order or actuation of the judge in the performance of official duties should be contrary to existing law and jurisprudence. Most importantly, the judge must be moved by bad faith, fraud, dishonesty or corruption. Judge Reyes' bad faith is clearly apparent from the above-related facts and circumstances in the consolidated cases. This Court cannot shrug off her failure to exercise that degree of care and temperance required of a judge in the correct and prompt administration of justice, more so in these cases where her exercise of the power of contempt resulted in the detention and deprivation of liberty of Migriño, Andree, Sebastian and Alicia, and endangered the freedom of the other complainants.

2. **ID.; NEW CODE OF JUDICIAL CONDUCT; MANDATES THAT JUDGES MUST OBSERVE JUDICIAL DECORUM AT ALL TIMES; VIOLATED IN CASE AT BAR.—** Being a dispenser of justice, Judge Reyes, a lady judge at that, should have demonstrated finesse in her choice of words. In this case, the words used by her was hardly the kind of circumspect language expected of a magistrate. The use of vulgar and curt language does not befit the person of a judge who is viewed by the public as a person of wisdom and scruples. Remarks such as *"Ano kaya kung mag*-hearing *ako ng hubo't hubad tapos naka*-robe *lang, pwede kaya?"; "Hayaan mo, Farah, pag natikman ko*

na siya, ipapasa ko sa iyo, ha ha ha!"; and "*Alam mo na ang dami intriga dito; ni*report *ba naman na nakatira ako dito, ano kaya masama dun? Alam ko* staff *ko rin nagsumbong eh, PUTANG INA NILA, PUTANG INA TALAGA NILA!"* have no place in the judiciary. Those who don the judicial robe must observe judicial decorum which requires magistrates to be at *all times* temperate in their language, refraining from inflammatory or excessive rhetoric or from resorting to the language of vilification. Judge Reyes failed to heed this injunction. Her inability to control her emotions her act of walking out of the courtroom during hearings, and her shouting invectives at her staff and lawyers indicate her unfitness to sit on the bench. They betray her failure to exercise judicial temperament at all times, and maintain composure and equanimity. Judge Reyes' questioned actions reflect her lack of patience, an essential part of dispensing justice; and of courtesy, a mark of culture and good breeding. Her demonstrated belligerence and lack of self-restraint and civility have no place in the government service.

3. ID.; ID.; MANDATES THAT JUDGES MUST CONDUCT THEMSELVES IN A WAY THAT IS CONSISTENT WITH THE DIGNITY OF THE JUDICIAL OFFICE; VIOLATED IN CASE AT BAR.— Respecting Judge Reyes' frequent nocturnal "gimmicks," suffice it to state that her presence in the above-mentioned places impairs the respect due her, which in turn necessarily affects the image of the judiciary. A judge is a visible representation of the judiciary and, more often than not, the public cannot separate the judge from the judiciary. Moreover, her act of bringing some of her staff to her weekday "gimmicks," that causes them to be absent or late for work disrupts the speedy administration of service. She thus also failed to heed the mandate of the New Code of Judicial Conduct, *viz*: SECTION 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities. SEC. 2. As a subject of constant public scrutiny, judges must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, judges shall conduct themselves in a way that is consistent with the dignity of the judicial office.

4. ID.; JUDGES; EXPECTED TO DELIVER SPEEDY AND INEXPENSIVE JUSTICE; VIOLATED IN CASE AT BAR.— Judge Reyes' comments like "*Armie, ang hina mo naman sumingil sa ex-parte, buti pa si Leah. Dapat pag tinanong ka kung magkano, sabihin mo* at least ₱2,000.00" and "*Sino pa ba ibang pwedeng pagkakitaan dito? O ikaw Oswald,* sheriff" smack of commercialism. This is not expected of a judge, knowing that the aim of the judiciary is to deliver speedy and inexpensive justice.

5. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF THE ACCUSED; RIGHT TO DUE PROCESS; VIOLATED WHEN JUDGE FAILED TO PUT INTO WRITING HER JUDGMENT; EXPLAINED.— Respecting Judge Reyes' failure to put into writing her judgment, she having merely required the accused to read it from the computer screen *in camera* without the presence of counsel, she violated the Constitution. She could have simply printed and signed the decision. Offering to a party's counsel a diskette containing the decision when such counsel demands a written copy thereof is unheard of in the judiciary. A verbal judgment is, in contemplation of law, *in esse*, ineffective. If Judge Reyes was not yet prepared to promulgate the decision as it was not yet printed, she could have called the case later and have it printed first. A party should not be left in the dark on what issues to raise before the appellate court. It is a requirement of due process that the parties to a litigation be informed of how it was decided, with an explanation of the factual and legal reasons that led to the conclusions of the court. The court cannot simply say that judgment is rendered in favor of X and against Y and just leave it at that without any justification whatsoever for its action. The losing party is entitled to know why he lost, so he may appeal to a higher court, if permitted, should he believe that the decision should be reversed. A decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark as to how it was reached and is especially prejudicial to the losing party, who is unable to in point the possible errors of the court for review by a higher tribunal.

APPEARANCES OF COUNSEL

Atencia and Associates Law Offices for Timoteo A. Migriño and Domingo S. Cruz.

Carlos Z. Ambrosio for Judge Julia A. Reyes.

D E C I S I O N

***PER CURIAM*:**

Professionalism, respect for the rights of others, good manners and right conduct are expected of all judicial officers and employees, because the image of the judiciary is necessarily mirrored in their actions.[1]

Five administrative cases against Judge Julia A. Reyes (Judge Reyes), Presiding Judge of the Metropolitan Trial Court (MeTC) of Pasig City, Branch 69 and one administrative case which Judge Reyes filed against her Branch Clerk of Court Timoteo Migriño were consolidated and referred to Justice Romulo S. Quimbo, consultant of the Office of the Court Administrator (OCA), for investigation, report and recommendation, by this Court's Resolutions of September 28, 2005[2] and December 12, 2007.[3]

Earlier, the Court preventively suspended Judge Reyes "effective immediately and until further orders," by Resolution of December 14, 2004 in A.M. No. 04-12-335-MeTC, "*Re: Problem Besetting MeTC, Branch 69, Pasig City.*"

Records show that Judge Reyes' whereabouts have remained unknown. She was issued an Authority to Travel to the United States for the period from November 16 to 30, 2004. She appears to have left the country in December 2004 but there is no record

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[1] *In re: Partial Report on the Results of the Judicial Audit Conducted in the MTCC, Branch 1, Cebu City*, A.M. No. MTJ-05-1572, January 30, 2008, 543 SCRA 105.

[2] *Rollo*, A.M. No. P-09-2693, p. 47.

[3] *Rollo*, A.M. No. MTJ-06-1638, p. 113.

showing that she sought the Court's permission therefor or filed any leave of absence for December 2004.[4]

From an August 17, 2005 Certification from the Bureau of Immigration, the only entry in its database relative to the travel of Judge Reyes was her departure to an unknown destination through Korean Air Flight No. KE622 on December 28, 2004.[5]

Due to her absence, the Court declared Judge Reyes as having waived her right to answer or comment on the allegations against her and to adduce evidence.

I. A.M. NO. MTJ-06-1623 (*PROSECUTOR ROMANA R. REYES v. JUDGE JULIA A. REYES*)

By letter-complaint of October 26, 2004,[6] Assistant City Prosecutor Romana Reyes (Prosecutor Reyes), the public prosecutor assigned to Branch 69, charged Judge Reyes with grave abuse of authority and/or grave misconduct, the details of which follow:

On October 1, 2004 at past 6:00 p.m., Prosecutor Reyes accidentally met Judge Reyes at the office of Police Inspector Jovita V. Icuin (Inspector Icuin), the Chief of the Criminal Investigation Branch of the Pasig City Police Station. Judge Reyes was there to inquire about her Branch Clerk of Court Timoteo Migriño (Migriño)[7] who was earlier arrested for alleged violation of Presidential Decree No. 1602 or the Anti-Gambling Law. When Judge Reyes was informed that Migriño was already released on orders of Judge Jose Morallos, Judge Reyes asked Prosecutor Reyes to conduct an inquest against Migriño for malversation on the basis of a photocopy of an affidavit of a certain Ariel

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[4] *Rollo*, A.M. No. MTJ-06-1627, p. 22.

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

[6] *Rollo*, A.M. No. MTJ-06-1623, pp. 1-5.

[7] Also spelled Migrino.

Nuestro, purportedly executed and sworn to before Judge Reyes on September 15, 2004.[8]

Prosecutor Reyes informed Judge Reyes that the case of malversation may not necessarily fall under Section 5, Rule

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[8] September 24, 2004, not September 15, 2004, on the Consolidated Report of Romulo S. Quimbo. The "Sinumpaang Salaysay" was not attached to the *rollo* of A.M. No. MTJ-06- 1623, but can be found in the *rollo* of A.M. No. P-09-2693 on page 8. The "Sinumpaang Salaysay" reads:

x x x x x x x x x

Na noong petsa 5 ng Nobyembre, 2002, ako ay nagdeposito ng halagang sampung libong piso (₱10,000.00) sa Clerk of Court ng Branch 69 na si G. Timoteo M[i]griño.

Na magkakasundo na sana kami ng aking complainant na maayos ang kasong ito. Na halagang labinlimang libong piso (₱15,000.00) na lang sana ang kulang ko at ang halagang sampung libo ay naideposito ko na kay G. Timoteo M[i]griño kung kaya't limang libong piso na lang sana ang kulang ko. At ayon po sa dating huwes na si Judge Emma Young, kapag natapos na raw ang hearing ay saka raw makukuha ng complainant ang pera na aking dineposito kay G. Timoteo M[i]griño.

Nagkataon po na nagkasakit ang aking nanay sa "breast" at kinakailangang operahan kaya pansamantala ko pong binawi ang pera kay G. Timoteo M[i]griño noong mga bandang unang linggo ng Nobyembre, 2003, ngunit, nakiusap po siya na hulug hulugan daw po niya an[g] dineposito ko na halagang sampung libong piso (₱10,000.00) dahil nagastos niya raw ito. Sa una po ay binigay niya sa akin ang halagang limang libong piso (₱5,000.00) sa araw po ng Biyernes, araw po ng kanilang suweldo mga bandang akinse ng Nobyembre, 2003.

Ang sumunod na hulog niya ay nanay ko na po ang kumuha at ang halagang aming nakuha ay isang libong piso (₱1,000.00) noong bandang pangalawang linggo ng Disyembre, 2003. At ang huli po ay apat na libong piso (₱4,000.00) na nakuha naming ng bandang ikatlong linggo ng Disyembre, 2003. Ngunit ang halagang apat na libong piso (₱4,000.00) ay hindi ko rin po napakinabangan dahil sa ito ay hiniram ng Criminal Case In-charge ng Branch 69 na si Emma J. Raymundo.

x x x x x x x x x

113 of the Rules of Court[9] on Arrest without Warrant and thus cannot be the subject of inquest. Prosecutor Reyes explained that inquest could not be conducted as it was already past 6:00 p.m. whereas inquest proceedings could be conducted only until 6:00 p.m. unless authorized by the City Prosecutor. She added that since the crime was allegedly committed in 2003, Migriño would have to undergo preliminary investigation.[10] Prosecutor Reyes continued:

> When she heard that if inquest is conducted he will be released for preliminary investigation, she was fuming mad and directed me to conduct the preliminary investigation right then and there. It was really a surprise that a judge, a former prosecutor at the Rizal Provincial Prosecution Office, would direct me to conduct preliminary investigation at the station without giving the respondent (Mr. Migrino), at least the mandatory 10-day period within which to prepare for an intelligent answer/counter-affidavit.
>
> She insisted that Mr. Migrino be detained on the weekend and the police detained him. He was the subject of inquest on October 4, 2004, Monday and was ordered release for preliminary investigation by the City Prosecutor.
>
> x x x x x x x x x
>
> On October 5 and 6, 2004 I was not able to appear during the hearing of criminal cases in her sala but I made it a point to inform

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[9] 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 just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances 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 is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112.

[10] *Rollo*, A.M. No. MTJ-06-1623, pp. 1-2.

the Court by calling, through cellphone, one of her staff on the mornings of October 5 and 6. I was having severe headache and chest discomfort.

On October 11, 2004, I appeared at her sala to discharge my official function as public prosecutor assigned in her Court. Before the hearing started, she asked for my Medical Certificate and I explained that to be candid, I did not personally see a doctor but called [the doctor] to inform him of my condition and I was advised to rest and take my regular medication. Surprisingly, and to my embarrassment, **without any case for contempt filed and without being included in the day's calendar, she brought up the incident of October 1, 2004.** I explained to her that unless I had been authorized by the City Prosecutor or Chief-Inquest, I could not conduct inquest and inquest proceedings are being held in my position as **a Prosecutor under the Department of Justice**. She insisted that I was "there as the Prosecutor assigned to this Court and who is assigned at the same sala and you refused to conduct an inquest" forgetting her constitutional law that there is separation of powers among the three branches of government – legislative, executive and the judiciary.

She issued in open court an order requiring me to explain in writing within twenty-four (24) hours why I should not be cited for contempt for my refusal to conduct the inquest on October 1, 2004. I was all the more surprised when she gave the following sweeping statement in open court:

> **"Don't worry Prosec, I will not order your arrest today, because I know that the Pasig City Police Officer at the Pasig Police Station, because your house is located in front of the Pasig City Station, there is no one who will arrest you. I will still coordinate with the office of Gen. Aglipay to send me a police officer who will take custody of you pending contempt proceedings."**

The above-quoted statement, lifted from the transcript of stenographic notes of October 11, 2004 which is hereto attached as Annex "A" to "A-5", only shows that she has already a pre-judgment of the contempt charge and no explanation, even if submitted, will convince her to stop from declaring me with contempt.

I was hospitalized at the Medical City on the night of October 11, 2004 until October 14, 2004 due to chest pain and the Court was

informed of this fact. However[,] on October 13, 2004 when I was still confined, respondent issued an Order in open court stating:

> " x x x **without any valid explanation except for the word that she is presently confined at the hospital,** which is hearsay at the moment, in which case the same is just noted by the court. So for her failure to attend today's proceedings, despite notice, as well as for her failure to attend the proceedings yesterday as well as on October 5 and 6 without any valid explanation, and for her failure to give any explanation after the lapse of 24 hours from the time she was ordered to show cause why she should not be cited in contempt in open court last October 11, 2004, let warrant of arrest issue against the said Public Prosecutor. x x x **Bail is set at ₱1,000.00 per case in which there is a total of 119 cases delayed as a result of her absence since October 5 and October 6 as well as yesterday, October 12 and today, October 13. That means a bail of ₱119,000.00 as well as for two (2) counts of apparent contempt which consist of misbehavior of an officer of the Court in the performance of her official duties as well as for improper conduct tending directly or indirectly to impede, obstruct, and degrade the administration of justice to which bail is set at ₱25,000.00 each, to set an example to the public especially, since she is actually the Public Prosecutor presently assigned to this Court who committed such apparent act of indirect contempt.**"[11] (Emphasis in the original; underscoring supplied)

In another letter dated October 29, 2004,[12] Prosecutor Reyes informed the OCA that during the October 27, 2004 hearing for the issuance of a temporary restraining order in connection with her petition for *certiorari*, prohibition and *mandamus* docketed as SCA-2732 before the Regional Trial Court of Pasig City, four police officers served a warrant of arrest[13] purportedly issued on October 11, 2004 by Judge Reyes pertaining to Criminal Case Nos. 02164-02173, all entitled "*People v. Prosecutor Romana R. Reyes.*"

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

[12] *Id.* at 20-23.

[13] *Id.* at 24.

Verification from the Office of the Clerk of Court of the MeTC of Pasig City revealed, however, that there was no pending case against Prosecutor Reyes and that the particular case numbers pertained to cases against 10 individuals for offenses ranging from violation of *Batas Pambansa Bilang* 6 to Reckless Imprudence resulting in Damage to Property.[14]

Prosecutor Reyes' travails did not stop there, however. On October 27, 2004, at around 10:30 a.m., she received copies of two Orders of October 11 and 13, 2004 of Judge Reyes directing Prosecutor Reyes in the later Order, to

> x x x show cause within 24 hours from receipt of this Order why she should not be cited in contempt for her failure to submit her explanation to date and for her failure to attend the proceedings of this Court without any explanation.
>
> Considering the gravity of her responsibility as a Public Prosecutor, **let warrant issue for her arrest. Bail is set at ₱2,000.00 per case, or a total of TWO HUNDRED THIRTY-EIGHT THOUSAND PESOS ONLY (₱238,000.00).**[15] (Emphasis and capitalization in the original; underscoring supplied)

On December 13, 2004, Prosecutor Reyes wrote another letter[16] to the OCA charging Judge Reyes with Violation of the Code of Judicial Conduct, Knowingly Rendering an Unjust Judgment or Order, and Gross Ignorance of the Law or Procedure, as follows:

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[14] *Vide* Certification dated October 27, 2004 issued by Atty. Reynaldo V. Bautista, Clerk of Court IV, Office of the Clerk of Court, MeTC of Pasig City (*rollo*, A.M. No.MTJ-06-1623, p. 25.). Prosecutor Reyes described the warrant as "highly questionable" because (1) there were no Case Nos. 02164 up to 02173 which were filed on October 1, 2004, and said numbers pertain to criminal cases filed in the year 1985; (2) no case, civil or criminal, had been filed against her per Certification of the Office of the Clerk of Court, MeTC of Pasig City; (3) The minutes of the October 11, 2004 hearing do not contain any order calling for the issuance of the warrant of arrest; and (4) no Case Nos. 02164 to 02173 were scheduled on that date (*rollo*, p. 21).

[15] *Id.* at 22.

[16] *Id.* at 49-52.

On December 7, 2004, I arrived at the court room of MTC-Pasig City Branch 69 at about 8:30 a.m. to discharge my duties as the trial prosecutor of the Branch. The hearing has not started, the Presiding Judge was not there yet and the litigants have not been allowed to enter the courtroom. Hearing of cases on the Court does not promptly start at 8:30 a.m. but always been the hours of 9:00 a.m. to 9:30 a.m. as the Presiding Judge, Julia A. Reyes, usually arrive past 8:30 a.m. and when she arrive[s], she still order[s] the installation of her microphone and computer. In the meantime, litigants are not allowed to enter the courtroom but have to wait outside until they are allowed entry by the staff.

I reviewed the court records to know if the parties had been notified of the scheduled hearings. After the recitation of the Centennial Prayer and before the calendar of cases were called, Judge Julia Reyes called my attention and said that there was an Order of the Court for me to explain my failure to appear on October 5, 6, 12, 13, 18, 19, 20, 25, 26 and 27 and up to now, I have not submitted my explanation. I stood up and politely explained to her that the incidents she was referring to was the subject of the case I filed against her for *Certiorari*, Prohibition & *Mandamus*, before the Regional Trial Court – Pasig City and there was an Order issued, a copy of the Order had been served on her, that any and all warrant of arrest issued by her would not be enforced and/or implemented by the police agencies. She did not hear my reason and said that this is a new order and is not covered by the Order of Hon. Celso Lavina and she ordered that I be detained for one (1) day at the Pasig City Police Headquarters. I moved for a five (5) minute recess to make a call to my lawyer and to fix myself as I was having palpitation then. She denied my motion and ordered the start of the scheduled hearing of cases. She ordered the police officers to lock the door of the courtroom and not to let anyone go out or come in. This was the first time, during my assignment at her branch, that the door of the court was locked and nobody is allowed to leave the room or go inside. Though not convenient, as I was thinking of my health then, and the humiliation I felt in, again, being declared in contempt in open court and ordered detained, I continued to discharge my duties as a trial prosecutor of the branch until after the more than 40 cases had been called.

After the hearing of criminal cases and the case of contempt was called against Max Soliven *et al.*, I was informed by PO1 Sandy Galino, her security escort, that the police officers whom they have called

for assistance were already outside the courtoom and will be bringing me to the police station. They would not allow me to leave the place unless I go with them at the Headquarters. When I was about to be escorted out of the court room, my lawyer, Atty. Hans Santos and my sister, Asst. Pros. Paz Yson, came and was bringing with them a certified copy of the Order of Hon. Celso Lavina dated November 22, 2004 stating that any and all warrants issued by Judge Julia Reyes will not be enforced by any police agencies. My lawyer showed the Order to PO1 Sandy Galino and a certain PO1 Villarosa and they said that they are getting orders from Judge Julia Reyes. My lawyer then asked them if they have a written Order from the Court, or a Warrant for my Arrest or a Commitment Order but they replied in the negative. My lawyer further asked them if they are detaining me and they said no.

x x x x x x x x x

On or about 12:00 noon of December 9, 2004, I have just alighted from a car and she was standing infront of the building when she saw me. She immediately followed me and shouted "Arrest her! Arrest her! To the guards on duty at the entrance of the building. In the presence of so many persons in the lobby and in high pitch she made calls, through her cell phone, to several police officers telling them that she caught an escaped convict, a fugitive from justice and needs a battery of police officers to make the arrest. I warned her to be careful with her language considering that I did not escape but was released by Hon. Executive Judge Jose Morallos upon presentation of the Order dated November 22, 2004 of Hon. Judge Celso Lavina, RTC-Pasig Br. 71. She continued, in the presence of people in the Lobby who had converged to see what was causing the commotion, that I am an escaped convict and should be detained at the Pasig City Police Headquarters. She further said that it was Judge Jose Morallos who facilitated my escape last Tuesday, December 7, 2004.

x x x x x x x x x

While questioning the propriety of the order of Direct Contempt, considering that there is an order of November 22, 2004 stating that any and all warrants she issued will not be enforced or implemented, and that she has to issue the necessary Commitment Order for my detention, she slapped with me another seven (7) days of detention for Direct Contempt.

x x x x x x x x x

At about 6:00 p.m., the Sheriff of Regional Trial Court-Pasig City, Branch 71 arrived and served a Writ of Preliminary Prohibitory and Mandatory Injunction with an attached Order dated December 9, 2004 issued by Hon Judge Celso Lavina declaring my detention illegal but the Headquarters would not release me until after they have conferred with their superior officers. After conferring with the higher officials, I was finally released, over the written objection of Judge Julia Reyes in the copy of the Writ of Preliminary Prohibitory Mandatory Injunction and Court Order dated December 9, 2004, from the Pasig City Police Headquarters at about 7:00 p.m.

x x x[17] (Underscoring supplied)

II. A.M. NO. MTJ-06-1624 (*TIMOTEO A. MIGRIÑO AND DOMINGO S. CRUZ v. JUDGE JULIA A. REYES*)

By Complaint of October 16, 2004,[18] Migriño and Domingo S. Cruz charged Judge Reyes with Gross Ignorance of the Law, Oppression, Abuse of Authority, and Illegal Arrest and Detention, the details of which follow:

In July 2003, not long after her appointment as Presiding Judge, Judge Reyes began to exhibit "unexplained prejudice and hostility" towards Migriño. In fact, without any reason at all, Judge Reyes told Atty. Reynaldo Bautista, the MeTC Clerk of Court, that Migriño would be detailed at the Office of the Clerk of Court.[19]

On several occasions, the latest of which was on August 24, 2004, she barred Migriño from entering the court premises and the staff room. During lunch break on October 1, 2004, Migriño, Deputy Sheriff Joel K. Agliam and Dandy T. Liwag were arrested without warrant upon orders of Judge Reyes as they were allegedly caught *in flagrante delicto* playing "*tong-its.*" Police Officer 1 Sandy Galino (PO1 Galino), the security officer of Judge Reyes, arrested them and brought them to the

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[17] *Id.* at 49-51.

[18] *Rollo*, A.M. No. MTJ-06-1624, pp. 1-17.

[19] *Id.* at 2.

Pasig City Police Station where they were detained by virtue of the affidavits[20] of PO1 Galino and Judge Reyes.[21]

When an Order of Release[22] was issued by Judge Morallos after the three posted bail, Judge Reyes tried to prevent their release and insisted that she had a complaint against Migriño for malversation of public funds, infidelity in the custody of document and/or qualified theft and violation of the Anti-Graft and Corrupt Practices Act[23] allegedly committed in November 2002, and presented the Affidavit[24] of Ariel Nuestro and the Joint Affidavit[25] she executed with court employees Remedios Diaz (Remedios) and Alma Santiano.

Complainant Atty. Domingo S. Cruz (Atty. Cruz), counsel of Migriño, *et al*., intervened and demanded from Inspector Icuin the immediate release of his clients since there was already an Order of Release. Atty. Cruz and Prosecutor Reyes also explained to Judge Reyes that Migriño could not be detained on the basis of an alleged offense that occurred in 2002 yet, and that the alleged offense was not covered by the rule on warrantless arrest.[26] Migriño and Atty. Cruz continued:

15. …Judge [Reyes] insisted that complainant Migriño must not be released as the case is covered by the rule on warrantless arrest, the alleged offense of malversation having been allegedly discovered only recently by respondent Judge and staff, specifically at 4:30 P.M. of 01 October 2004. She then told Pros. Reyes to conduct an immediate Inquest/preliminary investigation.

16. It must be noted and emphasized that Nuestro subscribed and swore to his Sinumpaang Salaysay before respondent Judge way back on September 15, 2004, and it could not be said that the alleged offense

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

[21] *Id.* at 2.

[22] *Id.* at 20.

[23] *Id.* at 3.

[24] *Vide* note 7.

[25] *Rollo*, A.M. No. MTJ-06-1624, p. 22.

[26] *Id.* at 4.

of malversation of public funds was discovered only at 4:30 P.M. of October 01, 2004. **What is certain is that respondent Judge timed the alleged discovery to suit her purpose**…[27] (Emphasis and underscoring supplied)

Unable to convince Judge Reyes, Atty. Cruz left the office of Inspector Icuin, but returned shortly with a warning that he would hold them responsible for illegal arrest, arbitrary detention and abuse of authority unless Migriño was immediately released. Inspector Icuin finally ordered the release of Migriño.

Migriño stayed in jail from October 1, 2004, a Friday, until he was released on October 4, 2004. Judge Reyes was determined to send Migriño back to jail, however, by means of her contempt powers. In her October 4, 2004 Order, she stated:

> x x x Timoteo Migrino, Clerk of Court, Branch 69, Metropolitan Trial Court, Pasig City, is hereby ordered to show cause within twelve (12) hours from receipt of this order why he should not be cited in contempt for the following acts: (1) illegal gambling during office hours within the Court premises (2) infidelity in the custody of documents, (3) qualified theft and/or malversation for misappropriation of the amount of PHP10,000.00 entrusted to him for "deposit" by one Ariel Nuestro in a criminal case filed before this Court, (4) for violation of R.A. 3019 or the Anti-Graft and Corrupt Practices Act, among others. He is likewise ordered to show cause why he should not be cited in contempt for openly defying to submit to undersigned with respect to her complaint before the police authorities for the said crimes and/or offenses which defiance appear to be "improper conduct tending directly or indirectly, to impede, obstruct, or degrade the administration of justice" under Rule 71, Sec. 3(d) of the Rules of Court.
>
> Set the hearing of this case on October 8, 2004 at 2:30 P.M. and said respondent is directed to make his explanation on said date and time in open court with warning that should he fail to attend said hearing despite due notice a warrant for arrest shall be issued.
>
> The Process Server of this Court with the assistance of a Sheriff of the Metropolitan Trial Court of Pasig City, is directed to send a copy of this Order by personal service to respondent TIMOTEO

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[27] *Id.* at 4-5.

A. MIGRINO. Any officer of the law is likewise directed to assist said Process Server in the service of this Order to said respondent and is **specifically directed to take custody** of said respondent **should he refuse to receive this Order** and bring the same to this Court on October 8, 2004 at 2:00 P.M.[28] (Capitalization in the original; emphasis and underscoring supplied)

Significantly, while in the said Order of October 4, 2004, Judge Reyes found Atty. Cruz, Prosecutor Reyes, Inspector Icuin and PO3 Jimenez to have also committed contumacious acts, she singled out Migriño and directed him to explain why he should not be declared in contempt of court.

On October 8, 2004, Judge Reyes issued another Order[29] giving her process server, the MeTC sheriff and any officer of the law blanket authority to "take custody of [Migriño] should he refuse to receive this Order and bring him to this Court on October 11, 13, 14 & 15, 2004 at 2:00 P.M." Complainants further narrated:

41. To show that the respondent judge is using her contempt powers as a bludgeon to clobber her perceived enemies, instead of using the same as a necessary tool for preserving the integrity of the court, the respondent issued another Order dated October 14, 2004 ordering complainant Migriño to show cause why "he should not be cited for at least **2,330 acts of indirect contempt.**" Repeat, **two thousand three hundred thirty**. A copy of this Order is attached hereto as Annex "J".

The tyranny and despotism of the respondent judge is crystal clear in the following statements in said Order of October 14, 2004 (Annex "J"):

> Moreover, respondent committed at least 1,510 acts of indirect contempt with respect to the case of *People vs. Marcos Rivera* (Crim. Case No. 36172) which remains pending in the docket of this court to date, when he failed to act on or set for arraignment to date, the said case filed herein on April 29, 1998. Considering that a total of around 1,510 working days has lapsed from the said date of filing of said case up to the

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[28] *Id.* at 25-26.

[29] *Id.* at 33.

time that said respondent was barred from entering the court premises and the staff room on August 24, 2004, herein respondent is hereby ordered to show cause why he should not be cited for 1,510 acts of indirect contempt for all the working days that he failed to act on said case which appears to remain pending in the docket of this court to date."

Even assuming for purposes of argument that the failure of the respondent to set for arraignment the aforementioned case is contumacious, it was **one continuing act of omission**, not 1,510 separate acts of commission.[30] (Emphasis in the original; underscoring supplied)

III. A.M. NO. MTJ-06-1625 *(ARMI M. FLORDELIZA, JULIET C. VILLAR AND MA. CONCEPCION LUCERO v. JUDGE JULIA A. REYES)*

By verified[31] letter-complaint of March 11, 2004,[32] Judge Reyes was charged by complainants Armi M. Flordelisa *et al*. who are court employees at Branch 69, with the following acts: (1) residing in chambers; (2) borrowing money from staff; (3) instructing the stenographer to collect a minimum amount for *ex-parte* cases; (4) frequently bringing some of her staff to her nighttime gimmick; (5) unethical conduct; (6) conduct unbecoming a lady judge; (7) unfriendliness to litigants; (8) anti-public service; (9) inability to control emotions during hearing; (10) uttering invectives in front of staff and lawyers; (11) conducting staff meeting in an unsightly attire; and (12) gross inefficiency/laziness.

According to complainants, it was of public knowledge at the Pasig City Hall of Justice that Judge Reyes was residing in her chambers where a big *aparador* she had placed therein was eventually removed after three Supreme Court lawyers investigated the matter. She continued to sleep in the chambers after going out for evening "gimmicks" with some members of

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[30] *Id.* at 11-12.

[31] The complaint was verified by Juliet Villar and Ma. Concepcion A. Lucero on October 5, 2004 (*rollo*, A.M. No. MTJ-06-1625, p. 7.).

[32] *Id.* at 20-24.

her staff. She would usually be fetched by a certain Col. Miranda at 12 midnight and would return at 4:00 a.m.[33]

On two separate occasions in May 2003, Judge Reyes instructed complainant Juliet Villar (Juliet), branch legal researcher, to act as her co-maker in her loan applications. Within the same period, Judge Reyes, who allegedly needed money for an ID picture, borrowed ₱500 from Juliet who was forced to borrow the amount from Miguelito Limpo (Limpo), branch process server, which amount remained unpaid as of the filing of their complaint.[34] Judge Reyes also borrowed ₱20,000 from the "branch process server" who, however, did not execute any affidavit out of fear,[35] as relayed by Maria Concepcion Lucero (Maria Concepcion), branch in-charge of civil cases.[36] When Juliet informed Limpo of the plan of some staff members to petition for the removal of Judge Reyes, Limpo remarked, *"Bago nyo ipatanggal yun, hintayin nyo munang bayaran ako. Inutangan ako nyan ng* ₱20,000.00, *isinanla ko pa yung alahas para lang may maipautang sa kanya."*[37]

In her other affidavit,[38] Juliet claimed that in October 2003, Judge Reyes stepped out of the chambers and told complainant Armi Flordeliza (Armie),[39] Court Stenographer I, "*Armie, ang hina mo naman sumingil sa ex-parte, buti pa si Leah. Dapat pag tinanong ka kung magkano, sabihin mo* at least ₱2,000.00" Since then all *ex-parte* cases were assigned to court stenographer Leah Palaspas (Leah). Judge Reyes further remarked, "*Sino pa ba ibang pwedeng pagkakitaan dito? O ikaw Oswald,* sheriff." The sheriff only smiled.

Complainants stated that Judge Reyes habitually invited her staff to go with her in night "gimmicks" from 10:00 p.m. to

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[33] *Id.* at 20.

[34] Affidavit of Juliet C. Villar, *id.* at 26.

[35] *Id.* at 20-21.

[36] Affidavit of Maria Concepcion A. Lucero, *id.* at 27.

[37] Affidavit of Juliet C. Villar, *id.* at 28.

[38] *Id.* at 29.

[39] Also spelled "Armie."

4:00 a.m. the following day, without regard to working days. This practice hampered the delivery of judicial services, as the employees who went out with her the previous night either went on leave or arrived late the following day.[40]

On December 23, 2003, upon the persistent request of Judge Reyes, Juliet joined her and company in a comedy bar in Quezon City and stayed there until 4:00 a.m. of December 24, 2003. Judge Reyes brought her employees to their respective homes and then went to sleep in her chambers.[41]

Maria Concepcion, in another affidavit, stated that on January 2, 2004, Judge Reyes repeatedly invited the staff for lunch at her residence. While inside her house, Judge Reyes insistently gave her a glass of red wine, from which she pretended to take a sip, after which Judge Reyes consumed the remainder. Judge Reyes joined the rest of the staff at the sala where they consumed "*gin pomelo.*"[42]

Complainants depicted Judge Reyes as very unethical. One time, in the presence of a stranger, Judge Reyes uttered, "*Ano kaya kung mag-*hearing *ako ng hubo't hubad tapos naka-*robe *lang, pwede kaya?*"[43] At one time, Armie overheard Judge Reyes utter over the phone "*Hayaan mo, Farah, pag natikman ko na siya, ipapasa ko sa iyo, ha ha ha!*"[44]

Judge Reyes exhibited conduct unbecoming a judge for repeatedly inviting her staff and other court employees to join her to a drinking spree in the courtroom after office hours on three consecutive Fridays in February 2004. On March 2, 2004, Juliet arrived at the office at around 7:00 a.m. and saw Judge Reyes about to leave the office. Juliet was later informed by the guards and janitors that they saw an inebriated Judge Reyes

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[40] *Id.* at 21.

[41] *Id.* at 30.

[42] *Id.* at 31.

[43] *Id.* at 21. Annex "I" of the letter-complaint, which refers to an affidavit of a certain Jojo Marco, is not attached to the *rollo*.

[44] *Id.* at 22.

sleeping on the bench outside the office and found empty bottles of alcoholic drinks in the garbage can.[45]

Judge Reyes was also unfriendly to litigants. On January 23, 2004 during the inventory of cases, as a litigant attempted to verify the status of his case, Judge Reyes suddenly remarked, "*Nag-iimbentaryo kami, bawal mag-*verify. *Pag hindi ka umalis, iko-*contempt *kita!"* However, when an employee from another branch referred a couple to Judge Reyes for solemnization of marriage, Judge Reyes ordered the stopping of the inventory to give way to it. On March 4, 2004, Judge Reyes sent Leah a text message advising her to reset the hearings as she was unavailable, but upon being informed by Remedios that there was a marriage to be solemnized that day, Judge Reyes immediately arrived and even attended the wedding reception. In the months of December 2003 and January 2004, Judge Reyes was able to solemnize 16[46] and 14[47] marriages, respectively.

Complainants claimed that Judge Reyes was anti-public service. She instructed the staff to lock the door entrance to the room occupied by the staff and not to answer phone calls during court hearings even if there were employees in the staff room to attend to calls and queries.[48]

Judge Reyes lacked the ability to control her emotions during hearings. In one hearing, she failed to maintain her composure and stormed out of the room while Assistant City Prosecutor Fernando Dumpit was still talking.[49] Judge Reyes hurled invectives in front of the staff and lawyers. On October 2, 2003, while with a lawyer friend from the Office of the Solicitor General, she remarked in front of her staff, *"Alam mo na ang dami intriga dito; ni*report *ba naman na nakatira ako dito, ano kaya masama dun? Alam ko* staff *ko rin*

[45] *Id.* at 34.

[46] *Id.* at 36.

[47] *Id.* at 38.

[48] *Id.* at 23.

[49] *Ibid.* Annex "P" of the letter-complaint which refers to a transcript of stenographic notes is not attached to the *rollo*.

nagsumbong eh, PUTANG INA NILA, PUTANG INA TALAGA NILA!"[50]

Several times, Judge Reyes conducted staff meetings wearing T-shirt, slippers and faded "*maong*" folded a little below the knee, as if she was in her house. Oftentimes, she would wear the same clothes she wore the previous day, which showed that she resided in the chambers.[51]

Judge Reyes was lazy and inefficient, as she delegated decision-writing to Juliet. Since her appointment, she was able to promulgate only three or four decisions of her own writing.

Complainants thus requested the conduct of judicial audit to determine her work output.[52]

By Supplemental Complaint[53] of January 28, 2005, Armie added:

1. I was jailed on the strength of a warrant of arrest dated October 8, 2004 issued by Judge Julia A. Reyes in connection with the ten (10) counts of Indirect Contempt of Court charges which she had initiated against me for gross misconduct in office and insubordination;

2. The warrant of arrest of October 8, 2004 stemmed from my failure to attend the hearing of an Indirect Contempt of Court charge she filed against me, then about to be heard on October 8, 2004 at 2:30 o'clock in the afternoon where I am supposed to explain my side;

x x x x x x x x x

5. I was served with a copy of the show cause Order dated October 4, 2004 signed by Judge Reyes where I was informed that I committed acts constituting contempt of court as defined by Rule 71, Section 3 (a) and (b) of the 1997 Rules of Civil Procedure. On the basis of said show cause order,

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[50] *Id.* at 39.

[51] *Ibid.*

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

[53] *Id.* at 66-69.

I was also directed by Judge Reyes to appear on October 8, 2040 (sic) at 2:30 pm in court and to make further explanation with warning that should I fail to attend the hearing on said date despite due notice, a warrant for my arrest shall be issued by the court. Plain copy of the **Order dated October 4, 2004** is herewith attached and duly marked as Annex "**A**";

6. For fear of being arrested, I did not attend the hearing of October 8, 2004, despite notice, and hence, as earlier stated, a warrant of arrest dated October 8, 2004 was issued by Judge Reyes against me;

7. I was apprehended and confined at the Pasig City Police Station, at Pariancillo, Kapasigan, Pasig City to my great damage and prejudice and that of my family;

x x x x x x x x x

11. What is worse is that Judge Reyes fixed the bail for my temporary liberty at two hundred thousand (sic) (₱250,000.00) pesos which to my mind is quite excessive and violative of my constitutional right to bail;

x x x x x x x x x

14. Surprisingly, the warrant of arrest dated October 8, 2004 issued by Judge Reyes supposedly carries a docket number starting from Case Number 02154 up to and including 02163 which correspond to ten (10) counts of Indirect Contempt of Court. However, the said case numbers does not pertain to a person of Armie M. Flordeliza, nor with a case of Contempt of Court. Please see **Certification** signed by Atty. Reynaldo V. Bautista, Clerk of Court IV of the Office of the Clerk of Court, Metropolitan Trial Court, Pasig City – Annex "**B**", and a copy of the Warrant of Arrest dated October 8, 2004 – Annex "C";

x x x x x x x x x

21. Be it noted that in November 8, 2004, herein complainant filed a **Motion for Reduction of Bail** (Annex "D") from ₱250,000.00 to ₱50,000.00 in cash which was not acted upon; the reason why the herein complainant suffered for a longer period inside the detention cell;

22. On the same date (November 8, 2004), a **Subpoena** (Annex **"D-1"**) was served upon the herein complainant alleging that a hearing will be held in November 9, 10, 11 and 12. However, Judge Reyes never conduct[ed] the hearings in November 10, 11 and 12, 2004 which constitute an oppression and violation of human rights and grave misconduct;

23. In November 16, 2004, the 12th day the herein complainant was under the detention cell, was the day that I was released by posting a cash bond of ₱50,000.00 granted by Hon. Divina Gracia Lopez-Peliño, Pairing Judge of Branch 69, Metropolitan Trial Court, Pasig City as evidenced by **Official Receipt No. 21065408 (Annex "E"); Order dated November 16, 2004 (Annex "F"); and Order of Release (Annex "G")**[.] (Emphasis in the original; underscoring supplied)[54]

IV. A.M. NO. MTJ-06-1627 (*ANDREE K. LAGDAMEO v. JUDGE JULIA A. REYES*)

Complainant Andree Lagdameo (Andree) is the private complainant in Criminal Case No. 42030 for physical injuries pending before Branch 69. The case was originally set for promulgation of judgment on May 19, 2004 but was cancelled and repeatedly reset – to July 13, 2004, September 14, 2004 and November 23, 2004. Andree thus filed an Urgent Motion to Set Promulgation of Judgment,[55] furnishing the OCA a copy thereof, which step, Andree believed, "must have courted [the judge's] ire."

Judge Reyes moved the promulgation date from November 23, 2004 to October 20, 2004, only to reset the same to October 16, 2004. After eight postponements,[56] the judgment was finally promulgated on December 7, 2004 during which Criminal Case No. 42030 was first in the calendar of cases. Andree narrated:

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[54] *Id.* at 66-68.

[55] *Rollo*, A.M. No. MTJ-06-1627, pp. 7-8.

[56] *Id.* at 2.

However, before the start of court proceedings that day, there was a courtroom drama which unfolded before the surprised eyes of all persons then inside the courtroom. The Honorable Judge Julia A. Reyes ordered the arrest and detention of Prosecutor Romana Reyes. Judge Reyes ordered her personal close-in-security, whom I later came to know to be PO1 Sandy Galino, and PO2 Rolando Lavadia, to implement her order. I was seated on the first bench and I had a clear view and could clearly hear the proceedings. I heard Judge Reyes forbid Prosecutor Reyes from calling her lawyer under pain of another day of detention. I heard Judge Reyes further order PO1 Galino and PO2 Lavadia to close the doors of the courtroom and to prevent Prosecutor Reyes from leaving the same.

6. Judge Reyes then proceeded to order Leah Palaspas to promulgate judgment in my case, Criminal Case No. 42030. I was so shocked by the intemperate and derogatory words Judge Reyes used to describe my person in the aforesaid judgment, so much so that I left the courtroom immediately after the reading because I was so afraid that my face would mirror my emotions and I might be cited for contempt, especially after witnessing Judge Reyes' actions toward Prosecutor Romana Reyes. I am a mere layman and I must indeed look puny to the high and mighty Judge Julia A. Reyes.

   I was the **complainant**, not the accused, in the case and I cannot understand why the judge exhibited such kind of hostility against me in the judgment just promulgated.

7. I then waited for the termination of the court proceedings, to request for a copy of the decision since I wanted to consult a lawyer regarding Judge Reyes' affront on my person. I was barred from re-entering the court room by PO1 Sandy Galino, the armed personal security of Judge Reyes, pursuant to her orders.

x x x x x x x x x

9. I then went back to the courtroom of Branch 69, and found Leah Palaspas and Alma Santiano, both employees of MTC Branch 69, together with PO1 Galino and PO2 Lavadia, sitting in the now empty courtroom. I could hear the raised voice of Judge Reyes emanating from her chambers. I asked Leah Palaspas for a copy of the decision, and to examine and photocopy some documents in the file folder of Criminal Case

No. 42030. She told me to wait as the folder was in the chamber of Judge Reyes. I pointed to her that the decision in this case had just been promulgated this morning and logically, the folder would be in the pile in front of her. She insisted that it was in the judge's chambers, and for me to wait.

10. I then stood and waited for about another half hour in the corridor fronting the courtroom of Branch 69 after which, I again approached Leah Palaspas regarding my request. She called a co-employee, whom I later came to know to be Ms. Josefina Catacutan to accompany me to the photocopying machine. While waiting in line, I noticed that the decision promulgated that morning was not in the file. I pointed this out to Ms. Catacutan who proposed that we return to Ms. Palaspas and ask for a copy.

11. Accompanied by Ms. Catacutan, I returned to the Branch 69 courtroom where we found Ms. Palaspas standing in the corridor. I pointed out to her that a copy of the decision was not in the file. She protested that it was almost noontime and that I should just come back in the afternoon. I pointed out to her that it was still ten minutes to twelve and it was just a matter of handing a copy of the decision to Ms. Catacutan, and besides, I had been waiting since early morning.

12. Ms. Leah Palaspas turned her back on me and stepped into the courtroom where Judge Reyes was sitting with Alma Santino, PO1 Galino and PO2 Lavadia and declared "*Eto ho* Judge, *las doce na ho e*."

13. I followed Ms. Palaspas inside the courtroom but had hardly stepped inside when I stopped in my tracks as Judge Reyes shouted "Don't try me, come back at 1:00 PM, GET OUT! I was so shocked at the arrogance of Judge Reyes and the way she shouted at me that I turned on my heels and left.

14. On my way out – probably out of sheer frustration at the way the judge treats people who happened to have business in her court – I commented to Ms. Palaspas who was standing beside me: "*O baka ma* contempt *pa ako*" and continued walking away.

15. Either Ms. Palaspas told the respondent judge about my comment, or the judge herself overheard me, when I reached the area in front of the door of the staff room PO1 Sandy Galino suddenly grabbed my arm and prevented me from moving. When

I turned my head, I saw Judge Julia Reyes in the lobby fronting her courtroom wagging her finger in the air and shouting, '*HULIHIN NIYO YAN, IKULONG NINYO YAN!*" – thus letting loose her armed gorilla on a hapless victim like me.

16. I instinctively struggled to free myself from the grip of PO1 Sandy Galino, all the while asking Judge Julia Reyes, "*Bakit, hindi naman kita sinagot ah*" who all the while was viewing the scene with a smirk of satisfaction on her face.

17. I was able to momentarily free my hand and was able to call a lawyer friend on my mobile phone who then advised me to demand for any sort of written order to justify my arrest and detention. I was also advised to demand that the arresting officers identify themselves and the unit to which they belong. PO1 Galino replied "*A wala, basta utos ni* Judge *ito doon ka na magpaliwanag at magtanong*!"

18. A uniformed police officer carrying an armalite rifle, whose name I was not able to get, then arrived. PO1 Sandy Galino addressed the latter: "*Pare, pag pumalag, barilin mo*." I never imagined that I – a simply citizen without any clout; a weak, educated, woman who merely sought the assistance of our courts to redress a perceived grievance – would be treated like a common criminal in this fair Republic of ours!

I then continued to demand a written order regarding my arrest but Galino repeated, "*Hindi na raw kailangan, sabe ni* Judge" and proceeded to forcibly bring me out of the Justice Hall. When we reached the lobby I tried to go up to the office of Executive Judge Morallos but PO1 Galino pulled me down the stairs.

x x x x x x x x x

The fact of my arrest was then entered into the Blotter of the Pasig Station on Page 0393, Entry No. 1781, Date: Dec. 7, 2004 Time 12:30 PM which reads as follows:

"Brought-in

PO1 Sandy Galino y Abuyog, 33 years old, married of this station brought in one Andree Lagdameo y Kirkwood, legal age, widow, res of 237 Marne St. San Juan Metro Mla. for direct contempt of court issued by

Hon. Judge Julia Reyes of MTC B69 Pasig City. Order will follow."

(Attached as Annex "B")

x x x x x x x x x

20. At 5:00 PM of December 7, 2004, Atty. Atencia again demanded my release from detention since it was now the close of office hours and Judge Julia Reyes had not issued any commitment order. Col. Galvan again refused and insisted that he was following the orders of Judge Julia Reyes.

x x x x x x x x x

22. I was finally released from detention after 24 hours. My release is entered on Page 0397 of the Pasig Police Blotter under Entry No. 1799, Date: December 08, 2004, Time: 12:30PM which reads as follows:

"Released

In relation to Entry 1781 dated Dec. 7, 2004 one Andree Lagdameo was released from the custody of this station physically and financially unmolested as attested by her signature below.

Note: Detained w/o written commitment order and released w/o written released order.

(signature)
Andree Lagdameo"

(Attached as Annex "C")

x x x[57] (Emphasis, capitalization and italics in the original; underscoring supplied)

Andree supplemented[58] her December 22, 2004 Complaint[59] to allege that she finally received a copy of the Decision[60] in

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

[58] *Id.* at 12-14.

[59] *Id.* at 1-6. The Complaint was verified and filed on December 22, 2004. The caption in the supplement erroneously dated it as December 21, 2004.

[60] *Id.* at 15-17.

Criminal Case No. 42030 on December 16, 2004, several days after she was illegally detained, and only after she wrote a letter to Judge Reyes, furnishing then Chief Justice Hilario G. Davide, Jr. and the OCA a copy thereof.[61]

When she read the Decision, she was shocked on noting that Judge Reyes used very insulting language in referring to her as the therein private complainant. Judge Reyes wrote that "[j]udging from the demeanor and character of the accused who appears to be a quiet man with a pleasant disposition and that of the private complainant who looks loud, rash and even vulgar in language in her dealings with the court personnel herein, this Court finds the version of the accused to be more credible."[62] Judge Reyes made a misrepresentation for she merely relied on the records in writing the decision as she never had the chance to hear the testimonies of the parties since Judge Alex Quiroz was the presiding judge when the case was tried.

V. A.M. NO. P-09-2693 (*TIMOTEO A. MIGRIÑO v. JUDGE JULIA A. REYES*)

In an undated letter[63] received by the OCA on October 4, 2004, Judge Reyes recommended that Migriño be separated from the service on charges of illegal gambling during office hours, qualified theft and/or infidelity in the custody of documents, and violation of the Anti-Graft and Corrupt Practices Act.

Upon the recommendation of the OCA, it appearing that this case emanated from the same incident of illegal gambling obtaining in A.M. No. MTJ-06-1624, the Court, by Resolution of September 28, 2005,[64] ordered the consolidation of the two cases. Hence, the factual background of this case is reflected in the earlier discussed A.M. No. MTJ-06-1624.

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[61] *Id.* at 12.

[62] *Id.* at 17.

[63] *Rollo*, A.M. No. P-09-2693, p. 1.

[64] *Id.* at 47.

VI. A.M. NO. MTJ-06-1638 (*FLORENCIO SEBASTIAN, JR. v. HON. JULIA A. REYES*)

By verified Complaint-Affidavit of April 22, 2005,[65] complainant Florencio Sebastian, Jr. (Sebastian) charged Judge Reyes with Grave Misconduct, Gross Ignorance of the Law, Incompetence and Inefficiency arising from the procedings in Criminal Case No. 19110, *"People v. Florencio Sebastian, Jr., Alicia Ty Sebastian and Justo Uy,"* for falsification of public document pending before Branch 69.

On February 18, 2004 at around 5:00 p.m., police officers arrived at Sebastian's residence and served on him and his wife Alicia (the couple) warrants of arrest[66] issued by Judge Reyes on October 28, 2003. After an overnight detention at Camp Caringal in Quezon City, the couple was presented to the branch clerk of court, and learned that the warrants of arrest were issued due to their failure to appear in court on October 28, 2003 as directed in an August 15, 2003 Order[67] which was not received by them or their counsel, Atty. Jaime Vibar.

A perusal of the August 15, 2003 Order reveals that the same suffers from grave infirmity. It reads:

> The **unsigned** Order dated May 9, 2000 is reiterated as follows:
>
> "Accused through counsel, having been [*sic*] filed a Manifestation and Request for Remarking and Formal Offer of Exhibits." The Prosecution is given five (5) days from receipt thereof within which to make its comment thereto."
>
> Set the same for hearing on October 28, 2003, at 8:130 [*sic*] A.M.
>
> Send copies of this Order to the parties. (Emphasis supplied)

The prior Order being unsigned, there was no factual or legal reason for Judge Reyes to reiterate the same and set the case

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[65] *Rollo*, A.M. No. MTJ-06-1638, pp. 1-6.

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

[67] *Id.* at 14.

for further hearing, notably since the case had long been submitted for decision.

Judge Reyes did not lift the warrant of arrest, even after Atty. Vibar filed, pursuant to the October 28, 2003 Order, a Motion for Reconsideration, Compliance and Entry of Appearance.[68]

At the promulgation of judgment on September 7, 2004, the branch clerk of court read only the decretal portion of the decision convicting the couple. Atty. Vibar requested a copy of the decision but Judge Reyes replied that the decision had not yet been printed but she could give him a diskette which Atty. Vibar refused. After declaring that she would later re-promulgate the judgment and that the couple should stay in court, Judge Reyes started calling out the other cases. Not wanting to be part of the irregularity and due to other pressing commitments, Atty. Vibar left. At around 11:40 a.m. inside the chambers, Judge Reyes read the judgment from a computer screen without giving the couple a written copy[69] or computer print-out.

The couple raised on appeal that the trial court failed to comply with the mandate of Rule 120[70] of the Rules of Court

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

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

[70] Sec. 1. *Judgment; definition and form.* – Judgment is the adjudication by the court that the accused is guilty or not guilty of the offense charged and the imposition on him of the proper penalty and civil liability, if any. It must be written in the official language, personally and directly prepared by the judge and signed by him and shall contain clearly and distinctly a statement of the facts and the law upon which it it is based.

Sec. 2. *Contents of the judgment.* – If the judgment is of conviction, it shall state (1) the legal qualification of the offense constituted by the acts committed by the accused and the aggravating or mitigating circumstances which attended its commission; (2) the participation of the accused in the offense, whether as principal, accomplice, or accessory after the fact; (3) the penalty imposed upon the accused; and (4) the civil liability or damages caused by his wrongful act or omission to be recovered from the accused by the offended party, if there is any, unless the enforcement of the civil liability by a separate civil action has been reserved or waived.

and Section 14[71] of Article VIII of the Constitution requiring that the decision must be written and signed by the judge with a clear statement of the facts and the law on which the decision is based.[72]

THE EVALUATION OF JUSTICE ROMULO S. QUIMBO

By Consolidated Report of June 27, 2004,[73] Retired Justice Romulo S. Quimbo evaluated the first five administrative cases, *viz*:

> Migrino presented a certificate that there is no case against him pending with the Metropolitan Trial Court of Pasig City. He admits, however, that a case for illegal gambling was filed against him. That the same may have been dismissed does not totally exempt him from administrative liability considering that gambling within the court's premises is proscribed by Administrative Circular No. 1-99[74] issued by the Supreme Court. His act of playing "*tong-its*" with two others within the court premises makes him punishable under said circular.
>
> x x x x x x x x x
>
> The acts which appear to have been committed by respondent Judge against Ass't. City Prosecutor R[o]m[a]na A. Reyes and Andree K. Lagdameo were clearly unjustified and unwarranted. The respondent Judge's orders to declare them in contempt and issuing warrants

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In case the judgment is of acquittal, it shall state whether the evidence of the prosecution absolutely failed to prove the guilt of the accused or merely failed to prove his guilt beyond reasonable doubt in either case, the judgment shall determine if the act or omission from which the civil liability might arise did not exist.

[71] Sec. 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor.

[72] Notice of Appeal, *rollo*, A.M. No. MTJ-06-1638, pp. 18-20.

[73] *Rollo*, A.M. No. MTJ-06-1627, pp. 64-84.

[74] ENHANCING THE DIGNITY OF COURTS AS TEMPLES OF JUSTICE AND PROMOTING RESPECT FOR THEIR OFFICIALS AND EMPLOYEES.

for their arrest betray **an abysmal lack of knowledge of the rules governing contempt.** Her fixing an atrociously excessive bail is a clear manifestation that respondent Judge wanted to exhibit her authority and fixing such a ridiculous amount of bail was designed to prevent the complainants from obtaining temporary release. Her obvious ignorance of the rule governing contempt and the jurisprudence that mandates that it be exercised as a protective not a vindictive power makes us wonder how, despite the rigorous screening of candidates by the Judicial and Bar Council (JBC), a "lemon" such as the respondent Judge managed to be nominated for appointment to such exalted position. How she was able to elude the psychiatric and psychological tests under which she went is remarkable for it resulted in the appointment of one grossly ignorant of the law and more importantly devoid of the temperament required of a judicial arbiter.

In the two cases mentioned above (A.M. No. MTJ-06-1623 and A.M. No. 06-1627), the acts of respondent Judge reveal **a flaw in her psychological makeup** that disqualifies her from holding the position of Judge. She appears to be unaware of the jurisprudence that has given meaning to the power of contempt.

x x x x x x x x x

The Order dated 13 October 2004 (Exhibit G, *Rollo*, p. 27, A.M. MTJ-06-1623), betrays not only her gross ignorance as regards the Rule on Contempt of Court, but it also shows her capricious arrogance and despotic nature, the antithesis of an ideal arbiter. It betrays a flaw in her psychological makeup that disqualifies her from presiding a court and dispensing justice.

Respondent inofficiously demanded that complainant conduct an inquest at the police station for the purpose of preventing the release of Timoteo Migrino who had earlier been arrested while allegedly engaged in illegal gambling and had posted the required bail. Notwithstanding the explanation of complainant Reyes that she was not authorized to conduct said inquest outside her office and the crime of malversation allegedly committed two years earlier could not be the proper subject of an inquest, respondent could not be denied. She demanded and the police acquiesced to hold Migrino in jail over the weekend.

The prosecution of Prosecutor Reyes was not based on any law or rule but was purely the whim and caprice of the respondent. After respondent Judge has held Prosecutor Reyes in contempt and ordered her arrest (Exhibit ["F"], A[.]M[.] No. MTJ-06-1623, p. 24.) she

required an unconscionable amount of Php236,000.00 as bail knowing that it was practically impossible to meet.

Complainant R[o]m[a]na R. Reyes charges respondent Judge with falsification of public documents. It appears that respondent Judge issued a warrant for the arrest of complainant. Since no case had been filed against complainant, respondent Judge conveniently issued the warrant under Criminal Cases Nos. 02164 to 02173 (10 counts) which pertained to cases filed against various persons during the year 1985. The Order of 13 October 2004 (Exhibit ["G"], *Rollo*, A.M. MTJ-06-1623) conveniently omitted to show any case numbers.

The travails suffered by complainant Lagdameo likewise prove that respondent Judge was not guided by law or rule but rather by whim and caprice. The record does not show any reason why respondent Judge could order the arrest of complainant. Assuming that she had uttered the words "I am going because I may be declared in contempt," this could not be the basis for declaring her in direct contempt because the court was no longer in session and she ma[d]e the remark outside the courtroom. It was not "misbehavior in the presence of or so near a court as to obstruct or interrupt the proceedings before the same." Neither could it be considered disrespect towards the court. It is probably for this reason that respondent Judge did not issue any commitment order but orally commanded the police to arrest Lagdameo. As can be seen from excerpts from the police blotter (*Rollo*, A.M. No. MTJ-06-1627, p. 9) Lagdameo was "brought in" on December 7, 2004 at 12:30 P.M. and was "released" on December 8, 2004, at 11[:]50 AM (ibid. p. 10). The same blotter states: ***"Note: Detained w/o written commitment order & released w/o written released."*** [*sic*] (Emphasis and italics in the Report)

Respondent's verbal order directed to members of the PNP to arrest and jail Lagdameo who languished in said jail for a day is clearly a violation of Article 124 of the Revised Penal Code and respondent Judge is a principal by inducement.

The complaint filed by three personnel of Br. 69 charges respondent Judge with conduct unbecoming a judge which could be considered pecadillos and are covered by circulars and other issuances of the Court and are punished by either fines or suspensions or admonitions.

Considering respondent Judge's acts complained of by complainants R[o]mana R. Reyes and Andree K. Lagdameo, together with the acts

committed by respondent Judge and subject of other administrative cases assigned to the undersigned, there can only be one conclusion that respondent Judge is suffering from some undiagnosed mental aberration that makes her totally unfit to hold the position she now occupies. **Not only was her gross ignorance established but her resort to falsification was also proved.**

The records show that respondent Judge was suspended and has abandoned her office of presiding Judge. She did this probably because she felt guilty and could not find any justification for her actions so she fled.

In **A.M. No. MTJ-06-1624,** the harassment and ill treatment of complainant Migrino was clearly established. The fact that respondent Judge followed Migrino to the police station and demanded that he be kept in custody despite the Order of Release issued by Judge Morallos upon Migrino's filing his bail both clearly shows her to be whimsical and capricious. The continued detention of Migrino after he was ordered released under bond is likewise arbitrary and in violation of Article 124 of the Revised Penal Code and respondent Judge is a principal by inducement.

In **OCA-IPI No. 04-2048-P**, the record reveals that the respondent Migrino was indicted for illegal gambling having been allegedly caught ***en flagrante*** by complainant Judge Julia A. Reyes. The record also reveals that a certificate was issued by the Clerk of Court, Metropolitan Trial Court of Pasig City that there is no pending case against Migrino. Even if we assume that the illegal gambling case which was filed against Migrino and for which he had to file his bond was dismissed, it still remains that Migrino was seen gambling within the court premises, an act which is proscribed by Administrative Circular No. 1-99[75] earlier mentioned.[76] (Emphasis partly in the original and partly supplied; italics in the original; underscoring supplied)

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[75] Administrative Circular No. 1-99, issued by then Chief Justice Hilario G. Davide, Jr. on January 15, 1999, provides:

As courts are temples of justice, their dignity and sanctity must, at all times, be preserved and enhanced. In inspiring public respect for the justice system, court officials and employees must:

x x x x x x x x x

7. Never permit the following to be done within the premises of the court: gambling, drinking of alcoholic beverages or any other form of improper or unbecoming conduct.

[76] *Rollo*, A.M. No. MTJ-06-1627, pp. 79-84.

Justice Quimbo thereupon RECOMMENDED that Judge Reyes be dismissed from the service with forfeiture of all her retirement benefits except accrued leave credits, if any, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations and that Migriño be fined in an amount equivalent to his one month salary.

Meanwhile, in A.M. No. MTJ-06-1638, Justice Quimbo, by Report of September 25, 2006,[77] reiterated his recommendation after coming up with the following evaluation:

> The complaint mentions acts of respondent Judge which are similar, if not identical to those complained of in the following cases, to wit: A.M. No. MTJ-06-1623 (*Prosecutor Romana R. Reyes vs. Judge Julia A. Reyes*); A.M. No. MTJ-06-1624 (*Timeteo A. Migrino, et al. vs. Judge Julia A. Reyes*); A.M. No. MTJ-06-1625 (*Armi Flordeliza, et al. vs. Judge Julia A. Reyes*); A.M. No. MTJ-06-1627 (*Andree Lagdameo vs. Judge Julia A. Reyes*) which the undersigned had earlier investigated and reported on. **Our conclusion remains firm that respondent Judge is unfit to hold the position of Presiding Judge of a Metropolitan Trial Court.**
>
> In the present case, she is charged with ignorance because she had issued a bench warrant against the complainant and his wife for their failure to appear on a date that respondent Judge fixed for the continuation of the trial. While she may be correct in assuming that she had the authority to issue such warrant, said act was clearly unjustified. Firstly, it does not appear in the record of the case that complainant or his wife received notice of said hearing. Neither does it appear that their counsel received a copy of the Order of 15 August 2003 which contained the said setting. Secondly, there was no longer any trial to speak of because the case had already been submitted for decision and the complainant (accused therein) had no longer any need for appearing.[78] (Emphasis and underscoring supplied)

THIS COURT'S RULING

The Court finds that Judge Julia Reyes should indeed be dismissed from the service.

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[77] *Rollo*, A.M. No. MTJ-06-1638, pp. 84-88.

[78] *Id.* at 87-88.

As early as 1949, this Court emphasized that the administration of justice is a lofty function.

> The administration of justice is a lofty function and is no less sacred than a religious mission itself. Those who are called upon to render service in it must follow that norm of conduct compatible only with public faith and trust in their impartiality, sense of responsibility, exercising the same devotion to duty and unction done by a priest in the performance of the most sacred ceremonies of a religious liturgy.[79]

By judges' appointment to the office, the people have laid on them their confidence that they are mentally and morally fit to pass upon the merits of their varied contentions. For this reason, members of the judiciary are expected to be fearless in their pursuit to render justice, to be unafraid to displease any person, interest or power, and to be equipped with a moral fiber strong enough to resist the temptations lurking in their office.[80] Unfortunately, respondent Judge failed to resist the temptations of power which eventually led her to transgress the very law she swore to protect and uphold.

To constitute gross ignorance of the law or procedure, the subject decision, order or actuation of the judge in the performance of official duties should be contrary to existing law and jurisprudence. Most importantly, the judge must be moved by bad faith, fraud, dishonesty or corruption.[81]

Judge Reyes' bad faith is clearly apparent from the above-related facts and circumstances in the consolidated cases. This Court cannot shrug off her failure to exercise that degree of care and temperance required of a judge in the correct and prompt administration of justice, more so in these cases where her exercise of the power of contempt resulted in the detention

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[79] *People v. Bedia*, 83 Phil. 909, 916 (1949).

[80] Vide *Ramirez v. Hon. Macandog*, 228 Phil. 436, 452 (1986).

[81] *Office of the Solicitor General v. De Castro*, A.M. No. RTJ-06-2018, August 3, 2007, 529 SCRA 157, 174; *Officers and Members of the Integrated Bar of the Philippines, Baguio-Benguet Chapter v. Pamintuan*, A.M. No. RTJ-02-1961, November 19, 2004, 443 SCRA 87, 101.

and deprivation of liberty of Migriño, Andree, Sebastian and Alicia, and endangered the freedom of the other complainants. *Tiongco v. Salao*[82] is instructive:

> Thus, **the carelessness and lack of circumspection on respondent Judge's part, to say the least, in peremptorily ordering the arrest and detention of complainant, warrant the imposition of a penalty on respondent Judge as a corrective measure**, so that she and others may be properly warned about carelessness in the application of the proper law and undue severity in ordering the detention of complainant immediately and depriving him of the opportunity to seek recourse from higher courts against the summary penalty of imprisonment imposed by respondent Judge.
>
> It is also well-settled that the power to declare a person in contempt is inherent in all courts so as to preserve order in judicial proceedings and to uphold the administration of justice. **Judges, however, are enjoined to exercise such power judiciously and sparingly, with utmost restraint, and with the end view of utilizing the same for correction and preservation of the dignity of the court, and not for retaliation or vindication.** The salutary rule is that the power to punish for contempt for purposes that are impersonal, because that power is intended as a safeguard not for the judges as persons but for the functions that they exercise. Only occasionally should the court invoke the inherent power in order to retain that respect without which the administration of justice must falter or fail.[83] (Emphasis and underscoring supplied)

Being a dispenser of justice, Judge Reyes, a lady judge at that, should have demonstrated finesse in her choice of words. In this case, the words used by her was hardly the kind of circumspect language expected of a magistrate. The use of vulgar and curt language does not befit the person of a judge who is viewed by the public as a person of wisdom and scruples.[84] Remarks such as *"Ano kaya kung mag-*hearing *ako ng hubo't hubad tapos naka-*robe *lang, pwede kaya?"; "Hayaan mo, Farah, pag natikman ko na siya, ipapasa ko sa iyo, ha ha ha!"*; and *"Alam mo na ang dami intriga dito; ni*report *ba naman na*

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[82] A.M. No. RTJ-06-2009, July 27, 2006, 496 SCRA 575.

[83] *Id.* at 586.

[84] *Lumibao v. Judge Panal*, 377 Phil. 157, 179 (1999).

nakatira ako dito, ano kaya masama dun? Alam ko staff *ko rin nagsumbong eh, PUTANG INA NILA, PUTANG INA TALAGA NILA!"* have no place in the judiciary.

Those who don the judicial robe must observe judicial decorum which requires magistrates to be at *all times* temperate in their language, refraining from inflammatory or excessive rhetoric or from resorting to the language of vilification.[85]

Judge Reyes failed to heed this injunction, however. Her inability to control her emotions her act of walking out of the courtroom during hearings, and her shouting invectives at her staff and lawyers indicate her unfitness to sit on the bench. They betray her failure to exercise judicial temperament at all times, and maintain composure and equanimity.[86]

Judge Reyes' questioned actions reflect her lack of patience, an essential part of dispensing justice; and of courtesy, a mark of culture and good breeding. Her demonstrated belligerence and lack of self-restraint and civility have no place in the government service.[87]

The New Code of Judicial Conduct for the Philippine Judiciary (New Code of Judicial Conduct), which took effect on June 1, 2004, mandates:

> SEC. 6. Judges shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, witnesses, lawyers and others with whom the judge deals in an official capacity. Judges shall require similar conduct of legal representatives, court staff and others subject to their influence, direction or control.[88]

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[85] *Seludo v. Fineza*, A.M. No. RTJ-04-1864, December 16, 2004, 447 SCRA 73, 82; *Negros Grace Pharmacy, Inc. v. Judge Hilario,* 461 Phil. 843, 852 (2003).

[86] *Re: Anonymous Complaint dated February 18, 2005 of a "Court Personnel" against Judge Francisco C. Gedorio, Jr., RTC, Br. 12, Ormoc City,* A.M. No. RTJ-05-1955, May 25, 2007, 523 SCRA 175, 182.

[87] *Macrohon v. Ibay*, A.M. No. RTJ-06-1970, November 30, 2006, 509 SCRA 75, 89-90.

[88] Canon 6 (Competence and Diligence).

Respecting Judge Reyes' frequent nocturnal "gimmicks," suffice it to state that her presence in the above-mentioned places impairs the respect due her, which in turn necessarily affects the image of the judiciary. A judge is a visible representation of the judiciary and, more often than not, the public cannot separate the judge from the judiciary. Moreover, her act of bringing some of her staff to her weekday "gimmicks," that causes them to be absent or late for work disrupts the speedy administration of service. She thus also failed to heed the mandate of the New Code of Judicial Conduct, *viz*:

> SECTION 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.
>
> SEC. 2. As a subject of constant public scrutiny, judges must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, judges shall conduct themselves in a way that is consistent with the dignity of the judicial office.[89]

As for Judge Reyes' act of borrowing money from her staff, the same constitutes conduct unbecoming a judge. While there is nothing wrong *per se* with borrowing money, it must be borne in mind that she exerted moral ascendancy over her staff, who may not have had the means but may have been forced to find a way in order not to displease her.

Judge Reyes' comments like "*Armie, ang hina mo naman sumingil sa ex-parte, buti pa si Leah. Dapat pag tinanong ka kung magkano, sabihin mo* at least ₱2,000.00*"* and "*Sino pa ba ibang pwedeng pagkakitaan dito? O ikaw Oswald,* sheriff" smack of commercialism. This is not expected of a judge, knowing that the aim of the judiciary is to deliver speedy and inexpensive justice.[90]

Respecting Judge Reyes' failure to put into writing her judgment, she having merely required the accused to read it from the computer screen *in camera* without the presence of counsel,

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[89] Canon 4 (Propriety).

[90] *Vide* OCA Circular No. 50-2001 (August 17, 2001).

she violated the Constitution. She could have simply printed and signed the decision. Offering to a party's counsel a diskette containing the decision when such counsel demands a written copy thereof is unheard of in the judiciary. A verbal judgment is, in contemplation of law, *in esse*, ineffective.[91] If Judge Reyes was not yet prepared to promulgate the decision as it was not yet printed, she could have called the case later and have it printed first. A party should not be left in the dark on what issues to raise before the appellate court.

> It is a requirement of due process that the parties to a litigation be informed of how it was decided, with an explanation of the factual and legal reasons that led to the conclusions of the court. The court cannot simply say that judgment is rendered in favor of X and against Y and just leave it at that without any justification whatsoever for its action. The losing party is entitled to know why he lost, so he may appeal to a higher court, if permitted, should he believe that the decision should be reversed. A decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark as to how it was reached and is especially prejudicial to the losing party, who is unable to in point the possible errors of the court for review by a higher tribunal.[92]

If judges were allowed to roam unrestricted beyond the boundaries within which they are required by law to exercise the duties of their office, then the law becomes meaningless. A government of laws excludes the exercise of broad discretionary powers by those acting under its authority.[93]

IN FINE, this Court finds Judge Reyes unfit to discharge her functions as judge.

WHEREFORE, Judge Julia A. Reyes, Presiding Judge, Metropolitan Trial Court, Branch 69, Pasig City, is *DISMISSED* from the service with forfeiture of all retirement benefits except

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[91] *Corpus v. Sandiganbayan*, 484 Phil. 899, 914 (2004).

[92] *Nicos Industrial Corporation v. Court of Appeals*, G.R. No. 88709, February 11, 1992, 206 SCRA 127, 132.

[93] *People v. Veneracion*, G.R. Nos. 119987-88, October 13, 1995, 249 SCRA 244, 251.

accrued leave credits, if any, and with prejudice to re-employment in any branch of the government including government-owned or controlled corporations.

Branch Clerk of Court Timoteo A. Migriño is, for violation of Administrative Circular No. 1-99, by gambling in the court premises, *FINED* in the amount equivalent to his one-month salary. He is WARNED that a repetition of the same act or the commission of a similar offense will be dealt with more severely.

SO ORDERED.

Ynares-Santiago, Corona, Carpio Morales, Chico-Nazario, Nachura, Leonardo-de Castro, Brion, Peralta, Bersamin, Del Castillo, and *Abad, JJ.,* concur.

Velasco Jr., J., no part.

Quisumbing, J., on official leave and no part.

Carpio, J., on official leave.

FIRST DIVISION

[G.R. No. 146534. September 18, 2009]

SPOUSES HU CHUAN HAI and LEONCIA LIM HU, *petitioners, vs.* **SPOUSES RENATO UNICO and MARIA AURORA J. UNICO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; THE DECISION OF A LAND REGISTRATION COURT IN A PETITION FOR CONSOLIDATION OF OWNERSHIP AND REGISTRATION PRECLUDES ANOTHER ACTION FOR ANNULMENT OF AUCTION

SALE; CASE AT BAR.— This case is similar to *Talusan v. Tayag*. In *Talusan*, we ruled that the decision of a land registration court in a petition for consolidation of ownership and registration precludes another action for annulment of auction sale. Hence, the September 8, 1986 decision of the RTC Branch 93 in LRC Case No. Q-3458(86) barred the institution of Civil Case No. Q-50553. The RTC Branch 104 should have dismissed the latter on the ground of *res judicata*.

2. TAXATION; REAL PROPERTY TAXATION; FOR PURPOSES THEREOF, THE REGISTERED OWNER OF THE PROPERTY IS DEEMED THE TAXPAYER; VALIDITY OF TAX SALE, UPHELD IN CASE AT BAR.— With regard to determining to whom the notice of sale should have been sent, settled is the rule that, for purposes of real property taxation, the registered owner of the property is deemed the taxpayer. Thus, in identifying the real delinquent taxpayer, a local treasurer cannot rely solely on the tax declaration but must verify with the Register of Deeds who the registered owner of the particular property is. Respondents not only neglected to register the transfer of the property but also failed to declare the property in their names as required by Section 6 of PD 464. TCT No. 236631 issued to the spouses de los Santos was never cancelled and respondents never paid realty tax on the property since they acquired it. Thus, the spouses de los Santos remained the registered owners of the property in the Torrens title and tax declaration. Since the transfer of the property to respondents was never registered, the City Treasurer correctly sent notice of the tax sale and advertisement to the spouses de los Santos and the tax sale conducted in connection therewith was valid.

APPEARANCES OF COUNSEL

Benjamin P. Quitoriano for petitioners.
Creencia Carillo & Baldovino for respondents.

R E S O L U T I O N

CORONA, *J.*:

On December 13, 1978, respondent spouses Renato and Maria Aurora J. Unico purchased a 800-sq. m. residential property

covered by TCT No. 236631 in Fairview Park Village, Quezon City from spouses Manuel and Adoracion de los Santos. After fully paying the purchase price, respondents built a house on the land and resided there. Respondents, however, neither registered the sale in the Registry of Deeds nor declared the property in their names for purposes of taxation. They also failed to pay realty taxes.

Due to respondents' tax delinquency, the property was sold at public auction on March 5, 1984 to petitioner spouses Hu Chuan Hai and Leoncia Lim Hu for ₱6,322.14.[1] A year later, petitioners filed a petition for consolidation of ownership and issuance of new title (LRC Case No. Q-3458[86]) in the Regional Trial Court (RTC) of Quezon City, Branch 93 which was granted in a decision dated September 8, 1986.[2] Consequently, TCT No. 236631 was cancelled and TCT No. 359854 was issued in petitioners' names.[3]

On December 19, 1986, respondents decided to pay realty taxes on the property for the first time but they were informed that it was already registered in the names of petitioners.

Respondents filed a complaint for annulment of sale and damages (Civil Case No. Q-50553) against petitioner spouses, spouses de los Santos, the City Treasurer of Quezon City and the Registrar of Deeds of Quezon City in the RTC of Quezon City, Branch 104 assailing the validity of the tax sale. They pointed out that the City Treasurer and the Registrar of Deeds sent the notice of tax sale and advertisement to the spouses de los Santos. Because they were never informed of the tax sale, they were deprived of their property without due process of law. Hence, the tax sale was void.

Petitioners, in their answer, insisted that they could not be prejudiced by respondents' failure to receive the notice of tax sale and advertisement.

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[1] Certificate of Sale of Delinquent Property to Purchaser. *Rollo*, p. 47.

[2] Penned by Judge Jose C. de Guzman. *Id.*, pp. 51-53.

[3] *Id.*, pp. 54-55.

In a decision dated May 9, 1990,[4] the RTC found that the City Treasurer sent the notice of tax sale and advertisement to the spouses de los Santos instead of respondents who were the actual occupants of the property. Thus, it nullified the tax sale.

Aggrieved, petitioners appealed to the Court of Appeals (CA).[5] The CA, however, affirmed the RTC decision *in toto*.[6] Hence, this recourse.[7]

Petitioners basically claim that the courts *a quo* erred in nullifying the March 5, 1984 tax sale as they could not be prejudiced by respondents' failure to declare the property in their names as required by Section 6[8] of PD 464.[9]

We grant the petition.

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[4] Penned by Judge Maximiano C. Asuncion. Dated May 9, 1990. *Id.*, pp. 59-66.

[5] Docketed as CA-G.R. CV No. 27501.

[6] Decision penned by Associate Justice B.A. Adefuin-de la Cruz (retired) and concurred in by Associate Justices Salome A. Montoya (retired) and Renato C. Dacudao (retired) of the First Division of the Court of Appeals. Dated December 27, 2000. *Rollo*, pp. 118-127.

[7] A petition for review on *certiorari* under Rule 45 of the Rules of Court.

[8] PD 464, Sec. 6 provides:

Section 6. *Declarations of Real Property by Owner or Administrator*. — It shall be the duty of all persons, natural or juridical, owning or administering real property, including the improvements therein, within a city or municipality, or their duly authorized representative, to prepare, or cause to be prepared, and file with the provincial or city assessor, a sworn statement declaring the true value of their property, whether previously declared or undeclared, taxable or exempt, which shall be the current and fair market value of the property, as determined by the declarant. Such declaration shall contain a description of the property sufficient in detail to enable the assessor or his deputy to identify the same for assessment purposes. The sworn declaration of real property herein referred to shall be filed with the assessor concerned once every five years during the period from January first to June thirtieth, commencing with the calendar year 1977, unless required earlier by the Secretary of Finance.

Compare LOCAL GOV'T CODE, Sec. 200.

[9] Real Property Tax Code. This has been superseded by the provisions of the 1991 Local Government Code on real property taxation (or Title II, Book II thereof).

This case is similar to *Talusan v. Tayag.*[10]

In *Talusan*, we ruled that the decision of a land registration court in a petition for consolidation of ownership and registration precludes another action for annulment of auction sale.[11] Hence, the September 8, 1986 decision of the RTC Branch 93 in LRC Case No. Q-3458(86) barred the institution of Civil Case No. Q-50553. The RTC Branch 104 should have dismissed the latter on the ground of *res judicata*.

With regard to determining to whom the notice of sale should have been sent, settled is the rule that, for purposes of real property taxation, the registered owner of the property is deemed the taxpayer.[12] Thus, in identifying the real delinquent taxpayer, a local treasurer cannot rely solely on the tax declaration but must verify with the Register of Deeds who the registered owner of the particular property is.[13]

Respondents not only neglected to register the transfer of the property but also failed to declare the property in their names as required by Section 6 of PD 464. TCT No. 236631 issued to the spouses de los Santos was never cancelled and respondents never paid realty tax on the property since they acquired it. Thus, the spouses de los Santos remained the registered owners of the property in the Torrens title and tax declaration. Since the transfer of the property to respondents was never registered, the City Treasurer correctly sent notice of the tax sale and advertisement to the spouses de los Santos and the tax sale conducted in connection therewith was valid.

WHEREFORE, the petition is hereby *GRANTED*. The December 27, 2000 decision of the Court of Appeals in CA-G.R. CV No. 27501 affirming the May 9, 1990 decision of the Regional

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[10] 408 Phil. 373 (2001).

[11] *Id.*, pp. 386-387.

[12] *Id.*, p. 388.

[13] *Estate of the Late Mercedes Jacob v. Court of Appeals*, G.R. No. 120435, 22 December 1997, 283 SCRA 474, 487-492.

Trial Court of Quezon City, Branch 104 in Civil Case No. Q-50553 is *REVERSED* and *SET ASIDE*.

New judgment is hereby entered dismissing Civil Case No. Q-50553 on the ground of *res judicata.* The March 5, 1984 tax sale is hereby declared *VALID*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 164549. September 18, 2009]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **SPOUSES AGUSTIN and PILAR ROCAMORA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE, ACTIONS; RIGHT OF MORTGAGEE TO MAINTAIN ACTION FOR DEFICIENCY; PROOF OF DEFICIENCY CLAIM IS NECESSARY; CASE AT BAR.— The foreclosure of chattel and real estate mortgages is governed by Act Nos. 1508 and 3135, respectively. Although both laws do not contain a provision expressly or impliedly authorizing the mortgagee to recover the deficiency resulting after the foreclosure proceeds are deducted from the principal obligation, the Court has construed the laws' silence as a grant to the mortgagee of the right to maintain an action for the deficiency; the mortgages are given merely as security, not as settlement or satisfaction of the indebtedness. As in any claim for payment of money, a mortgagee must be able to prove the basis for the deficiency

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[*] Per Special Order No. 698 dated September 4, 2009.

judgment it seeks. The right of the mortgagee to pursue the debtor arises only when the proceeds of the foreclosure sale are ascertained to be insufficient to cover the obligation and the other costs at the time of the sale. Thus, the amount of the obligation prior to foreclosure and the proceeds of the foreclosure are material in a claim for deficiency. In this case, both the RTC and the CA found that PNB failed to prove the claimed deficiency; its own testimonial and documentary evidence in fact contradicted one another. The PNB alleged that the spouses Rocamora's obligation at the time of foreclosure (September 19, 1990) amounted to ₱250,812.10, yet its own documentary evidence showed that, as of that date, the total obligation was only ₱206,664.34; the PNB's own witness, Mr. Reynaldo Caso, testified that the amount due from the spouses Rocamora was only ₱206,664.34.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; ESCALATION CLAUSES; NATURE.— Escalation clauses are valid and do not contravene public policy. These clauses are common in credit agreements as means of maintaining fiscal stability and retaining the value of money on long-term contracts. To avoid any resulting one-sided situation that escalation clauses may bring, we required in *Banco Filipino* the inclusion in the parties' agreement of a de-escalation clause that would authorize a reduction in the interest rates corresponding to downward changes made by law or by the Monetary Board.

3. ID.; ID.; ID.; DO NOT AUTHORIZE THE UNILATERAL INCREASE OF INTEREST RATES; EXPLAINED.— The validity of escalation clauses notwithstanding, we cautioned that these clauses do not give creditors the unbridled right to adjust interest rates *unilaterally*. As we said in the same *Banco Filipino* case, **any increase in the rate of interest made pursuant to an escalation clause must be the result of an agreement between the parties.** The minds of all the parties must meet on the proposed modification as this modification affects an important aspect of the agreement. There can be no contract in the true sense in the absence of the element of an agreement, *i.e.*, the parties' mutual consent. Thus, **any change must be mutually agreed upon, otherwise, the change carries no binding effect**. A stipulation on the validity or compliance with the contract that is left solely to the will of

one of the parties is void; the stipulation goes against the principle of mutuality of contract under Article 1308 of the Civil Code. As correctly found by the appellate court, even with a de-escalation clause, no matter how elaborately worded, an unconsented increase in interest rates is ineffective if it transgresses the principle of mutuality of contracts.

4. REMEDIAL LAW; APPEALS; FINDINGS OF THE TRIAL COURT, WHEN AFFIRMED BY THE COURT OF APPEALS, ARE BINDING UPON THE SUPREME COURT; CASE AT BAR.— x x x PNB's failure to secure the spouses Rocamora's consent to the increased interest rates prompted the lower courts to declare excessive and illegal the interest rates imposed. To go around this lower court finding, PNB alleges that the ₱206,297.47 deficiency claim was computed using only the original 12% per annum interest rate. We find this unlikely. Our examination of PNB's own ledgers, included in the records of the case, clearly indicates that PNB imposed interest rates higher than the agreed 12% per annum rate. This confirmatory finding, albeit based solely on ledgers found in the records, reinforces the application in this case of the rule that findings of the RTC, when affirmed by the CA, are binding upon this Court.

5. MERCANTILE LAW; PRESIDENTIAL DECREE NO. 385; GOVERNMENT FINANCIAL INSTITUTIONS; MANDATES IMMEDIATE FORECLOSURE OF COLLATERALS AND SECURITIES WHEN THE ARREARAGES AMOUNT TO AT LEAST 20% OF THE TOTAL OUTSTANDING OBLIGATION; EFFECT OF DELAY IN COMMENCING FORECLOSURE PROCEEDINGS ON THE RIGHT TO RECOVER THE DEFICIENCY.— Under PD 385, government financial institutions – which was PNB's status prior to its full privatization in 1996 – are **mandated to *immediately foreclose the securities*** given for any loan when the arrearages amount to at least 20% of the total outstanding obligation. As stated in the narrated facts, PNB commenced foreclosure proceedings in 1990 or three years after the spouses defaulted on their obligation in 1987. On this factual premise, the PNB now insists as a legal argument that its right to foreclose should not be affected by the mandatory tenor of PD 385, since it exercised its right still within the 10-year prescription period allowed under Articles 1142 and 1144 (1) of the Civil Code.

PNB's argument completely misses the point. The issue before us is the effect of the delay in commencing foreclosure proceedings on PNB's *right to recover the deficiency*, not on its right to foreclose. The delay in commencing foreclosure proceedings bears a significant function in the deficiency amount being claimed, as the amount undoubtedly includes interest and penalty charges which accrued during the period covered by the delay. The depreciation of the mortgaged properties during the period of delay must also be factored in, as this affects the proceeds that the mortgagee can recover in the foreclosure sale, which in turn affects its deficiency claim. There was also, in this case, the four-year gap between the foreclosure proceedings and the filing of the complaint for deficiency judgment – during which time interest, whether at the 12% per annum rate or higher, and penalty charges also accrued. For the Court to grant the PNB's deficiency claim would be to award it for its delay and its undisputed disregard of PD 385.

6. CIVIL LAW; DAMAGES; MORAL AND EXEMPLARY DAMAGES; AWARD THEREOF, NOT PROPER IN CASE AT BAR.— Moral damages are not recoverable simply because a contract has been breached. They are recoverable only if the defendant acted fraudulently or in bad faith or in wanton disregard of his contractual obligations. The breach must be wanton, reckless, malicious or in bad faith, and oppressive or abusive. Likewise, a breach of contract may give rise to exemplary damages only if the guilty party acted in a wanton, fraudulent, reckless, oppressive or malevolent manner. We are not sufficiently convinced that PNB acted fraudulently, in bad faith, or in wanton disregard of its contractual obligations, simply because it increased the interest rates and delayed the foreclosure of the mortgages. Bad faith cannot be imputed simply because the defendant acted with bad judgment or with attendant negligence. Bad faith is more than these; it pertains to a dishonest purpose, to some moral obliquity, or to the conscious doing of a wrong, a breach of a known duty attributable to a motive, interest or ill will that partakes of the nature of fraud. Proof of actions of this character is undisputably lacking in this case. Consequently, we do not find the spouses Rocamora entitled to an award of moral and exemplary damages. Under these circumstances, neither should they recover attorney's

fees and litigation expense. These awards are accordingly deleted.

APPEARANCES OF COUNSEL

Chief Legal Counsel (PNB) for petitioner.
Tomas MR Timbancaya for respondents.

D E C I S I O N

BRION, *J.*:

We resolve in this petition for review on *certiorari*[1] the legal propriety of the deficiency judgment that the petitioner Philippine National Bank (*PNB*) seeks against the respondents – the spouses Agustin and Pilar Rocamora (*spouses Rocamora*).

THE FACTUAL ANTECEDENTS

On September 25, 1981, the **spouses Rocamora obtained a loan from PNB in the aggregate amount of ₱100,000.00** under the Cottage Industry Guarantee and Loan Fund (*CIGLF*). The loan was payable in five years, under the following terms: ₱35,000 payable semi-annually and ₱65,000 payable annually. In addition to the principal amount, the spouses Rocamora agreed to pay interest at the rate of 12% per annum, plus a penalty fee of 5% per annum in case of delayed payments. The spouses Rocamora signed two promissory notes[2] evidencing the loan.

To secure their loan obligations, the spouses Rocamora executed two mortgages: a real estate mortgage[3] over a property covered by Transfer Certificate of Title No. 7160 in the amount of ₱10,000, and a chattel mortgage[4] over various machineries in the amount of ₱25,000. Payment of the remaining ₱65,000 was under the CIGLF guarantee, with the spouses Rocamora paying the required guarantee fee.

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[1] Filed under Rule 45 of the Rules of Court; *rollo*, pp. 22-48.

[2] Promissory Note (*PN*) Nos. CIGLF 01/81 and 02/81; *id.*, pp. 60-61.

[3] *Id.*, pp. 62-63.

[4] *Id.*, p. 64.

Both the promissory note and the real estate mortgage deed contained an **escalation clause** that allowed PNB to increase the 12% interest rate at anytime without notice, within the limits allowed by law. The pertinent portion of the promissory note stated:

> For value received, we, jointly and severally, promise to pay to the ORDER of the PHILIPPINE NATIONAL BANK, at its office in Pto. Princesa City, Philippines, the sum of xxx together with interest thereon at the rate of 12% per annum until paid, **which interest rate the Bank may at any time, without notice, raise within the limits allowed by law,** and I/we also agree to pay jointly and severally, 5% per annum penalty charge, by way of liquidated damages, should this note be unpaid or is not renewed on due date. [Emphasis supplied.]

While paragraph (k) of the real estate mortgage deed provided:

> (k) INCREASE OF INTEREST RATE
>
> **The MORTGAGEE reserves the right to increase the interest rate charged on the obligation secured by this mortgage including any amount which it may have advanced within the limits allowed by law at any time depending on whatever policy it may adopt in the future;** Provided, that the interest rate on the accommodation/s secured by the mortgage shall be correspondingly decreased in the event that the applicable maximum interest rate is reduced by law or by the Monetary Board. In either case, the adjustment in the interest rate agreed upon shall take effect on the effectivity date of the increase or decrease in that maximum interest rate. [Emphasis supplied.]

The spouses Rocamora only paid a total of ₱32,383.65[5] on the loan. Hence, the PNB commenced foreclosure proceedings in August and October 1990. The foreclosure of the mortgaged properties yielded ₱75,500.00 as total proceeds.

[5] Listed below are the payments made by the spouses Rocamora:

	Date of Payment	**Amount Paid**
On PN No. CIGLF 01/81for the ₱35,000 loan:	March 25, 1982	₱ 7,176.00
	September 25, 1982	7,176.00
On PN No. CIGLF 01/81for the ₱65,000 loan:	September 5, 1982	18,031.65
	TOTAL	**₱32,383.65**

After the foreclosure, PNB found that the recovered proceeds and the amounts the spouses Rocamora previously paid were not sufficient to satisfy the loan obligations. PNB thus filed, on January 18, 1994, a **complaint for deficiency judgment**[6] before the Regional Trial Court (*RTC*) of Puerto Princesa City, Branch 48. The PNB alleged that **as of January 7, 1994, the outstanding balance of the spouses Rocamora's loan (including interests and penalties) was ₱206,297.47**, broken down as follows:

Principal…….....	₱ 79,484.65
Total interest due up to 01-07-94……	51,229.35
Total penalty due up to 01-07-94…….....	75,583.47
TOTAL AMOUNT DUE AND PAYABLE	**₱206,297.47**[7]

The PNB claimed that the outstanding *principal* balance as of foreclosure date (September 19, 1990) was ₱79,484.65, plus interest and penalties, for a total due and demandable obligation of ₱250,812.10. Allegedly, after deducting the ₱75,500 proceeds of the foreclosure sale, the spouses Rocamora still owed the bank ₱206,297.47.

The spouses Rocamora refused to pay the amount claimed as deficiency. They alleged that the PNB "practically created" the deficiency by (a) increasing the interest rates from 12% to 42% per annum, and (b) failing to immediately foreclose the mortgage pursuant to Presidential Decree No. 385 (*PD 385* or the Mandatory Foreclosure Law) to prevent the interest and penalty charges from accruing.

The RTC dismissed PNB's complaint in its decision dated November 10, 1999.[8] The trial court invalidated the escalation clause in the promissory note and the resulting increased interest rates. The court also rejected PNB's reason for the delay in commencing foreclosure proceedings, ruling that the delay was

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[6] Docketed as Civil Case No. 2675.

[7] Statement of Account as of January 7, 1994; *rollo*, p. 70.

[8] *Id.*, pp. 71-80.

contrary to the immediate and mandatory foreclosure that PD 385 required. The finding that the bank's actions were contrary to law, justice, and morals justified the award of actual, moral, and exemplary damages to the spouses Rocamora. Attorney's fees and costs of suit were also ordered paid.[9]

Except for modifications in the awarded damages, the Court of Appeals (*CA*) decision of March 23, 2004 affirmed the RTC ruling.[10] The CA held that the PNB effectively negated the principle of mutuality of contracts when it increased the interest rates without the spouses Rocamora's conformity. The CA also found the long delay in the foreclosure of the mortgage, apparently a management lapse, prejudicial to the spouses Rocamora's interests and contrary as well to law and justice. More importantly, the CA found insufficient evidence to support the ₱206,297.47 deficiency claim; the bank's testimonial and documentary evidence did not support the deficiency claim that, moreover, was computed based on bloated interest rates. The CA maintained these rulings despite the motion for reconsideration PNB filed;[11] hence, PNB's present recourse to this Court.

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[9] The dispositive part of the RTC decision of November 10, 1999 reads:

WHEREFORE, premises considered, the instant complaint is hereby dismissed for lack of merit and finding the counterclaim meritorious, the [PNB] is ordered to pay the [spouses Rocamora] Two Hundred Thousand Pesos (₱200,000.00) as damages for breach of contract and for acting contrary to law, justice, and morals, One Hundred Thousand Pesos (₱100,000.00) as exemplary damages, One Hundred Thousand (₱100,000.00) as moral damages and Fifty Thousand Pesos (₱50,000.00) as attorney's fees; and to pay the costs of suit.

[10] *Rollo*, pp. 10-16; the dispositive part of the CA Decision of March 23, 2004 reads:

WHEREFORE, in view of the foregoing discussions, the assailed decision is hereby MODIFIED as follows:

1. The complaint is hereby ordered DISMISSED;
2. [PNB is] ordered to pay the [spouses Rocamora] the sum of Thirty Thousand Pesos (₱30,000.00) as moral damages; Thirty Thousand Pesos as exemplary damages (₱30,000.00); and Fifty Thousand Pesos (₱50,000.00) as attorney's fees;
3. Cost of suit.

[11] CA Resolution dated July 12, 2004; *id.*, p. 18.

THE PETITION

In insisting that it is entitled to a deficiency judgment of ₱206,297.47, PNB argues that the RTC and the CA erred in invalidating the escalation clause in the parties' agreement because it fully complied with the requirements for a valid escalation clause under this Court's following pronouncement in *Banco Filipino Savings and Mortgage Bank v. Navarro:*[12]

> It is now clear that from March 17, 1980 [the effectivity date of Presidential Decree No. 1684 allowing the increase in the stipulated rate of interest], **escalation clauses, to be valid, should specifically provide: (1) that there can be an increase in interest if increased by law or by the Monetary Board; and (2) in order for such stipulation to be valid, it must include a provision for reduction of the stipulated interest "in the event that the applicable maximum rate of interest is reduced by law or by the Monetary Board."** [Emphasis supplied.]

The PNB posits that the presence of a "de-escalation clause" (referring to the second of the above requirements, which was designed to prevent a resulting one-sided situation on the part of the lender-bank) in the real estate mortgage deed rules out any violation of the principle of mutuality of contracts.

The PNB also contends that it did not unreasonably delay the institution of foreclosure proceedings by acting three years after the spouses Rocamora defaulted on their obligation. Under Article 1142 of the Civil Code, a mortgage action prescribes in 10 years; the same 10-year period is provided in Article 1144 (1) for actions based on written contracts. Thus, the PNB alleges that it had 10 years from 1987 (the time when the spouses Rocamora allegedly defaulted from paying their loan obligation) to institute the foreclosure proceedings. Its decision to foreclose in 1990 – three years after the default – should not be taken against it, especially since the delay was prompted by the bank's sincere desire to assist the spouses Rocamora.

Additionally, the PNB claims that the decision to foreclose is entirely the bank's prerogative. The provisions of PD 385

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[12] G.R. No. L-46591, July 28, 1987, 152 SCRA 346.

should not be read as a limitation affecting the right of banks to foreclose within the 10-year period granted under the Civil Code. While PD 385 requires government banks to immediately foreclose mortgages under specified conditions, the provision does not limit the period within which the bank can foreclose; to hold otherwise would be contrary to the stated objectives of PD 385 to enhance the resources of government financial institutions and to facilitate the financing of essential development programs and projects.

On the basis of these arguments, the PNB contests the damages awarded to the spouses Rocamora, as the PNB had no malice, nor any furtive design: when it increased the interest rates pursuant to the escalation clause; when it decided to foreclose the mortgages only in 1990; and when it sought to claim the deficiency. PNB claimed all these to be proper acts made in the exercise of its rights.

Opposing the PNB's arguments, the spouses Rocamora allege the following:

a. The PNB failed to sufficiently and satisfactorily prove the amount of ₱250,812.10, claimed to be the total obligation due at the time of foreclosure, against which the proceeds of the foreclosure sale (₱75,500.00) were deducted and which became the basis of the bank's deficiency claim (₱206,297.47);

b. The "ballooning" of the spouses Rocamora's loan obligation was the PNB's own doing when it increased the interest rates and failed to immediately foreclose the mortgages;

c. The PNB's unilateral increase of interest rates violated the principle of mutuality of contracts;

d. The PNB failed to comply with the immediate and mandatory foreclosure required under PD 385; and

e. The PNB failed to call on the CIGLF which secured the payment of ₱65,000.00 of the loan.

THE COURT'S RULING

We find no basis to reverse the CA's decision and, consequently, deny the petition.

Proof of Deficiency Claim Necessary

The foreclosure of chattel and real estate mortgages is governed by Act Nos. 1508 and 3135, respectively. Although both laws do not contain a provision expressly or impliedly authorizing the mortgagee to recover the deficiency resulting after the foreclosure proceeds are deducted from the principal obligation, the Court has construed the laws' silence as a grant to the mortgagee of the right to maintain an action for the deficiency; the mortgages are given merely as security, not as settlement or satisfaction of the indebtedness.[13]

As in any claim for payment of money, a mortgagee must be able to prove the basis for the deficiency judgment it seeks. The right of the mortgagee to pursue the debtor arises only when the proceeds of the foreclosure sale are ascertained to be insufficient to cover the obligation and the other costs at the time of the sale.[14] Thus, the amount of the obligation prior to foreclosure and the proceeds of the foreclosure are material in a claim for deficiency.

In this case, both the RTC and the CA found that PNB failed to prove the claimed deficiency; its own testimonial and documentary evidence in fact contradicted one another. The PNB alleged that the spouses Rocamora's obligation at the time of foreclosure (September 19, 1990) amounted to ₱250,812.10,

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[13] We also stated that when the law intends to foreclose the right of a creditor to sue for any deficiency resulting from a foreclosure of security given to guarantee an obligation, it so expressly provides such as with respect to the sale of the thing pledged (see Article 2115 of the Civil Code) and foreclosure of chattel mortgage on personal property sold on installment basis (see Article 1484, par. 3 of the Civil Code); *Superlines Transportation Company v. ICC Leasing and Financing Corporation*, G.R. No. 150673, February 28, 2003, 398 SCRA 508.

[14] See *PNB v. CA*, G.R. No. 121739, June 14, 1999, 308 SCRA 229; and *Development Bank of the Philippines v. Vda. De Moll*, G.R. No. L-25807, January 31, 1972, 43 SCRA 82.

yet its own documentary evidence[15] showed that, as of that date, the total obligation was only ₱206,664.34; the PNB's own witness, Mr. Reynaldo Caso, testified that the amount due from the spouses Rocamora was only ₱206,664.34.

At any rate, whether the total obligation due at the time of foreclosure was ₱250,812.10 as PNB insisted or ₱206,664.34 as its own record disclosed, our own computation of the amounts involved does not add up to the ₱206,297.47 PNB claimed as deficiency.[16] We find it significant that PNB has been consistently unable to provide a detailed and credible accounting of the claimed deficiency. What appears clear is that after adding up the spouses Rocamora's partial payments and the proceeds of the foreclosure, the PNB has already received a total of ₱107,883.68 as payment for the spouses Rocamora's ₱100,000.00 loan; the claimed ₱206,297.47 deficiency consisted mainly of interests and penalty charges (or about 61.5% of the amount claimed). The spouses Rocamora posit that their loan would not have bloated to more than double the original amount if PNB had not increased the interest rates and had it immediately foreclosed the mortgages.

Escalation clauses do not authorize the unilateral increase of interest rates

Escalation clauses are valid and do not contravene public policy.[17] These clauses are common in credit agreements as means of maintaining fiscal stability and retaining the value of money on long-term contracts. To avoid any resulting one-sided situation that escalation clauses may bring, we required in *Banco Filipino*[18] the inclusion in the parties' agreement of a de-escalation clause that would authorize a reduction in the interest

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[15] Statement of Account dated October 23, 1996; records, p. 269.

[16] ₱250,812.10 less ₱75,500 (proceeds of foreclosure) is ₱175,312.10, while ₱206,664.34 less ₱75,500 is ₱131,164.34.

[17] *Spouses Almeda v. CA and PNB*, G.R. No. 113412, April 17, 1996, 256 SCRA 292; *Insular Bank of Asia & America v. Salazar*, G.R. No. 82082, March 25, 1988, 159 SCRA 133.

[18] *Supra* note 12.

rates corresponding to downward changes made by law or by the Monetary Board.

The validity of escalation clauses notwithstanding, we cautioned that these clauses do not give creditors the unbridled right to adjust interest rates *unilaterally*.[19] As we said in the same *Banco Filipino* case, **any increase in the rate of interest made pursuant to an escalation clause must be the result of an agreement between the parties.**[20] The minds of all the parties must meet on the proposed modification as this modification affects an important aspect of the agreement. There can be no contract in the true sense in the absence of the element of an agreement, *i.e.*, the parties' mutual consent. Thus, **any change must be mutually agreed upon, otherwise, the change carries no binding effect**.[21] A stipulation on the validity or compliance with the contract that is left solely to the will of one of the parties is void; the stipulation goes against the principle of mutuality of contract under Article 1308 of the Civil Code.[22] As correctly found by the appellate court, even with a de-escalation clause, no matter how elaborately worded, an unconsented increase in interest rates is ineffective if it transgresses the principle of mutuality of contracts.

Precisely for this reason, we struck down in several cases – many of them involving PNB – the increase of interest rates unilaterally imposed by creditors. In the 1991 case of *PNB v. CA and Ambrosio Padilla*,[23] we declared:

> In order that obligations arising from contracts may have the force of law between the parties, there must be mutuality between the parties based on their essential equality. A contract containing a

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[19] *Ibid.*

[20] *PNB v. CA and Spouses Basco*, G.R. No. 109563, July 9, 1996, 258 SCRA 549, citing *Banco Filipino*, *supra* note 12.

[21] *Floirendo v. Metropolitan Bank and Trust Company*, G.R. No. 148325, September 3, 2007, 532 SCRA 43.

[22] The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them.

[23] G.R. No. 88880, April 30, 1991, 196 SCRA 536.

condition which makes its fulfillment dependent exclusively upon the uncontrolled will of one of the contracting parties, is void. **Hence, even assuming that the ₱1.8 million loan agreement between the PNB and private respondent gave the PNB a license (although in fact there was none) to increase the interest rate at will during the term of the loan, that license would have been null and void for being violative of the principle of mutuality essential in contracts.** It would have invested the loan agreement with the character of a contract of adhesion, where the parties do not bargain on equal footing, the weaker party's (the debtor) participation being reduced to the alternative "to take it or leave it." Such a contract is a veritable trap for the weaker party whom the courts of justice must protect against abuse and imposition.

We repeated this rule in the 1994 case of *PNB v. CA and Jayme-Fernandez*[24] and the 1996 case of *PNB v. CA and Spouses Basco*.[25] Taking no heed of these rulings, the escalation clause PNB used in the present case to justify the increased interest rates is no different from the escalation clause assailed in the 1996 *PNB* case;[26] in both, the interest rates were increased from the agreed 12% per annum rate to 42%. We held:

PNB successively increased the stipulated interest so that what was originally 12% per annum became, after only two years, 42%. In declaring the increases invalid, we held:

> **We cannot countenance petitioner bank's posturing that the escalation clause at bench gives it unbridled right to *unilaterally* upwardly adjust the interest on private**

[24] G.R. No. 107569, November 8, 1994, 238 SCRA 20.

[25] *Supra* note 20.

[26] The pertinent portion of the promissory note in the 1996 PNB case read:

> For value received, I/we, [private respondents] jointly and severally promise to pay to the ORDER of the PHILIPPINE NATIONAL BANK, at its office in San Jose City, Philippines, the sum of FIFTEEN THOUSAND ONLY (₱15,000.00), Philippine Currency, together with interest thereon at the rate of 12 % per annum until paid, which interest rate the Bank may at any time without notice, raise within the limits allowed by law, and I/we also agree to pay jointly and severally ____% per annum penalty charge, by way of liquidated damages should this note be unpaid or is not renewed on due dated.

respondents' loan. That would *completely* take away from private respondents the right to assent to an important modification in their agreement, and would negate the element of mutuality in contracts.

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In this case no attempt was made by PNB to secure the conformity of private respondents to the successive increases in the interest rate. Private respondents' assent to the increases cannot be implied from their lack of response to the letters sent by PNB, informing them of the increases. For as stated in one case, no one receiving a proposal to change a contract is obliged to answer the proposal.[27] [Emphasis supplied.]

On the strength of this ruling, PNB's argument – that the spouses Rocamora's failure to contest the increased interest rates that were purportedly reflected in the statements of account and the demand letters sent by the bank amounted to their implied acceptance of the increase – should likewise fail.

Evidently, PNB's failure to secure the spouses Rocamora's consent to the increased interest rates prompted the lower courts to declare excessive and illegal the interest rates imposed. To go around this lower court finding, PNB alleges that the ₱206,297.47 deficiency claim was computed using only the original 12% per annum interest rate. We find this unlikely. Our examination of PNB's own ledgers, included in the records of the case, clearly indicates that PNB imposed interest rates higher than the agreed 12% per annum rate.[28] This confirmatory finding, albeit based solely on ledgers found in the records, reinforces the application in this case of the rule that findings of the RTC, when affirmed by the CA, are binding upon this Court.

PD 385 mandates immediate foreclosure of collaterals and securities when the arrearages amount to at least 20% of the total outstanding obligation

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[27] *Ibid.*

[28] Records, pp. 295-296.

Another reason that militates against the deficiency claim is PNB's own admitted delay in instituting the foreclosure proceedings.[29]

Section 1 of PD 385 states:

> Section 1. **It shall be mandatory for government financial institutions,** after the lapse of sixty (60) days from the issuance of this Decree, **to foreclose the collaterals and/or securities for any loan, credit, accommodation, and/or guarantees granted by them whenever the arrearages on such account, including accrued interest and other charges, amount to at least twenty percent (20%) of the total outstanding obligations, including interest and other charges,** as appearing in the books of account and/or related records of the financial institution concerned. This shall be without prejudice to the exercise by the government financial institutions of such rights and/or remedies available to them under their respective contracts with their debtors, including the right to foreclose on loans, credits, accommodations and/or guarantees on which the arrearages are less than twenty percent (20%). [Emphasis supplied.]

Under PD 385, government financial institutions – which was PNB's status prior to its full privatization in 1996 – are **mandated to *immediately foreclose the securities*** given for any loan when the arrearages amount to at least 20% of the total outstanding obligation.[30]

As stated in the narrated facts, PNB commenced foreclosure proceedings in 1990 or three years after the spouses defaulted on their obligation in 1987. On this factual premise, the PNB now insists as a legal argument that its right to foreclose should not be affected by the mandatory tenor of PD 385, since it exercised its right still within the 10-year prescription period allowed under Articles 1142 and 1144 (1) of the Civil Code.

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[29] *Id.*, p. 380.

[30] Records reveal that PNB admitted that the outstanding obligation of the spouses Rocamora before foreclosure was beyond the 20% requirement in PD 385; see records, pp. 209 and 359.

PNB's argument completely misses the point. The issue before us is the effect of the delay in commencing foreclosure proceedings on PNB's *right to recover the deficiency*, not on its right to foreclose. The delay in commencing foreclosure proceedings bears a significant function in the deficiency amount being claimed, as the amount undoubtedly includes interest and penalty charges which accrued during the period covered by the delay. The depreciation of the mortgaged properties during the period of delay must also be factored in, as this affects the proceeds that the mortgagee can recover in the foreclosure sale, which in turn affects its deficiency claim. There was also, in this case, the four-year gap between the foreclosure proceedings and the filing of the complaint for deficiency judgment – during which time interest, whether at the 12% per annum rate or higher, and penalty charges also accrued. For the Court to grant the PNB's deficiency claim would be to award it for its delay and its undisputed disregard of PD 385.

The Award for Damages

Moral damages are not recoverable simply because a contract has been breached. They are recoverable only if the defendant acted fraudulently or in bad faith or in wanton disregard of his contractual obligations.[31] The breach must be wanton, reckless, malicious or in bad faith, and oppressive or abusive. Likewise, a breach of contract may give rise to exemplary damages only if the guilty party acted in a wanton, fraudulent, reckless, oppressive or malevolent manner.[32]

We are not sufficiently convinced that PNB acted fraudulently, in bad faith, or in wanton disregard of its contractual obligations, simply because it increased the interest rates and delayed the foreclosure of the mortgages. Bad faith cannot be imputed simply because the defendant acted with bad judgment or with attendant negligence. Bad faith is more than these; it pertains to a dishonest purpose, to some moral obliquity, or to the conscious doing of

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[31] CIVIL CODE, Article 2220.

[32] *Pilipinas Shell Petroleum Corporation v. John Bordman Ltd. of Iloilo, Inc.*, G.R. No. 159831, October 14, 2005, 473 SCRA 151.

a wrong, a breach of a known duty attributable to a motive, interest or ill will that partakes of the nature of fraud.[33] Proof of actions of this character is undisputably lacking in this case. Consequently, we do not find the spouses Rocamora entitled to an award of moral and exemplary damages. Under these circumstances, neither should they recover attorney's fees and litigation expense.[34] These awards are accordingly deleted.

WHEREFORE, we *DENY* the petitioner's petition for review on *certiorari*, and *MODIFY* the March 23, 2004 decision of the Court of Appeals in CA-G.R. CV No. 66088 by *DELETING* the moral and exemplary damages, attorney's fees, and litigation costs awarded to the respondents. All other aspects of the assailed decision are *AFFIRMED*. Costs against the petitioner.

SO ORDERED.

Ynares-Santiago,[*] *Carpio Morales,*[**] *Del Castillo,* and *Abad, JJ.,* concur.

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[33] *Francisco v. Ferrer*, G.R. No. 142029, February 28, 2001, 353 SCRA 261; *Cojuangco, Jr. v. CA*, G.R. No. 119398, July 2, 1999, 309 SCRA 602.

[34] *Equitable PCI Bank v. Ng Sheung Ngor*, G.R. No. 171545, December 19, 2007, 541 SCRA 223.

[*] Designated additional Member of the Second Division per Special Order No. 691 dated September 4, 2009.

[**] Designated Acting Chairperson of the Second Division per Special Order No. 690 dated September 4, 2009.

SPECIAL FIRST DIVISION

[G.R. No. 167330. September 18, 2009]

PHILIPPINE HEALTH CARE PROVIDERS, INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. STATUTORY CONSTRUCTION; NO WORD, CLAUSE, SENTENCE, PROVISION OR PART OF A STATUTE SHALL BE CONSIDERED SURPLUSAGE OR SUPERFLUOUS, MEANINGLESS, VOID AND INSIGNIFICANT; RULE, APPLIED IN CASE AT BAR.— It is a cardinal rule in statutory construction that no word, clause, sentence, provision or part of a statute shall be considered surplusage or superfluous, meaningless, void and insignificant. To this end, a construction which renders every word operative is preferred over that which makes some words idle and nugatory. This principle is expressed in the maxim *Ut magis valeat quam pereat*, that is, we choose the interpretation which gives effect to the whole of the statute – its every word.

2. TAXATION; NATIONAL INTERNAL REVENUE CODE OF 1997; SECTION 185; REQUISITES BEFORE DOCUMENTARY STAMP TAX (DST) CAN APPLY.— From the language of Section 185, it is evident that **two requisites** must concur before the DST can apply, namely: (1) the document must be a **policy of insurance or an obligation in the nature of indemnity and** (2) **the maker should be transacting the business of** accident, fidelity, employer's liability, plate, glass, steam boiler, burglar, elevator, automatic sprinkler, or other branch of **insurance** (except life, marine, inland, and fire insurance).

3. POLITICAL LAW; STATUTES; REPUBLIC ACT NO. 7875 (NATIONAL HEALTH INSURANCE ACT OF 1995); HEALTH MAINTENANCE ORGANIZATION (HMO), DEFINED.— Petitioner is admittedly an HMO. Under RA 7875 (or "The National Health Insurance Act of 1995"), an HMO is "an entity that provides, offers or arranges for coverage of designated health services needed by plan members for a fixed prepaid

premium." The payments do not vary with the extent, frequency or type of services provided.

4. MERCANTILE LAW; INSURANCE; PRESIDENTIAL DECREE 1460 (INSURANCE CODE), SECTION 2 (2) THEREOF; WHAT CONSTITUTES "DOING AN INSURANCE BUSINESS" OR "TRANSACTING AN INSURANCE BUSINESS."— Section 2 (2) of PD 1460 (otherwise known as the Insurance Code) enumerates what constitutes "doing an insurance business" or "transacting an insurance business:" a) making or proposing to make, as insurer, any insurance contract; b) making or proposing to make, as surety, any contract of suretyship as a vocation and not as merely incidental to any other legitimate business or activity of the surety; c) doing any kind of business, including a reinsurance business, specifically recognized as constituting the doing of an insurance business within the meaning of this Code; d) doing or proposing to do any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this Code. In the application of the provisions of this Code, the fact that no profit is derived from the making of insurance contracts, agreements or transactions or that no separate or direct consideration is received therefor, shall not be deemed conclusive to show that the making thereof does not constitute the doing or transacting of an insurance business.

5. ID.; ID.; ID.; ID.; "PRINCIPAL OBJECT AND PURPOSE TEST"; HMO IS NOT ENGAGED IN THE INSURANCE BUSINESS.— Various courts in the United States, whose jurisprudence has a persuasive effect on our decisions, have determined that HMOs are not in the insurance business. One test that they have applied is whether the assumption of risk and indemnification of loss (which are elements of an insurance business) are the principal object and purpose of the organization or whether they are merely incidental to its business. If these are the principal objectives, the business is that of insurance. But if they are merely incidental and service is the principal purpose, then the business is not insurance. Applying the "principal object and purpose test," there is significant American case law supporting the argument that a corporation (such as an HMO, whether or not organized for profit), whose main object is to provide the members of a group with health services, is not engaged in the insurance business. The rule was enunciated

in *Jordan v. Group Health Association* wherein the Court of Appeals of the District of Columbia Circuit held that Group Health Association should not be considered as engaged in insurance activities since it was created primarily for the distribution of health care services rather than the assumption of insurance risk. x x x In *California Physicians' Service v. Garrison*, the California court felt that, after scrutinizing the plan of operation as a whole of the corporation, it was service rather than indemnity which stood as its principal purpose. There is another and more compelling reason for holding that the service is not engaged in the insurance business. **Absence or presence of assumption of risk or peril is not the sole test to be applied in determining its status. The question, more broadly, is whether, looking at the plan of operation as a whole, 'service' rather than 'indemnity' is its principal object and purpose.**

6. ID.; ID.; HMO AND INSURANCE COMPANY, DISTINGUISHED.— American courts have pointed out that the main difference between an HMO and an insurance company is that HMOs undertake to provide or arrange for the provision of medical services through participating physicians while insurance companies simply undertake to indemnify the insured for medical expenses incurred up to a pre-agreed limit. Consequently, the mere presence of risk would be insufficient to override the primary purpose of the business to provide medical services as needed, with payment made directly to the provider of these services. In short, even if petitioner assumes the risk of paying the cost of these services even if significantly more than what the member has prepaid, it nevertheless cannot be considered as being engaged in the insurance business. By the same token, any indemnification resulting from the payment for services rendered in case of emergency by non-participating health providers would still be incidental to petitioner's purpose of providing and arranging for health care services and does not transform it into an insurer. To fulfill its obligations to its members under the agreements, petitioner is required to set up a system and the facilities for the delivery of such medical services. This indubitably shows that indemnification is not its sole object.

7. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; INTERPRETATION OF AN ADMINISTRATIVE AGENCY WHICH IS TASKED TO IMPLEMENT A STATUTE IS ACCORDED GREAT RESPECT AND ORDINARILY

CONTROLS THE INTERPRETATION OF LAWS BY THE COURTS.— [I]t is significant that petitioner, as an HMO, is not part of the insurance industry. This is evident from the fact that it is not supervised by the Insurance Commission but by the Department of Health. In fact, in a letter dated September 3, 2000, the Insurance Commissioner confirmed that petitioner is not engaged in the insurance business. This determination of the commissioner must be accorded great weight. It is well-settled that the interpretation of an administrative agency which is tasked to implement a statute is accorded great respect and ordinarily controls the interpretation of laws by the courts.

8. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997; POLICIES OF INSURANCE TAXABLE ARE UNDER SEC. 185 OF THE NIRC; TAX STATUTES ARE STRICTLY CONSTRUED AGAINST THE TAXING AUTHORITY.— [The Court] shall quote once again the pertinent portion of Section 185: Section 185. *Stamp tax on fidelity bonds and other insurance policies*. – **On all policies of insurance** or bonds **or obligations of the nature of indemnity for loss, damage, or liability** made or renewed by any person, association or company or corporation transacting the business of accident, fidelity, employer's liability, plate, glass, steam boiler, burglar, elevator, automatic sprinkler, or other branch of insurance (except life, marine, inland, and fire insurance), xxx In construing this provision, we should be guided by the principle that tax statutes are strictly construed against the taxing authority. This is because taxation is a destructive power which interferes with the personal and property rights of the people and takes from them a portion of their property for the support of the government. Hence, tax laws may not be extended by implication beyond the clear import of their language, nor their operation enlarged so as to embrace matters not specifically provided.

9. MERCANTILE LAW; INSURANCE; CONTRACT OF INSURANCE; DEFINED; ELEMENTS; NOT ESTABLISHED IN CASE AT BAR.— Section 2 (1) of the Insurance Code defines a contract of insurance as an agreement whereby one undertakes for a consideration to indemnify another against loss, damage or liability arising from an unknown or contingent event. An insurance contract exists where the following elements concur: 1. The insured has an insurable interest; 2. The insured is subject to a risk of loss by the happening of the designed peril;

3. The insurer assumes the risk; 4. Such assumption of risk is part of a general scheme to distribute actual losses among a large group of persons bearing a similar risk and 5. In consideration of the insurer's promise, the insured pays a premium. Do the agreements between petitioner and its members possess all these elements? They do not. *First*. In our jurisdiction, a commentator of our insurance laws has pointed out that, even if a contract contains all the elements of an insurance contract, if its primary purpose is the rendering of service, it is not a contract of insurance: x x x *Second*. Not all the necessary elements of a contract of insurance are present in petitioner's agreements. To begin with, there is no loss, damage or liability on the part of the member that should be indemnified by petitioner as an HMO. Under the agreement, the member pays petitioner a predetermined consideration in exchange for the hospital, medical and professional services rendered by the petitioner's physician or affiliated physician to him. In case of availment by a member of the benefits under the agreement, petitioner does not reimburse or indemnify the member as the latter does not pay any third party. Instead, it is the petitioner who pays the participating physicians and other health care providers for the services rendered at pre-agreed rates. The member does not make any such payment. x x x There is no indemnity precisely because the member merely avails of medical services to be paid or already paid in advance at a pre-agreed price under the agreement. *Third*. According to the agreement, a member can take advantage of the bulk of the benefits anytime, *e.g.* laboratory services, x-ray, routine annual physical examination and consultations, vaccine administration as well as family planning counseling, even in the absence of any peril, loss or damage on his or her part. *Fourth*. In case of emergency, petitioner is obliged to reimburse the member who receives care from a non-participating physician or hospital. However, this is only a very minor part of the list of services available. The assumption of the expense by petitioner is not confined to the happening of a contingency but includes incidents even in the absence of illness or injury. x x x *Fifth*. Although risk is a primary element of an insurance contract, it is not necessarily true that risk alone is sufficient to establish it. Almost anyone who undertakes a contractual obligation always bears a certain degree of financial risk. Consequently, there is a need to distinguish prepaid service

contracts (like those of petitioner) from the usual insurance contracts. Indeed, petitioner, as an HMO, undertakes a business risk when it offers to provide health services: the risk that it might fail to earn a reasonable return on its investment. But it is not the risk of the type peculiar only to insurance companies. Insurance risk, also known as actuarial risk, is the risk that the cost of insurance claims might be higher than the premiums paid. The amount of premium is calculated on the basis of assumptions made relative to the insured. However, assuming that petitioner's commitment to provide medical services to its members can be construed as an acceptance of the risk that it will shell out more than the prepaid fees, it still will not qualify as an insurance contract because petitioner's objective is to provide medical services at reduced cost, not to distribute risk like an insurer. In sum, an examination of petitioner's agreements with its members leads us to conclude that it is not an insurance contract within the context of our Insurance Code.

10. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997; SECTION 185, CONSTRUED; THERE WAS NO LEGISLATIVE INTENT TO IMPOSE DOCUMENTARY STAMP TAX (DST) ON HEALTH CARE AGREEMENTS OF HEALTH MAINTENANCE ORGANIZATIONS.— We can clearly see from x x x two histories (of the DST on the one hand and HMOs on the other) that when the law imposing the DST was first passed, HMOs were yet unknown in the Philippines. However, when the various amendments to the DST law were enacted, they were already in existence in the Philippines and the term had in fact already been defined by RA 7875. If it had been the intent of the legislature to impose DST on health care agreements, it could have done so in clear and categorical terms. It had many opportunities to do so. But it did not. The fact that the NIRC contained no specific provision on the DST liability of health care agreements of HMOs at a time they were already known as such, belies any legislative intent to impose it on them. **As a matter of fact, petitioner was assessed its DST liability only on January 27, 2000, after more than a decade in the business as an HMO.** Considering that Section 185 did not change since 1904 (except for the rate of tax), it would be safe to say that health care agreements were never, at any time, recognized as insurance contracts or deemed engaged in the business of insurance within the context of the provision.

11. POLITICAL LAW; CONSTITUTIONAL LAW; SOVEREIGN POWERS OF THE STATE; POWER OF TAXATION; POWER TO TAX IS NOT THE POWER TO DESTROY; CASE AT BAR.— As a general rule, the power to tax is an incident of sovereignty and is unlimited in its range, acknowledging in its very nature no limits, so that security against its abuse is to be found only in the responsibility of the legislature which imposes the tax on the constituency who is to pay it. So potent indeed is the power that it was once opined that "the power to tax involves the power to destroy." Petitioner claims that the assessed DST to date which amounts to ₱376 million is way beyond its net worth of ₱259 million. Respondent never disputed these assertions. Given the realities on the ground, imposing the DST on petitioner would be highly oppressive. It is not the purpose of the government to throttle private business. On the contrary, the government ought to encourage private enterprise. Petitioner, just like any concern organized for a lawful economic activity, has a right to maintain a legitimate business. As aptly held in *Roxas, et al. v. CTA, et al.*: The power of taxation is sometimes called also the power to destroy. Therefore it should be exercised with caution to minimize injury to the proprietary rights of a taxpayer. It must be exercised fairly, equally and uniformly, lest the tax collector kill the "hen that lays the golden egg." Legitimate enterprises enjoy the constitutional protection not to be taxed out of existence. Incurring losses because of a tax imposition may be an acceptable consequence but killing the business of an entity is another matter and should not be allowed. It is counter-productive and ultimately subversive of the nation's thrust towards a better economy which will ultimately benefit the majority of our people.

12. TAXATION; REPUBLIC ACT NO. 9480 (TAX AMNESTY ACT OF 2007); PETITIONER'S TAX LIABILITY WAS EXTINGUISHED UNDER THE PROVISIONS THEREOF.— Petitioner asserts that, regardless of the arguments, the DST assessment for taxable years 1996 and 1997 became moot and academic when it availed of the tax amnesty under RA 9480 on December 10, 2007. It paid ₱5,127,149.08 representing 5% of its net worth as of the year ended December 31, 2005 and complied with all requirements of the tax amnesty. Under Section 6(a) of RA 9480, it is entitled to immunity from payment of taxes as well as additions thereto, and the appurtenant civil, criminal

or administrative penalties under the 1997 NIRC, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years. x x x Furthermore, we held in a recent case that DST is one of the taxes covered by the tax amnesty program under RA 9480. There is no other conclusion to draw than that petitioner's liability for DST for the taxable years 1996 and 1997 was totally extinguished by its availment of the tax amnesty under RA 9480.

13. REMEDIAL LAW; JUDGMENTS; *RES JUDICATA*; MINUTE RESOLUTION; A BINDING PRECEDENT WITH RESPECT TO THE SAME SUBJECT MATTER AND THE SAME ISSUES CONCERNING THE SAME PARTIES; DISTINGUISHED FROM A DECISION; MINUTE RESOLUTION IN G.R. NO. 148680 CANNOT BE INVOKED IN CASE AT BAR.— With respect to the same subject matter and the same issues concerning the same parties, it constitutes *res judicata*. However, if other parties or another subject matter (even with the same parties and issues) is involved, the minute resolution is not binding precedent. Thus, in *CIR v. Baier-Nickel*, the Court noted that a previous case, *CIR v. Baier-Nickel* **involving the same parties and the same issues**, was previously disposed of by the Court thru a minute resolution dated February 17, 2003 sustaining the ruling of the CA. Nonetheless, the Court ruled that **the previous case "ha(d) no bearing"** on the latter case because the two cases involved different subject matters as they were concerned with the taxable income of different taxable years. Besides, there are substantial, not simply formal, distinctions between a minute resolution and a decision. The constitutional requirement under the first paragraph of Section 14, Article VIII of the Constitution that the facts and the law on which the judgment is based must be expressed clearly and distinctly applies only to decisions, not to minute resolutions. A minute resolution is signed only by the clerk of court by authority of the justices, unlike a decision. It does not require the certification of the Chief Justice. Moreover, unlike decisions, minute resolutions are not published in the Philippine Reports. Finally, the proviso of Section 4(3) of Article VIII speaks of a decision. Indeed, as a rule, this Court lays down doctrines or principles of law which constitute binding precedent in a decision duly signed by the members of the Court and certified by the Chief Justice. Accordingly, since petitioner was not a party in G.R. No. 148680 and since petitioner's liability for DST on its health care agreement was not the subject matter

of G.R. No. 148680, petitioner cannot successfully invoke the minute resolution in that case (which is not even binding precedent) in its favor. Nonetheless, in view of the reasons already discussed, this does not detract in any way from the fact that petitioner's health care agreements are not subject to DST.

APPEARANCES OF COUNSEL

Divina & Uy Law Offices for petitioner.
The Solicitor General for respondent.

R E S O L U T I O N

CORONA, *J.*:

ARTICLE II
Declaration of Principles and State Policies

Section 15. The State shall protect and promote the right to health of the people and instill health consciousness among them.

ARTICLE XIII
Social Justice and Human Rights

Section 11. The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the underprivileged sick, elderly, disabled, women, and children. The State shall endeavor to provide free medical care to paupers.[1]

For resolution are a motion for reconsideration and supplemental motion for reconsideration dated July 10, 2008 and July 14, 2008, respectively, filed by petitioner Philippine Health Care Providers, Inc.[2]

We recall the facts of this case, as follows:

Petitioner is a domestic corporation whose primary purpose is "[t]o establish, maintain, conduct and operate a prepaid group practice

[1] 1987 Constitution.

[2] Now known as Maxicare Healthcare Corp. *Rollo*, p. 293.

health care delivery system or a health maintenance organization to take care of the sick and disabled persons enrolled in the health care plan and to provide for the administrative, legal, and financial responsibilities of the organization." Individuals enrolled in its health care programs pay an annual membership fee and are entitled to various preventive, diagnostic and curative medical services provided by its duly licensed physicians, specialists and other professional technical staff participating in the group practice health delivery system at a hospital or clinic owned, operated or accredited by it.

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On January 27, 2000, respondent Commissioner of Internal Revenue [CIR] sent petitioner a formal demand letter and the corresponding assessment notices demanding the payment of deficiency taxes, including surcharges and interest, for the taxable years 1996 and 1997 in the total amount of ₱224,702,641.18. xxx

The deficiency [documentary stamp tax (DST)] assessment was imposed on petitioner's health care agreement with the members of its health care program pursuant to Section 185 of the 1997 Tax Code xxx

x x x x x x x x x

Petitioner protested the assessment in a letter dated February 23, 2000. As respondent did not act on the protest, petitioner filed a petition for review in the Court of Tax Appeals (CTA) seeking the cancellation of the deficiency VAT and DST assessments.

On April 5, 2002, the CTA rendered a decision, the dispositive portion of which read:

> WHEREFORE, in view of the foregoing, the instant Petition for Review is PARTIALLY GRANTED. Petitioner is hereby ORDERED to PAY the deficiency VAT amounting to ₱22,054,831.75 inclusive of 25% surcharge plus 20% interest from January 20, 1997 until fully paid for the 1996 VAT deficiency and ₱31,094,163.87 inclusive of 25% surcharge plus 20% interest from January 20, 1998 until fully paid for the 1997 VAT deficiency. Accordingly, VAT Ruling No. [231]-88 is declared void and without force and effect. The 1996 and 1997 deficiency DST assessment against petitioner is hereby CANCELLED AND SET ASIDE. Respondent is ORDERED to DESIST from collecting the said DST deficiency tax.

SO ORDERED.

Respondent appealed the CTA decision to the [Court of Appeals (CA)] insofar as it cancelled the DST assessment. He claimed that petitioner's health care agreement was a contract of insurance subject to DST under Section 185 of the 1997 Tax Code.

On August 16, 2004, the CA rendered its decision. It held that petitioner's health care agreement was in the nature of a non-life insurance contract subject to DST.

> WHEREFORE, the petition for review is GRANTED. The Decision of the Court of Tax Appeals, insofar as it cancelled and set aside the 1996 and 1997 deficiency documentary stamp tax assessment and ordered petitioner to desist from collecting the same is REVERSED and SET ASIDE.
>
> Respondent is ordered to pay the amounts of ₱55,746,352.19 and ₱68,450,258.73 as deficiency Documentary Stamp Tax for 1996 and 1997, respectively, plus 25% surcharge for late payment and 20% interest per annum from January 27, 2000, pursuant to Sections 248 and 249 of the Tax Code, until the same shall have been fully paid.
>
> SO ORDERED.

Petitioner moved for reconsideration but the CA denied it. Hence, petitioner filed this case.

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In a decision dated June 12, 2008, the Court denied the petition and affirmed the CA's decision. We held that petitioner's health care agreement during the pertinent period was in the nature of non-life insurance which is a contract of indemnity, citing *Blue Cross Healthcare, Inc. v. Olivares*[3] and *Philamcare Health Systems, Inc. v. CA*.[4] We also ruled that petitioner's contention that it is a health maintenance organization (HMO) and not an insurance company is irrelevant because contracts between companies like petitioner and the beneficiaries under their plans are treated as insurance contracts. Moreover, DST

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[3] G.R. No. 169737, 12 February 2008, 544 SCRA 580.

[4] 429 Phil. 82 (2002).

is not a tax on the business transacted but an excise on the privilege, opportunity or facility offered at exchanges for the transaction of the business.

Unable to accept our verdict, petitioner filed the present motion for reconsideration and supplemental motion for reconsideration, asserting the following arguments:

(a) The DST under Section 185 of the National Internal Revenue of 1997 is imposed only on a company engaged in the business of fidelity bonds and other insurance policies. Petitioner, as an HMO, is a service provider, not an insurance company.

(b) The Court, in dismissing the appeal in *CIR v. Philippine National Bank*, affirmed in effect the CA's disposition that health care services are not in the nature of an insurance business.

(c) Section 185 should be strictly construed.

(d) Legislative intent to exclude health care agreements from items subject to DST is clear, especially in the light of the amendments made in the DST law in 2002.

(e) Assuming *arguendo* that petitioner's agreements are contracts of indemnity, they are not those contemplated under Section 185.

(f) Assuming *arguendo* that petitioner's agreements are akin to health insurance, health insurance is not covered by Section 185.

(g) The agreements do not fall under the phrase "other branch of insurance" mentioned in Section 185.

(h) The June 12, 2008 decision should only apply prospectively.

(i) Petitioner availed of the tax amnesty benefits under RA[5] 9480 for the taxable year 2005 and all prior years. Therefore, the questioned assessments on the DST are now rendered moot and academic.[6]

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[5] Republic Act.

[6] *Rollo*, pp. 257-258.

Oral arguments were held in Baguio City on April 22, 2009. The parties submitted their memoranda on June 8, 2009.

In its motion for reconsideration, petitioner reveals for the first time that it availed of a tax amnesty under RA 9480[7] (also known as the "Tax Amnesty Act of 2007") by fully paying the amount of ₱5,127,149.08 representing 5% of its net worth as of the year ending December 31, 2005.[8]

We find merit in petitioner's motion for reconsideration.

Petitioner was formally registered and incorporated with the Securities and Exchange Commission on June 30, 1987.[9] It is engaged in the dispensation of the following medical services to individuals who enter into health care agreements with it:

Preventive medical services such as periodic monitoring of health problems, family planning counseling, consultation and advices on diet, exercise and other healthy habits, and immunization;

Diagnostic medical services such as routine physical examinations, x-rays, urinalysis, fecalysis, complete blood count, and the like and

Curative medical services which pertain to the performing of other remedial and therapeutic processes in the event of an injury or sickness on the part of the enrolled member.[10]

Individuals enrolled in its health care program pay an annual membership fee. Membership is on a year-to-year basis. The medical services are dispensed to enrolled members in a hospital or clinic owned, operated or accredited by petitioner, through physicians, medical and dental practitioners under contract with it. It negotiates with such health care practitioners regarding payment schemes, financing and other procedures for the delivery of health services. Except in cases of emergency, the professional

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[7] Entitled "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."

[8] *Rollo*, p. 288.

[9] *Id.*, p. 591.

[10] *Id.*, pp. 592, 613.

services are to be provided only by petitioner's physicians, *i.e.* those directly employed by it[11] or whose services are contracted by it.[12] Petitioner also provides hospital services such as room and board accommodation, laboratory services, operating rooms, x-ray facilities and general nursing care.[13] If and when a member avails of the benefits under the agreement, petitioner pays the participating physicians and other health care providers for the services rendered, at pre-agreed rates.[14]

To avail of petitioner's health care programs, the individual members are required to sign and execute a standard health care agreement embodying the terms and conditions for the provision of the health care services. The same agreement contains the various health care services that can be engaged by the enrolled member, *i.e.*, preventive, diagnostic and curative medical services. Except for the curative aspect of the medical service offered, the enrolled member may actually make use of the health care services being offered by petitioner at any time.

HEALTH MAINTENANCE ORGANIZATIONS ARE NOT ENGAGED IN THE INSURANCE BUSINESS

We said in our June 12, 2008 decision that it is irrelevant that petitioner is an HMO and not an insurer because its agreements are treated as insurance contracts and the DST is

[11] This is called the Staff Model, *i.e.*, the HMO employs salaried health care professionals to provide health care services. (*Id.*, pp. 268, 271.)

[12] This is referred to as the Group Practice Model wherein the HMO contracts with a private practice group to provide health services to its members. (*Id.*, pp. 268, 271, 592.) Thus, it is both a service provider and a service contractor. It is a service provider when it directly provides the health care services through its salaried employees. It is a service contractor when it contracts with third parties for the delivery of health services to its members.

[13] *Id.*, p. 102.

[14] *Id.*, p. 280.

not a tax on the business but an excise on the privilege, opportunity or facility used in the transaction of the business.[15]

Petitioner, however, submits that it is of critical importance to characterize the business it is engaged in, that is, to determine whether it is an HMO or an insurance company, as this distinction is indispensable in turn to the issue of whether or not it is liable for DST on its health care agreements.[16]

A second hard look at the relevant law and jurisprudence convinces the Court that the arguments of petitioner are meritorious.

Section 185 of the National Internal Revenue Code of 1997 (NIRC of 1997) provides:

> Section 185. *Stamp tax on fidelity bonds and other insurance policies*. – **On all policies of insurance** or bonds or obligations **of the nature of indemnity for loss, damage, or liability made or renewed by any person, association or company or corporation transacting the business of** accident, fidelity, employer's liability, plate, glass, steam boiler, burglar, elevator, automatic sprinkler, **or other branch of insurance (except life, marine, inland, and fire insurance)**, and all bonds, undertakings, or recognizances, conditioned for the performance of the duties of any office or position, for the doing or not doing of anything therein specified, and on all obligations guaranteeing the validity or legality of any bond or other obligations issued by any province, city, municipality, or other public body or organization, and on all obligations guaranteeing the title to any real estate, or guaranteeing any mercantile credits, which may be made or renewed by any such person, company or corporation, there shall be collected a documentary stamp tax of fifty centavos (₱0.50) on each four pesos (₱4.00), or fractional part thereof, of the premium charged. (Emphasis supplied)

It is a cardinal rule in statutory construction that no word, clause, sentence, provision or part of a statute shall be considered surplusage or superfluous, meaningless, void and insignificant. To this end, a construction which renders every word operative

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[15] Decision, p. 422.

[16] *Rollo*, p. 265.

is preferred over that which makes some words idle and nugatory.[17] This principle is expressed in the maxim *Ut magis valeat quam pereat*, that is, we choose the interpretation which gives effect to the whole of the statute – its every word.[18]

From the language of Section 185, it is evident that **two requisites** must concur before the DST can apply, namely: (1) the document must be a **policy of insurance or an obligation in the nature of indemnity and** (2) **the maker should be transacting the business of** accident, fidelity, employer's liability, plate, glass, steam boiler, burglar, elevator, automatic sprinkler, or other branch of **insurance** (except life, marine, inland, and fire insurance).

Petitioner is admittedly an HMO. Under RA 7875 (or "The National Health Insurance Act of 1995"), an HMO is "an entity that provides, offers or arranges for coverage of designated health services needed by plan members for a fixed prepaid premium."[19] The payments do not vary with the extent, frequency or type of services provided.

The question is: was petitioner, as an HMO, engaged in the business of insurance during the pertinent taxable years? We rule that it was not.

Section 2 (2) of PD[20] 1460 (otherwise known as the Insurance Code) enumerates what constitutes "doing an insurance business" or "transacting an insurance business":

a) making or proposing to make, as insurer, any insurance contract;

b) making or proposing to make, as surety, any contract of suretyship as a vocation and not as merely incidental to any other legitimate business or activity of the surety;

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[17] *Allied Banking Corporation v. Court of Appeals*, G.R. No. 124290, 16 January 1998, 284 SCRA 327, 367, citing *Shimonek v. Tillanan*, 1 P. 2d., 154.

[18] *Inding v. Sandiganbayan*, G.R. No. 143047, 14 July 2004, 434 SCRA 388, 403.

[19] Section 4 (o) (3) thereof. Under this law, it is one of the classes of a "health care provider."

[20] Presidential Decree.

c) doing any kind of business, including a reinsurance business, specifically recognized as constituting the doing of an insurance business within the meaning of this Code;

d) doing or proposing to do any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this Code.

In the application of the provisions of this Code, the fact that no profit is derived from the making of insurance contracts, agreements or transactions or that no separate or direct consideration is received therefore, shall not be deemed conclusive to show that the making thereof does not constitute the doing or transacting of an insurance business.

Various courts in the United States, whose jurisprudence has a persuasive effect on our decisions,[21] have determined that HMOs are not in the insurance business. One test that they have applied is whether the assumption of risk and indemnification of loss (which are elements of an insurance business) are the principal object and purpose of the organization or whether they are merely incidental to its business. If these are the principal objectives, the business is that of insurance. But if they are merely incidental and service is the principal purpose, then the business is not insurance.

Applying the "principal object and purpose test,"[22] there is significant American case law supporting the argument that a corporation (such as an HMO, whether or not organized for profit), whose main object is to provide the members of a group with health services, is not engaged in the insurance business.

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[21] Our Insurance Code was based on California and New York laws. When a statute has been adopted from some other state or country and said statute has previously been construed by the courts of such state or country, the statute is deemed to have been adopted with the construction given. (*Prudential Guarantee and Assurance Inc. v. Trans-Asia Shipping Lines, Inc.*, G.R. No. 151890, 20 June 2006, 491 SCRA 411, 439; *Constantino v. Asia Life Inc. Co.*, 87 Phil. 248, 251 [1950]; *Gercio v. Sun Life Assurance Co. of Canada*, 48 Phil. 53, 59 [1925]; *Cerezo v. Atlantic, Gulf & Pacific Co.*, 33 Phil. 425, 428-429 [1916]).

[22] H. S. de Leon, *The Insurance Code of the Philippines Annotated*, p. 56 (2002 ed.).

The rule was enunciated in *Jordan v. Group Health Association*[23] wherein the Court of Appeals of the District of Columbia Circuit held that Group Health Association should not be considered as engaged in insurance activities since it was created primarily for the distribution of health care services rather than the assumption of insurance risk.

xxx Although Group Health's activities may be considered in one aspect as creating security against loss from illness or accident more truly they constitute the quantity purchase of well-rounded, continuous medical service by its members. xxx **The functions of such an organization are not identical with those of insurance or indemnity companies**. The latter are concerned primarily, if not exclusively, with risk and the consequences of its descent, not with service, or its extension in kind, quantity or distribution; with the unusual occurrence, not the daily routine of living. Hazard is predominant. **On the other hand, the cooperative is concerned principally with getting service rendered to its members and doing so at lower prices made possible by quantity purchasing and economies in operation. Its primary purpose is to reduce the cost rather than the risk of medical care; to broaden the service to the individual in kind and quantity; to enlarge the number receiving it; to regularize it as an everyday incident of living, like purchasing food and clothing or oil and gas, rather than merely protecting against the financial loss caused by extraordinary and unusual occurrences, such as death, disaster at sea, fire and tornado.** It is, in this instance, to take care of colds, ordinary aches and pains, minor ills and all the temporary bodily discomforts as well as the more serious and unusual illness. **To summarize, the distinctive features of the cooperative are the rendering of service, its extension, the bringing of physician and patient together, the preventive features, the regularization of service as well as payment, the substantial reduction in cost by quantity purchasing in short, getting the medical job done and paid for; not, except incidentally to these features, the indemnification for cost after the services is rendered. Except the last, these are not**

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[23] 107 F.2d 239 (D.C. App. 1939). This is a seminal case which had been reiterated in succeeding cases, *e.g. Smith v. Reserve Nat'l Ins. Co.*, 370 So. 2d 186 (La. Ct. App. 3d Cir. 1979); *Transportation Guarantee Co. v. Jellins*, 29 Cal.2d 242, 174 P.2d 625 (1946); *State v. Anderson*, 195 Kan. 649, 408 P.2d 864 (1966); *Commissioner of Banking and Insurance v. Community Health Service*, 129 N.J.L. 427, 30 A.2d 44 (1943).

distinctive or generally characteristic of the insurance arrangement. There is, therefore, a substantial difference between contracting in this way for the rendering of service, even on the contingency that it be needed, and contracting merely to stand its cost when or after it is rendered.

That an incidental element of risk distribution or assumption may be present should not outweigh all other factors. If attention is focused only on that feature, the line between insurance or indemnity and other types of legal arrangement and economic function becomes faint, if not extinct. This is especially true when the contract is for the sale of goods or services on contingency. But obviously it was not the purpose of the insurance statutes to regulate all arrangements for assumption or distribution of risk. That view would cause them to engulf practically all contracts, particularly conditional sales and contingent service agreements. **The fallacy is in looking only at the risk element, to the exclusion of all others present or their subordination to it. The question turns, not on whether risk is involved or assumed, but on whether that or something else to which it is related in the particular plan is its principal object purpose.**[24] (Emphasis supplied)

In *California Physicians' Service v. Garrison*,[25] the California court felt that, after scrutinizing the plan of operation as a whole of the corporation, it was service rather than indemnity which stood as its principal purpose.

There is another and more compelling reason for holding that the service is not engaged in the insurance business. **Absence or presence of assumption of risk or peril is not the sole test to be applied in determining its status. The question, more broadly, is whether, looking at the plan of operation as a whole, 'service' rather than 'indemnity' is its principal object and purpose.** Certainly the objects and purposes of the corporation organized and maintained by the California physicians have a wide scope in the field of social service. **Probably there is no more impelling need than that of adequate medical care on a voluntary, low-cost basis for persons of small income. The medical profession unitedly is endeavoring to meet that need. Unquestionably this is 'service' of a high order and not 'indemnity.'**[26] (Emphasis supplied)

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[24] *Id.*, pp. 247-248.

[25] 28 Cal. 2d 790 (1946).

[26] *Id.*, p. 809.

American courts have pointed out that the main difference between an HMO and an insurance company is that HMOs undertake to provide or arrange for the provision of medical services through participating physicians while insurance companies simply undertake to indemnify the insured for medical expenses incurred up to a pre-agreed limit. *Somerset Orthopedic Associates, P.A. v. Horizon Blue Cross and Blue Shield of New Jersey*[27] is clear on this point:

> The basic distinction between medical service corporations and ordinary health and accident insurers is that the former undertake to provide prepaid medical services **through participating physicians,** thus relieving subscribers of any further financial burden, while the latter only undertake to indemnify an insured for medical expenses up to, but not beyond, the schedule of rates contained in the policy.
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> x x x x x x x x x
>
> The primary purpose of a medical service corporation, however, is an undertaking to provide physicians who will render services to subscribers on a prepaid basis. **Hence, if there are no physicians participating in the medical service corporation's plan, not only will the subscribers be deprived of the protection which they might reasonably have expected would be provided**, **but the corporation will, in effect, be doing business solely as a health and accident indemnity insurer** without having qualified as such and rendering itself subject to the more stringent financial requirements of the General Insurance Laws….
>
> A participating provider of health care services is one who agrees in writing to render health care services to or for persons covered by a contract issued by health service corporation in return **for which the health service corporation agrees to make payment directly to the participating provider**.[28] (Emphasis supplied)

Consequently, the mere presence of risk would be insufficient to override the primary purpose of the business to provide medical services as needed, with payment made directly to the provider

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[27] 345 N.J. Super. 410, 785 A.2d 457 (2001);< http://lawlibrary.rutgers.edu/courts/appellate/a1562-00.opn.html> (visited July 14, 2009).

[28] *Id.*, citing *Group Health Ins. of N.J. v. Howell*, 40 N.J. 436, 451 (1963).

of these services.[29] In short, even if petitioner assumes the risk of paying the cost of these services even if significantly more than what the member has prepaid, it nevertheless cannot be considered as being engaged in the insurance business.

By the same token, any indemnification resulting from the payment for services rendered in case of emergency by non-participating health providers would still be incidental to petitioner's purpose of providing and arranging for health care services and does not transform it into an insurer. To fulfill its obligations to its members under the agreements, petitioner is required to set up a system and the facilities for the delivery of such medical services. This indubitably shows that indemnification is not its sole object.

In fact, a substantial portion of petitioner's services covers preventive and diagnostic medical services intended to keep members from developing medical conditions or diseases.[30] As an HMO, it is its obligation to maintain the good health of its members. **Accordingly, its health care programs are designed to prevent or to minimize the possibility of any assumption of risk on its part.** Thus, its undertaking under its agreements is not to indemnify its members against any loss or damage arising from a medical condition but, on the contrary, to provide the health and medical services needed to prevent such loss or damage.[31]

Overall, petitioner appears to provide insurance-type benefits to its members (with respect to its **curative** medical services), but these are incidental to the principal activity of providing them medical care. The "insurance-like" aspect of petitioner's business is miniscule compared to its noninsurance activities. Therefore, since it substantially provides health care services

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[29] L.R. Russ and S.F. Segalla, *1 Couch on Ins. § 1:46* (3rd ed., December 2008).

[30] This involves the determination of a medical condition (such as a disease) by physical examination or by study of its symptoms (*Rollo*, p. 613, citing Black's *Law Dictionary*, p. 484 [8th ed.]).

[31] *Rollo,* pp. 612-613.

rather than insurance services, it cannot be considered as being in the insurance business.

It is important to emphasize that, in adopting the "principal purpose test" used in the above-quoted U.S. cases, we are not saying that petitioner's operations are identical in every respect to those of the HMOs or health providers which were parties to those cases. What we are stating is that, for the purpose of determining what "doing an insurance business" means, we have to scrutinize the operations of the business as a whole and not its mere components. This is of course only prudent and appropriate, taking into account the burdensome and strict laws, rules and regulations applicable to insurers and other entities engaged in the insurance business. Moreover, we are also not unmindful that there are other American authorities who have found particular HMOs to be actually engaged in insurance activities.[32]

Lastly, it is significant that petitioner, as an HMO, is not part of the insurance industry. This is evident from the fact that it is not supervised by the Insurance Commission but by the Department of Health.[33] In fact, in a letter dated September 3, 2000, the Insurance Commissioner confirmed that petitioner is not engaged in the insurance business. This determination of the commissioner must be accorded great weight. It is well-settled that the interpretation of an administrative agency which is tasked to implement a statute is accorded great respect and ordinarily controls the interpretation of laws by the courts. The

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[32] One such decision of the United States Supreme Court is *Rush Prudential HMO, Inc. v. Moran* (536 U.S. 355 [2002]). In that case, the Court recognized that HMOs provide both insurance and health care services and that Congress has understood the insurance aspects of HMOs since the passage of the HMO Act of 1973. This case is not applicable here. Firstly, this was not a tax case. Secondly, the Court stated that Congress expressly understood and viewed HMOs as insurers. It is not the same here in the Philippines. As will be discussed below, there is no showing that the Philippine Congress had demonstrated an awareness of HMOs as insurers.

[33] See Executive Order No. 119 (1987) and Administrative Order (AO) No. 34 (1994), as amended by AO No. 36 (1996).

reason behind this rule was explained in *Nestle Philippines, Inc. v. Court of Appeals*:[34]

> The rationale for this rule relates not only to the emergence of the multifarious needs of a modern or modernizing society and the establishment of diverse administrative agencies for addressing and satisfying those needs; it also relates to the accumulation of experience and growth of specialized capabilities by the administrative agency charged with implementing a particular statute. In *Asturias Sugar Central, Inc. vs. Commissioner of Customs*,[35] the Court stressed that executive officials are presumed to have familiarized themselves with all the considerations pertinent to the meaning and purpose of the law, and to have formed an independent, conscientious and competent expert opinion thereon. The courts give much weight to the government agency officials charged with the implementation of the law, their competence, expertness, experience and informed judgment, and the fact that they frequently are the drafters of the law they interpret.[36]

A HEALTH CARE AGREEMENT IS NOT AN INSURANCE CONTRACT CONTEMPLATED UNDER SECTION 185 OF THE NIRC OF 1997

Section 185 states that DST is imposed on "all policies of insurance… or obligations of the nature of indemnity for loss, damage, or liability…." In our decision dated June 12, 2008, we ruled that petitioner's health care agreements are contracts of indemnity and are therefore insurance contracts:

> It is … incorrect to say that the health care agreement is not based on loss or damage because, under the said agreement, petitioner assumes the liability and indemnifies its member for hospital, medical and related expenses (such as professional fees of physicians). The term "loss or damage" is broad enough to cover the monetary expense or liability a member will incur in case of illness or injury.

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[34] G.R. No. 86738, 13 November 1991, 203 SCRA 504.

[35] 140 Phil. 20 (1969).

[36] *Supra* note 34, pp. 510-511.

Under the health care agreement, the rendition of hospital, medical and professional services to the member in case of sickness, injury or emergency or his availment of so-called "out-patient services" (including physical examination, x-ray and laboratory tests, medical consultations, vaccine administration and family planning counseling) is the contingent event which gives rise to liability on the part of the member. In case of exposure of the member to liability, he would be entitled to indemnification by petitioner.

Furthermore, the fact that petitioner must relieve its member from liability by paying for expenses arising from the stipulated contingencies belies its claim that its services are prepaid. The expenses to be incurred by each member cannot be predicted beforehand, if they can be predicted at all. Petitioner assumes the risk of paying for the costs of the services even if they are significantly and substantially more than what the member has "prepaid." Petitioner does not bear the costs alone but distributes or spreads them out among a large group of persons bearing a similar risk, that is, among all the other members of the health care program. This is insurance.[37]

We reconsider. We shall quote once again the pertinent portion of Section 185:

Section 185. *Stamp tax on fidelity bonds and other insurance policies*. – **On all policies of insurance** or bonds **or obligations of the nature of indemnity for loss, damage, or liability** made or renewed by any person, association or company or corporation transacting the business of accident, fidelity, employer's liability, plate, glass, steam boiler, burglar, elevator, automatic sprinkler, or other branch of insurance (except life, marine, inland, and fire insurance), xxx (Emphasis supplied)

In construing this provision, we should be guided by the principle that tax statutes are strictly construed against the taxing authority.[38] This is because taxation is a destructive power which interferes with the personal and property rights of the people and takes from them a portion of their property for the

[37] Decision, pp. 420-421.

[38] *Commissioner of Internal Revenue v. Solidbank Corporation*, G.R. No. 148191, 25 November 2003, 416 SCRA 436, citing *Miller v. Illinois Cent. R Co.*, Ill. So. 559, 28 February 1927.

support of the government.[39] Hence, tax laws may not be extended by implication beyond the clear import of their language, nor their operation enlarged so as to embrace matters not specifically provided.[40]

We are aware that, in *Blue Cross* and *Philamcare*, the Court pronounced that a health care agreement is in the nature of non-life insurance, which is primarily a contract of indemnity. However, those cases did not involve the interpretation of a tax provision. Instead, they dealt with the liability of a health service provider to a member under the terms of their health care agreement. Such contracts, as contracts of adhesion, are liberally interpreted in favor of the member and strictly against the HMO. For this reason, we reconsider our ruling that *Blue Cross* and *Philamcare* are applicable here.

Section 2 (1) of the Insurance Code defines a contract of insurance as an agreement whereby one undertakes for a consideration to indemnify another against loss, damage or liability arising from an unknown or contingent event. An insurance contract exists where the following elements concur:

1. The insured has an insurable interest;
2. The insured is subject to a risk of loss by the happening of the designed peril;
3. The insurer assumes the risk;
4. Such assumption of risk is part of a general scheme to distribute actual losses among a large group of persons bearing a similar risk and
5. In consideration of the insurer's promise, the insured pays a premium.[41]

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[39] *Paseo Realty & Development Corporation v. Court of Appeals*, G.R. No. 119286, 13 October 2004, 440 SCRA 235, 251.

[40] *Collector of Int. Rev. v. La Tondeña, Inc. and CTA*, 115 Phil. 841, 846 (1963).

[41] *Gulf Resorts, Inc. v. Philippine Charter Insurance Corporation*, G.R. No. 156167, 16 May 2005, 458 SCRA 550, 566, citations omitted.

Do the agreements between petitioner and its members possess all these elements? They do not.

First. In our jurisdiction, a commentator of our insurance laws has pointed out that, even if a contract contains all the elements of an insurance contract, if its primary purpose is the rendering of service, it is not a contract of insurance:

> It does not necessarily follow however, that a contract containing all the four elements mentioned above would be an insurance contract. **The primary purpose of the parties in making the contract may negate the existence of an insurance contract**. For example, a law firm which enters into contracts with clients whereby in consideration of periodical payments, it promises to represent such clients in all suits for or against them, is not engaged in the insurance business. Its contracts are simply for the purpose of rendering personal services. On the other hand, a contract by which a corporation, in consideration of a stipulated amount, agrees at its own expense to defend a physician against all suits for damages for malpractice is one of insurance, and the corporation will be deemed as engaged in the business of insurance. Unlike the lawyer's retainer contract, the essential purpose of such a contract is not to render personal services, but to indemnify against loss and damage resulting from the defense of actions for malpractice.[42] (Emphasis supplied)

Second. Not all the necessary elements of a contract of insurance are present in petitioner's agreements. To begin with, there is no loss, damage or liability on the part of the member that should be indemnified by petitioner as an HMO. Under the agreement, the member pays petitioner a predetermined consideration in exchange for the hospital, medical and professional services rendered by the petitioner's physician or affiliated physician to him. In case of availment by a member of the benefits under the agreement, petitioner does not reimburse or indemnify the member as the latter does not pay any third party. Instead, it is the petitioner who pays the participating physicians and other health care providers for the services rendered at pre-agreed rates. The member does not make any such payment.

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[42] M. C. L. Campos, *Insurance*, pp. 17-18 (1983), citing *Physicians' Defense Co. v. O'Brien*, 100 Minn. 490, 111 N.W. 397 (1907).

In other words, there is nothing in petitioner's agreements that gives rise to a monetary liability on the part of the member to any third party-provider of medical services which might in turn necessitate indemnification from petitioner. The terms "indemnify" or "indemnity" presuppose that a liability or claim has already been incurred. There is no indemnity precisely because the member merely avails of medical services to be paid or already paid in advance at a pre-agreed price under the agreements.

Third. According to the agreement, a member can take advantage of the bulk of the benefits anytime, *e.g.* laboratory services, x-ray, routine annual physical examination and consultations, vaccine administration as well as family planning counseling, even in the absence of any peril, loss or damage on his or her part.

Fourth. In case of emergency, petitioner is obliged to reimburse the member who receives care from a non-participating physician or hospital. However, this is only a very minor part of the list of services available. The assumption of the expense by petitioner is not confined to the happening of a contingency but includes incidents even in the absence of illness or injury.

In *Michigan Podiatric Medical Association v. National Foot Care Program, Inc.*,[43] although the health care contracts called for the defendant to partially reimburse a subscriber for treatment received from a non-designated doctor, this did not make defendant an insurer. Citing *Jordan*, the Court determined that "the primary activity of the defendant (was) the provision of podiatric services to subscribers in consideration of prepayment for such services."[44] Since indemnity of the insured was not the focal point of the agreement but the extension of medical services to the member at an affordable cost, it did not partake of the nature of a contract of insurance.

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[43] 438 N.W.2d 350. (Mich. Ct. App. 1989).

[44] *Id.*, p. 354.

Fifth. Although risk is a primary element of an insurance contract, it is not necessarily true that risk alone is sufficient to establish it. Almost anyone who undertakes a contractual obligation always bears a certain degree of financial risk. Consequently, there is a need to distinguish prepaid service contracts (like those of petitioner) from the usual insurance contracts.

Indeed, petitioner, as an HMO, undertakes a business risk when it offers to provide health services: the risk that it might fail to earn a reasonable return on its investment. But it is not the risk of the type peculiar only to insurance companies. Insurance risk, also known as actuarial risk, is the risk that the cost of insurance claims might be higher than the premiums paid. The amount of premium is calculated on the basis of assumptions made relative to the insured.[45]

However, assuming that petitioner's commitment to provide medical services to its members can be construed as an acceptance of the risk that it will shell out more than the prepaid fees, it still will not qualify as an insurance contract because petitioner's objective is to provide medical services at reduced cost, not to distribute risk like an insurer.

In sum, an examination of petitioner's agreements with its members leads us to conclude that it is not an insurance contract within the context of our Insurance Code.

THERE WAS NO LEGISLATIVE INTENT TO IMPOSE DST ON HEALTH CARE AGREEMENTS OF HMOs

Furthermore, militating in convincing fashion against the imposition of DST on petitioner's health care agreements under Section 185 of the NIRC of 1997 is the provision's legislative history. The text of Section 185 came into U.S. law as early as 1904 when HMOs and health care agreements were not even in existence in this jurisdiction. It was imposed under Section

[45] *Rollo*, p. 702, citing Phillip, Booth *et al.*, *Modern Actuarial Theory and Practice* (2005).

116, Article XI of Act No. 1189 (otherwise known as the "Internal Revenue Law of 1904")[46] enacted on July 2, 1904 and became effective on August 1, 1904. Except for the rate of tax, Section 185 of the NIRC of 1997 is a verbatim reproduction of the pertinent portion of Section 116, to wit:

ARTICLE XI

Stamp Taxes on Specified Objects

Section 116. There shall be levied, collected, and paid for and in respect to the several bonds, debentures, or certificates of stock and indebtedness, and other documents, instruments, matters, and things mentioned and described in this section, or for or in respect to the vellum, parchment, or paper upon which such instrument, matters, or things or any of them shall be written or printed by any person or persons who shall make, sign, or issue the same, on and after January first, nineteen hundred and five, the several taxes following:

x x x x x x x x x

Third xxx **(c) on all policies of insurance or bond or obligation of the nature of indemnity for loss, damage, or liability made or renewed by any person, association, company, or corporation transacting the business of accident, fidelity, employer's liability, plate glass, steam boiler, burglar, elevator, automatic sprinkle, or other branch of insurance (except life, marine, inland, and fire insurance)** xxx (Emphasis supplied)

On February 27, 1914, Act No. 2339 (the Internal Revenue Law of 1914) was enacted revising and consolidating the laws relating to internal revenue. The aforecited pertinent portion of Section 116, Article XI of Act No. 1189 was completely reproduced as Section 30 (l), Article III of Act No. 2339. The very detailed and exclusive enumeration of items subject to DST was thus retained.

On December 31, 1916, Section 30 (l), Article III of Act No. 2339 was again reproduced as Section 1604 (l), Article IV

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[46] Entitled "An Act to Provide for the Support of the Insular, Provincial and Municipal Governments, by Internal Taxation."

of Act No. 2657 (Administrative Code). Upon its amendment on March 10, 1917, the pertinent DST provision became Section 1449 (l) of Act No. 2711, otherwise known as the Administrative Code of 1917.

Section 1449 (1) eventually became Sec. 222 of Commonwealth Act No. 466 (the NIRC of 1939), which codified all the internal revenue laws of the Philippines. In an amendment introduced by RA 40 on October 1, 1946, the DST rate was increased but the provision remained substantially the same.

Thereafter, on June 3, 1977, the same provision with the same DST rate was reproduced in PD 1158 (NIRC of 1977) as Section 234. Under PDs 1457 and 1959, enacted on June 11, 1978 and October 10, 1984 respectively, the DST rate was again increased.

Effective January 1, 1986, pursuant to Section 45 of PD 1994, Section 234 of the NIRC of 1977 was renumbered as Section 198. And under Section 23 of EO[47] 273 dated July 25, 1987, it was again renumbered and became Section 185.

On December 23, 1993, under RA 7660, Section 185 was amended but, again, only with respect to the rate of tax.

Notwithstanding the comprehensive amendment of the NIRC of 1977 by RA 8424 (or the NIRC of 1997), the subject legal provision was retained as the present Section 185. In 2004, amendments to the DST provisions were introduced by RA 9243[48] but Section 185 was untouched.

On the other hand, the concept of an HMO was introduced in the Philippines with the formation of Bancom Health Care Corporation in 1974. The same pioneer HMO was later reorganized and renamed Integrated Health Care Services, Inc. (or Intercare). However, there are those who claim that Health Maintenance, Inc. is the HMO industry pioneer, having set foot in the Philippines as early as 1965 and having been formally

[47] Executive Order No.

[48] An Act Rationalizing the Provisions of the DST of the NIRC of 1997, as amended, and for other purposes.

incorporated in 1991. Afterwards, HMOs proliferated quickly and currently, there are 36 registered HMOs with a total enrollment of more than 2 million.[49]

We can clearly see from these two histories (of the DST on the one hand and HMOs on the other) that when the law imposing the DST was first passed, HMOs were yet unknown in the Philippines. However, when the various amendments to the DST law were enacted, they were already in existence in the Philippines and the term had in fact already been defined by RA 7875. If it had been the intent of the legislature to impose DST on health care agreements, it could have done so in clear and categorical terms. It had many opportunities to do so. But it did not. The fact that the NIRC contained no specific provision on the DST liability of health care agreements of HMOs at a time they were already known as such, belies any legislative intent to impose it on them. **As a matter of fact, petitioner was assessed its DST liability only on January 27, 2000, after more than a decade in the business as an HMO.**[50]

Considering that Section 185 did not change since 1904 (except for the rate of tax), it would be safe to say that health care agreements were never, at any time, recognized as insurance contracts or deemed engaged in the business of insurance within the context of the provision.

THE POWER TO TAX IS NOT THE POWER TO DESTROY

As a general rule, the power to tax is an incident of sovereignty and is unlimited in its range, acknowledging in its very nature no limits, so that security against its abuse is to be found only in the responsibility of the legislature which imposes the tax on the constituency who is to pay it.[51] So potent indeed is the

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[49] *Rollo*, pp. 589, 591, citing <http://www.rmaf.org.ph/Awardees/Biography/ Biography BengzonAlf.htm>; <http://doktorko.com/_blog/index.php?mod=blog_article&a=80&md=897>; <http://www.hmi.com.ph/prof.html> (visited July 15, 2009).

[50] *Id.*, p. 592.

[51] *MCIAA v. Marcos*, 330 Phil. 392, 404 (1996).

power that it was once opined that "the power to tax involves the power to destroy."[52]

Petitioner claims that the assessed DST to date which amounts to ₱376 million[53] is way beyond its net worth of ₱259 million.[54] Respondent never disputed these assertions. Given the realities on the ground, imposing the DST on petitioner would be highly oppressive. It is not the purpose of the government to throttle private business. On the contrary, the government ought to encourage private enterprise.[55] Petitioner, just like any concern organized for a lawful economic activity, has a right to maintain a legitimate business.[56] As aptly held in *Roxas, et al. v. CTA, et al.*:[57]

> The power of taxation is sometimes called also the power to destroy. Therefore it should be exercised with caution to minimize injury to the proprietary rights of a taxpayer. It must be exercised fairly, equally and uniformly, lest the tax collector kill the "hen that lays the golden egg."[58]

Legitimate enterprises enjoy the constitutional protection not to be taxed out of existence. Incurring losses because of a tax imposition may be an acceptable consequence but killing the business of an entity is another matter and should not be allowed.

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[52] United States Chief Justice Marshall in *McCulloch v. Maryland*, 17 U.S. 316, 4 Wheat, 316, 4 L ed. 579, 607 (1819).

[53] Inclusive of penalties.

[54] *Rollo*, p. 589.

[55] *Manila Railroad Company v. A. L. Ammen Transportation Co., Inc.*, 48 Phil. 900, 907 (1926).

[56] Constitution, Section 3, Article XIII on Social Justice and Human Rights reads as follows:

> Section 3. xxx
>
> The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the **right of enterprises to reasonable return on investments, and to expansion and growth**. (Emphasis supplied)

[57] 131 Phil. 773 (1968).

[58] *Id.*, pp. 780-781.

It is counter-productive and ultimately subversive of the nation's thrust towards a better economy which will ultimately benefit the majority of our people.[59]

PETITIONER'S TAX LIABILITY WAS EXTINGUISHED UNDER THE PROVISIONS OF RA 9840

Petitioner asserts that, regardless of the arguments, the DST assessment for taxable years 1996 and 1997 became moot and academic[60] when it availed of the tax amnesty under RA 9480 on December 10, 2007. It paid ₱5,127,149.08 representing 5% of its net worth as of the year ended December 31, 2005 and complied with all requirements of the tax amnesty. Under Section 6(a) of RA 9480, it is entitled to immunity from payment of taxes as well as additions thereto, and the appurtenant civil, criminal or administrative penalties under the 1997 NIRC, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years.[61]

Far from disagreeing with petitioner, respondent manifested in its memorandum:

> Section 6 of [RA 9840] provides that availment of tax amnesty entitles a taxpayer to immunity from payment of the tax involved, including the civil, criminal, or administrative penalties provided under the 1997 [NIRC], for tax liabilities arising in 2005 and the preceding years.
>
> In view of petitioner's availment of the benefits of [RA 9840], and without conceding the merits of this case as discussed above, **respondent concedes that such tax amnesty extinguishes the tax liabilities of petitioner**. This admission, however, is not meant to preclude a revocation of the amnesty granted in case it is found to have been granted under circumstances amounting to tax fraud under Section 10 of said amnesty law.[62] (Emphasis supplied)

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[59] *Manatad v. Philippine Telegraph and Telephone Corporation*, G.R. No. 172363, 7 March 2008, 548 SCRA 64, 80.

[60] *Rollo*, p. 661.

[61] *Id.*, pp. 260-261.

[62] *Id.*, p. 742.

Furthermore, we held in a recent case that DST is one of the taxes covered by the tax amnesty program under RA 9480.[63] There is no other conclusion to draw than that petitioner's liability for DST for the taxable years 1996 and 1997 was totally extinguished by its availment of the tax amnesty under RA 9480.

IS THE COURT BOUND BY A MINUTE RESOLUTION IN ANOTHER CASE?

Petitioner raises another interesting issue in its motion for reconsideration: whether this Court is bound by the ruling of the CA[64] in *CIR v. Philippine National Bank*[65] that a health care agreement of Philamcare Health Systems is not an insurance contract for purposes of the DST.

In support of its argument, petitioner cites the August 29, 2001 minute resolution of this Court dismissing the appeal in *Philippine National Bank* (G.R. No. 148680).[66] Petitioner argues that the dismissal of G.R. No. 148680 by minute resolution was a judgment on the merits; hence, the Court should apply the CA ruling there that a health care agreement is not an insurance contract.

It is true that, although contained in a minute resolution, our dismissal of the petition was a disposition of the merits of the case. When we dismissed the petition, we effectively affirmed the CA ruling being questioned. As a result, our ruling in that case has already become final.[67] When a minute resolution denies or dismisses a petition for failure to comply with formal and substantive requirements, the challenged decision, together

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[63] *Philippine Banking Corporation v. CIR*, G.R. No. 170574, 30 January 2009.

[64] CA-G.R. SP No. 53301, 18 June 2001.

[65] G.R. No. 148680.

[66] The dismissal was due to the failure of petitioner therein to attach a certified true copy of the assailed decision.

[67] *Del Rosario v. Sandiganbayan*, G.R. No. 143419, 22 June 2006, 492 SCRA 170, 177.

with its findings of fact and legal conclusions, are deemed sustained.[68] But what is its effect on other cases?

With respect to the same subject matter and the same issues concerning the same parties, it constitutes *res judicata*.[69] However, if other parties or another subject matter (even with the same parties and issues) is involved, the minute resolution is not binding precedent. Thus, in *CIR v. Baier-Nickel*,[70] the Court noted that a previous case, *CIR v. Baier-Nickel*[71] **involving the same parties and the same issues**, was previously disposed of by the Court thru a minute resolution dated February 17, 2003 sustaining the ruling of the CA. Nonetheless, the Court ruled that **the previous case "ha(d) no bearing"** on the latter case because the two cases involved different subject matters as they were concerned with the taxable income of different taxable years.[72]

Besides, there are substantial, not simply formal, distinctions between a minute resolution and a decision. The constitutional requirement under the first paragraph of Section 14, Article VIII of the Constitution that the facts and the law on which the judgment is based must be expressed clearly and distinctly applies only to decisions, not to minute resolutions. A minute resolution is signed only by the clerk of court by authority of the justices, unlike a decision. It does not require the certification of the Chief Justice. Moreover, unlike decisions, minute resolutions are not published in the Philippine Reports. Finally, the proviso

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[68] *Complaint of Mr. Aurelio Indencia Arrienda Against SC Justices Puno, Kapunan, Pardo, Ynares-Santiago, et al.*, A.M. No. 03-11-30-SC, 9 June 2005, 460 SCRA 1, 14, citing *Tan v. Nitafan*, G.R. No. 76965, 11 March 1994, 231 SCRA 129; *Republic v. CA*, 381 Phil. 558, 565 (2000), citing *Bernarte, et al. v. Court of Appeals, et al.*, 331 Phil. 643, 659 (1996).

[69] See *Bernarte, et al. v. Court of Appeals, et al., id.*, p. 567.

[70] G.R. No. 153793, 29 August 2006, 500 SCRA 87.

[71] Extended Resolution, G.R. No. 156305, 17 February 2003.

[72] *Supra* note 70, p. 102. G.R. No. 156305 referred to the income of Baier-Nickel for taxable year 1994 while G.R. No. 153793 pertained to Baier-Nickel's income in 1995.

of Section 4(3) of Article VIII speaks of a decision.[73] Indeed, as a rule, this Court lays down doctrines or principles of law which constitute binding precedent in a decision duly signed by the members of the Court and certified by the Chief Justice.

Accordingly, since petitioner was not a party in G.R. No. 148680 and since petitioner's liability for DST on its health care agreement was not the subject matter of G.R. No. 148680, petitioner cannot successfully invoke the minute resolution in that case (which is not even binding precedent) in its favor. Nonetheless, in view of the reasons already discussed, this does not detract in any way from the fact that petitioner's health care agreements are not subject to DST.

A FINAL NOTE

Taking into account that health care agreements are clearly not within the ambit of Section 185 of the NIRC and there was never any legislative intent to impose the same on HMOs like petitioner, the same should not be arbitrarily and unjustly included in its coverage.

It is a matter of common knowledge that there is a great social need for adequate medical services at a cost which the average wage earner can afford. HMOs arrange, organize and manage health care treatment in the furtherance of the goal of providing a more efficient and inexpensive health care system made possible by quantity purchasing of services and economies of scale. They offer advantages over the pay-for-service system (wherein individuals are charged a fee each time they receive medical services), including the ability to control costs. They protect their members from exposure to the high cost of

[73] Section 4. xxx

(3) Cases or matters heard by a Division shall be decided or resolved with the concurrence of a majority of the members who actually took part in the deliberation on the issues in the case and voted thereon, and in no case, without the concurrence of at least three of such members. When the required number is not obtained, the case shall be decided *En Banc*: *Provided*, **that no doctrine or principle of law laid down by the Court in a decision rendered *En Banc* or in Division may be modified or reversed except by the Court sitting *En Banc***. (Emphasis supplied)

hospitalization and other medical expenses brought about by a fluctuating economy. Accordingly, they play an important role in society as partners of the State in achieving its constitutional mandate of providing its citizens with affordable health services.

The rate of DST under Section 185 is equivalent to 12.5% of the premium charged.[74] Its imposition will elevate the cost of health care services. This will in turn necessitate an increase in the membership fees, resulting in either placing health services beyond the reach of the ordinary wage earner or driving the industry to the ground. At the end of the day, neither side wins, considering the indispensability of the services offered by HMOs.

WHEREFORE, the motion for reconsideration is *GRANTED*. The August 16, 2004 decision of the Court of Appeals in CA-G.R. SP No. 70479 is *REVERSED* and *SET ASIDE*. The 1996 and 1997 deficiency DST assessment against petitioner is hereby *CANCELLED* and *SET ASIDE*. Respondent is ordered to desist from collecting the said tax.

No costs.

SO ORDERED.

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

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[74] That is, fifty centavos (₱0.50) on each four pesos (₱4.00), or a fractional part thereof, of the premium charged.

[*] Per Special Order No. 698 dated September 4, 2009.

[**] Additional member per raffle list of 13 April 2009.

EN BANC

[G.R. No. 168446. September 18, 2009]
(Formerly G.R. Nos. 144174-75)

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ERNESTO CRUZ, JR.** ***y*** **CONCEPCION and REYNALDO AGUSTIN** ***y*** **RAMOS,** *appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT THEREON ARE ACCORDED GREAT WEIGHT AND RESPECT ON APPEAL.— Central to the issues raised in the respective briefs of appellants Cruz and Agustin is a question of the factual findings of the RTC. However, this Court, in numerous cases, has ruled that, [W]ell-entrenched is the doctrine that the factual findings of the trial court, especially on the assessment or appreciation of the testimonies of witnesses, are accorded great weight and respect. The trial court has the singular opportunity to observe the witnesses "through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply; or the furtive glance, the blush of conscious shame, the hesitation, the sincere or the flippant or sneering tone, the heat, the calmness, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien."

2. CRIMINAL LAW; CONSPIRACY; ESTABLISHED IN CASE AT BAR.— It is immaterial whether appellant Agustin acted as a principal or an accomplice. What really matters is that the conspiracy was proven and he took part in it. As lucidly shown in the evidence, without the participation of appellant Agustin, the commission of the offense would not have come to fruition, and as clearly presented by the prosecution, he was the one who paved the way for Atty. Soriano to board the vehicle and his closeness with the victim led the latter to trust the former, thus, accomplishing the appellants' devious plan. Consequently,

the conspirators shall be held equally liable for the crime, because in a conspiracy the act of one is the act of all.

3. ID.; CRIMES AGAINST PERSONAL LIBERTY; KIDNAPPING AND SERIOUS ILLEGAL DETENTION; PRIMARY ELEMENT OF THE CRIME IS ACTUAL CONFINEMENT, DETENTION AND RESTRAINT OF THE VICTIM; PROVEN IN CASE AT BAR.— x x x [T]here was actual confinement and that he was deprived of his liberty. The primary element of the crime of kidnapping is actual confinement, detention and restraint of the victim. There must be a showing of actual confinement or restriction of the victim, and that such deprivation was the intention of the malefactor. An accused is liable for kidnapping when the evidence adequately proves that he forcefully transported, locked up or restrained the victim. There must exist indubitable proof that the actual intent of the malefactor was to deprive the victim of his liberty. The restraint of liberty must not arise merely as an incident to the commission of another offense that the offender primarily intended to commit.

4. ID.; ID.; ID.; THE VICTIM NEED NOT BE TAKEN BY THE ACCUSED FORCIBLY OR AGAINST HIS WILL; CASE AT BAR.— As to the contention of appellant Cruz that there was no force or intimidation involved in the taking, this Court held in the case of *People v. Santos*, that the fact that the victim voluntarily went with the accused did not remove the element of deprivation of liberty, because the victim went with the accused on a false inducement without which the victim would not have done so. In the present case, although Atty. Soriano boarded the vehicle without any protestation, he was under the impression that the said persons inside the same vehicle were to be trusted as he was assured by appellant Agustin about that matter. Without such assurance, the victim would not have boarded the said vehicle. Moreover, it is important to emphasize that, in kidnapping, the victim need not be taken by the accused forcibly or against his will. What is controlling is the act of the accused in detaining the victim against his or her will after the offender is able to take the victim in his custody. In short, the carrying away of the victim in the crime of kidnapping and serious illegal detention can either be made forcibly or fraudulently.

5. ID.; ID.; ID.; PRESCRIBED PENALTY OF DEATH FOR VIOLATIONS THEREOF CANNOT BE IMPOSED IN VIEW

OF THE PASSAGE OF REPUBLIC ACT NO. 9346.— x x x [T]he RTC imposed the penalty of Death on both appellants, since it was then the prescribed penalty for violations of Article 267 of the Revised Penal Code, as amended by R.A. 7659. However, the death penalty cannot be imposed on the appellants in view of the passage of R.A. No. 9346 on June 24, 2006, prohibiting the imposition of death penalty in the Philippines. In accordance with Sections 2 and 3 thereof, the penalty that should be meted out to the appellants is *reclusion perpetua* without the possibility of parole.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Vicente D. Millora for Ernesto Cruz, Jr.
Law Firm of Lapeña & Associates for Reynaldo Agustin *y* Ramos.

D E C I S I O N

PERALTA, *J.*:

The present appeal is from a Decision[1] dated April 8, 2005 of the Court of Appeals (CA) in CA-G.R. CR No. 00264, affirming in *toto* the Joint Decision[2] dated May 25, 2000 of the Regional Trial Court (RTC), Branch 78, Malolos, Bulacan, finding appellants Ernesto Cruz, Jr. and Reynaldo Agustin guilty beyond reasonable doubt of the crimes of Kidnapping and Serious Illegal Detention (Article 267, Revised Penal Code [RPC] as amended by Republic Act [R.A.] No. 7659) and Robbery (Article 294, RPC, as amended by R.A. No. 7659).

The antecedent facts, as culled from the records, are the following:

On August 23, 1998, on or about 6:30 in the evening, Atty. Danilo Soriano, a Legal Officer of Del Monte Philippines, had

[1] Penned by Associate Justice Portia Aliño–Hormachuelos (Chairperson, Seventh Division), with Associate Justices Juan Q. Enriquez, Jr. and Vicente Q. Roxas, concurring; *rollo,* pp. 3-34.

[2] Penned by Judge Gregorio S. Sampaga; CA *rollo,* pp. 30-50.

just ended his usual Sunday visit to his farm in Masuso, Pandi, Bulacan.[3] Wanting to go home to his residence in Malabon, Metro Manila, Atty. Soriano requested his caretaker, appellant Reynaldo Agustin, to have the latter's son drive the former in a motorcycle to the jeepney stop, so that he could board a jeepney going to the Pandi-Balagtas terminal. Appellant Agustin volunteered to take Atty. Soriano to his destination using the former's motorbike, to which Atty. Soriano accepted.[4] It was raining then and barely 30 to 50 meters away from the jeepney stop, appellant Agustin stopped his motorbike beside a parked stainless owner-type jeep.[5] Three men were inside the said vehicle, while another one was standing beside it. Appellant Agustin spoke with the men and said, "*Ano ba? Si Attorney!*" After which, appellant Agustin told Atty. Soriano to board the said jeep. Atty. Soriano boarded after appellant Agustin told him that one of the men inside the jeep, appellant Ernesto Cruz, Jr., was his *compadre* and they were all bound for Balagtas, Bulacan. Thereafter, appellant Agustin left them.[6]

While the vehicle was on the road, appellant Cruz put his left arm around the neck of Atty. Soriano, poked a gun at the latter and announced a hold-up. Narciso Buluran (now deceased), held Atty. Soriano's hands, while accused Totchie Kulot grabbed Atty. Soriano's eyeglasses and used his umbrella to shield them from approaching vehicles. The men then got Atty. Soriano's bag and took his wristwatch, ₱2,500.00 cash, Totes umbrella worth ₱880.00, pager worth ₱3,000.00, a Swiss knife worth ₱1,500.00 and tools worth ₱1,500.00, totaling ₱12,000.00.[7] Then they brought Atty. Soriano to a dimly-lighted hut, but was later transferred to another hut. Atty. Soriano remained there for a week, closely guarded by Narciso Buluran, who was armed with an armalite rifle, and Tochie Kulot, who was armed with

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[3] TSN, November 24, 1998, p. 2.

[4] *Id.* at 5.

[5] *Id.* at 7.

[6] *Id.*

[7] *Id.* at 9.

a revolver. Appellant Cruz visited him most of the time, while accused Allen Francisco prepared the food.[8]

A day after the abduction, or on a Monday, appellant Cruz demanded ransom from Atty. Soriano; otherwise, they would kill the latter. Atty. Soriano was allowed to write two letters[9] to his wife Iluminada (Luming) and a note[10] on which he was told to write as follows:

> OFFER OF COMPROMISE
>
> 1. ₱100,000 cash payable today
> 2. US $20,000, telegraphic transfer to PNB-Makati Ave. payable upon credit to local account or by express delivery to me or representative.
>
> (Sgd. Illegible)
> 8-25-98

The letters were eventually sent to his wife, while appellant Cruz kept the short note in his wallet.[11] Appellant Cruz also called the victim's family from the cellular phone using the telephone number found on Soriano's diary.[12] That Friday or on August 28th, appellant Cruz arrived in the hut late in the evening appearing to be drunk and told Atty. Soriano that the ransom money had been raised and that the latter would be released the following day.[13]

That Saturday, August 29th, at 11:30 a.m., appellant Cruz went with accused Enrique Avendaño to the agreed place of pay-off at I. S. Pavilion, a mall located at Meycauayan, Bulacan, to collect the ransom money from Atty. Soriano's daughter, Clarissa. After receiving the parcel containing the ransom money, appellant Cruz and Avendaño left on board a tricycle. Unknown

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[8] *Id.* at 11-12, 17-19.

[9] Exhibits "A" and "H", records, vol. II, pp. 268 and 282, respectively.

[10] Exhibit "B", records, vol. II, pp. 271, 272.

[11] TSN, November 19, 1998, pp. 14-16, Exhibit "B", *supra*.

[12] *Id.* at 9.

[13] *Id.* at 19; record, Vol. III, p. 745.

to them, some Presidential Anti-Organized Crime Task Force (PAOCTF) operatives had been monitoring the pay-off and accosted appellant Cruz and accused Avendaño near the Meycauayan Public Market, while they were still carrying the parcel containing the ransom money and the Nokia cellular phone used to contact Atty. Soriano's family. The PAOCTF operatives were able to learn from appellant Cruz the whereabouts of Atty. Soriano.[14]

Around 5:30 p.m. of the same day, the PAOCTF operatives and local *barangay* officials of Camachilihan, Bustos, Bulacan entered the premises of appellant Cruz's fishpond in Camachilihan, Bustos, Bulacan, where they heard a gunshot, prompting the team to return fire. They were able to rescue Atty. Soriano and in the process, killing Narciso Buluran. They arrested appellant Agustin and accused Francisco within the vicinity of the fishpond, while Tochie Kulot was able to escape. They were able to recover a gun, an icepick, an M-16 rifle, one (1) magazine, three (3) empty shells of M-16, two (2) shells of .45 caliber and one (1) wallet while searching the premises.[15] Then PAOCTF Chief Superintendent (now Senator) Panfilo Lacson later handed to Atty. Soriano a bag containing the ransom money recovered, consisting of 10 bundles of ₱1,000.00 bills.[16]

As a consequence thereof, an Information[17] dated September 22, 1998 was filed against Ernesto Cruz, Jr, Enrique Avendaño, Allen Francisco, Reynaldo Agustin, John Doe *a.k.a.* Tochie Kulot, and Richard Does charging them with the crime of Kidnapping and Serious Illegal Detention, as amended by R.A. 7659, which reads as follows:

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[14] TSN, January 14, 1999, pp. 9-19, 40.

[15] *Id.* at 12-13; TSN, January 11, 1999, pp. 1-7; Affidavit of Arrest, Exhibit "M", records, Vol. II, p. 286; PAOCTF Report, Exhibit "S", records, Vol. II, p. 293.

[16] Exhibits "E" to "E-9", records, Vol. II, pp. 298-495; Exhibit "F", p. 280.

[17] CA *rollo*, pp. 8-10.

Criminal Case No. 1489-M-98

That on or about 6:30 o'clock in the evening of August 23, 1998 at the intersection of Pasong Kalabaw and J. Bernardino Streets, Poblacion Pandi, Bulacan and within the jurisdiction of this Honorable Court, the said accused, conspiring, confederating and mutually aiding one another, did then and there wilfully, unlawfully and feloniously kidnap ATTY. DANILO SORIANO for the purpose of demanding ransom for the latter's release, and in fact, accused collected and received the ransom money in the amount of ONE MILLION (₱1,000,000.00) PESOS, detaining and depriving Atty. Danilo Soriano of his personal liberty until his rescue by police officers on August 29, 1998.

CONTRARY TO LAW, particularly Article 267 of the Revised Penal Code, as amended by Republic Act No. 7659.

Another Information[18] was also filed against Ernesto Cruz, Jr., John Doe *a.k.a.* Tochie Kulot, and two unidentified men with violation of Article 294 of the Revised Penal Code, reading:

Criminal Case No. 1490-M-98

That on or about 6:30 o'clock in the evening of August 23, 1998 at the intersection of Pasong Kalabaw and J. Bernardino Streets, Poblacion, Pandi, Bulacan and within the jurisdiction of this Honorable Court, the said accused conspiring, confederating and mutually aiding one another, did then and there wilfully, unlawfully and feloniously, with intent to gain and by means of force, violence and intimidation and with the use of a firearm, robbed and took the following articles from Atty. Danilo Soriano, to wit:

1.	Cash Money	₱2,500.00
2.	Eyeglasses	1,500.00
3.	Pager	3,000.00
4.	Casio calculator	800.00
5.	Totes Umbrella	800.00
6.	Imported Swiss knife	1,500.00

[18] *Id.* at 11.

7. Folding pliers, screw driver And other handy tools	2,000.00
8. Other personal belongings of nominal value	
	₱12,180.00

To the damage and prejudice of ATTY. DANILO SORIANO in the aforesaid amount.

CONTRARY TO LAW.

Upon arraignment[19] on October 16, 1998, appellant Ernesto Cruz, appellant Reynaldo Agustin and Enrique Avendaño, assisted by counsel *de parte*, and Allen Francisco, assisted by counsel *de oficio*, all pleaded Not Guilty of the crime/s charged.

After Pre-trial on November 12, 1998, trial on the merits ensued.

The prosecution presented as witnesses, Atty. Soriano, SMART Telecommunications Supervisor, Daisy Sazon, Senior Police Inspector (SPO)1 Ricardo Valencia, SPO4 Willy Nuas and SPO4 Romano Desumala whose testimonies were earlier mentioned.

On the other hand, the defense presented the testimonies of accused Allen Francisco, appellant Agustin, appellant Cruz, Lilibeth Francisco, Danilo Agustin, Isabelita Agustin and Bonifacio Moramion.

According to accused Allen Francisco, he was merely a helper and caretaker of the fishpond of appellant Cruz and knew nothing about the kidnapping.[20] This was corroborated by his wife, Lilibeth, who stated that she prepared food for Atty. Soriano, a visitor who stayed in the hut from August 25 to 29, 1998, and wondered why the visitor was not allowed to leave the hut.[21]

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[19] Records, Vol. 1, pp. 110-113.

[20] TSN, September 2, 1999, pp. 2-3, 22.

[21] TSN, October 14, 1999, p. 7.

Appellant Agustin, the caretaker of Atty. Soriano's farm, testified that he only drove Atty. Soriano to the jeepney stop on August 23, 1998 as his son, Gerardo Agustin, met an accident earlier that day. When he and Atty. Soriano were already near the town, it began to rain and fearing that they would both get wet, and seeing appellant Cruz's jeepney parked at the intersection of Pasong Kalabaw and Bernardino Streets, appellant Agustin requested appellant Cruz to allow Atty. Soriano to ride with him to the town proper. At about 2 p.m. of the following day, Atty. Soriano's brother-in-law, Dan Roding, arrived at appellant Agustin's house and broke the news that Atty. Soriano failed to go home.[22] Agustin then told Dan Roding that he had asked his friend, appellant Cruz to drive Atty. Soriano up to the Pandi-Balagtas terminal. Dan Roding then requested permission to go to appellant Cruz's house in Bagbagin, Pandi, Bulacan to inquire about the matter. He arrived there at 3:30 p.m.. Appellant Cruz told him that he had dropped Atty. Soriano off at the terminal. Appellant Agustin then went home and told Dan Roding, who was still there, about appellant Cruz's answer. On August 25, 1998, appellant Agustin and his wife went to Atty. Soriano's house in Malabon, where Dan Roding and his wife, Atty. Soriano's sister, Atty. Soriano's wife Luming, and daughter Clarissa were there crying. Luming told him that she had received a telephone call asking for money. Appellant Agustin told Clarissa, "*Huwag kang mag-alala, makakauwi din yon*." They stayed in Atty. Soriano's house for two hours. Afterwards, he asked his son and wife to call up the Sorianos and inquire after Atty. Soriano. When asked why he was at appellant Cruz's farm in Camachilihan, Bustos, Bulacan at the time of the arrest on August 29, appellant Agustin said that he was there to request appellant Cruz to catch fingerlings of *hito* for them.[23]

However, accused Ernesto Cruz gave a version completely different from the earlier testimonies. He claimed that Atty. Soriano had staged the kidnapping. According to him, Atty. Soriano devised the kidnapping plan after the former's teasing

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[22] TSN, September 30, 2000, p. 11.

[23] *Id.* at 15-22.

remark of "*Atty., magpakidnap ka na lang,*" said during one of Atty. Soriano's frequent visits to appellant Cruz's nearby farm/fishpond. The said teasing remark was uttered after Atty. Soriano told appellant Cruz of the former's problems in dealing with bank installments for the on-going construction of his building in Santa Ana, Manila. Appellant Cruz added that Atty. Soriano set the kidnapping on August 23, 1998 at Pasong Kalabaw, Pandi, Bulacan for a ransom money of One Million Pesos (₱1,000,000.00), as it was the only amount available in the family coffers. Finally, he said that Atty. Soriano promised them 10% of the ransom money.[24]

On May 25, 2000, the RTC, rendered its Decision finding appellants Cruz and Agustin guilty beyond reasonable doubt of violation of Article 267 of the Revised Penal Code, as amended by R.A. No. 7659 and appellant Cruz of violation of Article 294 of the Revised Penal Code, as amended by R.A. No. 7659. However, Allen Francisco was acquitted of the crime charged. The dispositive portion of the said Decision reads:

> WHEREFORE, premises considered, this Court hereby finds accused Ernesto Cruz, Jr. *y* Concepcion and Reynaldo Agustin *y* Ramos GUILTY beyond reasonable doubt of Violation of Article 267 of the Revised Penal Code, as amended by R.A. 7659, and hereby sentences them to suffer the penalty of DEATH and to pay private complainant Atty. Danilo Soriano the amount of ₱50,000 as moral damages.
>
> Accused Allen Francisco *y* Buensaleda is hereby ACQUITTED of the charge.
>
> This Court likewise finds accused Ernesto Cruz, Jr. *y* Concepcion GUILTY beyond reasonable doubt of Violation of Article 294 of the Revised Penal Code, as amended by R.A. 7659, and hereby sentences him to suffer the indeterminate penalty of 6 months of *Arresto Mayor* Maximum, as minimum, to 8 years of *Prision Mayor* Medium, as maximum, and to pay herein private complainant the amount of ₱12,000 as actual damages. With costs.
>
> SO ORDERED.

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[24] TSN, December 2, 1999, pp. 3-21.

The cases were appealed to this Court due to the imposition of the death penalty. However, on September, 14, 2004, in conformity with the decision promulgated on July 7, 2004 in G.R. Nos. 147678-87, entitled *The People of the Philippines v. Efren Mateo y Garcia*, modifying the pertinent provisions of the Revised Rules of Criminal Procedure, more particularly Sections 3 and of Rule 125 and any other rule insofar as they provide for direct appeals from the RTCs to this Court in cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment, as well as the resolution of this Court *en banc*, dated September 19, 1995, in "Internal Rules of the Supreme Court" in cases similarly involving the death penalty, pursuant to the Court's power to promulgate rules of procedure in all courts under Article VII, Section 5 of the Constitution, and allowing an intermediate review by the CA before such cases are elevated to this Court, this Court transferred the case to the CA for appropriate action and disposition.

On April 8, 2005, the CA affirmed *in toto* the Decision of the RTC, with the dispositive portion reading:

> WHEREFORE, all the foregoing considered, this Court renders judgment AFFIRMING the appealed decision *in toto*. However, instead of rendering judgment, We hereby certify and elevate the entire records of this case to the Supreme Court for its final review and disposition, consonant with the ruling in the case of *People v. Mateo*, *supra* and its Resolution in A.M. No. 00-5-03-SC dated September 28, 2004
>
> SO ORDERED.

Hence, the present appeal.

Appellant Reynaldo Agustin filed his Supplemental Brief[25] dated October 7, 2005, while appellant Ernesto Cruz, Jr. filed a Manifestation dated October 12, 2005 stating that he is adopting *in toto* his Appellant's Brief, as well as his Supplemental Brief required in the Resolution dated July 19, 1995 of this Court. In compliance with the Court's Resolution dated July 19, 2005,

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[25] *Rollo*, p. 45.

the Office of the Solicitor General (OSG) also filed its Supplemental Brief dated January 5, 2006.

In his earlier Brief[26] dated April 30, 2002, appellant Agustin argued that the trial court overlooked and seriously failed to weigh accurately all the material facts and circumstances of the case presented to it for reconsideration. According to him, the prosecution failed to substantiate his participation in the conspiracy to commit the crime of kidnapping for ransom. He added that, at most, he was implicated in the commission of the crime charged based solely on circumstantial evidence, however, the circumstances presented by the prosecution were clearly inadequate to demonstrate convincingly and persuasively that he had conspired with appellant Cruz to commit the crime charged. Finally, he claims that the trial court failed to consider his defense that he never participated in kidnapping and detaining Atty. Soriano, as he had no knowledge whatsoever in the commission of the said offense.

In refutation of the Brief of appellant Agustin, the OSG filed its Brief[27] dated August 28, 2002 averring that appellant Agustin's guilt for the crime of Kidnapping for Ransom as a principal by indispensable cooperation has been sufficiently established.

As a reply to the brief filed by the OSG, appellant Agustin filed his Appellant's Reply Brief[28] dated November 27, 2002 insisting that his guilt as principal by indispensable cooperation in the crime charged has not been proven beyond reasonable doubt.

Appellant Cruz, on the other hand, filed his Brief[29] dated December 8, 2002 and argued that the trial court erred in not giving any credence or weight to his evidence that the kidnapping of Atty. Soriano was the idea of the latter and in not considering said circumstance that had removed or cast doubt on the element

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[26] *Id. at* 90.

[27] *Id.* at 142.

[28] *Id.* at 164.

[29] *Id.* at 172.

of illegal restraint upon the supposed victim, even only as a mitigating circumstance. He further stated that the trial court erred in finding that the crime allegedly committed by him is Kidnapping with Serious Illegal Detention, punishable by death, whereas, there was actually no forcible taking of the person of Atty. Soriano, who appeared to have voluntarily cooperated with appellant Agustin and his companions to make Atty. Soriano's plan appear to be real. The brief does not mention about any contention as to his being found guilty beyond reasonable doubt of the crime of robbery.

To refute the contentions of appellant Cruz in his brief, the OSG, in its Brief[30] dated April 3, 2003 stated that the former's guilt for Kidnapping for Ransom and Robbery with Intimidation has been sufficiently established.

In his Reply Brief[31] dated February 19, 2004, appellant Ernesto Cruz, Jr. contended that he was only able to disclose the defense that Atty. Soriano planned the kidnapping during the trial because it was his first time to testify and that he told the said fact to his lawyers long before the said trial.

The appeal lacks merit.

Before tackling the respective contentions of the appellants, this Court finds it apt to discuss the nature of the crime of kidnapping for ransom. The corresponding provisions and ruling[32] of this Court are as follows:

Article 267 of the Revised Penal Code, as amended by Republic Act No. 7659, reads:

> ART. 267. *Kidnapping and serious illegal detention*. – Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death:
>
> 1. If the kidnapping or detention shall have lasted more than three days.

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[30] *Id.* at 207.

[31] *Id.* at 238.

[32] *People v. Pagalasan*, 452 Phil. 341, 361-362 (2003).

2. If it shall have been committed simulating public authority.

3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained, or if threats to kill him shall have been made.

4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female, or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense.

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed. (As amended by RA No. 7659).

For the accused to be convicted of kidnapping, the prosecution is burdened to prove beyond reasonable doubt all the elements of the crime, namely: (a) the offender is a private individual; (b) he kidnaps or detains another, or in any manner deprives the latter of his liberty; (c) the act of detention or kidnapping must be illegal; and (d) in the commission of the offense any of the following circumstances is present: (1) the kidnapping or detention lasts for more than three days; (2) it is committed by simulating public authority; (3) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (4) the person kidnapped or detained is a minor, female, or a public officer.[33] If the victim of kidnapping and serious illegal detention is a minor, the duration of his detention is immaterial. Likewise, if the victim is kidnapped and illegally detained for the purpose of extorting ransom, the duration of his detention is immaterial.

The essential elements for this crime is the deprivation of liberty of the victim under any of the above-mentioned circumstances coupled with indubitable proof of intent of the accused to effect the same.[34]

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[33] *People v. Salimbago,* G.R. No. 121365, September 14, 1999, 314 SCRA 282.

[34] *People. v. Borromeo,* G.R. No. 130843, January 27, 2000, 323 SCRA 547.

There must be a purposeful or knowing action by the accused to forcibly restrain the victim coupled with intent.[35]

Central to the issues raised in the respective briefs of appellants Cruz and Agustin is a question of the factual findings of the RTC. However, this Court, in numerous cases, has ruled that, [W]ell-entrenched is the doctrine that the factual findings of the trial court, especially on the assessment or appreciation of the testimonies of witnesses, are accorded great weight and respect. The trial court has the singular opportunity to observe the witnesses "through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply; or the furtive glance, the blush of conscious shame, the hesitation, the sincere or the flippant or sneering tone, the heat, the calmness, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien".[36]

Appellant Agustin claims that the RTC erred in disregarding his defense that he did not conspire with appellant Cruz and that he had no knowledge of the kidnapping. He then proceeded to explain that the RTC based its conviction on circumstantial evidence. According to him, his only involvement was in accompanying Atty. Soriano to the town proper of Pandi, Bulacan. As such, he claims to be neither a principal by indispensable cooperation nor an accomplice. Circumstantial evidence, as held[37] by this Court, consists of the following:

x x x Circumstantial evidence consists of proof of collateral facts and circumstances from which the existence of the main fact may be

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[35] *People. v. Soberano*, G.R. No. 116234, November 6, 1997, 281 SCRA 438.

[36] *People. v. Yambot, et al.*, G.R. No. 120350, October 13, 2000, 343 SCRA 20, citing *People v. Quijada*, 259 SCRA 191, 212-213; citing: *People v. De Guzman*, 188 SCRA 407 (1990); *People v. De Leon*, 245 SCRA 538 (1995); *People v. Delovino*, 247 SCRA 637 (1995).

[37] *People v. Delim*, 444 Phil. 430, 451-452 (2003).

inferred according to reason and common experience.[38] What was once a rule of account respectability is now entombed in Section 4, Rule 133 of the Revised Rules of Evidence which states that circumstantial evidence, sometimes referred to as indirect or presumptive evidence, is sufficient as anchor for a judgment of conviction if the following requisites concur:

> x x x if (a) there is more than one circumstance; (b) the facts from which the inferences are derived have been established; and (c) the combination of all the circumstances is such as to warrant a finding of guilt beyond reasonable doubt.[39]

The prosecution is burdened to prove the essential events which constitute a compact mass of circumstantial evidence, and the proof of each being confirmed by the proof of the other, and all without exception leading by mutual support to but one conclusion: the guilt of accused for the offense charged.[40] For circumstantial evidence to be sufficient to support a conviction, all the circumstances must be consistent with each other, consistent with the hypothesis that accused is guilty and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt.[41] If the prosecution adduced the requisite circumstantial evidence to prove the guilt of accused beyond reasonable doubt, the burden of evidence shifts to the accused to controvert the evidence of the prosecution.

A careful perusal of the records and the transcript of stenographic notes clearly shows that the prosecution was able to adduce the requisite circumstantial evidence to prove the guilt of appellant Agustin beyond reasonable doubt.

Atty. Soriano testified as to the participation of appellant Agustin, thus:

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[38] Francisco, *The Revised Rules of Court of the Philippines*, Part II, Vol. VII, 1991 ed.

[39] *Supra.*

[40] *People v. Elizaga,* G.R. No. L-23202, April 30, 1968, 23 SCRA 449.

[41] *People v. Casingal,* G.R. No. 87163, March 29, 1995, 243 SCRA 37.

Q: What happened next?
A: My caretaker Reynaldo Agustin was insistent that he personally drive the motorcycle, although his son was presenting himself which was the usual practice. His wife also asked if it was possible to allow his son to drive the motorcycle because there was a drinking spree in some corner and his wife did not want him to drive the motorcycle but he insisted.

x x x x x x x x x

Q: What happened next?
A: We were still some distance away from the waiting shed. There was a parked private owner-type jeepney along the road. Without being told, Reynaldo Agustin stopped in front of that jeepney.

Q: And then what happened?
A: He gave some kind of signal to the four (4) men who were wearing black jacket. Three were boarded inside the jeepney and one was on the road. He gave the signal, *Ano ba? Si Attorney!* So I wondered what it was all about. Then he told me to board the jeepney and I asked why.

Q: What else happened?
A: When asked why I would have to take the jeep, he said, pointing to Ernesto Cruz, *He is my compadre*.[42]

The above testimony, coupled with the fact that appellant Agustin was arrested in the late afternoon of August 29, 1998 while he acted as a guard outside the hut where Atty. Soriano was kept, are consistent with each other, thereby warranting the conclusion that the former indeed had an indispensable part in the crime charged. His defense that his presence outside the hut where Atty. Soriano during the rescue operation, which eventually led to his arrest, does not make him criminally liable, deserves scant consideration. It was merely a statement which is not corroborated by any other evidence; thus, it is not enough to debunk the earlier mentioned circumstantial evidence.

With the above consideration, the evidence, therefore, is sufficient to show that appellant Agustin cooperated with the

[42] TSN, November 19, 1998, pp. 5-6.

other appellant in the commission of the offense. Conspiracy, as ruled by this Court in *People v. Pagalasan*[43] means the following:

Judge Learned Hand once called conspiracy "the darling of the modern prosecutor's nursery."[44] There is conspiracy when two or more persons agree to commit a felony and decide to commit it.[45] Conspiracy as a mode of incurring criminal liability must be proven separately from and with the same quantum of proof as the crime itself. Conspiracy need not be proven by direct evidence. After all, secrecy and concealment are essential features of a successful conspiracy. Conspiracies are clandestine in nature. It may be inferred from the conduct of the accused before, during and after the commission of the crime, showing that they had acted with a common purpose and design.[46] Paraphrasing the decision of the English Court in *Regina v. Murphy*,[47] conspiracy may be implied if it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent of each other, were, in fact, connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment.[48] To hold an accused guilty as a co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the complicity.[49] There must be intentional participation in the transaction with a view to the furtherance of the common design and purpose.[50]

The United States Supreme Court in *Braverman v. United States*,[51] held that the precise nature and extent of the conspiracy must be

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[43] *Supra* note 32, at 363-365.

[44] *Harrison v. United States*, 7 F.2d. 259 (1925).

[45] Revised Penal Code, Art. 8.

[46] *People v. Quilaton*, G.R. No. 131835, February 3, 2000, 324 SCRA 670.

[47] 172 Eng. Rep. 502 (1837).

[48] *People v. Del Rosario*, G.R. No. 127755, April 14, 1999, 305 SCRA 740.

[49] *People v. Elijorde*, G.R. No. 126531, April 21, 1999, 306 SCRA 188.

[50] *People v. Del Rosario*, *supra* note 48.

[51] 87 L.ed. 23 (1942).

determined by reference to the agreement which embraces and defines its objects. For one thing, the temporal dimension of the conspiracy is of particular importance. Settled as a rule of law is that the conspiracy continues until the object is attained, unless in the meantime the conspirator abandons the conspiracy or is arrested. There is authority to the effect that the conspiracy ends at the moment of any conspirator's arrest, on the presumption, albeit rebuttable, that at the moment the conspiracy has been thwarted, no other overt act contributing to the conspiracy can possibly take place, at least as far as the arrested conspirator is concerned.[52] The longer a conspiracy is deemed to continue, the greater the chances that additional persons will be found to have joined it. There is also the possibility that as the conspiracy continues, there may occur new overt acts. If the conspiracy has not yet ended, then the hearsay acts and declarations of one conspirator will be admissible against the other conspirators and one conspirator may be held liable for substantive crimes committed by the others.[53]

Each conspirator is responsible for everything done by his confederates which follows incidentally in the execution of a common design as one of its probable and natural consequences even though it was not intended as part of the original design.[54] Responsibility of a conspirator is not confined to the accomplishment of a particular purpose of conspiracy but extends to collateral acts and offenses incident to and growing out of the purpose intended.[55] Conspirators are held to have intended the consequences of their acts and by purposely engaging in conspiracy which necessarily and directly produces a prohibited result that they are in contemplation of law, charged with intending the result.[56] Conspirators are necessarily liable for the acts of another conspirator even though such act differs radically and substantively from that which they intended to commit.[57]

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[52] 22A Corpus Juris Secundum, Conspiracy, p. 1150; *U.S. v. Eng*, 241 F. 2d. 157 (1957).

[53] Revised Rules of Evidence, Rule 130, Sec. 30.

[54] 15A Corpus Juris Secundum, Conspiracy, p. 828.

[55] *Id.*

[56] *Ingram v. United States*, 259 F.2d. 886 (1958).

[57] *Pring v. Court of Appeals*, G.R. No. L-41605, August 19, 1985, 138 SCRA 185.

The Court agrees with the ruling of the Circuit Court of Appeals (Second District) per Judge Learned Hand in *United States v. Peoni*[58] "that nobody is liable in conspiracy except for the fair import of the concerted purpose or agreement as he understood it; if later comers change that, he is not liable for the change; his liability is limited to the common purpose while he remains in it." Earlier, the Appellate Court of Kentucky in *Gabbard v. Commonwealth*[59] held that:

> The act must be the ordinary and probable effect of the wrongful acts specifically agreed on, so that the connection between them may be reasonably apparent, and not a fresh and independent project of the mind of one of the confederates, outside of or foreign to the common design, and growing out of the individual malice of the perpetrator.

Equally persuasive is the pronouncement of the Circuit Court of Appeals (Second District) in *United States v. Crimms*,[60] that it is never permissible to enlarge the scope of the conspiracy itself by proving that some of the conspirators, unknown to the rest, have done what was beyond the reasonable intendment of the common understanding. This is equally true when the crime which the conspirators agreed upon is one of which they severally might be guilty though they were ignorant of the existence of some of its constitutive facts. Also, while conspirators are responsible for consequent acts growing out of the common design they are not for independent acts growing out of the particular acts of individuals.[61]

It is immaterial whether appellant Agustin acted as a principal or an accomplice. What really matters is that the conspiracy was proven and he took part in it. As lucidly shown in the evidence, without the participation of appellant Agustin, the commission of the offense would not have come to fruition, and as clearly presented by the prosecution, he was the one who paved the way for Atty. Soriano to board the vehicle and his closeness with the victim led the latter to trust the former, thus, accomplishing the appellants' devious plan. Consequently,

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[58] 100 F.2d. 401 (1938).

[59] 236 SW 942 (1922).

[60] 123 F.2d. 271 (1941).

[61] *Martin v. State*, 8 So. 23 (1890).

the conspirators shall be held equally liable for the crime, because in a conspiracy the act of one is the act of all.[62]

For his part, appellant Cruz claims that his guilt for the crime of kidnapping for ransom has not been sufficiently established. He alleged that Atty. Soriano was not deprived of his liberty as he was free to move about, nor was the latter at any time threatened or intimidated. However, the testimony of the victim proved otherwise, thus,

Q: Going back to the place in Bustos where you claimed to have been in detention. You said you were being guarded by Narciso Buluran and Totchie Kulot round the clock?
A: When I said I was being guarded from the first kubo, there were times

I could sense they were taking turns. There were times when both of them were not there and I could only see Allen Francisco going around.

Q: You could only sense that there were two of them guarding you on the second hut because you were in fact locked inside. It was bolted from the outside?
A: Yes, sir.

Q: And as you describe the place, it was 3 x 3 in measurement, no windows, only one door?
A: Yes, sir.

Q: And you were made to sleep on a bamboo sofa?
A: Sofa, actually.

Q: But there was an opening through which you could see outside the kubo?
A: Yes, sir.

Q: That is where you saw two persons guarding you round the clock?
A: Not only 2, sometimes 3.

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[62] *People v. Pangilinan*, 443 Phil. 198, 239 (2003), citing *People v. Boller*, 429 Phil. 754 (2002); *People v. Bacungan*, 428 Phil. 798 (2002); *People v. Manlansing*, 428 Phil. 743 (2002).

Q: Who might be the third?
A: Especially when fed by Allen Francisco because he was the one delivering the food.

Q: You stated in your August 29 statement and during your testimony last time that Allen was the one preparing the food for you?
A: Not exactly preparing. He was the one bringing food.

Q: Your statement that it was Francisco who prepares the food is not accurate?
A: It was possible he is. It was possible somebody else because I knew he has a wife in the first kubo.

Q: How did you know?
A: I saw her.

Q: When?
A: Early morning, Monday, August 24 when she transferred to the second kubo from the first kubo.

Q: So the wife of Francisco was in the second kubo when you were left in the early morning of August 25 by the group?
A: Yes, sir.

Q: And the wife of Francisco had to transfer to the second Jubo to take her place?
A: That is correct.[63]

From the above testimony of Atty. Soriano, it was obvious that there was actual confinement and that he was deprived of his liberty. The primary element of the crime of kidnapping is actual confinement, detention and restraint of the victim.[64] There must be a showing of actual confinement or restriction of the victim, and that such deprivation was the intention of the malefactor. An accused is liable for kidnapping when the evidence adequately proves that he forcefully transported, locked up or restrained the victim.[65] There must exist indubitable proof that

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[63] TSN, November 24, 1998, pp. 16-17.

[64] *People v. Ubongen*, G.R. No. 126024, April 20, 2001, 357 SCRA 142.

[65] *Id.*

the actual intent of the malefactor was to deprive the victim of his liberty. The restraint of liberty must not arise merely as an incident to the commission of another offense that the offender primarily intended to commit.[66]

As to the contention of appellant Cruz that there was no force or intimidation involved in the taking, this Court held in the case of *People v. Santos*,[67] that the fact that the victim voluntarily went with the accused did not remove the element of deprivation of liberty, because the victim went with the accused on a false inducement without which the victim would not have done so. In the present case, although Atty. Soriano boarded the vehicle without any protestation, he was under the impression that the said persons inside the same vehicle were to be trusted as he was assured by appellant Agustin about that matter. Without such assurance, the victim would not have boarded the said vehicle. Moreover, it is important to emphasize that, in kidnapping, the victim need not be taken by the accused forcibly or against his will. What is controlling is the act of the accused in detaining the victim against his or her will after the offender is able to take the victim in his custody. In short, the carrying away of the victim in the crime of kidnapping and serious illegal detention can either be made forcibly or fraudulently.[68]

Anent appellant Cruz contention that the kidnapping was concocted by Atty. Soriano himself to secure money from his relatives, such claim is specious and uncorroborated. As correctly ruled by the CA:

> Accused Ernesto Cruz's defense – that the kidnapping was concocted by Atty. Soriano himself to secure money from his relatives and that he was merely inveigled into it – is self-serving and unworthy of belief, as it is neither logical nor satisfactory, much less consistent with human experience and knowledge. Soriano, a lawyer gainfully

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[66] *People v. De la Cruz*, 342 Phil. 854 (1997); *People v. Sinoc*, 341 Phil. 355 (1997).

[67] G.R. No. 117833, December 22, 1997, 283 SCRA 443.

[68] *People v. Deduyo*, G.R. No. 138456, October 23, 2003, 414 SCRA 160, citing FLORENZ D. REGALADO, *CRIMINAL LAW CONSPECTUS* 488 [2000].

employed with Del Monte Philippines, with a caring family, cannot be believed to have concocted such a scheme. In *People v. Enriquez*, 132 SCRA 553, the High Tribunal dismissed therein appellant's theory that the kidnapping was a mere scheme concocted by the victim himself, ruling that "No normal human being could be so base and ungrateful as to conceive such scheme for the purpose of securing money from his own (parents)."

Cruz's defense does not hold water; his version is either unsupported by or inconsistent with the evidence. *First*, Cruz alleged that he knew Soriano prior to the incident as his farm in *Bagong Barrio, Pandi, Bulacan* abutted that of Soriano's and that the latter often visited him. But Soriano's farm is situated in another *barangay*, in *Brgy. Masuso, Pandi, Bulacan*. Agustin's testimony that he introduced Cruz to complainant as his *compadre* before asking the latter to board Cruz's jeep, also belied Cruz's claim. Hence, we accord credence to private complainant's assertion that, except for appellant Agustin, he knew none of the accused prior to his abduction.

It bears noting that despite Cruz's claim that Soriano confided in him and asked him to participate in the kidnapping scheme, he denied any reference to friendship, stating that he and Soriano merely developed a mutual liking for each other. Assuming this latter statement to be true, We cannot believe that complainant would propose such a delicate scheme to a mere acquaintance.

Second, appellant Cruz's testimony that Attorney Soriano was "Free to move about," "treated like a guest," "like taking a vacation" during his stay at Cruz's hut was belied by his helpers, former co-accused Allen Francisco and Francisco's wife, Lilibeth Mitra, who testified that they never saw complainant leave the hut (because) complainant was closely guarded by Buluran, who was armed with an armalite rifle. Moreover the presence of guns and other weapons in the alleged "kidnap me" charade, eventually resulting in the shooting to death of Narciso Buluran, strongly militates against its credence.

Third, the tearful reaction of complainant's family to his kidnapping was clearly sincere and unorchestrated, belying knowledge of any scheme.

Finally, appellant Cruz's silence for more than a year after his arrest and his failure to report the alleged charade to the authorities despite being in detention for one month and 18 days, or even to his family, is highly unusual and goes against the grain of human nature. It

would have been the natural and logical reaction of a person in his predicament to immediately inform the authorities of the alleged scheme instead of revealing it only in court. This omission makes his defense in court of the alleged kidnap-me charade suspect. Empirical data is yet to be found in order to accurately measure the value of testimony of a witness other than its conformity to human behavior and the common experience of mankind. This Court is convinced that appellant's "kidnap me" defense is a mere afterthought in order to stave off his certain conviction.[69]

From the above disquisitions, it is apparent that appellants Cruz and Agustin conspired to commit the crime of kidnapping for ransom which was proven beyond reasonable doubt by the prosecution.

Finally, the RTC imposed the penalty of Death on both appellants, since it was then the prescribed penalty for violations of Article 267 of the Revised Penal Code, as amended by R.A. 7659. However, the death penalty cannot be imposed on the appellants in view of the passage of R.A. No. 9346 on June 24, 2006, prohibiting the imposition of death penalty in the Philippines. In accordance with Sections 2 and 3 thereof, the penalty that should be meted out to the appellants is *reclusion perpetua* without the possibility of parole.[70]

WHEREFORE, the Decision dated April 8, 2005 of the Court of Appeals in CA-G.R. CR No. 00264, affirming *in toto* the Joint Decision dated May 25, 2000 of the Regional Trial Court, Branch 78, Malolos, Bulacan, is hereby *AFFIRMED* with *MODIFICATION*. Appellants Ernesto Cruz, Jr. and Reynaldo Agustin are found *GUILTY* beyond reasonable doubt of the crime of Kidnapping and Serious Illegal Detention (Article 267, RPC), as amended by R.A. No. 7659, the penalty of which, is *reclusion perpetua* in view of the passage of R.A. No. 9346.

SO ORDERED.

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[69] *Rollo,* pp. 21-24.

[70] *People v. Domingo Reyes y Paje, et al.*, G.R. No. 178300, March 17, 2009.

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

Quisumbing, J., on official leave.

THIRD DIVISION

[G.R. No. 169364. September 18, 2009]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **EVANGELINE SITON *y* SACIL and KRYSTEL KATE SAGARANO *y* MEFANIA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; LEGISLATIVE DEPARTMENT; POWER TO DEFINE CRIMES AND PRESCRIBE THEIR CORRESPONDING PENALTIES IS LEGISLATIVE IN NATURE.— The power to define crimes and prescribe their corresponding penalties is legislative in nature and inherent in the sovereign power of the state to maintain social order as an aspect of police power. The legislature may even forbid and penalize acts formerly considered innocent and lawful provided that no constitutional rights have been abridged.

2. ID.; ID.; ID.; DUE PROCESS OF LAW; VOID-FOR-VAGUENESS DOCTRINE, EXPLAINED.— x x x [I]n exercising its power to declare what acts constitute a crime, the legislature must inform the citizen with reasonable precision what acts it intends to prohibit so that he may have a certain understandable rule of conduct and know what acts it is his duty to avoid. This requirement has come to be known as the **void-for-vagueness doctrine** which states that "a statute which either forbids or requires the doing of an act in terms so vague that men of

common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law."

3. ID.; ID.; ID.; ID.; APPLICABLE TO CRIMINAL STATUTES IN APPROPRIATE CASES.— In *Spouses Romualdez v. COMELEC*, the Court recognized the application of the void-for-vagueness doctrine to criminal statutes in appropriate cases. The Court therein held: At the outset, we declare that under these terms, the opinions of the dissent which seek to bring to the fore the purported ambiguities of a long list of provisions in Republic Act No. 8189 can be deemed as a facial challenge. An appropriate "as applied" challenge in the instant Petition should be limited only to Section 45 (j) in relation to Sections 10 (g) and (j) of Republic Act No. 8189 – the provisions upon which petitioners are charged. An expanded examination of the law covering provisions which are alien to petitioners' case would be antagonistic to the rudiment that for judicial review to be exercised, there must be an existing case or controversy that is appropriate or ripe for determination, and not conjectural or anticipatory.

4. CRIMINAL LAW; CRIMES AGAINST DECENCY AND GOOD CUSTOMS; VAGRANCY; PHILIPPINE LAW THEREON FOUND IN ARTICLE 202 OF THE REVISED PENAL CODE.— x x x While historically an Anglo-American concept of crime prevention, the law on vagrancy was included by the Philippine legislature as a permanent feature of the Revised Penal Code in Article 202 thereof which, to repeat, provides: ART. 202. *Vagrants and prostitutes; penalty*. – The following are vagrants: 1. Any person having no apparent means of subsistence, who has the physical ability to work and who neglects to apply himself or herself to some lawful calling; 2. Any person found loitering about public or semi-public buildings or places, or tramping or wandering about the country or the streets without visible means of support; 3. Any idle or dissolute person who lodges in houses of ill-fame; ruffians or pimps and those who habitually associate with prostitutes; 4. Any person who, not being included in the provisions of other articles of this Code, shall be found loitering in any inhabited or uninhabited place belonging to another without any lawful or justifiable purpose; 5. Prostitutes. For the purposes of this article, women who, for money or profit, habitually indulge in sexual intercourse or

lascivious conduct, are deemed to be prostitutes. Any person found guilty of any of the offenses covered by this article shall be punished by *arresto menor* or a fine not exceeding 200 pesos, and in case of recidivism, by *arresto mayor* in its medium period to *prision correccional* in its minimum period or a fine ranging from 200 to 2,000 pesos, or both, in the discretion of the court.

5. ID.; ID.; ID.; ID.; VAGRANTS, DEFINED.— In the instant case, the assailed provision is paragraph (2), which defines a vagrant as any person found loitering about public or semi-public buildings or places, or tramping or wandering about the country or the streets without visible means of support. This provision was based on the second clause of Section 1 of Act No. 519 which defined "vagrant" as "*every person found loitering about saloons or dramshops or gambling houses, or tramping or straying through the country without visible means of support*." The second clause was essentially retained with the modification that the places under which the offense might be committed is now expressed in general terms – public or semi-public places.

6. ID.; ID.; ID.; ID.; THAT ARTICLE 202 (2) FAILS TO GIVE FAIR NOTICE OF WHAT CONSTITUTES FORBIDDEN CONDUCT FINDS NO APPLICATION IN CASE AT BAR; EXPLAINED.— The underlying principles in *Papachristou* are that: 1) the assailed Jacksonville ordinance "fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute"; and 2) it encourages or promotes opportunities for the application of discriminatory law enforcement. The said underlying principle in *Papachristou* that the Jacksonville ordinance, or Article 202 (2) in this case, fails to give fair notice of what constitutes forbidden conduct, finds no application here because under our legal system, ignorance of the law excuses no one from compliance therewith. This principle is of Spanish origin, and we adopted it to govern and limit legal conduct in this jurisdiction. Under American law, ignorance of the law is merely a traditional rule that admits of exceptions. Moreover, the *Jacksonville* ordinance was declared unconstitutional on account of **specific provisions thereof, which are *not* found in Article 202 (2)**. x x x [T]he U.S. Supreme Court in *Jacksonville* declared the ordinance unconstitutional, because such activities or habits as **nightwalking, wandering or strolling around without any lawful purpose or object, habitual loafing**, **habitual spending of time at places where**

alcoholic beverages are sold or served, and **living upon the earnings of wives or minor children**, which are otherwise common and normal, were declared illegal. ***But these are specific acts or activities not found in Article 202 (2)***. The closest to Article 202 (2) – "*any person found loitering about public or semi-public buildings or places, or tramping or wandering about the country or the streets without visible means of support*" – from the Jacksonville ordinance, would be "*persons wandering or strolling around from place to place without any lawful purpose or object*." But these two acts are still not the same: Article 202 (2) is qualified by "without visible means of support" while the Jacksonville ordinance prohibits wandering or strolling "without any lawful purpose or object," which was held by the U.S. Supreme Court to constitute a "trap for innocent acts."

7. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS AGAINST UNREASONABLE SEARCHES AND WARRANTLESS ARREST; REQUIREMENT OF PROBABLE CAUSE; PURPOSE; CASE AT BAR.— Under the Constitution, the people are guaranteed the right to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized. Thus, as with any other act or offense, the requirement of **probable cause** provides an acceptable limit on police or executive authority that may otherwise be abused in relation to the search or arrest of persons found to be violating Article 202 (2). The fear exhibited by the respondents, echoing *Jacksonville*, that unfettered discretion is placed in the hands of the police to make an arrest or search, is therefore assuaged by the constitutional requirement of probable cause, which is one less than certainty or proof, but more than suspicion or possibility. Evidently, the requirement of probable cause cannot be done away with arbitrarily without pain of punishment, for, absent this requirement, the authorities are necessarily guilty of abuse. 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 of the peace officers making the arrest. The State cannot in a cavalier fashion intrude into the persons of its citizens as well as into their houses, papers and effects. The constitutional provision sheathes the private individual with an impenetrable armor against unreasonable searches and seizures. It protects the privacy and sanctity of the person himself against unlawful arrests and other forms of restraint, and prevents him from being irreversibly cut off from that domestic security which renders the lives of the most unhappy in some measure agreeable. As applied to the instant case, it appears that the police authorities have been conducting previous surveillance operations on respondents prior to their arrest. On the surface, this satisfies the probable cause requirement under our Constitution. For this reason, we are not moved by respondents' trepidation that Article 202 (2) could have been a source of police abuse in their case.

8. CRIMINAL LAW; CRIMES AGAINST DECENCY AND GOOD CUSTOMS; VAGRANCY; ARTICLE 202 (2) OF THE REVISED PENAL CODE, A PUBLIC ORDER LAW; PUBLIC ORDER LAWS, ELUCIDATED.— The streets must be protected. Our people should never dread having to ply them each day, or else we can never say that we have performed our task to our brothers and sisters. We must rid the streets of the scourge of humanity, and restore order, peace, civility, decency and morality in them. This is exactly why we have ***public order laws***, to which Article 202 (2) belongs. These laws were crafted to **maintain minimum standards of decency, morality and civility in human society**. These laws may be traced all the way back to ancient times, and today, they have also come to be associated with the struggle to improve the citizens' quality of life, which is guaranteed by our Constitution. *Civilly*, they are covered by the "abuse of rights" doctrine embodied in the preliminary articles of the Civil Code concerning Human Relations, to the end, in part, that any person who willfully causes loss or injury to another in a manner that is contrary to **morals**, **good customs** or **public policy** shall compensate the latter for the damage. This provision is, together with the

succeeding articles on human relations, intended to embody certain basic principles "that are to be observed for the rightful relationship between human beings and for the stability of the social order." x x x *Criminally*, public order laws encompass a whole range of acts – from public indecencies and immoralities, to public nuisances, to disorderly conduct. The acts punished are made illegal by their offensiveness to society's basic sensibilities and their adverse effect on the quality of life of the people of society. For example, the issuance or making of a bouncing check is deemed a public nuisance, a crime against public order that must be abated. As a matter of public policy, the failure to turn over the proceeds of the sale of the goods covered by a trust receipt or to return said goods, if not sold, is a public nuisance to be abated by the imposition of penal sanctions. Thus, public nuisances must be abated because they have the effect of interfering with the comfortable enjoyment of life or property by members of a community.

9. ID.; ID.; ID.; A PUBLIC ORDER CRIME.— Vagrancy must not be so lightly treated as to be considered constitutionally offensive. It is a public order crime which punishes persons for conducting themselves, at a certain place and time which orderly society finds unusual, under such conditions that are repugnant and outrageous to the common standards and norms of decency and morality in a just, civilized and ordered society, as would engender a justifiable concern for the safety and well-being of members of the community.

10. ID.; ID.; ID.; ARTICLE 202 (2) OF THE REVISED PENAL CODE, PRESUMED VALID AND CONSTITUTIONAL; RATIONALE.— x x x Article 202 (2) should be presumed valid and constitutional. When confronted with a constitutional question, it is elementary that every court must approach it with grave care and considerable caution bearing in mind that every statute is presumed valid and every reasonable doubt should be resolved in favor of its constitutionality. The policy of our courts is to avoid ruling on constitutional questions and to presume that the acts of the political departments are valid in the absence of a clear and unmistakable showing to the contrary. To doubt is to sustain, this presumption is based on the doctrine of separation of powers which enjoins upon each department a becoming respect for the acts of the other departments. The theory is that as the joint act of Congress

and the President of the Philippines, a law has been carefully studied, crafted and determined to be in accordance with the fundamental law before it was finally enacted. It must not be forgotten that police power is an inherent attribute of sovereignty. It has been defined as the power vested by the Constitution in the legislature to make, ordain, and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the Constitution, as they shall judge to be for the good and welfare of the commonwealth, and for the subjects of the same. The power is plenary and its scope is vast and pervasive, reaching and justifying measures for public health, public safety, public morals, and the general welfare. As an obvious police power measure, Article 202 (2) must therefore be viewed in a constitutional light.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Women's Legal Bureau, Inc.-Legal Advocates for Women Network for respondents.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

If a man is called to be a street sweeper, he should sweep streets even as Michelangelo painted, or Beethoven composed music, or Shakespeare wrote poetry. He should sweep streets so well that all the hosts of Heaven and Earth will pause to say, here lived a great street sweeper who did his job well.

– Martin Luther King, Jr.

Assailed in this petition for review on *certiorari* is the July 29, 2005 Order[1] of Branch 11, Davao City Regional Trial Court in Special Civil Case No. 30-500-2004 granting respondents' Petition for *Certiorari* and declaring paragraph 2 of Article 202 of the Revised Penal Code unconstitutional.

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[1] Records, pp. 108-113; penned by Judge Virginia Hofileña-Europa.

Respondents Evangeline Siton and Krystel Kate Sagarano were charged with vagrancy pursuant to Article 202 (2) of the Revised Penal Code in two separate Informations dated November 18, 2003, docketed as Criminal Case Nos. 115,716-C-2003 and 115,717-C-2003 and raffled to Branch 3 of the Municipal Trial Court in Cities, Davao City. The Informations, read:

That on or about November 14, 2003, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, willfully, unlawfully and feloniously wandered and loitered around San Pedro and Legaspi Streets, this City, without any visible means to support herself nor lawful and justifiable purpose.[2]

Article 202 of the Revised Penal Code provides:

Art. 202. *Vagrants and prostitutes; penalty*. — The following are vagrants:

1. Any person having no apparent means of subsistence, who has the physical ability to work and who neglects to apply himself or herself to some lawful calling;

2. Any person found loitering about public or semi-public buildings or places or tramping or wandering about the country or the streets without visible means of support;

3. Any idle or dissolute person who lodges in houses of ill fame; ruffians or pimps and those who habitually associate with prostitutes;

4. Any person who, not being included in the provisions of other articles of this Code, shall be found loitering in any inhabited or uninhabited place belonging to another without any lawful or justifiable purpose;

5. Prostitutes.

For the purposes of this article, women who, for money or profit, habitually indulge in sexual intercourse or lascivious conduct, are deemed to be prostitutes.

Any person found guilty of any of the offenses covered by this articles shall be punished by *arresto menor* or a fine not exceeding

[2] *Rollo*, p. 25.

200 pesos, and in case of recidivism, by *arresto mayor* in its medium period to *prision correccional* in its minimum period or a fine ranging from 200 to 2,000 pesos, or both, in the discretion of the court.

Instead of submitting their counter-affidavits as directed, respondents filed separate Motions to Quash[3] on the ground that Article 202 (2) is unconstitutional for being vague and overbroad.

In an Order[4] dated April 28, 2004, the municipal trial court denied the motions and directed respondents anew to file their respective counter-affidavits. The municipal trial court also declared that the law on vagrancy was enacted pursuant to the State's police power and justified by the Latin maxim "*salus populi est suprem(a) lex*," which calls for the subordination of individual benefit to the interest of the greater number, thus:

> Our law on vagrancy was enacted pursuant to the police power of the State. An authority on police power, Professor Freund describes laconically police power "as the power of promoting public welfare by restraining and regulating the use of liberty and property." (Citations omitted). In fact the person's acts and acquisitions are hemmed in by the police power of the state. The justification found in the Latin maxim, *salus populi est supreme* (sic) *lex*" (the god of the people is the Supreme Law). This calls for the subordination of individual benefit to the interests of the greater number.In the case at bar the affidavit of the arresting police officer, SPO1 JAY PLAZA with Annex "A" lucidly shows that there was a prior surveillance conducted in view of the reports that vagrants and prostitutes proliferate in the place where the two accused (among other women) were wandering and in the wee hours of night and soliciting male customer. Thus, on that basis the prosecution should be given a leeway to prove its case. Thus, in the interest of substantial justice, both prosecution and defense must be given their day in Court: the prosecution proof of the crime, and the author thereof; the defense, to show that the acts of the accused in the indictment can't be categorized as a crime.[5]

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[3] Records, pp. 37-76.

[4] *Id.* at 31-34; penned by Presiding Judge Romeo C. Abarracin.

[5] *Id.* at 33.

The municipal trial court also noted that in the affidavit of the arresting police officer, SPO1 Jay Plaza, it was stated that there was a prior surveillance conducted on the two accused in an area reported to be frequented by vagrants and prostitutes who solicited sexual favors. Hence, the prosecution should be given the opportunity to prove the crime, and the defense to rebut the evidence.

Respondents thus filed an original petition for *certiorari* and prohibition with the Regional Trial Court of Davao City,[6] directly challenging the constitutionality of the anti-vagrancy law, claiming that the definition of the crime of vagrancy under Article 202 (2), apart from being vague, results as well in an arbitrary identification of violators, since the definition of the crime includes in its coverage persons who are otherwise performing ordinary peaceful acts. They likewise claimed that Article 202 (2) violated the equal protection clause under the Constitution because it discriminates against the poor and unemployed, thus permitting an arbitrary and unreasonable classification.

The State, through the Office of the Solicitor General, argued that pursuant to the Court's ruling in *Estrada v. Sandiganbayan*,[7] the overbreadth and vagueness doctrines apply only to free speech cases and not to penal statutes. It also asserted that Article 202 (2) must be presumed valid and constitutional, since the respondents failed to overcome this presumption.

On July 29, 2005, the Regional Trial Court issued the assailed Order granting the petition, the dispositive portion of which reads:

> WHEREFORE, PRESCINDING FROM THE FOREGOING, the instant Petition is hereby GRANTED. Paragraph 2 of Article 202 of the Revised Penal Code is hereby declared unconstitutional and the Order of the court *a quo*, dated April 28, 2004, denying the petitioners'

[6] *Id.* at 31. Docketed as Special Civil Case No. 30-500-2004 and raffled to Branch 11 of the Regional Trial Court of Davao City.

[7] G.R. No. 148560, November 19, 2001, 369 SCRA 394.

Motion to Quash is set aside and the said court is ordered to dismiss the subject criminal cases against the petitioners pending before it.

SO ORDERED.[8]

In declaring Article 202 (2) unconstitutional, the trial court opined that the law is vague and it violated the equal protection clause. It held that the "void for vagueness" doctrine is equally applicable in testing the validity of penal statutes. Citing *Papachristou v. City of Jacksonville*,[9] where an anti vagrancy ordinance was struck down as unconstitutional by the Supreme Court of the United States, the trial court ruled:

> The U.S. Supreme Court's justifications for striking down the Jacksonville Vagrancy Ordinance are equally applicable to paragraph 2 of Article 202 of the Revised Penal Code.
>
> Indeed, to authorize a police officer to arrest a person for being "found loitering about public or semi-public buildings or places or tramping or wandering about the country or the streets without visible means of support" offers too wide a latitude for arbitrary determinations as to who should be arrested and who should not.
>
> Loitering about and wandering have become national pastimes particularly in these times of recession when there are many who are "without visible means of support" not by reason of choice but by force of circumstance as borne out by the high unemployment rate in the entire country.
>
> To authorize law enforcement authorities to arrest someone for nearly no other reason than the fact that he cannot find gainful employment would indeed be adding insult to injury.[10]

On its pronouncement that Article 202 (2) violated the equal protection clause of the Constitution, the trial court declared:

> The application of the Anti-Vagrancy Law, crafted in the 1930s, to our situation at present runs afoul of the equal protection clause of the constitution as it offers no reasonable classification between those covered by the law and those who are not.

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[8] *Rollo,* p. 31.

[9] 405 U.S. 156, 31 L.Ed. 2d 110 (1972).

[10] *Rollo,* p. 31.

Class legislation is such legislation which denies rights to one which are accorded to others, or inflicts upon one individual a more severe penalty than is imposed upon another in like case offending.

Applying this to the case at bar, since the definition of Vagrancy under Article 202 of the Revised Penal Code offers no guidelines or any other reasonable indicators to differentiate those who have no visible means of support by force of circumstance and those who choose to loiter about and bum around, who are the proper subjects of vagrancy legislation, it cannot pass a judicial scrutiny of its constitutionality.[11]

Hence, this petition for review on *certiorari* raising the sole issue of:

WHETHER THE REGIONAL TRIAL COURT COMMITTED A REVERSIBLE ERROR IN DECLARING UNCONSTITUTIONAL ARTICLE 202 (2) OF THE REVISED PENAL CODE[12]

Petitioner argues that every statute is presumed valid and all reasonable doubts should be resolved in favor of its constitutionality; that, citing *Romualdez v. Sandiganbayan*,[13] the overbreadth and vagueness doctrines have special application to free-speech cases only and are not appropriate for testing the validity of penal statutes; that respondents failed to overcome the presumed validity of the statute, failing to prove that it was vague under the standards set out by the Courts; and that the State may regulate individual conduct for the promotion of public welfare in the exercise of its police power.

On the other hand, respondents argue against the limited application of the overbreadth and vagueness doctrines. They insist that Article 202 (2) on its face violates the constitutionally-guaranteed rights to due process and the equal protection of the laws; that the due process vagueness standard, as distinguished from the free speech vagueness doctrine, is adequate to declare Article 202 (2) unconstitutional and void on its face;

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[11] *Id.*

[12] *Id.* at 11.

[13] G.R. No. 152259, July 29, 2004, 435 SCRA 371.

and that the presumption of constitutionality was adequately overthrown.

The Court finds for petitioner.

The power to define crimes and prescribe their corresponding penalties is legislative in nature and inherent in the sovereign power of the state to maintain social order as an aspect of police power. The legislature may even forbid and penalize acts formerly considered innocent and lawful provided that no constitutional rights have been abridged.[14] However, in exercising its power to declare what acts constitute a crime, the legislature must inform the citizen with reasonable precision what acts it intends to prohibit so that he may have a certain understandable rule of conduct and know what acts it is his duty to avoid.[15] This requirement has come to be known as the **void-for-vagueness doctrine** which states that "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law."[16]

In *Spouses Romualdez v. COMELEC*,[17] the Court recognized the application of the void-for-vagueness doctrine to criminal statutes in appropriate cases. The Court therein held:

> At the outset, we declare that under these terms, the opinions of the dissent which seek to bring to the fore the purported ambiguities of a long list of provisions in Republic Act No. 8189 can be deemed as a facial challenge. An appropriate "as applied" challenge in the instant Petition should be limited only to Section 45 (j) in relation to Sections 10 (g) and (j) of Republic Act No. 8189 – the provisions upon which petitioners are charged. An expanded examination of the law covering provisions which are alien to petitioners' case would be antagonistic to the rudiment that for judicial review to be exercised,

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[14] 21 Am Jur §§ 12, 13.

[15] *Musser v. Utah*, 333 U.S. 95; *Giaccio v. Pennsylvania*, 382 U.S. 339; *U.S. v. Brewer*, 139 U.S. 278, 35 L.Ed. 190, 193.

[16] *Estrada v. Sandiganbayan*, *supra* note 6.

[17] *Supra* note 12.

there must be an existing case or controversy that is appropriate or ripe for determination, and not conjectural or anticipatory.[18]

The first statute punishing vagrancy – Act No. 519 – was modeled after American vagrancy statutes and passed by the Philippine Commission in 1902. The Penal Code of Spain of 1870 which was in force in this country up to December 31, 1931 did not contain a provision on vagrancy.[19] While historically an Anglo-American concept of crime prevention, the law on vagrancy was included by the Philippine legislature as a permanent feature of the Revised Penal Code in Article 202 thereof which, to repeat, provides:

ART. 202. *Vagrants and prostitutes; penalty.* – The following are vagrants:

1. Any person having no apparent means of subsistence, who has the physical ability to work and who neglects to apply himself or herself to some lawful calling;

2. Any person found loitering about public or semi-public buildings or places, or tramping or wandering about the country or the streets without visible means of support;

3. Any idle or dissolute person who lodges in houses of ill-fame; ruffians or pimps and those who habitually associate with prostitutes;

4. Any person who, not being included in the provisions of other articles of this Code, shall be found loitering in any inhabited or uninhabited place belonging to another without any lawful or justifiable purpose;

5. Prostitutes.

For the purposes of this article, women who, for money or profit, habitually indulge in sexual intercourse or lascivious conduct, are deemed to be prostitutes.

Any person found guilty of any of the offenses covered by this article shall be punished by *arresto menor* or a fine not exceeding 200 pesos, and in case of recidivism, by *arresto mayor* in its medium period to *prision correccional* in its minimum period or a fine ranging from 200 to 2,000 pesos, or both, in the discretion of the court.

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[18] *Id.* at 420.

[19] 57 P.L.J. 421 (1982).

In the instant case, the assailed provision is paragraph (2), which defines a vagrant as any person found loitering about public or semi-public buildings or places, or tramping or wandering about the country or the streets without visible means of support. This provision was based on the second clause of Section 1 of Act No. 519 which defined "vagrant" as "*every person found loitering about saloons or dramshops or gambling houses, or tramping or straying through the country without visible means of support*." The second clause was essentially retained with the modification that the places under which the offense might be committed is now expressed in general terms – public or semi-public places.

The Regional Trial Court, in asserting the unconstitutionality of Article 202 (2), take support mainly from the U.S. Supreme Court's opinion in the *Papachristou v. City of Jacksonville*[20] case, which in essence declares:

> Living under a rule of law entails various suppositions, one of which is that "[all persons] are entitled to be informed as to what the State commands or forbids." *Lanzetta v. New Jersey*, 306 U. S. 451, 306 U. S. 453.
>
> Lanzetta is one of a well recognized group of cases insisting that the law give fair notice of the offending conduct. See *Connally v. General Construction Co.*, 269 U. S. 385, 269 U. S. 391; *Cline v. Frink Dairy Co.*, 274 U. S. 445; *United States v. Cohen Grocery Co.*, 255 U. S. 81. In the field of regulatory statutes governing business activities, where the acts limited are in a narrow category, greater leeway is allowed. *Boyce Motor Lines, Inc. v. United States*, 342 U. S. 337; *United States v. National Dairy Products Corp.*, 372 U. S. 29; *United States v. Petrillo*, 332 U. S. 1.
>
> The poor among us, the minorities, the average householder, are not in business and not alerted to the regulatory schemes of vagrancy laws; and we assume they would have no understanding of their meaning and impact if they read them. Nor are they protected from being caught in the vagrancy net by the necessity of having a specific intent to commit an unlawful act. See *Screws v. United States*, 325 U. S. 91; *Boyce Motor Lines, Inc. v. United States, supra*.

[20] *Supra* note 8.

The Jacksonville ordinance makes criminal activities which, by modern standards, are normally innocent. "Nightwalking" is one. Florida construes the ordinance not to make criminal one night's wandering, *Johnson v. State*, 202 So.2d at 855, only the "habitual" wanderer or, as the ordinance describes it, "common night walkers." We know, however, from experience that sleepless people often walk at night, perhaps hopeful that sleep-inducing relaxation will result.

Luis Munoz-Marin, former Governor of Puerto Rico, commented once that "loafing" was a national virtue in his Commonwealth, and that it should be encouraged. It is, however, a crime in Jacksonville.

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Persons "wandering or strolling" from place to place have been extolled by Walt Whitman and Vachel Lindsay. The qualification "without any lawful purpose or object" may be a trap for innocent acts. Persons "neglecting all lawful business and habitually spending their time by frequenting . . . places where alcoholic beverages are sold or served" would literally embrace many members of golf clubs and city clubs.

Walkers and strollers and wanderers may be going to or coming from a burglary. Loafers or loiterers may be "casing" a place for a holdup. Letting one's wife support him is an intra-family matter, and normally of no concern to the police. Yet it may, of course, be the setting for numerous crimes.

The difficulty is that these activities are historically part of the amenities of life as we have known them. They are not mentioned in the Constitution or in the Bill of Rights. These unwritten amenities have been, in part, responsible for giving our people the feeling of independence and self-confidence, the feeling of creativity. These amenities have dignified the right of dissent, and have honored the right to be nonconformists and the right to defy submissiveness. They have encouraged lives of high spirits, rather than hushed, suffocating silence.

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Where the list of crimes is so all-inclusive and generalized as the one in this ordinance, those convicted may be punished for no more than vindicating affronts to police authority:

> "The common ground which brings such a motley assortment of human troubles before the magistrates in vagrancy-type

> proceedings is the procedural laxity which permits 'conviction' for almost any kind of conduct and the existence of the House of Correction as an easy and convenient dumping-ground for problems that appear to have no other immediate solution." Foote, Vagrancy-Type Law and Its Administration, 104 U.Pa.L.Rev. 603, 631.
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> x x x x x x x x x

Another aspect of the ordinance's vagueness appears when we focus not on the lack of notice given a potential offender, but on the effect of the unfettered discretion it places in the hands of the Jacksonville police. Caleb Foote, an early student of this subject, has called the vagrancy-type law as offering "punishment by analogy." Such crimes, though long common in Russia, are not compatible with our constitutional system.

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A presumption that people who might walk or loaf or loiter or stroll or frequent houses where liquor is sold, or who are supported by their wives or who look suspicious to the police are to become future criminals is too precarious for a rule of law. The implicit presumption in these generalized vagrancy standards — that crime is being nipped in the bud — is too extravagant to deserve extended treatment. Of course, vagrancy statutes are useful to the police. Of course, they are nets making easy the roundup of so-called undesirables. But the rule of law implies equality and justice in its application. Vagrancy laws of the Jacksonville type teach that the scales of justice are so tipped that even-handed administration of the law is not possible. The rule of law, evenly applied to minorities as well as majorities, to the poor as well as the rich, is the great mucilage that holds society together.[21]

The underlying principles in *Papachristou* are that: 1) the assailed Jacksonville ordinance "fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute"; and 2) it encourages or promotes opportunities for the application of discriminatory law enforcement.

The said underlying principle in *Papachristou* that the Jacksonville ordinance, or Article 202 (2) in this case, fails to

[21] *Supra* note 8 at 405 U.S. 163-171.

give fair notice of what constitutes forbidden conduct, finds no application here because under our legal system, ignorance of the law excuses no one from compliance therewith.[22] This principle is of Spanish origin, and we adopted it to govern and limit legal conduct in this jurisdiction. Under American law, ignorance of the law is merely a traditional rule that admits of exceptions.[23]

Moreover, the *Jacksonville* ordinance was declared unconstitutional on account of **specific provisions thereof, which are *not* found in Article 202 (2)**. The ordinance (Jacksonville Ordinance Code § 257) provided, as follows:

> Rogues and vagabonds, or dissolute persons who go about begging; common gamblers, persons who use juggling or unlawful games or plays, common drunkards, common night walkers, thieves, pilferers or pickpockets, traders in stolen property, lewd, wanton and lascivious persons, keepers of gambling places, common railers and

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[22] CIVIL CODE, Article 3.

[23] *Bryan v. United States* (96-8422), 122 F.3d 90. The Court held:

> Petitioner next argues that we must read §924(a)(1)(D) to require knowledge of the law because of our interpretation of "willfully" in two other contexts. In certain cases involving willful violations of the tax laws, we have concluded that the jury must find that the defendant was aware of the specific provision of the tax code that he was charged with violating. See, *e.g.*, *Cheek* v. *United States*, 498 U.S. 192, 201 (1991). Similarly, in order to satisfy a willful violation in *Ratzlaf*, we concluded that the jury had to find that the defendant knew that his structuring of cash transactions to avoid a reporting requirement was unlawful. See 510 U.S., at 138, 149. Those cases, however, are readily distinguishable. Both the tax cases and *Ratzlaf* involved highly technical statutes that presented the danger of ensnaring individuals engaged in apparently innocent conduct. As a result, we held that these statutes "carv[e] out an exception to the **traditional rule**" that ignorance of the law is no excuse and require that the defendant have knowledge of the law. The danger of convicting individuals engaged in apparently innocent activity that motivated our decisions in the tax cases and *Ratzlaf* is not present here because the jury found that this petitioner knew that his conduct was unlawful.
>
> Thus, the willfulness requirement of §924(a)(1)(D) does not carve out an exception to the traditional rule that ignorance of the law is no excuse; knowledge that the conduct is unlawful is all that is required. (Emphasis supplied)

brawlers, persons wandering or strolling around from place to place without any lawful purpose or object, habitual loafers, disorderly persons, persons neglecting all lawful business and habitually spending their time by frequenting houses of ill fame, gaming houses, or places where alcoholic beverages are sold or served, persons able to work but habitually living upon the earnings of their wives or minor children shall be deemed vagrants and, upon conviction in the Municipal Court shall be punished as provided for Class D offenses.

Thus, the U.S. Supreme Court in *Jacksonville* declared the ordinance unconstitutional, because such activities or habits as **nightwalking**, **wandering or strolling around without any lawful purpose or object**, **habitual loafing**, **habitual spending of time at places where alcoholic beverages are sold or served**, and **living upon the earnings of wives or minor children**, which are otherwise common and normal, were declared illegal. ***But these are specific acts or activities not found in Article 202 (2)***. The closest to Article 202 (2) – "*any person found loitering about public or semi-public buildings or places, or tramping or wandering about the country or the streets without visible means of support*" – from the Jacksonville ordinance, would be "*persons wandering or strolling around from place to place without any lawful purpose or object*." But these two acts are still not the same: Article 202 (2) is qualified by "without visible means of support" while the Jacksonville ordinance prohibits wandering or strolling "without any lawful purpose or object," which was held by the U.S. Supreme Court to constitute a "trap for innocent acts."

Under the Constitution, the people are guaranteed the right to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.[24] Thus, as with any other act or offense,

[24] CONSTITUTION, Art. III, Sec. 2.

the requirement of **probable cause** provides an acceptable limit on police or executive authority that may otherwise be abused in relation to the search or arrest of persons found to be violating Article 202 (2). The fear exhibited by the respondents, echoing *Jacksonville*, that unfettered discretion is placed in the hands of the police to make an arrest or search, is therefore assuaged by the constitutional requirement of probable cause, which is one less than certainty or proof, but more than suspicion or possibility.[25]

Evidently, the requirement of probable cause cannot be done away with arbitrarily without pain of punishment, for, absent this requirement, the authorities are necessarily guilty of abuse. 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 of the peace officers making the arrest.[26]

The State cannot in a cavalier fashion intrude into the persons of its citizens as well as into their houses, papers and effects. The constitutional provision sheathes the private individual with an impenetrable armor against unreasonable searches and seizures. It protects the privacy and sanctity of the person himself against unlawful arrests and other forms of restraint, and prevents him from being irreversibly cut off from that domestic security which renders the lives of the most unhappy in some measure agreeable.[27]

As applied to the instant case, it appears that the police authorities have been conducting previous surveillance operations

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[25] 79 C.J.S., Search and Seizures, Sec. 74, 865.

[26] *People v. Molina*, G.R. No. 133917, February 19, 2001, 352 SCRA 174.

[27] *People v. Bolasa*, G.R. No. 125754, December 22, 1999, 321 SCRA 459.

on respondents prior to their arrest. On the surface, this satisfies the probable cause requirement under our Constitution. For this reason, we are not moved by respondents' trepidation that Article 202 (2) could have been a source of police abuse in their case.

Since the Revised Penal Code took effect in 1932, no challenge has ever been made upon the constitutionality of Article 202 except now. Instead, throughout the years, we have witnessed the streets and parks become dangerous and unsafe, a haven for beggars, harassing "watch-your-car" boys, petty thieves and robbers, pickpockets, swindlers, gangs, prostitutes, and individuals performing acts that go beyond decency and morality, if not basic humanity. The streets and parks have become the training ground for petty offenders who graduate into hardened and battle-scarred criminals. Everyday, the news is rife with reports of innocent and hardworking people being robbed, swindled, harassed or mauled – if not killed – by the scourge of the streets. Blue collar workers are robbed straight from withdrawing hard-earned money from the ATMs (automated teller machines); students are held up for having to use and thus exhibit publicly their mobile phones; frail and helpless men are mauled by thrill-seeking gangs; innocent passers-by are stabbed to death by rowdy drunken men walking the streets; fair-looking or pretty women are stalked and harassed, if not abducted, raped and then killed; robbers, thieves, pickpockets and snatchers case streets and parks for possible victims; the old are swindled of their life savings by conniving streetsmart bilkers and con artists on the prowl; beggars endlessly pester and panhandle pedestrians and commuters, posing a health threat and putting law-abiding drivers and citizens at risk of running them over. All these happen on the streets and in public places, day or night.

The streets must be protected. Our people should never dread having to ply them each day, or else we can never say that we have performed our task to our brothers and sisters. We must rid the streets of the scourge of humanity, and restore order, peace, civility, decency and morality in them.

This is exactly why we have ***public order laws***, to which Article 202 (2) belongs. These laws were crafted to **maintain minimum standards of decency, morality and civility in human society**. These laws may be traced all the way back to ancient times, and today, they have also come to be associated with the struggle to improve the citizens' quality of life, which is guaranteed by our Constitution.[28] *Civilly*, they are covered by the "abuse of rights" doctrine embodied in the preliminary articles of the Civil Code concerning Human Relations, to the end, in part, that any person who willfully causes loss or injury to another in a manner that is contrary to **morals**, **good customs** or **public policy** shall compensate the latter for the damage.[29] This provision is, together with the succeeding articles on human relations, intended to embody certain basic principles "that are to be observed for the rightful relationship between human beings and for the stability of the social order."[30]

In civil law, for example, the summary remedy of ejectment is intended to prevent criminal disorder and breaches of the peace and to discourage those who, believing themselves entitled to the possession of the property, resort to force rather than to some appropriate action in court to assert their claims.[31] Any private person may abate a public nuisance which is specially injurious to him by removing, or if necessary, by destroying the thing which constitutes the same, without committing a breach of the peace, or doing unnecessary injury.[32]

Criminally, public order laws encompass a whole range of acts – from public indecencies and immoralities, to public

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[28] CONSTITUTION, Article II, Section 9: The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.

[29] CIVIL CODE, Article 19.

[30] *Sea Commercial Company Inc. v. Court of Appeals*, G.R. No. 122823, November 25, 1999, 319 SCRA 210.

[31] *Drilon v. Gaurana*, No. L-35482, April 30, 1987, 149 SCRA 342.

[32] CIVIL CODE, Article 704.

nuisances, to disorderly conduct. The acts punished are made illegal by their offensiveness to society's basic sensibilities and their adverse effect on the quality of life of the people of society. For example, the issuance or making of a bouncing check is deemed a public nuisance, a crime against public order that must be abated.[33] As a matter of public policy, the failure to turn over the proceeds of the sale of the goods covered by a trust receipt or to return said goods, if not sold, is a public nuisance to be abated by the imposition of penal sanctions.[34] Thus, public nuisances must be abated because they have the effect of interfering with the comfortable enjoyment of life or property by members of a community.

Article 202 (2) does not violate the equal protection clause; neither does it discriminate against the poor and the unemployed. Offenders of public order laws are punished not for their status, as for being poor or unemployed, but for conducting themselves under such circumstances as to endanger the public peace or cause alarm and apprehension in the community. Being poor or unemployed is not a license or a justification to act indecently or to engage in immoral conduct.

Vagrancy must not be so lightly treated as to be considered constitutionally offensive. It is a public order crime which punishes persons for conducting themselves, at a certain place and time which orderly society finds unusual, under such conditions that are repugnant and outrageous to the common standards and norms of decency and morality in a just, civilized and ordered society, as would engender a justifiable concern for the safety and well-being of members of the community.

Instead of taking an active position declaring public order laws unconstitutional, the State should train its eye on their effective implementation, because it is in this area that the Court perceives difficulties. Red light districts abound, gangs

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[33] *Ruiz v. People*, G.R. No. 160893, November 18, 2005, 475 SCRA 476.

[34] *Tiomico v. Court of Appeals*, G.R. No. 122539, March 4, 1999, 304 SCRA 216.

work the streets in the wee hours of the morning, dangerous robbers and thieves ply their trade in the trains stations, drunken men terrorize law-abiding citizens late at night and urinate on otherwise decent corners of our streets. Rugby-sniffing individuals crowd our national parks and busy intersections. Prostitutes wait for customers by the roadside all around the metropolis, some even venture in bars and restaurants. Drug-crazed men loiter around dark avenues waiting to pounce on helpless citizens. Dangerous groups wander around, casing homes and establishments for their next hit. The streets must be made safe once more. Though a man's house is his castle,[35] outside on the streets, the king is fair game.

The dangerous streets must surrender to orderly society.

Finally, we agree with the position of the State that first and foremost, Article 202 (2) should be presumed valid and constitutional. When confronted with a constitutional question, it is elementary that every court must approach it with grave care and considerable caution bearing in mind that every statute is presumed valid and every reasonable doubt should be resolved in favor of its constitutionality.[36] The policy of our courts is to avoid ruling on constitutional questions and to presume that the acts of the political departments are valid in the absence of a clear and unmistakable showing to the contrary. To doubt is to sustain, this presumption is based on the doctrine of separation of powers which enjoins upon each department a becoming respect for the acts of the other departments. The theory is that as the joint act of Congress and the President of the Philippines, a law has been carefully studied, crafted and determined to be in accordance with the fundamental law before it was finally enacted.[37]

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[35] *Villanueva v. Querubin*, G.R. No. L-26177, 48 SCRA 345.

[36] *Lacson v. Executive Secretary*, G.R. No. 128096, January 20, 1999, 301 SCRA 298.

[37] *Macasiano v. National Housing Authority*, G.R. No. 107921, July 1, 1993, 224 SCRA 236.

It must not be forgotten that police power is an inherent attribute of sovereignty. It has been defined as the power vested by the Constitution in the legislature to make, ordain, and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the Constitution, as they shall judge to be for the good and welfare of the commonwealth, and for the subjects of the same. The power is plenary and its scope is vast and pervasive, reaching and justifying measures for public health, public safety, public morals, and the general welfare.[38] As an obvious police power measure, Article 202 (2) must therefore be viewed in a constitutional light.

WHEREFORE, the petition is *GRANTED*. The Decision of Branch 11 of the Regional Trial Court of Davao City in Special Civil Case No. 30-500-2004 declaring *Article 202, paragraph 2 of the Revised Penal Code UNCONSTITUTIONAL* is *REVERSED* and *SET ASIDE*.

Let the proceedings in Criminal Cases Nos. 115,716-C-2003 and 115,717-C-2003 thus continue.

No costs.

SO ORDERED.

Chico-Nazario, Velasco, Jr., Peralta, and *Bersamin,*[*] *JJ.,* concur.

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[38] Bernas, *The 1987 Constitution of the Philippines, A Commentary*, pp. 95-98 [1996].

[*] In lieu of Associate Justice Antonio Eduardo B. Nachura per raffle dated September 16, 2009.

THIRD DIVISION

[G.R. No. 169940. September 18, 2009]

UNIVERSITY OF SANTO TOMAS, *petitioner, vs.* **SAMAHANG MANGGAGAWA NG UST (SM-UST),** *respondent*.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; COLLECTIVE BARGAINING AGREEMENT; RESPONDENT'S MEMBERS' INDIVIDUAL ACCEPTANCE OF THE AWARD AND THE RESULTING PAYMENTS MADE BY PETITIONER DO NOT OPERATE AS A RATIFICATION OF THE DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE) SECRETARY'S AWARD.— Going now to the question of whether respondent's members' *individual* acceptance of the award and the resulting payments made by petitioner operate as a ratification of the DOLE Secretary's award which renders CA-G.R. SP No. 72965 moot, we find that such do not operate as a ratification of the DOLE Secretary's award; nor a waiver of their right to receive further benefits, or what they may be entitled to under the law. The appellate court correctly ruled that the respondent's members were merely constrained to accept payment at the time. Christmas was then just around the corner, and the union members were in no position to resist the temptation to accept much-needed cash for use during the most auspicious occasion of the year. Time and again, we have held that necessitous men are not, truly speaking, free men; but to answer a present emergency, will submit to any terms that the crafty may impose upon them. Besides, as individual components of a union possessed of a distinct and separate corporate personality, respondent's members should realize that in joining the organization, they have surrendered a portion of their individual freedom for the benefit of all the other members; they submit to the will of the majority of the members in order that they may derive the advantages to be gained from the concerted action of all. Since the will of the members is personified by its board of directors or trustees, the decisions it makes should accordingly bind them. Precisely, a labor union exists in whole or in part for the purpose of *collective* bargaining

or of dealing with employers concerning terms and conditions of employment. What the individual employee may not do alone, as for example obtain more favorable terms and conditions of work, the labor organization, through persuasive and coercive power gained as a group, can accomplish better.

2. ID.; ID.; ID.; APPELLATE COURT'S AWARD OF ADDITIONAL SIGNING BONUS IS UNWARRANTED UNDER THE CIRCUMSTANCES; EXPLAINED.— x x x We come to the appellate court's award of additional signing bonus, which we find to be unwarranted under the circumstances. A signing bonus is a grant motivated by the goodwill generated when a CBA is successfully negotiated and signed between the employer and the union. In the instant case, no CBA was successfully negotiated by the parties. It is only because petitioner prays for this Court to affirm *in toto* the DOLE Secretary's May 31, 2002 Order that we shall allow an award of signing bonus. There would have been no other basis to grant it if petitioner had not so prayed. We shall take it as a manifestation of petitioner's liberality, which we cannot now allow it to withdraw. A bonus is a gratuity or act of liberality of the giver; when petitioner filed the instant petition seeking the affirmance of the DOLE Secretary's Order in its entirety, assailing only the increased amount of the signing bonus awarded, it is considered to have unqualifiedly agreed to grant the original award to the respondent union's members.

APPEARANCES OF COUNSEL

Divina and Uy Law Offices for petitioner.
Arellano and Arellano Law Offices for respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

Assailed in this petition for review on *certiorari* is the January 31, 2005 Decision[1] of the Court of Appeals in CA-

[1] *Rollo*, pp. 68-104; penned by Associate Justice Regalado E. Maambong and concurred in by Associate Justices Martin S. Villarama, Jr. and Lucenito N. Tagle.

G.R. SP No. 72965, which affirmed the May 31, 2002 Order of the Secretary of the Department of Labor and Employment (DOLE) directing the parties to execute a Collective Bargaining Agreement incorporating the terms in said Order with modification that the signing bonus is increased to ₱18,000.00. Also assailed is the September 23, 2005 Resolution[2] denying the motion for reconsideration.

Respondent Samahang Manggagawa ng U.S.T. (SM-UST) was the authorized bargaining agent of the **non-academic/non-teaching rank-and-file daily- and monthly-paid employees** (numbering about 619) of petitioner, the Pontifical and Royal University of Santo Tomas, The Catholic University of the Philippines (or UST), a private university in the City of Manila run by the Order of Preachers. In October 2001, during formal negotiations for a new collective bargaining agreement (CBA) for the academic year 2001 through 2006, petitioner submitted its "2001-2006 CBA Proposals" which, among others, contained the following economic provisions:

A. ACADEMIC YEAR 2001-2002

1. Salary increase of ₱800.00 per month
2. Signing bonus of ₱10,000.00
3. Additional Christmas bonus of ₱2,000.00

B. ACADEMIC YEAR 2002-2003

1. Salary increase of ₱1,500.00 per month
2. Additional Christmas bonus of ₱2,000.00
3. ₱6,000,000.00 for salary restructuring

C. ACADEMIC YEAR 2003-2004

1. Salary increase of ₱1,700.00 per month
2. Additional Christmas bonus of ₱2,000.00

In November 2001, the parties agreed in principle on all non-economic provisions of the proposed CBA, except those pertaining

[2] *Id.* at 106-107.

to Agency Contract or contractualization (Art. III, Sec. 3 of the proposed CBA), Union Leave of the SM-UST President (No. 4 of the Addendum to the proposed CBA), and hiring preference.

In December 2001, petitioner submitted its **final offer** on the economic provisions, thus:

A. ACADEMIC YEAR 2001-2002

1. Salary increase of ₱1,000.00 per month
2. Signing bonus of ₱10,000.00
3. Additional Christmas bonus of ₱2,000.00

B. ACADEMIC YEAR 2002-2003

1. Salary increase of ₱1,700.00 per month
2. Additional Christmas bonus of ₱2,000.00
3. ₱6,190,000.00 to be distributed in the form of salary restructuring

C. ACADEMIC YEAR 2003-2004

1. Salary increase of ₱2,000.00 per month
2. Additional Christmas bonus of ₱2,000.00

On the other hand, respondent reduced its demands for the first year from ₱8,000.00 monthly salary increase per employee to ₱7,000.00, and from ₱75,000.00 signing bonus to ₱60,000.00 for each employee, but petitioner insisted on its final offer. As a result, respondent declared a deadlock and filed a notice of strike with the National Conciliation and Mediation Board -National Capital Region (NCMB-NCR).

Conciliation and mediation proved to be futile, such that in January 2002, majority of respondent's members voted to stage a strike. However, the DOLE Secretary timely assumed jurisdiction over the dispute, and the parties were summoned and heard on their respective claims, and were required to submit their respective position papers.

On May 31, 2002, the DOLE Secretary issued an Order,[3] the pertinent portions of which read, as follows:

x x x In arguing on the reasonableness of its demands, it cites the income of the school from tuition fee increases and the allocation of this amount to the faculty and non-teaching employees of the School x x x. According to the Union, the School's estimate of the tuition fee increase for the school year 2003-2004 at ₱76,410,000.00 is erroneous. The Union argues that the total income of the School from tuition fee increases for school year 2003-2004 is ₱101,000,000.00 more or less, or a net of ₱98,252,187.36, after deducting adjustments for additional charges, allowances and discounts. This is based on the computation of the School's Assistant Chief Accountant x x x.

x x x x x x x x x

The Union feels that the members of the bargaining unit are the least favored. On the wage increases alone, the Union points out that a comparison of the average monthly salary of the non-academic personnel from school year 1995-1996 up to school year 1999-2000 shows a declining relative percentage. For this period, the bargaining unit enjoyed an average monthly salary increase of 14.234%, the lowest being 8.9% in school year 1998-1999 and the highest being 15.38% in school year 1995-1996. The School's offer for this CBA cycle translates to an increase of only 8.23%, specified as follows: (1) 5.69% increase in school year 2000-2001 (₱1,000.00); (2) 9.15% increase in school year 2001-2002 (₱1,700.00); and (3) 9.86% increase in 2002-2003 (₱2,000.00).

The Union also submits a comparative chart of the allocation to non-academic personnel of the 70% increase in tuition fees from school year 1996-1997 to 1999-2000 x x x. The average percentage allocation to non-academic personnel during this period is 32.8% of the total 70% of total tuition fee increases, the lowest being 20.83% for the school year 1999-2000 and the highest being 43.11% of the total allocation in 1997-1998. Using ₱101,036,330.37 as the estimated increase in tuition fee, 70% of this amount, net of adjustment, is ₱68,775,831.15 x x x. The Union argues that it is entitled to at least the average percentage of allocation to it for the past four (4) school years which is at 32.85%, or ₱22,592,860.53 of the total allocation of ₱68,775,831.15.

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[3] *Id.* at 496-518.

It maintains, however, that it is entitled to more than the average percentage of its allocation of the total 70% because it is School practice to allocate more than 70% of the total tuition fee increases for the salaries and benefits of School employees. Comparing the employees' share in the tuition fee increases from school year 1996-1997 to 1999-2000, the School allocated an average percentage of 76.75% for the benefits and salaries of its personnel, or from a low of 72% in 1998-1999 to a high of 84.4% in 1996-1997 x x x. If the average is applied this year, the Union argues that the available amount is ₱75,407,786.29. Because of this practice, the Union maintains that the School is already estopped from arguing that the allocation for employee wages and benefits should not exceed 70% of tuition fee increases.

Aside from this amount, the Union maintains that it is entitled to an additional ₱15,475,000.00, sourced from other income, for the signing bonus or one-time grant of ₱25,000.00 per member x x x. The Union alleges that it is school practice to appropriate other funds for the wages and benefits of its employees. For the school year 1996-1997, the School used funds from other sources to fund the ₱2,000,000.00 hospitalization fund and 50% of the signing bonus for the academic personnel; in 1997-1998 and 1998-1999, it used additional funds for the ₱1,000,000.00 hospitalization fund of the academic personnel; and in 1999-2000, it used other funds to finance the one-time grant of ₱10,000.00 each to the non-academic personnel and additional ₱4,000,000.00 for the hospitalization fund of the academic employees or a total of ₱17,592,500.00 for the past four (4) academic years x x x.

The School cannot claim that the funds are insufficient to cover the expenses for the CBA because for the fiscal year 2000-2001 alone, the accumulated excess of revenues over expenses at the end of the year totaled ₱148,881,678.00 x x x. The Statement of Revenues and Expenses from School Operations collated from the audited Financial Statements of the School for the school years 1996-1997 up to 2000-2001 shows that except for school years 1996-1997 and 2000-2001, the School posted a net income from school operations. Its average annual net income from school operations alone is ₱7,956,187.00 and the net loss in 2000-2001 was a result of the revaluation of the Main Building as part of the assets from its fully depreciated value so that a new depreciation cost was reported and charged to general expenses.

From the foregoing arguments, the Union demands that an amount should be allocated to it annually to finance its demands as follows:

1st Year – ₱38,067,860.00 distributed as follows: ₱22,592,860.53 (share from tuition fee increases) for the economic benefits with sliding effect on the succeeding years; plus ₱15,475,000.00 for the one-time signing bonus of ₱25,000.00 for each employee sourced from other funds.

2nd Year – ₱33,568,970.00 to apply to its demand for salary increase, Christmas bonus, rice subsidy and clothing/uniform allowance.

3rd Year – ₱46,653,295.37 to apply to its demand for salary increase, Christmas bonus, medicine allowance, mid-year bonus allowance and meal allowance.

Based on the Union's computation, its demands will cost the School a total of ₱133,765,125.37 for the entire three (3) year period.

x x x x x x x x x

Given all the foregoing, we cannot follow the Union's formula and in effect disregard the School's two other bargaining units; to do so is a distortion of economic reality that will not bring about long term industrial peace. We cannot simply adopt the School's proposal in light of the parties' bargaining history, particularly the pattern of increases in the last cycle. Considering all these, we believe the following to be a fair and reasonable resolution of the wage issue.

1st Year – ₱1,000.00/month

2nd Year – ₱2,000.00/month

3rd Year – ₱2,200.00/month

These increases, at a three-year total of ₱68,337,600, are less than the three (3)-year increases in the last CBA cycle to accommodate the School's proven lack of capacity to afford a higher increase, but are still substantial enough to accommodate the workers' needs while taking into account the symmetry that must be maintained with the wages of the other bargaining units. On a straight line aggregate of ₱5,200.00, the non-academic personnel will receive ₱498.48 less than an Instructor I (member of the faculty union) who received an aggregate of ₱5,698.48, thus maintaining the gap between the teaching and non-teaching personnel. The salary difference will as well be maintained over the three (3)-year period of the CBA. An RFI employee (member of the union's bargaining unit) will receive a monthly salary of ₱21,695.95 while an Instructor I (faculty union

member) will have a salary of ₱22,948.00; while an RF5-5/A (member of the union's bargaining unit) will receive a salary of ₱23,462.97 compared to an Asst. Prof. 1 (faculty) who will receive ₱29,250.96. From a total cost of salary increases for the first year at ₱7,428,000, these costs will escalate to ₱22,284,000 in the second year, and to ₱38,625,000 at the third year. Given these figures, the amounts available for distribution and the member of groups sharing these amounts, these increases are by no means minimal.

Signing Bonus

A review of the past bargaining history of the parties shows that the School as a matter of course grants a signing bonus. This ranged from ₱8,000.00 during the first three (3) years of the last CBA to ₱10,000.00 during the remaining two (2) years of the re-negotiated term. In this instance, the School's offer of ₱10,000.00 signing bonus is already reasonable considering that the School could have taken the position that no signing bonus is due on compulsory arbitration in line with the ruling in *Meralco v. Quisumbing et al.*, G.R. No. 127598, 27 January 1999.

Christmas Bonus

We note that the members of the bargaining unit receive a ₱6,500.00 Christmas bonus. Considering this current level, we believe that the School's offer of ₱2,000.00 for each of the next three (3) years of the CBA is already reasonable. Under this grant, the workers' Christmas bonus will stand at a total of ₱12,500 at the end of the third year.

Hospitalization Benefit

We believe that the current practice is already reasonable and should be maintained.

Meal Allowance

The Union failed to show any justification for its demand on this item, hence its demand on the increase of meal allowance is denied.

Rice Allowance

We believe an additional 2 sacks of rice on top of the existing 6 sacks of rice is reasonable and is hereby granted, effective on the second year.

Medical Allowance

In the absence of any clear justification for an improvement of this benefit, we find the existing practice to be already reasonable and should be maintained.

Uniform/Clothing

The Union has not established why the School should grant the benefit; hence this demand is denied.

Mid-year Bonus

The ₱3,000.00 bonus is already fair and should be maintained.

Hazard Pay

There is no basis to increase this benefit, the current level being fair and reasonable.

Educational Benefit

The existing provision is already generous and should be maintained.

Retirement Plan

We are convinced that the 100% of basic salary per year of service is already reasonable and should be maintained.

Hiring Preference

Based on the Minutes of Meeting on 18 October 2001 and 8 November 2001, the parties agreed to retain the existing provision; hence, our ruling on this matter is no longer called for.

Contractualization

The Union's proposed amendments are legal prohibitions which need not be incorporated in the CBA. The Union has alternative remedies if it desires to assail the School's contracts with agencies.

Full-time Union Leave of Union President

The Union failed to provide convincing reasons why this demand should be favorably granted; hence, the same is denied.

Other Demands

All other demands not included in the defined deadlock issues are deemed abandoned, except for existing benefits which the School

shall continue to grant at their current levels consistent with the principle of non-diminution of benefits.

WHEREFORE, premises considered, the parties are hereby directed to execute within ten (10) days from receipt of this Order a Collective Bargaining Agreement incorporating the terms and conditions of this Order as well as other agreements made in the course of negotiations and on conciliation.[4]

Respondent filed a motion for reconsideration but it was denied by the Secretary of Labor. Thus, respondent filed an original petition for *certiorari* with the Court of Appeals, claiming that the awards made by the DOLE Secretary are not supported by the evidence on record and are contrary to law and jurisprudence.

On January 31, 2005, the appellate court rendered the assailed Decision, the dispositive portion of which reads, as follows:

WHEREFORE, premises considered, the petition is partially GRANTED. The assailed Order of May 31, 2002 of Secretary Patricia Sto. Tomas is hereby AFFIRMED with the modification that the ₱10,000.00 signing bonus awarded is increased to ₱18,000.00.

SO ORDERED.[5]

In arriving at the foregoing disposition, the appellate court noted that:

Based on UST Chief Accountant Antonio J. Dayag's Certification, the tuition fee increment for the SY 2001-2002 amounted to ₱101,036,330.37. From this amount, the tuition fee adjustment amounting to ₱2,785,143.00 was deducted leaving a net tuition fee increment of ₱98,251,189.36.

Pursuant to Section 5 (2) RA 6728, seventy percent (70%) of ₱98,251,187.36 or ₱68,775,831.15 is the amount UST has to allocate for salaries, wages, allowances and other benefits of its 2,290 employees, categorized as follows: 619 non-teaching personnel represented by herein petitioner SM-UST; 1,452 faculty members represented by UST-Faculty Union (UST-FU) and 219 academic/

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[4] *Id.* at 501-518.

[5] *Id.* at 103.

administrative officials. The last group of employees is excluded from the coverage of the two bargaining units.

Public respondent, taking into consideration the bargaining history of the parties, the needs of the members of Union in relation to the capability of its employer, UST, to grant its demands, the impact of the award on the UST-Faculty Union members (UST-FU), and how the present salary and benefits of the non-academic personnel compare with the compensation of the employees of other learning institutions, arrived at the following "fair and reasonable" resolution to the wage issue:

1st year – ₱1,000.00/month

2nd year – ₱2,000.00/month

3rd year – ₱2,000.00/month

Based on public respondent's arbitral award for the first year (AY 2001-2002), We determine the allocation that SM-UST would get from the 70% of the tuition fee increment for AY 2001-2002 by approximating UST's expense on the increment of salaries/wages, allowances and benefits of the non-teaching personnel:

1. Increment on Salaries/Wages + 13th month pay (₱1,000 x 13 months x 619 employees)	₱ 8,047,000.00
2. Signing Bonus (₱10,000/employee)	6,190,000.00
3. ₱2,000 Christmas Bonus	1,238,000.00
Total	₱15,475,000.00

The amount of ₱15,475,000.00 represents 22.50% of the allocated ₱68,775,831.00 (70% of the tuition fee increment for AY 2001-2002). UST has allocated ₱45 million or 65.43% of the ₱68,775,831 to UST-Faculty Union.

Is the distribution equitable? If the share from the allocated ₱68,775,831.00 for each bargaining unit would be based on the union's membership, then the distribution appears fair and reasonable:

x x x x x x x x x

Academic	1,452 employees	awarded ₱45 million
Non-academic	619 employees	awarded ₱15.475 million
Academic & Administrative	219 employees	awarded ₱8 million
	Total awarded	**₱68,475,000.00**

The difference between ₱68,775,831 (70% of incremental tuition fee proceeds) and ₱68,475,000 (total actual allocation or award to the two bargaining units and the school officials) is ₱300,831.00, which is only .437% of the 70% mandatory allocation (₱68,775,831.00).

The Supreme Court in the case of *Cebu Institute of Medicine v. Cebu Institute of Medicine Employees' Union National Federation of Labor* held that SSS, Medicare and Pag-Ibig employer's share may be charged against the "seventy percent (70%) incremental tuition fee increase (sic)" as they are, after all, for the benefit of the University's teaching and non-teaching personnel. The High Court further ruled that "the private educational institution concerned has the discretion on the disposition of the seventy percent (70%) incremental tuition fee increase (sic). It enjoys the privilege of determining how much increase in salaries to grant and the kind and amount of allowances and other benefits to give. The only precondition is that seventy percent (70%) of the incremental tuition fee increase (sic) goes to the payment of salaries, wages, allowances and other benefits of teaching and non-teaching personnel."

In the (sic) light of the foregoing jurisprudence, the University, in order to comply with R.A. 6728, must fully allocate the 70% of the tuition fee increases to salaries, wages, allowances and other benefits of the teaching and non-teaching personnel. The amount of ₱300,831.00 must therefore be allocated either as salary increment or fringe benefits of the non-teaching personnel.

We noted that UST's non-teaching employees enjoy several fringe benefits.

We listed them down and estimated their costs for AY 2001-2002:

1. ₱3,000.00 mid-year bonus	₱1,857,000.00
2. 6 sacks of rice/employee @ ₱1,000.00/sack	3,714,000.00

3. Hospitalization benefit	2,476,000.00	
4. Meal allowance (₱600/month/employee)	4,456,800.00	
5. Hazard pay (₱200/month for 198 entitled employees)		8,430,780.00
6. Medicine Allowance (₱1,000/month/employee)	7,428,000.00	20,407,000.00
7. SSS (₱910.00 employer's share per employee)	6,759,480.00	
8. Pag-Ibig (2% of the basic pay)	742,800.00	
9. Phil Health (₱125.00/employee)	928,500.00	
Total		₱28,837,780.00

The allocation for salary increases, 13th month pay, signing bonus and Christmas bonus for UST's teaching and non-teaching employees, as well as the school officials, amount to ₱68.475 million. This represents almost 70% of the UST incremental tuition fee proceeds for AY 2001-2002. Considering the fringe benefits being extended to UST employees, it is safe to assume that the funds for such benefits need to be sourced from the University's other revenues. We looked into UST's financial statements to determine its financial standing. The financial statements duly audited by independent and credible external auditors constitute the normal method of proof of profit and loss performance of a company. We examined UST audited financial statements from 1997 to 2001 and found that the University's "other incomes" come from parking fees, rent income and interest income. It, likewise, derives income from school operations:

	1999	**2000**	**2001**
Income from Operations	₱19,874,937.00	(24,222,602)	(40,905,598)
Other Income	85,995,039.00	77,335,032.00	78,358,303

Excess of Revenues Over Expenses Before Income Tax	96,869,976.00	53,112,480.00	(29,726,651)
Provision for Income Tax	2,122,518.00	2,602,305.00	
Excess of Revenues Over Expenses	94,747,458.00	50,510,175.00	(32,115,272)
ACCUMULATED EXCESS OF REVENUES OVER EXPENSES AT END OF YEAR	₱180,996,950.00	₱130,486,775.00	₱148,881,678

Thus, if We charge the employees' other benefits from the accumulated excess of revenues, We will come up with the following:

Accumulated Excess of Revenues Over Expenses (2001)	₱148,881,678.00
Less:	
Other Benefits of Non-Teaching Personnel	28,837,780.00
Balance	₱120,043,898.00

Even if the other benefits of the faculty members were to be charged from the remaining balance of the Accumulated Excess of Revenues Over Expenses, there would still be sufficient amount to fund the other benefits of the non-teaching personnel.

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However, while We subscribe to UST's position on "salary distortion," Our earlier findings support the petitioner's contention that the UST has substantial accumulated income and thus, We deem it proper to award an increase, not in salary, to prevent any salary distortion, but in signing bonus. The arbitral award of ₱10,000 signing bonus per employee awarded by public respondent is hereby increased to ₱18,000.00.

We are well aware of the need for the University to maintain a sound and viable financial condition in the light of the decreasing number of its enrollees and the increasing costs of construction of buildings and modernization of equipment, libraries, laboratories and other similar facilities. To balance this concern of the University with

the need of its non-academic employees, the additional award, which We deem reasonable, and to be funded from the University's accumulated income, is thus limited to the increase in signing bonus.[6]

Petitioner filed a motion for reconsideration, which the appellate court denied in its September 23, 2005 Resolution. Hence, the instant petition which raises the following issues:

I.

THE HONORABLE COURT OF APPEALS COMMITTED PALPABLE ERROR OF SUBSTANCE WHEN IT RULED THAT THE MEMBERS OF PRIVATE RESPONDENT DID NOT VOLUNTARILY AND KNOWINGLY ACCEPT THE ARBITRAL AWARD OF THE SECRETARY OF DOLE.

II.

THE HONORABLE COURT OF APPEALS COMMITTED PALPABLE ERROR OF SUBSTANCE AMOUNTING TO GRAVE ABUSE OF DISCRETION WHEN IT INCREASED THE SIGNING BONUS AWARDED BY THE SECRETARY OF DOLE TO EACH OF THE MEMBERS OF PRIVATE RESPONDENT FROM ₱10,000.00 TO ₱18,000.00.

III.

THE HONORABLE COURT OF APPEALS HAS COMPLETELY IGNORED THE CLEAR MANDATE AND INTENTION OF R.A. 6728 OTHERWISE KNOWN AS THE GOVERNMENT ASSISTANCE TO STUDENTS AND TEACHERS IN PRIVATE EDUCATION ACT.

IV.

THE HONORABLE COURT OF APPEALS COMMITTED PALPABLE ERROR OF SUBSTANCE AMOUNTING TO GRAVE ABUSE OF DISCRETION WHEN IT RULED THAT THE FRINGE BENEFITS BEING ENJOYED BY THE ACADEMIC AND NON-ACADEMIC EMPLOYEES OF PETITIONER WERE SOURCED OUT FROM ITS OTHER INCOME.

V.

THE HONORABLE COURT OF APPEALS COMMITTED PALPABLE ERROR OF SUBSTANCE AMOUNTING TO GRAVE ABUSE OF

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[6] *Id.* at 91-100.

DISCRETION WHEN IT IGNORED THE TIME HONORED PRINCIPLES GOVERNING PETITION FOR *CERTIORARI* INVOLVING LABOR CASES.[7]

Petitioner alleges that, as of December 11, 2002, 526 regular non-academic employees – out of a total of 619 respondent's members – have decided to unconditionally abide by the May 31, 2002 Order of the DOLE Secretary.[8] A letter signed by the 526 non-academic employees allegedly reads:

December 3, 2002

TO: REV. FR. TAMERLANE R. LANA, O.P.
Rector

REV. FR. JUAN V. PONCE, O.P.
Vice-Rector

KAMI NA NAKALAGDA SA IBABA AY NAGPAPAABOT NG AMING TAHASANG PAGTANGGAP SA AWARD NG SECRETARY OF LABOR SA AMING (CBA) DEADLOCK CASE.

SANA PO AY MA-RELEASE ANG AMING MGA WAGE ADJUSTMENTS AT IBA PANG BENEPISYO BAGO MAG DECEMBER 15, 2002.

x x x x x x x x x[9]

Petitioner claims that it began paying the wage adjustment and other benefits pursuant to the May 31, 2002 Order of the DOLE Secretary; and that to date, 572 out of the 619 members of respondent have been paid. It now argues that by their acceptance of the award and the resulting payments made to them, the said union members have ratified its offer and thus rendered moot the case before the Court of Appeals (CA-G.R. SP No. 72965).

Petitioner also argues that the Court of Appeals erred in ordering it to source part of its judgment award from the school's

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[7] *Id.* at 19.

[8] *Id.* at 20-21.

[9] *Id.* at 22, 613.

other income, claiming that Republic Act 6728[10] does not compel or require schools to allocate more than 70% of the incremental tuition fee increase for the salaries and benefits of its employees. Citing an authority in education law, it stresses that –

> Clearly, only 70% may be used for the "payment of salaries, wages, allowances and other benefits of teaching and non-teaching personnel," since 20% "shall go to the improvement or modernization of buildings, equipment, libraries, laboratories, gymnasia and similar facilities and the payment of other costs of operation."

A school does not exist solely for the benefit of its teachers and non-teaching personnel. A school is principally established to deliver quality education at all levels, as the Constitution requires. Therefore, any tuition fee increase authorized by either the DepEd Secretary, the CHED or the Director General of the TESDA for private schools should not solely benefit the teaching and non-teaching personnel but should rather be used for the welfare of the entire school community, particularly the students.

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[10] AN ACT PROVIDING GOVERNMENT ASSISTANCE TO STUDENTS AND TEACHERS IN PRIVATE EDUCATION, AND APPROPRIATING FUNDS THEREFOR, which provides among others that:

Section 5. ***Tuition Fee Supplement for Students in Private High School.*** – x x x. (2) Assistance under paragraph (1), subparagraphs (a) and (b) shall be granted and tuition fees under subparagraph (c) may be increased, on the condition that seventy percent (70%) of the amount subsidized allotted for tuition fee or of the tuition fee increases shall go to the payment of salaries, wages, allowances and other benefits of teaching and non-teaching personnel except administrators who are principal stockholders of the school, and may be used to cover increases as provided for in the collective bargaining agreements existing or in force at the time when this Act is approved and made effective: Provided, That government subsidies are not used directly for salaries of teachers of non-secular subjects. At least twenty percent (20%) shall go to the improvement or modernization of buildings, equipment, libraries, laboratories, gymnasia and similar facilities and to the payment of other costs of operation. For this purpose, school shall maintain a separate record of accounts for all assistance received from the government, any tuition fee increase, and the detailed disposition and use thereof, which record shall be made available for periodic inspection as may be determined by the State Assistance Council, during business hours, by the faculty, the non-teaching personnel, students of the school concerned, the Department of Education, Culture and Sports and other concerned government agencies.

The students are entitled as a matter of right to the improvement and modernization of the school "buildings, equipment," as this is fundamental to the maintenance or improvement of the quality of education they receive.

Thus, if schools use any part of the 20% reserved for the upgrading of school facilities to supplement the salaries of their academic and non-academic personnel, they would not only be violating the students' constitutional right to quality education through "improvement and modernization" but also committing a serious infraction of the mandatory provisions of RA 6728.

The law is silent, however, on the remaining ten percent of the tuition fee increase. The DepEd has referred to it as the "return of investment" for proprietary schools and the "free portion" for non-stock, non-profit educational institutions. This ten percent (10%) is the only portion of the tuition fee increase which schools may use as they wish.[11]

Petitioner thus concedes liability only up to ₱300,831.00, which is the remaining balance of the undistributed amount of ₱68,775,831.00, which represents 70% of the incremental tuition fee proceeds for the period in question.

Petitioner contends further that the appellate court's award of additional signing bonus (from ₱10,000.00 to ₱18,000.00) is contrary to the nature and principle behind the grant of such benefit, which is one given as a matter of discretion and cannot be demanded by right,[12] a consideration paid for the goodwill that existed in the negotiations, which culminate in the signing of a CBA.[13] Petitioner claims that since this condition is absent in the parties' case, it was erroneous to have rewarded respondent with an increased signing bonus.

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[11] *Rollo*, pp. 50-51, citing Sarmiento III, *"Education Law and the Private Schools, A Practice Guide for Educational Leaders and Policy Makers,"* pp. 582-583.

[12] Citing *Caltex Refinery Employees Association v. Brillantes*, G.R. No. 123782, September 16, 1997, 279 SCRA 218.

[13] Citing *Manila Electric Company v. Quisumbing*, G.R. No. 127598, January 27, 1999, 302 SCRA 204.

Finally, petitioner endorses the original award of the DOLE Secretary, calling her disposition of the case "fair and equitable"[14] and deserving of our attention, in light of the principle that –

> The conclusions reached by public respondent (Secretary of Labor) in the discharge of her statutory duty as compulsory arbitrator, demand the high respect of this Court. The study and settlement of these disputes fall within public respondent's distinct administrative expertise. She is especially trained for this delicate task, and she has within her cognizance such data and information as will assist her in striking the equitable balance between the needs of management, labor, and the public. Unless there is clear showing of grave abuse of discretion, this Court cannot and will not interfere with the labor expertise of public respondent x x x.[15]

On the other hand, respondent seeks to sustain the appellate court's disposition, echoing its ruling that even though majority of the non-teaching employees agreed to petitioner's offer and accepted payment thereupon, they are not precluded from receiving additional benefits that the courts may award later on, bearing in mind that –

> the employer and the employee do not stand on the same footing. Considering the country's prevailing economic conditions, the employee oftentimes finds himself in no position to resist money proffered, thus, his case becomes one of adherence and not of choice. This being the case, they are deemed not to have waived any of their rights.[16]

As regards petitioner's assertion that the funds to cover for the cost of the other benefits awarded by the DOLE Secretary may not be sourced from its other income pursuant to R.A. 6728 as these benefits should only be paid out from the 70% tuition fee increment, respondent argues that R.A. 6728 –

> does not provide that the increase or improvement of the salaries and fringe benefits of the employees should be exclusively funded

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[14] *Rollo,* p. 53.

[15] *Id.* at 58, citing *Pier 8 Arrastre & Stevedoring Services, Inc. v. Roldan-Confesor,* G.R. No. 110854, February 13, 1995, 241 SCRA 294.

[16] *Rollo,* pp. 1059-1060.

from the income of the University which is derived from the increase in tuition fees. In fact, the statute has no application with respect to the manner of disposition of the other incomes (as distinguished from income derived from tuition fee increases) of the University, nor does it preclude or exempt the latter from using its other income or part thereof to fund the cost of increases or improvements in the salaries and benefits of its employees. x x x

15. Contrary to the assertion of Petitioner, it is very clear that the funds used by the University to cover the cost of other fringe benefits (under the existing CBA) granted to the non-academic employees for AY 2001-2002 in the amount of ₱28,837,780.00 as observed by the Court of Appeals, came from the other income of the University and not from the share of the said employees in the income derived from the tuition fee increases during the same period. Logically, the grant of the said fringe benefits could not have come from the amount of ₱15,475,000.00 which was already allocated by the University to cover the total cost of the increases in the salaries, grant of signing bonus, and increase in the Christmas bonus to the non-academic employees for AY 2001-2002.[17]

On the appellate court's award of additional signing bonus, respondent argues that since no strike or any untoward incident occurred, goodwill between the parties remained, which entitles respondent's members to receive their signing bonus. Besides, respondent asserts that since petitioner did not appeal the DOLE Secretary's award, it may not now argue against its grant, the issue remaining being the propriety of the awarded amount; that is, whether or not it was proper for the appellate court to have raised it from ₱10,000.00 to ₱18,000.00.

We resolve to PARTIALLY GRANT the petition.

To put matters in their proper context, we must first simplify the facts.

Although the parties were negotiating on the CBA for academic years 2001 through 2006 (2001-2006 CBA Proposals), we are here concerned only with the economic provisions for the academic year (AY) 2001-2002, specifically the appellate court's increased award of signing bonus, from ₱10,000.00 as originally

[17] *Id.* at 1064-1066.

granted by the DOLE Secretary, to ₱18,000.00; the parties do not appear to question any other disposition made by the DOLE Secretary.

Thus, it has been determined that from the tuition fees for the academic year in question, petitioner earned an increment of ₱101,036,330.37. Under R.A. 6728, 70% of that amount – or the net[18] amount of ₱68,775,831.15 – should be allotted for payment of salaries, wages, allowances and other benefits of teaching and non-teaching personnel except administrators who are principal stockholders of the school.

Of this amount (₱68,775,831.15), an aggregate of ₱15,475,000.00 (or 22.5 %) was allocated to the university's non-teaching or non-academic personnel, by way of the following:

Increment on Salaries/Wages plus 13th month pay (₱1,000 x 13 months x 619 non-academic personnel)	₱ 8,047,000.00
Signing Bonus (₱10,000 per employee)	6,190,000.00
₱2,000 Christmas Bonus	1,238,000.00
TOTAL	**15,475,000.00**

On the other hand, the amount of ₱45 million (or 65.43% of ₱68,775,831.15) was allocated to the teaching personnel.

After distribution of the respective shares of the teaching and non-teaching personnel, there remained a balance of ₱300,831.00 from the ₱68,775,831.15.

In addition to the salary increase, signing and Christmas bonuses, the Court of Appeals extended to respondent's members the following fringe benefits for AY 2001-2002, which benefits petitioner has been giving its non-teaching employees in the past, and which are included in the DOLE Secretary's award – an award which **petitioner** prays for this Court to **affirm** *in toto*:

[18] Less tuition fee adjustment of ₱2,785,143.00.

1. ₱3,000.00 mid-year bonus	₱1,857,000.00	
2. 6 sacks of rice/employee @ ₱1,000/sack	3,714,000.00	
3. Hospitalization benefit	2,476,000.00	
4. Meal allowance (₱600/month/employee)	4,456,800.00	
5. Hazard pay (₱200/month for 198 entitled employees)		8,430,780.00
6. Medicine Allowance (₱1,000/month/employee)	7,428,000.00	20,407,000.00
7. SSS (₱910.00 employer's share per employee)	6,759,480.00	
8. Pag-Ibig (2% of the basic pay)	742,800.00	
9. Philhealth (₱125.00/employee)	928,500.00	
	Total	₱28,837,780.00

Clearly, these fringe benefits would have to be obtained from sources other than the incremental tuition fee proceeds (₱68,775,831.15), since only ₱15,475,000.00 thereof was set aside for the non-teaching personnel; the rest was allocated to the teaching personnel.

The appellate court, moreover, granted an increase in the signing bonus, that is, from the DOLE Secretary's award of ₱10,000.00, to ₱18,000.00. This, exactly, is the parties' point of contention.

Going now to the question of whether respondent's members' *individual* acceptance of the award and the resulting payments made by petitioner operate as a ratification of the DOLE Secretary's award which renders CA-G.R. SP No. 72965 moot, we find that such do not operate as a ratification of the DOLE Secretary's award; nor a waiver of their right to receive further benefits, or what they may be entitled to under the law. The appellate court correctly ruled that the respondent's members

were merely constrained to accept payment at the time. Christmas was then just around the corner, and the union members were in no position to resist the temptation to accept much-needed cash for use during the most auspicious occasion of the year. Time and again, we have held that necessitous men are not, truly speaking, free men; but to answer a present emergency, will submit to any terms that the crafty may impose upon them.[19]

Besides, as individual components of a union possessed of a distinct and separate corporate personality, respondent's members should realize that in joining the organization, they have surrendered a portion of their individual freedom for the benefit of all the other members; they submit to the will of the majority of the members in order that they may derive the advantages to be gained from the concerted action of all.[20] Since the will of the members is personified by its board of directors or trustees, the decisions it makes should accordingly bind them. Precisely, a labor union exists in whole or in part for the purpose of *collective* bargaining or of dealing with employers concerning terms and conditions of employment.[21] What the individual employee may not do alone, as for example obtain more favorable terms and conditions of work, the labor organization, through persuasive and coercive power gained as a group, can accomplish better.

Regarding petitioner's assertion that it was unlawful for the Court of Appeals to have required it to source the award of fringe benefits (in the amount of ₱28,837,780.00) from the school's other income, since R.A. 6728 does not compel or require schools to allocate more than 70% of the incremental tuition fee increase for the salaries and benefits of its employees, we find it unnecessary to rule on this matter. These fringe benefits are included in the DOLE Secretary's award – an

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[19] *Lorbes v. Court of Appeals*, G.R. No. 139884, February 15, 2001, 351 SCRA 716.

[20] *UST Faculty Union v. Bitonio*, G.R. No. 131235, November 16, 1999, 318 SCRA 185.

[21] Labor Code, Article 212 (g).

award which **petitioner** seeks to **affirm** *in toto*; this being so, it cannot now argue otherwise. Since it abides by the DOLE Secretary's award, which it finds "fair and equitable," it must raise the said amount through sources other than incremental tuition fee proceeds.

Finally, we come to the appellate court's award of additional signing bonus, which we find to be unwarranted under the circumstances. A signing bonus is a grant motivated by the goodwill generated when a CBA is successfully negotiated and signed between the employer and the union.[22] In the instant case, no CBA was successfully negotiated by the parties. It is only because petitioner prays for this Court to affirm *in toto* the DOLE Secretary's May 31, 2002 Order that we shall allow an award of signing bonus. There would have been no other basis to grant it if petitioner had not so prayed. We shall take it as a manifestation of petitioner's liberality, which we cannot now allow it to withdraw. A bonus is a gratuity or act of liberality of the giver;[23] when petitioner filed the instant petition seeking the affirmance of the DOLE Secretary's Order in its entirety, assailing only the increased amount of the signing bonus awarded, it is considered to have unqualifiedly agreed to grant the original award to the respondent union's members.

WHEREFORE, the petition is *PARTIALLY GRANTED*. The signing bonus of EIGHTEEN THOUSAND PESOS (₱18,000.00) per member of respondent Samahang Manggagawa ng U.S.T. as awarded by the Court of Appeals is *REDUCED* to TEN THOUSAND PESOS (₱10,000.00). All other findings and dispositions made by the Court of Appeals in its January 31, 2005 Decision and September 23, 2005 Resolution in CA-G.R. SP No. 72965 are *AFFIRMED*.

SO ORDERED.

Chico-Nazario, Velasco, Jr., Nachura, and *Peralta, JJ.*, concur.

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[22] *Meralco v. Secretary of Labor*, G.R. No. 127598, January 27, 1999, 302 SCRA 173.

[23] *Manila Banking Corporation v. National Labor Relations Commission*, G.R. No. 107487, September 29, 1997, 279 SCRA 602.

THIRD DIVISION

[G.R. No. 170342. September 18, 2009]

ALLAN DIZON *Y* AQUI, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; GUIDING PRINCIPLES IN REVIEWING RAPE CASES.— In reviewing rape cases, this Court is 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.

2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; IN RAPE CASES, CONVICTION OF THE ACCUSED MAY BE HAD SOLELY ON THE BASIS OF THE TESTIMONY OF THE VICTIM; CASE AT BAR.— As a result of these guiding principles, the 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. We have carefully examined AAA's court testimony and found it to be credible and trustworthy. Her positive identification of petitioner as the one who ravished her on 20 February 1997 (Criminal Case No. 304-97), as well as her direct account of the bestial act, was clear and consistent.

3. ID.; ID.; ID.; FINDINGS OF THE TRIAL COURT ARE ACCORDED RESPECT ON APPEAL; RATIONALE.— It is also significant to note that the RTC gave full credence to the foregoing testimony of AAA, as she relayed her painful ordeal in a candid manner. It found her testimony to be credible and sincere. Jurisprudence instructs that when the credibility of a witness is of primordial consideration, as in this case, the findings of

the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded respect if not conclusive effect. This is because the trial court has had the unique opportunity to observe the demeanor of a witness and was in the best position to discern whether they were telling the truth. When the trial court's findings have been affirmed by the appellate court, as in the present case, said findings are generally binding upon this Court.

4. ID.; ID.; ID.; IN RAPE CASES, THE TESTIMONY OF COMPLAINANT MUST BE CONSIDERED AND CALIBRATED IN ITS ENTIRETY, NOT IN ITS TRUNCATED PORTION OR ISOLATED PASSAGES THEREOF.— In rape cases, the testimony of complainant must be considered and calibrated in its entirety, and not in its truncated portion or isolated passages thereof. The true meaning of answers to questions propounded to a witness is to be ascertained with due consideration of all the questions and answers given thereto. The whole impression or effect of what has been said or done must be considered, and not individual words or phrases alone. Facts imperfectly stated in answer to a question may be supplied or clarified by one's answer to other questions.

5. ID.; ID.; DENIAL; CANNOT PREVAIL OVER THE POSITIVE TESTIMONIES OF CREDIBLE WITNESSES.— Denial is inherently a weak defense, as it is negative and self-serving. It cannot prevail over the positive testimonies of credible witnesses who testify on affirmative matters.

6. ID.; ID.; ALIBI; NOT PROVEN WITH CLEAR AND CONVINCING EVIDENCE IN CASE AT BAR.— x x x Alibi is the weakest of all defenses, for it is easy to contrive and difficult to prove. It must be proved by the accused with clear and convincing evidence. 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 the commission of the crime. In the case at bar, the incident occurred inside petitioner's house on the evening of petitioner's birthday, which was on 20 February 1997. Petitioner testified that he was celebrating his birthday on said date in his house with relatives and friends when the alleged incident transpired. Obviously, he was at the

crime scene when the incident happened. Further, if petitioner was indeed in the company of his relatives and friends during the incident and was not raping AAA, then petitioner should have presented as witnesses his said relatives and friends to prove that he was with them and was not committing rape against AAA. Petitioner, nonetheless, did not present any of them as witness. Clearly, the defense failed to prove that he was somewhere else when the incident occurred, and that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission.

7. ID.; ID.; ID.; ILL MOTIVES BECOME INCONSEQUENTIAL IF THERE IS AN AFFIRMATIVE AND CREDIBLE DECLARATION FROM THE RAPE VICTIM WHICH CLEARLY ESTABLISHES THE LIABILITY OF THE ACCUSED.— Petitioner also averred that the family of AAA had an ill motive in accusing him of raping her. He explained that when CCC and petitioner's brother-in-law were drunk, the two would call him a *"sampid."* Also, when petitioner had arguments or misunderstandings with the two of them, they would tell him to leave the house and find another residence. Motives such as family feuds, resentment, hatred or revenge have never swayed this Court from giving full credence to the testimony of a rape victim. Also, ill motives become inconsequential if there is an affirmative and credible declaration from the rape victim, which clearly establishes the liability of the accused. In the present case, AAA categorically identified petitioner as the one who defiled her. Her account of the incident, as found by the RTC, the Court of Appeals, and this Court, was sincere and truthful. Hence, petitioner's uncorroborated and flimsy allegation of ill motive is immaterial.

8. CRIMINAL LAW; REPUBLIC ACT NO. 7659 (DEATH PENALTY LAW); RAPE; ELEMENTS; PROVEN IN CASE AT BAR.— As the rape was committed on 20 February 1997, the applicable law is Section 11 of Republic Act No. 7659, otherwise known as the Death Penalty Law, which took effect on 31 December 1993. For the charge of rape under said law to prosper, the prosecution must prove that (1) the offender had carnal knowledge of a woman; and (2) he accomplished such act through force or intimidation. In the instant case, the prosecution has sufficiently proven through the positive and credible testimony of AAA, that petitioner had carnal knowledge of her through

force and intimidation. AAA categorically testified that petitioner threatened her with a knife, and that he inserted his penis into her vagina.

9. ID.; ID.; ID.; PENALTY.— Republic Act No. 7659 states that the crime of rape shall be punished by *reclusion perpetua*. However, if the rape was committed with the use of a deadly weapon, the penalty shall be *reclusion perpetua* to death. Further, the supreme penalty of death shall be imposed if the rape victim was a minor **and** the offender was her parent, ascendant or relative.

10. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; THE INFORMATION MUST STATE THE QUALIFYING AND AGGARAVATING CIRCUMSTANCES ATTENDING THE COMMISSION OF THE CRIME FOR THEM TO BE CONSIDERED IN THE IMPOSITION OF THE PENALTY; PROPER PENALTY IN CASE AT BAR.— x x x Under the 2000 Rules of Criminal Procedure, which should be given retroactive effect following the rule that statutes governing court proceedings shall be construed as applicable to actions pending and undetermined at the time of their passage, the information must state the qualifying and the aggravating circumstances attending the commission of the crime for them to be considered in the imposition of the penalty. The information alleged that AAA was a minor (17 years old) during the incident. Nevertheless, there was no allegation that petitioner was her parent, ascendant or relative. Further, there was no allegation that he raped her with the use of a deadly weapon. Hence, the penalty imposable on petitioner is *reclusion perpetua*. The RTC and the Court of Appeals thus acted accordingly in imposing on him the penalty of *reclusion perpetua*.

11. CIVIL LAW; DAMAGES; CIVIL INDEMNITY AND MORAL DAMAGES; AWARD THEREOF PROPER IN CASE AT BAR.— As regards the damages awarded and their corresponding amounts, we agree with the Court of Appeals that AAA is entitled to the amount of ₱50,000.00 as civil indemnity and another ₱50,000.00 as moral damages. Consistent with prevailing jurisprudence, the victim in simple rape cases is entitled to an award of ₱50,000.00 as civil indemnity and another ₱50,000.00 as moral damages.

12. ID.; ID.; EXEMPLARY DAMAGES; AWARD THEREOF NOT WARRANTED IN CASE AT BAR.— In criminal cases, exemplary damages may be imposed on the offender as part of the civil liability when the crime was committed with one or more aggravating circumstances. Nonetheless, it is required that the aggravating circumstance/s be alleged in the information and proved during the trial. As earlier stated, the minority of the victim and her relationship with the offender, as well as the use of a deadly weapon in the commission of rape, is an aggravating/qualifying circumstance in the crime of rape. Minority and relationship must both be alleged in the information and proved during the trial in order to be appreciated as an aggravating/qualifying circumstance. While the information in the instant case alleged that AAA was a minor during the incident, there was no allegation that petitioner was her parent, ascendant or relative. Also, there was no allegation that petitioner raped AAA with the use of a deadly weapon. Thus, the award of exemplary damages in the instant case is not warranted.

APPEARANCES OF COUNSEL

Aida D. Dizon for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

In this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, petitioner Allan Dizon *y* Aqui prays for the reversal of the Decision,[2] dated 1 September 2005, and Resolution,[3] dated 7 November 2005, of the Court of Appeals in CA-G.R. CR-H.C. No. 00615, which affirmed with modification the Decision,[4] dated 11 March 2002, of the Regional Trial Court

[1] *Rollo*, pp. 10-29.

[2] Penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Andres B. Reyes, Jr. and Lucas P. Bersamin (now a member of this Court), concurring; *rollo*, pp. 32-55.

[3] *Rollo*, pp. 95-96.

[4] *Id.* at 57-64.

(RTC), Branch 75, Olongapo City, in Criminal Cases No. 303-97 to No. 305-97, finding petitioner guilty of one count of simple rape.

The records of the case generate the following facts:

On 19 June 1997, three separate informations[5] were filed with the RTC charging petitioner with three counts of rape, thus:

Criminal Case No. 30**3**-97

The undersigned accuses Allan Dizon *y* Aqui of the crime of Rape, upon complaint under oath filed by AAA[6] which is attached hereto and made an integral part hereof as Annex "A" committed as follows:

That in or about the month of **December**, **1996**, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force, and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of AAA, who was seventeen (17) years old, against her will.

Criminal Case No. 30**4**-97

The undersigned accuses Allan Dizon *y* Aqui of the crime of Rape, upon complaint under oath filed by AAA which is attached hereto and made an integral part hereof as Annex "A" committed as follows:

That on or about the **twentieth (20th) day of February**, **1997**, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force, and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of AAA, who was seventeen (17) years old, against her will.

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[5] *Id.* at 98-104.

[6] Pursuant to Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim, together with the real names of her immediate family members, is withheld; and fictitious initials instead are used to represent her, both to protect her privacy. *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419, 421-426.

Criminal Case No. 30**5**-97

The undersigned accuses Allan Dizon *y* Aqui of the crime of Rape, upon complaint under oath filed by AAA which is attached hereto and made an integral part hereof as Annex "A" committed as follows:

That in or about the month of **October**, **1996**, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force, and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of AAA, who was seventeen (17) years old, against her will.

Subsequently, these cases were consolidated. When arraigned on 5 August 1998, petitioner, assisted by counsel *de parte*, pleaded "Not guilty" to each of the charges. Trial on the merits thereafter ensued.[7]

The prosecution presented as witnesses AAA, BBB and Brigida Acuna Navarette. Their testimonies, woven together, bear the following narrative:

AAA, daughter of BBB (mother) and CCC (father), live with her parents in a two-storey house located at No. 26 Bonifacio Street, Barangay Pag-asa, Olongapo City. She and her parents occupied the first floor of the house, while DDD (paternal grandmother of AAA) lived on the second floor. She was born with a harelip/cleft palate, causing her difficulty in speaking. She was enrolled by her parents in school but upon reaching Grade One, she stopped going to school and merely stayed in the house to avoid ridicule from classmates and schoolmates. Although illiterate, she could distinguish right from wrong. She was always left to the care of DDD whenever her parents were at work at the Subic Bay Metropolitan Authority from 7:30 a.m. to 5:30 p.m.[8]

Petitioner and his wife, EEE (niece of CCC), lived in a house also situated at No. 26 Bonifacio Street, Barangay Pag-asa, Olongapo City. Their house was detached from, and positioned at the back of, the two-storey house of AAA and her parents.

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[7] *Rollo*, p. 57.

[8] TSN, 29 October 1998, pp. 5-20.

The said houses were located within the same compound and had the same address.[9]

On 20 February 1997, petitioner celebrated his birthday in his house. On that evening, AAA, then 17 years old, was in the backyard of their two-storey house. Petitioner called her and told her to proceed to his house. She innocently obeyed. While she was inside his house, petitioner pulled out a knife and told her to remove her shorts. Terrified, she submitted. He then applied cologne in her vagina, into which he then inserted his penis. She felt pain in her vagina. After satisfying his lust, petitioner warned her not to tell anyone of the incident, or he would fight with CCC and create trouble.[10]

Sometime in April 1997, BBB observed that AAA was physically weak and lonely. She also noticed that her daughter's stomach was becoming bigger. BBB asked her if she was pregnant, but the latter refused to answer. On 21 April 1997, AAA experienced severe abdominal pain. At this juncture, she confessed to her mother that petitioner had raped her. BBB then brought her to the hospital, where the latter was confined and examined by a certain Dr. Lynemir V. Zarbo. After physical examination, Dr. Zarbo confirmed that AAA was pregnant. BBB then reported the incident to the police which, in turn, later arrested petitioner.[11]

Subsequently, the police requested the Department of Social and Welfare Development (DSWD) Lingap Center to assist AAA. Brigida Acuna Navarette (Navarette), social worker and officer of DSWD, proceeded to the hospital where AAA was confined and interviewed the latter about the incident. The victim confided to her that petitioner had raped and impregnated her. Later, a certain Senior Police Officer (SPO) 3 Dominga Olaybar arrived at the hospital and took the statement of AAA regarding the incident. The latter was assisted by Navarette during the taking of her statement. Thereafter,

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[9] *Id.*

[10] TSN, 3 September 1998, pp. 2-50.

[11] TSN, 29 October 1998, pp. 5-50.

the victim, accompanied and assisted by BBB and Navarette, filed before the prosecutor's office a complaint for rape against petitioner.[12]

According to AAA, this was already the second time that petitioner raped her. The first one happened inside her house while her parents were not around. The third rape incident took place in petitioner's house.[13]

The prosecution also proffered documentary evidence to bolster the testimonies of its witnesses, to wit: (1) medical certificate of AAA certifying that she was pregnant (Exhibit A);[14] (2) birth certificate of AAA showing that she was born on 7 June 1980 (Exhibit B);[15] and (3) sworn statement of AAA regarding the incident (Exhibit C).[16]

For its part, the defense presented the lone testimony of petitioner to refute the foregoing accusations. No documentary or object evidence was adduced.

Petitioner testified that he and his wife, EEE, lived in a house situated at No. 26 Bonifacio Street, Barangay Pag-asa, Olongapo City. Their house was detached from, and positioned at the back of, the two-storey house of AAA and her parents. The said houses were located within the same compound and had the same address. AAA and BBB were relatives of EEE. Petitioner denied raping the victim on the evening of 20 February 1997 or on other occasions as she alleged. He claimed that he was celebrating his birthday on 20 February 1997 in his house with relatives and friends when the alleged incident occurred. He averred that the family of AAA had an ill motive in accusing him of raping her. He explained that when CCC and his brother-in-law were drunk, the two would call him a *"sampid."* Also, when he had an argument or misunderstanding with CCC and

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[12] TSN, 17 February 1999, pp. 2-8.

[13] *Id.*

[14] *Rollo*, p. 230.

[15] *Id.* at 232.

[16] *Id.* at 234.

his brother-in-law, the two would tell him to leave the house and to find another residence. He and EEE refused to leave their house at said address because he had constructed the said house.[17]

After trial, the RTC rendered a Decision on 11 March 2002 convicting petitioner of simple rape in Criminal Case No. 30**4**-97. The RTC imposed on him the penalty of *reclusion perpetua*. The trial court also ordered him to pay AAA the amount of ₱50,000.00 as civil indemnity. However, it acquitted petitioner in Criminal Cases No. 30**3**-97 and No. 30**5**-97 because the prosecution had failed to prove the commission of rapes in said criminal cases.

Petitioner filed a Notice of Appeal, to which the RTC gave due course in its Order dated 4 April 2002. In the said Order, the trial court directed the transmittal of the records of the instant case to this Court.[18] Subsequently, petitioner submitted his "Appellant's Brief."[19] Pursuant, however, to this Court's ruling in *People v. Mateo*,[20] we remanded the case to the Court of Appeals for disposition.

On 1 September 2005, the Court of Appeals promulgated its Decision affirming with modification the RTC Decision. In addition to the latter's grant of civil indemnity in the amount of ₱50,000.00, also awarded by the appellate court were moral damages amounting to ₱50,000.00 in favor of AAA. Petitioner filed a Motion for Reconsideration but this was denied by the Court of Appeals in its Resolution dated 7 November 2005.

Hence, petitioner lodged the instant Petition assigning the following errors:

I.

THE COURT OF APPEALS ERRED IN AFFIRMING WITH MODIFICATION THE DECISION OF THE REGIONAL TRIAL COURT DESPITE LACK OF EVIDENCE AGAINST PETITIONER;

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[17] TSN, 12 October 2000, pp. 3-12.

[18] *Rollo*, p. 45.

[19] *Id.* pp. 236-257.

[20] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.

II.

THE COURT OF APPEALS AND THE REGIONAL TRIAL COURT ERRED IN CONCLUDING THAT THE VERNACULAR "*GINALAW PO NIYA AKO*" IS SYNONYMOUS WITH RAPE; AND

III.

THE COURT OF APPEALS AND THE REGIONAL TRIAL COURT ERRED IN NOT USING THE STANDARDS USED FOR ADULTS IN ASSESSING THE TESTIMONY OF AAA.

In reviewing rape cases, this Court is 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.[21]

As a result of these guiding principles, the 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.[22]

We have carefully examined AAA's court testimony and found it to be credible and trustworthy. Her positive identification of petitioner as the one who ravished her on 20 February 1997 (Criminal Case No. 30**4**-97), as well as her direct account of the bestial act, was clear and consistent, to wit:

FISCAL (to witness)

Q. How many times were you – which you said "*ginalaw*" by the accused Allan Dizon?

A. Several times.

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[21] *People v. Mangitngit*, G.R. No. 171270, 20 September 2006, 502 SCRA 560, 572.

[22] *Id.*

x x x x x x x x x

Q. Now, you said several times, when was the second time?

x x x x x x x x x

WITNESS:

During the birthday of Allan.

COURT (to witness)

Q. How did you know that it was his birthday?
A. My cousin told me that it was the birthday of Allan.

FISCAL (to witness)

Q. And where did this incident happen?
A. Infront of their house.

Q. Is that a lot?
A. Inside our yard.

Q. Was it in the morning or in the evening?
A. Evening.

Q. And what did the accused do in this second incident?
A. Inside his house. He called me.

Q. And what happened after he called you?
A. He asked me to do something, but he did not ask anything.

Q. After that, what happened?
A. *Ginalaw po niya ako.*

Q. And you still remember what you were wearing at the time?
A. Yes, sir.

Q. What were you wearing at the time?
A. I was wearing a short.

Q. And what happened to your short?
A. He told me to take off my short.

Q. Did you take off your short?
A. Yes, sir.

Q. Why?
A. Because he was holding a knife. He threatened me.

Q. After you took off your short, what happened?
A. *Ginalaw po niya ako.*

Q. Did you feel anything when you said "*ginalaw po niya ako*"?

x x x x x x x x x

WITNESS:

Yes, sir.

FISCAL (to witness)

Q. What did you feel?
A. I felt pain.

COURT (to witness)

Q. In what part of your body did you feel pain?
A. From waist downward.

FISCAL (to witness)

Q. Was there anything inserted in your vagina?

ATTY GUIAO

Objection.

COURT

Sustained.

FISCAL (to witness)

Q. Why did you feel pain on your lower part of your body?
A. My vagina sustained a wound.

COURT (to witness)

Q. How did you know that your vagina sustained a wound?
A. When I urinated. I felt pain.

Q. Why did you sustain a wound in your vagina?
A. There was a blood on my vagina.

x x x x x x x x x

FISCAL (to witness)

Q. Who caused the wound in your vagina?

x x x x x x x x x

WITNESS

Allan.

FISCAL (to witness)

Q. How did he cause the wound?
A. Because of his penis.

Q. And what about his penis?
A. He put cologne on my vagina.

COURT (to witness)

Q. After putting cologne on your vagina, what did he do?
A. *Ginalaw po niya ako*.

Q. What do you mean by "*ginalaw po niya ako*"?
A. He threatened me.

COURT

Continue

x x x x x x x x x

FISCAL (to witness)

Q. Why did the accused threaten you when you said "*ginalaw po niya ako*"?
A. He told me not to report the matter. He told me that if I report the matter to my mother, he would fight my father.

COURT (to witness)

Q. How did [he] threaten you?
A. If I report the matter he would create a trouble.

x x x x x x x x x

Q. And when you said "*ginalaw po niya ako*," what did the accused do in general?
A. He took off my panty.

Q. And after the accused took off your panty?
A. "*Ginalaw po niya ako*."

Q. With what did he touch you?
A. My vagina.

COURT (to witness)

Q. What did he do with your vagina?
A. He inserted his penis on my vagina.

Q. How did you know that he inserted his penis?
A. I saw it.

Q. What did you feel?
A. I felt pain.

Q. Why?
A. When he brought out his penis, I felt pain.[23]

Well-entrenched is the rule that when a woman says that she has been raped, she says in effect all that is necessary to show that the rape was indeed committed.[24]

It is also significant to note that the RTC gave full credence to the foregoing testimony of AAA, as she relayed her painful ordeal in a candid manner. It found her testimony to be credible and sincere. Jurisprudence instructs that when the credibility of a witness is of primordial consideration, as in this case, the findings of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded respect if not conclusive effect. This is because the trial court has had the unique opportunity to observe the demeanor of a witness and was in the best position to discern whether they were telling the truth. When the trial court's findings have been affirmed by the appellate court, as in the present case, said findings are generally binding upon this Court.[25]

Further, BBB and Navarette corroborated AAA's testimony on material and relevant points.

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[23] TSN, 3 September 1998, pp. 29-45.

[24] *People v. Pioquinto*, G.R. No. 168326, 11 April 2007, 520 SCRA 712, 720.

[25] *People v. Bejic*, G.R. No. 174060, 25 June 2007, 525 SCRA 488, 504.

Petitioner, however, maintains that there was no rape because when AAA was asked during the trial what petitioner had done to her on 20 February 1997, AAA merely answered, *"Ginalaw po niya ako."* Petitioner argues that the phrase *"ginalaw po niya ako"* does not necessarily refer to carnal knowledge, sexual intercourse, or insertion of the penis in the vagina. It could merely mean kissing or touching a woman's breast or the placing of a penis on a female's private parts. Petitioner asserts that the testimony of AAA should be assessed based on standards used for adults.[26]

In rape cases, the testimony of complainant must be considered and calibrated in its entirety, and not in its truncated portion or isolated passages thereof.[27] The true meaning of answers to questions propounded to a witness is to be ascertained with due consideration of all the questions and answers given thereto. The whole impression or effect of what has been said or done must be considered, and not individual words or phrases alone.[28] Facts imperfectly stated in answer to a question may be supplied or clarified by one's answer to other questions.[29]

Initially, AAA made vague explanations of what she meant by *"ginalaw po niya ako."* However, subsequent inquiries clarified her statement *"ginalaw po niya ako"* to mean that petitioner inserted his penis into her vagina, *viz*:

COURT (to witness)

Q. After putting cologne on your vagina, what did he do?
A. *Ginalaw po niya ako.*

Q. What do you mean by "*ginalaw po niya ako*"?
A. He threatened me.

x x x x x x x x x

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[26] *Rollo,* pp. 20-28.

[27] *People v. Olarte*, 418 Phil. 111, 123 (2001).

[28] *People v. Jackson*, 451 Phil. 610, 627 (2003).

[29] *People v. Bacus*, 411 Phil. 632, 645 (2001).

Q. And when you said "*ginalaw po niya ako*," what did the accused do in general?
A. He took off my panty.

Q. And after the accused took off your panty?
A. "*Ginalaw po niya ako*."

Q. With what did he touch you?
A. My vagina.

COURT (to witness)

Q. What did he do with your vagina?
A. **He inserted his penis on my vagina**.

Q. How did you know that he inserted his penis?
A. I saw it.

Q. What did you feel?
A. I felt pain.[30] (Emphasis supplied.)

AAA's difficulty in clarifying her statement "*ginalaw po niya ako*" cannot undermine her credibility. It should be noted that she was illiterate at the time she testified on the incident.[31] Hence, her testimony must be treated with the broadest understanding and consideration of attendant circumstances. At any rate, AAA sufficiently explained her statement "*ginalaw po niya ako*" to mean that petitioner inserted his penis into her vagina. The RTC and the Court of Appeals were, therefore, correct in concluding that what she meant when she said those words was that petitioner raped her.

To rebut the overwhelming evidence for the prosecution, petitioner interposed the defense of denial and alibi. He denied raping AAA and claimed that he was celebrating his birthday in his house with relatives and friends when the alleged incident occurred.

Denial is inherently a weak defense, as it is negative and self-serving. It cannot prevail over the positive testimonies of credible witnesses who testify on affirmative matters. Alibi is

[30] TSN, 3 September 1998, pp. 36-45.

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

the weakest of all defenses, for it is easy to contrive and difficult to prove. It must be proved by the accused with clear and convincing evidence. 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 the commission of the crime.[32]

In the case at bar, the incident occurred inside petitioner's house on the evening of petitioner's birthday, which was on 20 February 1997. Petitioner testified that he was celebrating his birthday on said date in his house with relatives and friends when the alleged incident transpired. Obviously, he was at the crime scene when the incident happened. Further, if petitioner was indeed in the company of his relatives and friends during the incident and was not raping AAA, then petitioner should have presented as witnesses his said relatives and friends to prove that he was with them and was not committing rape against AAA. Petitioner, nonetheless, did not present any of them as witness. Clearly, the defense failed to prove that he was somewhere else when the incident occurred, and that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission.

Petitioner also averred that the family of AAA had an ill motive in accusing him of raping her. He explained that when CCC and petitioner's brother-in-law were drunk, the two would call him a *"sampid."* Also, when petitioner had arguments or misunderstandings with the two of them, they would tell him to leave the house and find another residence.

Motives such as family feuds, resentment, hatred or revenge have never swayed this Court from giving full credence to the testimony of a rape victim.[33] Also, ill motives become inconsequential if there is an affirmative and credible declaration

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[32] *People v. Montesa,* G.R. No. 181899, 572 SCRA 317, 340.

[33] *People v. Audine*, G.R. No. 168649, 6 December 2006, 510 SCRA 531, 549.

from the rape victim, which clearly establishes the liability of the accused.[34] In the present case, AAA categorically identified petitioner as the one who defiled her. Her account of the incident, as found by the RTC, the Court of Appeals, and this Court, was sincere and truthful. Hence, petitioner's uncorroborated and flimsy allegation of ill motive is immaterial.

As the rape was committed on 20 February 1997, the applicable law is Section 11 of Republic Act No. 7659, otherwise known as the Death Penalty Law, which took effect on 31 December 1993. For the charge of rape under said law to prosper, the prosecution must prove that (1) the offender had carnal knowledge of a woman; and (2) he accomplished such act through force or intimidation.[35] In the instant case, the prosecution has sufficiently proven through the positive and credible testimony of AAA, that petitioner had carnal knowledge of her through force and intimidation. AAA categorically testified that petitioner threatened her with a knife, and that he inserted his penis into her vagina.

Republic Act No. 7659 states that the crime of rape shall be punished by *reclusion perpetua*. However, if the rape was committed with the use of a deadly weapon, the penalty shall be *reclusion perpetua* to death. Further, the supreme penalty of death shall be imposed if the rape victim was a minor **and** the offender was her parent, ascendant or relative. Under the 2000 Rules of Criminal Procedure,[36] which should be given

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[34] *People v. Santos*, G.R. No. 172322, 8 September 2006, 501 SCRA 325, 343.

[35] *People v. Ortizuela*, G.R. No. 135675, 23 June 2004, 432 SCRA 574, 579.

[36] **Rule 110, SEC. 8.** ***Designation of offense***. – The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. x x x.

Rule 110, SEC. 9. ***Cause of the accusation***. The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to

retroactive effect following the rule that statutes governing court proceedings shall be construed as applicable to actions pending and undetermined at the time of their passage, the information must state the qualifying and the aggravating circumstances attending the commission of the crime for them to be considered in the imposition of the penalty.[37]

The information alleged that AAA was a minor (17 years old) during the incident. Nevertheless, there was no allegation that petitioner was her parent, ascendant or relative. Further, there was no allegation that he raped her with the use of a deadly weapon. Hence, the penalty imposable on petitioner is *reclusion perpetua*. The RTC and the Court of Appeals thus acted accordingly in imposing on him the penalty of *reclusion perpetua*.

As regards the damages awarded and their corresponding amounts, we agree with the Court of Appeals that AAA is entitled to the amount of ₱50,000.00 as civil indemnity and another ₱50,000.00 as moral damages. Consistent with prevailing jurisprudence, the victim in simple rape cases is entitled to an award of ₱50,000.00 as civil indemnity and another ₱50,000.00 as moral damages.[38]

In criminal cases, exemplary damages may be imposed on the offender as part of the civil liability when the crime was committed with one or more aggravating circumstances.[39] Nonetheless, it is required that the aggravating circumstance/s be alleged in the information and proved during the trial.[40]

As earlier stated, the minority of the victim and her relationship with the offender, as well as the use of a deadly weapon in the

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enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

[37] *People v. Salalima*, 415 Phil. 414, 428 (2001).

[38] *People v. Biong*, 450 Phil. 432, 448 (2003); *People v. Invencion*, 446 Phil. 775, 792 (2003); *People v. Pagsanjan*, 442 Phil. 667, 687 (2002).

[39] Civil Code, Article 2229.

[40] *People v. Tampus*, G.R. No. 181084, 16 June 2009.

commission of rape, is an aggravating/qualifying circumstance in the crime of rape. Minority and relationship must both be alleged in the information and proved during the trial in order to be appreciated as an aggravating/qualifying circumstance.[41] While the information in the instant case alleged that AAA was a minor during the incident, there was no allegation that petitioner was her parent, ascendant or relative. Also, there was no allegation that petitioner raped AAA with the use of a deadly weapon. Thus, the award of exemplary damages in the instant case is not warranted.

WHEREFORE, the instant Petition is hereby *DENIED*. The Decision, dated 1 September 2005, and Resolution, dated 7 November 2005, of the Court of Appeals in CA-G.R. CR-H.C. No. 00615 are hereby *AFFIRMED in toto*.

SO ORDERED.

Ynares-Santiago (Chairperson), Velasco, Jr., Peralta, and *Del Castillo,*[*] *JJ.,* concur.

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[41] *Id.*

[*] Associate Justice Mariano C. Del Castillo was designated to sit as additional member replacing Associate Justice Antonio Eduardo B. Nachura per Raffle dated 16 September 2009.

FIRST DIVISION

[G.R. No. 172217. September 18, 2009]

SPOUSES LYDIA FLORES-CRUZ and REYNALDO I. CRUZ, *petitioners, vs.* **SPOUSES LEONARDO and ILUMINADA GOLI-CRUZ, SPOUSES RICO and FELIZA DE LA CRUZ, SPOUSES BOY and LANI DE LA CRUZ, ZENAIDA A. JACINTO and ROGELIO DE LOS SANTOS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; NATURE OF THE ACTION IS DETERMINED BY THE ALLEGATIONS IN THE COMPLAINT AND THE LAW AT THE TIME ACTION WAS COMMENCED.— It is axiomatic that the nature of the action – on which depends the question of whether a suit is within the jurisdiction of the court – is determined solely by the allegations in the complaint and the law at the time the action was commenced. Only facts alleged in the complaint can be the basis for determining the nature of the action and the court's competence to take cognizance of it. One cannot advert to anything not set forth in the complaint, such as evidence adduced at the trial, to determine the nature of the action thereby initiated.

2. ID.; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; NECESSARY ALLEGATIONS OF THE COMPLAINT; CASE AT BAR.— The necessary allegations in a complaint for ejectment are set forth in Section 1, Rule 70 of the Rules of Court. Petitioners alleged that the former owner (Estanislao, their predecessor) allowed respondents to live on the land. They also stated that they purchased the property on December 15, 1999 and then found respondents occupying the property. Yet they demanded that respondents vacate only on March 2, 2001. It can be gleaned from their allegations that they had in fact permitted or tolerated respondents' occupancy. Based on the allegations in petitioners' complaint, it is apparent that such is a complaint for unlawful detainer based on possession by tolerance of the owner. It is a settled rule that in order to justify such an action, the owner's permission or tolerance must be

present at the beginning of the possession. Such jurisdictional facts are present here.

3. ID.; CIVIL PROCEDURE; REPUBLIC ACT NO. 7691; JURISDICTION; EXPANDED JURISDICTION OF THE MUNICIPAL TRIAL COURT; INCLUDES *ACCION PUBLICIANA* AND *ACCION REIVINDICATORIA*, DEPENDING ON THE ASSESSED VALUE OF THE PROPERTY.— There is another reason why petitioners' complaint was not a proper action for recovery of possession cognizable by the RTC. It is no longer true that all cases of recovery of possession or *accion publiciana* lie with the RTC regardless of the value of the property. When the case was filed in 2001, Congress had already approved Republic Act No. 7691 which expanded the MTC's jurisdiction to include other actions involving title to or possession of real property (*accion publiciana* and *reivindicatoria*) where the assessed value of the property does not exceed ₱20,000 (or ₱50,000, for actions filed in Metro Manila). Because of this amendment, the test of whether an action involving possession of real property has been filed in the proper court no longer depends solely on the type of action filed but also on the assessed value of the property involved. More specifically, since MTCs now have jurisdiction over *accion publiciana* and *accion reivindicatoria* (depending, of course, on the assessed value of the property), jurisdiction over such actions has to be determined on the basis of the assessed value of the property.

4. ID.; ID.; ID.; ID.; ISSUE OF ASSESSED VALUE AS A JURISDICTIONAL ELEMENT IN *ACCION PUBLICIANA* MUST BE RAISED BY THE PARTIES; CASE AT BAR.— This issue of assessed value as a jurisdictional element in *accion publiciana* was not raised by the parties nor threshed out in their pleadings. Be that as it may, the Court can *motu proprio* consider and resolve this question because jurisdiction is conferred only by law. It cannot be acquired through, or waived by, any act or omission of the parties. To determine which court (RTC or MTC) has jurisdiction over the action, the complaint must allege the assessed value of the real property subject of the complaint or the interest thereon. The complaint did not contain any such allegation on the assessed value of the property. There is no showing on the face of the complaint that the RTC had jurisdiction over the action of petitioners.

Indeed, absent any allegation in the complaint of the assessed value of the property, it cannot be determined whether it is the RTC or the MTC which has original and exclusive jurisdiction over the petitioners' action.

5. ID.; ID.; ID.; REGIONAL TRIAL COURT; NO JURISDICTION IN CASE AT BAR; EXPLAINED.— x x x [T]he complaint was filed (August 6, 2001) within one year from the demand to vacate was made (March 2, 2001). Petitioners' dispossession had thus not lasted for more than one year to justify resort to the remedy of *accion publiciana*. Since petitioners' complaint made out a case for unlawful detainer which should have been filed in the MTC and it contained no allegation on the assessed value of the subject property, the RTC seriously erred in proceeding with the case. The proceedings before a court without jurisdiction, including its decision, are null and void. It follows that the CA was correct in dismissing the case.

APPEARANCES OF COUNSEL

Cresenciano C. Santiago for petitioners.
Natividad Law Office for respondents.

R E S O L U T I O N

CORONA, *J.*:

This is a petition for review on *certiorari*[1] of the August 23, 2005 decision[2] and April 5, 2006 resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 81099.

On December 15, 1999,[4] petitioner spouses Lydia Flores-Cruz and Reynaldo I. Cruz purchased a 5,209-sq. m. lot situated

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

[2] Penned by Associate Justice Bienvenido L. Reyes and concurred in by Associate Justices Godardo A. Jacinto (retired) and Rosalinda Asuncion-Vicente of the Second Division of the Court of Appeals. *Rollo*, pp. 18-24.

[3] *Id.*, pp. 24-25.

[4] *Id.*, p. 85.

in Pulong Yantok, Angat, Bulacan[5] from Lydia's siblings, namely, Teresita, Ramon and Daniel (all surnamed Flores). Their father, Estanislao Flores, used to own the land as an inheritance from his parents Gregorio Flores and Ana Mangahas. Estanislao died in 1995. Estanislao and, later, petitioners paid the realty taxes on the land although neither of them occupied it. Petitioners sold portions thereof to third parties sometime in September 2000.[6]

After the death of Estanislao, petitioners found out that respondent spouses Leonardo and Iluminada Goli-Cruz *et al.* were occupying a section of the land. Initially, petitioner Lydia talked to respondents and offered to sell them the portions they were occupying but the talks failed as they could not agree on the price. On March 2, 2001, petitioners' lawyer sent respondents letters asking them to leave. These demands, however, were ignored. Efforts at *barangay* conciliation also failed.[7]

Respondents countered that their possession of the land ranged from 10 to 20 years. According to respondents, the property was alienable public land.[8] Prior to petitioners' demand, they had no knowledge of petitioners' and their predecessor's ownership of the land. They took steps to legitimize their claim and paid the realty tax on their respective areas for the taxable year 2002. Subsequently, however, the tax declarations issued to them were cancelled by the Provincial Assessors Office and re-issued to petitioners.[9]

On August 6, 2001, petitioners filed a complaint for recovery of possession of the land in the Regional Trial Court (RTC) of

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[5] Lot 30, Cad. 349. The property was declared under Property Index No. 99-1010-00931 of the Municipal Assessors Office of Angat, Bulacan. *Id.*, p. 7.

[6] *Id.*, pp. 19-20.

[7] *Id.*, pp. 19 and 22.

[8] Respondents made inquiries from the Municipal Assessors Office (in Pandi, Bulacan), Provincial Assessors Office and CENTRO Tabang, Guiguinto, Bulacan as to the status of the land. Information was given that it was alienable public land. *Id.*, p. 20.

[9] *Id.*, pp. 19-20.

Malolos, Bulacan, Branch 82.[10] Respondents filed a motion to dismiss claiming, among others, that the RTC had no jurisdiction over the case as it should have been filed in the Municipal Trial Court (MTC) since it was a summary action for ejectment under Rule 70 of the Rules of Court. The RTC denied the motion in an order dated November 9, 2001.[11]

After trial, the RTC rendered a decision dated October 3, 2003 in favor of petitioners and ordered respondents to vacate the land, and pay attorney's fees and costs of suit.[12]

On appeal by respondents to the CA, the latter, in a decision dated August 23, 2005, ruled that the RTC had no jurisdiction over the action for recovery of possession because petitioners had been dispossessed of the property for less than a year. It held that the complaint was one for unlawful detainer which should have been filed in the MTC. Thus, it ruled that the RTC decision was null and void. Reconsideration was denied on April 5, 2006.

Hence, this petition.

The issue for our resolution is whether the RTC had jurisdiction over this case.

The petition has no merit.

It is axiomatic that the nature of the action – on which depends the question of whether a suit is within the jurisdiction of the court – is determined solely by the allegations in the complaint[13] and the law at the time the action was commenced.[14] Only facts alleged in the complaint can be the basis for determining the nature of the action and the court's competence to take

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[10] Docketed as Civil Case No. 516-M-2001. *Id.*, p. 51.

[11] *Id.*, pp. 53 and 82.

[12] *Id.*, pp. 18-19.

[13] *Barbosa v. Hernandez*, G.R. No. 133564, 10 July 2007, 527 SCRA 99, 103, citing *Dimo Realty & Development, Inc. v. Dimaculangan*, G.R. No. 130991, 11 March 2004, 425 SCRA 376 and *Ching v. Malaya*, G.R. No. 56449, 31 August 1987, 153 SCRA 413.

[14] *Laresma v. Abellana*, 484 Phil. 766, 777 (2004).

cognizance of it.[15] One cannot advert to anything not set forth in the complaint, such as evidence adduced at the trial, to determine the nature of the action thereby initiated.[16]

Petitioners' complaint contained the following allegations:

x x x x x x x x x

3. That, [petitioners] are owners of a piece of land known as Lot 30-part, Cad. 349 located at Pulong Yantok, Angat, Bulacan as shown by a copy of Tax Declaration No. 99-01010-01141 made [an] integral [part] hereof as Annex "A";

4. That, said Lot No. 30-part was acquired through [purchase] on December 15, 1999, as shown by [a] Deed of Absolute Sale of Unsubdivided Land made [an] integral [part] hereof as Annex "B, B-1 & B-2";

5. That, when [petitioners] inspected subject property, they found it to be occupied by at least five (5) households under the names of herein [respondents], who, when asked about their right to stay within the premises replied that they were allowed to live thereat by the deceased former owner;

6. That, [petitioners] informed the [respondents] that as far as they are concerned, the latter's occupancy was not communicated to them so it follows that they do not have any right to remain within subject piece of land;

7. That, [respondents] seem to be unimpressed and made no move to leave the premises or to come to terms with the [petitioners] so much so that [the latter] asked their lawyer to write demand letters to each and everyone of the [respondents] as shown by the demand letters dated March 2, 2001 made integral part hereof as Annex "C, C-1, C-2, C-3, & C-4";

8. That, there is no existing agreement or any document that illustrate whatever permission, if any were given, that the [respondents] presented to [petitioners] in order to legitimize the claim;

9. That, it is clear that [respondents] occupy portions of subject property either by stealth, stratagem, force or any unlawful manner which are just bases for ejectment;

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[15] *Barbosa v. Hernandez*, *supra* note 13.

[16] *Id.*

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

According to the CA, considering that petitioners claimed that respondents were possessors of the property by mere tolerance only and the complaint had been initiated less than a year from the demand to vacate, the proper remedy was an action for unlawful detainer which should have been filed in the MTC.

We agree.

The necessary allegations in a complaint for ejectment are set forth in Section 1, Rule 70 of the Rules of Court.[18] Petitioners alleged that the former owner (Estanislao, their predecessor) allowed respondents to live on the land. They also stated that they purchased the property on December 15, 1999 and then found respondents occupying the property. Yet they demanded that respondents vacate only on March 2, 2001. It can be gleaned from their allegations that they had in fact permitted or tolerated respondents' occupancy.

Based on the allegations in petitioners' complaint, it is apparent that such is a complaint for unlawful detainer based on possession by tolerance of the owner.[19] It is a settled rule that in order to justify such an action, the owner's permission or tolerance must

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[17] *Rollo*, pp. 84-85.

[18] Section 1. *Who may institute proceedings, and when.* – Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, **or a lessor, vendor or vendee or other person, against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied**, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, **may, at any time within one (1) year** after such unlawful deprivation or withholding of possession, bring an action in the proper [MTC] against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs. (Emphasis supplied)

[19] *Dela Cruz v. Court of Appeals*, G.R. No. 139442, 6 December 2006, 510 SCRA 103, 121.

be present at the beginning of the possession.[20] Such jurisdictional facts are present here.

There is another reason why petitioners' complaint was not a proper action for recovery of possession cognizable by the RTC. It is no longer true that all cases of recovery of possession or *accion publiciana* lie with the RTC regardless of the value of the property.[21]

When the case was filed in 2001, Congress had already approved Republic Act No. 7691[22] which expanded the MTC's jurisdiction to include other actions involving title to or possession of real property (*accion publiciana* and *reivindicatoria*)[23] where the assessed value of the property does not exceed ₱20,000 (or ₱50,000, for actions filed in Metro Manila).[24] Because of

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[20] *Heirs of Melchor v. Melchor*, 461 Phil. 437, 445 (2003), citing *Go, Jr. v. Court of Appeals*, 415 Phil. 172 (2001).

[21] *Quinagoran v. Court of Appeals*, G.R. No. 155179, 24 August 2007, 531 SCRA 104, 111.

[22] An Act Expanding the Jurisdiction of the Metropolitan Trial Courts, [MTCs], and Municipal Circuit Trial Courts, Amending for the Purpose Batas Pambansa Blg. 129. It amended [BP 129] (Judiciary Reorganization Act of 1980), was approved on March 25, 1994 and took effect on April 15, 1994.

[23] *Laresma v. Abellana*, *supra* note 14, p. 782.

[24] SEC. 19. *Jurisdiction in civil cases.* — [RTCs] shall exercise exclusive original jurisdiction:

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(2) In all civil actions which involve the title to or possession of real property, or any interest therein, where the assessed value of the property involved exceeds Twenty thousand pesos (₱20,000.00) or, for civil actions in Metro Manila, where such value exceeds Fifty thousand pesos (₱50,000.00) except for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon the Metropolitan Trial Courts, [MTCs], and Municipal Circuit Trial Courts.

x x x x x x x x x

Sec. 33. *Jurisdiction of Metropolitan Trial Courts, [MTCs] and Municipal Circuit Trial Courts in Civil Cases.* — Metropolitan Trial Courts, [MTCs], and Municipal Circuit Trial Courts shall exercise:

this amendment, the test of whether an action involving possession of real property has been filed in the proper court no longer depends solely on the type of action filed but also on the assessed value of the property involved.[25] More specifically, since MTCs now have jurisdiction over *accion publiciana* and *accion reivindicatoria* (depending, of course, on the assessed value of the property), jurisdiction over such actions has to be determined on the basis of the assessed value of the property.[26]

This issue of assessed value as a jurisdictional element in *accion publiciana* was not raised by the parties nor threshed out in their pleadings.[27] Be that as it may, the Court can *motu proprio* consider and resolve this question because jurisdiction is conferred only by law.[28] It cannot be acquired through, or waived by, any act or omission of the parties.[29]

To determine which court (RTC or MTC) has jurisdiction over the action, the complaint must allege the assessed value of the real property subject of the complaint or the interest thereon.[30] The complaint did not contain any such allegation

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x x x x x x x x x

(3) Exclusive original jurisdiction in all civil actions which involve title to, or possession of, real property, or any interest therein where the assessed value of the property or interest therein does not exceed Twenty Thousand Pesos (₱20,000.00) or, in civil actions in Metro Manila, where such assessed value does not exceed Fifty Thousand Pesos (₱50,000.00) exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs: Provided, That in cases of land not declared for taxation purposes, the value of such property shall be determined by the assessed value of the adjacent lots.

[25] *Barbosa v. Hernandez*, *supra* note 13, p. 105.

[26] *Id.*; *De Barrera v. Heirs of Vicente Legaspi*, G.R. No. 174346, 12 September 2008.

[27] *PAG-ASA Fishpond Corporation v. Jimenez*, G.R. No. 164912, 18 June 2008, 555 SCRA 111, 130, citations omitted.

[28] *Republic of the Phil. v. Estipular*, 391 Phil. 211, 218 (2000).

[29] *Suarez v. Saul*, G.R. No. 166664, 20 October 2005, 473 SCRA 628, 637.

[30] *Laresma v. Abellana*, *supra* note 14, pp. 782-783.

on the assessed value of the property. There is no showing on the face of the complaint that the RTC had jurisdiction over the action of petitioners.[31] Indeed, absent any allegation in the complaint of the assessed value of the property, it cannot be determined whether it is the RTC or the MTC which has original and exclusive jurisdiction over the petitioners' action.[32]

Moreover, the complaint was filed (August 6, 2001) within one year from the demand to vacate was made (March 2, 2001). Petitioners' dispossession had thus not lasted for more than one year to justify resort to the remedy of *accion publiciana*.[33]

Since petitioners' complaint made out a case for unlawful detainer which should have been filed in the MTC and it contained no allegation on the assessed value of the subject property, the RTC seriously erred in proceeding with the case. The proceedings before a court without jurisdiction, including its decision, are null and void.[34] It follows that the CA was correct in dismissing the case.

WHEREFORE, the petition is *DENIED.*

Costs against petitioners.

SO ORDERED.

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

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[31] *Id.,* p. 782.

[32] *Quinagoran v. Court of Appeals, supra* note 21, p. 115.

[33] *De Barrera v. Heirs of Vicente Legaspi, supra* note 26; *Gonzaga v. Court of Appeals*, G.R. No. 130841, 26 February 2008, 546 SCRA 532, 542; *Dela Rosa v. Roldan*, G.R. No. 133882, 5 September 2006, 501 SCRA 34, 57; *Hilario v. Salvador*, G.R. No. 160384, 29 April 2005, 457 SCRA 815, 825, citation omitted.

[34] *Id.* There is no estoppel or laches in this case because respondents sought the dismissal of the complaint on the ground of lack of jurisdiction right after it was filed.

[*] Per Special Order No. 698 dated September 4, 2009.

THIRD DIVISION

[G.R. No. 172447. September 18, 2009]

IGLESIA EVANGELICA METODISTA EN LAS ISLAS FILIPINAS (IEMELIF), INC., *petitioner, vs.* **NATANAEL B. JUANE,** *respondent.*

[G.R. No. 179404. September 18, 2009]

NATANAEL B. JUANE, *petitioner, vs.* **IGLESIA EVANGELICA METODISTA EN LAS ISLAS FILIPINAS (IEMELIF), INC.,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; CORPORATION LAW; CORPORATION SOLE; DEFINED; DISTINGUISHED FROM CORPORATION AGGREGATE; CASE AT BAR.— As held by the Court of Appeals, even if the transformation of IEMELIF from a corporation sole to a corporation aggregate was legally defective, its head or governing body, *i.e.*, Bishop Lazaro, whose acts were approved by the Highest Consistory of Elders, still did no change. A **corporation sole** is one formed by the chief archibishop, bishop, priest, minister, rabbi or other presiding elder of a religious denomination, sect, or church, for the purpose of administering or managing, as trustee, the affairs, properties and temporalities of such religious denomination, sect or church. As opposed to a corporation aggregate, a corporation sole consists of a single member. While a **corporation aggregate** consists of two or more persons. If the transformation did not materialize, the corporation sole would still be Bishop Lazaro, who himself performed the questioned acts of removing Juane as Resident Pastor of the Tondo Congregation. If the transformation did materialize, the corporation aggregate would be composed of the Highest Consistory of Elders, which nevertheless approved the very same acts. As either Bishop Lazaro or the Highest Consistory of Elders had the authority to appoint Juane as Resident Pastor of the IEMELIF Tondo Congregation, it also had the power to remove him as such or transfer him to another congregation.

2. CIVIL LAW; OWNERSHIP; ACTION FOR RECONVEYANCE; CAN EXIST AT THE SAME TIME AS EJECTMENT CASES INVOLVING THE SAME PROPERTY; RATIONALE.— An action for reconveyance or *accion reivindicatoria* has no effect and can exist at the same time as ejectment cases involving the same property. This is because the only issue to be resolved in an unlawful detainer case is physical or material possession of the property involved, independent of any claim of ownership by any of the parties involved. Ejectment cases are designed to summarily restore physical possession to one who has been illegally deprived of such possession, without prejudice to the settlement of the parties' opposing claims of juridical possession in appropriate proceedings. The question of ownership may only be provisionally ruled upon for the sole purpose of determining who is entitled to possession *de facto*.

3. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF THE TRIAL COURT WHICH ARE AFFIRMED BY THE COURT OF APPEALS ARE BINDING UPON THE SURPEME COURT.— There is a question of fact when the doubt or difference arises as to the truth or falsehood of alleged facts, or when the query necessarily invites calibration of the whole evidence, considering mainly the credibility of witnesses, existence and relevance of specific surrounding circumstances, their relation to one another and to the whole and the probabilities of the situation. Time and again we have held that it is not the function of the Supreme Court to analyze or weigh all over again the evidence and credibility of witnesses presented before the lower tribunal or office. The Supreme Court is not a trier of facts. Its jurisdiction is limited to reviewing and revising errors of law imputed to the lower court, its findings of fact being conclusive and not reviewable by this Court. Findings of fact of the trial court, particularly when affirmed by the Court of Appeals, are binding upon this Court.

APPEARANCES OF COUNSEL

Elmer G. Pedregosa for petitioner.
Benjamin V. Aritao for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before this Court are two consolidated cases arising from a Complaint, captioned "Unlawful Detainer," filed by Iglesia Evangelica Metodista en las Islas Filipinas (IEMELIF), Inc. against Reverend Natanael B. Juane (Juane), docketed as Civil Case No. 173711-CV, and raffled to the Metropolitan Trial Court (MeTC) of Manila, Branch 26.

IEMELIF is a religious corporation existing and duly organized under Philippine laws. It alleged in its Complaint, dated 17 September 2002, that:

> 3. [IEMELIF] is the absolute and registered owner of a parcel of land with Transfer Certificate of Title No. 62080 particularly described as a parcel of land with Lot No. 77-B-2 of the subdivision plan psd-12951, being a portion of 77-B, pcs-367 of the cadastal survey of the City of Manila, G.L.R.O. cad. rec. 264 as shown in Plan F-23-48, Office of the City Engineer and situated in Tondo, Manila. Likewise it is the absolute and registered owner of a parcel of land with TCT No. 14366 and situated on the SE line of Calle Sande Nos. 1462-1466, District of Tondo, Manila. x x x.
>
> 4. On these lots the Cathedral of the Iglesia Evangelica Metodista en las Islas Filipinas is located together with other improvements including the Pastor's residence and the church's school.
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> 5. [Juane] is a former minister or pastor of IEMELIF. He was elected as one of the members of the Highest Consistory of Elders (or Board of Trustees) of IEMELIF in the February 2000 IEMELIF General Conference. During the concluding Anniversary Service of said General Conference, IEMELIF Bishop Nathanael P. Lazaro, the General Superintendent of the whole IEMELIF Church and the General Administrator of the IEMELIF Cathedral in Tondo, Manila, during the reading of the "IEMELIF Workers' Assignment," announced the appointment and assignment of [Juane] as Resident Pastor of the Cathedral Congregation in Tondo, Manila. By virtue and as a consequence of such appointment, Defendant Rev. Juane was authorized to stay at and occupy the Resident Pastor's residence inside the Cathedral complex. By the same reason, he also took charge of the Cathedral facilities and other property of the church in said

premises. One year thereafter, during the traditional concluding IEMELIF Anniversary Service of the February 2001 General Conference, [Juane] was re-assigned and re-appointed by Bishop Lazaro to the same position.

6. On 03 March 2002, during the annual and regular reading of the "IEMELIF Workers' Assignment" in the concluding Anniversary Service of the IEMELIF 2002 General Conference, Bishop Lazaro, acting in his capacity as the General Superintendent of IEMELIF Church as well as the General Administrator of the IEMELIF Cathedral in Tondo, removed [Juane] as Resident Pastor of the Tondo Cathedral Congregation and assigned him as Resident Pastor of the Sta. Mesa (Banal na Hapag) Congregation. In view of this re-assignment, [Juane]'s authority to occupy and to take charge and possession of the premises of the IEMELIF Cathedral in Tondo ceased and expired. However, [Juane] defied said re-assignment and continued to arrogate upon himself the position of Resident Pastor of the Cathedral. To date, he continues to defy the Church authorities and still has physical possession and occupation of the Cathedral premises despite the expiration of his authority to do so and illegally depriving herein Plaintiff [IEMELIF] physical possession thereof.

7. Further, on 10 May 2002, the Highest Consistory of Elders of the IEMELIF Church, upon recommendation of IEMELIF's Committee on Relations, Examination and Ordination, and in accordance with the Discipline of the Church, approved the expulsion of herein [Juane] as a pastor of the IEMELIF Church for various acts of defiance and rebellion. This expulsion as a pastor permanently took away from [Juane] any and all right or authority to occupy and possess any property of the IEMELIF Church.

8. Still, Defendant Juane ignored said expulsion. To date, his defiance continues. He is occupying the IEMELIF Cathedral premises in Tondo in violation of [IEMELIF]'s right to physically possess the subject property.

9. On 23 May 2002, Plaintiff's Highest Consistory of Elders, through the Secretary, Rev. Honorio F. Rivera and Bishop Nathanael P. Lazaro, sent [Juane] a letter through registered mail, demanding among others, that he vacate and turnover to the Church all Church property in his possession, including the cathedral, pastoral house, the school and the church premises. x x x.

10. Despite receipt of the above-said demand to vacate the IEMELIF Cathedral premises, [Juane] failed and refused, and continues

to fail and refuse, to vacate the subject property and continued its unlawful occupation thereof to the exclusion of [IEMELIF].

11. Due to [Juane]'s unwarranted failure and unjust refusal to vacate the premises, [IEMELIF] is left without recourse but to file legal action to enforce its right to have physical possession of the Cathedral premises and, thus, for such purpose, is constrained to engage the services of undersigned counsel for an agreed engagement fee of ₱40,000.00 plus ₱2,000.00 per appearance fee and to incur other expenses incidental to the instant litigation.

12. Likewise, said failure and refusal on the part of [Juane] to vacate the Cathedral premises caused and is causing [IEMELIF] damages for having been deprived of the physical possession of the Cathedral. The fact is that due to such continuing failure and refusal of [Juane] and of those deriving right under him to vacate, [IEMELIF], through its Cathedral Congregation, is forced to rent a space outside the Cathedral premises in order to provide its Tondo congregation a place for worship.[1]

At the end of its Complaint, IEMELIF prayed for the RTC to:

1. RENDER a decision ordering [Juane] and any and all persons claiming right under him to vacate the Cathedral premises and peacefully turn over possession thereof to [IEMELIF];

2. ORDER [Juane] to pay [IEMELIF] reasonable compensation for the unlawful dispossession of the premises caused by [Juane], commencing on the time of the dispossession of the property until the same is finally vacated and possession thereof peacefully surrendered to [IEMELIF];

3. ORDER [Juane] to pay [IEMELIF] attorney's fees and the costs of suit.

Such other reliefs, just and equitable under the circumstances, are likewise respectfully prayed for.[2]

G.R. No. 172447 (Motion to Dismiss)

Juane filed a Motion to Dismiss Civil Case No. 173711-CV, contending that the Complaint therein actually involved intra-

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[1] Records, Vol. I, pp. 2-5.

[2] *Id.* at 6.

corporate controversies, which, under Republic Act No. 8799, otherwise known as the Securities Regulation Code, fell within the jurisdiction of the Regional Trial Court (RTC), not the MeTC.

In an Order dated 27 February 2003, the MeTC denied Juane's Motion to Dismiss. It held that the case did not involve the issue of removal of a corporate officer, but rather the right to possess the IEMELIF Cathedral in Tondo (subject property). Juane filed a Motion for Reconsideration of the Order dated 21 March 2003, but the same was denied by the MeTC in another Order dated 5 May 2003.

Juane filed a Petition for *Certiorari* and Prohibition with Preliminary Injunction and/or Temporary Restraining Order, docketed as Civil Case No. 03-107439, before the RTC of Manila, Branch 30. On 14 November 2003, the RTC rendered its Decision dismissing Juane's Petition. The RTC pointed out that the primary and ultimate purpose of IEMELIF in filing the Complaint in Civil Case No. 173711-CV was to seek recovery of physical possession over the subject property, a matter within the jurisdiction of the MeTC.

Juane's appeal to the Court of Appeals was docketed as CA-G.R. SP No. 85543. In a Decision dated 10 April 2006, the Special Sixth Division of the Court of Appeals granted Juane's appeal and set aside the RTC Decision dated 14 November 2003. According to the Court of Appeals, the most contentious issues raised in the Complaint of IEMELIF in Civil Case No. 173711-CV were Juane's removal from office and reassignment, which were within the realm of intra-corporate controversies and the exclusive jurisdiction of the RTC. Juane's purported loss of the right to possess the subject property was merely incidental to his removal from office and reassignment by IEMELIF, and could not be the subject of an action for unlawful detainer under Rule 70 of the Rules of Court.

IEMELIF, thus, filed the present Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, docketed as G.R. No. 172447. IEMELIF argues that the intra-corporate dispute alleged by Juane is a completely extraneous matter that was never alleged or prayed for in the Complaint. IEMELIF

points out that the right to physically occupy the premises is derived from Juane's appointment as a church worker assigned to the Cathedral, and not from his being a member of the corporation.

The Court has determined that the fundamental issue for its resolution in this Petition is whether the Complaint filed by IEMELIF against Juane constitutes an intra-corporate dispute beyond the jurisdiction of the MeTC.

The Court rules in the negative.

In *Magay v. Estiandan*,[3] the Court held that:

> [J]urisdiction over the subject matter is determined by the **allegations of the complaint,** irrespective of whether or not the Plaintiff is entitled to recover upon all or some of the claims asserted therein – a matter that can be resolved only after and as a result of the trial. **Nor may the jurisdiction of the court be made to depend upon the defenses set up in the answer or upon the motion to dismiss**, for, were we to be governed by such rule, the question of jurisdiction could depend almost entirely upon the defendant x x x. (Emphases ours.)

The Court reiterated in *Abrin v. Campos*[4] that:

> Well-settled is the rule that what determines the nature of the action, as well as the Court which has jurisdiction over the case, is the **allegation made by the Plaintiff in his complaint** (*Ching v. Malaya*, 153 SCRA 412; *Ganadin v. Ramos*, 99 SCRA 613; *Republic v. Sebastian*, 72 SCRA 227; *Magay v. Estandian*, 69 SCRA 456; *Time, Inc. v. Reyes*, 39 SCRA 303). To resolve the issue of jurisdiction, the Court must interpret and apply the law on jurisdiction *vis-a-vis* the averments of the complaint (*Malayan Integrated Industries Corporation v. Judge Mendoza*, 154 SCRA 548 [1987]). **The defenses asserted in the answer or motion to dismiss are not to be considered in resolving the issue of jurisdiction**, otherwise the question of jurisdiction could depend entirely upon the defendant (*Magay v. Estandian*, 69 SCRA 456 [1976]).

The jurisdictional elements needed to be alleged in a Complaint for unlawful detainer are the following: (1) the plaintiff is a

[3] G.R. No. L-28975, 27 February 1976, 69 SCRA 456, 458.

[4] G.R. No. 52740, 12 November 1991, 203 SCRA 420, 423.

vendor, vendee, or other person from whom possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied; (2) the defendant is the person unlawfully withholding the same from the plaintiff after the expiration or termination of the right to hold possession, by virtue of any contract express or implied; (3) the plaintiff issued a demand for the defendant to comply with the contract or vacate the said premises; and (4) the action is commenced within one year from the demand.[5]

The Complaint of IEMELIF in Civil Case No. 173711-CV stated all the foregoing jurisdictional elements. The Complaint stated that IEMELIF is the absolute and registered owner of the subject parcel of land. The Complaint stated further that by virtue of the appointment and assignment of defendant Juane as Resident Pastor of the Cathedral Congregation in Tondo, Manila, he was authorized to stay in and occupy the Pastor's residence inside the cathedral complex. The Complaint stated that this authority to stay in the premises expired upon Juane's reassignment as Resident Pastor of the Sta. Mesa Congregation. Finally, the Complaint stated that IEMELIF issued a demand for Juane to vacate the premises which was within one year from the date of the Complaint, 17 September 2002.

Furthermore, the Complaint never alleged as issues the *validity* of IEMELIF's actions of reassigning Juane to another church, and later removing him as pastor. The invalidity of Juane's removal as the Resident Pastor of the IEMELIF Tondo Congregation and his reassignment as the Resident Pastor of the IEMELIF Sta. Mesa (Banal na Hapag) Congregation was a defense set up by Juane in his Motion to Dismiss, which cannot be considered in resolving the issue of jurisdiction.

The Complaint, having stated the jurisdictional elements in an unlawful detainer case, was properly filed with the Metropolitan Trial Court.[6]

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[5] Rules of Court, Rule 70, Sections 1-2.

[6] Rules of Court, Rule 70, Section 1.

G.R. No. 179404 (Main Case)

While the foregoing incidents regarding Juane's Motion to Dismiss were taking place, and without any Temporary Restraining Order or preliminary injunction having been issued against the MeTC, said trial court continued with the proceedings in Civil Case No. 173711-CV. On 10 January 2005, the MeTC promulgated its Decision in favor of IEMELIF. The dispositive portion of said Decision reads as follows:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff [IEMELIF] and against the defendant [Juane] ordering the latter and any and all persons claiming right under him
>
> 1. to vacate the [IEMELIF's] property including the cathedral, pastoral house, the school, and the church premises in Tondo, Manila and peacefully turn over possession thereof to the [IEMELIF];
>
> 2. to pay [IEMELEIF] attorneys fees in the amount of Ten Thousand Pesos; and
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> 3. to pay the costs of suit.[7]

Juane filed an appeal of the aforementioned MeTC judgment, docketed as Civil Case No. 05-112202, before the RTC of Manila, Branch 1. In a Decision dated 15 December 2005, the RTC affirmed the MeTC Decision.

Juane brought his case before the Court of Appeals, where it was docketed as CA-G.R. SP No. 93222. Juane pursued his argument that the transformation of IEMELIF from a corporation sole to a corporation aggregate was legally defective and, therefore, IEMELIF had no personality to eject Juane from the subject property.

The Sixth Division of the Court of Appeals, in a Decision dated 15 August 2007, affirmed the RTC Decision dated 15 December 2005. The Court of Appeals reasoned that even assuming *arguendo*, that the transformation of IEMELIF from a corporation sole to a corporation aggregate was legally defective, its head or governing body, *i.e.*, Bishop Lazaro, whose

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[7] Records, Vol. I, p. 777.

acts were approved by the Highest Consistory of Elders, still did not change. As Bishop Lazaro and the Highest Consistory of Elders had the authority to appoint Juane as Resident Pastor of the IEMELIF Tondo Congregation, they also had the power to remove him as such or transfer him to another congregation. The Court of Appeals additionally stressed that ownership of the subject property was not a valid defense in an ejectment proceeding where at issue was the right to physical possession of the subject property.

Thereafter, Juane filed a Petition for Review on *Certiorari* with this Court, docketed as G.R. No. 179404. Juane maintains that the "IEMELIF" that filed the Complaint before the MeTC had no personality to eject him from the subject property. The Church has remained a corporation sole, since its transformation to a corporation aggregate was legally defective. Juane, thus, claims that he is now the corporation sole, who is entitled to the physical possession of the subject property as owner thereof. In fact, on the basis of these same arguments, Juane already filed a case disputing ownership of the subject property, docketed as Civil Case No. 03-018777 before the RTC of Manila. The RTC rendered a Decision in Civil Case No. 03-018777 against Juane, which was affirmed by the Court of Appeals. Juane now has a pending Petition for Review with the Second Division of this Court.

We uphold the findings of the Court of Appeals.

As held by the Court of Appeals, even if the transformation of IEMELIF from a corporation sole to a corporation aggregate was legally defective, its head or governing body, *i.e.*, Bishop Lazaro, whose acts were approved by the Highest Consistory of Elders, still did not change. A **corporation sole** is one formed by the chief archbishop, bishop, priest, minister, rabbi or other presiding elder of a religious denomination, sect, or church, for the purpose of administering or managing, as trustee, the affairs, properties and temporalities of such religious denomination, sect or church.[8] As opposed to a corporation aggregate, a corporation

[8] CORPORATION CODE, Section 110.

sole consists of a single member, while a **corporation aggregate** consists of two or more persons. If the transformation did not materialize, the corporation sole would still be Bishop Lazaro, who himself performed the questioned acts of removing Juane as Resident Pastor of the Tondo Congregation.If the transformation did materialize, the corporation aggregate would be composed of the Highest Consistory of Elders, which nevertheless approved the very same acts. As either Bishop Lazaro or the Highest Consistory of Elders had the authority to appoint Juane as Resident Pastor of the IEMELIF Tondo Congregation, it also had the power to remove him as such or transfer him to another congregation.

An action for reconveyance or *accion reivindicatoria* has no effect and can exist at the same time as ejectment cases involving the same property.[9] This is because the only issue to be resolved in an unlawful detainer case is physical or material possession of the property involved, independent of any claim of ownership by any of the parties involved.[10] Ejectment cases are designed to summarily restore physical possession to one who has been illegally deprived of such possession, without prejudice to the settlement of the parties' opposing claims of juridical possession in appropriate proceedings.[11] The question of ownership may only be provisionally ruled upon for the sole purpose of determining who is entitled to possession *de facto*.[12]

That IEMELIF has presented sufficient evidence to prove its allegations in its Complaint in Civil Case No. 173711-CV, thus, warranting the ejectment of Juane from the subject property, is a matter which the Court can no longer look into. There is

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[9] See *Del Rosario v. Jimenez*, 118 Phil. 565, 567 (1963); *Guzman v. Court of Appeals*, G.R. No. 81949, 15 September 1989, 177 SCRA 604, 616; *Sy v. Court of Appeals*, G.R. No. 95818, 2 August 1991, 200 SCRA 117, 126-127.

[10] *Co v. Militar*, 466 Phil. 217, 223 (2004).

[11] *Barnes v. Padilla*, G.R. No. 160753, 28 June 2005, 461 SCRA 533, 543.

[12] *Umpoc v. Mercado*, G.R. No. 158166, 21 January 2005, 449 SCRA 220, 238-239.

a question of fact when the doubt or difference arises as to the truth or falsehood of alleged facts, or when the query necessarily invites calibration of the whole evidence, considering mainly the credibility of witnesses, existence and relevance of specific surrounding circumstances, their relation to one another and to the whole and the probabilities of the situation.[13] Time and again we have held that it is not the function of the Supreme Court to analyze or weigh all over again the evidence and credibility of witnesses presented before the lower tribunal or office. The Supreme Court is not a trier of facts. Its jurisdiction is limited to reviewing and revising errors of law imputed to the lower court, its findings of fact being conclusive and not reviewable by this Court.[14] Findings of fact of the trial court, particularly when affirmed by the Court of Appeals, are binding upon this Court.[15]

WHEREFORE, the Court renders the following judgment:

(1) The Petition in G.R. No. 172447 is *GRANTED*. The Decision dated 10 April 2006 of the Special Sixth Division of the Court of Appeals in CA-G.R. SP No. 85543 is *REVERSED* and *SET ASIDE*. The Decision dated 14 November 2003 of the Regional Trial Court of Manila, Branch 30, in Civil Case No. 03-107439, which affirmed the Order dated 27 February 2003 of the Metropolitan Trial Court of Manila, Branch 26, in Civil Case No. 173711-CV, denying the Motion to Dismiss of Natanael B. Juane, is *REINSTATED*; and

(2) The Petition in G.R. No. 179404 is *DENIED*. The Decision dated 15 August 2007 of the Sixth Division the Court of Appeals in CA-G.R. SP No. 93222 affirming the findings of the Regional Trial Court of Manila, Branch 1 and the Metropolitan Trial Court of Manila, Branch 26 that there was unlawful detainer in the case at bar is hereby *AFFIRMED*.

Costs against Natanael B. Juane.

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[13] *Bernardo v. Court of Appeals*, G.R. No. 101680, 7 December 1992, 216 SCRA 224, 232.

[14] *Manzano v. Court of Appeals*, 344 Phil. 240, 252 (1997).

[15] *Castillo v. Court of Appeals*, 329 Phil. 151, 159 (1996).

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 175064. September 18, 2009]

PROVINCE OF CAMARINES SUR, represented by GOVERNOR LUIS RAYMUND F. VILLAFUERTE, JR., *petitioner, vs.* **HONORABLE COURT OF APPEALS; and CITY OF NAGA, represented by MAYOR JESSE M. ROBREDO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; REQUISITES; GRAVE ABUSE OF DISCRETION, DEFINED.— For a Petition for *Certiorari* under Rule 65 of the Rules of Court to prosper, the following requisites must be present: (1) the writ is directed against a tribunal, a board or an officer exercising judicial or quasi-judicial functions; (2) such tribunal, board or officer has acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. There is grave abuse of discretion "when there is a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, such as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross so as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law."

2. ID.; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT;

ELUCIDATED.— x x x Rule 45 of the Rules of Court pertains to a Petition for Review on *Certiorari*, whereby "a party desiring to appeal by *certiorari* from a judgment, final order or resolution of the x x x the Regional Trial Court x x x, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth."

3. ID.; ID.; ID.; A CASE OF; QUESTION OF LAW, DEFINED.— A perusal of the petition referred to the Court of Appeals lays bare the fact that the same was undoubtedly a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. Not only does the title of the Petition indicate it as such, but a close reading of the issues and allegations set forth therein also discloses that it involved pure questions of law. A question of law arises when there is doubt as to what the law is on a certain state of facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. The Court of Appeals, thus, could not fault Camarines Sur for failing to allege, much less prove, grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC when such is not required for a Petition for Review on *Certiorari*. Likewise, the doctrine that *certiorari* cannot be resorted to as a substitute for the lost remedy of appeal applies only when a party actually files a Petition for *Certiorari* under Rule 65 in lieu of a Petition for Review under Rule 45, since the latter remedy was already lost through the fault of the petitioning party. In the instant case, Camarines Sur actually filed a Petition for Review under Rule 45; the Court of Appeals only mistook the same for a Petition for *Certiorari* under Rule 65.

4. ID.; ID.; SPECIAL CIVIL ACTIONS; DECLARATORY RELIEF; DEFINED; REQUISITES.— Declaratory relief is defined as an action by any person interested in a deed, will, contract or other written instrument, executive order or resolution, to determine any question of construction or validity arising from the instrument, executive order or regulation, or statute; and for a declaration of his rights and duties thereunder. The only issue that may be raised in such a petition is the question of

construction or validity of provisions in an instrument or statute. The requisites of an action for declaratory relief are: (1) there must be a justiciable controversy between persons whose interests are adverse; (2) the party seeking the relief has a legal interest in the controversy; and (3) the issue is ripe for judicial determination.

5. POLITICAL LAW; PUBLIC CORPORATIONS; LOCAL GOVERNMENTS; ADMINISTRATIVE CONTROL AND SUPERVISION OF PLAZA RIZAL IS WITH THE CITY OF NAGA; EXPLAINED.— x x x Plaza Rizal partakes of the nature of a public park or promenade. As such, Plaza Rizal is classified as a property for public use. In *Municipality of San Carlos, Pangasinan v. Morfe*, the Court recognized that a public plaza is a public land belonging to, and, subject to the administration and control of, the Republic of the Philippines. Absent an express grant by the Spanish Government or that of the Philippines, the local government unit where the plaza was situated, which in that case was the Municipality of San Carlos, had no right to claim it as its patrimonial property. The Court further held that whatever right of administration the Municipality of San Carlos may have exercised over said plaza was not proprietary, but governmental in nature. The same did not exclude the national government. On the contrary, it was possessed on behalf and in representation thereof, the municipal government of San Carlos being — in the performance of its political functions — a mere agency of the Republic, acting for its benefit. Applying the above pronouncements to the instant case, Camarines Sur had the right to administer and possess Plaza Rizal prior to the conversion of the then Municipality of Naga into the independent City of Naga, as the plaza was then part of the territorial jurisdiction of the said province. Said right of administration by Camarines Sur was governmental in nature, and its possession was on behalf of and in representation of the Republic of the Philippines, in the performance of its political functions. Thereafter, by virtue of the enactment of Republic Act No. 305 and as specified in Section 2, Article I thereof, the City of Naga was created out of the territory of the old Municipality of Naga. Plaza Rizal, which was located in the said municipality, thereby ceased to be part of the territorial jurisdiction of Camarines Sur and was, instead transferred to the territorial jurisdiction of the City of Naga. Theretofore, the local government unit that is the proper agent of the Republic

of the Philippines that should administer and possess Plaza Rizal is the City of Naga. Camarines Sur cannot claim that Plaza Rizal is part of its patrimonial property. The basis for the claim of ownership of Camarines Sur, *i.e.*, the tax declaration covering Plaza Rizal in the name of the province, hardly convinces this Court. Well-settled is the rule that a tax declaration is not conclusive evidence of ownership or of the right to possess land, when not supported by any other evidence. The same is merely an *indicia* of a claim of ownership. In the same manner, the Certification dated 14 June 1996 issued by the Department of Environment and Natural Resources–Community Environment and Natural Resources Office (DENR-CENRO) in favor of Camarines Sur, merely stating that the parcel of land described therein, purportedly Plaza Rizal, was being claimed solely by Camarines Sur, hardly constitutes categorical proof of the alleged ownership of the said property by the province. Thus, being a property for public use within the territorial jurisdiction of the City of Naga, Plaza Rizal should be under the administrative control and supervision of the said city.

APPEARANCES OF COUNSEL

The Provincial Legal Officer for petitioner.
The City Legal Officer for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This Petition for *Certiorari*[1] under Rule 65 of the Rules of Court seeks to annul and set aside the Decision[2] dated 28 June 2004 and the Resolution[3] dated 11 August 2006 of the Court of Appeals in CA-G.R. SP No. 56243. The assailed Decision of the appellate court denied due course the Petition for Review

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[1] *Rollo*, pp. 10-39.

[2] Penned by Associate Justice Roberto A. Barrios with Associate Justices Mariano C. del Castillo (now a member of this Court) and Magdangal M. de Leon, concurring; *rollo*, pp. 40-47.

[3] *Rollo*, pp. 48-50.

on *Certiorari*[4] filed by petitioner Province of Camarines Sur (Camarines Sur), while the assailed Resolution denied the Motion for Reconsideration of the earlier Decision.

The property subject of the instant case is a parcel of land, known as Plaza Rizal, situated within the territory of herein respondent City of Naga and with an aggregate area of 4,244 square meters, more or less. Plaza Rizal is located in front of the old provincial capitol building, where the Provincial Government of Camarines Sur used to have its seat, at the time when the then Municipality of Naga was still the provincial capital.

On 18 June 1948, Republic Act No. 305[5] took effect and, by virtue thereof, the Municipality of Naga was converted into the City of Naga. Subsequently, on 16 June 1955, Republic Act No. 1336[6] was approved, transferring the site of the provincial capitol of Camarines Sur from the City of Naga to the *barrio* of Palestina, Municipality of Pili.[7] The Municipality of Pili was also named as the new provincial capital.[8]

On 13 January 1997, the City of Naga filed a Complaint[9] for Declaratory Relief and/or Quieting of Title against Camarines

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[4] CA *rollo*, pp. 12-49.

[5] AN ACT CREATING THE CITY OF NAGA.

[6] AN ACT TRANSFERRING THE SITE OF THE PROVINCIAL CAPITOL OF THE PROVINCE OF CAMARINES SUR FROM THE CITY OF NAGA TO THE BARRIO OF PALESTINA, MUNICIPALITY OF PILI IN THE SAME PROVINCE.

[7] Section 1. The site of the provincial capitol of the Province of Camarines Sur is hereby transferred from the City of Naga to the barrio of Palestina, Municipality of Pili, Province of Camarines Sur.

[8] Section 3. Upon approval of this Act, the capital of the Province of Camarines Sur shall be the Municipality of Pili.

[9] The parties to the original complaint were respectively referred to as "*CITY GOVERNMENT OF NAGA, herein represented by its City Mayor, Jesse M. Robredo, Plaintiff*" and "*PROVINCIAL GOVERNMENT OF CAMARINES SUR, herein represented by its Provincial Governor, Luis R. Villafuerte, Defendant*." (Records, pp. 1-4) Subsequently, on 17 August 1997, the complaint was amended in order to change the names of the parties

Sur before the Regional Trial Court (RTC) of the City of Naga, Branch 61, which was docketed as Civil Case No. 97-3691.

The City of Naga alleged that, for a considerable length of time, Camarines Sur possessed and claimed ownership of Plaza Rizal because of a tax declaration over the said property in the name of the province. As a result, Camarines Sur had long exercised administrative control and management of Plaza Rizal, to the exclusion of the City of Naga. The City of Naga could not introduce improvements on Plaza Rizal, and its constituents could not use the property without securing a permit from the proper officials of Camarines Sur. The situation had created a conflict of interest between the parties herein and had generated animosities among their respective officials.

The City of Naga stressed that it did not intend to acquire ownership of Plaza Rizal. Being a property of the public domain, Plaza Rizal could not be claimed by any subdivision of the state, as it belonged to the public in general. Instead, the City of Naga sought a declaration that the administrative control and management of Plaza Rizal should be vested in it, given that the said property is situated within its territorial jurisdiction. The City of Naga invoked Section 2, Article I of Republic Act No. 305, the Charter of the City of Naga, which states:

> SEC. 2. *Territory of the City of Naga*. — The city of Naga which is hereby created, shall comprise the present territorial jurisdiction of the municipality of Naga, in the Province of Camarines Sur.

On 21 February 1997, Camarines Sur filed an Answer with Motion to Dismiss.[10] It argued that it was the legal and absolute owner of Plaza Rizal and, therefore, had the sole right to maintain, manage, control, and supervise the said property. Camarines Sur asserted that the City of Naga was without any cause of action because the Complaint lacked any legal or factual basis.

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to "*CITY OF NAGA, herein represented by its City Mayor, Jesse M. Robredo, Plaintiff*" and "*PROVINCE OF CAMARINES SUR, herein represented by its Provincial Governor, Luis R. Villafuerte, Defendant*." (*Rollo*, pp. 55-59.)

[10] CA *rollo*, pp. 54-58.

Allegedly, Section 2 of Republic Act No. 305 merely defined the territorial jurisdiction of the City of Naga and did not vest any color of right to the latter to manage and control any property owned by Camarines Sur. Furthermore, the remedy of Declaratory Relief was inappropriate because there was no justiciable controversy, given that the City of Naga did not intend to acquire ownership of Plaza Rizal; and Camarines Sur, being the owner of Plaza Rizal, had the right to the management, maintenance, control, and supervision thereof. There was likewise no actual or impending controversy, since Plaza Rizal had been under the control and supervision of Camarines Sur since time immemorial. The remedy of Quieting of Title was inappropriate, as the City of Naga had no legal or equitable title to or interest in Plaza Rizal that needed protection. Lastly, Camarines Sur stated that Plaza Rizal was not a property of public domain, but a property owned by Camarines Sur which was devoted to public use.

In an Order[11] dated 28 May 1997, the RTC denied the Motion to Dismiss of Camarines Sur, since the grounds cited therein were legal issues that were evidentiary in nature and could only be threshed out in a full-blown trial.

On 10 March 1999, the RTC rendered a Decision[12] in favor of the City of Naga, the pertinent portions of which provide:

> As understood in the Law of Nations, the right of jurisdiction accorded a sovereign state consists of first, its personal jurisdiction, which in a sense is its authority over its nationals who are in a foreign country and second, territorial jurisdiction, which is its authority over persons and properties within the territorial boundaries x x x.
>
> "The territorial jurisdiction of a state is based on the right of domain. The domain of a State includes normally only the expanse of its territory over which it exercises the full rights of sovereignty." x x x
>
> "Sovereignty, in turn, refers to the supreme power of a State to command and enforce obedience; it is the power, to which,

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[11] Records, pp. 25-26.

[12] *Rollo*, pp. 51-53-A.

> legally speaking all interest[s] are practically subject and all wills subordinate." x x x Indeed, from the point of view of national law, it is in a sense absolute control over a definite territory. x x x.

In summation therefore from the above-quoted citations, when territorial jurisdiction is being referred to, it means the entire territory over which a State (or any local government unit) can exercise absolute control.

In the instant case, [Camarines Sur] thru (sic) counsel admitted during the pre-trial conference that indeed, the property in question, which is Plaza Rizal, is within the territorial jurisdiction of the [City of Naga]. Thus, applying the above-quoted principles concerning territorial jurisdiction, [Camarines Sur] is barred by its express admission from claiming that it is the Province of Camarines Sur who has the right to administratively control, manage and supervise said Plaza Rizal.

[The contention of Camarines Sur] that [Section 2, Article I] of [Republic Act No.] 305 merely defines [the] territory of the City of Naga has no strong leg to stand on.

The unequivocal and specific import of said provision provides the extent into which the City of Naga can exercise its powers and functions over all its constituents and properties found within its territory. Further, Art. II, Sec. 9, par. b of [Republic Act No.] 305 provides one of the general powers and duties of the City Mayor, to wit:

> "To safeguard all the lands, buildings, records, moneys, credits and other property and rights of the city, and subject to the [provisions] of this Charter, have control of all its property."

Considering that the Province [of Camarines Sur] expressly acknowledged that [Section 2, Article I] of [Republic Act No.] 305 merely defines the territory of [the City of Naga], then it is safe to assume that it also accept that the City of Naga as represented by the City Mayor exercises control of all the properties of the City, for properties as used in the above-quoted provision refers to lands, buildings, records, moneys[,] credits and other property and rights of the city. x x x Since [Section 2, Article I] of [Republic Act No.] 305 defines the territory of [the City of] Naga and Plaza Rizal is within

its territorial jurisdiction, ergo, it is the City [of Naga] who has the right of administrative control and management of Plaza Rizal.

The RTC thus decreed:

> WHEREFORE, premises considered, [Section 2, Article I] of [Republic Act No.] 305 is hereby interpreted and declared in this Court to mean that the administrative control and management of Plaza Rizal is within the City of Naga and not with the Province of Camarines Sur.[13]

Camarines Sur received a copy of the foregoing Decision on 16 March 1999, and filed a Motion for Reconsideration[14] of the same on 30 March 1999. The RTC denied the Motion for Reconsideration of Camarines Sur in an Order[15] dated 1 September 1999. The RTC reiterated that the enactment of Republic Act No. 305, which converted the Municipality of Naga into an independent city, had *ipso facto* ceased the power of administrative control and supervision exercised by Camarines Sur over the property within the territorial jurisdiction of the Municipality of Naga and vested into the City of Naga. The administrative control and supervision exercised by Camarines Sur over Plaza Rizal, since the time of the creation of the City of Naga and up to the time of the filing of the instant case, was by mere tolerance on the part of the said city. Furthermore, the claim of ownership of Plaza Rizal by Camarines Sur was wanting, given that there was no express legislative action therefor. Public streets, squares, plazas and the like, are not the private property of either the City of Naga or Camarines Sur.

Camarines Sur received a copy of the RTC Order dated 1 September 1999, denying its Motion for Reconsideration, on 3 September 1999. On 8 September 1999, Camarines Sur filed with the RTC a Notice of Appeal.[16] In an Order[17] dated 13

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[13] *Id.* at 53-A.

[14] CA *rollo*, pp. 72-88.

[15] *Id.* at 89-95.

[16] *Id.* at 117.

[17] *Id.* at 118.

September 1999, the RTC disapproved the Notice of Appeal for non-compliance with the material data rule, which requires the statement of such data as will show that the appeal was perfected on time.

On 13 September 1999, Camarines Sur filed a second Notice of Appeal,[18] which was again disapproved by the RTC in an Order[19] dated 14 September 1999 for having been filed outside of the reglementary period. The RTC noted that Camarines Sur received a copy of the RTC Decision dated 10 March 1999 on 16 March 1999. It thus had a period of 15 days therefrom to file a motion for reconsideration or appeal. Camarines Sur filed its Motion for Reconsideration on 30 March 1999 or on the fourteenth day of the reglementary period. Said Motion for Reconsideration was denied by the RTC in an Order dated 1 September 1999, which was received by Camarines Sur on 3 September 1999. Thereafter, Camarines Sur only had two days left to file its Notice of Appeal, but the province filed said Notice on 8 September 1999, or five days after receipt of the Order denying its Motion for Reconsideration.[20]

On 18 October 1999, Camarines Sur filed before the Court a Petition for Review on *Certiorari*,[21] which was docketed as G.R. No. 139838. Camarines Sur questioned in its Petition the act of the RTC of giving due course to the Complaint for Declaratory Relief and/or Quieting of Title and the interpretation of said trial court of Section 2, Article 1 of Republic Act No. 305.

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[18] *Id.* at 119-120.

[19] *Id.* at 121.

[20] Thereafter, On 16 September 1999, Camarines Sur filed before the Court a Motion for Extension to file a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. (CA *rollo*, pp. 3-9.) In a Resolution dated 4 October 1999, the Court granted an extension of thirty (30) days counted from the expiration of the reglementary period for filing the said Petition. (CA *rollo*, p. 10.)

[21] CA *rollo*, pp. 12-49.

In a Resolution[22] dated 17 November 1999, the Court referred the Petition for Review filed by Camarines Sur to the Court of Appeals for appropriate action, holding that the latter had jurisdiction concurrent with that of the former over the case, and no special and important reason was cited for the Court to take cognizance of the case in the first instance. Before the appellate court, the Petition for Review of Camarines Sur was docketed as CA-G.R. SP No. 56243.

On 28 June 2004, the Court of Appeals promulgated the assailed Decision denying the Petition in CA-G.R. SP No. 56243. It pronounced:

> We deny the petition.
>
> Where an appeal would have been an adequate remedy but it was lost through petitioner's inexcusable negligence, *certiorari* is not in order. x x x *Certiorari* cannot be resorted to as a substitute for the lost remedy of appeal x x x. It is notable that Camarines Sur took this recourse of **petition for *certiorari*** only after it twice attempted to avail of appeal, but both of which were DISAPPROVED. Because it made these attempts to appeal, it goes without saying that Camarines Sur believed that the errors it claimed were committed by the court *a quo* were correctible only by appeal and not by *certiorari*. Thus, when it subsequently filed the instant petition, it was availing of it as a disallowed substitute remedy for a lost appeal. Time and again it has been ruled that [the] remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive x x x.
>
> But disregarding for the nonce the lost appeal and its disallowed substitution by *certiorari*, still the petition would fail because of the absence of grave abuse of discretion. The court *a quo* had declared that:
>
> > The existence of the Municipality of Naga was governed by the provisions of Chapter 57 of the Old Revised Administrative Code, otherwise known as the Regular Municipal Law. A law under which the municipalities in regularly organized provinces like the province of Camarines Sur may be organized. As a consequence of its creation, the Municipality of Naga acquired title to all the property, powers, rights and obligations

[22] *Rollo*, p. 54.

> falling within its territorial limits (62 C.J.S. 193). Being a political subdivision created within an organized province, the administration of the higher political subdivision, the province of Camarines Sur x x x has stood as trustee of all the properties belonging to the State within its territorial limits. This is the legal and logical reason why[,] before the conversion of the municipality of Naga to a City[,] [Camarines Sur] was exercising control and supervision over Plaza Rizal. x x x

This finds support in one of the provisions of the old Administrative Code of the Philippine Islands where it was provided that:

> SEC. 2168. Beginning of the corporate existence of new municipality. – x x x.
>
> When a township or other local territorial division is converted or fused into a municipality all property rights vested in the original territorial organization shall become vested in the government of the municipality. x x x.

When Naga was converted from a municipality into a city, all properties under its territorial jurisdiction including Plaza Rizal was vested upon it.[23] (Emphasis ours.)

The *fallo* of the Court of Appeals decision reads:

WHEREFORE, the petition is **DENIED DUE COURSE** and **DISMISSED**.[24]

Camarines Sur sought a reconsideration[25] of the aforequoted Decision, but the Court of Appeals denied the same in the assailed Resolution dated 11 August 2006.

Camarines Sur, thus, filed the instant Petition, raising the sole issue of:

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT TREATED THE

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[23] *Id.* at 44-46.

[24] *Id.* at 46.

[25] CA *rollo*, pp. 299-325.

[PETITION FOR REVIEW UNDER RULE 45 FILED BY CAMARINES SUR] AS ONE FOR *CERTIORARI* UNDER RULE 65 THEREBY DENYING DUE COURSE AND DISMISSING THE PETITION AND EVEN THE MOTION FOR RECONSIDERATION ON THE GROUND THAT THE PETITION WAS AVAILED OF AS A SUBSTITUTE FOR THE LOST APPEAL AND FOR ABSENCE OF GRAVE ABUSE OF DISCRETION.

Camarines Sur argues that the Court of Appeals went beyond its authority and gravely abused its discretion when it treated and resolved the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court as a Petition for *Certiorari* under Rule 65, which must allege grave abuse of discretion on the part of the RTC, and which cannot be made a substitute for a lost appeal. Camarines Sur insists that what it filed was a Petition under Rule 45, which raised all reversible errors committed by the RTC and presented all questions of laws.

Moreover, as the Court of Appeals upheld the Decision dated 16 March 1999 of the RTC based on a wrong premise and application of legal principles, Camarines Sur pleads for this Court to decide on the questions of law raised in the dismissed Petition.

First, Camarines Sur avers that the filing of the Complaint for Declaratory Relief and/or Quieting of Title was improper as it was hinged on a pretended controversy. Essentially, the complaint of the City of Naga did not show "an active antagonistic assertion of a legal right, on one side, and a denial thereof, on the other." Such action sought merely to create an unwarranted inference not of a clear right, but of a theoretical implication that a property, even if not legally owned or possessed by a city, could be administratively controlled and managed by it on the sheer expediency of being located within its territorial jurisdiction. Thus, there was no actual controversy between Camarines Sur and the City of Naga, considering that Camarines Sur had always managed and administratively controlled the same, the projects installed thereon and the programs and activities held therein, without any question from the previous Mayors of the City of Naga or from any national official, department, bureau or agency.

Second, Camarines Sur contends that since Plaza Rizal is admittedly located within the territorial jurisdiction of the City of Naga, the question of law is whether the management and administrative control of said land should be vested in the City of Naga, simply because of Article 1, Section 2 of the Charter of the City of Naga. Naga never possessed administrative control and management of Plaza Rizal when it was still a municipality, and it cannot be deemed to have been vested with the same, just because it was converted into the City of Naga – especially when the City admits it does not intend to acquire ownership of Plaza Rizal.

Petition for Review v. Petition for Certiorari

At the outset, the Court holds that the Court of Appeals indeed committed grave abuse of discretion amounting to lack or excess of jurisdiction in erroneously and inexplicably resolving the Petition, which was initially filed by Camarines Sur before the Court, but later referred to the appellate court, as if the same were a Petition for *Certiorari* under Rule 65 of the Rules of Court. This mistake is evident in the preliminary statement of the case, as found in the first paragraph of the Decision dated 28 June 2004, where the Court of Appeals stated that:

> The petitioner Province of Camarines Sur (or Camarines Sur for brevity), represented by Gov. Luis Villafuerte, asks through this **Petition for *Certiorari*** that the Decision of Branch 61 of the Regional Trial Court stationed at Naga City x x x be reversed and set aside x x x.[26] (Emphasis ours.)

For a Petition for *Certiorari* under Rule 65 of the Rules of Court to prosper, the following requisites must be present: (1) the writ is directed against a tribunal, a board or an officer exercising judicial or quasi-judicial functions; (2) such tribunal, board or officer has acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.[27]

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[26] *Rollo*, p. 40.

[27] *Tirazona v. Court of Appeals*, G.R. No. 169712, 14 March 2008, 548 SCRA 560, 575, citing *Manila Memorial Park Cemetery, Inc. v. Panado*, G.R. No. 167118, 15 June 2006, 490 SCRA 751, 762.

There is grave abuse of discretion "when there is a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, such as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross so as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law."[28]

On the other hand, Rule 45 of the Rules of Court pertains to a Petition for Review on *Certiorari*, whereby "a party desiring to appeal by *certiorari* from a judgment, final order or resolution of the x x x the Regional Trial Court x x x, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth."[29]

A perusal of the petition referred to the Court of Appeals lays bare the fact that the same was undoubtedly a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. Not only does the title of the Petition indicate it as such, but a close reading of the issues and allegations set forth therein also discloses that it involved pure questions of law. A question of law arises when there is doubt as to what the law is on a certain state of facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances.[30] The Court of Appeals, thus, could not fault Camarines Sur for failing to allege, much less prove, grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC when such is not required for a Petition for Review on *Certiorari*.

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[28] *Manila Memorial Park Cemetery, Inc. v. Panado, id.* at 762-763.

[29] RULES OF COURT, Rule 45, Sec. 1, as amended by A.M. No. 07-7-12-SC.

[30] See *Velayo-Fong v. Velayo*, G.R. No. 155488, 6 December 2006, 510 SCRA 320, 329-330, cited in *Binay v. Odeña*, G.R. No. 163683, 8 June 2007, 524 SCRA 248, 255-256.

Likewise, the doctrine that *certiorari* cannot be resorted to as a substitute for the lost remedy of appeal applies only when a party actually files a Petition for *Certiorari* under Rule 65 in lieu of a Petition for Review under Rule 45, since the latter remedy was already lost through the fault of the petitioning party. In the instant case, Camarines Sur actually filed a Petition for Review under Rule 45; the Court of Appeals only mistook the same for a Petition for *Certiorari* under Rule 65.

Be that as it may, the Court still finds that the questions of law invoked by Camarines Sur must be resolved against it.

Declaratory Relief

Declaratory relief is defined as an action by any person interested in a deed, will, contract or other written instrument, executive order or resolution, to determine any question of construction or validity arising from the instrument, executive order or regulation, or statute; and for a declaration of his rights and duties thereunder.[31] The only issue that may be raised in such a petition is the question of construction or validity of provisions in an instrument or statute.[32]

The requisites of an action for declaratory relief are: (1) there must be a justiciable controversy between persons whose interests are adverse; (2) the party seeking the relief has a legal interest

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[31] Section 1, Rule 63 (Declaratory Relief and Similar Remedies) of the Rules of Court provides:

Section 1. *Who may file petition*. – Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.

[32] *Atlas Consolidated Mining & Development Corporation v. Court of Appeals*, G.R. No. 54305, 14 February 1990, 182 SCRA 166, 177, cited in *Almeda v. Bathala Marketing Industries, Inc.*, G.R. No. 150806, 28 January 2008, 542 SCRA 470, 480.

in the controversy; and (3) the issue is ripe for judicial determination.[33]

The Court rules that the City of Naga properly resorted to the filing of an action for declaratory relief.

In the instant case, the controversy concerns the construction of the provisions of Republic Act No. 305 or the Charter of the City of Naga. Specifically, the City of Naga seeks an interpretation of Section 2, Article I of its Charter, as well as a declaration of the rights of the parties to this case thereunder.

To recall, Section 2, Article I of Republic Act No. 305 defines the territory of the City of Naga, providing that the City shall comprise the present territorial jurisdiction of the Municipality of Naga. By virtue of this provision, the City of Naga prays that it be granted the right to administratively control and supervise Plaza Rizal, which is undisputedly within the territorial jurisdiction of the City.

Clearly, the interests of the City of Naga and Camarines Sur in this case are adverse. The assertion by the City of Naga of a superior right to the administrative control and management of Plaza Rizal, because said property of the public domain is within its territorial jurisdiction, is clearly antagonistic to and inconsistent with the insistence of Camarines Sur. The latter asserted in its Complaint for Declaratory Relief and/or Quieting of Title that it should maintain administrative control and management of Plaza Rizal having continuously possessed the same under a claim of ownership, even after the conversion of the Municipality of Naga into an independent component city. The City of Naga further asserted that as a result of the possession by Camarines Sur, the City of Naga could not introduce improvements on Plaza Rizal; its constituents were denied adequate use of said property, since Camarines Sur required that the latter's permission must first be sought for the use of the same; and it was still Camarines Sur that was able

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[33] See *Galarosa v. Valencia*, G.R. No. 109455, 11 November 1993, 227 SCRA 729, 737.

to continuously use Plaza Rizal for its own programs and projects. The City of Naga undoubtedly has a legal interest in the controversy, given that Plaza Rizal is undisputedly within its territorial jurisdiction. Lastly, the issue is ripe for judicial determination in that, in view of the conflicting interests of the parties to this case, litigation is inevitable, and there is no adequate relief available in any other form or proceeding.[34]

Administrative control and supervision of Plaza Rizal

Republic Act No. 305 took effect on 18 June 1948. At that time, the Spanish Civil Code of 1889 was still in effect in the Philippines. Properties of local government units under the Spanish Civil Code were limited to properties of public use and patrimonial property.[35] Article 344 of the Spanish Civil Code provides:

> Art. 344. Property of public use, in provinces and in towns, comprises the provincial and town roads, the squares, streets, fountains, and public waters, the promenades, and public works of general service paid for by such towns or provinces.
>
> All other property possessed by either is patrimonial and shall be governed by the provisions of this code, unless otherwise provided by special laws.

Under the 1950 Civil Code, the properties of local government units are set forth in Article 424 thereof, which reads:

> Art. 424. Property for public use, in the provinces, cities, and municipalities, consist of the provincial roads, city streets, municipal streets, the squares, fountains, public waters, promenades, and public works for public service paid for by said provinces, cities, or municipalities.
>
> All other property possessed by any of them is patrimonial and shall be governed by this Code, without prejudice to the provisions of special laws.

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[34] *CJH Development Corporation v. Bureau of Internal Revenue*, G.R. No. 172457, 24 December 2008, 575 SCRA 467, 473.

[35] CIVIL CODE (1889), Art. 343.

Manifestly, the definition of what constitutes the properties for public use and patrimonial properties of local government units has practically remained unchanged.

As regards properties for public use, the principle is the same: property for public use can be used by everybody, even by strangers or aliens, in accordance with its nature; but nobody can exercise over it the rights of a private owner.[36]

It is, therefore, vital to the resolution of this case that the exact nature of Plaza Rizal be ascertained. In this regard, the description thereof by Camarines Sur is enlightening, *viz*:

> The land subject of the Action filed by the City of Naga against the Province of Camarines Sur was a garden that served as the front lawn of the old capitol site in Naga. A monument in honor of our national hero was built by the Provincial Government of Camarines Sur sometime in 1911 on a portion of subject land. Within the same land, a structure as a memorial for Ninoy Aquino was also constructed by the Provincial Government of Camarines Sur; and nearby, a stage in honor of President Manuel Quezon was also built. In the post-martial [law] period there was inscribed in the wall of the said garden the following words: "Freedom Park of Camarines Sur."
>
> A historical marker was erected in the said place which attests to the long standing ownership, possession and management by the Province of Camarines Sur of said place.
>
> All the improvements in said place, such as the construction of monuments and memorial structures, the concreting of its flooring and the walkways, planting of trees and ornamental plants, the construction of the skating or skateboard ring, a public TV facility, an internet café, a gazebo where people from all walks of life discuss religion, political, social and economic issues, a portable stage where cultural shows are held, a giant chessboard on the tiled ground with large pieces for playing, where portable booths are installed for the trade fairs during fiesta or Christmas season, where year-round lights are wrapped around the trees, all of which have been constructed, operated and maintained by the Province of Camarines Sur (not by

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[36] *In the Matter of Reversion/Recall of Reconstituted Act No. 0-116 Decree No. 388, Heirs of Palaganas v. Registry of Deeds, Tarlac City*, G.R. No. 171304, 10 October 2007, 535 SCRA 476, 484.

Naga City) where millions of pesos had been spent for construction and millions of pesos are budgeted annually for maintenance, operating expenses and personnel services by the Province of Camarines Sur.[37]

Unmistakable from the above description is that, at present, Plaza Rizal partakes of the nature of a public park or promenade. As such, Plaza Rizal is classified as a property for public use.

In *Municipality of San Carlos, Pangasinan v. Morfe*,[38] the Court recognized that a public plaza is a public land belonging to, and, subject to the administration and control of, the Republic of the Philippines. Absent an express grant by the Spanish Government or that of the Philippines, the local government unit where the plaza was situated, which in that case was the Municipality of San Carlos, had no right to claim it as its patrimonial property. The Court further held that whatever right of administration the Municipality of San Carlos may have exercised over said plaza was not proprietary, but governmental in nature. The same did not exclude the national government. On the contrary, it was possessed on behalf and in representation thereof, the municipal government of San Carlos being — in the performance of its political functions — a mere agency of the Republic, acting for its benefit.

Applying the above pronouncements to the instant case, Camarines Sur had the right to administer and possess Plaza Rizal prior to the conversion of the then Municipality of Naga into the independent City of Naga, as the plaza was then part of the territorial jurisdiction of the said province. Said right of administration by Camarines Sur was governmental in nature, and its possession was on behalf of and in representation of the Republic of the Philippines, in the performance of its political functions.

Thereafter, by virtue of the enactment of Republic Act No. 305 and as specified in Section 2, Article I thereof, the City of Naga was created out of the territory of the old Municipality of Naga. Plaza Rizal, which was located in the said municipality,

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[37] *Rollo*, pp. 138-139.

[38] 115 Phil. 608 (1962).

thereby ceased to be part of the territorial jurisdiction of Camarines Sur and was, instead transferred to the territorial jurisdiction of the City of Naga. Theretofore, the local government unit that is the proper agent of the Republic of the Philippines that should administer and possess Plaza Rizal is the City of Naga.

Camarines Sur cannot claim that Plaza Rizal is part of its patrimonial property. The basis for the claim of ownership of Camarines Sur, *i.e.*, the tax declaration[39] covering Plaza Rizal in the name of the province, hardly convinces this Court. Well-settled is the rule that a tax declaration is not conclusive evidence of ownership or of the right to possess land, when not supported by any other evidence. The same is merely an *indicia* of a claim of ownership.[40] In the same manner, the Certification[41] dated 14 June 1996 issued by the Department of Environment and Natural Resources–Community Environment and Natural Resources Office (DENR-CENRO) in favor of Camarines Sur, merely stating that the parcel of land described therein, purportedly Plaza Rizal, was being claimed solely by Camarines Sur, hardly constitutes categorical proof of the alleged ownership of the said property by the province.

Thus, being a property for public use within the territorial jurisdiction of the City of Naga, Plaza Rizal should be under the administrative control and supervision of the said city.

WHEREFORE, premises considered, the Petition for *Certiorari* under Rule 65 of the Rules of Court is hereby *DISMISSED*. The administrative control and supervision of Plaza Rizal is hereby vested in the City of Naga. Costs against petitioner.

SO ORDERED.

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

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[39] Records, pp. 99-100.

[40] *Director of Lands v. Intermediate Appellate Court*, G.R. No. 73246, 2 March 1993, 219 SCRA 339, 347.

[41] Records, pp. 101-102.

EN BANC

[G.R. No. 176364. September 18, 2009]

JUANITO R. RIMANDO, *petitioner, vs.* **COMMISSION ON ELECTIONS and NORMA O. MAGNO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ELECTION LAWS; SECTION 261 (S) OF THE OMNIBUS ELECTION CODE; AS A RULE, THE BEARING OF ARMS BY A MEMBER OF SECURITY OR POLICE ORGANIZATION OF A GOVERNMENT OFFICE OR OF A PRIVATELY OWNED SECURITY AGENCY OUTSIDE THE IMMEDIATE VICINITY OF ONE'S PLACE OF WORK IS PROHIBITED; EXCEPTIONS; PRIOR WRITTEN APPROVAL FROM THE COMMISSION ON ELECTIONS (COMELEC) IS NECESSARY IN THE CASE OF THE THIRD EXCEPTION.— A perusal of Section 261(s) in its entirety would show that, as a rule, the bearing of arms by a member of security or police organization of a government office or of a privately owned security agency outside the immediate vicinity of one's place of work is prohibited. Implicitly, the bearing of arms by such person within the immediate vicinity of his place of work is not prohibited and does not require prior written approval from the Commission. However, Section 261(s) also lays down exceptions to this rule and states that the general prohibition shall not apply in three instances: (a) when any of the persons enumerated therein is in pursuit of another person who has committed or is committing a crime in the premises the former is guarding; (b) when such person is escorting or providing security for the transport of payrolls, deposits, or other valuables; and (c) when he is guarding private residences, buildings or offices. It is only in the case of the third exception that it is provided that prior written approval from the COMELEC shall be obtained.

2. ID.; ID.; ID.; PROPER INTERPRETATION THEREOF.— x x x [T]his seeming conflict between the general rule (which allows the bearing of arms within the immediate vicinity of the security personnel's place of work) and the exception (which states that

prior written approval from the COMELEC is necessary when security personnel are guarding private residences or offices) can be harmonized if we interpret the exceptions as pertaining to instances where the security personnel are outside the immediate vicinity of their place of work or where the boundaries of their place of work cannot be easily determined. Applying this interpretation to the case at bar, prior written approval from the COMELEC is only required when a member of a security agency is guarding private residences outside the immediate vicinity of his place of work, or where the exact area of his assignment is not readily determinable. Verily, the correct interpretation of Section 261(s) is found in the January 30**,** 2004 Resolution of the COMELEC *En Banc* which held: [Section 261(s) of the Omnibus Election Code] lays down the following parameters for its application, to wit: 1. Bearing of firearms beyond the immediate vicinity of one's place of work is prohibited; 2. One may carry his firearm beyond the immediate vicinity of his place of work when he is guarding the residence of private persons or private residences or offices provided he has prior written authority from the Comelec. The confusion in the interpretation of this proscription **lies in the peculiar circumstances under which security guards perform their duties.** There are security guards hired to escort individuals. **Since they are mobile, their place of work cannot be determined with exactitude** hence, the need for an authority from the Comelec for them to carry their firearms. There are also guards hired to secure the premises of offices, or residences. **And because these offices adjoin other offices or that these residences adjoin other houses, the actual place of work or its immediate vicinity cannot be fixed with ease, there is also a need for these guards to secure authority from the Comelec**. Lastly, there are **guards assigned to secure all the houses in a subdivision, or all offices in one compound, or all factories within a complex, or all stores within a mall. In this case, the place of work of the guards therein detailed can be easily determined by the visible boundaries.** And because the place of work can be determined, the Gun Ban **exemption is required only when the firearms are brought outside said subdivision, or compound, or complex, or mall**.

3. ID.; ID.; ID.; NO VIOLATION THEREOF IN CASE AT BAR; EXPLAINED.— Here, it is undisputed that security guards Carag

and Enaya were bearing licensed firearms while performing their assigned task as guards inside the subdivision, which was their place of work. That being the case, there was no need to secure a written authority from the COMELEC under Section 261(s) of the Omnibus Election Code. Hence, there was no violation at all of that particular provision. We, thus, concur with petitioner that he did not commit an election offense on February 27, 2001, the day the shooting incident happened within the premises of Sta. Rosa Homes at Santa Rosa, Laguna. To begin with, under Section 261(s) of the Omnibus Election Code, the offender is, among others, **a member of a privately owned or operated security, investigative, protective or intelligence agency**, **who** either (a) wears his uniform or uses his insignia, decorations or regalia, or (b) **bears arms outside the immediate vicinity of his place of work during the election period,** except under certain circumstances or when authorized by the COMELEC to do so. Ineluctably, such circumstances can only apply to security guards Enaya and Carag but not to petitioner. Petitioner should not be made responsible for the acts of another, more so, when the law does not make him expressly so responsible. x x x Even assuming for the sake of argument that Section 261(s) required petitioner's security agency to secure prior written approval from the COMELEC for its security guards to bear arms in their place of work (which was a residential subdivision), the failure of the President or General Manager of the security agency to secure such approval is not itself defined as an election offense. What is punished or prohibited under Section 261(s) is merely the bearing of arms by a member of a security agency outside the immediate vicinity of his place of work without the approval of the COMELEC as required under particular circumstances.

4. ID.; ID.; ID.; LAST PROVISO THEREOF IS NOT PENAL; PENAL LAW, DEFINED.— To put it alternatively, the last proviso in Section 261(s) is not a penal provision. Said proviso reads: x x x Provided further that in the last case, prior written approval of the Commission shall be obtained. x x x A penal law, as defined by this Court, is an act of the legislature that prohibits certain acts and establishes penalties for its violation. It also defines crime, treats of its nature and provides for its punishment. Here, the abovequoted proviso does not prohibit certain acts or provide penalties for its violation; neither does it describe the nature of a crime and its punishment. Consequently, the

abovequoted phrase cannot be considered a penal provision. Moreover, even if we read Section 3(d) of COMELEC Resolution No. 3328 as requiring members of private security agencies to secure prior written authority from the COMELEC to bear arms even within the vicinity of their places of work and we assume that the COMELEC may validly do so despite the fact that such authorization is not required under Section 261(s) of the Omnibus Election Code, but rather an added regulatory measure, the same is likewise not a penal provision. At most, it is an administrative requirement to be complied with by the concerned persons. As aptly opined by Commissioner Romeo A. Brawner in his Dissent to the assailed January 5, 2007 Resolution: x x x **The requirement to secure the Commission's permit to secure exemption from the gun ban is in its present formulation no more than an administrative process described in the law**. If this Commission believes that it is necessary to criminalize the failure to secure its approval, then representation should be made for such purpose.

5. ID.; ID.; REPUBLIC ACT NO. 7166; NOTHING THEREIN EXPRESSLY PENALIZES THE MERE FAILURE TO SECURE WRITTEN AUTHORITY FROM THE COMELEC.— x x x [T]here is likewise nothing in R.A. 7166 that expressly penalizes the mere failure to secure written authority from the COMELEC as required in Section 32 thereof. Such failure to secure an authorization must still be accompanied by other operative acts, such as the bearing, carrying or transporting of firearms in public places during the election period.

APPEARANCES OF COUNSEL

Ermitaño Manzano Reodica and Associates for petitioner.
The Solicitor General for public respondent.
Ramon M. Gerona for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court is a petition for *certiorari* under Rule 65 of the Rules of Court with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction to reverse and set aside the following issuances of the Commission on Elections (COMELEC) *En Banc*: 1) **Resolution**[1] **promulgated on October 11, 2005** and 2) **Resolution**[2] **promulgated on January 5, 2007** in Election Offense (E.O.) Case No. 01-130 for Violation of the Omnibus Election Code. The first assailed Resolution granted private respondent's Motion for Reconsideration and directed the COMELEC's Law Department to file the proper information against petitioner for violation of Article XXII, Section 261, paragraph (s) of the Omnibus Election Code, while the second Resolution denied the petitioner's motion for reconsideration.

The factual antecedents:

On July 13, 2001, herein private respondent lodged a Complaint[3] with the COMELEC, Office of the Provincial Election Supervisor, Santa Cruz Laguna, accusing Jacinto Carag, Jonry Enaya and herein petitioner Juanito R. Rimando of violating Section 2, paragraph (e) and Section 3, paragraph (d) of COMELEC Resolution No. 3328[4] in relation to Section 261, paragraph (s) of the Omnibus Election Code[5] and Section 32 of

[1] *Rollo*, pp. 52-57.

[2] *Id.* at 58-63.

[3] *Id.* at 73-74.

[4] Entitled *RULES AND REGULATIONS ON: (A) BEARING, CARRYING OR TRANSPORTING FIREARMS OR OTHER DEADLY WEAPONS; (B) SECURITY PERSONNEL OR BODYGUARDS; (C) BEARING ARMS BY ANY MEMBER OF SECURITY OR POLICE ORGANIZATION OF GOVERNMENT AGENCIES AND OTHER SIMILAR ORGANIZATION; (D) ORGANIZATION OR MAINTENANCE OF REACTION FORCES DURING THE ELECTION PERIOD IN CONNECTION WITH THE MAY 14, 2001 NATIONAL AND LOCAL ELECTIONS.* It was promulgated on November 20, 2000.

[5] Approved and became effective on December 3, 1985.

Republic Act (R.A.) No. 7166.[6] The Complaint included the following narration of facts:[7]

> That on or about February 27, 2001, and/or during the election period from January 2, 2001 to June 13, 2001, in Quezon City and Santa Rosa, Laguna, and within the jurisdiction of this Honorable Commission, xxx JUANITO R. RIMANDO, being then the President and General Manager of the Illustrious Security and Investigation Agency, Inc. despite the COMELEC denial on February 19, 2001 of his/its application for a Firearms & Other Deadly Weapons Ban Exemption, in conspiring with one another, did then and there, willfully and unlawfully, allow, permit and/or sanction his/its SECURITY GUARDS JACINTO CARAG AND JONRY ENAYA, to work as such as they in fact unlawfully and willfully did at the Santa Rosa Homes, Santa Rosa, Laguna, using 12 GA with Firearms License Nos. 0002946J0048708 and 0002946J00478992, knowing fully well that they had no prior written COMELEC authority to do so under said Section 2, paragraph e and Section 3, paragraph d COMELEC RESOLUTION 3328; that on February 27, 2001, respondent-Security Guard JACINTO CARAG, without any justifiable cause, with intent to kill, taking advantage of nighttime, with treachery and use of firearm, did then there, willfully, feloniously and unlawfully shoot to death with a shotgun JONATHAN MAGNO, a 19-year old unarmed and defenseless nautical student in his school uniform… that said respondent-Security Guard CARAG immediately fled from the scene of the crime and is still at large, and that the fatal weapon though recovered by the afore-named agency has not yet been surrendered by said respondent RIMANDO to the police authorities, to the damage and prejudice of the heirs of said victim represented by the undersigned mother. xxx xxx xxx

In his Counter-Affidavit,[8] petitioner denied having violated COMELEC Resolution No. 3328 and averred that on the day of the shooting incident, security guards Carag and Enaya were within the vicinity of Sta. Rosa Homes in Santa Rosa, Laguna,

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[6] Entitled *AN ACT PROVIDING FOR SYNCHRONIZED NATIONAL AND LOCAL ELECTIONS AND FOR ELECTORAL REFORMS, AUTHORIZING APPROPRIATIONS THEREFOR, AND FOR OTHER PURPOSES.* This was approved on November 26, 1991.

[7] *Rollo,* p. 73.

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

where they were assigned to provide security to the residents thereof and provided with licensed firearms which they never brought outside the subdivision. Attached to his Counter-Affidavit was Memorandum 31-2000[9] of the Security Agencies and Guards Supervision Division, Civil Security Group, PNP, which petitioner contended only prohibited private security agencies, company security forces, government security forces and their security guards from bearing guns outside the immediate vicinity of their places of work without written authority from the COMELEC.

In a Resolution[10] dated October 8, 2001, the Provincial Election Supervisor of Santa Cruz, Laguna, dismissed private respondent's complaint against petitioner and his security guards based on a finding that the licensed firearms were carried and used by security guards Enaya and Carag within their place of work, for which no exemption and/or permit was needed in accordance with Section 2(e) of COMELEC Resolution No. 3328.

Therefrom, private respondent Magno appealed[11] to the COMELEC at Intramuros, Manila. Citing Section 3(d) of COMELEC Resolution No. 3328, she argued that prior written authority from the COMELEC was necessary before firearms could legally be carried even in the place of assignment during the election period.

On May 6, 2002, the COMELEC *En Banc* rendered a Resolution[12] affirming the dismissal of the complaint against security guards Jonry Enaya and Jacinto Carag, but directing its Law Department to file the proper information against petitioner Juanito Rimando for violation of Article XXII, Section 261, paragraph (s) of the Omnibus Election Code. In said Resolution, the COMELEC *En Banc*, noting the "seeming" conflict between Section 2(e) and Section 3(d) of COMELEC Resolution No. 3328, interpreted Section 261(s) of the Omnibus Election Code as requiring a permit from the Commission before the security

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

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

[11] *Id.* at 82-85.

[12] *Id.* at 87-95.

guards of a security agency can bear firearms in their place of assignment during the election gun ban. Moreover, the COMELEC found that as President and General Manger of the security agency, it was petitioner's responsibility to apply for such a permit from the COMELEC. Thus, the COMELEC ruled in its May 6, 2002 Resolution:[13]

> As President and General Manager, respondent Rimando is aware of this requirement as shown in the records that he actually applied for an exemption from the Committee on Firearms and Security Personnel of the Commission. However, said application was denied on the ground that it lacked the endorsement of the CSG Director as evidenced by the recommendations made by the Law Department. xxx xxx xxx
>
> We therefore hold respondent Rimando liable for violation of the COMELEC Gun Ban in his capacity as the President and General Manager of the agency. His liability falls squarely on his failure to secure a permit from the Commission as provided under the supplementary statement, "Provided further, *That in the last case prior written approval of the Commission shall be obtained*." This supplemental provision explicitly reveals the role of a security agency head in the procurement of COMELEC permit delineating his responsibility over his subordinates who only perform their duties as mandated of them by the agency. It would be a mockery of justice if by reason of respondent Rimando's failure to secure a permit from the COMELEC all security guards employed in his agency, inclusive of herein respondents Carag and Jacinto, be charged with violation of the COMELEC Gun Ban.
>
> This principle on the criminal liability of managers of security agencies and their employees has been laid down in *Cuenca vs. People of the Philippines* (G.R. No. L-27586, June 26, 1970). In said case, the Supreme Court absolved the security guard of the crime of illegal possession of firearms and instead ordered the prosecution of the security guard's agency's manager for his failure to acquire the necessary permit for the firearms used by his agency. xxx xxx xxx

Petitioner filed a Motion for Reconsideration[14] contending that 1) the aforesaid Resolution went beyond the scope of the

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[13] *Id.* at 92-93.

[14] *Id.* at 96-114.

law when it held petitioner, as President of the security agency, criminally liable for an act that was not prohibited under Section 261 (s) of the Omnibus Election Code; 2) there was no conflict between Sections 2 and 3 of COMELEC Resolution No. 3382 and if ever there was, the same should be resolved in his favor since penal laws were construed strictly against the State and in favor of the accused; 3) the application for exemption filed by petitioner's security agency with the COMELEC through the PNP-SAGD was for the authority to transport firearms and not to bear arms inside or within the vicinity of the place of work of petitioner's security personnel; and 4) since no election offense was committed, the filing of a criminal case against petitioner was unwarranted and contrary to law.

In its Resolution[15] dated January 30, 2004, the COMELEC *En Banc* granted petitioner's motion for reconsideration and accordingly reversed and set aside its May 6, 2002 Resolution with the following ratiocination:

> "Section 261. Prohibited Acts. – The following shall be guilty of an election offense:
>
> x x x x x x x x x
>
> (s) Wearing of uniforms and bearing arms.- During the campaign period, on the day before and on election day, any member of x x x [a] privately-owned or operated security, investigative, protective or intelligence agencies, "who x x x bear arms outside the immediate vicinity of his place of work; *Provided*, That this prohibition shall not apply x x x when guarding private residences, buildings or offices; *Provided, further*, that in the last case prior written approval of the Commission shall be obtained. xxx"

The aforequoted provision lays down the following parameters for its application, to wit:

1. Bearing of firearms beyond the immediate vicinity of one's place of work is prohibited;
2. One may carry his firearm beyond the immediate vicinity of his place of work when he is guarding the residence

[15] *Id.* at 122-129.

> of private persons or private residences or offices provided he has prior written authority from the Comelec.

The confusion in the interpretation of this proscription lies in the peculiar circumstances under which security guards perform their duties. There are security guards hired to escort individuals. Since they are mobile, their place of work cannot be determined with exactitude hence, the need for an authority from the Comelec for them to carry their firearms. There are also guards hired to secure the premises of offices, or residences. And because these offices adjoin other offices or that these residences adjoin other houses, the actual place of work or its immediate vicinity cannot be fixed with ease, there is also a need for these guards to secure authority from the Comelec. Lastly, there are guards assigned to secure all the houses in a subdivision, or all offices in one compound, or all factories within a complex, or all stores within a mall. In this case, the place of work of the guards therein detailed can be easily determined by the visible boundaries. And because the place of work can be determined, the Gun Ban exemption is required only when the firearms are brought outside said subdivision, or compound, or complex, or mall.

The following provisions of Comelec Resolution No. 3328 which is the Rules and regulations governing the Bearing of Firearms during the election period for the May 2001 elections should likewise be noted:

> "Sec. 2. Prohibitions – During the election period from Jan. 2 to June 13, 2001, it shall be unlawful for xxx
>
> x x x x x x x x x
>
> (e) Any members of xxx privately owned or operated security, investigative, protective or intelligence agencies to bear firearms outside the immediate vicinity of his place of work xxx
>
> x x x x x x x x x
>
> "Sec. 3. Exceptions – The provisions in Sec. 2 hereof shall not apply in the following instances:
>
> x x x x x x x x x
>
> (d). Members of x x x privately owned or operated security, investigative, protective or intelligence agencies

in the specific area of their assignment of their duties with prior written authority from the Commission."

Interpreting the provisions aforequoted in relation to this case, we arrive at the following important points:

1. One does not need authority from the Commission when the firearm is carried within the immediate vicinity of his place of work;

2. If his place of work cannot be determined but he has an assignment to carry out in accordance with his duty, authority from the Commission is required.

In the instant case, the shooting incident happened within the premises of Sta. Rosa Homes, a subdivision being guarded by the security agency headed by the respondent. It is very clear therefore that the carrying of firearm was done within the premises of the guards' place of work. Under the law, the act is exempted from the Gun Ban rule.

Laws which are penal in nature, like Section 261 of the Omnibus Election Code, should be interpreted liberally in favor of respondents. xxx While it is our duty to conduct preliminary investigation for election offenses and that this kind of investigation only requires substantial evidence, the Commission must carry out this task prudently to the end that persons are not unnecessarily dragged into court hearings. Furthermore, we have already dismissed the case against the security guards. In the interest of justice, we also have to dismiss the case against the head of their security agency.[16]

Private respondent filed a motion for reconsideration[17] of the January 30, 2004 Resolution. In the herein first assailed **Resolution**[18] **dated October 11, 2005,** the COMELEC *En Banc* rendered judgment, thus:

WHEREFORE, complainant's Motion for Reconsideration is hereby **GRANTED**, and the Resolution of the Commission promulgated on 30 January 2004 is hereby **RECONSIDERED**.

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[16] *Id.* at 125-128.

[17] *Id.* at 134-137.

[18] *Supra* note 1.

The Law department is hereby directed to file the proper information against respondent Ret. Brig. Gen. **JUANITO RIMANDO** for violation of Article XXII, Section 261, paragraph (s) of the Omnibus Election Code. The Law Department is further **ORDERED** to ensure the effective prosecution thereof.

SO ORDERED.[19]

In again changing its disposition of this case, the COMELEC *En Banc* explained:[20]

The focal issue involved in the instant case is whether or not respondent Rimando violated the COMELEC Gun Ban enforced during the 2001 election period.

To settle the issue once and for all, We deem it proper to spell out the elements of the offense provided for in Section 261 (s) of the Omnibus Election Code, to wit:

(1) The offender is a member of security or police organization of government agencies, commissions, councils, bureaus, offices or government-owned or controlled corporations, or privately owned or operated security, investigative, protective or intelligence agencies;

(2) He wears his uniform or uses his insignia, decorations or regalia, or bear arms outside the immediate vicinity of his place of work;

(3) That he committed the same during the campaign period, on the day before election day, or on election day;

(4) The offender does not fall under any of these exceptions:

4.1. He is in pursuit of a person who has committed or is committing a crime in the premises he is guarding;

4.2. He is escorting or providing security for the transport of payrolls, deposits or other valuables;

4.3. He is guarding the residence of private persons or guarding private residences, buildings or offices; Provided, that prior written approval of the Commission shall be obtained.

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[19] *Rollo*, p. 57.

[20] *Id.* at 54-56.

The situation subject of this case falls within sub-paragraph 4.3. above.

Simply put, one way of committing the offense of violation of the gun ban is when the offender is in possession of a gun while guarding the residence of private persons, or guarding private residences, buildings or offices, without the necessary written approval or permission from the Commission.

The above interpretation of the law is consistent with Section 2, paragraph (e) and Section 3, paragraph (d) of Resolution No. 3328.
xxx

There is therefore no question that a violation of the gun ban was indeed committed. The only remaining issue is whether or not respondent Rimando can be held liable therefor.

There is no dispute that the security agency concerned, as represented by respondent Rimando, is required by law to secure the necessary permit from the Commission. In fact, the records show that the said agency represented by respondent Rimando did in fact apply for exemption from the gun ban, but the same was denied for failure to comply with all the requirements.

Can respondent Rimando be held criminally liable for such failure to secure the necessary exemption from the gun ban? It is Our studied opinion that the answer is in the affirmative.

In the case of ***Cuenca vs. People of the Philippines***, G.R. No. L-27586, June 26, 1970, the Supreme Court ruled that

> Appellant security guard of the Bataan Veterans Security Agency, which was duly licensed to operate as such security agency, cannot be held guilty of the crime of illegal possession of firearm and ammunitions owing to the failure of the owner, manager and/or operator of the said security agency to comply with his duty to obtain such license before he got said firearm and ammunitions and delivered the same to his employee, herein appellant.
>
> x x x x x x x x x
>
> The owner, manager and/or operator of the security agency who failed to secure the requisite license – in the case at bar, Jose Forbes, as the owner and operator of the Bataan Veterans Security Agency – should be prosecuted for illegal possession

of firearms and/or such other crime as may have been committed in consequence of the breach of the laws and regulations regarding the operation of a security agency and use and issuance of firearms and ammunitions.

Petitioner moved for reconsideration of the October 11, 2005 Resolution. In its herein second impugned **Resolution**[21] **promulgated on January 5, 2007**, the COMELEC *En Banc* emphasized that in light of the peculiar circumstances surrounding the case, it was ruling *pro hac vice – i.e.* its ruling in the instant case should not be taken as a precedent for future cases of similar nature, but only as a ruling with regard to the herein case – and denied petitioner's Motion for Reconsideration, to wit:[22]

WHEREFORE, premises considered, the Commission (*en banc*) **RESOLVED**, as it is hereby **RESOLVES**, to **DENY** the instant Motion for Reconsideration for **LACK OF MERIT**.

ACCORDINGLY, we uphold the October 11, 2005 *en banc* Resolution as our **FINAL** Resolution in the instant case. The Law Department (this Commission) is hereby **DIRECTED** to file the proper information against Ret. Brig. Gen. **JUANITO R. RIMANDO** for violation of Article XXII, Section 261 paragraph (s) of the Omnibus Election Code and other pertinent election laws. The Law Department (this Commission) is further **ORDERED** to ensure the effective prosecution thereof.

SO ORDERED.[23]

Ascribing to public respondent COMELEC *En Banc* grave abuse of discretion and/or ruling without or in excess of jurisdiction for rendering the assailed Resolutions dated October 11, 2005 and January 5, 2007, petitioner has come to us for relief on the following grounds:[24]

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[21] *Supra* note 2.

[22] *Id.* at 61.

[23] *Id.* at 62.

[24] *Id.* at 20.

I

PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AND/OR WITHOUT OR IN EXCESS OF JURISDICTION IN MAKING CRIMINAL AN ACT OF BEARING ARMS WITHIN THE IMMEDIATE VICINITY OF THE PLACE OF WORK WITHOUT COMELEC AUTHORITY, EVEN WHEN IT IS CLEARLY NOT MADE SO UNDER SECTION 261(s) OF THE OMNIBUS ELECTION CODE.

II

ASSUMING *ARGUENDO* THAT THE ACT CONSTITUTE AN ELECTION OFFENSE, NEVERTHELESS, PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AND/OR WITHOUT OR IN EXCESS OF JURISDICTION IN HOLDING PETITIONER CRIMINALLY LIABLE FOR THE ACTS OF OTHER PERSONS, *I.E.*, THE SECURITY GUARDS WHO WERE THE ONES WHO PERSONALLY CARRIED THE FIREARMS, JUST BECAUSE PETITIONER WAS THEN THE HEAD OF THE SECURITY AGENCY CONCERNED, WHEN IT IS NOT CLEARLY MADE SO UNDER SECTION 261(s) OF THE OMNIBUS ELECTION CODE.

III

PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AND/OR WITHOUT OR IN EXCESS OF JURISDICTION IN DISREGARDING THE TIME-HONORED DOCTRINE OF "*NULLUM CRIMEN, NULLA POENA SINE LEGE*."

In its Comment,[25] private respondent averred that the resolutions of the COMELEC *En Banc,* being the government office principally charged with the enforcement of the Omnibus Election Code, should be given full faith and credit.

The petition is impressed with merit.

Public respondent's interpretation of Section 261 (s) of the Omnibus Election Code – to the effect that there was a violation of the election gun ban in this case because of the absence of a permit from the COMELEC to carry firearms within the place of work – was without basis in law.

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[25] *Id.* at 168-173.

Section 261 (s) of the Omnibus Election Code reads:

Section 261. Prohibited Acts. – T**he following shall be guilty of an election offense:**

x x x x x x x x x

(s) Wearing of uniforms and bearing arms.- During the campaign period, on the day before and on election day, **any member of** security or police organization of government agencies, commissions, councils, bureaus, offices or government-owned or controlled corporations or **privately-owned or operated security, investigative, protective or intelligence agencies, who** wears his uniform or uses his insignia, decorations or regalia, or **bears arms outside the immediate vicinity of his place of work**; *Provided*, That **this prohibition shall not apply when said member is** in pursuit of a person who has committed or is committing a crime in the premises he is guarding; or when escorting or providing security for the transport of payrolls, deposits, or other valuables; or when **guarding the residence of private persons or when guarding private residences, buildings or offices**; *Provided, further*, **that in the last case prior written approval of the Commission shall be obtained.** The Commission shall decide all applications for authority under this paragraph within fifteen days from the date of the filing of such application. (Emphasis ours)

A perusal of Section 261 (s) in its entirety would show that, as a rule, the bearing of arms by a member of security or police organization of a government office or of a privately owned security agency outside the immediate vicinity of one's place of work is prohibited. Implicitly, the bearing of arms by such person within the immediate vicinity of his place of work is not prohibited and does not require prior written approval from the Commission. However, Section 261 (s) also lays down exceptions to this rule and states that the general prohibition shall not apply in three instances: (a) when any of the persons enumerated therein is in pursuit of another person who has committed or is committing a crime in the premises the former is guarding; (b) when such person is escorting or providing security for the transport of payrolls, deposits, or other valuables; and (c) when he is guarding

private residences, buildings or offices. It is only in the case of the third exception that it is provided that prior written approval from the COMELEC shall be obtained.

In the case at bar, the cause of the confusion appears to be the fact that the security guards who were being charged with violation of the election gun ban were bearing firearms within the immediate vicinity of their place of work, but their place of work happened to be a residential subdivision where they were guarding the residences of private persons.

Indeed, this seeming conflict between the general rule (which allows the bearing of arms within the immediate vicinity of the security personnel's place of work) and the exception (which states that prior written approval from the COMELEC is necessary when security personnel are guarding private residences or offices) can be harmonized if we interpret the exceptions as pertaining to instances where the security personnel are outside the immediate vicinity of their place of work or where the boundaries of their place of work cannot be easily determined. Applying this interpretation to the case at bar, prior written approval from the COMELEC is only required when a member of a security agency is guarding private residences outside the immediate vicinity of his place of work, or where the exact area of his assignment is not readily determinable.

Verily, the correct interpretation of Section 261 (s) is found in the January 30, 2004 Resolution of the COMELEC *En Banc* which held:[26]

> [Section 261 (s) of the Omnibus Election Code] lays down the following parameters for its application, to wit:
>
> 1. Bearing of firearms beyond the immediate vicinity of one's place of work is prohibited;
>
> 2. One may carry his firearm beyond the immediate vicinity of his place of work when he is guarding the residence of private persons or private residences or offices provided he has prior written authority from the Comelec.

[26] *Supra* note 15.

The confusion in the interpretation of this proscription **lies in the peculiar circumstances under which security guards perform their duties.** There are security guards hired to escort individuals. **Since they are mobile, their place of work cannot be determined with exactitude** hence, the need for an authority from the Comelec for them to carry their firearms. There are also guards hired to secure the premises of offices, or residences. **And because these offices adjoin other offices or that these residences adjoin other houses, the actual place of work or its immediate vicinity cannot be fixed with ease, there is also a need for these guards to secure authority from the Comelec**. Lastly, there are **guards assigned to secure all the houses in a subdivision, or all offices in one compound, or all factories within a complex, or all stores within a mall. In this case, the place of work of the guards therein detailed can be easily determined by the visible boundaries.** And because the place of work can be determined, the Gun Ban **exemption is required only when the firearms are brought outside said subdivision, or compound, or complex, or mall**. (Emphasis ours)

Indeed, the aforesaid interpretation would also harmonize Sections 2(e) and 3(d) of COMELEC Resolution No. 3328, which pertinently provide:

Sec. 2. **Prohibitions** – During the election period from Jan. 2 to June 13, 2001, it shall be unlawful for:

x x x x x x x x x

e) Any member of xxx privately owned or operated security, investigative, protective or intelligence agencies to bear firearms outside the immediate vicinity of his place of work; xxx

x x x x x x x x x

Sec. 3. **Exceptions** – The prohibitions in Section 2 hereof shall not apply in the following instances:

x x x x x x x x x

d). Members of xxx privately owned or operated security, investigative, protective or intelligence agencies in the specific area of their assignment of their duties with prior written authority from the Commission.

The exemption also applies to these personnel when:

x x x x x x x x x

3) Guarding private residence, buildings or offices with prior written authority of the Commission; xxx

x x x (Emphasis supplied)

From the foregoing provisions of COMELEC Resolution No. 3328, one of the prohibited acts is for a member of a privately owned or operated security agency to bear firearms **outside** the immediate vicinity of his place of work. Such prohibition shall not apply 1) when the member of the security agency is in the actual performance of his duty in the specific area of his assignment with prior written authority from the Commission, and 2) when such member is guarding private residences, buildings or offices with prior written authority from the Commission. However, these two instances presuppose that the member of the security agency was undertaking his duties in such a manner that the boundaries of his place of work cannot be determined with exactitude.

This was the interpretation of COMELEC Resolution No. 3328 adopted in the same January 30, 2004 Resolution of the COMELEC *En Banc*. To quote:[27]

1. One does not need authority from the Commission when the firearm is carried within the immediate vicinity of his place of work;

2. If his place of work cannot be determined but he has an assignment to carry out in accordance with his duty, authority from the Commission is required.

Here, it is undisputed that security guards Carag and Enaya were bearing licensed firearms while performing their assigned task as guards inside the subdivision, which was their place of work. That being the case, there was no need to secure a written authority from the COMELEC under Section 261(s) of the Omnibus Election Code. Hence, there was no violation at all of that particular provision. We, thus, concur with petitioner that

[27] *Id.* at 127-128.

he did not commit an election offense on February 27, 2001, the day the shooting incident happened within the premises of Sta. Rosa Homes at Santa Rosa, Laguna.

To begin with, under Section 261(s) of the Omnibus Election Code, the offender is, among others, **a member of a privately owned or operated security, investigative, protective or intelligence agency**, **who** either (a) wears his uniform or uses his insignia, decorations or regalia, or (b) **bears arms outside the immediate vicinity of his place of work during the election period,** except under certain circumstances or when authorized by the COMELEC to do so. Ineluctably, such circumstances can only apply to security guards Enaya and Carag but not to petitioner. Petitioner should not be made responsible for the acts of another, more so, when the law does not make him expressly so responsible. In *United States v. Abad Santos*,[28] it was explicitly held that:

> **Courts will not hold one person criminally responsible for the acts of another,** committed without his knowledge or consent, **unless there is a statute requiring it so plain in its terms that there is no doubt of the intention of the Legislature**. Criminal statutes are to be strictly construed. **No person should be brought within their terms who is not clearly within them, nor should any act be pronounced criminal which is not clearly made so by the statute**. (Emphasis ours)

We likewise held in *People v. Deleverio* that:[29]

> **It is a basic rule of statutory construction that penal statutes are to be liberally construed in favor of the accused.** Courts must not bring cases within the provision of a law which are not clearly embraced by it. No act can be pronounced criminal which is not clearly made so by statute; so, too, no person who is not clearly within the terms of a statute can be brought within them. **Any reasonable doubt must be resolved in favor of the accused.** (Emphasis Ours)

It may not be amiss to point out that in order to buttress its ruling regarding petitioner's liability for failing to secure a permit,

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[28] 36 Phil. 243, 246.

[29] G.R. Nos. 118937-38, April 24, 1998, 289 SCRA 547, 566.

the COMELEC *En Banc*, in its October 11, 2005 Resolution, found that petitioner, as the representative of the security agency concerned, was aware that an exemption from the COMELEC must necessarily be obtained. True, petitioner applied for an exemption from the gun ban, but as revealed in petitioner's security agency's Letter attached to its Application for Exemption,[30] the request for exemption involved the transport and conveyance of licensed firearms and ammunitions, which were integral to the conduct of the security agency's business and not for the bearing of arms within the place of work of the security guards. Evidently, petitioner did not see the need to apply for an exemption for his security guards, considering that in a memorandum guideline issued by the Security Agencies and Guards Division, PNP-SAGD, what was prohibited, among others, was to bear guns outside the immediate vicinity of the place of work. Pertinently, Memorandum 31-2000[31] states:

Guidelines Re—COMELEC GUN BAN During Election Period

(December 12, 2000)

1. References

a. Provisions on Omnibus election code

b. COMELEC Resolution Nos. 3258 dated September 28, 2000 and 3328 dated November 20, 2000.

2. xxx **The following circumstances are prohibited, unless with written authority from COMELEC:**

x x x x x x x x x

b. Detailed security personnel of PSAs//CSFs/GSFs and their security guards/personnel are **prohibited to bear guns outside the immediate vicinity of their place of work.**

x x x x x x x x x

(Emphasis ours)

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[30] *Rollo*, pp. 119 & 120 respectively.

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

Even assuming for the sake of argument that Section 261(s) required petitioner's security agency to secure prior written approval from the COMELEC for its security guards to bear arms in their place of work (which was a residential subdivision), the failure of the President or General Manager of the security agency to secure such approval is not itself defined as an election offense. What is punished or prohibited under Section 261(s) is merely the bearing of arms by a member of a security agency outside the immediate vicinity of his place of work without the approval of the COMELEC as required under particular circumstances.

To put it alternatively, the last proviso in Section 261(s) is not a penal provision. Said proviso reads:

xxx Provided further that in the last case, prior written approval of the Commission shall be obtained. xxx

A penal law, as defined by this Court, is an act of the legislature that prohibits certain acts and establishes penalties for its violation. It also defines crime, treats of its nature and provides for its punishment.[32] Here, the abovequoted proviso does not prohibit certain acts or provide penalties for its violation; neither does it describe the nature of a crime and its punishment. Consequently, the abovequoted phrase cannot be considered a penal provision.

Moreover, even if we read Section 3(d) of COMELEC Resolution No. 3328 as requiring members of private security agencies to secure prior written authority from the COMELEC to bear arms even within the vicinity of their places of work and we assume that the COMELEC may validly do so despite the fact that such authorization is not required under Section 261(s) of the Omnibus Election Code, but rather an added regulatory measure, the same is likewise not a penal provision. At most, it is an administrative requirement to be complied with by the concerned persons.

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[32] *Elvira Yu Oh v. CA*, G.R. No. 125297, June 6, 2003, 403 SCRA 300, 308.

As aptly opined by Commissioner Romeo A. Brawner in his Dissent to the assailed January 5, 2007 Resolution:[33]

xxx **The requirement to secure the Commission's permit to secure exemption from the gun ban is in its present formulation no more than an administrative process described in the law**. If this Commission believes that it is necessary to criminalize the failure to secure its approval, then representation should be made for such purpose. (Emphasis ours)

Lastly, the COMELEC's reliance on *Cuenca v. People*[34] in its October 11, 2005 Resolution to hold petitioner criminally liable is plainly misplaced. Commissioner Brawner in his Dissent properly distinguished *Cuenca* from the present case and we quote:[35]

One. What is involved in the case of Cuenca was a simple case of illegal possession of firearm totally unrelated to election while the case at bench is a charge for violation of an election law.

Two. The operative act constituting the offense found by the Supreme Court was the omission of the security agency headed by Jose Forbes to secure a license for the firearm he issued to his security Guard Ernesto Cuenca. While in the present case, there is no dispute at all that the firearms issued by respondent Rimando to his security guards were duly licensed.

Three. The accused in Cuenca was the security guard and not the security agency head while in this case, the remaining respondent is the head of the security agency.

Four. The issue in Cuenca was whether the security guard was in possession of a licensed firearm or not while the issue in this case is whether the head of the agency who failed to secure a permit for exemption from the Commission is guilty of an election offense or not.

It may likewise be noted that mere possession of unlicensed firearms is already punishable by statute as a crime. Hence, the owner, manager or operator of the security agency that obtains

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[33] *Rollo*, p. 70.

[34] G.R. No. L-27586, June 26, 1970, 33 SCRA 522.

[35] *Rollo*, pp. 71-72.

unlicensed firearms and issues the same to security guards in its employ is undeniably criminally liable. Moreover, the law on illegal possession of firearms has been amended to specifically penalize the owner, president, manager, director, or other responsible officer of any public or private firm or entity who knowingly allows the use of unlicensed firearms by his personnel.[36]

To reiterate, under Section 261 (s) of the Omnibus Election Code, the punishable act is the bearing of arms outside the immediate vicinity of one's place of work during the election period and not the failure of the head or responsible officer of the security agency to obtain prior written COMELEC approval.

Incidentally, private respondent also asserts that since the incident happened in a street inside a subdivision, a written authority from the COMELEC should have nonetheless been obtained under R.A. 7166, Section 32 which in effect modified Section 261 of the Omnibus Election Code.

Suffice it to say that Section 261(s) was not the one modified by Section 32 of R.A. No. 7166, but Section 261(q). As noted in *Los Banos v. Pedro:*[37]

SEC. 261. Prohibited Acts. — The following shall be guilty of an election offense:

x x x x x x x x x

(q) Carrying firearms outside residence or place of business. — Any person who, although possessing a permit to carry firearms, carries any firearms outside his residence or place of business during the election period, unless authorized in writing by the Commission [on Elections]: Provided, That a motor vehicle, water or air craft shall not be considered residence or place of business or extension thereof.

This prohibition shall not apply to cashiers and disbursing officers while in the performance of their duties or to persons who by nature of their official duties, profession, business or occupation habitually carry large sums of money or valuables.

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[36] See P.D. 1866 as amended by R.A. No. 8294.

[37] G.R. No. 173588, April 22, 2009, footnote 5.

This section was subsequently amended under Republic Act (R.A.) No. 7166, the Synchronized Election Law of 1991, to read:

SEC. 32. Who May Bear Firearms. — During the election period, no person shall bear, carry or transport firearms or other deadly weapons in public places, including any building, street, park, private vehicle or public conveyance, even if licensed to possess or carry the same, unless authorized in writing by the Commission. The issuance of firearm licenses shall be suspended during the election period

In any event, there is likewise nothing in R.A. 7166 that expressly penalizes the mere failure to secure written authority from the COMELEC as required in Section 32 thereof. Such failure to secure an authorization must still be accompanied by other operative acts, such as the bearing, carrying or transporting of firearms in public places during the election period.

All told, petitioner should be absolved of any criminal liability, consistent with the doctrine of *nullum crimen, nulla poena sine lege* - there is no crime when there is no law punishing it.[38]

Thus, the Court finds that respondent COMELEC acted with grave abuse of discretion in issuing the questioned Resolutions.

WHEREFORE, The Resolutions of the COMELEC *En Banc* issued on October 11, 2005 and January 5, 2007 in Election Case No. 01-130 are hereby *REVERSED* and *SET ASIDE*.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Nachura, Brion, Peralta, Bersamin, Del Castillo, and *Abad, JJ.,* concur.

Quisumbing and *Carpio, JJ.,* on official leave.

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[38] *Evangelista v.* People, G.R. Nos. 108135-36, August 14, 2000, 337 SCRA 671, 678.

THIRD DIVISION

[G.R. No. 177056. September 18, 2009]

THE OFFICE OF THE SOLICITOR GENERAL, *petitioner, vs.* **AYALA LAND INCORPORATED, ROBINSON'S LAND CORPORATION, SHANGRI-LA PLAZA CORPORATION and SM PRIME HOLDINGS, INC.,** *respondents*.

SYLLABUS

1. STATUTORY CONSTRUCTION; A STATUTE WHICH IS CLEAR AND UNEQUIVOCAL MUST BE GIVEN ITS LITERAL MEANING AND APPLIED WITHOUT ANY ATTEMPT AT INTERPRETATION; CASE AT BAR.— Statutory construction has it that if a statute is clear and unequivocal, it must be given its literal meaning and applied without any attempt at interpretation. Since Section 803 of the National Building Code and Rule XIX of its IRR do not mention parking fees, then simply, said provisions do not regulate the collection of the same. The RTC and the Court of Appeals correctly applied Article 1158 of the New Civil Code, which states: Art. 1158. Obligations derived from law are not presumed. Only those **expressly determined** in this Code or in special laws are demandable, and shall be regulated by the precepts of the law which establishes them; and as to what has not been foreseen, by the provisions of this Book. Hence, in order to bring the matter of parking fees within the ambit of the National Building Code and its IRR, the OSG had to resort to specious and feeble argumentation, in which the Court cannot concur.

2. POLITICAL LAW; STATUTES; NATIONAL BUILDING CODE; SECTION 102 THEREOF IS NOT AN ALL-ENCOMPASSING GRANT OF REGULATORY POWER TO THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH) SECRETARY AND LOCAL BUILDING OFFICIALS; EXPLAINED.— The OSG cannot rely on Section 102 of the National Building Code to expand the coverage of Section 803 of the same Code and Rule XIX of the IRR, so as to include the regulation of parking fees. The OSG limits its citation to the first part of Section 102 of

the National Building Code declaring the policy of the State "to safeguard life, health, property, and public welfare, consistent with the principles of sound environmental management and control"; but totally ignores the second part of said provision, which reads, "and to this end, make it the purpose of this Code to provide for all buildings and structures, **a framework of minimum standards and requirements** to regulate and control their location, site, design, quality of materials, construction, use, occupancy, and maintenance." While the first part of Section 102 of the National Building Code lays down the State policy, it is the second part thereof that explains how said policy shall be carried out in the Code. Section 102 of the National Building Code is not an all-encompassing grant of regulatory power to the DPWH Secretary and local building officials in the name of life, health, property, and public welfare. On the contrary, it limits the regulatory power of said officials to ensuring that the minimum standards and requirements for all buildings and structures, as set forth in the National Building Code, are complied with.

3. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; RULE-MAKING POWER; MUST BE CONFINED TO DETAILS FOR REGULATING THE MODE OR PROCEEDINGS TO CARRY INTO EFFECT THE LAW AS IT HAS BEEN ENACTED.— x x x [T]he OSG cannot claim that in addition to fixing the minimum requirements for parking spaces for buildings, Rule XIX of the IRR also mandates that such parking spaces be provided by building owners free of charge. If Rule XIX is not covered by the enabling law, then it cannot be added to or included in the implementing rules. The rule-making power of administrative agencies must be confined to details for regulating the mode or proceedings to carry into effect the law as it has been enacted, and it cannot be extended to amend or expand the statutory requirements or to embrace matters not covered by the statute. Administrative regulations must always be in harmony with the provisions of the law because any resulting discrepancy between the two will always be resolved in favor of the basic law.

4. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *REPUBLIC* AND *CITY OF OZAMIS* CASES DO NOT CONSTITUTE PRECEDENTS FOR THE CASE AT BAR;

ELUCIDATED.— From the RTC all the way to this Court, the OSG repeatedly referred to *Republic v. Gonzales* and *City of Ozamis v. Lumapas* to support its position that the State has the power to regulate parking spaces to promote the health, safety, and welfare of the public; and it is by virtue of said power that respondents may be required to provide free parking facilities. The OSG, though, failed to consider the substantial differences in the factual and legal backgrounds of these two cases from those of the Petition at bar. x x x *Republic* and *City of Ozamis* involved parking in the local streets; in contrast, the present case deals with privately owned parking facilities available for use by the general public. In *Republic* and *City of Ozamis*, the concerned local governments regulated parking pursuant to their power to control and regulate their streets; in the instant case, the DPWH Secretary and local building officials regulate parking pursuant to their authority to ensure compliance with the minimum standards and requirements under the National Building Code and its IRR. With the difference in subject matters and the bases for the regulatory powers being invoked, *Republic* and *City of Ozamis* do not constitute precedents for this case. Indeed, *Republic* and *City of Ozamis* both contain pronouncements that weaken the position of the OSG in the case at bar. In *Republic*, the Court, instead of placing the burden on private persons to provide parking facilities to the general public, mentioned the trend in other jurisdictions wherein the municipal governments themselves took the initiative to make more parking spaces available so as to alleviate the traffic problems. x x x In *City of Ozamis*, the Court authorized the collection by the City of minimal fees for the parking of vehicles along the streets: so why then should the Court now preclude respondents from collecting from the public a fee for the use of the mall parking facilities? Undoubtedly, respondents also incur expenses in the maintenance and operation of the mall parking facilities, such as electric consumption, compensation for parking attendants and security, and upkeep of the physical structures.

5. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; IT IS NOT SUFFICIENT FOR THE OFFICE OF THE SOLICITOR GENERAL (OSG) TO CLAIM THAT THE POWER TO REGULATE AND CONTROL THE USE, OCCUPANCY AND MAINTENANCE OF BUILDINGS AND

STRUCTURES CARRIES WITH IT THE POWER TO IMPOSE FEES AND TO CONTROL THE IMPOSITION OF SUCH FEES; EXPLAINED.— It is not sufficient for the OSG to claim that "the power to regulate and control the use, occupancy, and maintenance of buildings and structures carries with it the power to impose fees and, conversely, to control, partially or, as in this case, absolutely, the imposition of such fees." *Firstly*, the fees within the power of regulatory agencies to impose are **regulatory fees**. It has been settled law in this jurisdiction that this broad and all-compassing governmental competence to restrict rights of liberty and property carries with it the undeniable power to collect a regulatory fee. It looks to the enactment of specific measures that govern the relations not only as between individuals but also as between private parties and the political society. True, if the regulatory agencies have the power to impose regulatory fees, then conversely, they also have the power to remove the same. Even so, it is worthy to note that the present case does not involve the imposition by the DPWH Secretary and local building officials of regulatory fees upon respondents; but the collection by respondents of **parking fees** from persons who use the mall parking facilities. *Secondly*, assuming *arguendo* that the DPWH Secretary and local building officials do have regulatory powers over the collection of parking fees for the use of privately owned parking facilities, they cannot allow or prohibit such collection arbitrarily or whimsically. Whether allowing or prohibiting the collection of such parking fees, the action of the DPWH Secretary and local building officials must pass the test of classic reasonableness and propriety of the measures or means in the promotion of the ends sought to be accomplished.

6. ID.; STATUTES; NATIONAL BUILDING CODE; CHAPTER 8 THEREOF ON LIGHT AND VENTILATION DOES NOT NECESSARILY INCLUDE OR IMPLY THE LATTER.— xxx [T]he Court notes that Section 803 of the National Building Code falls under Chapter 8 on **Light and Ventilation**. Evidently, the Code deems it necessary to regulate site occupancy to ensure that there is proper lighting and ventilation in every building. Pursuant thereto, Rule XIX of the IRR requires that a building, depending on its specific use and/or floor area, should provide a minimum number of parking spaces. The Court, however, fails to see the connection between regulating site occupancy to ensure proper light and ventilation in every building *vis-à-*

vis regulating the collection by building owners of fees for the use of their parking spaces. Contrary to the averment of the OSG, the former does not necessarily include or imply the latter. It totally escapes this Court how lighting and ventilation conditions at the malls could be affected by the fact that parking facilities thereat are free or paid for. The OSG attempts to provide the missing link by arguing that: Under Section 803 of the National Building Code, complimentary parking spaces are required to enhance light and ventilation, that is, to avoid traffic congestion in areas surrounding the building, which certainly affects the ventilation within the building itself, which otherwise, the annexed parking spaces would have served. Free-of-charge parking avoids traffic congestion by ensuring quick and easy access of legitimate shoppers to off-street parking spaces annexed to the malls, and thereby removing the vehicles of these legitimate shoppers off the busy streets near the commercial establishments. The Court is unconvinced. The National Building Code regulates **buildings**, by setting the minimum specifications and requirements for the same. It does not concern itself with **traffic congestion** in areas surrounding the building. It is already a stretch to say that the National Building Code and its IRR also intend to solve the problem of traffic congestion around the buildings so as to ensure that the said buildings shall have adequate lighting and ventilation. Moreover, the Court cannot simply assume, as the OSG has apparently done, that the traffic congestion in areas around the malls is due to the fact that respondents charge for their parking facilities, thus, forcing vehicle owners to just park in the streets. The Court notes that despite the fees charged by respondents, vehicle owners still use the mall parking facilities, which are even fully occupied on some days. Vehicle owners may be parking in the streets only because there are not enough parking spaces in the malls, and not because they are deterred by the parking fees charged by respondents. Free parking spaces at the malls may even have the opposite effect from what the OSG envisioned: more people may be encouraged by the free parking to bring their own vehicles, instead of taking public transport, to the malls; as a result, the parking facilities would become full sooner, leaving more vehicles without parking spaces in the malls and parked in the streets instead, causing even more traffic congestion.

7. ID.; CONSTITUTIONAL LAW; INHERENT POWERS OF THE STATE; POLICE POWER; EXPLAINED.— Without using the term outright, the OSG is actually invoking police power to justify the regulation by the State, through the DPWH Secretary and local building officials, of privately owned parking facilities, including the collection by the owners/operators of such facilities of parking fees from the public for the use thereof. The Court finds, however, that in totally prohibiting respondents from collecting parking fees from the public for the use of the mall parking facilities, the State would be acting beyond the bounds of police power. Police power is the power of promoting the public welfare by restraining and regulating the use of liberty and property. It is usually exerted in order to merely regulate the use and enjoyment of the property of the owner. The power to regulate, however, does not include the power to prohibit. A *fortiori*, the power to regulate does not include the power to confiscate. Police power does not involve the taking or confiscation of property, with the exception of a few cases where there is a necessity to confiscate private property in order to destroy it for the purpose of protecting peace and order and of promoting the general welfare; for instance, the confiscation of an illegally possessed article, such as opium and firearms.

8. ID.; ID.; ID.; POWER OF EMINENT DOMAIN; THE PROHIBITION AGAINST COLLECTION OF PARKING FEES FROM THE PUBLIC IS TANTAMOUNT TO A TAKING OR CONFISCATION OF PROPERTIES.— When there is a taking or confiscation of private property for public use, the State is no longer exercising police power, but another of its inherent powers, namely, eminent domain. Eminent domain enables the State to forcibly acquire private lands intended for public use upon payment of just compensation to the owner. Normally, of course, the power of eminent domain results in the taking or appropriation of title to, and possession of, the expropriated property; but no cogent reason appears why the said power may not be availed of only to impose a burden upon the owner of condemned property, without loss of title and possession. It is a settled rule that neither acquisition of title nor total destruction of value is essential to taking. It is usually in cases where title remains with the private owner that inquiry should be made to determine whether the impairment of a property is

> merely regulated or amounts to a compensable taking. A regulation that deprives any person of the profitable use of his property constitutes a taking and entitles him to compensation, unless the invasion of rights is so slight as to permit the regulation to be justified under the police power. Similarly, a police regulation that unreasonably restricts the right to use business property for business purposes amounts to a taking of private property, and the owner may recover therefor. Although in the present case, title to and/or possession of the parking facilities remain/s with respondents, the prohibition against their collection of parking fees from the public, for the use of said facilities, is already tantamount to a taking or confiscation of their properties. The State is not only requiring that respondents devote a portion of the latter's properties for use as parking spaces, but is also mandating that they give the public access to said parking spaces for free. Such is already an excessive intrusion into the property rights of respondents. Not only are they being deprived of the right to use a portion of their properties as they wish, they are further prohibited from profiting from its use or even just recovering therefrom the expenses for the maintenance and operation of the required parking facilities.

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D E C I S I O N

CHICO-NAZARIO, *J.*:

Before this Court is a Petition for Review on *Certiorari*,[1] under Rule 45 of the Revised Rules of Court, filed by petitioner

[1] *Rollo*, pp. 26-43.

Office of the Solicitor General (OSG), seeking the reversal and setting aside of the Decision[2] dated 25 January 2007 of the Court of Appeals in CA-G.R. CV No. 76298, which affirmed *in toto* the Joint Decision[3] dated 29 May 2002 of the Regional Trial Court (RTC) of Makati City, Branch 138, in Civil Cases No. 00-1208 and No. 00-1210; and (2) the Resolution[4] dated 14 March 2007 of the appellate court in the same case which denied the Motion for Reconsideration of the OSG. The RTC adjudged that respondents Ayala Land Incorporated (Ayala Land), Robinsons Land Corporation (Robinsons), Shangri-la Plaza Corporation (Shangri-la), and SM Prime Holdings, Inc. (SM Prime) could not be obliged to provide free parking spaces in their malls to their patrons and the general public.

Respondents Ayala Land, Robinsons, and Shangri-la maintain and operate shopping malls in various locations in Metro Manila. Respondent SM Prime constructs, operates, and leases out commercial buildings and other structures, among which, are SM City, Manila; SM Centerpoint, Sta. Mesa, Manila; SM City, North Avenue, Quezon City; and SM Southmall, Las Piñas.

The shopping malls operated or leased out by respondents have parking facilities for all kinds of motor vehicles, either by way of parking spaces inside the mall buildings or in separate buildings and/or adjacent lots that are solely devoted for use as parking spaces. Respondents Ayala Land, Robinsons, and SM Prime spent for the construction of their own parking facilities. Respondent Shangri-la is renting its parking facilities, consisting of land and building specifically used as parking spaces, which were constructed for the lessor's account.

Respondents expend for the maintenance and administration of their respective parking facilities. They provide security personnel to protect the vehicles parked in their parking facilities and maintain order within the area. In turn, they collect the

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[2] Penned by Associate Justice Myrna Dimaranan Vidal with Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, concurring; *rollo*, pp. 45-58.

[3] Penned by Judge Sixto Marella, Jr.; *rollo*, pp. 250-260.

[4] *Rollo*, pp. 59-60.

following parking fees from the persons making use of their parking facilities, regardless of whether said persons are mall patrons or not:

Respondent	**Parking Fees**
Ayala Land	On weekdays, ₱25.00 for the first four hours and ₱10.00 for every succeeding hour; on weekends, flat rate of ₱25.00 per day
Robinsons	₱20.00 for the first three hours and ₱10.00 for every succeeding hour
Shangri-la	Flat rate of ₱30.00 per day
SM Prime	₱10.00 to ₱20.00 (depending on whether the parking space is outdoors or indoors) for the first three hours and 59 minutes, and ₱10.00 for every succeeding hour or fraction thereof

The parking tickets or cards issued by respondents to vehicle owners contain the stipulation that respondents shall not be responsible for any loss or damage to the vehicles parked in respondents' parking facilities.

In 1999, the Senate Committees on Trade and Commerce and on Justice and Human Rights conducted a joint investigation for the following purposes: (1) to inquire into the legality of the prevalent practice of shopping malls of charging parking fees; (2) assuming *arguendo* that the collection of parking fees was legally authorized, to find out the basis and reasonableness of the parking rates charged by shopping malls; and (3) to determine the legality of the policy of shopping malls of denying liability in cases of theft, robbery, or carnapping, by invoking the waiver clause at the back of the parking tickets. Said Senate Committees invited the top executives of respondents, who operate the major malls in the country; the officials from the Department of Trade and Industry (DTI), Department of Public Works and Highways (DPWH), Metro Manila Development Authority (MMDA), and other local government officials; and the Philippine Motorists Association (PMA) as representative of the consumers' group.

After three public hearings held on 30 September, 3 November, and 1 December 1999, the afore-mentioned Senate Committees jointly issued Senate Committee Report No. 225[5] on 2 May 2000, in which they concluded:

> In view of the foregoing, the Committees find that the collection of parking fees by shopping malls is contrary to the National Building Code and is therefor [*sic*] illegal. While it is true that the Code merely requires malls to provide parking spaces, without specifying whether it is free or not, both Committees believe that the reasonable and logical interpretation of the Code is that the parking spaces are for free. This interpretation is not only reasonable and logical but finds support in the actual practice in other countries like the United States of America where parking spaces owned and operated by mall owners are free of charge.
>
> Figuratively speaking, the Code has "expropriated" the land for parking – something similar to the subdivision law which require developers to devote so much of the land area for parks.
>
> Moreover, Article II of R.A. No. 9734 (Consumer Act of the Philippines) provides that *"it is the policy of the State to protect the interest of the consumers, promote the general welfare and establish standards of conduct for business and industry."* Obviously, a contrary interpretation (*i.e.*, justifying the collection of parking fees) would be going against the declared policy of R.A. 7394.
>
> Section 201 of the National Building Code gives the responsibility for the administration and enforcement of the provisions of the Code, including the imposition of penalties for administrative violations thereof to the Secretary of Public Works. This set up, however, is not being carried out in reality.
>
> In the position paper submitted by the Metropolitan Manila Development Authority (MMDA), its chairman, Jejomar C. Binay, accurately pointed out that the Secretary of the DPWH is responsible for the implementation/enforcement of the National Building Code. After the enactment of the Local Government Code of 1991, the local government units (LGU's) were tasked to discharge the regulatory powers of the DPWH. Hence, in the local level, the Building Officials enforce all rules/ regulations formulated by the

[5] *Id.* at 410-431.

DPWH relative to all building plans, specifications and designs including parking space requirements. There is, however, no single national department or agency directly tasked to supervise the enforcement of the provisions of the Code on parking, notwithstanding the national character of the law.[6]

Senate Committee Report No. 225, thus, contained the following recommendations:

> In light of the foregoing, the Committees on Trade and Commerce and Justice and Human Rights hereby recommend the following:
>
> 1. The Office of the Solicitor General should institute the necessary action to enjoin the collection of parking fees as well as to enforce the penal sanction provisions of the National Building Code. The Office of the Solicitor General should likewise study how refund can be exacted from mall owners who continue to collect parking fees.
>
> 2. The Department of Trade and Industry pursuant to the provisions of R.A. No. 7394, otherwise known as the Consumer Act of the Philippines should enforce the provisions of the Code relative to parking. Towards this end, the DTI should formulate the necessary implementing rules and regulations on parking in shopping malls, with prior consultations with the local government units where these are located. Furthermore, the DTI, in coordination with the DPWH, should be empowered to regulate and supervise the construction and maintenance of parking establishments.
>
> 3. Finally, Congress should amend and update the National Building Code to expressly prohibit shopping malls from collecting parking fees by at the same time, prohibit them from invoking the waiver of liability.[7]

Respondent SM Prime thereafter received information that, pursuant to Senate Committee Report No. 225, the DPWH Secretary and the local building officials of Manila, Quezon City, and Las Piñas intended to institute, through the OSG, an action to enjoin respondent SM Prime and similar establishments from collecting parking fees, and to impose upon said

[6] *Id.* at 420-421.

[7] *Id.* at 421-422.

establishments penal sanctions under Presidential Decree No. 1096, otherwise known as the National Building Code of the Philippines (National Building Code), and its Implementing Rules and Regulations (IRR). With the threatened action against it, respondent SM Prime filed, on 3 October 2000, a Petition for Declaratory Relief[8] under Rule 63 of the Revised Rules of Court, against the DPWH Secretary and local building officials of Manila, Quezon City, and Las Piñas. Said Petition was docketed as Civil Case No. 00-1208 and assigned to the RTC of Makati City, Branch 138, presided over by Judge Sixto Marella, Jr. (Judge Marella). In its Petition, respondent SM Prime prayed for judgment:

> a) Declaring Rule XIX of the Implementing Rules and Regulations of the National Building Code as *ultra vires*, hence, unconstitutional and void;
>
> b) Declaring [herein respondent SM Prime]'s clear legal right to lease parking spaces appurtenant to its department stores, malls, shopping centers and other commercial establishments; and
>
> c) Declaring the National Building Code of the Philippines Implementing Rules and Regulations as ineffective, not having been published once a week for three (3) consecutive weeks in a newspaper of general circulation, as prescribed by Section 211 of Presidential Decree No. 1096.
>
> [Respondent SM Prime] further prays for such other reliefs as may be deemed just and equitable under the premises.[9]

The very next day, 4 October 2000, the OSG filed a Petition for Declaratory Relief and Injunction (with Prayer for Temporary Restraining Order and Writ of Preliminary Injunction)[10] against respondents. This Petition was docketed as Civil Case No. 00-1210 and raffled to the RTC of Makati, Branch 135, presided over by Judge Francisco B. Ibay (Judge Ibay). Petitioner prayed that the RTC:

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[8] *Id.* at 64-89.

[9] *Id.* at 86-87.

[10] *Id.* at 90-95.

1. After summary hearing, a temporary restraining order and a writ of preliminary injunction be issued restraining respondents from collecting parking fees from their customers; and

2. After hearing, judgment be rendered declaring that the practice of respondents in charging parking fees is violative of the National Building Code and its Implementing Rules and Regulations and is therefore invalid, and making permanent any injunctive writ issued in this case.

Other reliefs just and equitable under the premises are likewise prayed for.[11]

On 23 October 2000, Judge Ibay of the RTC of Makati City, Branch 135, issued an Order consolidating Civil Case No. 00-1210 with Civil Case No. 00-1208 pending before Judge Marella of RTC of Makati, Branch 138.

As a result of the pre-trial conference held on the morning of 8 August 2001, the RTC issued a Pre-Trial Order[12] of even date which limited the issues to be resolved in Civil Cases No. 00-1208 and No. 00-1210 to the following:

1. Capacity of the plaintiff [OSG] in Civil Case No. 00-1210 to institute the present proceedings and relative thereto whether the controversy in the collection of parking fees by mall owners is a matter of public welfare.

2. Whether declaratory relief is proper.

3. Whether respondent Ayala Land, Robinsons, Shangri-La and SM Prime are obligated to provide parking spaces in their malls for the use of their patrons or the public in general, free of charge.

4. Entitlement of the parties of [sic] award of damages.[13]

On 29 May 2002, the RTC rendered its Joint Decision in Civil Cases No. 00-1208 and No. 00-1210.

The RTC resolved the first two issues affirmatively. It ruled that the OSG can initiate Civil Case No. 00-1210 under

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

[12] Penned by Judge Sixto Marella, Jr., *id.*, at 61-63.

[13] *Id.* at 62-63.

Presidential Decree No. 478 and the Administrative Code of 1987.[14] It also found that all the requisites for an action for declaratory relief were present, to wit:

> The requisites for an action for declaratory relief are: (a) there is a justiciable controversy; (b) the controversy is between persons whose interests are adverse; (c) the party seeking the relief has a legal interest in the controversy; and (d) the issue involved is ripe for judicial determination.
>
> SM, the petitioner in Civil Case No. 001-1208 [*sic*] is a mall operator who stands to be affected directly by the position taken by the government officials sued namely the Secretary of Public Highways and the Building Officials of the local government units where it operates shopping malls. The OSG on the other hand acts on a matter of public interest and has taken a position adverse to that of the mall owners whom it sued. The construction of new and bigger malls has been announced, a matter which the Court can take judicial notice and the unsettled issue of whether mall operators should provide parking facilities, free of charge needs to be resolved.[15]

As to the third and most contentious issue, the RTC pronounced that:

> The Building Code, which is the enabling law and the Implementing Rules and Regulations do not impose that parking spaces shall be provided by the mall owners free of charge. Absent such directive[,] Ayala Land, Robinsons, Shangri-la and SM [Prime] are under no obligation to provide them for free. Article 1158 of the Civil Code is clear:
>
> > "Obligations derived from law are not presumed. Only those expressly determined in this Code or in special laws are demandable and shall be regulated by the precepts of the law which establishes them; and as to what has not been foreseen, by the provisions of this Book (1090).["]
>
> x x x x x x x x x

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[14] Section 1 of Presidential Decree No. 478 and Section 35, Chapter12, Title III of the Administrative Code of 1987, enumerate the powers and functions of the OSG.

[15] *Rollo*, p. 252.

The provision on ratios of parking slots to several variables, like shopping floor area or customer area found in Rule XIX of the Implementing Rules and Regulations cannot be construed as a directive to provide free parking spaces, because the enabling law, the Building Code does not so provide. x x x.

To compel Ayala Land, Robinsons, Shangri-La and SM [Prime] to provide parking spaces for free can be considered as an unlawful taking of property right without just compensation.

Parking spaces in shopping malls are privately owned and for their use, the mall operators collect fees. The legal relationship could be either lease or deposit. In either case[,] the mall owners have the right to collect money which translates into income. Should parking spaces be made free, this right of mall owners shall be gone. This, without just compensation. Further, loss of effective control over their property will ensue which is frowned upon by law.

The presence of parking spaces can be viewed in another light. They can be looked at as necessary facilities to entice the public to increase patronage of their malls because without parking spaces, going to their malls will be inconvenient. These are[,] however[,] business considerations which mall operators will have to decide for themselves. They are not sufficient to justify a legal conclusion, as the OSG would like the Court to adopt that it is the obligation of the mall owners to provide parking spaces for free.[16]

The RTC then held that there was no sufficient evidence to justify any award for damages.

The RTC finally decreed in its 29 May 2002 Joint Decision in Civil Cases No. 00-1208 and No. 00-1210 that:

FOR THE REASONS GIVEN, the Court declares that Ayala Land[,] Inc., Robinsons Land Corporation, Shangri-la Plaza Corporation and SM Prime Holdings[,] Inc. are not obligated to provide parking spaces in their malls for the use of their patrons or public in general, free of charge.

All counterclaims in Civil Case No. 00-1210 are dismissed.

No pronouncement as to costs.[17]

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[16] *Id.* at 258-260.

[17] *Id.* at 260.

CA-G.R. CV No. 76298 involved the separate appeals of the OSG[18] and respondent SM Prime[19] filed with the Court of Appeals. The sole assignment of error of the OSG in its Appellant's Brief was:

THE TRIAL COURT ERRED IN HOLDING THAT THE NATIONAL BUILDING CODE DID NOT INTEND MALL PARKING SPACES TO BE FREE OF CHARGE[;][20]

while the four errors assigned by respondent SM Prime in its Appellant's Brief were:

I

THE TRIAL COURT ERRED IN FAILING TO DECLARE RULE XIX OF THE IMPLEMENTING RULES AS HAVING BEEN ENACTED *ULTRA VIRES*, HENCE, UNCONSTITUTIONAL AND VOID.

II

THE TRIAL COURT ERRED IN FAILING TO DECLARE THE IMPLEMENTING RULES INEFFECTIVE FOR NOT HAVING BEEN PUBLISHED AS REQUIRED BY LAW.

III

THE TRIAL COURT ERRED IN FAILING TO DISMISS THE OSG'S PETITION FOR DECLARATORY RELIEF AND INJUNCTION FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES.

IV

THE TRIAL COURT ERRED IN FAILING TO DECLARE THAT THE OSG HAS NO LEGAL CAPACITY TO SUE AND/OR THAT IT IS NOT A REAL PARTY-IN-INTEREST IN THE INSTANT CASE.[21]

Respondent Robinsons filed a Motion to Dismiss Appeal of the OSG on the ground that the lone issue raised therein involved a pure question of law, not reviewable by the Court of Appeals.

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[18] *Id.* at 263-272.

[19] *Id.* at 461-516.

[20] *Id.* at 263.

[21] *Id.* at 462.

The Court of Appeals promulgated its Decision in CA-G.R. CV No. 76298 on 25 January 2007. The appellate court agreed with respondent Robinsons that the appeal of the OSG should suffer the fate of dismissal, since "the issue on whether or not the National Building Code and its implementing rules require shopping mall operators to provide parking facilities to the public for free" was evidently a question of law. Even so, since CA-G.R. CV No. 76298 also included the appeal of respondent SM Prime, which raised issues worthy of consideration, and in order to satisfy the demands of substantial justice, the Court of Appeals proceeded to rule on the merits of the case.

In its Decision, the Court of Appeals affirmed the capacity of the OSG to initiate Civil Case No. 00-1210 before the RTC as the legal representative of the government,[22] and as the one deputized by the Senate of the Republic of the Philippines through Senate Committee Report No. 225.

The Court of Appeals rejected the contention of respondent SM Prime that the OSG failed to exhaust administrative remedies.

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[22] Citing Section 35, Chapter XII, Title III, Book IV of Executive Order No. 292, otherwise known as the Administrative Code of 1987, which provide:

> 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 a lawyer. 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 a lawyer. It shall have the following specific powers and functions:
>
> x x x x x x x x x
>
> (3) Appear in any court in any action involving the validity of any treaty, law, executive order or proclamation, rule or regulation when in his judgment his intervention is necessary or when requested by the Court.
>
> x x x x x x x x x
>
> (11) Act and represent the Republic and/or the people before any court, tribunal, body or commission in any matter, action or proceeding which, in his opinion, affects the welfare of the people as the ends of justice may require; x x x.

The appellate court explained that an administrative review is not a condition precedent to judicial relief where the question in dispute is purely a legal one, and nothing of an administrative nature is to be or can be done.

The Court of Appeals likewise refused to rule on the validity of the IRR of the National Building Code, as such issue was not among those the parties had agreed to be resolved by the RTC during the pre-trial conference for Civil Cases No. 00-1208 and No. 00-1210. Issues cannot be raised for the first time on appeal. Furthermore, the appellate court found that the controversy could be settled on other grounds, without touching on the issue of the validity of the IRR. It referred to the settled rule that courts should refrain from passing upon the constitutionality of a law or implementing rules, because of the principle that bars judicial inquiry into a constitutional question, unless the resolution thereof is indispensable to the determination of the case.

Lastly, the Court of Appeals declared that Section 803 of the National Building Code and Rule XIX of the IRR were clear and needed no further construction. Said provisions were only intended to control the occupancy or congestion of areas and structures. In the absence of any express and clear provision of law, respondents could not be obliged and expected to provide parking slots free of charge.

The *fallo* of the 25 January 2007 Decision of the Court of Appeals reads:

> WHEREFORE, premises considered, the instant appeals are **DENIED**. Accordingly, appealed Decision is hereby **AFFIRMED *in toto***.[23]

In its Resolution issued on 14 March 2007, the Court of Appeals denied the Motion for Reconsideration of the OSG, finding that the grounds relied upon by the latter had already been carefully considered, evaluated, and passed upon by the appellate court, and there was no strong and cogent reason to modify much less reverse the assailed judgment.

[23] *Rollo*, p. 57.

The OSG now comes before this Court, via the instant Petition for Review, with a single assignment of error:

THE COURT OF APPEALS SERIOUSLY ERRED IN AFFIRMING THE RULING OF THE LOWER COURT THAT RESPONDENTS ARE NOT OBLIGED TO PROVIDE FREE PARKING SPACES TO THEIR CUSTOMERS OR THE PUBLIC.[24]

The OSG argues that respondents are mandated to provide free parking by Section 803 of the National Building Code and Rule XIX of the IRR.

According to Section 803 of the National Building Code:

SECTION 803. Percentage of Site Occupancy

(a) Maximum site occupancy shall be governed by the use, type of construction, and height of the building and the use, area, nature, and location of the site; and subject to the provisions of the local zoning requirements and in accordance with the rules and regulations promulgated by the Secretary.

In connection therewith, Rule XIX of the old IRR,[25] provides:

RULE XIX – PARKING AND LOADING SPACE REQUIREMENTS

Pursuant to Section 803 of the National Building Code (PD 1096) providing for maximum site occupancy, the following provisions on parking and loading space requirements shall be observed:

1. The parking space ratings listed below are minimum off-street requirements for specific uses/occupancies for buildings/structures:

    1.1 The size of an average automobile parking slot shall be computed as 2.4 meters by 5.00 meters for perpendicular or diagonal parking, 2.00 meters by 6.00 meters for parallel parking. A truck or bus

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[24] *Id.* at 33.

[25] A Revised IRR took effect on 30 April 2005. Rule XIX of the old IRR was reproduced in Table VII.4 (Minimum Required Off-Street (Off-RROW)-cum-On-Site Parking Slot, Parking Area and Loading/Unloading Space Requirements by Allowed Use or Occupancy) of the Revised IRR.

> parking/loading slot shall be computed at a minimum of 3.60 meters by 12.00 meters. The parking slot shall be drawn to scale and the total number of which shall be indicated on the plans and specified whether or not parking accommodations, are attendant-managed. (See Section 2 for computation of parking requirements).
>
> x x x x x x x x x
>
> 1.7 Neighborhood shopping center – 1 slot/100 sq. m. of shopping floor area

The OSG avers that the aforequoted provisions should be read together with Section 102 of the National Building Code, which declares:

> **SECTION 102. Declaration of Policy**
>
> It is hereby declared to be the policy of the State to safeguard life, health, property, and public welfare, consistent with the principles of sound environmental management and control; and to this end, make it the purpose of this Code to provide for all buildings and structures, a framework of minimum standards and requirements to regulate and control their location, site, design, quality of materials, construction, use, occupancy, and maintenance.

The requirement of free-of-charge parking, the OSG argues, greatly contributes to the aim of safeguarding "life, health, property, and public welfare, consistent with the principles of sound environmental management and control." Adequate parking spaces would contribute greatly to alleviating traffic congestion when complemented by quick and easy access thereto because of free-charge parking. Moreover, the power to regulate and control the use, occupancy, and maintenance of buildings and structures carries with it the power to impose fees and, conversely, to control — partially or, as in this case, absolutely — the imposition of such fees.

The Court finds no merit in the present Petition.

The explicit directive of the afore-quoted statutory and regulatory provisions, garnered from a plain reading thereof, is

that respondents, as operators/lessors of neighborhood shopping centers, should provide parking and loading spaces, in accordance with the minimum ratio of one slot per 100 square meters of shopping floor area. There is nothing therein pertaining to the collection (or non-collection) of parking fees by respondents. In fact, the term "parking fees" cannot even be found at all in the entire National Building Code and its IRR.

Statutory construction has it that if a statute is clear and unequivocal, it must be given its literal meaning and applied without any attempt at interpretation.[26] Since Section 803 of the National Building Code and Rule XIX of its IRR do not mention parking fees, then simply, said provisions do not regulate the collection of the same. The RTC and the Court of Appeals correctly applied Article 1158 of the New Civil Code, which states:

> Art. 1158. Obligations derived from law are not presumed. Only those **expressly determined** in this Code or in special laws are demandable, and shall be regulated by the precepts of the law which establishes them; and as to what has not been foreseen, by the provisions of this Book. (Emphasis ours.)

Hence, in order to bring the matter of parking fees within the ambit of the National Building Code and its IRR, the OSG had to resort to specious and feeble argumentation, in which the Court cannot concur.

The OSG cannot rely on Section 102 of the National Building Code to expand the coverage of Section 803 of the same Code and Rule XIX of the IRR, so as to include the regulation of parking fees. The OSG limits its citation to the first part of Section 102 of the National Building Code declaring the policy of the State "to safeguard life, health, property, and public welfare, consistent with the principles of sound environmental management and control"; but totally ignores the second part of said provision, which reads, "and to this end, make it the purpose of this Code to provide for all buildings and structures, **a framework of minimum standards and requirements** to

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[26] *Soria v. Desierto*, 490 Phil. 749, 754 (2005).

regulate and control their location, site, design, quality of materials, construction, use, occupancy, and maintenance." While the first part of Section 102 of the National Building Code lays down the State policy, it is the second part thereof that explains how said policy shall be carried out in the Code. Section 102 of the National Building Code is not an all-encompassing grant of regulatory power to the DPWH Secretary and local building officials in the name of life, health, property, and public welfare. On the contrary, it limits the regulatory power of said officials to ensuring that the minimum standards and requirements for all buildings and structures, as set forth in the National Building Code, are complied with.

Consequently, the OSG cannot claim that in addition to fixing the minimum requirements for parking spaces for buildings, Rule XIX of the IRR also mandates that such parking spaces be provided by building owners free of charge. If Rule XIX is not covered by the enabling law, then it cannot be added to or included in the implementing rules. The rule-making power of administrative agencies must be confined to details for regulating the mode or proceedings to carry into effect the law as it has been enacted, and it cannot be extended to amend or expand the statutory requirements or to embrace matters not covered by the statute. Administrative regulations must always be in harmony with the provisions of the law because any resulting discrepancy between the two will always be resolved in favor of the basic law.[27]

From the RTC all the way to this Court, the OSG repeatedly referred to *Republic v. Gonzales*[28] and *City of Ozamis v. Lumapas*[29] to support its position that the State has the power to regulate parking spaces to promote the health, safety, and welfare of the public; and it is by virtue of said power that respondents may be required to provide free parking facilities. The OSG, though, failed to consider the substantial differences

[27] *Land Bank of the Philippines v. Court of Appeals*, 327 Phil. 1048, 1052 (1996).

[28] G.R. Nos. 45338-39, 31 July 1991, 199 SCRA 788, 793.

[29] 160 Phil. 33 (1975).

in the factual and legal backgrounds of these two cases from those of the Petition at bar.

In *Republic*, the Municipality of Malabon sought to eject the occupants of two parcels of land of the public domain to give way to a road-widening project. It was in this context that the Court pronounced:

> Indiscriminate parking along F. Sevilla Boulevard and other main thoroughfares was prevalent; this, of course, caused the build up of traffic in the surrounding area to the great discomfort and inconvenience of the public who use the streets. Traffic congestion constitutes a threat to the health, welfare, safety and convenience of the people and it can only be substantially relieved by widening streets and providing adequate parking areas.

The Court, in *City of Ozamis*, declared that the City had been clothed with full power to control and regulate its streets for the purpose of promoting public health, safety and welfare. The City can regulate the time, place, and manner of parking in the streets and public places; and charge minimal fees for the street parking to cover the expenses for supervision, inspection and control, to ensure the smooth flow of traffic in the environs of the public market, and for the safety and convenience of the public.

Republic and *City of Ozamis* involved parking in the local streets; in contrast, the present case deals with privately owned parking facilities available for use by the general public. In *Republic* and *City of Ozamis*, the concerned local governments regulated parking pursuant to their power to control and regulate their streets; in the instant case, the DPWH Secretary and local building officials regulate parking pursuant to their authority to ensure compliance with the minimum standards and requirements under the National Building Code and its IRR. With the difference in subject matters and the bases for the regulatory powers being invoked, *Republic* and *City of Ozamis* do not constitute precedents for this case.

Indeed, *Republic* and *City of Ozamis* both contain pronouncements that weaken the position of the OSG in the

case at bar. In *Republic*, the Court, instead of placing the burden on private persons to provide parking facilities to the general public, mentioned the trend in other jurisdictions wherein the municipal governments themselves took the initiative to make more parking spaces available so as to alleviate the traffic problems, thus:

> Under the Land Transportation and Traffic Code, parking in designated areas along public streets or highways is allowed which clearly indicates that provision for parking spaces serves a useful purpose. In other jurisdictions where traffic is at least as voluminous as here, the provision by municipal governments of parking space is not limited to parking along public streets or highways. There has been a marked trend to build off-street parking facilities with the view to removing parked cars from the streets. While the provision of off-street parking facilities or carparks has been commonly undertaken by private enterprise, municipal governments have been constrained to put up carparks in response to public necessity where private enterprise had failed to keep up with the growing public demand. American courts have upheld the right of municipal governments to construct off-street parking facilities as clearly redounding to the public benefit.[30]

In *City of Ozamis*, the Court authorized the collection by the City of minimal fees for the parking of vehicles along the streets: so why then should the Court now preclude respondents from collecting from the public a fee for the use of the mall parking facilities? Undoubtedly, respondents also incur expenses in the maintenance and operation of the mall parking facilities, such as electric consumption, compensation for parking attendants and security, and upkeep of the physical structures.

It is not sufficient for the OSG to claim that "the power to regulate and control the use, occupancy, and maintenance of buildings and structures carries with it the power to impose fees and, conversely, to control, partially or, as in this case, absolutely, the imposition of such fees." *Firstly*, the fees within the power of regulatory agencies to impose are **regulatory fees**. It has been settled law in this jurisdiction that this broad and all-compassing governmental competence to restrict rights of

[30] *Republic v. Gonzales*, *supra* note 28 at 793.

liberty and property carries with it the undeniable power to collect a regulatory fee. It looks to the enactment of specific measures that govern the relations not only as between individuals but also as between private parties and the political society.[31] True, if the regulatory agencies have the power to impose regulatory fees, then conversely, they also have the power to remove the same. Even so, it is worthy to note that the present case does not involve the imposition by the DPWH Secretary and local building officials of regulatory fees upon respondents; but the collection by respondents of **parking fees** from persons who use the mall parking facilities. *Secondly*, assuming *arguendo* that the DPWH Secretary and local building officials do have regulatory powers over the collection of parking fees for the use of privately owned parking facilities, they cannot allow or prohibit such collection arbitrarily or whimsically. Whether allowing or prohibiting the collection of such parking fees, the action of the DPWH Secretary and local building officials must pass the test of classic reasonableness and propriety of the measures or means in the promotion of the ends sought to be accomplished.[32]

Keeping in mind the aforementioned test of reasonableness and propriety of measures or means, the Court notes that Section 803 of the National Building Code falls under Chapter 8 on **Light and Ventilation**. Evidently, the Code deems it necessary to regulate site occupancy to ensure that there is proper lighting and ventilation in every building. Pursuant thereto, Rule XIX of the IRR requires that a building, depending on its specific use and/or floor area, should provide a minimum number of parking spaces. The Court, however, fails to see the connection between regulating site occupancy to ensure proper light and ventilation in every building *vis-à-vis* regulating the collection by building owners of fees for the use of their parking spaces. Contrary to the averment of the OSG, the former does not necessarily include or imply the latter. It totally escapes this

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[31] *Republic v. Philippine Rabbit Bus Lines*, 143 Phil. 158, 163 (1970).

[32] *Acebedo Optical Company, Inc. v. Court of Appeals*, 385 Phil. 956, 969 (2000).

Court how lighting and ventilation conditions at the malls could be affected by the fact that parking facilities thereat are free or paid for.

The OSG attempts to provide the missing link by arguing that:

> Under Section 803 of the National Building Code, complimentary parking spaces are required to enhance light and ventilation, that is, to avoid traffic congestion in areas surrounding the building, which certainly affects the ventilation within the building itself, which otherwise, the annexed parking spaces would have served. Free-of-charge parking avoids traffic congestion by ensuring quick and easy access of legitimate shoppers to off-street parking spaces annexed to the malls, and thereby removing the vehicles of these legitimate shoppers off the busy streets near the commercial establishments.[33]

The Court is unconvinced. The National Building Code regulates **buildings**, by setting the minimum specifications and requirements for the same. It does not concern itself with **traffic congestion** in areas surrounding the building. It is already a stretch to say that the National Building Code and its IRR also intend to solve the problem of traffic congestion around the buildings so as to ensure that the said buildings shall have adequate lighting and ventilation. Moreover, the Court cannot simply assume, as the OSG has apparently done, that the traffic congestion in areas around the malls is due to the fact that respondents charge for their parking facilities, thus, forcing vehicle owners to just park in the streets. The Court notes that despite the fees charged by respondents, vehicle owners still use the mall parking facilities, which are even fully occupied on some days. Vehicle owners may be parking in the streets only because there are not enough parking spaces in the malls, and not because they are deterred by the parking fees charged by respondents. Free parking spaces at the malls may even have the opposite effect from what the OSG envisioned: more people may be encouraged by the free parking to bring their own vehicles, instead of taking public transport, to the malls; as a result, the parking facilities would become full sooner, leaving more vehicles

[33] *Rollo*, pp. 36-37.

without parking spaces in the malls and parked in the streets instead, causing even more traffic congestion.

Without using the term outright, the OSG is actually invoking police power to justify the regulation by the State, through the DPWH Secretary and local building officials, of privately owned parking facilities, including the collection by the owners/operators of such facilities of parking fees from the public for the use thereof. The Court finds, however, that in totally prohibiting respondents from collecting parking fees from the public for the use of the mall parking facilities, the State would be acting beyond the bounds of police power.

Police power is the power of promoting the public welfare by restraining and regulating the use of liberty and property. It is usually exerted in order to merely regulate the use and enjoyment of the property of the owner. The power to regulate, however, does not include the power to prohibit. A *fortiori*, the power to regulate does not include the power to confiscate. Police power does not involve the taking or confiscation of property, with the exception of a few cases where there is a necessity to confiscate private property in order to destroy it for the purpose of protecting peace and order and of promoting the general welfare; for instance, the confiscation of an illegally possessed article, such as opium and firearms. [34]

When there is a taking or confiscation of private property for public use, the State is no longer exercising police power, but another of its inherent powers, namely, eminent domain. Eminent domain enables the State to forcibly acquire private lands intended for public use upon payment of just compensation to the owner.[35]

Normally, of course, the power of eminent domain results in the taking or appropriation of title to, and possession of, the expropriated property; but no cogent reason appears why the said power may not be availed of only to impose a burden upon

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[34] See *City Government of Quezon City v. Judge Ericta*, 207 Phil. 648, 654 (1983).

[35] *Acuña v. Arroyo*, G.R. No. 79310, 14 July 1989, 175 SCRA 343, 370.

the owner of condemned property, without loss of title and possession.[36] It is a settled rule that neither acquisition of title nor total destruction of value is essential to taking. It is usually in cases where title remains with the private owner that inquiry should be made to determine whether the impairment of a property is merely regulated or amounts to a compensable taking. A regulation that deprives any person of the profitable use of his property constitutes a taking and entitles him to compensation, unless the invasion of rights is so slight as to permit the regulation to be justified under the police power. Similarly, a police regulation that unreasonably restricts the right to use business property for business purposes amounts to a taking of private property, and the owner may recover therefor.[37]

Although in the present case, title to and/or possession of the parking facilities remain/s with respondents, the prohibition against their collection of parking fees from the public, for the use of said facilities, is already tantamount to a taking or confiscation of their properties. The State is not only requiring that respondents devote a portion of the latter's properties for use as parking spaces, but is also mandating that they give the public access to said parking spaces for free. Such is already an excessive intrusion into the property rights of respondents. Not only are they being deprived of the right to use a portion of their properties as they wish, they are further prohibited from profiting from its use or even just recovering therefrom the expenses for the maintenance and operation of the required parking facilities.

The ruling of this Court in *City Government of Quezon City v. Judge Ericta*[38] is edifying. Therein, the City Government of Quezon City passed an ordinance obliging private cemeteries

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[36] *Republic of the Philippines v. Philippine Long Distance Telephone Company*, 136 Phil. 20, 29 (1969).

[37] See J. Romero's Dissenting Opinion in *Telecommunications and Broadcast Attorneys of the Philippines v. Commission on Elections*, 352 Phil. 153, 191 (1998). See also *People v. Fajardo*, 104 Phil. 443, 447-448 (1958).

[38] *Supra* note 34 at 656-657.

within its jurisdiction to set aside at least six percent of their total area for charity, that is, for burial grounds of deceased paupers. According to the Court, the ordinance in question was null and void, for it authorized the taking of private property without just compensation:

> There is no reasonable relation between the setting aside of at least six (6) percent of the total area of all private cemeteries for charity burial grounds of deceased paupers and the promotion of' health, morals, good order, safety, or the general welfare of the people. The ordinance is actually a taking without compensation of a certain area from a private cemetery to benefit paupers who are charges of the municipal corporation. Instead of building or maintaining a public cemetery for this purpose, the city passes the burden to private cemeteries.
>
> The expropriation without compensation of a portion of private cemeteries is not covered by Section 12(t) of Republic Act 537, the Revised Charter of Quezon City which empowers the city council to prohibit the burial of the dead within the center of population of the city and to provide for their burial in a proper place subject to the provisions of general law regulating burial grounds and cemeteries. When the Local Government Code, Batas Pambansa Blg. 337 provides in Section 177(q) that a sangguniang panlungsod may "provide for the burial of the dead in such place and in such manner as prescribed by law or ordinance" it simply authorizes the city to provide its own city owned land or to buy or expropriate private properties to construct public cemeteries. This has been the law, and practise in the past. It continues to the present. Expropriation, however, requires payment of just compensation. The questioned ordinance is different from laws and regulations requiring owners of subdivisions to set aside certain areas for streets, parks, playgrounds, and other public facilities from the land they sell to buyers of subdivision lots. The necessities of public safety, health, and convenience are very clear from said requirements which are intended to insure the development of communities with salubrious and wholesome environments. The beneficiaries of the regulation, in turn, are made to pay by the subdivision developer when individual lots are sold to homeowners.

In conclusion, the total prohibition against the collection by respondents of parking fees from persons who use the mall parking facilities has no basis in the National Building Code or

its IRR. The State also cannot impose the same prohibition by generally invoking police power, since said prohibition amounts to a taking of respondents' property without payment of just compensation.

Given the foregoing, the Court finds no more need to address the issue persistently raised by respondent SM Prime concerning the unconstitutionality of Rule XIX of the IRR. In addition, the said issue was not among those that the parties, during the pre-trial conference for Civil Cases No. 12-08 and No. 00-1210, agreed to submit for resolution of the RTC. It is likewise axiomatic that the constitutionality of a law, a regulation, an ordinance or an act will not be resolved by courts if the controversy can be, as in this case it has been, settled on other grounds.[39]

WHEREFORE, the instant Petition for Review on *Certiorari* is hereby *DENIED*. The Decision dated 25 January 2007 and Resolution dated 14 March 2007 of the Court of Appeals in CA-G.R. CV No. 76298, affirming *in toto* the Joint Decision dated 29 May 2002 of the Regional Trial Court of Makati City, Branch 138, in Civil Cases No. 00-1208 and No. 00-1210 are hereby *AFFIRMED*. No costs.

SO ORDERED.

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

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[39] *Ty v. Trampe*, G.R. No. 117577, 1 December 1995, 250 SCRA 500, 520.

SECOND DIVISION

[G.R. No. 177705. September 18, 2009]

KIMBERLY-CLARK PHILIPPINES, INC., *petitioner, vs.* **NORA DIMAYUGA, ROSEMARIE C. GLORIA, and MARICAR C. DE GUIA,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; POST EMPLOYMENT; RETIREMENT; ENTITLEMENT OF EMPLOYEES TO RETIREMENT BENEFITS MUST BE SPECIFICALLY GRANTED UNDER EXISTING LAWS, A COLLECTIVE BARGAINING AGREEMENT OR EMPLOYMENT CONTRACT, OR AN ESTABLISHED EMPLOYER POLICY; CASE AT BAR.— It is settled that entitlement of employees to retirement benefits must specifically be granted under existing laws, a collective bargaining agreement or employment contract, or an established employer policy. No law or collective bargaining agreement or other applicable contract, or an established company policy was existing during respondents' employment entitling them to the ₱200,000 lump-sum retirement pay. Petitioner was not thus obliged to grant them such pay.

2. ID.; ID.; ID.; ID.; DOCTRINE ON EQUAL TREATMENT OF EMPLOYEES BY EMPLOYER LAID DOWN IN *BUSINESSDAY* IS NOT APPLICABLE TO CASE AT BAR; EXPLAINED.— Respondents nevertheless argue that since other employees who resigned before the announcement of the grant of the lump sum retirement pay received the same, they (respondents) should also receive it, citing the pronouncement in *Businessday* that: x x x The law requires an employer to extend equal treatment to its employees. It may not, in the guise of exercising management prerogatives, grant greater benefits to some and less to others. Management prerogatives are not absolute prerogatives but are subject to legal limits, collective bargaining agreements, or general principles of fair play and justice. Respondents' reliance on *Businessday* is misplaced. The factual milieu in *Businessday* is markedly different from that of the present case. That case

involved the *retrenched* employees' separation pay to which they are entitled under Article 283 of the Labor Code. In the present case, Nora and Rosemarie *resigned* prior to petitioner's offer of the lump sum retirement pay as an incentive to those employees who would voluntarily avail of its early retirement scheme as a cost-cutting and streamlining measure. That respondents resigned, and not retrenched, is clear from their respective letters to petitioner. And nowhere in the letters is there any allegation that they resigned in view of the company's downward trend in sales which necessitated downsizing or streamlining.

3. ID.; ID.; ID.; ID.; GRANTING EARLY RETIREMENT PACKAGE TO EMPLOYEES WHO PREVIOUSLY RESIGNED FROM THE COMPANY IS AN ACT OF GENEROSITY, NOT AN OBLIGATION, OF THE EMPLOYER.— Petitioner's claim that it allowed Nora and Rosemarie to avail of the early retirement package despite their previous separation from the company out of pure generosity is well-taken in light of Nora's letter of September 15, 2002 asking if she could avail of the early retirement package as "it would certainly be of great assistance to us financially." It is thus absurd to fault petitioner for acceding to such a request out of compassion by directing it to pay additional benefits to resigned employees who are not entitled thereto. Petitioner's decision to extend the benefit to some former employees who had already resigned before the offer of the lump sum pay incentive was thus an act of generosity which it is not obliged to extend to respondents. *Apropos* is this Court's ruling in *Businessday*: With regard to the private respondents' claim for the mid-year bonus, it is settled doctrine that the grant of a bonus is a **prerogative, not an obligation**, of the employer. The matter of giving a bonus over and above the worker's lawful salaries and allowances is entirely dependent on the financial capability of the employer to give it. The fact that the company's business was no longer profitable (it was in fact moribund) plus the fact that the private respondents did not work up to the middle of the year (they were discharged in May 1998) were valid reasons for not granting them a mid-year bonus. Requiring the company to pay a mid-year bonus to them also would in effect **penalize the company for its generosity** to those workers who remained with the company "till the end" of its days.

4. ID.; ID.; ID.; ID.; ECONOMIC ASSISTANCE GRANTED TO EMPLOYEES ON REGULAR STATUS WAS A BONUS OVER AND ABOVE THE EMPLOYEES' SALARIES AND ALLOWANCES WHICH WAS WELL WITHIN THE EMPLOYER'S PREROGATIVE; RESPONDENT EMPLOYEES ARE NOT ENTITLED THERETO BECAUSE OF PRIOR RESIGNATION.— Neither are Nora and Rosemarie entitled to the economic assistance which petitioner awarded to "all monthly employees who are under regular status as of November 16, 2002," they having resigned earlier or on October 21, 2002. Again, contrary to the appellate court's ruling that Nora and Rosemarie already earned the economic assistance, the same having been given in lieu of the performance-based annual salary increase, the Court finds that the economic assistance was a *bonus* over and above the employees' salaries and allowances. A perusal of the memorandum regarding the grant of economic assistance shows that it was granted in lieu of salary increase (the grant of which depends on petitioner's financial capability) and that it was not intended to be a counterpart of the Collective Bargaining Agreement grant to members of the K-CPI union. The grant of economic assistance to all monthly employees under regular status as of November 16, 2002 was thus well within petitioner's prerogatives. Moreover, petitioner's decision to give economic assistance was arrived at more than a month after respondents' resignation and, therefore, it was a benefit not yet existing at the time of their separation.

5. ID.; ID.; ID.; ID.; ID.; ID.; QUITCLAIMS; VALID AND BINDING IN CASE AT BAR.— In any event, assuming that Nora and Rosemarie are entitled to the economic assistance, they had signed release and quitclaim deeds upon their resignation in which they waived x x x any or manner of action or actions, course or courses of action, suits, debts, dues, sums of money, accounts, reckonings, promises, damages (whether actual, moral, nominal, temperate, liquidated or exemplary), claims and liabilities whatsoever, in law or equity, arising out or and in connection with, but not limited to claims for salary, termination pay, vacation leave, overtime, night work, compensation for injuries or illness directly caused by my employment or either aggravated by or the results of the nature of my employment and claims for which I may or shall make, or may have for or by any reason of any matter, cause or thing

whatsoever, including but not limited to my employment and to matters arising from my employment by KIMBERLY-CLARK PHILIPPINES, INC. over any period or periods in the past. While quitclaims executed by employees are commonly frowned upon as being contrary to public policy and are ineffective to bar claims for the full measure of their legal rights, where the person making the waiver has done so voluntarily, with a full understanding thereof, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as being a valid and binding undertaking. In the case at bar, Nora and Rosemarie are Accounting graduates. They have not alleged having been compelled to sign the quitclaims, nor that the considerations thereof (₱1,024,113.73 for Nora and ₱682,721.24 for Rosemarie) are unconscionable.

6. ID.; ID.; ID.; A RESIGNED EMPLOYEE IS NOT ENTITLED TO LUMP SUM RETIREMENT PAY; EXPLAINED.— As for Maricar's claim to the lump sum retirement pay, the Court finds that, like Nora and Rosemarie, she is not entitled to it. Although the incentive was offered when she was still connected with petitioner, she resigned from employment, citing career advancement as the reason therefor. Indubitably, the incentive was addressed to those employees who, without prior plans of resigning, opted to terminate their employment in light of the downsizing being undertaken by petitioner. In other words, Maricar resigned from petitioner in order to find gainful employment elsewhere – a reason which has no bearing on the financial viability of petitioner.

APPEARANCES OF COUNSEL

Laguesma Magsalin Consulta & Gastardo for petitioner.
Luciano R. Caraang for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Respondents were employees of Kimberly-Clark Philippines, Inc. (petitioner). Nora Dimayuga (Nora) was Cost Accounting Supervisor, Rosemarie Gloria (Rosemarie) was Business Analyst,

and Maricar de Guia (Maricar) was General Accounting Manager.

On September 19, 2002, Nora tendered her resignation effective October 21, 2002.[1]

On October 7, 2002, Rosemarie tendered her resignation, also effective October 21, 2002.[2]

As petitioner had been experiencing a downward trend in its sales, it created a tax-free *early retirement package* for its employees as a cost-cutting and streamlining measure. Twenty-four of its employees availed of the offer that was made available from November 10-30, 2002.[3]

Despite their resignation before the early retirement package was offered, Nora and Rosemarie pleaded with petitioner that they be retroactively extended the benefits thereunder, to which petitioner acceded.[4] Hence, Nora received a total of ₱1,025,113.73 while Rosemarie received a total of ₱1,006,493.94, in consideration of which they executed release and quitclaim deeds dated January 17, 2003[5] and January 16, 2003,[6] respectively.

On November 4, 2002, Maricar tendered her resignation effective December 1, 2002,[7] citing career advancement as the reason therefor. As at the time of her resignation the early retirement package was still effective, she received a total of ₱523,540.13 for which she signed a release and quitclaim.[8]

On November 28, 2002, petitioner announced that in lieu of the merit increase which it did not give that year, it would provide *economic assistance*, to be released the following day,

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[1] NLRC records, p. 46.

[2] *Id.* at 48.

[3] *Id.* at 34.

[4] *Id.* at 35, 61.

[5] *Id.* at 127.

[6] *Id.* at 128.

[7] *Id.* at 55.

[8] *Id.* at 128.

to all monthly-paid employees on regular status as of November 16, 2002.

Still later or on January 16, 2003, petitioner announced that it would grant a *lump sum retirement pay* in the amount of ₱200,000, in addition to the early retirement package benefit, to those who signed up for early retirement and who would sign up until January 22, 2003.[9]

On May 23, 2003, respondents filed a Complaint,[10] docketed as NLRC Case No. RAB-IV 5-17522-03-L, before the National Labor Relations Commission (NLRC) Regional Arbitration Branch No. IV against petitioner and its Finance Manager Fernando B. Gomez (Gomez) whom respondents alleged to be "responsible for the withholding of [their] additional retirement benefits,"[11] claiming entitlement to the ₱200,000 lump sum retirement pay. Respondents Nora and Rosemarie additionally claimed entitlement to the economic assistance.

By Decision of August 31, 2004, Labor Arbiter Generoso V. Santos dismissed the claims of Nora and Rosemarie, holding that they were not entitled to the ₱200,000 lump sum retirement pay, they having ceased to be employees of petitioner at the time it was offered or made effective on January 16, 2003. He, however, granted Maricar's claim for the same pay, holding that she was entitled to it because at the time she resigned from the company effective December 1, 2002, such pay was already offered. Besides, the Labor Arbiter ruled, Maricar had a vested right to it as she was given a formal notice of her entitlement to it by petitioner, through its Human Resources Director.

On appeal by both parties,[12] the NLRC, by Decision[13] of November 22, 2005, *modified* the Labor Arbiters Decision by

[9] *Id.* at 23.

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

[11] *Id.* at 15.

[12] *Id.* at 95-170.

[13] *Id.* at 175-176. Penned by Commissioner Angelita A. Gacutan and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay.

ordering petitioner to pay Nora ₱200,000 additional bonus and ₱2,880 economic assistance, and to pay Rosemarie ₱200,000 additional bonus and ₱2,656 economic assistance. It affirmed Maricar's entitlement to the lump sum retirement pay.

Applying the ruling in *Businessday Information Systems and Services, Inc. v. NLRC (Businessday)*,[14] the NLRC ratiocinated that petitioner's refusal to give Nora and Rosemarie the lump sum retirement pay was an act of discrimination, more so because a certain Oscar Diokno, another employee who presumably resigned also prior to January 16, 2003, was given said benefit.

As to the award of economic assistance, the NLRC held that Nora and Rosemarie were also entitled to it as the same was given in lieu of the annual performance-based salary increase that was not given in 2002 and, therefore, already earned by them when they resigned. Petitioner's Motion for Reconsideration[15] having been denied,[16] it filed a Petition for *Certiorari*[17] before the Court of Appeals.

By Decision[18] of January 19, 2007, the appellate court affirmed the NLRC Decision. It held that, contrary to petitioner's assertion that the early retirement package was extended to respondents out of generosity, the offer/grant thereof, as well as their inclusion in the termination report submitted to the Department of Labor and Employment, made them "full retirees," hence, they must be given the other benefits extended to petitioner's other employees, following the ruling in *Businessday*.

The appellate court added that since respondents resigned from their respective positions barely a month before the

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[14] G.R. No. 103575, April 5, 1993, 221 SCRA 9.

[15] NLRC records, pp. 190-199.

[16] *Id.* at 210-211.

[17] CA *rollo*, pp. 2-32.

[18] *Id.* at 240-251. Penned by Court of Appeals Associate Justice Renato C. Dacudao, with the concurrence of Associate Justices Hakim S. Abdulwahid and Arturo G. Tayag.

effectivity of the early retirement package, the general principles of fair play and justice dictate that petitioner extend to them the same benefits in consideration of their long years of service.

The appellant court, noting that Nora and Rosemarie received commendable ratings, upheld their entitlement to the economic assistance as their resignation before the grant of such benefit took effect did not detract from the fact that it was in substitution of the traditional merit increase extended by petitioner to its employees with commendable or outstanding ratings which it failed to give in 2002.

Petitioner's Motion for Reconsideration[19] having been denied,[20] it filed the present petition, insisting that Nora and Rosemarie are no longer entitled to the economic assistance and lump sum pay considering that they were already retired and have in fact executed quitclaims and waivers.

And petitioner questions the application to the present case by the appellate court of the doctrine laid down in *Businessday*.

The petition is impressed with merit.

It is settled that entitlement of employees to retirement benefits must specifically be granted under existing laws, a collective bargaining agreement or employment contract, or an established employer policy.[21] No law or collective bargaining agreement or other applicable contract, or an established company policy was existing during respondents' employment entitling them to the ₱200,000 lump-sum retirement pay. Petitioner was not thus obliged to grant them such pay.

Respondents nevertheless argue that since other employees who resigned before the announcement of the grant of the lump sum retirement pay received the same, they (respondents) should

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[19] *Id.* at 270-288.

[20] *Id.* at 298.

[21] *Vide* Article 287, Labor Code; *GVM Security and Protective Agency v. NLRC*, G.R. No. 102157, July 23, 1993, 224 SCRA 734, 736.

also receive it,[22] citing the pronouncement in *Businessday* that:

> x x x The law requires an employer to extend equal treatment to its employees. It may not, in the guise of exercising management prerogatives, grant greater benefits to some and less to others. Management prerogatives are not absolute prerogatives but are subject to legal limits, collective bargaining agreements, or general principles of fair play and justice.[23] (Underscoring supplied)

Respondents' reliance on *Businessday* is misplaced. The factual milieu in *Businessday* is markedly different from that of the present case. That case involved the *retrenched* employees' separation pay to which they are entitled under Article 283 of the Labor Code. In the present case, Nora and Rosemarie *resigned* prior to petitioner's offer of the lump sum retirement pay as an incentive to those employees who would voluntarily avail of its early retirement scheme as a cost-cutting and streamlining measure. That respondents resigned, and not retrenched, is clear from their respective letters to petitioner. And nowhere in the letters is there any allegation that they resigned in view of the company's downward trend in sales which necessitated downsizing or streamlining.

The appellate court's finding that petitioner's inclusion of Nora and Rosemarie in the termination report submitted to the DOLE and its grant to them of the early retirement benefits made them "full retirees" to thus entitle them to the same benefits offered to those who would voluntarily resign after November 16, 2003 does not lie.

Petitioner's claim that it allowed Nora and Rosemarie to avail of the early retirement package despite their previous separation from the company out of pure generosity is well-taken in light of Nora's letter of September 15, 2002 asking if she could avail of the early retirement package as "it would certainly be of great assistance to us financially." It is thus

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[22] *Vide* NLRC records, p. 18

[23] *Businessday Information Systems and Services v. National Labor Relations Commission, supra* note 14 at 13.

absurd to fault petitioner for acceding to such a request out of compassion by directing it to pay additional benefits to resigned employees who are not entitled thereto.

Petitioner's decision to extend the benefit to some former employees who had already resigned before the offer of the lump sum pay incentive was thus an act of generosity which it is not obliged to extend to respondents. *Apropos* is this Court's ruling in *Businessday*:

> With regard to the private respondents' claim for the mid-year bonus, it is settled doctrine that the grant of a bonus is a **prerogative, not an obligation**, of the employer. The matter of giving a bonus over and above the worker's lawful salaries and allowances is entirely dependent on the financial capability of the employer to give it. The fact that the company's business was no longer profitable (it was in fact moribund) plus the fact that the private respondents did not work up to the middle of the year (they were discharged in May 1998) were valid reasons for not granting them a mid-year bonus. Requiring the company to pay a mid-year bonus to them also would in effect **penalize the company for its generosity** to those workers who remained with the company "till the end" of its days.[24] (Citations omitted) (Emphasis and underscoring supplied)

Neither are Nora and Rosemarie entitled to the economic assistance which petitioner awarded to "all monthly employees who are under regular status as of November 16, 2002," they having resigned earlier or on October 21, 2002.

Again, contrary to the appellate court's ruling that Nora and Rosemarie already earned the economic assistance, the same having been given in lieu of the performance-based annual salary increase, the Court finds that the economic assistance was a *bonus* over and above the employees' salaries and allowances. A perusal of the memorandum regarding the grant of economic assistance shows that it was granted in lieu of salary increase (the grant of which depends on petitioner's financial capability) and that it was not intended to be a counterpart of the Collective Bargaining Agreement grant to members of the K-CPI union.

[24] *Id.* at 13-14.

The grant of economic assistance to all monthly employees under regular status as of November 16, 2002 was thus well within petitioner's prerogatives.

Moreover, petitioner's decision to give economic assistance was arrived at more than a month after respondents' resignation and, therefore, it was a benefit not yet existing at the time of their separation.

In any event, assuming that Nora and Rosemarie are entitled to the economic assistance, they had signed release and quitclaim deeds upon their resignation[25] in which they waived

> x x x any or manner of action or actions, course or courses of action, suits, debts, dues, sums of money, accounts, reckonings, promises, damages (whether actual, moral, nominal, temperate, liquidated or exemplary), claims and liabilities whatsoever, in law or equity, arising out or and in connection with, but not limited to claims for salary, termination pay, vacation leave, overtime, night work, compensation for injuries or illness directly caused by my employment or either aggravated by or the results of the nature of my employment and claims for which I may or shall make, or may have for or by any reason of any matter, cause or thing whatsoever, including but not limited to my employment and to matters arising from my employment by KIMBERLY-CLARK PHILIPPINES, INC. over any period or periods in the past.[26]

While quitclaims executed by employees are commonly frowned upon as being contrary to public policy and are ineffective to bar claims for the full measure of their legal rights, where the person making the waiver has done so voluntarily, with a full understanding thereof, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as being a valid and binding undertaking.[27] In the case at bar, Nora and Rosemarie are Accounting graduates. They have not alleged having been

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[25] NLRC records, p. 127.

[26] *Id.* at 127-128.

[27] *Vide Magsalin v. National Organization of Working Men*, G.R. No. 148492, May 9, 2003, 403 SCRA 199, 207.

compelled to sign the quitclaims, nor that the considerations thereof (₱1,024,113.73 for Nora and ₱682,721.24 for Rosemarie) are unconscionable.

As for Maricar's claim to the lump sum retirement pay, the Court finds that, like Nora and Rosemarie, she is not entitled to it. Although the incentive was offered when she was still connected with petitioner, she resigned from employment, citing career advancement as the reason therefor. Indubitably, the incentive was addressed to those employees who, without prior plans of resigning, opted to terminate their employment in light of the downsizing being undertaken by petitioner. In other words, Maricar resigned from petitioner in order to find gainful employment elsewhere – a reason which has no bearing on the financial viability of petitioner.

WHEREFORE, the petition is *GRANTED*. The Decision and Resolution of the Court of Appeals dated January 19, 2007 and April 30, 2007, respectively, are *REVERSED* and *SET ASIDE*. NLRC Case No. RAB-IV-17522-03-L is *DISMISSED*.

SO ORDERED.

Ynares-Santiago,[*] *Brion, Del Castillo,* and *Abad, JJ.*, concur.

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[*] Additional member per Special Order No. 691 dated September 4, 2009.

THIRD DIVISION

[G.R. Nos. 178034 & 178117; 186984-85. September 18, 2009]

ANDREW JAMES MCBURNIE, *petitioner, vs.* **EULALIO GANZON, EGI-MANAGERS, INC. and E. GANZON, INC.,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; NATIONAL LABOR RELATIONS COMMISSION; APPEAL; POSTING OF BOND; INDISPENSABLE TO THE PERFECTION OF APPEAL IN CASES INVOLVING MONETARY AWARDS FROM THE DECISION OF THE LABOR ARBITER; EXPLAINED.— The posting of a bond is indispensable to the perfection of an appeal in cases involving monetary awards from the decision of the Labor Arbiter. The lawmakers clearly intended to make the bond a mandatory requisite for the perfection of an appeal by the employer as inferred from the provision that an appeal by the employer may be perfected "*only upon the posting of a cash or surety bond*." The word "*only*" makes it clear that the posting of a cash or surety bond by the employer is the essential and exclusive means by which an employer's appeal may be perfected. On the other hand, the word "*may*" refers to the perfection of an appeal as optional on the part of the defeated party, but not to the compulsory posting of an appeal bond, if he desires to appeal. The meaning and the intention of the legislature in enacting a statute must be determined from the language employed; and where there is no ambiguity in the words used, then there is no room for construction.

2. ID.; ID.; ID.; ID.; ID.; REQUIRED TO CONFER JURISDICTION; NON-COMPLIANCE THEREWITH RENDERS THE DECISION OF THE LABOR ARBITER FINAL AND EXECUTORY.— x x x [T]he filing of the bond is not only mandatory but a jurisdictional requirement as well, that must be complied with in order to confer jurisdiction upon the NLRC. Non-compliance therewith renders the decision of the Labor Arbiter final and executory. This requirement is intended to assure the workers that if they prevail in the case, they will

receive the money judgment in their favor upon the dismissal of the employer's appeal. It is intended to discourage employers from using an appeal to delay or evade their obligation to satisfy their employees' just and lawful claims.

3. ID.; ID.; ID.; ID.; ID.; INSUFFICIENT POSTING IS NOT SUFFICIENT TO PERFECT THE APPEAL.— x x x [I]t behooves the Court to give utmost regard to the legislative and administrative intent to strictly require the employer to post a cash or surety bond securing the ***full*** amount of the monetary award within the 10 day reglementary period. **Nothing in the Labor Code or the NLRC Rules of Procedure authorizes the posting of a bond that is *less* than the monetary award in the judgment, or would deem such insufficient posting as sufficient to perfect the appeal.**

4. ID.; ID.; ID.; ID.; ID.; REDUCTION OF BOND UPON MOTION BY THE EMPLOYER; CONDITIONS; CASE AT BAR.— While the bond may be reduced upon motion by the employer, this is subject to the conditions that (1) the motion to reduce the bond shall be based on **meritorious grounds**; and (2) a **reasonable amount** in relation to the monetary award is posted by the appellant, otherwise the filing of the motion to reduce bond shall not stop the running of the period to perfect an appeal. The qualification effectively requires that unless the NLRC grants the reduction of the cash bond within the 10 day reglementary period, **the employer is still expected to post the cash or surety bond securing the *full* amount within the said 10-day period**. If the NLRC does eventually grant the motion for reduction after the reglementary period has elapsed, the correct relief would be to reduce the cash or surety bond already posted by the employer within the 10-day period. Records show that respondents filed their Memorandum of Appeal and Motion to Reduce Appeal Bond on the 10th or last day of the reglementary period. Although they posted an initial appeal bond of ₱100,000.00, the same was grossly inadequate compared to the monetary awards of US$985,162.00 representing salaries and benefits for the unexpired portion of the contract, ₱2,000,000 as moral and exemplary damages and attorney's fees equivalent to the total monetary award. Further, there is no basis in respondents' contention that the awards of the Labor Arbiter were null and excessive, and with

premeditated intention to render respondents incapable of posting an appeal bond and deprive them of the right to appeal.

5. ID.; ID.; ID.; ID.; ID.; RELAXATION OF THE RULES INAPPLICABLE IN CASE AT BAR.— The failure of the respondents to comply with the requirement of posting a bond equivalent in amount to the monetary award is fatal to their appeal. For filing their motion only on the final day within which to perfect an appeal, respondents cannot be allowed to seek refuge in a liberal application of the rules. Under such circumstance, there is neither way for the NLRC to exercise its discretion to grant or deny the motion, nor for the respondents to post the full amount of the bond, without risk of summary dismissal for non-perfection of appeal. While in certain instances, we allow a relaxation in the application of the rules, we never intend to forge a weapon for erring litigants to violate the rules with impunity. The liberal interpretation and application of rules apply only in proper cases of demonstrable merit and under justifiable causes and circumstances, but none obtains in this case. The NLRC had, therefore, the full discretion to grant or deny their motion to reduce the amount of the appeal bond. The finding of the labor tribunal that respondents did not present sufficient justification for the reduction thereof cannot be said to have been done with grave abuse of discretion.

APPEARANCES OF COUNSEL

Dolendo & Associates for petitioner.
Roque & Butuyan Law Offices for respondents.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

Assailed in this petition for review on *certiorari* under Rule 45 of the Rules of Court is the October 27, 2008 Decision[1] of the Court of Appeals in CA-G.R. SP Nos. 90845 and 95916,

[1] *Rollo*, G.R. Nos. 186984-85, pp. 47-70; penned by Associate Justice Arcangelita M. Romilla-Lontok and concurred in by Associate Justices Mariano C. Del Castillo and Portia Aliño-Hormachuelos.

granting respondents' Motion to Reduce Appeal Bond; directing them to post a bond of ₱10 Million; and ordering the National Labor Relations Commission (NLRC), to give due course to their appeal and to conduct further proceedings. Also assailed is the Resolution[2] dated March 3, 2009 denying the motion for reconsideration.

On May 11, 1999, petitioner Andrew James McBurnie, an Australian national, signed a five-year employment contract as Executive Vice-President of respondent EGI Manager's, Inc. (EGI), through its President respondent Eulalio Ganzon.[3] McBurnie's responsibilities were to oversee the general management of the company's hotels and resorts within the Philippines, supervise the present and future constructions of its hotel and resort properties; review the operational performance of the hotels and resorts; and make recommendations to improve profitability, efficiency and reputation, and to engage other hotel management groups, if necessary.[4]

On June 7, 1999, McBurnie furnished Manjo Martinez, EGI's Vice President, a concept paper regarding the management philosophy and structure of Leisure Experts International, with its staffing budget, timeline and office layout.[5] On September 8, 1999, he submitted to respondent Ganzon his ten-year financial projection with debt servicing for the Coronado Beach - Cebu.[6] He also completed the audit of the EGI Maribago Resort - Cebu and requested that he be given access to the general ledgers to verify the findings.[7] Lastly, on September 29, 1999, he furnished respondent Ganzon the Monthly Profit and Loss Statement of EGI for the year 2000; he also expressed his concern on the failure

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[2] *Id.* at 44-45.

[3] *Id.* at 165-169.

[4] *Id.* at 166.

[5] *Id.* at 170-175.

[6] *Id.* at 176-179.

[7] *Id.* at 181.

of EGI to release funds for the proper operation of the business; and likewise informed respondents that he had already used his personal money to finance the operation.[8]

On November 1, 1999, petitioner featured in an accident that fractured his skull and necessitated his confinement at the Makati Medical Center.[9] While recuperating from his injuries in Australia, petitioner was informed by respondent Ganzon that his services were no longer needed since the project had been permanently discontinued.[10]

Thus, on October 4, 2002, petitioner filed a complaint for illegal dismissal with prayer for the payment of his salary and benefits for the unexpired term of the contract, damages and attorney's fees.[11]

In their Position Paper, respondents contended that there never existed an employer-employee relationship between them and petitioner; that petitioner was employed at Pan Pacific Hotel when he proposed to respondent Ganzon to jointly put up and invest in a company that will professionally manage hotels; that they agreed in principle with no assurance as to its funding; that after petitioner left Pan Pacific Hotel, he requested respondent Ganzon to be his sponsor for his alien work permit; that the Employment Contract was executed with the understanding that the same shall be used only for alien work permit and visa applications; and considering that no permit was issued to petitioner, he left for Australia for medical treatment and never returned.[12]

On September 30, 2004, Labor Arbiter Salithmar Nambi rendered a decision declaring petitioner's dismissal illegal and ordering respondents to pay US$985,162.00 as salary and benefits for the unexpired term of the contract, ₱2,000,000.00 as moral

[8] *Id.* at 182-187.

[9] *Id.* at 188.

[10] *Id.* at 158.

[11] *Id.* at 145.

[12] *Id.* at 148-153.

and exemplary damages, and attorney's fees equivalent to 10% of the total monetary award.[13]

On November 5, 2004, or 10 days after receipt of the Labor Arbiter's decision, respondents filed before the NLRC a Memorandum of Appeal[14] and Motion to Reduce Bond,[15] and posted as bond the amount of ₱100,000.00. They argued that the awards of the Labor Arbiter were null and excessive, *with the premeditated intention to render the employer incapable of posting an appeal bond and consequently deprive him of the right to appeal*.[16]

In an Order[17] dated March 31, 2005, the NLRC denied the motion to reduce bond and ordered respondents to post an additional bond of ₱54,083,910.00 together with the other requirements under Section 6, Rule VI of the NLRC Rules of Procedure within a non-extendible period of 10 days from receipt thereof, otherwise the appeal shall be dismissed. Respondents moved for reconsideration but it was denied in an Order[18] dated July 15, 2005; respondents were again ordered to post the additional appeal bond within another non-extendible period of 10 days from receipt thereof.

Instead of complying with the order of the NLRC, respondents filed on August 12, 2005, a petition for *certiorari* and prohibition with the Court of Appeals with prayer for issuance of a preliminary injunction and/or temporary restraining order, (TRO)[19] which was docketed as **CA-G.R. SP No. 90845.**[20]

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

[14] *Rollo*, G.R. Nos. 178034 & 178117, pp. 65-105.

[15] *Rollo*, G.R. Nos. 186984-85, pp. 216-227.

[16] *Id.* at 217.

[17] *Id.* at 437.

[18] *Id.* at 443.

[19] *Rollo*, G.R. Nos. 178034 & 178117, pp. 130-185.

[20] *Rollo*, G.R. Nos. 186984-85, pp. 58-59.

On September 8, 2005, a TRO effective for 60 days was issued enjoining the NLRC from enforcing its March 31, 2005 and July 15, 2005 Orders.[21]

Meanwhile, on March 8, 2006, after the TRO expired and respondents still failed to post additional bond, the NLRC dismissed their appeal, thus:

> WHEREFORE, in view of the foregoing, respondents' appeal is hereby DISMISSED for failure to post additional bond as directed by the Commission and as mandated by law. Complainant's *Ex-Parte* Motion for Entry of Judgment and to Remand the Records to the Labor Arbitration Branch of origin is DENIED for being premature.
>
> SO ORDERED.[22]

Following the denial by the NLRC of their motion for reconsideration,[23] respondents filed with the Court of Appeals a petition for *certiorari* with prayer for issuance of TRO and/or writ of preliminary injunction, which was docketed as CA-G.R. SP No. 95916 and was ordered consolidated with **CA-G.R. SP No. 90845**.[24]

On December 8, 2006, the Court of Appeals issued a TRO enjoining the NLRC from enforcing its March 8, 2006 Resolution dismissing respondents' appeal, and its June 30, 2006 Resolution denying the motion for reconsideration thereof.[25] On May 29, 2007, it issued a Writ of Preliminary Injunction after respondents posted an injunction bond of ₱10,000,000.00.[26]

Petitioner assailed the issuance of the writ before the Supreme Court, which was docketed as G.R. Nos. 178034 & 178117.

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[21] *Rollo*, G.R. Nos. 178034 & 178117, pp. 243-245.

[22] *Id.* at 123-124.

[23] *Id.* at 128.

[24] *Id.* at 247.

[25] *Id.* at 248-249.

[26] *Id.* at 266-267.

However, it was dismissed for submitting an affidavit of service which failed to show a competent evidence of affiant's identity.[27]

Meanwhile, on October 27, 2008, the Court of Appeals rendered the assailed Decision granting respondents' Motion to Reduce Appeal Bond and directing them to post an appeal bond of ₱10,000,000.00 with the NLRC, which was likewise ordered to give due course to the appeal and to conduct further proceedings, thus:

> WHEREFORE, in view of the foregoing, the petition for *certiorari* and prohibition docketed as CA GR SP No. 90845 and the petition for *certiorari* docketed as CA GR SP No. 95916 are GRANTED. Petitioners Motion to Reduce Appeal Bond is GRANTED. Petitioners are hereby DIRECTED to post appeal bond in the amount of ₱10,000,000.00. The NLRC is hereby DIRECTED to give due course to petitioners' appeal in CA GR SP No. 95916 which is ordered REMANDED to the NLRC for further proceedings.
>
> SO ORDERED.[28]

Petitioner's motion for reconsideration was denied in a Resolution[29] dated March 3, 2009.

Hence, this petition for review on *certiorari* raising the sole issue of:

> WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN FINDING THAT THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION WHEN IN FACT IT MERELY FOLLOWED AND IMPLEMENTED THE VALID, CLEAR AND UNQUESTIONED PROVISION OF THE LABOR CODE, SPECIFICALLY ARTILE (sic) 223 AND SEC. 6, RULE VI OF THE NLRC RULES OF PROCEDURE WHICH IMPLEMENTATION IS IN ACCORD WITH THE JURISPRUDENCE SET BY THE SUPREME COURT IN THE PERFECTION OF APPEALS IN LABOR CASES.[30]

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[27] *Id.* at 297.

[28] *Rollo*, G.R. Nos. 186984-85, p. 70.

[29] *Id.* at 45.

[30] *Id.* at 7.

Petitioner contends a) that the Court of Appeals erred in holding that the NLRC committed grave abuse of discretion when it outrightly dismissed the motion to reduce appeal bond without fixing a reasonable amount therefor, thus depriving the respondents their right to appeal the Labor Arbiter's decision; b) that the rules on perfection of appeals must be strictly applied; c) that the period for posting the bond cannot be made to depend on the discretion of the party; d) that respondents not only refused to post appeal bond within the prescribed period but the ground relied upon for the reduction thereof, to wit: the awards were patent nullity and excessive, was not meritorious.

The petition is impressed with merit.

Article 223 of the Labor Code provides:

> Article 223. *Appeal*.— Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties **within ten (10) calendar days** from receipt of such decisions, awards, or orders. x x x
>
> x x x x x x x x x
>
> In case of a judgment involving a monetary award, an appeal by the employer **may be perfected only upon the posting of a cash or surety bond** issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from. (Emphasis supplied)

The posting of a bond is indispensable to the perfection of an appeal in cases involving monetary awards from the decision of the Labor Arbiter. The lawmakers clearly intended to make the bond a mandatory requisite for the perfection of an appeal by the employer as inferred from the provision that an appeal by the employer may be perfected "*only upon the posting of a cash or surety bond*." The word "*only*" makes it clear that the posting of a cash or surety bond by the employer is the essential and exclusive means by which an employer's appeal may be perfected. On the other hand, the word "*may*" refers to the perfection of an appeal as optional on the part of the defeated party, but not to the compulsory posting of an appeal bond, if he desires to appeal. The meaning and the intention of the

legislature in enacting a statute must be determined from the language employed; and where there is no ambiguity in the words used, then there is no room for construction.[31]

Moreover, the filing of the bond is not only mandatory but a jurisdictional requirement as well, that must be complied with in order to confer jurisdiction upon the NLRC. Non-compliance therewith renders the decision of the Labor Arbiter final and executory. This requirement is intended to assure the workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the employer's appeal. It is intended to discourage employers from using an appeal to delay or evade their obligation to satisfy their employees' just and lawful claims.[32]

The jurisdictional principle and the mandatory nature of the appeal bond posted within the 10-day reglementary period are reaffirmed by the New Rules of Procedure of the NLRC.[33] The pertinent provisions state:

RULE VI
APPEALS

SECTION 1. PERIODS OF APPEAL. – Decisions, resolutions or orders of the Labor Arbiter shall be final and executory unless appealed to the Commission by any or both parties **within ten (10) calendar days** from receipt of such decisions, resolutions or orders of the Labor Arbiter and in case of a decision of the Regional Director within five (5) calendar days from receipt of such decisions, resolutions, or orders. If the 10th or 5th day, as the case may be, falls on a Saturday, Sunday or a holiday, the last day to perfect the appeal shall be the next working day.

x x x x x x x x x

SECTION 6. BOND. – In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or

[31] *Accessories Specialist, Inc. v. Albanza*, G.R. No. 168985, July 23, 2008, 559 SCRA 550, 560-561.

[32] *Id.* at 561-562.

[33] As amended by NLRC Resolution No. 01-02, Series of 2002.

surety bond. The appeal bond **shall either be in cash or surety in an amount equivalent to the monetary award, exclusive of damages and attorney's fees.**

x x x x x x x x x

No motion to reduce bond shall be entertained except on **meritorious grounds** and upon **the posting of a bond in a reasonable amount in relation to the monetary award.**

The filing of the motion to reduce bond without compliance with the requisites in the preceding paragraph **shall not stop the running of the period to perfect an appeal.** (Emphasis supplied)

Thus, it behooves the Court to give utmost regard to the legislative and administrative intent to strictly require the employer to post a cash or surety bond securing the ***full*** amount of the monetary award within the 10 day reglementary period. **Nothing in the Labor Code or the NLRC Rules of Procedure authorizes the posting of a bond that is *less* than the monetary award in the judgment, or would deem such insufficient posting as sufficient to perfect the appeal.**[34]

While the bond may be reduced upon motion by the employer, this is subject to the conditions that (1) the motion to reduce the bond shall be based on **meritorious grounds**; and (2) a **reasonable amount** in relation to the monetary award is posted by the appellant, otherwise the filing of the motion to reduce bond shall not stop the running of the period to perfect an appeal.[35] The qualification effectively requires that unless the NLRC grants the reduction of the cash bond within the 10 day reglementary period, **the employer is still expected to post the cash or surety bond securing the *full* amount within the said 10-day period**. If the NLRC does eventually grant the motion for reduction after the reglementary period has elapsed, the correct relief would be

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[34] *Colby Construction and Management Corporation v. National Labor Relations Commission*, G.R. No. 170099, November 28, 2007, 539 SCRA 159, 173.

[35] *Nicol v. Footjoy Industrial Corp.*, G.R. No. 159372, July 27, 2007, 528 SCRA 300, 310.

to reduce the cash or surety bond already posted by the employer within the 10-day period.[36]

Records show that respondents filed their Memorandum of Appeal and Motion to Reduce Appeal Bond on the 10th or last day of the reglementary period. Although they posted an initial appeal bond of ₱100,000.00, the same was grossly inadequate compared to the monetary awards of US$985,162.00 representing salaries and benefits for the unexpired portion of the contract, ₱2,000,000 as moral and exemplary damages and attorney's fees equivalent to the total monetary award. Further, there is no basis in respondents' contention that the awards of the Labor Arbiter were null and excessive, and with premeditated intention to render respondents incapable of posting an appeal bond and deprive them of the right to appeal.

In *Computer Innovations Center v. National Labor Relations Commission*,[37] the Court held, thus:

> The grounds cited for reduction of the appeal bond were "the great possibility of the reversal of the [Labor Arbiter's] decision in the light of the serious errors in the findings of fact and in the application of the law," and that the monetary award was too harsh and unfounded. Just about any aggrieved employer can invoke such grounds. Indeed, the mere allegation of the decision as purportedly erroneous in fact or in law cannot serve to mitigate the appeal bond requirement. Neither could the allegation that the monetary award was too harsh or unfounded unsettle the appeal bond requirement absent concrete proof, especially if, as in this case, the alleged "harshness" of the award is not self-evident.[38]

It was further held therein that:

> Admittedly, these rules as embodied in the Labor Code and the NLRC Rules of Procedure impose a burden on the employer intending to appeal the decision of the labor arbiter. Within the ten (10)-day reglementary period, the employer has to prepare

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[36] *Computer Innovations Center, Inc. v. National Labor Relations Commission*, G.R. No. 152410, June 29, 2005, 462 SCRA 183, 191.

[37] *Id.*

[38] *Id.* at 194.

a memorandum of appeal and to secure a cash or surety bond equivalent to the monetary award in the judgment appealed from. The facility in obtaining the bond is highly dependent on circumstances particular to the employer. ***Yet it is highly probable that should the employer take the effort to secure the cash or surety bond immediately upon receipt of the decision of the Labor Arbiter, such bond would be available within the ten (10)-day reglementary period.***

It also does not escape judicial notice that the cash/surety bond requirement does not necessitate the employer to physically surrender the entire amount of the monetary judgment. The usual procedure is for the employer to obtain the services of a bonding company, which will then require the employer to pay a percentage of the award in exchange for a bond securing the full amount. This observation undercuts the notion of financial hardship as a justification for the inability to timely post the required bond.

At the same time, the Court understands that especially in cases wherein the monetary award is significant in relation to the employer's assets, it might be difficult to immediately obtain the required bond pending ascertainment by the bonding company that the employer holds sufficient security in case the bond is subsequently executed. It is under these premises that petitioners' arguments should bear scrutiny.[39] (Emphasis supplied)

The failure of the respondents to comply with the requirement of posting a bond equivalent in amount to the monetary award is fatal to their appeal. For filing their motion only on the final day within which to perfect an appeal, respondents cannot be allowed to seek refuge in a liberal application of the rules. Under such circumstance, there is neither way for the NLRC to exercise its discretion to grant or deny the motion, nor for the respondents to post the full amount of the bond, without risk of summary dismissal for non-perfection of appeal.

While in certain instances, we allow a relaxation in the application of the rules, we never intend to forge a weapon for erring litigants to violate the rules with impunity. The liberal interpretation and application of rules apply only in proper cases

[39] *Id.* at 191-192.

of demonstrable merit and under justifiable causes and circumstances,[40] but none obtains in this case. The NLRC had, therefore, the full discretion to grant or deny their motion to reduce the amount of the appeal bond. The finding of the labor tribunal that respondents did not present sufficient justification for the reduction thereof cannot be said to have been done with grave abuse of discretion.

The records show that after the motion to reduce appeal bond was denied, the NLRC still allowed respondents a new period of 10 days from receipt of the order of denial within which to post the additional bond. Nonetheless, respondents failed to post the additional bond and instead moved for reconsideration. On this score alone, their appeal should have been dismissed outright for not having been perfected on time. The NLRC even bent backwards by entertaining the motion for reconsideration and even granted respondents another 10 days within which to post the appeal bond. However, respondents did not take advantage of this liberality when they persistently failed and refused to post the additional bond despite the extensions given them.

Time and again, it has been held that the right to appeal is not a constitutional right, but a mere statutory privilege. Hence, parties who seek to avail themselves of it must comply with the statutes or rules allowing it.[41] To reiterate, perfection of an appeal in the manner and within the period permitted by law is mandatory and jurisdictional. The requirements for perfecting an appeal must, as a rule, be strictly followed. Such requirements are considered indispensable interdictions against needless delays and are necessary for the orderly discharge of the judicial business. Failure to perfect the appeal renders the judgment of the court final and executory.[42] Just

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[40] *Land Bank of the Philippines v. Natividad*, G.R. No. 127198, May 16, 2005, 458 SCRA 441, 449-450.

[41] *Air France Philippines v. Leachon*, G.R. No. 134113, October 12, 2005, 472 SCRA 439, 442-443.

[42] *Id.* at 443.

as a losing party has the privilege to file an appeal within the prescribed period, so does the winner also have the correlative right to enjoy the finality of the decision.[43] Thus, the propriety of the monetary awards of the Labor Arbiter is already binding upon this Court, much more with the Court of Appeals.

WHEREFORE, the petition is *GRANTED*. The Decision of the Court of Appeals in CA-G.R. SP Nos. 90845 and 95916 dated October 27, 2008 granting respondents' Motion to Reduce Appeal Bond and ordering the National Labor Relations Commission to give due course to respondents' appeal, and its March 3, 2009 Resolution denying petitioner's motion for reconsideration, are *REVERSED* and *SET ASIDE*. The March 8, 2006 and June 30, 2006 Resolutions of the National Labor Relations Commission in NLRC NCR CA NO. 042913-05 dismissing respondents' appeal for failure to perfect an appeal and denying their motion for reconsideration, respectively, are *REINSTATED* and *AFFIRMED*.

SO ORDERED.

Chico-Nazario, Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

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[43] *Tan v. Court of Appeals*, G.R. No. 157194, June 20, 2006, 491 SCRA 452, 459.

SECOND DIVISION

[G.R. No. 179319. September 18, 2009]

EUGENE C. FIRAZA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INSTITUTION OF CRIMINAL ACTIONS; SUFFICIENCY OF COMPLAINT OR INFORMATION; CASE AT BAR.— The allegations in a Complaint or Information determine what offense is charged. The alleged acts or omissions complained of constituting the offense need not be in the terms of the statute determining the offense, but in such form as is sufficient to enable a person of common understanding to know what offense is being charged as well as the qualifying and aggravating circumstances and for the court to pronounce judgment. The earlier-quoted Complaint alleged that the "accused willfully, unlawfully and feloniously possess [*sic*] one (1) unit Pistol Cal. 45 with serial number 670320 [and] entered . . . the residence of Christopher Rivas at Lianga, Surigao del Sur with expired license or permit to carry outside residence." The words used to indicate or describe the offense charged — that petitioner unlawfully carried his firearm outside his residence because he had no permit for the purpose — are clear. They are self-explanatory.

2. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT OF THE ACCUSED TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION AGAINST HIM; NOT VIOLATED IN CASE AT BAR.— Petitioner cannot seriously claim that his constitutional right to be informed of the nature and cause of the accusation against him was violated. For the transcript of stenographic notes of the proceedings before the trial court shows that he, through his counsel, was duly informed of the nature of the case against him.

3. CRIMINAL LAW; P.D. NO. 1866; IMPLEMENTING RULES AND REGULATIONS; MISSION ORDER, DEFINED; CASE AT BAR.— x x x Permit to carry firearm is not the

same as permit to carry licensed firearm outside one's residence. Under the Implementing Rules and Regulations of P.D. No. 1866, a Mission Order is defined as "*a written directive or order issued by government authority as enumerated in Section 5 hereof to persons who are under his supervision and control for a definite purpose or objective during a specified period and to such place or places as therein mentioned which may entitle the bearer thereof to carry his duly issued or licensed firearms outside of residence* ***when so specified therein***." The Mission Order issued to petitioner authorized him to carry firearms "in connection with confidential (illegible) cases assigned to [him]." Admittedly, petitioner was at Rivas' restaurant in connection with a private business transaction. Additionally, the Mission Order did not authorize petitioner to carry his duly issued firearm outside of his residence. AT ALL EVENTS, *Sayco v. People*, citing Section 6(a) of The Implementing Rules and Regulations of P.D. No. 1866 and Memorandum Circular No. 8 dated October 16, 1986 issued by the Department (then Ministry) of Justice, should put to rest any nagging doubts on the liability of petitioner, a confidential civilian agent who was not shown to be in the regular *plantilla* of the NBI. *First*, special or confidential civilian agents who are not included in the regular *plantilla* of any government agency involved in law enforcement or receiving regular compensation for services rendered are **not exempt** from the requirement under P.D. No. 1866, as amended by R.A. No. 8294, of a regular license to possess firearms and a **permit to carry the same outside of residence**. x x x *Third*, said special or confidential civilian agents **do not qualify for mission orders** to carry firearms (whether private-owned or government-owned) **outside of their residence**. x x x

4. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS OF THE ACCUSED; RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURES; PLAIN VIEW DOCTRINE; REQUIREMENTS; ESTABLISHED IN CASE AT BAR.— As for petitioner's claim that he was searched without a warrant to thus render the firearm seized inadmissible in evidence, the same fails. For even assuming *arguendo* that, as claimed by petitioner, his firearm was tucked inside his shirt, the plain view doctrine, of which the following requirements which must concur, *viz:* (1) the law enforcement officer has a prior justification for the intrusion, (2) the discovery of the

evidence in plain view is inadvertent, and, (3) the illegality of the evidence observed in plain view is apparent to the apprehending officer, justified the intervention by the police officers in petitioner's and Rivas' heated arguments in the course of which they noticed the suspicious bulging object on petitioner's waist to draw them to check what it was.

APPEARANCES OF COUNSEL

Sansaet Masendo Cadiz Bañosia Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Petitioner, appointed as a confidential agent of the National Bureau of Investigation (NBI), Caraga Regional Office on August 18, 1999, was issued a firearm and a mission to gather and report to the NBI such information as may be relevant to investigations undertaken by it.

In his private capacity, petitioner served as manager for RF Communications in connection with which he dealt with Christopher Rivas, Provincial Auditor of Surigao del Sur, for the establishment of a Public Calling Office in the Municipality of Lianga, Surigao del Sur.

On August 11, 2000, in the course of a meeting between petitioner and Rivas at the latter's restaurant regarding the delivery of a defective machine for the Public Calling Office, a heated exchange ensued during which petitioner is alleged to have pointed a gun at Rivas. Petitioner was thereupon accosted by P/Insp. Alberto A. Mullanida, Acting Chief of Police of Lianga, Surigao del Sur and PO2 Nilo Ronquillo, who discovered that his permit to carry firearm outside residence had expired more than a month earlier or on July 5, 2000.

Hence, a criminal complaint was filed against petitioner before the 6th Municipal Circuit Trial Court (MCTC) of Barobo-Lianga, Barobo, Surigao del Sur for "UNATHORIZED CARRYING

OF LICENCE [*sic*] FIREARM OUTSIDE RESIDENCE," the accusatory portion of which reads:

> That on or about the 11th day of August 2000 at about 4:00 o'clock in the afternoon more or less in Poblacion, Municipality of Lianga, Province of Surigao del Sur Philippines and within the jurisdiction of this Honorable Court the above named accused, willfully, unlawfully, and feloniously **possess** [*sic*] one (1) unit Pistol Caliber 45 with serial number 670320 entered inside the residence of Christopher Rivas at Lianga, Surigao del Sur **with expired license or permit to carry outside residence renewed** [*sic*] **from the government authority concerned**.
>
> CONTRARY TO LAW. (Violation of RA 8294 as amended).[1]

(Emphasis and underscoring supplied)

Petitioner, denying that any argument occurred between him and Rivas, claimed that while he was explaining to Rivas the defect in the machine subject of their meeting, P/Insp. Mullaneda and PO2 Ronquillo apprehended him and seized his firearm tucked inside his shirt, even as he identified himself as an NBI agent; and that he was prevented from presenting a Mission Order dated July 26, 2000 issued to him by the NBI, to prove his authority to carry firearms outside of his residence, due to the coercive manner by which the two approached him.

By Decision of February 20, 2003, the MCTC convicted petitioner, disposing as follows:

> WHEREFORE, Court finds accused Eugene C. Firaza GUILTY beyond reasonable doubt of the crime "Unauthorized Carrying of Licensed Firearm Outside Residence," penalized under Section 1 of Republic Act 8294.
>
> Accused Eugene C. Firaza is hereby sentenced to an imprisonment of one (1) month and ten days of *Arresto Mayor*.
>
> SO ORDERED.

In convicting petitioner, the trial court noted the following facts:

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[1] Records, p. 14.

1. That accused's permit to carry firearms outside residence, has already expired when he was apprehended on August 11, 2000;

2. That the "Mission Order" (Exhibit "4") was not presented or shown to the apprehending policemen on August 11, 2000;

3. That accused's "Mission Order" was not issued by the NBI Director or Assistant/Deputy Director or by Regional Director of Caraga Region;

4. That accused is only a confidential agent and as such is not included in the regular plantilla of the NBI, nor is receiving regular compensation for the services he is rendering;

5. When apprehended, accused was not in actual performance of alleged mission but on business trip.[2] (Underscoring supplied)

On appeal, the Regional Trial Court upheld petitioner's conviction.

On petition for review, the Court of Appeals, by Decision of April 20, 2007,[3] affirmed petitioner's conviction.

Before this Court, petitioner raises the following issues:

a. Whether or not Petitioner can be convicted of an offense different from that charged in the Complaint.

b. Whether or not the burden of proving a negative element of an offense lies with the prosecution; and

c. Whether or not the firearm seized from petitioner after an unlawful search without a warrant is inadmissible in evidence. (Underscoring supplied)

Petitioner prefaces his arguments in support of his appeal by claiming that the Complaint charged him with "illegal possession of firearms," hence, he cannot be convicted of carrying firearms outside of residence, the phrase in the

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[2] Records, p. 12.

[3] Penned by Associate Justice Jane Aurora C. Lantion with the concurrence of Associate Justices Teresita Dy-Liacco Flores and Romulo V. Borja.

Complaint reading "with expired license or permit to carry outside residence . . ." being "merely descriptive of the alleged unlicensed nature of the firearm."

Petitioner concludes that since he had authority to carry firearm, it was error to convict him. He cites the appellate court's following disquisition as crediting his defense that he had authority to carry firearms, *viz*:

> It must be stated at the outset that petitioner was charged of violation of RA 8294 or Unauthorized Carrying of Licensed Firearm Outside of Residence. His conviction by the courts below is based on their finding that although petitioner had a mission order which authorized him to carry the firearm issued to him, the same already expired as of July 26, 2000.
>
> *We qualify.*
>
> The courts below committed an error when they said that the authority of petitioner to carry firearm outside residence expired on July 26, 2000, hence when petitioner carried his issued firearm on 18 August 2000, he did so without authority. **Mission Order No. 00352000 dated July 26, 2000 issued to petitioner allowed him to carry his issued firearm Pistol Cal. 45 with him, which mission order is good for sixty (60) days from issuance thereof**.[4] x x x (Italics in the original, emphasis and underscoring supplied)

Petitioner's argument fails.

Section 6, Rule 110 of the Rules of Court provides:

> SEC. 6. Sufficiency of complaint or information. – A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; **the acts or omissions complained of as constituting the offense**; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.
>
> When an offense is committed by more than one person, all of them shall be included in the complaint or information. (Emphasis and underscoring supplied)

[4] *Rollo*, p. 38.

The allegations in a Complaint or Information determine what offense is charged. The alleged acts or omissions complained of constituting the offense need not be in the terms of the statute determining the offense, but in such form as is sufficient to enable a person of common understanding to know what offense is being charged as well as the qualifying and aggravating circumstances and for the court to pronounce judgment.[5]

The earlier-quoted Complaint alleged that the "accused willfully, unlawfully and feloniously possess [*sic*] one (1) unit Pistol Cal. 45 with serial number 670320 [and] entered . . . the residence of Christopher Rivas at Lianga, Surigao del Sur with expired license or permit to carry outside residence."[6] The words used to indicate or describe the offense charged –– that petitioner unlawfully carried his firearm outside his residence because he had no permit for the purpose –– are clear. They are self-explanatory.

Petitioner cannot seriously claim that his constitutional right to be informed of the nature and cause of the accusation against him was violated. For the transcript of stenographic notes of the proceedings before the trial court shows that he, through his counsel, was duly informed of the nature of the case against him:

Court:

> You intend to file a motion for investigation?

Atty. Cadiz: [herein petitioner's counsel]

> Yes, Your Honor.

Court:

> On what ground?

Atty. Cadiz:

> On the ground that based on the evidence that we presented, Your Honor, like counter-affidavit, it seems to be the ground

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[5] Section 9, Rule 110, Rules of Court.

[6] Underscoring supplied.

> for the further proceedings of this case **because the case filed against the accused is merely unauthorized(d) carrying of firearms outside the residence,** and the accused is covered by mission order and the evidence submitted, Your Honor, which we take that it is not necessary to prosecute this case, because this case is summary in nature, Your Honor. We will submit a necessary motion for reinvestigation of this case.[7] (Emphasis and underscoring supplied)

It bears noting that petitioner does not challenge his having been found guilty of violating Section 1 of P.D. No. 1866 (DECREE CODIFYING THE LAWS ON ILLEGAL/ UNLAWFUL POSSESSION, MANUFACTURE, DEALING IN, ACQUISITION OR DISPOSITION, OF FIREARMS, AMMUNITION OR EXPLOSIVES) as amended by R.A. No. 8294 which provides:

> SECTION 1. *Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition.* – The penalty of *prision correccional* in its maximum period and a fine of not less than Fifteen thousand pesos (₱15,000) shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose or possess any low powered firearm, such as rimfire handgun, .380 or .32 and other firearm of similar firepower, part of firearm or ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition: *Provided*, That no other crime was committed.
>
> x x x x x x x x x
>
> The penalty of *arresto mayor* shall be imposed upon any person who shall **carry** any **licensed** firearm **outside his residence without legal authority** therefor. (Italics in the original; emphasis and underscoring supplied)

Petitioner, however, justifies, his carrying of the firearm outside his residence with the 60-day July 26, 2000 Mission Order issued to him by the NBI.

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[7] TSN, March 15, 2001, p. 11.

Petitioner is mistaken. Permit to carry firearm is not the same as permit to carry licensed firearm outside one's residence. Under the Implementing Rules and Regulations of P.D. No. 1866, a Mission Order is defined as "*a written directive or order issued by government authority as enumerated in Section 5 hereof to persons who are under his supervision and control for a definite purpose or objective during a specified period and to such place or places as therein mentioned which may entitle the bearer thereof to carry his duly issued or licensed firearms outside of residence* ***when so specified therein***."

The Mission Order issued to petitioner authorized him to carry firearms "in connection with confidential (illegible) cases assigned to [him]." Admittedly, petitioner was at Rivas' restaurant in connection with a private business transaction. Additionally, the Mission Order did not authorize petitioner to carry his duly issued firearm outside of his residence.

AT ALL EVENTS, *Sayco v. People*,[8] citing Section 6(a) of The Implementing Rules and Regulations of P.D. No. 1866 and Memorandum Circular No. 8 dated October 16, 1986 issued by the Department (then Ministry) of Justice, should put to rest any nagging doubts on the liability of petitioner, a confidential civilian agent who was not shown to be in the regular *plantilla* of the NBI.

> *First*, special or confidential civilian agents who are not included in the regular *plantilla* of any government agency involved in law enforcement or receiving regular compensation for services rendered are **not exempt** from the requirement under P.D. No. 1866, as amended by R.A. No. 8294, of a regular license to possess firearms and a **permit to carry the same outside of residence**.
>
> x x x x x x x x x
>
> *Third*, said special or confidential civilian agents **do not qualify for mission orders** to carry firearms (whether private-owned or government-owned) **outside of their residence**.
>
> x x x (Italics in the original; underscoring supplied)

[8] G.R. No. 159703, March 3, 2008, 547 SCRA 368, 385-386.

As for petitioner's claim that he was searched without a warrant to thus render the firearm seized inadmissible in evidence, the same fails.

For even assuming *arguendo* that, as claimed by petitioner, his firearm was tucked inside his shirt, the plain view doctrine, of which the following requirements which must concur, *viz:* (1) the law enforcement officer has a prior justification for the intrusion, (2) the discovery of the evidence in plain view is inadvertent, and, (3) the illegality of the evidence observed in plain view is apparent to the apprehending officer,[9] justified the intervention by the police officers in petitioner's and Rivas' heated arguments in the course of which they noticed the suspicious bulging object on petitioner's waist to draw them to check what it was.

WHEREFORE, the Petition for Review is *DENIED*.

SO ORDERED.

Ynares-Santiago,[*] *Brion, Del Castillo,* and *Abad, JJ.*, concur.

SECOND DIVISION

[G.R. No. 179502. September 18, 2009]

PROGRESSIVE TRADE & SERVICE ENTERPRISES, *petitioner, vs.* **MARIA MILAGROSA ANTONIO,** *respondent.*

SECUNDINA M. CEBRERO, *defendant-appellant before the Court of Appeals.*

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[9] *People v. Go*, G.R. No. 144639, September 12, 2003, 411 SCRA 81.

[*] Additional member per Special Order No. 691 dated September 4, 2009.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; HANDWRITING EXPERTS, WHILE USEFUL, ARE NOT INDISPENSABLE IN EXAMINING OR COMPARING HANDWRITINGS OR SIGNATURES.— The trial court's ruling that Secundina failed to prove her allegation that the Deed of Absolute Sale to Milagrosa was a forgery because she failed to present expert witnesses does not lie. It is settled that handwriting experts, while useful, are not indispensable in examining or comparing handwritings or signatures. For Section 22 of Rule 132 of the Rules of Court provides: The handwriting of a person may be proved by any witness who believes it to be the handwriting of the person because he has seen the person write, or has seen writing purporting to be his upon which the witness has acted or been charged, and has thus acquired knowledge of the handwriting of such person. Evidence respecting the handwriting may also be given by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge.

2. ID.; ID.; ADMISSIBILITY; OPINION RULE; ALLOWS THE RECEPTION OF THE OPINION OF A WITNESS AS EVIDENCE REGARDING HANDWRITING WITH WHICH HE HAS SUFFICIENT FAMILIARITY.— Complementing the said provision is Section 50 of Rule 130 of the Rules of Court which allows the reception of the opinion of a witness, like Judge Laviña, for which proper basis is given, as evidence regarding a handwriting with which he has sufficient familiarity.

3. CIVIL LAW; SPECIAL CONTRACTS; SALES; A DEED OF ABSOLUTE SALE WHICH IS NOT GENUINE TRANSMITS NO RIGHTS.— As the Court finds that the Deed of Absolute Sale in Milagrosa's favor is not genuine, it transmitted no rights to her. Consequently, the subject land – part of Cebrero's estate which was allotted to Secundina was validly sold by her to petitioner.

APPEARANCES OF COUNSEL

Batino Law Offices for petitioner.
Tabaquero Albano Lopez and Associates for Secundina Cabrero.
Atienza Madrid and Formento for Maria Milagrosa Antonio.

D E C I S I O N

CARPIO MORALES, *J.*:

Virgilio Cebrero (Cebrero), registered owner of a 2,281 square meter parcel of land situated in Sampaloc, Manila and covered by Transfer Certificate of Title (TCT) No. 158305[1] (the land) died on December 19, 1989.

On January 19, 1991, Cebrero's wife Secundina Magno Cebrero (Secundina) and children executed a Deed of Extrajudicial Settlement of the Estate of the Deceased Virgilio D. Cebrero With Waiver of Rights[2] allotting the land to Secundina.

On September 27, 1994, Secundina sold the land to Progressive Trade and Services (petitioner), through its president and chairman Manuel C. Chua (Chua), via Deed of Absolute Sale.[3] TCT No.158305 was thus cancelled and in its stead TCT No. 225340[4] was issued in the name of Secundina on December 11, 1995 and, on even date, TCT No. 225340 was cancelled and TCT No. 225341[5] was issued in the name of petitioner.

On September 22, 1997, herein respondent Maria Milagrosa Antonio (Milagrosa) filed a Complaint[6] before the Regional Trial Court (RTC) of Manila, docketed as Civil Case No. 97-85178, for Annulment of Title and Documents with Damages against

[1] Exhibit "A", records, pp. 499-502.

[2] Exhibit "F", *id.* at 629-630.

[3] Exhibit "4", *id.* at 671-672.

[4] Exhibit "3", *id.* at 669-670.

[5] Exhibit "4-I", *id.* at 676-677.

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

petitioner and Secundina, claiming that on April 30, 1985, Cebrero, with Secundina's consent, sold to her the land for ₱9,124,000;[7] that she was not able to register the sale because she had to go to the United States to attend to personal family matters; and that the Deed of Extrajudicial Settlement of Estate and the Deed of Absolute Sale in favor of petitioner are null and void.

In its Answer,[8] petitioner claimed that it bought the land in good faith and for value from Secundina and that Milagrosa's claim appears to be "questionable, dubious, spurious, or inexistent";[9] that any claim of Milagrosa would only be as between her and Secundina; and that Milagrosa's rights, if any, had been forfeited by laches, estoppel, and prescription.

In her Answer,[10] Secundina denied that she and her husband sold the land to Milagrosa, claiming that the sale to petitioner was lawful and for valuable consideration; and that, in any event, laches and prescription had set in to bar Milagrosa's claim.

Branch 35 of the Manila RTC found petitioner to be a purchaser in good faith. With respect to Secundina, it concluded that since she and her husband twice sold the land to two different vendees without their knowledge and consent, "[she] must compensate [the plaintiff Milagrosa] who was damaged by her fraud."[11] Thus the trial court disposed:

WHEREFORE, judgment is rendered:

(1) Dismissing the complaint as far as defendant Progressive Trade & Services Enterprises, represented by its President and Chairman Manuel C. Chua, is concerned;

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[7] Exhibit "B", *id*. at 503. A more legible copy is on RTC records, p. 619.

[8] *Id.* at 42-49.

[9] *Id.* at 45.

[10] *Id.* at 148-153.

[11] *Id.* at 829.

(2) Confirming the validity of Transfer Certificate of Title No. 225341 issued by the Register of Deeds of Manila in the name of Progressive Trade & Services Enterprises, a single proprietorship represented by its President & Chairman Manuel C. Chua, for Lot 68-A-l-A of the subdivision plan (LRC) Psd-314533, located in Sampaloc, Manila;

(3) Ordering the defendant Segundina, *a.k.a*. Secundina, Cebrero to pay the plaintiff:

(a) The sum of ₱9,124,000.00, plus interest thereon at the legal rate computed from September 22, 1997;

(b) The sum of ₱50,000.00 for attorney's fees; and

(c) The costs.

SO ORDERED.[12]

Both Milagrosa and Secundina appealed.[13] By Decision[14] of October 10, 2006, the Court of Appeals affirmed the trial court's decision. However, on Milagrosa's Motion for Reconsideration,[15] the Court of Appeals, finding the title, TCT No. 225340, issued to Secundina spurious, rendered an *Amended* Decision[16] on March 26, 2007 in favor of Milagrosa, disposing as follows:

WHEREFORE, premises considered, the Plaintiff-Appellant's *Motion for Reconsideration* is hereby **GRANTED**. The assailed decision is **REVERSED** and **SET ASIDE**. Concomitantly, judgment is rendered:

1. Cancelling TCT No. 225340 issued by the Register of Deeds of Manila in favor of the Defendant-Appellant, Segundina M. Cebrero, for being spurious;

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[12] *Id.* at 830.

[13] *Id.* at 831-836, 840.

[14] Decision of October 10, 2006, penned by Court of Appeals Associate Justice Normandie B. Pizarro, with the concurrence of Associate Justices Amelita G. Tolentino and Jose Catral Mendoza. CA *rollo*, pp. 166-186.

[15] *Id.* at 214-222.

[16] Penned by Court of Appeals Associate Justice Normandie B. Pizarro, with the concurrence of Associate Justices Amelita G. Tolentino and Jose Catral Mendoza. *Id.* at 251-258.

2. *Cancelling TCT No. 225341 issued by the Register of Deeds of Manila in favor of the Defendant-Appellee, Progressive Trade and Services Enterprises, for the reason that it is a purchaser in bad faith;*

3. *Upholding the validity of TCT No. 158305 in the name of the late Virgilio D. Cebrero; and*

4. *Ordering the Register of Deeds of Manila to issue a new title over the subject property in the name of Plaintiff-Appellant, Maria Milagrosa Antonio, in lieu of TCT No. 158305.*

SO ORDERED.[17] (Emphasis and italics in the original)

Hence, the present petition,[18] petitioner alleging that the Court of Appeals erred

x x x **in ordering the cancellation of TCT No. 225341 which was duly issued by the Register of Deeds of Manila in favor of the petitioner**.[19]

x x x x x x x x x

x x x **in not ruling that the petitioner purchased the subject property in good faith and for value**.[20]

x x x x x x x x x

x x x in not upholding the principle of indefeasibility of title under the Torrens system of registration.[21]

x x x **in ruling that the attendant circumstances did not constitute a case of double sale**.[22]

x x x x x x x x x

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[17] *Id.* at 257-258.

[18] *Rollo*, pp. 3-41.

[19] *Id.* at 16.

[20] *Id.* at 20.

[21] *Id.* at 25.

[22] *Id.* at 26.

x x x **in not finding that under the circumstances, respondent had forfeited whatever pretended rights she has, if any, on the grounds of laches, estoppel and prescription**.[23]

x x x x x x x x x

x x x **in not finding that the respondent has no cause of action against the petitioner**.[24] (Emphasis in the original)

In the meantime, as Milagrosa died on June 15, 2006, the Court of Appeals, in the exercise of its residual jurisdiction, substituted Romualdo Uy for Milagrosa as plaintiff-appellant[25] on December 12, 2007.

The petition is meritorious.

The former lawyer of the Cebrero spouses, Judge Celso D. Laviña (Judge Laviña), who is familiar with the signatures of the spouses, testified that Cebrero's purported signature in the Deed of Absolute Sale to Milagrosa (marked Exhibit "B" in the deed but designated Exhibit "A" during trial in Milagrosa's formal offer of evidence)[26] is not his.[27]

A naked eye comparison of Cebrero's signature in the Deed of Absolute Sale to Milagrosa which is, by the way, a mere photocopy[28] with the sample signatures identified by Judge Laviña as those of Cebrero and which were executed at around the time the questioned Deed of Absolute Sale to Milagrosa was executed shows marked differences,[29] indicating that they were not affixed by one and the same hand.

A comparison too with the naked eye of Secundina's signatures in public documents which she identified to be hers, as well as

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[23] *Id.* at 28.

[24] *Id.* at 30.

[25] CA *rollo*, pp. 729-732.

[26] TSN, March 10, 2000, p. 3.

[27] TSN, March 16, 2000, pp. 25-29.

[28] *Supra* note 7.

[29] *Vide* Exhibits "16-a" ,"17-a", "18-a", "19-a", "20-a", *id.* at 708-714; Exhibit "B", *id*, at 503, 619; TSN, March 16, 2000, pp. 31-51.

her signatures which she executed in open court and the signature attributed to her in the Deed of Absolute Sale to Milagrosa[30] in which her name is typed as "SEGUNDINA" and her signature above it reads also "Segundina," shows that they were not written by one and the same hand.

The trial court's ruling that Secundina failed to prove her allegation that the Deed of Absolute Sale to Milagrosa was a forgery because she failed to present expert witnesses[31] does not lie. It is settled that handwriting experts, while useful, are not indispensable in examining or comparing handwritings or signatures.[32] For Section 22 of Rule 132 of the Rules of Court provides:

> The handwriting of a person may be proved by any witness who believes it to be the handwriting of the person because he has seen the person write, or has seen writing purporting to be his upon which the witness has acted or been charged, and has thus acquired knowledge of the handwriting of such person. Evidence respecting the handwriting may also be given by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge. (Underscoring supplied)

Complementing the said provision is Section 50 of Rule 130 of the Rules of Court which allows the reception of the opinion of a witness, like Judge Laviña, for which proper basis is given, as evidence regarding a handwriting with which he has sufficient familiarity.

As the Court finds that the Deed of Absolute Sale in Milagrosa's favor is not genuine, it transmitted no rights to her. Consequently, the subject land – part of Cebrero's estate which was allotted to Secundina was validly sold by her to petitioner.

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[30] *Vide* Exhibits "2", "4-b", "4-c", "21-b", "22", "23-a", "24-b", "25-b", *id.* at 665, 673-674, 715-719; Exhibit "B", *id.* at 503, 619; TSN, March 16, 2000, pp. 65, 68; TSN, March 17, 2000, pp. 13-17.

[31] *Id.* at 828-829.

[32] *Vide Fullero v. People*, G.R. No. 170583, September 12, 2007, 533 SCRA 97, 122.

WHEREFORE, the petition is *GRANTED*. The Amended Decision of the Court of Appeals dated March 26, 2007 is *REVERSED* and *SET ASIDE*. Civil Case No. 97-85178 lodged at the Regional Trial Court of Manila Branch 35 is *DISMISSED*.

SO ORDERED.

Ynares-Santiago,[*] *Brion, Del Castillo,* and *Abad, JJ.,* concur.

SECOND DIVISION

[G.R. No. 179985. September 18, 2009]

ODILON L. MARTINEZ, *petitioner, vs.* **B&B FISH BROKER/NORBERTO M. LUCINARIO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; LIMITED TO REVIEW OF QUESTIONS OF LAW; EXCEPTION. — It is axiomatic that in a petition for review on *certiorari*, only questions of law may be raised. The rule admits of certain exceptions, however, one of which is when there is variance on the appreciation of facts of the case. In the present case, the Labor Arbiter ruled that there is no illegal dismissal, yet she ordered petitioner's reinstatement. The NLRC found otherwise – that petitioner was illegally dismissed. On appeal, the appellate court reversed the findings of the NLRC. This constrains the Court to reassess the evidence of the parties.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUST CAUSES; ABANDONMENT; NOT ESTABLISHED IN CASE AT BAR. — Abandonment is a form of neglect of duty, one of the just

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[*] Additional member per Special Order No. 691 dated September 4, 2009.

causes for an employer to terminate an employee. It is a hornbook precept that in illegal dismissal cases, the employer bears the burden of proof. For a valid termination of employment on the ground of abandonment, Lucinario must prove, by substantial evidence, the concurrence of petitioner's failure to report for work for no valid reason and his categorical intention to discontinue employment. Indeed, Lucinario, however, failed to establish any overt act on the part of petitioner to show his intention to abandon employment. As reflected above, petitioner, after being informed of his alleged shortages in collections and despite his relegation to that of company custodian, still reported for work. He later applied for a 4-day leave of absence. On his return, he discovered that his name was erased from the logbook, was refused entry into the company premises, and learned that his application for a 4-day leave was not approved. He thereupon exerted efforts to communicate with Lucinario on the status of his employment, but to no avail. To the Court, these circumstances do not indicate abandonment. Finally, that petitioner immediately filed the illegal dismissal complaint with prayer for reinstatement should dissipate any doubts that he wanted to return to work.

3. ID.; ID.; ID.; CONSTRUCTIVE DISMISSAL; EXISTS WHEN AN EMPLOYEE IS PLACED IN A POSITION WHERE CONTINUED EMPLOYMENT IS RENDERED IMPOSSIBLE AND UNREASONABLE; CASE AT BAR. — [P]etitioner was constructively dismissed. No actual dismissal might have occurred in the sense that petitioner was not served with a notice of termination, but there was constructive dismissal, petitioner having been placed in a position where continued employment was rendered impossible and unreasonable x x x.

APPEARANCES OF COUNSEL

Dionela Jimenez Baroque So and Salazar for petitioner.
Amoroso Amoroso and Associates Law Office for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Challenged *via* petition for review on *certiorari* is the Court of Appeals Decision of September 27, 2007[1] setting aside the Resolution of the National Labor Relations Commission (NLRC) and reinstating that of the Labor Arbiter.

Odilon L. Martinez (petitioner) was employed as a cashier on February 2000 by B&B Fish Broker, a partnership owned and managed by respondent Norberto M. Lucinario (Lucinario) and Jose Suico.

On November 24, 2002, Lucinario called petitioner's attention to his alleged shortages in his cash collections and ordered him to, as he did, take a leave the following day. When petitioner reported back for work on November 26, 2002, he was relieved of his position and reassigned as company custodian.

As cashier, petitioner's duties consisted of issuing receipts on items taken and bought and balancing of the cash on hand and receipts issued at the close of the business day.

On December 2, 2002, petitioner filed an application for a four-day leave effective on even date due to an inflamed jaw. His application, addressed to Lucinario, was received by a co-employee, Arielle Penaranda.

On December 9, 2002, petitioner discovered that his name had been removed from the company logbook and was prevented from logging in. And he was informed that his application filed on December 2, 2002 for a four-day leave of absence had been denied. The following day or on December 10, 2002, petitioner, having understood that the removal of his name from the logbook amounted to the termination of his employment, tried to confer with Lucinario but to no avail, hence, filed on December 19,

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[1] Penned by former Associate Justice Vicente Q. Roxas with the concurrence of Associate Justices Josefina Guevara-Salonga and Ramon R. Garcia.

2002 a complaint against B&B Fish Broker and/or Lucinario, for illegal dismissal, underpayment and non-payment of wages with prayer for reinstatement, before the Arbitration Branch of the National Labor Relations Commission, docketed as NLRC-NCR Case No. 12-11217-02.[2]

Lucinario countered that as early as April 2000, petitioner had been incurring shortages in his cash collections; that despite petitioner's preventive suspension in 2001 and several verbal warnings from the management, discrepancies in petitioner's cash collections continued; and that on December 6, 2002, he, through Head Cashier, Diosdado Deynate (Deynate), required petitioner to report and explain the shortages/ discrepancies in his collections but he did not show up for work.

Denying petitioner's charge that his services were illegally terminated, Lucinario claimed, in effect, that petitioner abandoned his job. In support thereof, he presented the affidavits of Head Cashier Deynate and that of Leoncia M. Teonson (Teonson), an employee of B&B Fish Broker, who added that they even persuaded petitioner to report back for work. He also presented index cards showing the regularity of petitioner's incurring of shortages in his collections.

As to petitioner's claim that his name had been taken off the company logbook, Lucinario stated that the company practice is for employees to personally affix in the logbook their names and the time they arrive for work.

By Decision of September 26, 2003,[3] the Labor Arbiter, crediting Lucinario's side, dismissed petitioner's complaint and ordered B&B Fish Broker and/or Lucinario to reinstate petitioner but without backwages, and to pay him the amount of ₱29,576.87 representing salary differentials, unpaid salaries and pro-rata 13th month pay.

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[2] Petitioner filed an Amended Complaint on January 6, 2003, to include his prayer for moral and exemplary damages and attorney's fees. *Vide rollo*, p. 106.

[3] *Id.* at 84-92

Thus the Labor Arbiter disposed:

WHEREFORE, premises considered judgment is hereby rendered **dismissing the complaint** for illegal dismissal for lack of merit. Respondents B&B Fish Broker and/or Norberto Lucinario are ordered to **reinstate complainant** Odilon L. Martinez **without backwages.** Respondents are further ordered to pay complainant the amount of ₱29,576.87 representing salary differentials, unpaid salaries and pro-rata 13th month pay.

All other claims are dismissed for lack of merit.[4] (Emphasis and underscoring supplied)

On petitioner's partial appeal, the National Labor Relations Commission (NLRC), by Resolution of March 31, 2005,[5] found that the Labor Arbiter erred in placing heavy reliance on the self-serving affidavits of Deynate and Teonson submitted by Lucinario. In any event, the NLRC held that the records did not support Lucinario's claim that petitioner had abandoned his job. It thus found petitioner have been illegally dismissed. Thus it disposed:

WHEREFORE, for serious error on the part of the Arbiter *a quo*, the assailed Decision dated 26 September 2003 is MODIFIED. Finding that **complainant-appellant dismissal as illegal**, respondents are hereby ordered to **reinstate** complainant-appellant to his former position with **payments of full backwages** from the date of his dismissal until his reinstatement.

SO ORDERED. (Emphasis and underscoring supplied)

His motion for reconsideration having been denied,[6] Lucinario challenged the NLRC Decision via *Certiorari* before the Court of Appeals, faulting the NLRC in, *inter alia*, not giving credence and probative value to the affidavits of Deynate and Teonson and in relying solely on the bare and unsubstantiated allegations of petitioner.

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[4] *Id*. at p. 92.

[5] *Id*. at 93-100.

[6] *Id*. at 101-104, Resolution of December 23, 2005.

By the assailed Decision,[7] the Court of Appeals upheld Lucinario's contention that petitioner was not dismissed, it ruling that there is no requirement for affiants-witnesses to take the witness stand as the Rules on Evidence are not strictly observed in administrative proceedings similar to those conducted by the Labor Arbiter.

Hence, the present petition for review on *certiorari*, petitioner faulting the Court of Appeals in reversing the findings of the NLRC, and praying that he is further entitled to reimbursement of costs and attorney's fees.

The petition is impressed with merit.

Oddly, while Lucinario contends that petitioner abandoned his job, the bulk of his (Lucinario's) evidence relates to petitioner's incurring of shortages in his collections to justify the transfer of petitioner's assignment from cashier to company custodian and his alleged previous suspension. Parenthetically, documentary evidence relating thereto, which could lend light on petitioner's performance, was not presented.

On to Lucinario's claim that petitioner abandoned his employment:

It is axiomatic that in a petition for review on *certiorari*, only questions of law may be raised. The rule admits of certain exceptions, however, one of which is when there is variance on the appreciation of facts of the case. In the present case, the Labor Arbiter ruled that there is no illegal dismissal, yet she ordered petitioner's reinstatement. The NLRC found otherwise – that petitioner was illegally dismissed. On appeal, the appellate court reversed the findings of the NLRC. This constrains the Court to reassess the evidence of the parties.

Abandonment is a form of neglect of duty, one of the just causes for an employer to terminate an employee. It is a hornbook precept that in illegal dismissal cases, the employer bears the burden of proof. For a valid termination of employment on the ground of abandonment, Lucinario must prove, by substantial

[7] *Id*. at 72-83.

evidence, the concurrence of petitioner's failure to report for work for no valid reason and his categorical intention to discontinue employment.

Indeed, Lucinario, however, failed to establish any overt act on the part of petitioner to show his intention to abandon employment. As reflected above, petitioner, after being informed of his alleged shortages in collections and despite his relegation to that of company custodian, still reported for work. He later applied for a 4-day leave of absence. On his return, he discovered that his name was erased from the logbook, was refused entry into the company premises, and learned that his application for a 4-day leave was not approved. He thereupon exerted efforts to communicate with Lucinario on the status of his employment, but to no avail. To the Court, these circumstances do not indicate abandonment.

Finally, that petitioner immediately filed the illegal dismissal complaint with prayer for reinstatement should dissipate any doubts that he wanted to return to work.

What thus surfaces is that petitioner was constructively dismissed. No actual dismissal might have occurred in the sense that petitioner was not served with a notice of termination, but there was constructive dismissal, petitioner having been placed in a position where continued employment was rendered impossible and unreasonable by the circumstances indicated above.

WHEREFORE, the petition is, in light of the foregoing discussions, *GRANTED*. The assailed Decision of the Court of Appeals is hereby *REVERSED* and *SET ASIDE*. The March 31, 2005 Resolution of the National Labor Relations Commission is *REINSTATED*.

SO ORDERED.

Ynares-Santiago,[*] *Brion, Del Castillo,* and *Abad, JJ.,* concur.

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[*] Additional member per Special Order No. 691 dated September 4, 2009.

SECOND DIVISION

[G.R. No. 180888. September 18, 2009]

ROLANDO PLACIDO and EDGARDO CARAGAY, *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION and PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, INCORPORATED,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; STANDARDS OF DUE PROCESS; THE HOLDING OF AN ACTUAL HEARING OR CONFERENCE IS NOT A CONDITION *SINE QUA NON* FOR COMPLIANCE WITH THE DUE PROCESS REQUIREMENT IN CASE OF TERMINATION OF EMPLOYMENT. — Article 277 of the Labor Code provides: "x x x (b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just or authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, **the employer shall furnish the workers whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and defend himself with the assistance of his representative if he so desires** in accordance with company rules and regulations promulgated pursuant to the guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer." And the Omnibus Rules Implementing the Labor Code *require a hearing and conference* during which the employee concerned is given the opportunity to respond to the charge, and present his evidence or rebut the evidence presented against him. Thus Rule I, Section 2(d), provides: "Section 2. *Security of Tenure*. — x x x (d) In all cases of

termination of employment, the following standards of due process shall be substantially observed: For termination of employment based on just causes as defined in Article 282 of the Labor Code: (i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side. (ii) **A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him.** (iii) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination." The abovequoted provision of Section 2(d) should not be taken to mean, however, that holding an actual hearing or conference is a condition *sine qua non* for compliance with the due process requirement in case of termination of employment. For the test for the fair procedure guaranteed under the above-quoted Article 277(b) of the Labor Code is not whether there has been a formal pretermination confrontation between the employer and the employee. The *"ample opportunity to be heard"* standard is neither synonymous nor similar to a formal hearing. To confine the employee's right to be heard to a solitary form narrows down that right.

2. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; DUE PROCESS; ESSENCE IS SIMPLY AN OPPORTUNITY TO BE HEARD; CASE AT BAR. — The essence of due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of. What the law prohibits is *absolute* absence of the opportunity to be heard, hence, a party cannot feign denial of due process where he had been afforded the opportunity to present his side. A formal or trial type hearing is not at all times and in all instances essential to due process, the requirements of which are satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy. In the present case, petitioners were, among other things, given several written invitations to submit themselves to PLDT's Investigation Unit to explain their side, but they failed to heed them. A hearing, which petitioners attended along with their union MKP representatives, was

conducted on June 25, 2001 during which the principal witnesses to the incident were presented. Petitioners were thus afforded the opportunity to confront those witnesses and present evidence in their behalf, but they failed to do so.

APPEARANCES OF COUNSEL

Sanidad Abaya Te Viterbo Enriquez & Tan Law Firm for petitioners.

Confucius M. Amistad for PLDT.

D E C I S I O N

CARPIO MORALES,[*] *J.*:

Petitioners Rolando Placido (Placido) and Edgardo Caragay (Caragay) had been employed since January 22, 1981 and June 1, 1983, respectively, both as cable splicers by respondent Philippine Long Distance Telephone Company, Incorporated (PLDT).

It appears that since August 2000, PLDT had been receiving reports of theft and destruction of its cables.[1] On March 13, 2001, PLDT Duty Inspector Ricardo Mojica (Mojica) and PLDT Security Guard/Driver Mark Anthony Cruto (Cruto), responding to a report that cables were being stripped and burned in one of the residences along Alley 2 Street, Project 6, Quezon City, proceeded to the said area where they saw petitioners' service vehicle parked infront of the house at No. 162. They likewise saw petitioners stripping and burning cables inside the compound of the house which turned out to belong to Caragay's mother. With the assistance of police and *barangay* officials, PLDT recovered the cables bearing the "PLDT" marking.

The incident spawned the filing, on complaint of PLDT, of an Information for Qualified Theft against petitioners before

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[*] Per Special Order No. 690 in lieu of the sabbatical leave of Senior Associate Justice Leonardo A. Quisumbing.

[1] NLRC records, pp. 160-163.

the Regional Trial Court (RTC) of Quezon City, docketed as Criminal Case No. 99467.

In a related move, PLDT required petitioners to explain within 72 hours why no severe disciplinary action should be taken against them for Serious Misconduct and Dishonesty.[2] After several requests for extension to submit their explanations, petitioners submitted a joint explanation[3] on June 11, 2001 denying the charges against them. By their claim, they were on their way back from the house of one Jabenz Quezada (Quezada) from whom they were inquiring about a vehicle when they were detained by Mojica.

On petitioners' request, a formal hearing was scheduled. Their request for a copy of the Security Investigation was denied, however, on the ground that they are only entitled to "be informed of the charges, and they cannot demand for the report as it is still on the confidential stage."

During the June 25, 2001 formal hearing scheduled by PLDT, representatives from petitioners' union *Manggagawa ng Komunikasyon sa Pilipinas* (MKP) were present. As petitioners' counsel could not attend the hearing due to a previously scheduled hearing at the RTC Makati, petitioners requested for another setting[4] but it was denied. Petitioners were, however, given a non-extendible period of three days to submit their evidence.[5]

Mojica testified during the hearing that when petitioners saw him as they were stripping and burning the cables, they fled but surfaced thirty minutes later from Alley 6 Street wearing different clothes; and that according to Rodolfo R. Anor, PLDT Work Order Supervisor, the cables could be dead cables that were not recovered by contractors.[6]

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

[3] *Id.* at 23.

[4] *Id.* at 62.

[5] *Id.* at 63.

[6] *Rollo*, p. 99.

Petitioners' counsel later reiterated the request for a setting of a hearing and an audiotape of the June 25, 2001 hearing, but the same was denied. A third time request for another hearing was likewise denied.[7]

On May 17, 2002, PLDT sent notices of termination[8] to petitioners, prompting them to file on May 24, 2002 a complaint[9] for illegal dismissal before the Labor Arbiter.

By Decision of January 12, 2004, Labor Arbiter Catalino R. Laderas held that petitioners were illegally dismissed, there being no provision in PLDT's rules and regulations that stripping and burning of PLDT cables and wires constitute Serious Misconduct and Dishonesty; that PLDT's seeming lack of urgency in taking any disciplinary action against petitioners negates the charges;[10] and that dismissal is too harsh, given petitioners' years of service and lack of previous derogatory record.

On appeal,[11] the National Labor Relations Commission (NLRC), by Decision dated February 28, 2005, *reversed* the Labor Arbiter's Decision and *dismissed* petitioners' complaint for lack of merit,[12] it holding that they were validly dismissed for just cause — "theft of company property."[13]

In brushing aside petitioners' disclaimer of the acts attributed to them, the NLRC noted that, *inter alia*, they failed to present any affidavit of Quezada to prove that they were indeed at his house inquiring about a vehicle.

Petitioners appealed to the Court of Appeals.

In the meantime or on February 15, 2007, Branch 104 of the Quezon City RTC acquitted petitioners in Criminal Case

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[7] NLRC records, pp. 67-68.

[8] *Id.* at 69-70.

[9] *Id.* at 2.

[10] *Id.* at 180-189.

[11] *Id.* at 256-269.

[12] *Id.* at 381-398.

[13] *Id.* at 395.

No. 99467 on the ground of reasonable doubt, it holding that the prosecution failed to prove that the cables were in fact stolen from PLDT.[14]

By Decision of September 28, 2007, the appellate court affirmed the NLRC Decision,[15] it holding that since the cables bore the "PLDT" marking, they were presumed to be owned by PLDT, hence, the burden of evidence shifted on petitioners to prove that they were no longer owned by PLDT, but they failed.

Ruling out petitioners' claim that they were denied due process, the appellate court held that they were given ample opportunity to defend themselves during the administrative hearing during which they were furnished with written invitations for their appearance before the investigating unit on several dates, but they refused to submit themselves to the investigation. Petitioners' motion for reconsideration having been denied by Resolution[16] of December 17, 2007, the present petition was filed.[17]

Petitioners insist that the presence of the "PLDT" marking on the cables does not prove that PLDT owned them at the time. They aver that PLDT disposes of used and unserviceable materials, including cables and telephone wires which had been declared junked and classified as scrap — a substantial amount of which remains insulated —, and once disposed of, these cables, although still bearing the "PLDT" marking, are no longer its property.

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[14] *Rollo*, pp. 320-334.

[15] Decision of September 28, 2007, penned by Court of Appeals Associate Justice Fernanda Lampas Peralta, with the concurrence of Associate Justices Normandie B. Pizarro and Edgardo P. Cruz. CA *rollo*, pp. 271-281.

[16] Penned by Court of Appeals Associate Justice Fernanda Lampas Peralta, with the concurrence of Associate Justices Normandie B. Pizarro and Edgardo P. Cruz. *Rollo*, p. 44.

[17] *Id.* at 8-30.

In fine, petitioners contend that PLDT's ownership of cables or wires bearing the "PLDT" marking on the insulation cannot be presumed, hence, a person's possession thereof does not give rise to the presumption that he obtained or stole them from PLDT.[18]

Additionally, petitioners aver that they were denied due process when PLDT refused to furnish them a copy of the Investigation Report and grant them a formal hearing in which they could be represented by counsel of their choice.

The petition is bereft of merit.

As did the NLRC and the Court of Appeals,[19] the Court finds that as the cables bore the "PLDT" marking, the presumption is that PLDT owned them. The burden of evidence thus lay on petitioners to prove that they acquired the cables lawfully. This they failed to discharge.

And as also did the NLRC and the Court of Appeals, the Court finds that petitioners were not denied due process.

Article 277 of the Labor Code provides:

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(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just or authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, **the employer shall furnish the workers whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and defend himself with the assistance of his representative if he so desires** in accordance with company rules and regulations promulgated pursuant to the guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor

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[18] *Id.* at 20.

[19] CA *rollo*, p. 38; *vide* NLRC records, pp. 451-452.

Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. (Emphasis supplied)

And the Omnibus Rules Implementing the Labor Code *require a hearing and conference* during which the employee concerned is given the opportunity to respond to the charge, and present his evidence or rebut the evidence presented against him. Thus Rule I, Section 2(d), provides:

Section 2. *Security of Tenure*. —

x x x x x x x x x

(d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

For termination of employment based on just causes as defined in Article 282 of the Labor Code:

(i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.

(ii) **A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him.**

(iii) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination. (Emphasis and underscoring supplied)

The abovequoted provision of Section 2(d) should not be taken to mean, however, that holding an actual hearing or conference is a condition *sine qua non* for compliance with the due process requirement in case of termination of employment. For the test for the fair procedure guaranteed under the above-quoted Article 277(b) of the Labor Code is not whether there has been a formal pretermination confrontation between the employer and the employee. The "*ample opportunity to be heard"* standard is neither synonymous nor

similar to a formal hearing. To confine the employee's right to be heard to a solitary form narrows down that right.[20]

The essence of due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of. What the law prohibits is *absolute* absence of the opportunity to be heard, hence, a party cannot feign denial of due process where he had been afforded the opportunity to present his side. A formal or trial type hearing is not at all times and in all instances essential to due process, the requirements of which are satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy.[21]

In the present case, petitioners were, among other things, given several written invitations to submit themselves to PLDT's Investigation Unit to explain their side, but they failed to heed them. A hearing, which petitioners attended along with their union MKP representatives, was conducted on June 25, 2001 during which the principal witnesses to the incident were presented. Petitioners were thus afforded the opportunity to confront those witnesses and present evidence in their behalf, but they failed to do so.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals dated September 28, 2007 is *AFFIRMED*.

SO ORDERED.

Ynares-Santiago,[**] *Brion, Del Castillo,* and *Abad, JJ.*, concur.

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[20] *Perez v. PT&T*, G.R. No. 152048, April 7, 2009.

[21] *Cada v. Time Saver Laundry*, G.R. No. 181480, January 30, 2009.

[**] Additional member per Special Order No. 691.

SECOND DIVISION

[G.R. No. 181300. September 18, 2009]

MALAYAN INSURANCE CO., INC., *petitioner, vs.* **JARDINE DAVIES TRANSPORT SERVICES, INC. and ASIAN TERMINALS, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE REVISED RULES OF COURT; LIMITED TO REVIEW OF ERRORS OF LAW; EXCEPTIONS; PRESENT IN CASE AT BAR. — While it is settled that the Court's jurisdiction in a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court is limited to a review of errors of law and does not, as a rule, involve the re-examination of the evidence presented by the parties, the Court has recognized several exceptions, *viz:* "The rule in our jurisdiction is that only questions of law may be entertained by this Court in a petition for review on *certiorari*. This rule, however, is not ironclad and admits certain exceptions, such as when (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) **the findings of fact are conflicting;** (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) **the findings of the CA are contrary to those of the trial court;** (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties." Given the bold-faced exceptions in the immediately-quoted ruling of the Court, which are present in the case at bar, not to mention the fact that the trial court's conclusion "that the loss occurred while the cargo was in the possession, custody and control of the defendants" is bereft of any reference to specific evidence on record upon which it was based, the Court takes a second, hard look at the evidence.

2. ID.; EVIDENCE; PRESUMPTIONS; THE PRESUMPTION THAT A BILL OF LADING CONSTITUTES *PRIMA FACIE* EVIDENCE OF THE GOODS THEREIN DESCRIBED, REBUTTED BY EVIDENCE CASTING DOUBTS ON ITS VERACITY; CASE AT BAR. — The presumption that the bill of lading, which petitioner relies upon to support its claim for restitution, constitutes *prima facie* evidence of the goods therein described was correctly deemed by the appellate court to have been rebutted in light of abundant evidence casting doubts on its veracity. That *MV Hoegh* undertook, under the bill of lading, to transport 6,599.23 MT of yellow crude sulphur on a "said to weigh" basis is not disputed. Under such clause, the shipper is solely responsible for the loading of the cargo while the carrier is oblivious of the contents of the shipment. Nobody really knows the *actual* weight of the cargo inasmuch as what is written on the bill of lading, as well as on the manifest, is based solely on the shipper's declaration. The bill of lading carried an added clause – the shipment's weight measure, quantity, quality, condition, contents and value unknown." Evidently, the weight of the cargo could not be gauged from the bill of lading. As observed by the Court of Appeals, there were also significant differences in shipment quantity at various stages of transit. x x x In the absence of clear, convincing and competent evidence to prove that the cargo indeed weighed, albeit the Bill of Lading qualified it by the phrase "said to weigh," 6,599.23 MT at the port of origin when it was loaded onto the *MV Hoegh*, the fact of loss or shortgage in the cargo upon its arrival in Manila cannot be definitively established. The legal basis for attributing liability to either of the respondents is thus sorely wanting.

3. MERCANTILE LAW; INSURANCE LAW; MARINE INSURANCE; MARINE INSURANCE POLICY; MUST BE PRESENTED IN EVIDENCE TO DETERMINE ITS TERMS AND CONDITIONS AND THE EXTENT OF ITS COVERAGE. — Jurisprudence mandates the presentation in evidence of the marine insurance policy so that its terms and conditions can be scrutinized and the extent of coverage can be determined. Respondents were thus well within their rights to scrutinize the contents thereof for the purpose of determining the terms of its validity or effectivity, among other things. Given that it is respondents who stand to be prejudiced by any claims for restitution arising from petitioner's right of subrogation under

the open policy, it is, at best specious to insist that they are barred from invoking any contractual defect as a defense under the pretext that they were not privy to the insurance contract.

4. ID.; ID.; ID.; A MARINE RISK NOTE CANNOT BE A LEGAL SOURCE OF SUBROGATION; CASE AT BAR. — Recall that petitioner's main cause of action under the complaint was based on both the Marine Risk Note and the Open Policy. The Subrogation Receipt clearly states that the amount paid was in full settlement of LMG's claim under petitioner's Marine Risk Note Number RN-001-17551. The Marine Risk Note, however, is not the insurance policy. It merely constitutes an acknowledgment or declaration of the shipper about the specific shipment covered by the marine insurance policy, the evaluation of the cargo and the chargeable premium. The marine open policy is the blanket insurance to be undertaken by the insurer on all goods to be shipped by the consignee during the existence of the contract. Apart from not being a legal source of subrogation, the Marine Risk Note is invalid for, as earlier stated, it was issued only on July 20, 1994 or *after* the main insurance contract had already lapsed (by the end of December 1993), and the insurance premium on this risk note was paid only on October 6, 1994 or a month *after* the shipment had already arrived in Manila, a peculiarity that none of petitioner's witnesses has endeavored to explain. Petitioner's marine insurance policy explicitly states under its effectivity clause that it shall cover "all shipments effective January 10, 1993 sailings and all shipments made thereafter until December 31, 1993 sailings." Coverage had, therefore, expired almost seven (7) months prior to the loading of the shipment on July 23, 1994.

APPEARANCES OF COUNSEL

Placer & Associates Law Office for petitioner.
Montilla Law Offfice for Asian Terminals, Inc.
Del Rosario & Del Rosario for Jardine Davies Transport Services, Inc.

D E C I S I O N

CARPIO MORALES, *J.*:

On July 23, 1994, Petrosul International (Petrosul) shipped on board the vessel "MV Hoegh Merchant" (*MV Hoegh*) from Vancouver, Canada yellow crude sulphur "said to weigh 6,599.23 metric tons as per draft survey" for transportation to Manila, consigned to LMG Chemicals Corporation (LMG).[1]

Upon arrival of the *MV Hoegh* in Manila on September 5, 1994, the stevedores of respondent Asian Terminals, Inc. (ATI) undertook discharging operations of the shipment or cargo from the vessel directly onto the steel barges of Creed Customs Brokerage, Inc. (CCBI), which barges were later towed upriver and arrived at the consignee LMG's storage area in Pasig, Manila.

The consignee's hired workers thereupon received and unloaded the cargo with the use of an overhead crane and clamshell grab.

During the discharge of the cargo "ex vessel" onto CCBI's barges, SMS Average Surveyors and Adjusters, Inc. (SMS), LMG's appointed surveyors, reported the Outturn Quantity/ Weight of the cargo at **6,247.199 Metric Tons (MT),**[2] hence, given that as indicated in the Bill of Lading the weight was **6,599.23 MT,** there was a shortage of 352.031 MT.

Once on board the barges, the weight of the cargo was again taken and recorded at **6,122.023 MT**,[3] thus reflecting a shortage of 477.207 MT.

The weight of the cargo, taken a third time upon discharge at LMG's storage area, was recorded at **6,206.748 MT**[4] to thus reflect a shortage of 392.482 MT.

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[1] *Vide* Bill of Lading, Exhibit "C"; records, p. 182.

[2] *Vide* Report of Survey, Exhibit "H-2"; *id.* at 189.

[3] *Id.*, Exhibit "H-3"; *id.* at 190.

[4] *Id.*, Exhibit "H-5"; *id.* at 192.

The cargo having been insured, LMG filed a claim for the value of shortage of cargo with its insurer Malayan Insurance Co., Inc., (petitioner) which paid LMG the sum of ₱1,144,108.43 in February 1995[5] and was accordingly subrogated to the rights of LMG.

For failing to heed demands to pay for the value of the cargo loss and on the basis of Marine Risk Note RN-0001-17551[6] and Marine Insurance Policy No. 001-0343,[7] petitioner as subrogee[8] filed on September 5, 1995 a Complaint[9] against herein respondents ATI and Jardine Davies Transport Services, Inc. (Jardine Davies), as alleged shipagent of MV Hoegh, together with CCBI and the "Unknown Owner and Unknown Shipagent" of the *MV Hoegh*, before the Regional Trial Court (RTC) of Manila, for recovery of the amount it paid to LMG. As the identities and addresses of CCBI and the "Unknown Owner and Unknown Shipagent" could not be ascertained, only Jardine Davies and ATI were served with summons.[10]

ATI filed its Answer with Compulsory Counterclaim and Crossclaim[11] denying any liability for the value of the loss of part of the cargo, claiming that it had exercised due care and diligence in the discharge of the cargo from the vessel onto CCBI's barges; that its participation was limited to supplying the stevedores who undertook the discharging operations from the vessel to the barges; and that any loss to the cargo was sustained either prior to its discharge from the vessel or due to the negligence of CCBI.

Jardine Davies likewise filed its Answer with Compulsory Counterclaim and Crossclaim[12] claiming that it was not the

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[5] Based on the shortage of 392.482 MT.

[6] Exhibit "A"; records, p. 175.

[7] Exhibit "B"; *id.* at 176-181.

[8] *Vide* Subrogation Receipt, Exhibit "F"; *id.* at 185.

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

[10] *Vide* October 21, 1996 Order; *id.* at 79-80.

[11] *Id.* at 18-21.

[12] *Id.* at 27-33.

shipagent of the *MV Hoegh* but a mere commercial agent; that any loss sustained by the cargo was due to the inherent vice or defect of the goods and unrecovered spillages, among other things; and that the complaint failed to state a cause of action as there was no valid subrogation.

By Decision of September 9, 2004, Branch 52 of the Manila RTC found for petitioner, disposing as follows:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of the plaintiff ordering the defendants Jardine Davies Transport Services, Inc. and Asian Terminals, Inc. to pay in solidum the former, the following:
>
> (a) ₱1,144,108.43 representing the unpaid principal obligation plus legal interest thereon from the time of demand until fully paid;
>
> (b) 25% of the amount due as and by way of attorney's fees;
>
> (c) costs of suit; and
>
> (d) Defendant Creed Customs Brokerage, Inc. and the unknown Owner and Unknown Shipagent of M/V "Hoegh Merchant" are ordered DROPPED from the complaint as the court has not acquired jurisdiction over their persons.
>
> SO ORDERED.[13] (Underscoring supplied)

Discussing in two paragraphs the basis for holding herein respondents Jardine Davies and ATI solidarily liable for the loss, the trial court stated:

> It must be emphasized that the loss occurred while the cargo was in the possession, custody and control of the defendants. Absent any proof of exercise of due diligence required by law in the vigilance over the cargo, defendants are presumed to be at fault or to have acted negligently. Such presumption, the defendants failed to overturn to the satisfaction of this court.
>
> Moreover, defendants cannot escape liability by raising as a defense any defect in the contract of insurance as they are not privies thereto. Besides, whatever defect found therein is deemed to have been waived by the subsequent payment made by the plaintiff of

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[13] *Vide* note 2 at 405-406.

consignee's claim (*Compania Maritima v. Insurance Co. of North America*, 12 SCRA 213).

x x x[14] (Underscoring supplied)

On respondents' appeal, the Court of Appeals, by Decision of January 14, 2008,[15] vacated the trial court's decision and dismissed the complaint. It, however, upheld the dropping from the complaint of CCBI and the "Unknown Owner and Unknown Shipagent" of *M/V Hoegh*.

Thus the appellate court disposed:

WHEREFORE, the assailed Decision is MODIFIED, in that portions (a), (b), and (c) of the same are VACATED and SET ASIDE. Accordingly, judgment is hereby rendered DISMISSING the complaint against Asian Terminals, Inc. and Jardine Davies Transport Services, Inc. in Civil Case No. 95-75224. Costs against Malayan Insurance Corp., Inc.

SO ORDERED.[16]

In sustaining respondents' appeal, the appellate court held that petitioner failed to establish the fact of shortage in the cargo, doubts having arisen from the disparity in quantity as stated the bill of lading (6,559.23 MT) and the shipment invoice[17] (6,477.81 MT), as well as the discrepancy in quantity as reflected in SMS's Report of Survey[18] and the Comparison of Outturns[19] incorporated therein; that the same Report shows that inaccuracies or errors in the manner of/or equipment used in measuring the weight of the cargo might have resulted in variances in the outturn quantity; and that the testimonies of

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[14] Records, p. 405.

[15] Penned by Justice Normandie B. Pizarro, with the concurrence of Justices Edgardo P. Cruz and Fernanda Lampas Peralta; CA *rollo*, pp. 171-173.

[16] *Id.* at 183.

[17] Invoice No. 114171, Exhibit "G"; records, p.186.

[18] Exhibit "H"; *id.* at 187-193.

[19] Exhibit "4"; *id.* at 192.

petitioner's witnesses, Eutiquiano Patiag[20] and Emmanuel Gotladera,[21] relative to the contents of the bill of lading may not be credited since they were not present at the actual weighing and loading of the cargo.

In fine, the appellate court held that the presumption accorded to a bill of lading - as *prima facie* evidence of the goods described therein, had been sufficiently rebutted.

Since the right of subrogation in favor of an insurer arises only upon payment of a valid insurance claim, the appellate court held that petitioner was not entitled to restitution, the insurance policy between LMG and petitioner having already expired on December 31, 1993[22] or seven (7) months *prior* to the loading of the shipment on July 23, 1994; and that the premium for Marine Risk Note RN-0001-17551 and/or the Endorsements[23] which purportedly extended the effectivity of the policy was paid only on October 6, 1994 or a month *after* the arrival of the cargo.[24]

The appellate court went on to note that petitioner also failed to prove that respondent Jardine Davies was the local shipagent of the *MV Hoegh* given that such vessel was sub-chartered by LMG's shipper Petrosul from Jardine Davies' principal Pacific Commerce Line (PCL), thereby making Petrosul the carrier which undertook to transport LMG's cargo.

The appellate court thus concluded that liability could not be imputed to Jardine Davies, its principal PCL not being the carrier of the cargo and no privity of contract existed between it (Jardine Davies) and Petrosul.

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[20] A surveyor employed with SM Santos Adjusters and Surveyors (formerly SMS Average Surveyors and Adjusters, Inc.).

[21] A Claims Processor for petitioner Malayan Insurance.

[22] *Vide* note 9 at 179.

[23] Exhibits "K" and "M", dated December 8, 1994 and December 29, 1993, respectively; *id.* at 196 and 198.

[24] The phrase was erroneously stated in the appellate court's decision as "or a month after the **loading** of the cargo."

Respecting ATI, the appellate court held that no evidence that any shortage occurred since neither LMG nor its surveyors lodged any protest on the manner by which ATI's stevedores carried out the discharging operations.[25]

Hence, the present petition raising the following issues:

I

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT (THE) PRESUMPTION ACCORDED ON THE BILL OF LADING HAS BEEN REBUTTED.

II

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT MALAYAN IS NOT ENTITLED TO REIMBURSEMENT SINCE THERE WAS NO VALID SUBROGATION.

III

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT DEFENDANT ASIAN TERMINALS, INC. IS NOT SOLIDARILY LIABLE WITH DEFENDANT JARDINE DAVIES.

IV

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT PLAINTIFF DID NOT CONSIDER JARDINE DAVIES AS "M/V HOEGH'S" LOCAL SHIPAGENT.[26]

The issue boils down to whether petitioner discharged its burden of proving by clear, competent and convincing evidence that there was shortage in the shipment of yellow crude sulphur to the consignee LMG.

The Court holds not.

Before proceeding to the substantive issues, the Court deems it fit to first resolve a procedural issue raised by respondents in their respective Comments[27] – that the present petition seeks

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[25] *Vide* note 15.

[26] *Rollo*, p. 28. Bracketed insertion supplied.

[27] Jardine's and ATI's Comment; *id.* at 75-83 and 85-96, respectively.

to pass upon questions of fact which is not allowed in a *certiorari* petition whose province is confined to questions of law.

While it is settled that the Court's jurisdiction in a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court is limited to a review of errors of law and does not, as a rule, involve the re-examination of the evidence presented by the parties, the Court has recognized several exceptions, *viz*:

> The rule in our jurisdiction is that only questions of law may be entertained by this Court in a petition for review on *certiorari*. This rule, however, is not ironclad and admits certain exceptions, such as when (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) **the findings of fact are conflicting;** (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) **the findings of the CA are contrary to those of the trial court**; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.[28] (Emphasis supplied)

Given the bold-faced exceptions in the immediately-quoted ruling of the Court, which are present in the case at bar, not to mention the fact that the trial court's conclusion "that the loss occurred while the cargo was in the possession, custody and control of the defendants" is bereft of any reference to specific evidence on record upon which it was based, the Court takes a second, hard look at the evidence.[29]

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[28] *International Container Services, Inc. v. FGU Insurance Corporation*, G.R. No. 161539, June 27, 2008, 556 SCRA 194, 199 citing *Philippine Charter Insurance Corporation v. Unknown Owner of the Vessel M/V National Honor*, G.R. No. 161833.

[29] *Wallem Philippines Shipping, Inc. v. Prudential Guarantee & Assurance, Inc.*, G.R. No. 152158, February 7, 2003, 397 SCRA 158, 167.

Petitioner argues, in the main, that the appellate court erred in failing to consider the bill of lading as a binding contract between the carrier and shipper or consignee insofar as the accuracy of the weight of the cargo is concerned. It insists:

> x x x [T]here is no need to confirm the correctness of its contents by other evidence outside the Bill of Lading as it is already conclusive upon the parties. To argue otherwise would be to allow an anomalous situation since defendant carrier can opt not to honor the terms and conditions of the bill of lading which they themselves [*sic*] prepared by simply questioning the disparity of the quantity between the bill of lading and the invoice. x x x[30]

The presumption that the bill of lading, which petitioner relies upon to support its claim for restitution, constitutes *prima facie* evidence of the goods therein described was correctly deemed by the appellate court to have been rebutted in light of abundant evidence casting doubts on its veracity.

That *MV Hoegh* undertook, under the bill of lading, to transport 6,599.23 MT of yellow crude sulphur on a "said to weigh" basis is not disputed. Under such clause, the shipper is solely responsible for the loading of the cargo while the carrier is oblivious of the contents of the shipment.[31] Nobody really knows the *actual* weight of the cargo inasmuch as what is written on the bill of lading, as well as on the manifest, is based solely on the shipper's declaration.[32]

The bill of lading carried an added clause – the shipment's weight, measure, quantity, quality, condition, contents and value unknown." Evidently, the weight of the cargo could not be gauged from the bill of lading.

As observed by the Court of Appeals, there were also significant differences in shipment quantity at various stages of transit. These disparities in the quantity at various stages of the cargo's

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[30] *Vide* Petition, *rollo*, p. 31.

[31] *Wallem Philippines Shipping, Inc. v. Prudential Guarantee & Assurance, Inc.*, *supra* note 29.

[32] *Ibid.*

transfer after its arrival to its final destinations in Manila are reflected in the Comparison of Outturns[33] embodied in SMS's Report of Survey, the pertinent portions of which read:

GENERAL REMARKS

The resultant variations among the foregoing figures per stage of transit as compared against the Bill of Lading Quantity/Weight could probably be attributed to any and/or a confluence of the following factors:

1. Variance in moisture content; evaporation and/or absorption of moisture due to exposure of the subject shipment to the elements otherwise atmospheric change, attendant all throughout the stages of transit from port of loading/origin to final destination at consignee's receiving terminal;

2. Unrecovered spillages during unloading of the subject shipment from vessel to barges, and during receiving at LMG Terminal from barges to stock pile area;

3. Shortage of about 352.031 Metric Tons as established on completion of discharging the subject shipment per vessel's draft, and/or 477.207 Metric Tons as established based on quantity/weight received by barges at shipside per displacement method;

4. Probable error/oversight aboard vessel and barges due rough sea condition prevailing at the time of initial and final draft surveys; and

5. Variance due to inaccuracies or errors in manner, procedure, method, and/or equipments used or applied in determining the outturn quantity/weight of the subject shipment per stage of transit from port of loading/origin to final port of destination at consignee's designated receiving terminal.[34] (Underscoring supplied)

In the absence of clear, convincing and competent evidence to prove that the cargo indeed weighed, albeit the Bill of Lading qualified it by the phrase "said to weigh," 6,599.23 MT at the port of origin when it was loaded onto the *MV Hoegh*, the fact of loss or shortage in the cargo upon its arrival in Manila cannot

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[33] *Vide* note 19.

[34] Exhibits "H-5" to "H-6"; records, pp. 192-193.

be definitively established. The legal basis for attributing liability to either of the respondents is thus sorely wanting.

Petitioner points out, however, that the shipment was covered not only by the Marine Risk Note but also by Open Marine Insurance Policy which, it explains, means that the value of the thing insured has not been agreed upon but left to be ascertained in the event of loss and, therefore, covered by a continuing insurance long before the cargo even loaded on board; and that Jardine Davies cannot set up any defect in the insurance policy as a defense since it is not privy to the contract of insurance between it (petitioner) and LMG.

These matters pointed out by petitioner are closely intertwined with the terms and conditions embodied in the insurance contract between petitioner and LMG such that petitioner's right to recovery unquestionably derives from contractual subrogation as an incident to an insurance relationship.[35]

Jurisprudence mandates the presentation in evidence of the marine insurance policy so that its terms and conditions can be scrutinized and the extent of coverage[36] can be determined. Respondents were thus well within their rights to scrutinize the contents thereof for the purpose of determining the terms of its validity or effectivity, among other things.

Given that it is respondents who stand to be prejudiced by any claims for restitution arising from petitioner's right of subrogation under the open policy, it is, at best specious to insist that they are barred from invoking any contractual defect as a defense under the pretext that they were not privy to the insurance contract.

Recall that petitioner's main cause of action under the complaint was based on both the Marine Risk Note and the

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[35] *Malayan Insurance Co., Inc. v. Regis Brokerage Corp.*, G.R. No. 172156, November 23, 2007, 538 SCRA 681, 690.

[36] *Malayan Insurance Co., Inc. v. Regis Brokerage Corp.*; *Wallem Philippines Shipping, Inc., v. Prudential Guarantee and Assurance, Inc.*, *supra* notes 36 and 29 respectively.

Open Policy. The Subrogation Receipt[37] clearly states that the amount paid was in full settlement of LMG's claim under petitioner's Marine Risk Note Number RN-001-17551. The Marine Risk Note, however, is not the insurance policy. It merely constitutes an acknowledgment or declaration of the shipper about the specific shipment covered by the marine insurance policy, the evaluation of the cargo and the chargeable premium.[38] The marine open policy is the blanket insurance to be undertaken by the insurer on all goods to be shipped by the consignee during the existence of the contract.

Apart from not being a legal source of subrogation, the Marine Risk Note is invalid for, as earlier stated, it was issued only on July 20, 1994 or *after* the main insurance contract had already lapsed (by the end of December 1993), and the insurance premium on this risk note was paid only on October 6, 1994[39] or a month *after* the shipment had already arrived in Manila, a peculiarity that none of petitioner's witnesses has endeavored to explain.

Petitioner's marine insurance policy explicitly states under its effectivity clause that it shall cover "all shipments effective January 10, 1993 sailings and all shipments made thereafter until December 31, 1993 sailings."[40] Coverage had, therefore, expired almost seven (7) months prior to the loading of the shipment on July 23, 1994.

Petitioner can take no refuge in its claim that the Endorsement dated December 29, 1993[41] proves that the subject insurance policy was amended or renewed. The said Endorsement was never adverted to in the complaint filed before the trial court, its existence coming to light only at the close of the testimony

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[37] *Vide* note 8.

[38] *Aboitiz Shipping Corporation v. Philippine American General Insurance, Co.*, G.R. No. 77530, October 5, 1989, 178 SCRA 357, 360.

[39] *Vide* Exhibit "I"; records, p. 194.

[40] Exhibit "B-3-b"; *id.* at 179.

[41] *Vide* note 23.

on cross of petitioner's witness Emmanuel Gotladera on the expired marine insurance policy.[42] In fact, said witness did not identify the signatory to the Endorsement nor on its genuineness and due execution, thus rendering his testimony thereon as mere hearsay.

A final note. It bears stressing that there is nothing in the records showing that ATI was negligent in its handling of the cargo when its stevedores discharged the same from the vessel directly onto the steel barges of CCBI.

Contrary to the trial court's findings, ATI was never in custody or possession of the shipment, its participation having been limited to where "the stevedores of Asian Terminals, Inc. (ATI) undertook the discharging operations of the shipment ex vessel to barges thru the use of vessel's cargo gears, and clamshell/ grab,"[43] a fact confirmed by petitioner's own witness Eutiquiano Patiag.

More importantly, representatives of SMS, the consignee's assigned surveyors, were present throughout the entire discharging operations - from the time the cargo was unloaded from the *MV Hoegh* until its discharge at LMG's chemical terminal - and never reported any mishap or incidence of mishandling on the part of ATI.[44]

WHEREFORE, the assailed Court of Appeals January 14, 2008 Decision in connection with CA-G.R. CV No. 84139 is *AFFIRMED*.

Costs against petitioner.

SO ORDERED.

Ynares-Santiago,[*] *Brion, Del Castillo,* and *Abad, JJ.,* concur.

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[42] TSN September 1, 2000, pp. 10-12.

[43] *Vide* Report of Survey at note 18; records, p. 188.

[44] *Vide* TSN January 26, 2001 (Eutiquiano Patiag), pp. 5-8.

[*] Additional member per Special Order No. 691 dated September 4, 2009.

SECOND DIVISION

[G.R. No. 181503. September 18, 2009]

BIO QUEST MARKETING, INC. and/or JOSE L. CO, *petitioner, vs.* **EDMUND REY,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; AUTHORIZED CAUSES; RETRENCHMENT; ESTABLISHED STANDARDS IN RETRENCHMENT CASES. — Retrenchment to avoid or minimize business losses is a justified ground to dismiss employees under Article 283 of the Labor Code. The employer, however, bears the burden to prove such ground with clear and satisfactory evidence, failing which the dismissal on such ground is unjustified. In discharging its burden, the employer must satisfy certain established standards, all of which must concur, *viz*: "1. That retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely *de minimis*, but substantial, serious, actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer; 2. That the employer served written notice both to the employees and to the Department of Labor and Employment at least one month prior to the intended date of retrenchment; 3. That the employer pays the retrenched employees separation pay equivalent to one (1) month pay or at least one half (1/2) month pay for every year of service, whichever is higher; 4. That the employer exercises its prerogative to retrench employees in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and 5. That the employer used fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status, efficiency, seniority, physical fitness, age, and financial hardship for certain workers."

2. ID.; ID.; ID.; ID.; ID.; WARRANTED WHERE BUSINESS LOSS IS SUBSTANTIAL, CONTINUING AND WITHOUT ANY IMMEDIATE PROSPECT OF ABATING. — Petitioner contends that contrary to the findings of the Labor Arbiter and the

appellate court, the comparative report of its sales and collections for years 2001, 2002 and 2003 sufficiently proves that it was "suffering or [was] about to suffer imminent losses due to the gap between sales and collection, and/or poor collection efforts, coupled with declining sales"; and that although the report showed an increase of sales from 2001 to 2002, there was a sharp decline thereof in 2003 by more than ₱38 Million while collections from 2002 to 2003 decreased by almost ₱100 Million. While the above-said comparative report of sales and collections indicates that there was a decrease in the amount of sales and collections from 2002 to 2003, the same does not suffice to prove that petitioner was suffering or about to suffer losses within the contemplation of Article 283 of the Labor Code. *Clarion Printing House, Inc. v. NLRC* teaches that sliding incomes or decreasing gross revenues *alone* do not necessarily indicate business losses within the meaning of Article 283, for, in the nature of things, the possibility of incurring losses is constantly present in business operations. The decline in petitioner's sales and collections from 2002 to 2003 cannot thus be considered as *the* loss referred to in Article 283 of the Labor Code, petitioner having failed to prove the stringent requirement that it was substantial, continuing and without any immediate prospect of abating. To consider every loss incurred or expected to be incurred by a company as a justification of retrenchment would be susceptible to abuse by scheming employers who might be merely feigning business losses or reverses in their business ventures to ease out employees.

3. ID.; ID.; ID.; ID.; ID.; SHOULD ONLY BE RESORTED TO WHEN OTHER LESS DRASTIC MEANS HAVE BEEN TRIED AND FOUND INADEQUATE. — For retrenchment should only be resorted to when other less drastic means have been tried and found to be inadequate. So *Polymart Paper Industries, Inc. v. NLRC* instructs: ". . . [E]ven if business losses were indeed sufficiently proven, the employer **must still prove that retrenchment was resorted to only after less drastic measures** such as the reduction of both management and rank-and-file bonuses and salaries, going on reduced time, improving manufacturing efficiency, reduction of marketing and advertising costs, faster collection of customer accounts, reduction of raw materials investment and others, **have been tried and found wanting**." In the case at bar, petitioner did not adduce evidence to prove that retrenchment was resorted to because other

measures were undertaken to abate actual or future business losses but thus failed.

APPEARANCES OF COUNSEL

Cabio Law Offices & Associates for petitioner.
Nicholas A. Aquino for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Edmund Rey (respondent) was hired by petitioner Bio Quest Marketing, Inc. on December 1, 1997 as its Area Collector in Quezon, Batangas and all the provinces of the Bicol region. As Area Collector, he was tasked to collect payment for various veterinary products sold to feedmill companies, piggery and poultry farms within his area of assignment.

Allegedly as part of its cost cutting measures brought about by a decline in its sales receipts and collections, petitioner furnished the Department of Labor and Employment (DOLE) a copy of the retrenchment notice on September 3, 2003.[1] And by letter of August 30, 2003 which was received by respondent, petitioner terminated his services on September 29, 2003.[2]

Claiming that he was dismissed without a valid cause and the observance of due process, respondent filed a complaint for illegal dismissal against petitioner.

Petitioner averred, however, that it furnished complainant a retrenchment notice[3] in compliance with Art. 283 of the Labor Code;[4] and that it had the prerogative to retrench its employees

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[1] Records, Vol. I, p. 26.

[2] *Id.* at 14.

[3] *Ibid.*

[4] Art. 283. CLOSURE OF ESTABLISHMENT AND REDUCTION OF PERSONNEL. – The employer may also terminate the employment of any employee due to the installment of labor saving devices, redundancy,

including respondent to forestall business losses,[5] to prove which claim of business losses it submitted a comparative report of its sales and collections for 2001-2003.[6]

By Decision of March 10, 2004,[7] the Labor Arbiter found that respondent was illegally dismissed and accordingly disposed:

> WHEREFORE, premises considered, judgment is hereby rendered, ordering the respondents **Bio [Q]uest Marketing, Inc. and/or Jose L. Co** to:
>
> 1) reinstate complainant Edmund Rey to his former position without loss of seniority rights; and
>
> 2) pay complainant the amount of **ONE HUNDRED EIGHT THOUSAND & TWO HUNDRED SEVENTEEN PESOS & 20/100 (₱108,217.20)** representing his backwages, holiday pay, 13th month pay and attorney's fees.
>
> All other claims are **DISMISSED** for lack of merit.[8] (Emphasis in the original)

Except with respect to the award of holiday pay which it deleted, the NLRC affirmed the Labor Arbiter's ruling by Decision

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retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing in for the purpose of circumventing the provisions of this Title, by serving a written notice on the worker and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his 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 or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one half (1/2) 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.

[5] Records, Vol. I, pp. 15-24.

[6] *Id.* at 25.

[7] *Id.* at 43-49.

[8] *Id.* at 48.

of November 23, 2005.[9] However, on petitioner's Motion for Reconsideration, the NLRC, by Decision of June 19, 2006,[10] held that petitioner was able to prove that it undertook a valid retrenchment program, as imminent and not actual losses suffices to justify such, but that "while [herein petitioner] may have exercised its sound judgment in doing away with the services of [herein respondent], the latter should be entitled to some form of reward for all the dedication, hard work and loyalty he has exhibited during his years of service with [herein petitioner]." It thus VACATED its Decision of November 23, 2005 and disposed as follows:

> WHEREFORE, the respondent's Motion for Reconsideration is hereby, GRANTED. Accordingly, the decision sought to be reconsidered is hereby, VACATED and SET ASIDE. A new one is hereby entered ordering the respondent to pay the complainant separation pay equivalent to one (1) month salary for every year of service.[11] (Underscoring supplied)

Respondent thus elevated the case via *Certiorari*[12] to the Court of Appeals which, by Decision of September 28, 2007,[13] held that herein petitioner "failed to prove convincingly that [herein respondent] was validly terminated on account of retrenchment" and accordingly reversed and set aside the decision of the NLRC, disposing as follows:

> WHEREFORE, the foregoing considered, the instant petition is **GRANTED** and the assailed Decision is **REVERSED and SET ASIDE.** Accordingly, private respondents are ordered to:
>
> Reinstate petitioner to his former position without loss of seniority rights and if this is no longer possible, to pay him:
>
> (a) separation pay, in addition to;

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[9] *Id.* at 161-167.

[10] *Id.* at 186-189.

[11] *Id.* at 188.

[12] CA *rollo*, pp. 2-23.

[13] *Id.* at 161-175.

(b) backwages equivalent to one-half month pay for every year of service from the time he was illegally dismissed up to the finality of this decision;

(c) his 13th month pay in the amount of Twenty-eight Thousand Five Hundred Seven Pesos and 68/100 (₱28,507.68), as computed by the Labor Arbiter.

Let this case be **REMANDED** to the Labor Arbiter for the computation of the amounts due petitioner.[14] (Emphasis in the original)

Petitioner's motion for reconsideration[15] having been denied by the appellate court by Resolution of January 23, 2008,[16] petitioner comes before this Court via petition for review on *certiorari*, advancing the following argument:

THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN REVERSING AND SETTING ASIDE THE NLRC DECISION BY DECLARING THAT PETITIONER FAILED TO PROVE IT WAS SUFFERING FROM SUBSTANTIAL, ACTUAL OR IMMINENT LOSSES.

The petition is bereft of merit.

Retrenchment to avoid or minimize business losses is a justified ground to dismiss employees under Article 283 of the Labor Code. The employer, however, bears the burden to prove such ground with clear and satisfactory evidence, failing which the dismissal on such ground is unjustified.[17] In discharging its burden, the employer must satisfy certain established standards, all of which must concur,[18] *viz*:

1. That retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely *de*

[14] *Id.* at 173-174.

[15] *Id.* at 178-186.

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

[17] *Polymart Paper Industries, Inc. v. NLRC*, 355 Phil. 592, August 12, 1998.

[18] *Uichico v. National Labor Relations Commission*, G.R. No. 121434, 273 SCRA 35, June 2, 1997.

minimis, but substantial, serious, actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer;

2. That the employer served written notice both to the employees and to the Department of Labor and Employment at least one month prior to the intended date of retrenchment;

3. That the employer pays the retrenched employees separation pay equivalent to one (1) month pay or at least one half (1/2) month pay for every year of service, whichever is higher;

4. That the employer exercises its prerogative to retrench employees in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and

5. That the employer used fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status, efficiency, seniority, physical fitness, age, and financial hardship for certain workers.[19]

Petitioner contends that contrary to the findings of the Labor Arbiter and the appellate court, the comparative report of its sales and collections for years 2001, 2002 and 2003 sufficiently proves that it was "suffering or [was] about to suffer imminent losses due to the gap between sales and collection, and/or poor collection efforts, coupled with declining sales";[20] and that although the report showed an increase of sales from 2001 to 2002, there was a sharp decline thereof in 2003 by more than ₱38 Million while collections from 2002 to 2003 decreased by almost ₱100 Million.

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[19] *Flight Attendants and Stewards Association of the Philippines v. Philippine Airlines, Inc., et al.*, G.R. No. 178083. July 22, 2008 citing *Casimiro v. Stern Real Estate Inc.*, G.R. No. 162233, March 10, 2006, 484 SCRA 463; *Philippine Carpet Employees Association v. Sto. Tomas*, G.R. No. 168719, February 22, 2006, 483 SCRA 128; *Ariola v. Philex Mining Corp.*, G.R. No. 147756, August 9, 2005, 466 SCRA 152; *Danzas Intercontinental, Inc. v. Daguman*, G.R. No. 154368, April 15, 2005, 456 SCRA 382.

[20] *Rollo*, p. 20.

While the above-said comparative report of sales and collections indicates that there was a decrease in the amount of sales and collections from 2002 to 2003, the same does not suffice to prove that petitioner was suffering or about to suffer losses within the contemplation of Article 283 of the Labor Code.

Clarion Printing House, Inc. v. NLRC[21] teaches that sliding incomes or decreasing gross revenues *alone* do not necessarily indicate business losses within the meaning of Article 283, for, in the nature of things, the possibility of incurring losses is constantly present in business operations.

The decline in petitioner's sales and collections from 2002 to 2003 cannot thus be considered as *the* loss referred to in Article 283 of the Labor Code, petitioner having failed to prove the stringent requirement that it was substantial, continuing and without any immediate prospect of abating.[22]

To consider every loss incurred or expected to be incurred by a company as a justification of retrenchment[23] would be susceptible to abuse by scheming employers who might be merely feigning business losses or reverses in their business ventures to ease out employees.[24]

As for the Statement of Profit and Loss submitted by petitioner, the same does not bear the signature of a certified public accountant. Neither is there a showing that it was audited by an independent auditor, hence, it is a self-serving document which ought to be treated as a mere scrap of paper devoid of any probative value.[25]

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[21] G.R. No. 148372, June 27, 2005, 461 SCRA 272.

[22] *Oriental Petroleum and Minerals Corp. v. Fuentes, et al.*, G.R. No. 151818, October 14, 2005, 472 SCRA 106, 11, *citing EMCO Plywood Corp. v. Abelgas*, G.R. No. 148532, April 14, 2004, 427 SCRA 496.

[23] *Id.*

[24] *Nasipit Lumber Company v. National Organization of Workingmen (NOWM)*, G.R. No. 146225, November 25, 2004, 444 SCRA 158 citing *J.A.T. General Services v. National Labor Relations Commission*, G.R. No. 148340, January 26, 2004, 421 SCRA 78.

[25] *Supra* note 17.

At all events, even if the comparative report were to be considered, the Court is not persuaded on the necessity of resorting to retrenchment to prevent or minimize actual or imminent business losses on the part of petitioner. For retrenchment should only be resorted to when other less drastic means have been tried and found to be inadequate.[26] So *Polymart Paper Industries, Inc. v. NLRC*[27] instructs:

> . . . [E]ven if business losses were indeed sufficiently proven, the employer **must still prove that retrenchment was resorted to only after less drastic measures** such as the reduction of both management and rank-and-file bonuses and salaries, going on reduced time, improving manufacturing efficiency, reduction of marketing and advertising costs, faster collection of customer accounts, reduction of raw materials investment and others, **have been tried and found wanting**. (Emphasis supplied)

In the case at bar, petitioner did not adduce evidence to prove that retrenchment was resorted to because other measures were undertaken to abate actual or future business losses but thus failed.

WHEREFORE, the Petition is *DENIED* and the challenged Decision and Resolution of the Court of Appeals are *AFFIRMED.*

Costs against petitioner.

SO ORDERED.

Ynares-Santiago,[*] *Brion, Del Castillo,* and *Abad, JJ.,* concur.

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[26] *Supra* note 24.

[27] *Supra* note 17.

[*] Additional member per Special Order No. 691 dated September 4, 2009.

SECOND DIVISION

[G.R. No. 181629. September 18, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ELIZARDO**[1] **CABILES *alias* "SARDO,"** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT ADVERSELY AFFECTED BY THE DELAY IN REPORTING THE RAPE INCIDENT DUE TO THREATS OF PHYSICAL VIOLENCE; CASE AT BAR. — The records of the case yield no evident trace that the trial court erred in its assessment of AAA's account on how she was ensnared by appellant into going to the grassy area where she was only to be ravished by him. To the Court, the account abounds with details which only a sincere witness can convey. Significantly, appellant does **not** assail the specific details of AAA's factual narration of how he raped her. He focuses, instead, on her delay in reporting the rape incident which, so he posits, contradicts the natural course of things. Contrary to appellant's assertion, the delay does not detract from AAA's credibility. Nor does it indicate that her tale is fabricated. In a number of cases, this Court considered justified the victim's eight and even ten years belated disclosure of the rape, it holding that "delay in reporting the rape incidents, in the face of threats of physical violence," *as in the present case*, cannot be taken against the victim, considering that "[s]trong apprehensions brought about by fear, stress, or anxiety can easily put the victim to doubt or even distrust what should otherwise be a positive attitude of bringing the culprit to justice." AAA's unqualified obedience to appellant, her lack of struggle against him, and the studied silence she held on to her ordeal appear to have been brought about by genuine fear posed by his threats to kill her and her father should she disclose to anyone the rape

[1] Some portions of the record spell appellant's first name as "**F**elizardo." However, the trial court ordered on May 31, 2001 that said name be amended to read as "**E**lizardo," in light of appellant's declaration during the trial that the correct spelling of his first name is "**E**lizardo" (TSN, May 31, 2001, p. 7; see Information dated August 16, 1999, RTC records, p. 1).

incident. Her apprehension that appellant might ravish her again, after noting appellant's acts of following her in 1999 after she had returned to stay at her father's home, naturally drew her to finally break her silence and report to her father.

2. CIVIL LAW; DAMAGES; CIVIL INDEMNITY AND MORAL DAMAGES; AWARDED IN CASE AT BAR. — A word on the award of damages. The prevailing jurisprudence on like cases authorizes a civil indemnity of ₱50,000, not ₱75,000, in addition to moral damages for a like amount.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

CARPIO MORALES, *J.*:

On review is the August 30, 2007 Decision[2] of the Court of Appeals in CA-G.R. CR-H.C. No. 00228 which affirmed[3] that of Branch 19 of the Regional Trial Court of Digos City, Davao del Sur in Criminal Case No. 352(99) finding Elizardo Cabiles *alias* "Sardo" (appellant) guilty of rape of his minor niece, but modified the death penalty to *reclusion perpetua* and the award of damages.

The accusatory portion of the Information dated August 16, 1999 against appellant reads:

That on or about the 9th day of May, 1995,[4] at about 8:00 o'clock in the morning thereof, more or less, at Barangay Mahayahay, Municipality of Hagonoy, Province of Davao del Sur, Philippines,

[2] Penned by Associate Justice Romulo V. Borja and concurred in by Associate Justices Mario V. Lopez and Elihu A. Ybanez; Court of Appeals (CA) *rollo*, pp. 93-110.

[3] Penned by Judge Hilario I. Mapayo.

[4] In her Affidavit-Complaint dated July 6, 1999, the victim stated that she was first sexually abused by appellant, her uncle, in the evening of May 7, 1995 in her house at Mahayahay, Hagonoy, Davao del Sur (pars. 3-9; RTC records, p. 4). The incident happened while she, then nine years

and within the jurisdiction of this Honorable Court, the above-named accused, through force, threat and intimidation, by using a knife, did then and there willfully, unlawfully and feloniously have carnal knowledge with one [AAA],[5] his nine (9)-year old niece, against the latter's will and without her consent.

CONTRARY TO LAW.[6]

The prosecution, through the testimonies of AAA and her father BBB,[7] gave the following version:

On May 9, 1995,[8] at around 8:00 a.m., then nine-year old AAA and her younger sister CCC[9] were playing soccer in their house at Mahayahay, Hagonoy, Davao del Sur when they heard appellant – their uncle, he and their father BBB being allegedly first cousins[10] – calling them from a nearby grassy area to go over to him as there were big guavas. The sisters dutifully went to where appellant was but found no ripe guavas. On appellant's directive, CCC left to buy bread and cigarettes.[11]

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old, was sleeping in her room that night and "noticed somebody hugged and caressed my private parts, and when I woke up I saw my uncle [appellant] already on top of me; at this juncture I pleaded to him not to continue his evil and lustful desires…, but instead he poked me with a knife and then I parried it, but he boxed me at the abdomen which made me unconscious; and when I woke up that morning I noticed my panty already bloodied and I felt pain in my vagina." (pars. 7-8, 12, *id.*).

[5] The real name of the victim is withheld to protect her privacy; instead, fictitious initials are used to represent her, pursuant to Section 44 of Republic Act No. 9262 (the Anti-Violence Against Women and Their Children Act of 2004). Likewise, the personal circumstances or any other information tending to establish or compromise her identity, as well as those of her family members shall not be disclosed.

[6] Regional Trial Court (RTC) records, pp. 1-2.

[7] His real name is not disclosed; instead, fictitious initial is used pursuant to R.A. No. 9262.

[8] TSN, August 1, 2001, pp. 15-16; par. 9 of AAA's Affidavit-Complaint, *supra* note 3.

[9] Her real name is not disclosed; instead, fictitious initial is used pursuant to R.A. No. 9262.

[10] TSN, August 1, 2001, p. 11.

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

AAA wanted to follow CCC but appellant held her hand, blocked her way and kicked her left foot, causing her to fall on the ground. Thereupon, appellant pinned down AAA and threatened her with a knife, saying "Do not try to shout because if you will do so, I will kill you right now." He quickly removed her panties, unzipped his pants and inserted his penis into her vagina. She cried as she felt pain on her vagina, which was oozing with blood. After he sexually abused her, she sat on a "big stone."[12]

Not long after, CCC arrived with the bread and cigarettes. Appellant gave the bread to CCC and told her to, as she did, leave ahead, leaving AAA alone with him. He once again threatened AAA that if she reported the incident to anyone, he would kill her and her father. Mindful of his parting threat, she went home and kept her ordeal to herself.[13]

AAA's elder brother later took her to stay home with him[14] so that she could assist his then pregnant wife. After staying with the couple for two years, AAA returned to her father's home in Mahayahay. While there, in 1999, she noticed that appellant kept following her. Afraid that he might abuse her again, she revealed to her father on June 27, 1999 what appellant had done to her.[15] She was thus medically examined on July 2, 1999 which disclosed the following findings and conclusion:

GENITAL EXAMINATION:

- Scanty Pubic Hair.
- Labia Minora and Labia Majora coaptated.
- Hymen-old lacerated wound at 3 o'clock – 9:00 o'clock correspond to a wall of a clock.

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

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

[14] The records do not indicate when and where she stayed at her brother's home.

[15] TSN, August 1, 2001, pp. 10-11, 15-17; TSN, May 31, 2001, pp. 6, 9.

- Internal Examination-admit one (1) finger with resistance.
- Rugae, prominent.

CONCLUSION:

- Old lacerated wound at 3 o'clock – 9 o'clock correspond to a wall of a clock.[16]

AAA soon after gave a sworn statement and the MCTC Judge, by Resolution of July 21, 1999, after noting that the already detained appellant "failed to submit any counter-affidavit as directed," found probable cause to indict appellant.[17]

Denying the accusation, appellant who was 37 years old when he took the witness stand on June 13, 2002, gave the following version:

In April of 1995, he left Mahayahay and lived in Diwalwal, Monkayo, Comval Province where he worked as "trummer." At the time of the alleged rape on May 9, 1995, his cousin BBB and his family were residing in North Cotabato. It was only in November of 1997 that he (appellant) returned to live in Mahayahay at which time BBB and his family also began to reside there, about a hundred meters away from his house.[18]

His relationship with BBB turned sour in 1998 due to a conflict over a farmland, but the same was settled by them amicably before *barangay* officials, and BBB "was satisfied with the settlement."[19] Despite the settlement, BBB still harbored ill-feelings against him since "he (BBB) did not talk to me anymore."[20]

His relationship with AAA was not good either, because a year before she filed the present complaint or in June of 1998, he admonished her for her unbecoming conduct of sleeping in

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[16] Records, p. 9.

[17] *Id.* at 8.

[18] TSN, June 13, 2002, pp. 6-9, 18.

[19] *Id.* at 17.

[20] *Id.* at 9, 17-18.

the house of other people, to which she reacted negatively by telling him that he "[had] nothing to do whatever … may happen to her."[21] He did not, however, inform AAA's parents about her improper behavior as he had had no chance to do so.[22]

Defense witness Martin Sarabillo related that, among other things, in 1995 when the alleged rape occurred, his neighbor BBB and family had not returned yet to Mahayahay as he did not see them that year.[23]

The trial court credited AAA's testimony as trustworthy, and brushed aside appellant's as "stand[ing] on wobbly foundation."

The trial court thus convicted appellant by Decision dated April 2, 2003, disposing as follows:

> CONFORMABLY, with all the foregoing, we find the accused ELIZARDO CABILES *alias* "SARDO," GUILTY beyond reasonable doubt of RAPE as charged, and the Court hereby sentenced him to suffer a supreme penalty of DEATH, to indemnify the complainant the sum of ₱50,000.00 as moral damages; ₱30,000.00 as exemplary damages and to pay the costs.
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> SO ORDERED.[24]

The records of the case were forwarded to this Court for automatic review. By Resolution of January 25, 2005,[25] this Court referred the case to the Court of Appeals pursuant to *People v. Mateo*.[26]

The appellate court, by Decision of August 30, 2007, affirmed the factual findings of the trial court convicting appellant of rape. It, however, modified the sentence to *reclusion perpetua*, finding that "*neither* AAA's *minority* nor her *relationship* by

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[21] *Id.* at 21-22.

[22] *Id.* at 11.

[23] TSN, August 13, 2002, pp. 4-6.

[24] CA *rollo*, pp. 12, 16.

[25] *Id.* at 90.

[26] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

consanguinity or affinity within the *third civil degree* to appellant has been duly established,"[27] and that he used a knife, a deadly weapon, in committing the crime,[28] an aggravating circumstance which already qualified the rape. It likewise modified the civil aspect of the case by ordering appellant to pay the victim civil indemnity of ₱75,000 and increasing the moral damages to ₱75,000. It thus disposed:

> WHEREFORE, the assailed Decision is hereby MODIFIED. Appellant's conviction of the crime of Rape is hereby AFFIRMED. His sentence, however, is reduced to *reclusion perpetua*. Appellant is further ordered to pay private complainant a civil indemnity of ₱75,000.00 and another ₱75,000.00 in moral damages, and ₱30,000.00 in exemplary damages.
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> SO ORDERED.[29]

In the present appeal, appellant, maintaining that "his guilt was not proven beyond reasonable doubt,"[30] contends that AAA's testimony should not be credited, the report of the alleged rape having been made four years after its alleged commission.

The appeal fails.

The records of the case yield no evident trace that the trial court erred in its assessment of AAA's account on how she was ensnared by appellant into going to the grassy area where she was only to be ravished by him. To the Court, the account abounds with details which only a sincere witness can convey. Significantly, appellant does **not** assail the specific details of AAA's factual narration of how he raped her. He focuses, instead, on her delay in reporting the rape incident which, so he posits, contradicts the natural course of things.

Contrary to appellant's assertion, the delay does not detract from AAA's credibility. Nor does it indicate that her tale is fabricated. In a number of cases, this Court considered justified

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[27] Italics supplied.

[28] CA *rollo*, pp. 105-108.

[29] *Id.* at 109.

[30] *Id.* at 39.

the victim's eight and even ten years belated disclosure of the rape, it holding that "delay in reporting the rape incidents, in the face of threats of physical violence," *as in the present case*, cannot be taken against the victim, considering that "[s]trong apprehensions brought about by fear, stress, or anxiety can easily put the victim to doubt or even distrust what should otherwise be a positive attitude of bringing the culprit to justice."[31]

AAA's unqualified obedience to appellant, her lack of struggle against him, and the studied silence she held on to her ordeal appear to have been brought about by genuine fear posed by his threats to kill her and her father should she disclose to anyone the rape incident. Her apprehension that appellant might ravish her again, after noting appellant's acts of following her in 1999 after she had returned to stay at her father's home, naturally drew her to finally break her silence and report to her father.

Appellant's challenge to the assailed decision having failed, and no circumstance which creates reasonable doubt on his guilt being extant, his conviction must be upheld.

A word on the award of damages. The prevailing jurisprudence on like cases authorizes a civil indemnity of ₱50,000, not ₱75,000, in addition to moral damages for a like amount.[32]

WHEREFORE, the assailed Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00228 is *AFFIRMED* with *Modification* in that appellant is ordered to pay the victim only ₱50,000 as civil indemnity, and ₱50,000 as moral damages. In all other respects, the appellate court's decision is AFFIRMED.

Costs against appellant.

SO ORDERED.

Ynares-Santiago,[*] *Brion, Del Castillo,* and *Abad, JJ.,* concur.

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[31] *People v. Sandico*, G.R. No. 128104, May 18, 1999, 307 SCRA 204, 216; *People v. Malagar*, G.R. Nos. 98169-73, December 1, 1994, 238 SCRA 512, citing *People v. Coloma*, G.R. No. 95755, May 18, 1993, 222 SCRA 255.

[32] *People v. Labiano*, G.R. No. 145338, June 9, 2003, 403 SCRA 324, 334.

[*] Additional member per Special Order No. 691 dated September 4, 2009.

THIRD DIVISION

[G.R. No. 182185. September 18, 2009]

JOAQUIN GA, JR., JUDITH GA GADNANAN and JESUSA GA ESMAÑA, *petitioners, vs.* **SPOUSES ANTONIO TUBUNGAN and ROSALINDA TUBUNGAN and NORBERTO GA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; COURTS; COURT OF APPEALS; HAS JURISDICTION OVER APPEALS FROM THE ORDERS, RESOLUTIONS OR DECISIONS AND PETITIONS FOR *CERTIORARI* OF THE COMMISSION ON SETTLEMENT OF LAND PROBLEMS; CASE AT BAR.— In *Sy v. Commission on the Settlement of Land Problems*, the Court held that all appeals from orders, resolutions or decisions of the COSLAP should be taken to the Court of Appeals under Rule 43 of the Rules of Court. If a petition for *certiorari* under Rule 65 is the prescribed remedy due to grave abuse of discretion or lack of jurisdiction, the same should also be brought to the Court of Appeals, as the said court cannot be bypassed without running afoul of the doctrine of judicial hierarchy. In this case, respondents did not timely appeal the COSLAP decision to the Court of Appeals *via* Rule 43, and instead filed a petition for *certiorari* under Rule 65, although with the Regional Trial Court, a body that is co-equal with the COSLAP. Only later did they file a petition for *certiorari* with the appellate court assailing the trial court's dismissal of their petition. We find that the Court of Appeals correctly held that respondents' remedy from the decision of the COSLAP was to file a petition for *certiorari* under Rule 65, as they assailed the lack of jurisdiction of said body over the dispute. However, the petition should have been filed before the Court of Appeals and not the trial court. In other words, while respondents availed of the correct remedy, they sought the same from the wrong court. This mistake would have rendered the assailed COSLAP decision final and executory, were it not for its patent nullity and invalidity.

2. ID.; JUDGMENTS; VOID JUDGMENTS; CAN NEVER BECOME FINAL AND EXECUTORY AND CAN BE ASSAILED AT ANY TIME THROUGH A PETITION FOR *CERTIORARI*.— In *National Housing Authority v. Commission on the Settlement of Land Problems*, we held that a judgment rendered by a body or tribunal that has no jurisdiction over the subject matter of the case is no judgment at all. Thus, it cannot be the source of any right or the creator of any obligation. All acts pursuant to it and all claims emanating from it have no legal effect. The void judgment can never become final and any writ of execution based on it is likewise void. We also declared in the same case that such a nullity is correctible only through a petition for *certiorari*. A petition for *certiorari* that seeks the nullification of a void judgment cannot be dismissed for timeliness as the same does not prescribe. A judgment issued by a quasi-judicial body without jurisdiction is void. It can never become final and executory, hence, an appeal is out of the question.

3. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; COMMISSION ON SETTLEMENT OF LAND PROBLEMS; MAY RESOLVE LAND DISPUTES THAT INVOLVE ONLY PUBLIC LANDS OR LAND OF THE PUBLIC DOMAIN OR THOSE COVERED WITH A SPECIFIC LICENSE FROM THE GOVERNMENT. — Administrative agencies like COSLAP are tribunals of limited jurisdiction that can only wield powers which are specifically granted to it by its enabling statute. Under Section 3 of E.O. No. 561, COSLAP has two options in acting on a land dispute or problem lodged before it, to wit: (a) refer the matter to the agency having appropriate jurisdiction for settlement/resolution; or (b) assume jurisdiction if the matter is one of those enumerated in paragraph 2 (a) to (e) of the law, if such case is critical and explosive in nature, taking into account the large number of parties involved, the presence or emergence of social unrest, or other similar critical situations requiring immediate action. In resolving whether to assume jurisdiction over a case or to refer the same to the particular agency concerned, the COSLAP has to consider the nature or classification of the land involved, the parties to the case, the nature of the questions raised, and the need for immediate and urgent action thereon to prevent injuries to persons and damage or destruction to property. The law does not vest jurisdiction on the COSLAP

over any land dispute or problem. Thus, the COSLAP may resolve land disputes that involve only public lands or lands of the public domain or those covered with a specific license from the government such as a pasture lease agreement, a timber concession, or a reservation grant.

APPEARANCES OF COUNSEL

Bedona Bedona Cabado Alim & Endonila for petitioners.
Bacbac Law Office for respondents.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

Assailed in this petition for review on *certiorari* is the Decision[1] of the Court of Appeals dated February 22, 2007 in CA-G.R. CEB SP No. 00779, which set aside the Order dated November 20, 2000 and the Writ of Demolition dated May 19, 2004 of the Commission on Settlement of Land Problems (COSLAP) in COSLAP Case No. IL-00-06-085 for having been issued without jurisdiction. Also assailed is the February 21, 2008 Resolution denying the motion for reconsideration.

The facts are undisputed.

Sometime in 1985, petitioner Joaquin Ga, Jr. filed a Complaint for Recovery of Property and Ownership of a parcel of land, known as Assessor's Lot No. 117, against respondent Norberto Ga before the COSLAP. The complaint was subsequently re-filed on February 23, 2000 by petitioner Joaquin's daughters, Girlie and Grecilda Ga, and was docketed as COSLAP Case No. IL-00-06-085.

On November 20, 2000, the COSLAP rendered judgment declaring petitioner Joaquin and his heirs as the lawful owners of the disputed lot.[2] Respondent Norberto moved for

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[1] *Rollo*, pp. 32-47; penned by Associate Justice Romeo F. Barza and concurred in by Associate Justices Arsenio J. Magpale and Priscilla Baltazar-Padilla.

[2] *Id.* at 60-63.

reconsideration but the same was denied by COSLAP in an Order dated June 14, 2001.

On June 14, 2002, respondent Norberto, together with respondents Antonio and Rosalinda Tubungan, filed a Petition for *Certiorari*, Prohibition, Preliminary Injunction, Quieting of Title and Damages with Prayer for Temporary Restraining Order[3] before the Regional Trial Court, Branch 65, San Miguel, Jordan, Guimaras, which was docketed as Civil Case No. 0223. The petition assailed the validity of the COSLAP decision and sought to enjoin the implementation of writs of execution[4] and demolition[5] issued by the COSLAP pursuant to said judgment.

On March 3, 2005, the trial court issued an order[6] dismissing Civil Case No. 0223. It held that it had no jurisdiction to nullify the COSLAP decision, as the same would be an interference with a co-equal and coordinate body.[7] Respondents filed a motion for reconsideration but it was denied by the trial court per Order dated April 18, 2005.[8]

Consequently, respondents filed a Petition for *Certiorari* before the Court of Appeals assailing the trial court's order of dismissal. On February 22, 2007, the appellate court rendered the herein assailed Decision, the dispositive part of which reads:

> WHEREFORE, the instant petition is GRANTED. The Order dated November 20, 2000 and the Writ of Demolition dated May 19, 2004, of the Commission on Settlement of Land Problems is hereby SET ASIDE. Further, the respondent commission is hereby ordered to DISMISS COSLAP Case No. IL-00-06-085 for lack of jurisdiction.
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> SO ORDERED.[9]

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[3] *Id.* at 79-86.

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

[5] *Id.* at 136-138.

[6] *Id.* at 106; penned by Judge Merlin D. Deloria.

[7] *Id.* at 102-106.

[8] *Id.* at 121-123.

[9] *Id.* at 46.

The appellate court noted that respondents erred in filing a petition for *certiorari* before the trial court when they assailed the validity of the COSLAP. According to the appellate court, respondents should have directly filed the petition with the Court of Appeals, and not the trial court, in accordance with the Court's decision in *Sy v. Commission on the Settlement of Land Problems*.[10] Nevertheless, the appellate court held that suspension of the rules on appeal was warranted, considering that the determination of respondents' substantive rights over the disputed lot far outweighs any procedural lapse that may have been committed.[11]

Moreover, the appellate court held that COSLAP had no jurisdiction over the subject matter of the complaint filed by petitioners. Citing *Davao New Town Development Corporation v. Commission on the Settlement of Land Problems*,[12] it held that COSLAP's jurisdiction over land disputes is limited only to those involving public lands or those covered by a specific license or grant from the government. In this case, the records do not show that the parcel of land subject of petitioners' complaint is public land. Thus, the determination of which party was entitled to ownership and possession of said lot belonged to the regular courts and not the COSLAP.[13]

Petitioners filed a motion for reconsideration but the same was denied by the Court of Appeals in a Resolution[14] dated February 21, 2008.

Hence, this petition raising the sole issue of whether the appellate court erred in relaxing the rules on appeal considering its findings that respondents failed to avail of the proper remedy before the appropriate court from the adverse decision of the COSLAP. Due to respondents' procedural lapse, petitioners

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[10] 417 Phil. 378 (2001).

[11] *Rollo*, pp. 37-40.

[12] G.R. No. 141523, June 8, 2005, 459 SCRA 491.

[13] *Rollo*, pp. 44-46.

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

contend that the COSLAP decision had become final and executory and that the Court of Appeals should have dismissed respondents' petition outright.

We find no reversible error in the assailed decision.

In *Sy v. Commission on the Settlement of Land Problems*,[15] the Court held that all appeals from orders, resolutions or decisions of the COSLAP should be taken to the Court of Appeals under Rule 43 of the Rules of Court. If a petition for *certiorari* under Rule 65 is the prescribed remedy due to grave abuse of discretion or lack of jurisdiction, the same should also be brought to the Court of Appeals, as the said court cannot be bypassed without running afoul of the doctrine of judicial hierarchy. In this case, respondents did not timely appeal the COSLAP decision to the Court of Appeals *via* Rule 43, and instead filed a petition for *certiorari* under Rule 65, although with the Regional Trial Court, a body that is co-equal with the COSLAP. Only later did they file a petition for *certiorari* with the appellate court assailing the trial court's dismissal of their petition.

We find that the Court of Appeals correctly held that respondents' remedy from the decision of the COSLAP was to file a petition for *certiorari* under Rule 65, as they assailed the lack of jurisdiction of said body over the dispute. However, the petition should have been filed before the Court of Appeals and not the trial court. In other words, while respondents availed of the correct remedy, they sought the same from the wrong court. This mistake would have rendered the assailed COSLAP decision final and executory, were it not for its patent nullity and invalidity.

In *National Housing Authority v. Commission on the Settlement of Land Problems*,[16] we held that a judgment rendered by a body or tribunal that has no jurisdiction over the subject matter of the case is no judgment at all. Thus, it cannot be the source of any right or the creator of any obligation. All acts pursuant to it and all claims emanating from it have no legal

[15] *Supra* note 10 at 393.

[16] G.R. No. 142601, October 23, 2006, 505 SCRA 38, 46-47.

effect. The void judgment can never become final and any writ of execution based on it is likewise void.

We also declared in the same case that such a nullity is correctible only through a petition for *certiorari*. A petition for *certiorari* that seeks the nullification of a void judgment cannot be dismissed for timeliness as the same does not prescribe. A judgment issued by a quasi-judicial body without jurisdiction is void. It can never become final and executory, hence, an appeal is out of the question.[17]

In the instant case, COSLAP had no jurisdiction over the subject matter of petitioners' complaint. The disputed lot was not shown to be public land and the nature of the dispute is not among those which fall under the jurisdiction of the COSLAP. Executive Order No. 561 enumerates the instances when COSLAP may exercise adjudicatory functions, as follows:

SECTION 3. — Powers and Functions.- The Commission shall have the following powers and functions:

x x x x x x x x x

2. Refer and follow-up for immediate action by the agency having appropriate jurisdiction any land problem or dispute referred to the Commission: Provided, That the Commission may, in the following cases, assume jurisdiction and resolve land problems or disputes which are *critical and explosive in nature* considering, for instance, the *large number of the parties involved*, the presence or emergence of *social tension or unrest*, or other similar *critical situations* requiring immediate action:

(a) Between occupants/squatters and pasture lease agreement holders or timber concessionaires;

(b) Between occupants/squatters and government reservation grantees;

(c) Between occupants/squatters and public land claimants or applicants;

(d) Petitions for classification, release and/or subdivision of lands of the public domain; and

[17] *Id.* at 43.

(e) Other similar land problems of grave urgency and magnitude.

x x x x x x x x x

Administrative agencies like COSLAP are tribunals of limited jurisdiction that can only wield powers which are specifically granted to it by its enabling statute. Under Section 3 of E.O. No. 561, COSLAP has two options in acting on a land dispute or problem lodged before it, to wit: (a) refer the matter to the agency having appropriate jurisdiction for settlement/resolution; or (b) assume jurisdiction if the matter is one of those enumerated in paragraph 2 (a) to (e) of the law, if such case is critical and explosive in nature, taking into account the large number of parties involved, the presence or emergence of social unrest, or other similar critical situations requiring immediate action. In resolving whether to assume jurisdiction over a case or to refer the same to the particular agency concerned, the COSLAP has to consider the nature or classification of the land involved, the parties to the case, the nature of the questions raised, and the need for immediate and urgent action thereon to prevent injuries to persons and damage or destruction to property. The law does not vest jurisdiction on the COSLAP over any land dispute or problem.[18]

Thus, the COSLAP may resolve land disputes that involve only public lands or lands of the public domain or those covered with a specific license from the government such as a pasture lease agreement, a timber concession, or a reservation grant.[19] However, the lot subject of the instant petition was not shown to fall under any of these categories of land and appears to be a private unregistered land. Neither is the dispute between petitioners and respondents critical and explosive in nature nor does it involve a large number of parties that could result to social tension and unrest. It can also hardly be characterized as involving a critical situation that requires immediate action.

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[18] *Barranco v. Commission on the Settlement of Land Problems*, G.R. No. 168990, June 16, 2006, 491 SCRA 222, 235.

[19] *Sy v. Commission on the Settlement of Land Problems*, *supra* note 10 at 510.

As such, the COSLAP should have dismissed petitioners' complaint for lack of jurisdiction or referred the same to the regular courts, which has jurisdiction over controversies relating to ownership and possession of private lands. The records show that respondents have consistently assailed the jurisdiction of the COSLAP,[20] and yet, the latter ignored the matter and simply proceeded to resolve petitioners' complaint. Since the COSLAP had no jurisdiction over the land dispute between petitioners and respondents, the judgment it rendered on the case is null and void.

As stated earlier, a void judgment can never be final and executory and may be assailed at any time. It is thus clear that the Court of Appeals did not err in taking cognizance of respondents' petition for *certiorari* as the judgment of the COSLAP could not have attained finality. In other words, the failure of respondents to properly appeal from the COSLAP decision before the appropriate court was not fatal to the petition for *certiorari* that they eventually filed with the Court of Appeals. The latter remedy remained available despite the lapse of the period to appeal from the void COSLAP decision.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals dated February 22, 2007 in CA-G.R. CEB-SP No. 00779 setting aside the November 20, 2000 Order of the Commission on Settlement of Land Problems in COSLAP Case No. IL-00-06-085 and the Writ of Execution dated May 19, 2004 for having been issued without jurisdiction, and the Resolution dated February 21, 2008 denying the motion for reconsideration, are *AFFIRMED*.

SO ORDERED.

Chico-Nazario, Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

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[20] See Respondents' Position Paper and Motion for Reconsideration; *rollo*, pp. 58 and 64.

THIRD DIVISION

[G.R. No. 183141. September 18, 2009]

EDGARDO H. CATINDIG, *petitioner, vs.* **THE PEOPLE OF THE PHILIPPINES and ATTY. DANIEL P. FANDIÑO, JR.,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; MAY BE RESORTED TO WHERE THE DENIAL OF THE MOTION TO DISMISS IS TAINTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION. — It is a fundamental principle that an order denying a Motion to Dismiss is an interlocutory order, which neither terminates nor finally disposes of a case, as it leaves something to be done by the court before the case is finally decided on the merits. As such, the general rule is that the denial of a Motion to Dismiss cannot be questioned in a special civil action for *certiorari*, which is a remedy designed to correct errors of jurisdiction and not errors of judgment. Neither can a denial of a Motion to Dismiss be the subject of an appeal unless and until a final judgment or order is rendered. In order to justify the grant of the extraordinary remedy of *certiorari*, the denial of the Motion to Dismiss must have been tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.

2. ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION, DEFINED. — There is "grave abuse of discretion" where "a power is exercised in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility, so patent and so gross as to amount to evasion of positive duty or virtual refusal to perform a duty enjoined by, or in contemplation of law."

3. ID.; ID.; ID.; MAY BE EXCEPTIONALLY ALLOWED WHERE SPECIAL CIRCUMSTANCES CLEARLY DEMONSTRATE THE INADEQUACY OF AN APPEAL. — Where special circumstances clearly demonstrate the inadequacy of an appeal, then the special civil action of *certiorari* may exceptionally be allowed. This Court categorically stated in *Salonga v. Cruz*

Paño that under certain situations, recourse to the extraordinary legal remedies of *certiorari*, prohibition or *mandamus* to question the denial of a motion to quash is considered proper in the interest of more enlightened and substantial justice.

4. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; LOCAL WATER UTILITIES; BOARD OF DIRECTORS OF WATER DISTRICTS; NOT ENTITLED TO THE GRANT OF COMPENSATION OTHER THAN THE PAYMENT OF PER DIEMS. — In *Baybay Water District v. Commission on Audit*, this Court made a categorical pronouncement that Presidential Decree No. 198, as amended, expressly prohibits the grant of compensation other than the payment of *per diems*, to directors of water districts. The erroneous application and enforcement of the law by public officers does not *estop* the Government from making a subsequent correction of such errors. More specifically, where there is an express provision of law prohibiting the grant of certain benefits, the law must be enforced even if it prejudices certain parties due to an error committed by public officials in granting the benefit. Practice, without more, no matter how long continued, cannot give rise to any vested right if it is contrary to law.

5. CRIMINAL LAW; VIOLATION OF SECTION 3(E) OF REPUBLIC ACT NO. 3019; ELEMENTS. — [T]he elements of violation of Section 3(e) of Republic Act No. 3019, as amended, are as follows: (1) the accused must be a public officer discharging administrative, judicial or official functions; **(2) he must have acted with manifest partiality, evident bad faith or inexcusable negligence;** and (3) his action caused undue injury to any party, including the government, or gave any private party an unwarranted benefit, advantage or preference in the discharge of his functions. In the present case, the second element of violation of Section 3(e) of Republic Act No. 3019, as amended, *i.e.*, that the private respondent and the other members of the Board of Directors of CWD acted with manifest partiality, evident bad faith or inexcusable negligence, is absent.

6. ID.; ID.; ID.; THE TERMS "MANIFEST PARTIALITY," "EVIDENT BAD FAITH," AND "GROSS INEXCUSABLE NEGLIGENCE," DEFINED. — In *Soriano v. Marcelo*, citing

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

7. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; ELEMENTS. — *Res judicata* exists when the following elements are present: (a) the former judgment must be final; (b) the court that rendered it had jurisdiction over the parties and the subject matter; (c) it must be a judgment on the merits; and (d) there must be — between the first and the second actions — identity of parties, subject matter, and cause of action.

APPEARANCES OF COUNSEL

Restituto M. Mendoza for petitioner.
The Solicitor General for public respondent.
Joselito I. Fandiño for private 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 1997 Revised Rules of Civil Procedure seeking to reverse and set aside the Decision[1] dated 14 September 2007

[1] Penned by Associate Justice Bienvenido L. Reyes with Associate Justices Aurora Santiago Lagman and Apolinario D. Bruselas, Jr., concurring; *rollo*, pp. 51-65.

and Resolution[2] dated 14 May 2008 of the Court of Appeals in CA-G.R. SP No. 96293. In its assailed Decision, the Court of Appeals annulled and set aside the following Orders of the Regional Trial Court (RTC) of Calamba City, Branch 35, in Criminal Case No. 13850-05-C for violation of Section 3(e),[3] Republic Act No. 3019, as amended, to wit: (1) Order dated 24 May 2006[4] directing the issuance of a warrant of arrest against herein private respondent Atty. Daniel Fandiño, Jr. (Atty. Fandiño) and his co-accused[5] therein and their suspension *pendente lite* from their position as Chairman and members of the Board of Directors of the Calamba Water Districts (CWD), respectively, for a period of 60 days pursuant to Section 13[6] of Republic Act

[2] Penned by Associate Justice Bienvenido L. Reyes with Associate Justices Apolinario D. Bruselas, Jr. and Romeo F. Barza, concurring; *id.* at 93-94.

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

x x x x x x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[4] Penned by Judge Romeo C. de Leon, *rollo*, pp. 397-401.

[5] The following are the co-accused of private respondent Atty. Fandiño: (1) Vivencio P. Leus, Vice-Chairman; (2) Sylvia V. Tancangco, Corporate Secretary; and (3) Severino M. Arambulo, Press Relations Officer (P.R.O).

[6] SEC 13. *Suspension and loss of benefits.* Any incumbent public officer against whom any criminal prosecution under a valid information under this Act or under Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property whether as a simple or as a complex offense and in whatever stage of execution and mode of participation, is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him.

No. 3019, as amended;[7] and (2) Order dated 5 July 2006 denying the Motion for Reconsideration of private respondent and his co-accused therein. In its questioned Resolution, the Court of Appeals denied the Motion for Reconsideration of petitioner Edgardo H. Catindig (Catindig).

Herein petitioner Catindig is an incumbent member of the *Sangguniang Pambayan* of Calamba City, Laguna, while private respondent Atty. Fandiño is the duly elected Chairman of the Board of Directors of CWD.

The factual antecedents of this case are as follows:

Sometime in 2001, a team of auditors from the Commission on Audit (COA) conducted a rate audit of CWD, Calamba, Laguna, covering its operations and financial transactions for calendar year 2001. The audit was made to determine the reasonableness of the water rate increase granted by the Local Water Utilities Administration (LWUA) to the water districts to cover Power Cost Adjustment (PCA) and Foreign Exchange Cost Adjustment (FECA).

During the examination, the COA audit team found that the Board of Directors of CWD passed several resolutions granting benefits and allowances to officers, employees and members of its Board of Directors in the total amount of ₱15,455,490.14 supposedly without legal basis and beyond the allowable limit. The said amount was divided as follows: (1) ₱4,378,908.58 granted to the Board of Directors of CWD over and above *per diems* without legal basis; (2) ₱10,620,587.68 granted to CWD officers and employees without legal basis; and (3) ₱455,993.88 granted to CWD officers and employees in amounts over the authorized limits.

The aforesaid findings of the COA audit team were embodied in its Report No. 2002-06.[8] The COA audit team explained therein that the functions of the members of the Board of Directors of the Water Districts were limited to policy-making, as clearly

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[7] Also known as the Anti-Graft and Corrupt Practices Act.

[8] *Rollo*, pp. 227-236.

stated in Section 18[9] of Presidential Decree No. 198, as amended. Moreover, even the LWUA, in its Resolution No. 313, Series of 1995, acknowledged that directors of Water Districts a not organic personnel, and that their function is limited only to policy-making. Also, Section 13[10] of Presidential Decree No. 198, as amended, categorically provides that each member of the Board of Directors of the Water Districts is entitled only to receive *per diem*, and no director shall receive other compensation for services to the district. Thus, the COA audit team stated in its audit report that the compensation, benefits and allowances amounting to ₱4,378,908.58 received by the Board of Directors of CWD were in clear violation of Section 13 of Presidential Decree No. 198, as amended. From the said amount, only ₱366,300 was allowed, representing the *per diem* per board meeting. Furthermore, the allowances granted to the officers and employees of CWD amounting to ₱10,620,587.68 by a mere board resolution issued by the Board of Directors of CWD were without basis, as these are not authorized by law.

Accordingly, the audit team made the following recommendations: (1) that the CWD make a re-evaluation of the benefits and allowances granted to its Board of Directors, officers and employees to ensure that the same were authorized and within the limits allowed under existing laws and regulations; and (2) that the LWUA should adhere to the law, particularly Presidential Decree No. 198, as amended, in regulating the grant of benefits and allowances to the CWD Board of Directors, officials and employees to ensure that the same are within the authorized limits.

On the basis thereof, petitioner filed on 7 July 2004 a Complaint before the Office of the Ombudsman for Luzon (Ombudsman)

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[9] SEC 18. Functions Limited to Policy-Making. — The function of the board shall be to establish policy. The Board shall not engaged in the detailed management of the district.

[10] SEC. 13. Compensation. — Each director shall receive a per diem, to be determined by the board, for each meeting of the board actually attended by him, but no director shall receive per diems in any given month in excess of the equivalent of the total per diems of four meetings in any given month. No director shall receive other compensation for services to the district.

against private respondent and the other members of the Board of Directors of CWD for a series of acts of gross violation of Section 3(i)[11] of Republic Act No. 3019, as amended, in conspiracy with one another, and in relation to their duties as public officers of CWD, with a prayer for immediate preventive suspension against all of them. The said Complaint was docketed as OMB-L-C-04-0709-H.

After going over the records, the Ombudsman was convinced that the findings of fact made by the COA audit team can sustain charges for violation of Section 3(e) of Republic Act No. 3019, as amended, against private respondent and the other members of the Board of Directors of CWD. The Ombudsman then issued a Resolution[12] dated 26 August 2005 recommending the filing of two Informations,[13] both for violation of Section 3(e) of Republic Act No. 3019, as amended, against private respondent and the other members of the Board of Directors of CWD.[14]

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

x x x x x x x x x

(i) Directly or indirectly becoming interested, for personal gain, or having material interest in any transaction or act requiring the approval of a board, panel or group of which he is a member, and which exercise of discretion in such approval, even if he votes against the same or does not participate in the action of the board, committee, panel or group.

Interest for personal gain shall be presumed against those public officers responsible for the approval of manifestly unlawful, inequitable, or irregular transactions or acts by the board, panel or group to which they belong.

[12] *Rollo*, pp. 329-333.

[13] *Id.* at 368-373.

[14] Herein private respondent Atty. Fandiño and the two members of the Board of Directors of CWD, namely, Vivencio P. Leus and Sylvia V. Tancangco, elevated the Resolution dated 26 August 2005 of the Office of the Deputy Ombudsman for Luzon to the Court of Appeals by way of a Petition for Review under Rule 43 of the 1997 Revised Rules of Civil Procedure. The said case was docketed as CA-G.R. SP No. 92474. On

Thereafter, two Informations, both dated 26 August 2005, were filed against private respondent and the other members of the Board of Directors of CWD — both for violation of Section 3(e) of Republic Act No. 3019, as amended — before the RTC of Calamba City. The first Information, docketed as Criminal Case No. 13850-05-C,[15] was raffled to **Branch 35** of the RTC of Calamba City; while the other Information, docketed as Criminal Case No. 13851-05-C[16] was raffled to **Branch 36** thereof.

The Information docketed as Criminal Case No. 13850-05-C, the subject of this Petition, reads:

> That on or about the period from 1993-2001, or sometime prior or subsequent thereto, in the Municipality of Calamba, Province of Laguna, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, **[ATTY. FANDIÑO], VIVENCIO P. LEUS, SYLVIA V. TANCANGCO, SEVERINO M. ARAMBULO**, public officers, being members of the Board of Directors of [CWD], while in the performance of their official functions, committing the crime charged in relation to their office, and taking advantage of the same, through manifest partiality, evident bad faith or gross inexcusable negligence, did then and there willfully, unlawfully and feloniously allow and grant unto themselves the total amount of **₱4,378,908.00** as benefits consisting of **director's fee, RATA, extra and miscellaneous expense, mid-year productivity incentive, anniversary incentive, 13th month pay, Christmas incentive, year-end incentive, uniform allowance, medical and hospitalization, traveling and *per diem* during official business and employer's contribution to [Board of Directors'] share in the welfare/provident fund** when in truth and in fact they are not allowed by law because they are not organic personnel of the water district whose functions are limited only to

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28 December 2005, the Court of Appeals dismissed outrightly the Petition on technical grounds. Private respondent Atty. Fandiño and the two members of the Board of Directors of CWD moved for the reconsideration of the said Decision, but the same was denied for lack of merit in a Resolution dated 8 March 2006. On 29 March 2006, the said Decision dated 28 December 2005 of the Court of Appeals became final and executory as evidenced by an Entry of Judgment. (See *rollo*, pp. 85-91, 367).

[15] *Rollo*, pp. 368-370.

[16] *Id.* at 371-373.

policy making and not in the detailed management of the district, thereby causing undue injury to the government in the aforestated amount.[17] (Emphases supplied.)

On 12 December 2005, the private respondent and the other members of the Board of Directors of CWD filed in Criminal Case No. 13850-05-C an Omnibus Motion for Determination of the Existence of Probable Cause, Motion to Dismiss for Lack of Probable Cause and Motion to Hold in Abeyance the Issuance of Warrant of Arrest.[18] Then, on 19 December 2005, they filed a Supplemental Motion to their Omnibus Motion for Determination of the Existence of Probable Cause, Motion to Dismiss for Lack of Probable Cause and Motion to Hold in Abeyance the Issuance of Warrant of Arrest.[19]

On 24 May 2006, the RTC of Calamba City, Laguna, Branch 35, issued an Order finding probable cause for the issuance of a warrant of arrest against the private respondent and the other members of the Board of Directors of CWD. The dispositive portion of the Order reads:

> WHEREFORE, premises considered, let a warrant for the arrest of the [herein private respondent and the other members of the Board of Directors of CWD] be issued.
>
> Likewise, pursuant to Section 13, R.A. [No.] 3019, [as amended], this Court hereby orders the **suspension** *pendente lite* of [the private respondent and the other members of the Board of Directors of CWD] from their position as members of the Board of Directors, Calamba Water Districts for a period of sixty (60) days, to take effect immediately upon receipt hereof.
>
> Let a copy of this Order be furnished to the [CWD] for the implementation of the **suspension** order.
>
> The said [CWD] shall inform this Court of any action taken thereon within ten (10) days from receipt thereof and its authorized official or duly authorized representative shall advise this Court of the date

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[17] *Id.* at 368-369.

[18] *Id.* at 374-382.

[19] *Id.* at 383-384.

of the actual implementation of the **suspension** of the [private respondent and his co-accused therein] as well as the expiration of the sixtieth day hereof so that the same may be lifted at the proper time.

Send a copy of this order to the Office of the City Prosecutor and Atty. Brion, Jr.[20] (Emphases supplied.)

The private respondent and the other members of the Board of Directors of CWD moved for the reconsideration of the aforesaid Order, but the motion was denied in the court *a quo*'s other Order dated 5 July 2006.

The private respondent was the only one who elevated the case to the Court of Appeals *via* a Petition for *Certiorari* under Rule 65 of the 1997 Revised Rules of Civil Procedure. He challenged the aforesaid two Orders of the court *a quo* for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction, as the facts on record did not establish *prima facie* probable cause; thus, Criminal Case No. 13850-05-C should have been dismissed.

On 14 September 2007, the Court of Appeals rendered its Decision granting the Petition of the private respondent, thereby annulling and setting aside the two Orders dated 24 May 2006 and 5 July 2006 of the court *a quo*.

The Court of Appeals stated in its Decision that the employees and officers, including the Board of Directors of the CWD, had received the disputed allowances and benefits long before this Court declared as illegal such payment of additional compensation; thus, it could be reasonably concluded that private respondent and his co-accused in the case below received the same in good faith. The Court of Appeals also elucidated that in prosecuting cases involving violation of Section 3(e) of Republic Act No. 3019, as amended, the public officers must have acted with manifest partiality, evident bad faith or gross inexcusable negligence in performing their legal duties. In the absence of bad faith, private respondent and his co-accused in the case

[20] *Id.* at 401.

below cannot be held liable for violation of Section 3(e) of Republic Act No. 3019, as amended.

Aggrieved, petitioner moved for a reconsideration of the aforesaid Decision of the Court of Appeals, but the motion was denied by the appellate court in its Resolution dated 14 May 2008.

Hence, this Petition with the following assignment of errors:

A

THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS JURISDICTION WHEN IT RULED THE PETITION THEREIN BASED ON FACTUAL ISSUE RATHER THAN ON THE ISSUE OF JURISDICTION OF THE TRIAL COURT, SINCE IT WAS FOR *CERTIORARI* UNDER RULE 65 OF THE 1997 RULES OF CIVIL PROCEDURE, AS AMENDED.

B

THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION WHEN IT DID NOT OUTRIGHTLY DISMISS THE PETITION IN QUESTION SINCE THE ISSUES RAISED THEREIN WERE SUBSTANTIALLY THE SAME IN CA-G.R. SP NO. 92474, WHICH IT ALREADY FINALLY DISMISSED OUTRIGHTLY ON [28 DECEMBER 2005] LONG BEFORE THE PETITION IN QUESTION IN CA-G.R. SP NO. 96293 WAS FILED WITH THIS HONORABLE COURT DATED [24 AUGUST 2006].

C

THE COURT OF APPEALS ERRED, IN GRAVE ABUSE OF ITS DISCRETION WHEN IT FAILED TO NOTICE CERTAIN RELEVANT FACTS IN ITS QUESTIONED DECISION AND RESOLUTION WHICH, IF PROPERLY CONSIDERED, WILL JUSTIFY A DIFFERENT CONCLUSION THEREOF.

D

THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION WHEN IT DID NOT UPHOLD THE ASSAILED TWO ORDERS IN QUESTION OF THE TRIAL COURT.

Given the foregoing, the issues that must be resolved in this Petition are:

I. Whether the Court of Appeals erred in pronouncing that the private respondent and the other members of the Board of Directors of the CWD acted in good faith in receiving the disputed benefits and allowances pursuant to LWUA Resolution No. 313, as amended, in a Petition for *Certiorari*, which is meant only to correct errors of jurisdiction and grave abuse of discretion.

II. Whether the Court of Appeals erred in not outrightly dismissing CA-G.R. SP No. 96293 on the ground of *res judicata*.

The present Petition is not impressed with merit.

Petitioner argues that a Petition for *Certiorari* under Rule 65 of the 1997 Revised Rules of Civil Procedure, which was used by the private respondent in challenging the Orders dated 24 May 2006 and 5 July 2006 of the court *a quo*, is intended only to correct errors of jurisdiction and grave abuse of discretion or excess of jurisdiction committed by the trial court. It cannot be used to correct an error of judgment or simple abuse of discretion. Also, it cannot be legally used for any other purpose. Petitioner, thus, holds that the Court of Appeals erred when it ruled not only on the issue of grave abuse of discretion but also on the merits of the case, that is, by ruling that the private respondent and the other members of the Board of Directors of CWD acted in good faith in receiving the disputed benefits and allowances pursuant to LWUA Resolution No. 313.

At the outset, the Ombudsman recommended the filing of two Informations with the RTC of Calamba City against the private respondent and the other members of the Board of Directors of CWD for violation of Section 3(e) of Republic Act No. 3019, as amended. One of the two Informations was lodged before Branch 35 of the RTC of Calamba City, and is now the subject of this Petition. After the Information was filed with the court *a quo*, the private respondent and the other members of the Board of Directors of CWD conversely filed an Omnibus Motion for Determination of the Existence of Probable Cause, Motion to Dismiss for Lack of Probable Cause and Motion to Hold in Abeyance the Issuance of Warrant of Arrest. In resolving the said Omnibus Motion, the trial court issued an Order dated

24 May 2006 finding probable cause for the issuance of a warrant of arrest against the private respondent and the other members of the Board of Directors of CWD. The trial court, thus, directed the issuance of a warrant of arrest and the suspension *pendente lite* of private respondent and the other members of the Board of Directors of CWD. In effect, the trial court denied the Omnibus Motion of the private respondent and the other members of the Board of Directors of CWD, thus, sustaining the Ombudsman's findings of probable cause against them for violation of Section 3(e) of Republic Act No. 3019, as amended. The subsequent Motion for Reconsideration of the private respondent and the other members of the Board of Directors of CWD was denied in the trial court's Order dated 5 July 2006. Consequently, the private respondent filed a Petition for *Certiorari* with the Court of Appeals questioning the aforesaid two Orders of the court *a quo*.

It is a fundamental principle that an order denying a Motion to Dismiss is an interlocutory order, which neither terminates nor finally disposes of a case, as it leaves something to be done by the court before the case is finally decided on the merits. As such, the general rule is that the denial of a Motion to Dismiss cannot be questioned in a special civil action for *certiorari*, which is a remedy designed to correct errors of jurisdiction and not errors of judgment. Neither can a denial of a Motion to Dismiss be the subject of an appeal unless and until a final judgment or order is rendered. In order to justify the grant of the extraordinary remedy of *certiorari*, the denial of the Motion to Dismiss must have been tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.[21]

There is "grave abuse of discretion" where "a power is exercised in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility, so patent and so gross as to amount to evasion of positive duty or virtual refusal to perform a duty enjoined by, or in contemplation of law."[22]

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[21] *Lu Ym v. Nabua*, G.R. No. 161309, 23 February 2005, 452 SCRA 298, 305-306.

[22] *Bayas v. Sandiganbayan*, 440 Phil. 54, 71-72 (2002).

With the aforesaid definition, it cannot be said that the trial court gravely abuse its discretion in finding probable cause for the issuance of a warrant of arrest against the private respondent and the other members of the Board of Directors of CWD, thus, denying their Omnibus Motion. It bears emphasis that the trial court itself carefully scrutinized the documents submitted by the parties and personally evaluated the Resolution of the Ombudsman finding probable cause for the filing of the Information against the private respondent and the other members of the Board of Directors of CWD for violation of Section 3(e) of Republic Act No. 3019, as amended. After it was convinced that probable cause exists to issue a warrant of arrest, it was only then that it directed the issuance thereof.

The aforesaid general rule, however, is not absolute. Where special circumstances clearly demonstrate the inadequacy of an appeal, then the special civil action of *certiorari* may exceptionally be allowed. This Court categorically stated in *Salonga v. Cruz Paño*[23] that under certain situations, recourse to the extraordinary legal remedies of *certiorari*, prohibition or *mandamus* to question the denial of a motion to quash is considered proper in the interest of more enlightened and substantial justice.[24]

After a careful review of the records, this Court finds that such special circumstance obtains in the present case. Simply stated, the existing evidence is insufficient to establish probable cause against the private respondent to prosecute him for violation of Section 3(e) of Republic Act No. 3019, as amended, *vis-à-vis* to establish probable cause for the issuance of a warrant of arrest against him.

The Ombudsman, in arriving at the conclusion that probable cause exists to prosecute the private respondent and the other members of the Board of Directors of CWD for violation of Section 3(e) of Republic Act No. 3019, as amended, relied

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[23] G.R. No. 59524, 18 February 1985, 134 SCRA 438, 448.

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

heavily on the findings of fact of the COA audit team and the ruling of this Court in *Baybay Water District v. Commission on Audit*.[25] Such finding of probable cause by the Ombudsman was affirmed by the trial court in its two Orders dated 24 May 2006 and 5 July 2006 resulting in its issuance of a warrant of arrest against the private respondent and the other members of the Board of Directors of CWD,

The findings of fact of the COA audit team revealed that the Board of Directors of CWD passed several resolutions granting benefits and allowances to its officers, employees and members of its Board of Directors, including the private respondent. The said benefits and allowances granted to the members of the Board of Directors of CWD amounting to ₱4,378,908.58, are as follows: (1) director's fee; (2) RATA; (3) extra and miscellaneous expense; (4) mid-year productivity incentive; (5) anniversary incentive; (6) 13th month pay; (7) Christmas incentive; (8) yearend incentive; (9) uniform allowance; (10) medical and hospitalization, and traveling and *per diem* during official business; and (11) employer's contribution to the Board of Directors' share in the welfare/provident fund. The COA audit team in its audit report stated that the aforesaid benefits and allowances granted to the members of the Board of Directors of CWD were without basis. The COA audit team explained that the functions of the members of the Board of Directors of Water Districts are limited only to policy-making as provided for in Section 18, Presidential Decree No. 198, as amended. Moreover, Section 13 of Presidential Decree No. 198, as amended, explicitly states that the director of water districts shall receive no other compensation other than the *per diem*.

In *Baybay Water District v. Commission on Audit*,[26] this Court made a categorical pronouncement that Presidential Decree No. 198, as amended, expressly prohibits the grant of compensation other than the payment of *per diems*, to directors of water districts. The erroneous application and enforcement

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[25] 425 Phil. 326 (2002).

[26] *Id.*

of the law by public officers does not *estop* the Government from making a subsequent correction of such errors. More specifically, where there is an express provision of law prohibiting the grant of certain benefits, the law must be enforced even if it prejudices certain parties due to an error committed by public officials in granting the benefit. Practice, without more, no matter how long continued, cannot give rise to any vested right if it is contrary to law.

Despite the foregoing, this Court strongly holds that there was no probable cause to prosecute the private respondent and the other members of the Board of Directors of CWD for violation of Section 3(e) of Republic Act No. 3019, as amended, and to issue warrant of arrest against them.

Section 3(e) of Republic Act No. 3019, as amended, provides:

> SEC. 3. *Corrupt practices of public officers*. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
>
> x x x x x x x x x
>
> (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

From the aforequoted provisions, the elements of violation of Section 3(e) of Republic Act No. 3019, as amended, are as follows: (1) the accused must be a public officer discharging administrative, judicial or official functions; **(2) he must have acted with manifest partiality, evident bad faith or inexcusable negligence**; and (3) his action caused undue injury to any party, including the government, or gave any private party an unwarranted benefit, advantage or preference in the discharge of his functions.[27]

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[27] *Soriano v. Marcelo*, G.R. No. 160772, 13 July 2009.

In the present case, the second element of violation of Section 3(e) of Republic Act No. 3019, as amended, *i.e.*, that the private respondent and the other members of the Board of Directors of CWD acted with manifest partiality, evident bad faith or inexcusable negligence, is absent.

In *Soriano v. Marcelo*,[28] citing *Albert v. Sandiganbayan*,[29] this Court discussed the second element, to wit:

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

Based on the foregoing definitions, this Court does not find the act of the private respondent and the other members of the Board of Directors of CWD of passing resolutions granting benefits and allowances to have been committed with manifest impartiality, evident bad faith or gross inexcusable negligence.

It bears stressing that in granting those benefits and allowances, the Board of Directors of CWD relied on Resolution No. 313, Series of 1995, as amended by Resolution No. 39, Series of 1996, entitled "Policy Guidelines on Compensation and Other Benefits to Water District Board of Directors," which was issued by the LWUA itself, the body that oversees and regulates the operations of the local water districts. The benefits granted by the said LWUA Resolution No. 313, Series of 1995, to the board of directors of water districts are the following: rata,

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[28] *Id.*

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

travel allowance, extraordinary and miscellaneous expense, Christmas bonus, cash gift, uniform allowance, rice allowance, medical/dental benefits and productivity incentive bonus.[30]

More so, at the time that the private respondent and the other members of the Board of Directors of CWD passed the resolutions from 1993-2001 granting benefits and allowances, this Court had not yet decided *Baybay Water District v. Commission on Audit*, which was promulgated only in 2002. Also, it was only in *De Jesus v. Commission on Audit*,[31] applying *Baybay Water District v. Commission on Audit*, that this Court declared that LWUA Resolution No. 313, Series of 1995, which grants compensation and other benefits to the members of the Board of Directors of Local Water Districts, is not in conformity with Section 13 of Presidential Decree No. 198, as amended.

Therefore, in relying on LWUA Resolution No. 313, Series of 1995 in passing several resolutions granting the disputed benefits and allowances, the private respondent and the other members of the Board of Director of CWD acted in good faith, as they were of the honest belief that LWUA Board Resolution No. 313, as amended, was valid.

Bad faith is never presumed, while **good faith is always presumed;** and the chapter on Human Relations of the Civil Code directs every person, *inter alia*, to observe good faith, which springs from the fountain of good conscience.[32]

In the absence of manifest partiality, evident bad faith or inexcusable negligence in passing several resolutions granting benefits and allowances, there can be no probable cause to prosecute the private respondent and the other members of the Board of Directors of CWD for violation of Section 3(e) of Republic Act No. 3019, as amended. Consequently, there was also no probable cause for the issuance of a warrant of arrest against them.

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[30] *Molen, Jr. v. Commission on Audit*, 493 Phil. 874, 883 (2005).

[31] 451 Phil. 812, 822 (2003).

[32] *Principio v. Barrientos, supra* note 24.

Clearly, where the evidence patently demonstrates the innocence of the accused, as in this case, this Court finds no reason to continue with his prosecution; otherwise, persecution amounting to grave and manifest injustice would be the inevitable result.[33]

In *Principio v. Barrientos*,[34] petitioner therein filed a motion with the trial court praying that its motion for reconsideration filed with the Ombudsman be given due course and thereafter, rule that no probable cause exists. The trial court denied the said motion of the petitioner, thus, affirming the finding of probable cause. Petitioner filed a Petition for *Certiorari* with the Court of Appeals, but it dismissed the petition and affirmed the RTC. On appeal to this Court *via* a Petition for Review on *Certiorari,* this Court ratiocinated that:

> At the outset, we reiterate the fundamental principle that an order denying a motion to quash is interlocutory and therefore not appealable, nor can it be the subject of a petition for *certiorari*. x x x The proper procedure to be followed is to enter a plea, go to trial, and if the decision is adverse, reiterate the issue on appeal from the final judgment. x x x.
>
> However, the general rule is not absolute. Where special circumstances clearly demonstrate the inadequacy of an appeal, then the special civil action of *certiorari* or prohibition may exceptionally be allowed. x x x.
>
> After a careful review of the records, we find that such special circumstance obtains in the case at bar. **Simply stated, the existing evidence is insufficient to establish probable cause against the petitioner and therefore, the petition must be granted**.
>
> x x x x x x x x x

Furthermore, the Ombudsman cannot impute bad faith on the part of the petitioner on the assumption that he, together with other BSP officials, was part of a cabal to apply pressure on RBSMI to sell out by subjecting it to many impositions through the Monetary Board. Bad faith is never presumed while good faith is always presumed

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[33] *Id.*

[34] *Id.* at 645-651.

x x x. Therefore, he who claims bad faith must prove it. x x x The Ombudsman should have first determined the facts indicating bad faith instead of relying on the tenuous assumption that there was an orchestrated attempt to force RBSMI to sell out.

As a general rule, courts do not interfere with the discretion of the Ombudsman to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts. There are, **however, well-recognized exceptions to this rule**, such as those enumerated in *Brocka v. Enrile* [G.R. Nos. 69863-65, December 10, 1990, 192 SCRA 183, 188-189] to wit:

a. To afford adequate protection to the constitutional rights of the accused x x x;

b. When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions x x x;

c. When there is a pre-judicial question which is subjudice x x x;

d. When the acts of the officer are without or in excess of authority x x x;

e. Where the prosecution is under an invalid law, ordinance or regulation x x x;

f. When double jeopardy is clearly apparent x x x;

g. Where the court has no jurisdiction over the offense x x x;

h. Where it is a case of persecution rather than prosecution x x x ;

i. Where the charges are manifestly false and motivated by the lust for vengeance x x x;

j. When there is clearly no *prima facie* case against the accused and a motion to quash on that ground has been denied x x x; and

k. Preliminary injunction has been issued by the Supreme Court to prevent the threatened unlawful arrest of petitioners x x x.

This is not the first time that we are dismissing a case for want of probable cause. In *Cabahug v. People* [426 Phil. 490, 510 (2002)],

we took exception to the Ombudsman's determination of probable cause and accordingly dismissed the case against the accused before the Sandiganbayan. Therein, we observed:

> While it is the function of the Ombudsman to determine whether or\not the petitioner should be subjected to the expense, rigors and embarrassment of trial, he cannot do so arbitrarily. This seemingly exclusive and unilateral authority of the Ombudsman must be tempered by the Court when powers of prosecution are in danger of being used for persecution. Dismissing the case against the accused for palpable want of probable cause not only spares her the expense, rigors and embarrassment of trial, but also prevents needless waste of the courts' time and saves the precious resources of the government. (Emphases supplied.)

Thus, the Court of Appeals did not err in granting the Petition for *Certiorari* of the private respondent and in pronouncing that he and the other members of the Board of Directors of CWD acted in good faith.

Similarly, petitioner contends that the substantial facts and issues involved in the Petition for Review in CA-G.R. SP No. 92474 were the same facts and issues raised in the Petition for *Certiorari* in CA-G.R. SP No. 96293, the subject of the present Petition. With the dismissal of the Petition for Review in CA-G.R. SP No. 92474, which became final and executory on 29 March 2006, petitioner insists that the Court of Appeals should have also dismissed outright the private respondent's Petition for *Certiorari* in CA-G.R. SP No. 96293 on the ground of *res judicata*.

Res judicata exists when the following elements are present: (a) the former judgment must be final; (b) the court that rendered it had jurisdiction over the parties and the subject matter; (c) it must be a judgment on the merits; and (d) there must be — between the first and the second actions — identity of parties, subject matter, and cause of action.[35]

Emphasis must be given to the fact that CA-G.R. No. 92474 was dismissed based on pure technicalities and not on the merits,

[35] *Avisado v. Rumbaua*, 406 Phil. 704, 716 (2001).

to wit: (1) therein petitioners' (now private respondent's) counsels failed to indicate their respective Integrated Bar of the Philippines (IBP) Official Receipt numbers, in violation of Bar Matter No. 1132; (2) the Petition did not contain an affidavit of service, as required by Section 13, Rule 13 and Section 5, Rule 43, of the Rules of Procedure, as proof that copy of the said Petition had been served on the adverse party; (3) the Petition does not contain any explanation of why a personal service upon therein private respondent (now petitioner) was not resorted to pursuant to Section 11, Rule 13; and therein petitioners failed to furnish the Ombudsman and the Office of the Solicitor General (OSG) with a copy of their Petition.

Clearly from the foregoing, the dismissal of CA-G.R. SP No. 92474 was based on sheer technicality. Since no judgment on the merits was rendered after consideration of the evidence or stipulation submitted by the parties at the trial of the case, it falls short of one of the essential requisites of *res judicata*, that the judgment should be one on the merits.[36]

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.

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[36] *Barranco v. Commission on the Settlement of Land Problems*, G.R. No. 168990, 16 June 2006, 491 SCRA 222, 230.

THIRD DIVISION

[G.R. No. 183546. September 18, 2009]

WILSON A. GO, *petitioner, vs.* **HARRY A. GO,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; COURTS; HAVE THE GENERAL POWER TO ISSUE ORDERS CONFORMABLE TO LAW AND JUSTICE AND TO ADOPT MEANS NECESSARY TO CARRY ITS JURISDICTION INTO EFFECT; CASE AT BAR. — The appellate court held that the order granting petitioner's motion to deposit monthly rentals is premature because the question of co-ownership should first be resolved before said motion may be granted. However, as correctly argued by petitioner, the assailed order is merely preservatory or provisional in nature. It does not amount to an adjudication on the merits of the action for partition and accounting for the rentals are merely kept by the trial court until it is finally determined who is lawfully entitled thereto. Although the Rules of Court do not expressly provide for this kind of provisional relief, the Court has, in the past, sanctioned such practice pursuant to the court's general power to issue such orders conformable to law and justice and to adopt means necessary to carry its jurisdiction into effect. x x x As can be seen, the order to deposit the lease rentals with the trial court is in the nature of a provisional relief designed to protect and preserve the rights of the parties while the main action is being litigated. Contrary to the findings of the Court of Appeals, such an order may be issued even prior to the determination of the issue of co-ownership because it is precisely meant to preserve the rights of the parties until such time that the court finally determines who is lawfully entitled thereto.

2. ID.; ID.; CANNOT GRANT ANYTHING MORE THAN WHAT IS PRAYED FOR; CASE AT BAR. — At the outset, the Court agrees with private respondent that the RTC gravely abused its discretion when it ordered the deposit of the entire monthly rentals whereas petitioner merely asked for the deposit of his alleged one-half (1/2) share therein. Indeed, the court's power to grant any relief allowed under the law is, as general rule,

delimited by the cardinal principle that it cannot grant anything more than what is prayed for because the relief dispensed cannot rise above its source. Here, petitioner categorically prayed for in his motion for deposit with the trial court of only one-half (1/2) of the monthly rentals during the pendency of the case. It was, therefore, highly irregular for the RTC to order the deposit of the entire monthly rentals. The RTC offered no reason for its departure from such a basic principle of law; its actuations, thus, constituted grave abuse of discretion.

3. ID.; ID.; SUPREME COURT; MAY MODIFY THE ORDER OF A TRIAL COURT TO ENSURE THAT IT CONFORMS TO JUSTICE; CASE AT BAR. — [T]he Court cannot lightly brush aside petitioner's lack of forthrightness and candor reflected, as it were, in the shifting sands of his theory of the case. While initially in his complaint he anchored his alleged one-half (1/2) share based solely on the names appearing in the title of the subject land, petitioner's subsequent admissions (when confronted with private respondent's answer to the complaint) contradicted his previous allegations, thus, creating serious doubts as to the real extent of his lawful interest in the subject land. What emerges at this stage of the proceedings, *albeit* preliminary and subject to the outcome of the presentation of evidence during the trial on merits, is that the subject land was bought by Sio Tong Go and, upon his death, his interest therein passed on to his surviving spouse, Simeona Lim Ang, and their five children. Under the presumption that the subject land is conjugal property because it was bought during the marriage of Sio Tong Go and Simeona Lim Ang, and pursuant to the law on succession, petitioner's share, as one of the children, appears to be limited to 1/12 of the monthly rentals. Thus, it is only to this extent that his alleged interest as co-owner should be protected through the order to deposit rental income. Consequently, under the prevailing equities of this case, the subject order requiring private respondent to deposit with the trial court the entire monthly rental income should be reduced to 1/12 of said income reckoned from the finality of this Decision and every month thereafter until the trial court finally determines who is lawfully entitled thereto. The Court emphasizes that these are *preliminary findings* for the sole purpose of resolving the propriety of the subject order requiring the deposit of the monthly rentals with the trial court. The precise extent of the

interest of the parties in the subject land will have to await the final determination by the trial court of the main action for partition after a trial on the merits. While ordinarily this Court does not interfere with the sound discretion of the trial court to determine the propriety and extent of the provisional relief necessitated by a given case, the afore-discussed special and compelling circumstances warrant a correction of the trial court's exercise of discretion based on the grave abuse of discretion standard. It is well to remember that the question often asked of this Court, that is, whether it is a court of law or a court of justice, has always been answered in that it is both a court of law *and* a court of justice. When the circumstances warrant, this Court shall not hesitate to modify the order issued by a trial court to ensure that it conforms to justice. The result reached here is but an affirmation of this long held and cherished principle.

APPEARANCES OF COUNSEL

O.F. Suarez-Fetesio Law Office for petitioner.
Gary S. Baluyot for private respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This is a petition for *certiorari* under Rule 65 of the Rules of Court assailing the April 21, 2008 Decision[1] of the Court of Appeals in CA-G.R. SP No. 100100 which annulled the May 4[2] and July 4, 2007[3] Orders of the Regional Trial Court (RTC) of Valenzuela City, Branch 172 in Civil Case No. 179-V-06. In its July 4, 2008 Resolution,[4] the Court of Appeals denied petitioner's motion for reconsideration.

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[1] *Rollo*, pp. 36-49. Penned by Associate Justice Martin S. Villarama, Jr. and concurred in by Associate Justices Noel G. Tijam and Myrna Dimaranan Vidal.

[2] Records, p. 193. Penned by Judge Floro P. Alejo.

[3] *Id.* at 219.

[4] *Rollo*, p. 50.

On September 11, 2006, petitioner Wilson A. Go instituted an action[5] for partition with accounting against private respondent Harry A. Go in the RTC of Valenzuela City. The case was raffled to Branch 172 and docketed as Civil Case No. 179-V-06.

Petitioner alleged that he and private respondent are among the five children of Spouses Sio Tong Go and Simeona Lim Ang; that he and private respondent are the registered co-owners of a parcel of land, with an area of 7,151 square meters located at Valenzuela City, Metro Manila, covered by Transfer Certificate of Title (TCT) No. V-44555 issued on June 24, 1996 by the Registry of Deeds of Valenzuela, Metro Manila; that, upon mutual agreement between petitioner and private respondent, petitioner has possession of the Owner's Duplicate Copy of TCT No. V-44555; that on said land there are seven warehouses being rented out by private respondent to various businesses without proper authority from petitioner; that from March 2006 to September 2006, private respondent collected rentals thereon amounting to ₱1,697,850.00 without giving petitioner his one-half (1/2) share; that petitioner has repeatedly demanded payment of his rightful share in the rentals from private respondent to no avail; and that due to loss of trust and confidence in private respondent, petitioner has no recourse but to demand the partition of the subject land. Petitioner prayed that the RTC render judgment (a) ordering the partition of the subject land together with the building and improvements thereon in equal share between petitioner and private respondent; (b) directing private respondent to render an accounting of the rentals collected from the seven warehouses; (c) ordering the joint collection by petitioner and private respondent of the monthly rentals pending the resolution of the case; and (d) ordering private respondent to pay attorney's fees and the costs of suit.

In his answer,[6] private respondent claimed that during the lifetime of their father, Sio Tong Go, the latter observed Chinese customs and traditions; that, for this reason, when Sio Tong

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[5] Records, pp. 1-10.

[6] *Id.* at 15-21.

Go acquired the subject land together with one Wendell Simsim on November 23, 1995, the title to the same was placed in the names of petitioner, private respondent and Simsim instead of his (Sio Tong Go's) name and that of his wife; that the interest of Simsim in the subject land was subsequently transferred in the names of petitioner and private respondent through the deed of extra-judicial settlement dated June 24, 1996; that the investment of their father flourished after businessmen started renting the warehouses built thereon; that during his lifetime, Sio Tong Go had control and stewardship of the business while petitioner and private respondent helped manage the business; that it was Sio Tong Go who entrusted the title to the subject land to petitioner for safekeeping and custody while the operations and management of the business were given to private respondent in accordance with the prevailing customs observed and practiced by their parents of Chinese origin; that the buildings and other improvements were sourced from the business and money of their parents and not from petitioner or private respondent; that partition is not proper because indivision was imposed as a condition by their father prior to his death; that the subject land cannot be partitioned without making the whole property unserviceable for the purpose intended by their parents; that partition will prejudice the rights of the other surviving siblings of Sio Tong Go and his surviving wife who depend on the rental income for their subsistence and to answer for the expenses in maintaining and preserving the subject land; that the amount of rental collection is only ₱228,000.00 per month or a total ₱1,596,000.00 for a period of six months and not ₱1,697,850.00 as alleged by petitioner; that the income must be offset with the payment for the debts of petitioner which were paid out from the rental income as well as the expenses for utilities and other costs of administration and preservation of the subject land; and that the issue of ownership must first be resolved before partition may be granted. Private respondent prayed that the complaint be dismissed; he counterclaimed for moral and exemplary damages, and attorney's fees.

On April 23, 2007, petitioner filed a motion[7] to require private respondent to deposit with the trial court petitioner's one-half (1/2) share in the rental collections from the date of the filing of the complaint on September 11, 2006 up to April 30, 2007, and every month thereafter as well as the rental collections from February 2006 to August 2006. On May 4, 2007, the trial court issued an order granting the motion not only with respect to the one-half (1/2) share prayed for but the entire monthly rental collections:

> WHEREFORE, finding the instant motion to be well-taken, the defendant is hereby directed to deposit in Court within thirty (30) days from receipt hereof all the amounts collected by him from the lessees of the warehouses covered by the certificate of title in the names of the [petitioner] and [private respondent], and no withdrawal therefrom shall be allowed without the previous written authority of this Court.
>
> SO ORDERED.[8]

Private respondent moved for reconsideration which was denied by the trial court in its July 4, 2007 Order. Aggrieved, he filed a petition for *certiorari* with the Court Appeals attributing grave abuse of discretion on the trial court. On April 21, 2008, the Court of Appeals issued the assailed Decision which nullified and set aside the May 4 and July 4, 2007 Orders of the trial court:

> WHEREFORE, premises considered, the present petition is hereby GIVEN DUE COURSE and the writ prayed for accordingly GRANTED. The assailed Orders dated May 4 and July 4, 2007 issued by respondent court are hereby ANNULLED and SET ASIDE.
>
> No pronouncement as to costs.
>
> SO ORDERED.[9]

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[7] *Id.* at 189-192.

[8] *Id.* at 193.

[9] *Rollo*, p. 48.

The Court of Appeals noted, citing the ruling in *Maglucot-aw v. Maglucot*,[10] that an action for partition involves two phases. During the first phase, the trial court determines whether a co-ownership in fact exists while in the second phase the propriety of partition is resolved. Thus, until and unless the issue of co-ownership is definitely resolved, it would be premature to effect a partition of the subject property. Applying this principle by analogy, the appellate court concluded that the deposit of the monthly rentals with the trial court was premature considering that the issue of co-ownership has yet to be resolved:

> The Court holds that with the issue of co-ownership, or to be precise, the *nature and extent* of private respondent's title on the subject real estate, *i.e.*, whether as owner of one-half (1/2) share, or a co-owner along with the other heirs of the late Sio Tong Go, not having been resolved first, it was premature for the respondent court to act favorable on private respondent's motion to deposit in court *all rentals* collected from the date of death of the said decedent, which according to petitioner is the true owner of the property under co-ownership. Such relief may be granted during the second stage of the action for partition, after due trial and the court has been satisfied that indeed private respondent-movant is the owner of the full one-half (1/2) share, and not just of an equal share with the other siblings and their mother, the surviving wife of Sio Tong Go. For, if it turns out that the subject property is owned not just by petitioner and private respondent but all the heirs of the late Sio Tong Go, then the latter had to be included as *parties in interest* in the partition case, pursuant to Sec. 1, Rule 69. As co-owners entitled to a share in the property subject of partition, assuming the evidence at the trial proves the contention of petitioner, the other sibling and mother of petitioner and private respondent are indispensable parties to the suit. Indeed, the presence of all indispensable parties is a condition *sine qua non* for the exercise of judicial power. Without the presence of all the other heirs as plaintiffs, the trial court could not validly render judgment and grant relief in favor of the private respondent.
>
> Moreover, assuming the veracity of the allegations raised in the answer by petitioner, it would appear that the real property sought

[10] 385 Phil. 720 (2000).

to be partitioned is merely held in trust by petitioner and private respondent for the benefit of their deceased father, and the latter's surviving heirs who succeeded him in his estate after his death. Thus, all the co-heirs and persons having an interest in the property are indispensable parties; as such, an action for partition will not lie without the joinder of the said parties. The circumstance that the names of the other alleged co-owners and co-heirs do not appear in the certificate of title over the subject property is of no moment. It was held that the mere issuance of a certificate of title does not foreclose the possibility that the real property may be under co-ownership with persons not named therein.

x x x x x x x x x

Petitioner's answer and the annexes attached thereto raise serious question on the right or interest of private respondent to seek segregation of the subject property to the extent of one-half (1/2) share thereof, and consequently, to receive rents or income of the property corresponding to such claimed one-half (1/2) share. That the rentals sought to be deposited in court is limited only to those collected following the death of their father only tends to support the position of petitioner that the subject real property is owned in common by the heirs of Sio Tong Go, and not just by petitioner and private respondent. It may also be noted that the complaint contains no categorical statement that private respondent, *before the filing of the complaint*, has in fact received such one-half (1/2) share out of the rentals collected from the lessees of the warehouses. Hence, respondent court's order for petitioner to deposit all rental income from the real estate subject of partition, which amounts to an accounting of rents and income pertaining to the co-owner share of private respondent *prior to the determination of the question of co-ownership*, constitutes grave abuse of discretion.[11]

Thereafter, the Court of Appeals denied petitioner's motion for reconsideration in Resolution dated July 4, 2008. Petitioner filed the instant petition for *certiorari* under Rule 65 of the Rules of Court alleging grave abuse of discretion on the part of the appellate court in nullifying the aforementioned orders of the trial court.

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[11] *Rollo*, pp. 46-48.

The Court notes that petitioner pursued the wrong remedy when he filed a petition for *certiorari* under Rule 65 from the adverse ruling of the Court of Appeals. The province of a petition for *certiorari* is strict and narrow for it is limited to questions of lack of or excess in jurisdiction, or grave abuse of discretion. The proper remedy should have been a petition for review under Rule 45. However, the Court, pursuant to the liberal spirit which pervades the Rules and given the substantial issue raised, shall treat the present petition as a petition for review on *certiorari* under Rule 45 since it was filed within the 15-day reglementary period prescribed under said rule.[12]

The sole issue is whether the Court of Appeals erred when it nullified the order requiring private respondent to deposit the monthly rentals over the subject land with the trial court during the pendency of the action for partition and accounting.

Petitioner contends that the subject order is merely provisional and preservatory in character. It is intended to prevent the undue dissipation of the rental income until such time that the trial court shall determine who is lawfully entitled thereto. Rule 69 of the Rules of Court on partition does not preclude the trial court from issuing orders to protect and preserve the rights and interests of the parties while the main action for partition is being litigated. In this case, there is no dispute that the subject property is registered in the names of petitioner and private respondent, this being admitted by private respondent himself. Petitioner thus asserts that the trial court correctly ordered the deposit of the monthly rentals to safeguard the interests of the parties to this case.

Private respondent counters that assuming that the subject order is merely provisional in nature, such order needs a concrete ground to justify it. The fact that the title to the subject land is in the names of petitioner and private respondent does not automatically mean that there exists a co-ownership. The surrounding circumstances of this case support the contention

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[12] *Philippine Journalists, Inc. v. National Labor Relations Commission*, G.R. No. 166421, September 5, 2006, 501 SCRA 75, 87-88.

that the subject land was bought by Sio Tong Go and the title thereto was placed in the names of his two sons, petitioner and private respondent, in observance of the Chinese customs and tradition. Private respondent emphasizes that petitioner began to claim his (petitioner's) alleged one-half (1/2) share in the rentals only after the death of their father on February 27, 2006 despite the fact that the subject land was bought way back on June 24, 1996. Petitioner's acquiescence for 10 years thus shows that he knew that the subject land was really owned by their father and was merely placed in their names. Further, the grant of the motion to deposit will unduly prejudice the whole family because they depend on the rental income for their living expenses as well as the costs of administration and preservation of the subject land. Also, petitioner failed to prove that there was an undue dissipation of the rental income by private respondent which would warrant the issuance of the subject order. Finally, the order to deposit the whole monthly rental income is erroneous because petitioner only prayed for the deposit of his alleged one-half (1/2) share therein and not the entirety thereof.

The petition is partly meritorious.

The appellate court held that the order granting petitioner's motion to deposit monthly rentals is premature because the question of co-ownership should first be resolved before said motion may be granted. However, as correctly argued by petitioner, the assailed order is merely preservatory or provisional in nature. It does not amount to an adjudication on the merits of the action for partition and accounting for the rentals are merely kept by the trial court until it is finally determined who is lawfully entitled thereto. Although the Rules of Court do not expressly provide for this kind of provisional relief, the Court has, in the past, sanctioned such practice pursuant to the court's general power to issue such orders conformable to law and justice[13] and to adopt means necessary to carry its jurisdiction into effect.[14]

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[13] RULES OF COURT, Rule 135, Section 5.

[14] *Id.*, *id.*, Section 6.

In *The Province of Bataan v. Hon. Villafuerte, Jr.*,[15] the Court sustained the escrow order issued by the trial court over the lease rentals of the subject properties therein pending the resolution of the main action for annulment of sale and reconveyance. In upholding the authority of the trial court to issue such order, the Court ratiocinated thus:

> In a manner of speaking, courts have not only the power to maintain their life, but they have also the power to make that existence effective for the purpose for which the judiciary was created. They can, by appropriate means, do all things necessary to preserve and maintain every quality needful to make the judiciary an effective institution of Government. Courts have therefore inherent power to preserve their integrity, maintain their dignity and to insure effectiveness in the administration of justice.
>
> To lend flesh and blood to this legal aphorism, Rule 135 of the Rules of Court explicitly provides:
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> "Section 5. *Inherent powers of courts* — Every court shall have power:
>
> " . . . (g) To amend and control its process and orders so as to make them conformable to law and justice.
>
> "Section 6. *Means to carry jurisdiction into effect* — When by law jurisdiction is conferred on a court or judicial officer, *all auxiliary writs, processes and other means necessary to carry it into effect may be employed* by such court or officer, and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, *any suitable process or mode of proceeding may be adopted which appears conformable to the spirit of said law or rules*." (Emphasis ours)

It is beyond dispute that the lower court exercised jurisdiction over the main action docketed as Civil Case No. 210-ML, which involved the annulment of sale and reconveyance of the subject properties. Under this circumstance, we are of the firm view that the trial court, in issuing the assailed escrow orders, acted well within its province and sphere of power inasmuch as the subject orders were adopted in accordance with the Rules and jurisprudence and

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[15] 419 Phil. 907 (2001).

were merely incidental to the court's exercise of jurisdiction over the main case, thus:

x x x x x x x x x

> "In the ordinary case the courts can proceed to the enforcement of the plaintiff's rights only after a trial had in the manner prescribed by the laws of the land, which involves due notice, the right of the trial by jury, *etc. Preliminary to such an adjudication, the power of the court is generally to preserve the subject matter of the litigation to maintain the status, or issue some extraordinary writs provided by law, such as attachments, etc.* None of these powers, however, are exercised on the theory that the court should, in advance of the final adjudication determine the rights of the parties in any summary way and put either of them in the enjoyment thereof; *but such actions taken merely, as means for securing an effective adjudication and enforcement of rights of the parties after such adjudication. Colby v. Osgood Tex. Civ. App.*, 230 S.W. 459"; (emphasis ours)

On this score, the incisive disquisition of the Court of Appeals is worthy of mention, to wit:

> ". . . Given the jurisdiction of the trial court to pass upon the raised question of ownership and possession of the disputed property, there then can hardly be any doubt as to the competence of the same court, as an adjunct of its main jurisdiction, to require the deposit in escrow of the rentals thereof pending final resolution of such question. To paraphrase the teaching in *Manila Herald Publishing Co., Inc. vs. Ramos* (G.R. No. L-4268, January 18, 1951, cited in Francisco, *Revised Rules of Court*, Vol. 1, 2nd ed., p. 133), jurisdiction over an action carries with it jurisdiction over an interlocutory matter incidental to the cause and deemed essential to preserve the subject matter of the suit or to protect the parties' interest. x x x
>
> "x x x the impugned orders appear to us as a fair response to the exigencies and equities of the situation. Parenthetically, it is not disputed that even before the institution of the main case below, the Province of Bataan has been utilizing the rental payments on the Baseco Property to meet its financial requirements. To us, this circumstance adds a more compelling dimension for the issuance of the assailed orders. . . ."

Applying the foregoing principles and considering the peculiarities of the instant case, the lower court, in the course of adjudicating and resolving the issues presented in the main suit, is clearly empowered to control the proceedings therein through the adoption, formulation and issuance of orders and other ancillary writs, including the authority to place the properties in *custodia legis*, for the purpose of effectuating its judgment or decree and protecting further the interests of the rightful claimants of the subject property.

To trace its source, the court's authority proceeds from its jurisdiction and power to decide, adjudicate and resolve the issues raised in the principal suit. Stated differently, the deposit of the rentals in escrow with the bank, in the name of the lower court, "is only an incident in the main proceeding." To be sure, placing property in litigation under judicial possession, whether in the hands of a receiver, and administrator, or as in this case, in a government bank, is an ancient and accepted procedure. Consequently, we find no cogency to disturb the questioned orders of the lower court and in effect uphold the propriety of the subject escrow orders. (emphasis ours)[16]

In another case, *Bustamante v. Court of Appeals*,[17] private respondents filed a complaint against petitioners for recovery of possession with preliminary injunction over the subject lot with buildings thereon. Favorably acting on the application for a writ of preliminary injunction, the trial court required the petitioners to pay reasonable rent to private respondents and granted to the latter the right to collect rentals from the existing lessees of the subject lot and buildings. On review, the Court ruled, *inter alia*, that the vesting in private respondents of the right to collect rent from the existing lessees of the buildings is premature pending a final determination of who among the parties is the lawful possessor of the subject lot and buildings. The Court went on to state that "[t]he most prudent way to preserve the rights of the contending parties is to deposit with the trial court all the rentals from the existing lessees of the Buildings."[18] Consequently, petitioners were ordered to deposit with the trial

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[16] *Id.* at 916-919.

[17] 430 Phil. 797 (2002).

[18] *Id.* at 810.

court all collections of rentals from the lessees of the buildings pending the resolution of the case.

As can be seen, the order to deposit the lease rentals with the trial court is in the nature of a provisional relief designed to protect and preserve the rights of the parties while the main action is being litigated. Contrary to the findings of the Court of Appeals, such an order may be issued even prior to the determination of the issue of co-ownership because it is precisely meant to preserve the rights of the parties until such time that the court finally determines who is lawfully entitled thereto. It does not follow, however, that the subject order in this case should be sustained. Like all other interlocutory orders issued by a trial court, the subject order must not suffer from the vice of grave abuse of discretion. As will be discussed hereunder, special and compelling circumstances constrain the Court to hold that the subject order was tainted with grave abuse of discretion.

At the outset, the Court agrees with private respondent that the RTC gravely abused its discretion when it ordered the deposit of the entire monthly rentals whereas petitioner merely asked for the deposit of his alleged one-half (1/2) share therein. Indeed, the court's power to grant any relief allowed under the law is, as general rule, delimited by the cardinal principle that it cannot grant anything more than what is prayed for because the relief dispensed cannot rise above its source.[19] Here, petitioner categorically prayed for in his motion for deposit with the trial court of only one-half (1/2) of the monthly rentals during the pendency of the case.[20] It was, therefore, highly irregular for

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[19] See *Potenciano v. Court of Appeals*, 104 Phil. 156, 160 (1958).

[20] Petitioner prayed thus in his April 23, 2007 Motion before the trial court:

WHEREFORE, premises considered, it is respectfully prayed that the defendant be ordered to deposit with this Honorable Court his rental collection from the date of the filing of this complaint on 11 September 2006 up to April 30, 2007 and every month thereafter plaintiff's one-half (1/2) share in such rental collections, let alone the rental collections made by defendant from February 2006 to August 2006.

the RTC to order the deposit of the entire monthly rentals. The RTC offered no reason for its departure from such a basic principle of law; its actuations, thus, constituted grave abuse of discretion.

This finding does not, however, fully dispose of this case. The question may be asked, if petitioner is not entitled to the deposit of the entire monthly rentals, is he then entitled to the deposit of his alleged one-half (1/2) share therein?

The Court answers in the negative.

The origin of petitioner's alleged one-half (1/2) share as co-owner of the subject land is conspicuously absent in the allegations in his complaint for partition and accounting before the trial court. Petitioner tersely stated that, as per the title of the subject land, he and private respondent are named as co-owners in equal shares. It was private respondent's answer to the complaint which brought to light the alleged origin of their title to the subject land. Private respondent claimed that the subject land was actually bought by their father but the title was placed in petitioner and private respondent's names in accordance with the customs and traditions of their parents who were of Chinese descent. Furthermore, it was their father who exercised control and ownership over the subject land as well as the warehousing business built thereon. Before the Court of Appeals, petitioner *never refuted* this claim by private respondent. Rather, petitioner insisted that the names in the title is controlling and, on its face, the existence of a co-ownership has been duly established, thus, entitling him to the deposit of his one-half (1/2) share in the monthly rentals in order to protect his interest during the pendency of the case. Curiously, after the Court of Appeals ruled in its April 21, 2008 Decision that the act of Sio Tong Go in placing in the names of his two children the title to the subject land merely created an implied trust for the benefit of Sio Tong Go and, upon his death, all his legal heirs pursuant to Article 1448[21] of the Civil Code, petitioner, in his motion for

[21] Art. 1448. There is an implied trust when property is sold, and the legal estate is granted to one party but the price is paid by another for the purpose of having the beneficial interest of the property. The former is

reconsideration, harped on a new theory through a process of deduction. *For the first time on appeal*, he claimed that the subject land was donated by their father to him and private respondent using the very same provision that the Court of Appeals relied on in concluding that an implied trust was created.[22] Then, before this Court, petitioner sought to further amplify his new found theory of the case. In trying to explain why he did not demand the rental collections as early as the date of purchase of the subject land in 1996 and why he waited until the death of his father in 2006, he stated, *again for the first time on appeal*, that "while it may be true that petitioner did not seek the partition of the property and asked for his share in the rental collection when their father Sio Tong Go was still alive, it was but an act of courtesy and respect to their father, since the latter was still the one *overseeing and supervising the business operation*, and there was yet no danger and risk of abuse and dissipation of the rental collections since Sio Tong Go was still alive *to control the rental collections and disbursements of the funds*."[23] In effect, petitioner admitted that his father had control and ownership of the subject land and the lease rentals collected therefrom thereby lending

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the trustee, while the latter is the beneficiary. However, if the person to whom the title is conveyed is a child, legitimate or illegitimate, of the one paying the price of the sale, no trust is implied by law, it being disputably presumed that there is a gift in favor of the child.

[22] See third sentence, Article 1448, CIVIL CODE. Petitioner argued thus:

It is respectfully submitted and pointed out however, that the very same Article 1448 of the Civil Code, when read in full, will even bolster the position of the private respondent, that the deceased, Sio Tong Go intended that the property was voluntarily given as a gift to his two (2) sons (petitioner and private respondent), such that no implied trust was created, but a unilateral, unequivocal and unconditional assignment of rights, ownership and dominion over the said property, as and by way of a gift to the recipient-beneficiaries (petitioner and respondent) as shown by the act of Sio Tong Go in registering the subject property in the names of his (2) sons. No other rational and contrary conclusion can be drawn therefrom. (CA *rollo*, pp. 262-263)

[23] *Rollo*, pp. 193. (Italics supplied)

credence to private respondent's consistent claim that the subject land was actually bought by their father.

Prescinding from the foregoing, the Court cannot lightly brush aside petitioner's lack of forthrightness and candor reflected, as it were, in the shifting sands of his theory of the case. While initially in his complaint he anchored his alleged one-half (1/2) share based solely on the names appearing in the title of the subject land, petitioner's subsequent admissions (when confronted with private respondent's answer to the complaint) contradicted his previous allegations, thus, creating serious doubts as to the real extent of his lawful interest in the subject land. What emerges at this stage of the proceedings, *albeit* preliminary and subject to the outcome of the presentation of evidence during the trial on merits, is that the subject land was bought by Sio Tong Go and, upon his death, his interest therein passed on to his surviving spouse, Simeona Lim Ang, and their five children. Under the presumption that the subject land is conjugal property because it was bought during the marriage of Sio Tong Go and Simeona Lim Ang, and pursuant to the law on succession, petitioner's share, as one of the children, appears to be limited to 1/12[24] of the monthly rentals. Thus, it is only to this extent that his alleged interest as co-owner should be protected through the order to deposit rental income. Consequently, under the prevailing equities of this case, the subject order requiring private respondent to deposit with the trial court the entire monthly rental income should be reduced to 1/12 of said income reckoned from the finality of this Decision and every month thereafter until the trial court finally determines who is lawfully entitled thereto.

The Court emphasizes that these are **preliminary findings** for the sole purpose of resolving the propriety of the subject order requiring the deposit of the monthly rentals with the trial court. The precise extent of the interest of the parties in the subject land will have to await the final determination by the trial court of the main action for partition after a trial on the

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[24] One-half (1/2) interest goes to the estate of Sio Tong Go and the other half to Simeona Lim Ang. The one-half (1/2) interest of the estate is then divided by 6 (Simeona plus five children) to arrive at 1/12.

merits. While ordinarily this Court does not interfere with the sound discretion of the trial court to determine the propriety and extent of the provisional relief necessitated by a given case, the afore-discussed special and compelling circumstances warrant a correction of the trial court's exercise of discretion based on the grave abuse of discretion standard. It is well to remember that the question often asked of this Court, that is, whether it is a court of law or a court of justice, has always been answered in that it is both a court of law *and* a court of justice.[25] When the circumstances warrant, this Court shall not hesitate to modify the order issued by a trial court to ensure that it conforms to justice. The result reached here is but an affirmation of this long held and cherished principle.

As a final note, private respondent raised a collateral matter regarding the lack of jurisdiction of the RTC over this case for failure to implead indispensable parties, *i.e.*, all the legal heirs of Sio Tong Go. The records indicate that on August 16, 2007, Simeona Lim Ang filed a motion[26] to intervene although it is not clear whether the trial court has acted on this motion and whether the other legal heirs have similarly intervened in this case. At any rate, the Court cannot rule on this issue because the present case is limited to the propriety of the subject order granting the motion to deposit monthly rentals. The proper forum to thresh out this issue, if the parties so desire, is the trial court where the main action is pending.

WHEREFORE, the petition is *PARTIALLY GRANTED*. The April 21, 2008 Decision and July 4, 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 100100 are *REVERSED and SET ASIDE*. The May 4 and July 4, 2007 Orders of the Regional Trial Court of Valenzuela City, Branch 172 in Civil Case No. 179-V-06 are SET ASIDE and a new Order is entered directing private respondent to deposit 1/12 of the monthly rentals collected by him from the buildings on TCT No. V-44555 with the trial court from the finality of this Decision and every month

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[25] *Valarao v. Court of Appeals*, 363 Phil. 495, 510 (1999).

[26] Records, pp. 245-246.

thereafter until it is finally adjudged who is lawfully entitled thereto.

Costs against petitioner.

SO ORDERED.

Chico-Nazario, Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

THIRD DIVISION

[G.R. No. 183646. September 18, 2009]

GREAT SOUTHERN MARITIME SERVICES CORP. and IMC SHIPPING CO., PTE. LTD., *petitioners, vs.* **LEONILA SURIGAO for Herself and In Behalf of Her Minor Children, Namely KAYE ANGELI and MIRIAM, Both Surnamed SURIGAO,** *respondents*.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; THE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT FOR SEAFARERS; COMPENSATION AND BENEFITS FOR DEATH; RULE.— The general rule is that the employer is liable to pay the heirs of the deceased seafarer for death benefits once it is established that he died during the effectivity of his employment contract. However, the employer may be exempted from liability if he can successfully prove that the seafarer's death was caused by an injury directly attributable to his deliberate or willful act. In sum, respondents' entitlement to any death benefits depends on whether the evidence of the petitioners suffices to prove that the deceased committed suicide; the burden of proof rests on his employer.

2. REMEDIAL LAW; COURTS; SUPREME COURT; DOES NOT RE-EXAMINE THE EVIDENCE PRESENTED BY THE PARTIES TO A CASE; EXCEPTIONS. — While it is settled that the Court is not a trier of facts and does not, as a rule, re-examine the evidence presented by the parties to a case, there are a number of recognized exceptions, such as when the judgment is based on a misapprehension of facts; when the findings of facts of lower courts are conflicting; or when the findings of facts are premised on the supposed absence of evidence but which are contradicted by the evidence on record.

3. LABOR AND SOCIAL LEGISLATION; THE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT FOR SEAFARERS; COMPENSATION AND BENEFITS FOR DEATH; THE DEATH OF A SEAMAN EVEN DURING THE TERM OF EMPLOYMENT DOES NOT AUTOMATICALLY GIVE RISE TO COMPENSATION. — In *Mabuhay Shipping Services, Inc. v. National Labor Relations Commission*, the Court held that the death of a seaman even during the term of employment does not automatically give rise to compensation. The circumstances which led to the death as well as the provisions of the contract, and the right and obligation of the employer and the seaman must be taken into consideration, in consonance with the due process and equal protection clauses of the Constitution. It is true that the beneficent provisions of the Standard Employment Contract are liberally construed in favor of Filipino seafarers and their dependents. We commiserate with respondents for the unfortunate fate that befell their loved one; however, we find that the factual circumstances in this case do not justify the grant of death benefits as prayed for by them as beneficiaries of Salvador.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioner.
Romulo P. Valmores for respondents.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

Assailed in this petition for review on *certiorari* is the Decision[1] of the Court of Appeals in CA-G.R. SP No. 100113 dated February 14, 2008, which reversed the Decision and Resolution of the National Labor Relations Commission (NLRC) for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction, and reinstated the Decision of the Labor Arbiter finding the death of Salvador M. Surigao as compensable. Also assailed is the Resolution[2] dated July 8, 2008 denying the motion for reconsideration.

The facts as correctly summarized by the appellate court are as follows:

> [Respondent Leonila Surigao's] husband, the late Salvador M. Surigao, was hired as Fitter by [petitioner] Great Southern Maritime Services Corporation, for and in behalf of [co-petitioner] IMC Shipping Co. Pte., Ltd. (Singapore) for a period of ten (10) months. In his pre-employment medical examination, he was found fit for sea duty. Thus, on April 29, 2001, he commenced his work aboard MV Selendang Nilam.
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> However, on August 22, 2001, as per Ship Master's advice, a doctor was sent on board the vessel to medically attend to Salvador due to complaints of extensive neuro dermatitis, neck region viral, aetiology, urticaria, maculo popular, rash extending to the face, chest and abdomen. After examination, Salvador was advised to take a blood test. His condition having worsened, he was confined at the Seven Hills Hospital. Not long thereafter, the Ship Master decided to sign him off from the vessel on August 25, 2001 for treatment in the hospital and for repatriation upon certification of the doctor that he was fit to travel.
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> Prior to his repatriation, though, or on August 26, 2001, at around seven o'clock in the morning, Salvador was found dead inside the

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[1] *Rollo*, pp. 13-25; penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Jose C. Reyes, Jr. and Myrna Dimaranan Vidal.

[2] *Id.* at 28-29.

bathroom of his hospital room. Later, his body was transferred to a government hospital, the Ling George Hospital Mortuary Hall, for post-mortem examination. The Post-Mortem Certificate issued by the Department of Forensic Medicine, Visakhapatnam City, stated that the cause of death of Salvador was asphyxia due to hanging.

As an heir of the deceased seaman, petitioner, for in behalf of her minor children, filed for death compensation benefits under the terms of the standard employment contract, but her claims were denied by the [petitioners]. Since efforts to settle the case amicably proved futile, the Labor Arbiter directed the parties to submit their respective position papers. On October 28, 2003, the Labor Arbiter rendered his decision, the dispositive portion of which reads, thus:

> *"WHEREFORE, premises considered, judgment is hereby rendered, ordering the [petitioners] Great Southern Maritime Services Corporation and/or IMC Shipping Co., PTE LTD., Singapore to pay complainants Leonila S. Surigao, Miriam Surigao and Kaye Angeli Surigao the amount of SEVENTY ONE THOUSAND FIVE HUNDRED DOLLARS ($71,500.00) or its equivalent in Philippine pesos at the prevailing rate of exchange at the time of actual payment representing the death benefits, burial expenses of the deceased Salvador M. Surigao and attorney's fees.*
>
> *All other claims are DISMISSED for lack of merit.*
>
> *SO ORDERED."*

On appeal, the NLRC reversed and set aside the decision of the Labor Arbiter and declared [petitioners] not liable for death benefits. In lieu thereof, however, the commission directed the [petitioners] to grant financial assistance to the [respondent] in the amount of Five Thousand Dollars ($5,000.00). The dispositive portion reads as follows:

> *"PREMISSES CONSIDERED, the Decision of October 28, 2003, is REVERSED and VACATED. [Petitioners] however, are directed to grant financial assistance to complainants in the amount of five thousand US dollars (US$5,000.00) at the prevailing rate at the time of payment.*
>
> *SO ORDERED."*

[Respondent] moved for the reconsideration of the aforequoted decision, but the commission in a Resolution, dated May 24, 2007, denied the same. The dispositive portion reads, thus:

> *"ACCORDINGLY, the instant Motion for Reconsideration is hereby DENIED for lack of merit.*
>
> *No further Motions for Reconsideration shall be entertained.*
>
> *SO ORDERED."*[3]

Respondent thereafter elevated the case to the appellate court which reversed the decision of the NLRC and reinstated that of the Labor Arbiter in its herein assailed February 14, 2008 Decision. The appellate court found that Salvador did not commit suicide; hence, respondents are entitled to receive death benefits. The dispositive portion of the Decision, reads:

> WHEREFORE, in view of the foregoing, the assailed Decision and Resolution of the National Labor Relations Commission are, hereby, REVERSED and SET ASIDE for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction, while the Decision of the Labor Arbiter is hereby REINSTATED.
>
> SO ORDERED.[4]

Petitioners' Motion for Reconsideration was denied by the Court of Appeals in its Resolution dated July 8, 2008.

Hence, this petition raising the following issues:

1. WHETHER OR NOT PRIVATE RESPONDENT IS ENTITLED TO DEATH BENEFITS FOR THE DEATH OF HER HUSBAND UNDER THE POEA STANDARD EMPLOYMENT CONTRACT FOR SEAFARERS.
2. WHETHER OR NOT PRIVATE RESPONDENT IS ENTITLED TO DAMAGES AND ATTORNEY'S FEES.[5]

The pertinent provisions of the *Standard Terms and Conditions Governing the Employment of Filipino Seafarers*

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[3] *Id.* at 14-17.

[4] *Id.* at 25.

[5] *Id.* at 45.

On-Board Ocean-Going Vessels, or the *POEA Standard Employment Contract*, which Salvador and the petitioners incorporated into their contract, provide that:

> **SECTION 20. COMPENSATION AND BENEFITS**
>
> A. COMPENSATION AND BENEFITS FOR DEATH
>
> 1. In case of death of the seafarer during the term of his contract, the employer shall pay his beneficiaries the Philippine Currency equivalent to the amount of Fifty Thousand US dollars (US$50,000) and an additional amount of Seven Thousand US dollars (US$7,000) to each child under the age of twenty-one (21) but not exceeding four (4) children at the exchange rate prevailing during the time of payment.
>
> x x x x x x x x x
>
> D. No compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or intentional breach of his duties, provided however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to the seafarer.

The general rule is that the employer is liable to pay the heirs of the deceased seafarer for death benefits once it is established that he died during the effectivity of his employment contract. However, the employer may be exempted from liability if he can successfully prove that the seafarer's death was caused by an injury directly attributable to his deliberate or willful act.[6] In sum, respondents' entitlement to any death benefits depends on whether the evidence of the petitioners suffices to prove that the deceased committed suicide; the burden of proof rests on his employer.[7]

Petitioners insist that respondents are not entitled to death benefits because Salvador committed suicide. As proof, they presented the Death Certificate issued by Dr. Butchi Raju stating

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[6] *NFD International Manning Agents v. National Labor Relations Commission*, 348 Phil. 264, 273 (1998).

[7] *Lapid v. National Labor Relations Commission*, 366 Phil. 10, 17 (1999).

that Salvador was suspected to have committed suicide; the post-mortem examination results stating that *the deceased appeared to have died of "ASPHYXIA DUE TO HANGING";* the Indian Police Inquest Report also stating that he *died due to hanging;* the affidavit of the nurse on duty of Seven Hills hospital, Ms. P. V. Ramanamma, wherein she stated that as *the entrance doors to the bathroom main room was bolted from the inside and no other person was in the near physical vicinity of the deceased, it was concluded that seafarer committed suicide*; as well as photos taken immediately after the discovery of the body with a belt around his neck. They contend that the appellate court erred in disregarding these pieces of evidence which convincingly rule out suspicions of foul play.

The petition is impressed with merit.

While it is settled that the Court is not a trier of facts and does not, as a rule, re-examine the evidence presented by the parties to a case, there are a number of recognized exceptions, such as when the judgment is based on a misapprehension of facts; when the findings of facts of lower courts are conflicting; or when the findings of facts are premised on the supposed absence of evidence but which are contradicted by the evidence on record.[8]

In holding that Salvador did not commit suicide, the appellate court subscribed to the Labor Arbiter's findings that:

> The findings of the employer that complainant's husband died of hanging is questionable and deserves no consideration at all for the following reasons: First, seaman Surigao was found lying on the floor with a belt around his neck. If he died hanging, why was he found lying on the floor? It is very unlikely for him to dislodge himself from being hang [sic] before his last breath. Second, the respondents failed to show the place where Surigao could have possibly hanged himself. What seems absurd is that the respondents took picture of the doors, locks and shower pipes but not the place where he allegedly hanged himself. And third, the presence of the broken showerhead near the body of Surigao is confusing. If Surigao

[8] *La Rosa v. Ambassador Hotel*, G.R. No. 177059, March 13, 2009.

hanged himself in the said showerhead and it broke down, then Surigao could not have died since he fell therefrom. All these circumstances are contrary to the allegation that seafarer Surigao committed suicide. Moreover, this Office opines that had respondents conducted a thorough investigation on the circumstances, it would have yielded a result not favorable to the respondents.[9]

We find the foregoing ratiocination anchored on pure guesswork and speculation. In stark contrast, we find the foregoing circumstances as constituting substantial evidence supporting a conclusion that Salvador's death was attributable to himself:

1. Salvador was last seen alive by the attending nurse in Room No. 1619 at about 4:00 a.m. of August 26, 2001;[10]
2. At 6:30 a.m. of the same day, when no one answered to the repeated knocks of the attending nurse, the hospital staff forcibly opened the main door of the room;[11]
3. Things inside the room were found in order;[12]
4. The bathroom door was locked from inside and the hospital staff gained entrance therein only through a closed door with a mesh leading to the ceiling of the bathroom;[13]
5. The window in the bathroom has grills;[14]
6. Salvador was found dead inside with a belt tied around his neck;[15]
7. A broken pipe and showerhead were found near the body;[16] and

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[9] *Rollo,* p. 23.

[10] *Id.* at 110.

[11] *Id.* at 97.

[12] *Id.*

[13] *Id.* at 97 and 103.

[14] *Id.* at 97 and 106.

[15] *Id.* at 97 and 104.

[16] *Id.* at 104.

8. The post-mortem examination result stating an opinion on the cause of death as Asphyxia due to hanging.[17]

The post-mortem examination conclusively established that the true cause of death was asphyxia or suffocation. The appellate court's ruling that while it may be consistent with the theory that the deceased hanged himself but it does not rule out the possibility that he might have died of other causes,[18] does not persuade. Aside from being purely speculative, we find it hard to believe that someone strangled Salvador inside the bathroom then locked the door thereof on his way out undetected. As shown by the evidence presented by the petitioners, the bathroom door was locked or bolted from the inside and could not be opened from outside. In order to gain entrance, the hospital staff had to pass through a closed door with a mess leading to the ceiling of the bathroom. Entry could not likewise be effected through the bathroom window as it has grills.

Moreover, the conclusion that Salvador could not have hanged himself to the showerhead as he was found lying on the floor with a belt tied around his neck; or that he could not have died since the pipe broke down and he fell therefrom,[19] are based on speculations and hypothetical in nature. This confusion could have been avoided had both the Court of Appeals and the Labor Arbiter considered the most logical possibility that Salvador died hanging on the showerhead before the pipe broke down due to his body weight, and thus, explaining why he was found on the floor with the belt still on his neck and broken pipe and showerhead near his lifeless body. That the post-mortem examination, the Certification of Dr. Raju and the police inquest report, all stated that Salvador's cause of death was asphyxia due to hanging, and not due to any other injury, lead to a fair and just conclusion that Salvador was already dead before the showerhead broke.

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[17] *Id.* at 114.

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

[19] *Id.* at 23.

Indeed, we are not unaware of our ruling in *Becmen Service Exporter and Promotion, Inc. v. Cuaresma*,[20] where we held that Jasmin Cuaresma, also an overseas Filipino worker, did not commit suicide; that Filipinos are resilient people, willing to take on sacrifices for the good of their family; and that we do not easily succumb to hardships and difficulties. Nevertheless, the circumstances prevailing in said case are totally different from this case. In *Becmen*, the postmortem examination and the police report did not state with specificity that poisoning or suicide was the cause of Jasmin's death. In fact, both reports mentioned that the cause of death of Jasmin was still under investigation. In contrast, the postmortem examination and the police report in this case, categorically mentioned that Salvador died of asphyxia due to hanging. It was also shown that no other individual could have caused the death of Salvador because the bathroom door was locked or bolted from the inside and could not be opened from outside.

In *Mabuhay Shipping Services, Inc. v. National Labor Relations Commission*,[21] the Court held that the death of a seaman even during the term of employment does not automatically give rise to compensation. The circumstances which led to the death as well as the provisions of the contract, and the right and obligation of the employer and the seaman must be taken into consideration, in consonance with the due process and equal protection clauses of the Constitution.

It is true that the beneficent provisions of the Standard Employment Contract are liberally construed in favor of Filipino seafarers and their dependents.[22] We commiserate with respondents for the unfortunate fate that befell their loved one; however, we find that the factual circumstances in this case do not justify the grant of death benefits as prayed for by them as beneficiaries of Salvador.

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[20] G.R. Nos. 182978-79 & 184298-99, April 7, 2009.

[21] G.R. No. 94167, January 21, 1991, 193 SCRA 141.

[22] *Hermogenes v. Osco Shipping Service, Inc.*, G.R. No. 141505, August 18, 2005, 467 SCRA 301, 311.

WHEREFORE, the petition is *GRANTED*. The Decision of the Court of Appeals in CA-G.R. SP No. 100113 dated February 14, 2008 and its July 8, 2008 Resolution denying the motion for reconsideration are *REVERSED* and *SET ASIDE*. The March 30, 2007 Decision and May 24, 2007 Resolutions of the National Labor Relations Commission in NLRC NCR CA NO. 038741-04 reversing the October 28, 2003 Decision of the Labor Arbiter are hereby *REINSTATED and AFFIRMED*.

SO ORDERED.

Chico-Nazario, Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

THIRD DIVISION

[G.R. No. 183965. September 18, 2009]

JOANIE SURPOSA UY, *petitioner, vs.* **JOSE NGO CHUA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT; A PARTY MAY DIRECTLY APPEAL TO THE SUPREME COURT FROM A DECISION OR FINAL ORDER OR RESOLUTION OF THE TRIAL COURT ON PURE QUESTIONS OF LAW; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED. — [A] party may directly appeal to this Court from a decision or final order or resolution of the trial court on pure questions of law. A question of law lies, on one hand, when the doubt or difference arises as to what the law is on a certain set of facts; a question of fact exists, on the other hand, when the doubt or difference arises as to the truth or falsehood of the alleged facts. Here, the facts are not disputed; the controversy merely relates to the correct application of the law

or jurisprudence to the undisputed facts. The central issue in this case is whether the Compromise Agreement entered into between petitioner and respondent, duly approved by RTC-Branch 9 in its Decision dated 21 February 2000 in Special Proceeding No. 8830-CEB, constitutes *res judicata* in Special Proceeding No. 12562-CEB still pending before RTC-Branch 24.

2. ID.; ID.; JUDGMENTS; DOCTRINE OF *RES JUDICATA*; GROUNDS. — The doctrine of *res judicata* is a rule that pervades every well-regulated system of jurisprudence and is founded upon two grounds embodied in various maxims of the common law, namely: (1) public policy and necessity, which makes it in the interest of the State that there should be an end to litigation, *interest reipublicae ut sit finis litium*, and (2) the hardship of the individual that he should be vexed twice for the same cause, *nemo debet bis vexari pro eadem causa*.

3. ID.; ID.; ID.; ID.; REQUISITES. — For *res judicata*, to serve as an absolute bar to a subsequent action, the following requisites must concur: (1) there must be a final judgment or order; (2) the court rendering it must have jurisdiction over the subject matter and the parties; (3) it must be a judgment or order on the merits; and (4) there must be, between the two cases, identity of parties, subject matter, and causes of action.

4. CIVIL LAW; OBLIGATIONS AND CONTRACTS; COMPROMISES; JUDICIAL COMPROMISE; HAS THE EFFECT OF *RES JUDICATA*.— A compromise is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced. In *Estate of the late Jesus S. Yujuico v. Republic*, the Court pronounced that a judicial compromise has the effect of *res judicata*. A judgment based on a compromise agreement is a judgment on the merits.

5. ID.; ID.; ID.; COMPROMISE AGREEMENT; REQUISITES. — [L]ike any other contract, a compromise agreement must comply with the requisites in Article 1318 of the Civil Code, to wit: (a) consent of the contracting parties; (b) object certain that is the subject matter of the contract; and (c) cause of the obligation that is established. And, like any other contract, the terms and conditions of a compromise agreement must not be contrary to law, morals, good customs, public policy and public order. Any compromise agreement that is contrary to law or public

policy is null and void, and vests no rights in and holds no obligation for any party. It produces no legal effect at all.

6. ID.; ID.; ID.; THE STATUS AND FILIATION OF A CHILD CANNOT BE COMPROMISED; CASE AT BAR. — [T]he Court calls attention to Article 2035 of the Civil Code, which states: "ART. 2035. No compromise upon the following questions shall be valid: **(1) The civil status of persons;** (2) The validity of a marriage or a legal separation; (3) Any ground for legal separation; **(4) Future support;** (5) The jurisdiction of courts; **(6) Future legitime.**" The Compromise Agreement between petitioner and respondent, executed on 18 February 2000 and approved by RTC-Branch 9 in its Decision dated 21 February 2000 in Special Proceeding No. 8830-CEB, obviously intended to settle the question of petitioner's status and filiation, *i.e.*, whether she is an illegitimate child of respondent. In exchange for petitioner and her brother Allan acknowledging that they are **not the children** of respondent, respondent would pay petitioner and Allan ₱2,000,000.00 each. Although unmentioned, it was a necessary consequence of said Compromise Agreement that petitioner also waived away her rights to future support and future legitime as an illegitimate child of respondent. Evidently, the Compromise Agreement dated 18 February 2000 between petitioner and respondent is covered by the prohibition under Article 2035 of the Civil Code. x x x It is settled, then, in law and jurisprudence, that the status and filiation of a child cannot be compromised. Public policy demands that there be no compromise on the status and filiation of a child. Paternity and filiation or the lack of the same, is a relationship that must be judicially established, and it is for the Court to declare its existence or absence. It cannot be left to the will or agreement of the parties. Being contrary to law and public policy, the Compromise Agreement dated 18 February 2000 between petitioner and respondent is void *ab initio* and vests no rights and creates no obligations. It produces no legal effect at all. The void agreement cannot be rendered operative even by the parties' alleged performance (partial or full) of their respective prestations. Neither can it be said that RTC-Branch 9, by approving the Compromise Agreement, in its Decision dated 21 February 2000 in Special Proceeding No. 8830-CEB, already made said contract valid and legal. Obviously, it would already be beyond the jurisdiction of RTC-Branch 9 to legalize what is illegal. RTC-Branch 9

had no authority to approve and give effect to a Compromise Agreement that was contrary to law and public policy, even if said contract was executed and submitted for approval by both parties. RTC-Branch 9 would not be competent, under any circumstances, to grant the approval of the said Compromise Agreement. No court can allow itself to be used as a tool to circumvent the explicit prohibition under Article 2035 of the Civil Code.

7. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; A JUDGMENT VOID FOR WANT OF JURISDICTION HAS NO LEGAL EFFECT. — A judgment void for want of jurisdiction is no judgment at all. It cannot be the source of any right or the creator of any obligation. All acts performed pursuant to it and all claims emanating from it have no legal effect. Hence, it can never become final, and any writ of execution based on it is void. It may be said to be a lawless thing that can be treated as an outlaw and slain on sight, or ignored wherever and whenever it exhibits its head.

8. ID.; ID.; DEMURRER TO EVIDENCE; NATURE. — Demurrer to evidence authorizes a judgment on the merits of the case without the defendant having to submit evidence on his part, as he would ordinarily have to do, if plaintiff's evidence shows that he is not entitled to the relief sought. Demurrer, therefore, is an aid or instrument for the expeditious termination of an action, similar to a motion to dismiss, which the court or tribunal may either grant or deny.

9. ID.; ID.; ID.; GUIDELINES ON WHEN A DEMURRER TO EVIDENCE SHOULD BE GRANTED. — The Court has recently established some guidelines on when a demurrer to evidence should be granted, thus: "A demurrer to evidence may be issued when, upon the facts and the law, the plaintiff has shown no right to relief. Where the plaintiff's evidence together with such inferences and conclusions as may reasonably be drawn therefrom does not warrant recovery against the defendant, a demurrer to evidence should be sustained. A demurrer to evidence is likewise sustainable when, admitting every proven fact favorable to the plaintiff and indulging in his favor all conclusions fairly and reasonably inferable therefrom, the plaintiff has failed to make out one or more of the material elements of his case, or when there is no evidence to support

an allegation necessary to his claim. It should be sustained where the plaintiff's evidence is *prima facie* insufficient for a recovery."

10. ID.; RULES OF COURT; APPLICATION THEREOF MAY BE RELAXED IN THE INTEREST OF SUBSTANTIAL JUSTICE. — It must be kept in mind that substantial justice must prevail. When there is a strong showing that grave miscarriage of justice would result from the strict application of the Rules, this Court will not hesitate to relax the same in the interest of substantial justice. The Rules of Court were conceived and promulgated to set forth guidelines in the dispensation of justice but not to bind and chain the hand that dispenses it, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion. That is precisely why courts in rendering real justice have always been, as they in fact ought to be, conscientiously guided by the norm that when on the balance, technicalities take backseat against substantive rights, and not the other way around.

APPEARANCES OF COUNSEL

Alex D. Tolentino for petitioner.
Lim Villanueva and Associates Law Offices for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for Review under Rule 45 of the Rules of Court assailing the Resolution dated 25 June 2008 of the Regional Trial Court (RTC) of Cebu City, Branch 24, which granted the demurrer to evidence of respondent Jose Ngo Chua, resulting in the dismissal of Special Proceeding No. 12562-CEB.

Petitioner Joanie Surposa Uy filed on 27 October 2003 before the RTC a Petition[1] for the issuance of a decree of illegitimate filiation against respondent. The Complaint was docketed as **Special Proceeding No. 12562-CEB**, assigned to RTC-Branch 24.

[1] Records, pp. 1-7.

Petitioner alleged in her Complaint that respondent, who was then married, had an illicit relationship with Irene Surposa (Irene). Respondent and Irene had two children, namely, petitioner and her brother, Allan. Respondent attended to Irene when the latter was giving birth to petitioner on 27 April 1959, and instructed that petitioner's birth certificate be filled out with the following names: "ALFREDO F. SURPOSA" as father and "IRENE DUCAY" as mother. Actually, Alfredo F. Surposa was the name of Irene's father, and Ducay was the maiden surname of Irene's mother. Respondent financially supported petitioner and Allan. Respondent had consistently and regularly given petitioner allowances before she got married. He also provided her with employment. When petitioner was still in high school, respondent required her to work at the Cebu Liberty Lumber, a firm owned by his family. She was later on able to work at the Gaisano-Borromeo Branch through respondent's efforts. Petitioner and Allan were introduced to each other and became known in the Chinese community as respondent's illegitimate children. During petitioner's wedding, respondent sent his brother Catalino Chua (Catalino) as his representative, and it was the latter who acted as father of the bride. Respondent's relatives even attended the baptism of petitioner's daughter.[2]

In his Answer[3] to the Complaint, filed on 9 December 2003, respondent denied that he had an illicit relationship with Irene, and that petitioner was his daughter.[4] Hearings then ensued during which petitioner testified that respondent was the only father she knew; that he took care of all her needs until she finished her college education; and that he came to visit her on special family occasions. She also presented documentary evidence to prove her claim of illegitimate filiation. Subsequently, on 27 March 2008, respondent filed a Demurrer to Evidence[5] on the ground that the Decision dated 21 February 2000 of RTC-Branch 9 in Special Proceeding No. 8830-CEB had already

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

[3] *Id.* at 19-32.

[4] *Id.* at 19.

[5] *Rollo*, p. 53.

been barred by *res judicata* in Special Proceeding No. 12562-CEB before RTC-Branch 24.

It turned out that prior to instituting Special Proceeding No. 12562-CEB on 27 October 2003, petitioner had already filed a similar Petition for the issuance of a decree of illegitimate affiliation against respondent. It was docketed as **Special Proceeding No. 8830-CEB**, assigned to RTC-Branch 9. Petitioner and respondent eventually entered into a Compromise Agreement in Special Proceeding No. 8830-CEB, which was approved by RTC-Branch 9 in a Decision[6] dated 21 February 2000. The full contents of said Decision reads:

> Under consideration is a Compromise Agreement filed by the parties on February 18, 2000, praying that judgment be rendered in accordance therewith, the terms and conditions of which follows:
>
> "1. Petitioner JOANIE SURPOSA UY declares, admits and acknowledges that there is no blood relationship or filiation between petitioner and her brother Allan on one hand and [herein respondent] JOSE NGO CHUA on the other. This declaration, admission or acknowledgement is concurred with petitioner's brother Allan, who although not a party to the case, hereby affixes his signature to this pleading and also abides by the declaration herein.
>
> 2. As a gesture of goodwill and by way of settling petitioner and her brother's (Allan) civil, monetary and similar claims but without admitting any liability, [respondent] JOSE NGO CHUA hereby binds himself to pay the petitioner the sum of TWO MILLION PESOS (₱2,000,000.00) and another TWO MILLION PESOS (₱2,000,000.00) to her brother, ALLAN SURPOSA. Petitioner and her brother hereby acknowledge to have received in full the said compromise amount.
>
> 3. Petitioner and her brother (Allan) hereby declare that they have absolutely no more claims, causes of action or demands against [respondent] JOSE NGO CHUA, his heirs, successors and assigns and/or against the estate of Catalino

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[6] Copy of the Petition and the RTC decision in Special Proceeding 8830-CEB not attached to the records of the petition before this Court.

Chua, his heirs, successors and assigns and/or against all corporations, companies or business enterprises including Cebu Liberty Lumber and Joe Lino Realty Investment and Development Corporation where defendant JOSE NGO CHUA or CATALINO NGO CHUA may have interest or participation.

4. [Respondent] JOSE NGO CHUA hereby waives all counterclaim or counter-demand with respect to the subject matter of the present petition.

5. Pursuant to the foregoing, petitioner hereby asks for a judgment for the permanent dismissal with prejudice of the captioned petition. [Respondent] also asks for a judgment permanently dismissing with prejudice his counterclaim."

Finding the said compromise agreement to be in order, the Court hereby approves the same. Judgment is rendered in accordance with the provisions of the compromise agreement. The parties are enjoined to comply with their respective undertakings embodied in the agreement.[7]

With no appeal having been filed therefrom, the 21 February 2000 Decision of RTC-Branch 9 in Special Proceeding 8830-CEB was declared final and executory.

Petitioner filed on 15 April 2008 her Opposition[8] to respondent's Demurrer to Evidence in Special Proceeding No. 12562-CEB. Thereafter, RTC-Branch 24 issued its now assailed Resolution dated 25 June 2008 in Special Proceeding No. 12562-CEB, granting respondent's Demurrer.

RTC-Branch 24 summarized the arguments of respondent and petitioner in the Demurrer and Opposition, respectively, as follows:

This is to resolve the issues put across in the Demurrer to the Evidence submitted to this Court; the Opposition thereto; the Comment on the Opposition and the Rejoinder to the Comment.

x x x x x x x x x

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[7] Records, pp. 210-211.

[8] *Id.* at 237.

1. The instant case is barred by the principle of *res judicata* because there was a judgment entered based on the Compromise Agreement approved by this multiple-sala Court, Branch 09, on the same issues and between the same parties.

2. That such decision of Branch 09, having attained finality, is beyond review, reversal or alteration by another Regional Trial Court and not even the Supreme Court, no matter how erroneous.

3. Judicial Admissions or admission in petitioner's pleadings to the effect that there is no blood relationship between petitioner and respondent, which is a declaration against interest, are conclusive on her and she should not be permitted to falsify.

4. That the Certificate of Live Birth showing that petitioner's father is Alfredo Surposa is a public document which is the evidence of the facts therein stated, unless corrected by judicial order.

5. After receiving the benefits and concessions pursuant to their compromise agreement, she is estopped from refuting on the effects thereof to the prejudice of the [herein respondent].

The summary of the Opposition is in this wise:

1. That the illegitimate filiation of petitioner to respondent is established by the open, and continuous possession of the status of an illegitimate child.

2. The Demurrer to the evidence cannot set up the affirmative grounds for a Motion to Dismiss.

3. The question on the civil status, future support and future legitime can not be subject to compromise.

4. The decision in the first case does not bar the filing of another action asking for the same relief against the same defendant.[9]

Taking into consideration the aforementioned positions of the parties, RTC-Branch 24 held that:

Looking at the issues from the viewpoint of a judge, this Court believes that its hands are tied. Unless the Court of Appeals strikes down the Compromise Judgment rendered by Branch 09 of the Regional Trial Court of Cebu City, this Court will not attempt

[9] *Id.* at 304.

to vacate, much more annul, that Judgment issued by a co-equal court, which had long become final and executory, and in fact executed.

This court upholds the Policy of Judicial Stability since to do otherwise would result in patent abuse of judicial discretion amounting to lack of jurisdiction. The defense of lack of jurisdiction cannot be waived. At any rate, such is brought forth in the Affirmative Defenses of the Answer.

This Court, saddled with many cases, suffers the brunt of allowing herein case involving same parties to re-litigate on the same issues already closed.[10]

In the end, RTC-Branch 24 decreed:

WHEREFORE, in view of the foregoing, the Demurrer to the Evidence is hereby given due course, as the herein case is hereby ordered DISMISSED.[11]

RTC-Branch 24 denied petitioner's Motion for Reconsideration[12] in a Resolution[13] dated 29 July 2008.

Petitioner then filed the instant Petition raising the following issues for resolution of this Court:

I

Whether or not the principle of *res judicata* is applicable to judgments predicated upon a compromise agreement on cases enumerated in Article 2035 of the Civil Code of the Philippines;

II

Whether or not the compromise agreement entered into by the parties herein before the Regional Trial Court, Branch 09 of Cebu City effectively bars the filing of the present case.[14]

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[10] *Id.* at 304-305.

[11] *Id.* at 305.

[12] *Id.* at 308.

[13] *Id.* at 315.

[14] *Rollo*, p. 7.

At the outset, the Court notes that from the RTC Resolution granting respondent's Demurrer to Evidence, petitioner went directly to this Court for relief. This is only proper, given that petitioner is raising pure questions of law in her instant Petition.

Section 1, Rule 45 of the Rules of Court provides:

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

Clearly, a party may directly appeal to this Court from a decision or final order or resolution of the trial court on pure questions of law. A question of law lies, on one hand, when the doubt or difference arises as to what the law is on a certain set of facts; a question of fact exists, on the other hand, when the doubt or difference arises as to the truth or falsehood of the alleged facts. Here, the facts are not disputed; the controversy merely relates to the correct application of the law or jurisprudence to the undisputed facts.[15]

The central issue in this case is whether the Compromise Agreement entered into between petitioner and respondent, duly approved by RTC-Branch 9 in its Decision dated 21 February 2000 in Special Proceeding No. 8830-CEB, constitutes *res judicata* in Special Proceeding No. 12562-CEB still pending before RTC-Branch 24.

The doctrine of *res judicata* is a rule that pervades every well- regulated system of jurisprudence and is founded upon two grounds embodied in various maxims of the common law, namely: (1) public policy and necessity, which makes it in the interest of the State that there should be an end to litigation, *interest reipublicae ut sit finis litium*, and (2) the hardship of

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[15] *Philippine Veterans Bank v. Monillas*, G.R. No. 167098, 28 March 2008, 550 SCRA 251, 257.

the individual that he should be vexed twice for the same cause, *nemo debet bis vexari pro eadem causa*.[16]

For *res judicata*, to serve as an absolute bar to a subsequent action, the following requisites must concur: (1) there must be a final judgment or order; (2) the court rendering it must have jurisdiction over the subject matter and the parties; (3) it must be a judgment or order on the merits; and (4) there must be, between the two cases, identity of parties, subject matter, and causes of action.[17]

It is undeniable that Special Proceeding No. 8830-CEB, previously before RTC-Branch 9, and Special Proceeding No. 12562-CEB, presently before RTC-Branch 24, were both actions for the issuance of a decree of illegitimate filiation filed by petitioner against respondent. Hence, there is apparent identity of parties, subject matter, and causes of action between the two cases. However, the question arises as to whether the other elements of *res judicata* exist in this case.

The court rules in the negative.

A compromise is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced.[18] In *Estate of the late Jesus S. Yujuico v. Republic*,[19] the Court pronounced that a judicial compromise has the effect of *res judicata*. A judgment based on a compromise agreement is a judgment on the merits.

It must be emphasized, though, that like any other contract, a compromise agreement must comply with the requisites in Article 1318 of the Civil Code, to wit: (a) consent of the contracting parties; (b) object certain that is the subject matter of the contract; and (c) cause of the obligation that is established. And, like

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[16] *Arenas v. Court of Appeals*, 399 Phil. 372, 385 (2000).

[17] *Estate of the late Jesus S. Yujuico v. Republic*, G.R. No. 168661, 26 October 2007, 537 SCRA 513, 537.

[18] Civil Code, Article 2028.

[19] *Supra* note 17, citing *Romero v. Tan*, 468 Phil. 224, 239 (2004).

any other contract, the terms and conditions of a compromise agreement must not be contrary to law, morals, good customs, public policy and public order. Any compromise agreement that is contrary to law or public policy is null and void, and vests no rights in and holds no obligation for any party. It produces no legal effect at all.[20]

In connection with the foregoing, the Court calls attention to Article 2035 of the Civil Code, which states:

ART. 2035. No compromise upon the following questions shall be valid:

(1) The civil status of persons;

(2) The validity of a marriage or a legal separation;

(3) Any ground for legal separation;

(4) Future support;

(5) The jurisdiction of courts;

(6) Future legitime. (Emphases ours.)

The Compromise Agreement between petitioner and respondent, executed on 18 February 2000 and approved by RTC-Branch 9 in its Decision dated 21 February 2000 in Special Proceeding No. 8830-CEB, obviously intended to settle the question of petitioner's status and filiation, *i.e.*, whether she is an illegitimate child of respondent. In exchange for petitioner and her brother Allan acknowledging that they are **not the children** of respondent, respondent would pay petitioner and Allan ₱2,000,000.00 each. Although unmentioned, it was a necessary consequence of said Compromise Agreement that petitioner also waived away her rights to future support and future legitime as an illegitimate child of respondent. Evidently, the Compromise Agreement dated 18 February 2000 between petitioner and respondent is covered by the prohibition under Article 2035 of the Civil Code.

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[20] *Rivero v. Court of Appeals*, G.R. No. 141273, 17 May 2005, 458 SCRA 714, 735.

Advincula v. Advincula[21] has a factual background closely similar to the one at bar. Manuela Advincula (Manuela) filed, before the Court of First Instance (CFI) of Iloilo, Civil Case No. 3553 for acknowledgment and support, against Manuel Advincula (Manuel). On motion of both parties, said case was dismissed. Not very long after, Manuela again instituted, before the same court, Civil Case No. 5659 for acknowledgment and support, against Manuel. This Court declared that although Civil Case No. 3553 ended in a compromise, it did not bar the subsequent filing by Manuela of Civil Case No. 5659, asking for the same relief from Manuel. Civil Case No. 3553 was an action for acknowledgement, affecting a person's civil status, which cannot be the subject of compromise.

It is settled, then, in law and jurisprudence, that the status and filiation of a child cannot be compromised. Public policy demands that there be no compromise on the status and filiation of a child.[22] Paternity and filiation or the lack of the same, is a relationship that must be judicially established, and it is for the Court to declare its existence or absence. It cannot be left to the will or agreement of the parties.[23]

Being contrary to law and public policy, the Compromise Agreement dated 18 February 2000 between petitioner and respondent is void *ab initio* and vests no rights and creates no obligations. It produces no legal effect at all. The void agreement cannot be rendered operative even by the parties' alleged performance (partial or full) of their respective prestations.[24]

Neither can it be said that RTC-Branch 9, by approving the Compromise Agreement, in its Decision dated 21 February 2000 in Special Proceeding No. 8830-CEB, already made said contract

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[21] 119 Phil. 448 (1964).

[22] *Concepcion v. Court of Appeals*, G.R. No. 123450, 31 August 2005, 468 SCRA 438, 447-448, citing *Baluyut v. Baluyut*, G.R. No. L-33659, 14 June 1990, 186 SCRA 506, 511.

[23] *De Asis v. Court of Appeals*, 362 Phil. 515, 522 (1999).

[24] See *Chavez v. Presidential Commission on Good Government*, 366 Phil. 863, 871 (1999).

valid and legal. Obviously, it would already be beyond the jurisdiction of RTC-Branch 9 to legalize what is illegal. RTC-Branch 9 had no authority to approve and give effect to a Compromise Agreement that was contrary to law and public policy, even if said contract was executed and submitted for approval by both parties. RTC-Branch 9 would not be competent, under any circumstances, to grant the approval of the said Compromise Agreement. No court can allow itself to be used as a tool to circumvent the explicit prohibition under Article 2035 of the Civil Code. The following quote in *Francisco v. Zandueta*[25] is relevant herein:

> It is a universal rule of law that parties cannot, by consent, give a court, as such, jurisdiction in a matter which is excluded by the laws of the land. In such a case the question is not whether a competent court has obtained jurisdiction of a party triable before it, but whether the court itself is competent under any circumstances to adjudicate a claim against the defendant. And where there is want of jurisdiction of the subject-matter, a judgment is void as to all persons, and consent of parties can never impart to it the vitality which a valid judgment derives from the sovereign state, the court being constituted, by express provision of law, as its agent to pronounce its decrees in controversies between its people. (7 R. C. L., 1039.)

A judgment void for want of jurisdiction is no judgment at all. It cannot be the source of any right or the creator of any obligation. All acts performed pursuant to it and all claims emanating from it have no legal effect. Hence, it can never become final, and any writ of execution based on it is void. It may be said to be a lawless thing that can be treated as an outlaw and slain on sight, or ignored wherever and whenever it exhibits its head.[26]

In sum, Special Proceeding No. 12562-CEB before RTC-Branch 24 is not barred by *res judicata*, since RTC-Branch 9 had no jurisdiction to approve, in its Decision dated 21 February

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[25] 61 Phil. 752, 757-758 (1935).

[26] *Galicia v. Manliquez Vda. de Mindo*, G.R. No. 155785, 13 April 2007, 521 SCRA 85, 97.

2000 in Special Proceeding No. 8830-CEB, petitioner and respondent's Compromise Agreement, which was contrary to law and public policy; and, consequently, the Decision dated 21 February 2000 in Special Proceeding No. 8830-CEB, being null and void for having been rendered by RTC-Branch 9 without jurisdiction, could not have attained finality or been considered a judgment on the merits.

Nevertheless, the Court must clarify that even though the Compromise Agreement between petitioner and respondent is void for being contrary to law and public policy, the admission petitioner made therein may still be appreciated against her in Special Proceeding No. 12562-CEB. RTC-Branch 24 is only reminded that while petitioner's admission may have evidentiary value, it does not, by itself, conclusively establish the lack of filiation.[27]

Proceeding from its foregoing findings, the Court is remanding this case to the RTC-Branch 24 for the continuation of hearing on Special Proceedings No. 12562-CEB, more particularly, for respondent's presentation of evidence.

Although respondent's pleading was captioned a Demurrer to Evidence, it was more appropriately a Motion to Dismiss on the ground of *res judicata*.

Demurrer to Evidence is governed by Rule 33 of the Rules of Court, Section 1 of which is reproduced in full below:

> SECTION 1. *Demurrer to evidence*. – After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. If his motion is denied, he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence.

Demurrer to evidence authorizes a judgment on the merits of the case without the defendant having to submit evidence on his part, as he would ordinarily have to do, if plaintiff's

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[27] See *De Asis v. Court of Appeals*, *supra* note 23.

evidence shows that he is not entitled to the relief sought. Demurrer, therefore, is an aid or instrument for the expeditious termination of an action, similar to a motion to dismiss, which the court or tribunal may either grant or deny.[28]

The Court has recently established some guidelines on when a demurrer to evidence should be granted, thus:

> A demurrer to evidence may be issued when, upon the facts and the law, the plaintiff has shown no right to relief. Where the plaintiff's evidence together with such inferences and conclusions as may reasonably be drawn therefrom does not warrant recovery against the defendant, a demurrer to evidence should be sustained. A demurrer to evidence is likewise sustainable when, admitting every proven fact favorable to the plaintiff and indulging in his favor all conclusions fairly and reasonably inferable therefrom, the plaintiff has failed to make out one or more of the material elements of his case, or when there is no evidence to support an allegation necessary to his claim. It should be sustained where the plaintiff's evidence is *prima facie* insufficient for a recovery.[29]

The essential question to be resolved in a demurrer to evidence is whether petitioner has been able to show that she is entitled to her claim, and it is incumbent upon RTC-Branch 24 to make such a determination. A perusal of the Resolution dated 25 June 2008 of RTC-Branch 24 in Special Proceeding No. 12562-CEB shows that it is barren of any discussion on this matter. It did not take into consideration any of the evidence presented by petitioner. RTC-Branch 24 dismissed Special Proceedings No. 12562-CEB on the sole basis of *res judicata*, given the Decision dated 21 February 2000 of RTC-Branch 9 in Special Proceeding No. 8830-CEB, approving the Compromise Agreement between petitioner and respondent. Hence, the Resolution dated 25 June 2008 of RTC-Branch 24 should be deemed as having dismissed Special Proceeding No. 12562-CEB on the ground of *res judicata* rather than an adjudication

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[28] *Condes v. Court of Appeals*, G.R. No. 161304, 27 July 2007, 528 SCRA 339, 352.

[29] *Id.* at 352-353.

on the merits of respondent's demurrer to evidence. Necessarily, the last line of Section 1, Rule 33 of the Rules of Court should not apply herein and respondent should still be allowed to present evidence before RTC-Branch 24 in Special Proceedings No. 12562-CEB.

It must be kept in mind that substantial justice must prevail. When there is a strong showing that grave miscarriage of justice would result from the strict application of the Rules, this Court will not hesitate to relax the same in the interest of substantial justice. The Rules of Court were conceived and promulgated to set forth guidelines in the dispensation of justice but not to bind and chain the hand that dispenses it, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion. That is precisely why courts in rendering real justice have always been, as they in fact ought to be, conscientiously guided by the norm that when on the balance, technicalities take backseat against substantive rights, and not the other way around.[30]

WHEREFORE, premises considered, the Resolution dated 25 June 2008 of the Regional Trial Court of Cebu City, Branch 24, in Special Proceeding No. 12562-CEB is *REVERSED and SET ASIDE*. This case is ordered *REMANDED* to the said trial court for further proceedings in accordance with the ruling of the Court herein. No costs.

SO ORDERED.

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

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[30] See *People v. Flores*, 336 Phil. 58, 64 (1997), citing *De Guzman v. Sandiganbayan*, 326 Phil. 182, 188 (1996).

THIRD DIVISION

[G.R. No. 187043. September 18, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **LORENZO OLIVA *y* ROSELA,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT, ITS CALIBRATION OF THE TESTIMONIES OF WITNESSES, AND ITS ASSESSMENT OF THEIR PROBATIVE WEIGHT ARE GENERALLY GIVEN GREAT RESPECT IF NOT CONCLUSIVE EFFECT. — The Court sustains the decision of the trial court, as affirmed by the CA, finding appellant guilty beyond reasonable doubt of two counts of rape. The legal aphorism is that factual findings of the trial court, its calibration of the testimonies of the witnesses, and its assessment of their probative weight are given great respect if not conclusive effect, unless it ignored, misconstrued, misunderstood, or misinterpreted cogent facts and circumstances of substance which, if considered, would alter the outcome of the case.

2. ID.; ID.; CREDIBILITY OF WITNESSES; YOUTH AND IMMATURITY ARE GENERALLY BADGES OF TRUTH AND SINCERITY IN RAPE CASES.— [C]ourts usually give credence to the testimony of a girl who is a victim of sexual assault particularly if it constitutes incestuous rape because, normally, no person would be willing to undergo the humiliation of a public trial and to testify on the details of her ordeal were it not to condemn an injustice. Needless to say, it is settled jurisprudence that testimonies of child victims are given full weight and credit, because when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed. Youth and immaturity are generally badges of truth and sincerity.

3. ID.; ID.; ID.; NOT ADVERSELY AFFECTED BY MINOR INCONSISTENCIES IN THE TESTIMONIES OF WITNESSES; CASE AT BAR. — The *gravamen* of rape is carnal knowledge of a woman under any of the circumstances

provided by law. Thus, the precise time when the rape took place has no substantial bearing on its commission. As such, the date or time need not be stated with absolute accuracy. The victim cannot be expected to store methodically in her memory the sordid details of a rape incident and, when called to testify in court, give a completely detailed and accurate account of the harrowing experience she suffered. Thus, minor inconsistencies in the narration are generally given liberal appreciation by the trial court.

4. ID.; ID.; DENIAL; CANNOT PREVAIL OVER THE CATEGORICAL TESTIMONY OF THE VICTIM. — Mere denial, if unsubstantiated by clear and convincing evidence, has no weight in law and cannot be given greater evidentiary value than the positive testimony of a rape victim.

5. CRIMINAL LAW; RAPE; QUALIFYING CIRCUMSTANCE OF MINORITY AND RELATIONSHIP, DULY ESTABLISHED IN CASE AT BAR; PENALTY. — The imposition of the penalty of death, which was reduced to *reclusion perpetua* in view of Republic Act No. 9346, was proper considering that the qualifying circumstance of minority and relationship had been duly established.

6. CIVIL LAW; DAMAGES; CIVIL INDEMNITY, MORAL DAMAGES, AND EXEMPLARY DAMAGES; AWARDED IN CASE AT BAR. — The Court x x x modifies the award of damages in light of more recent jurisprudence increasing the amount of civil indemnity to ₱75,000.00, moral damages to ₱75,000.00, and exemplary damages to ₱30,000.00 to deter other persons with perverse or aberrant sexual behavior from sexually abusing their children.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

R E S O L U T I O N

NACHURA, *J.*:

Lorenzo Oliva appeals from the Court of Appeals (CA) Decision[1] dated April 21, 2008 in CA-G.R. CR No. HC-02102, affirming his conviction of rape but modifying the amount of damages.

The records disclose the following facts:

Sometime in March 2003, at about 3:00 o'clock in the afternoon, appellant Lorenzo Oliva asked his 11-year-old daughter, "M," to go with him to the farm of Naty Astor. When they arrived at the place, he ordered her to undress. She obeyed the order because she was afraid of him and he had a bolo, about 16 inches long, which he brandished near her head. After removing her short pants and panty, appellant mounted her and inserted his penis into her vagina. It was painful and she cried. About 15 minutes later, he told her to dress up and then she went home. Two of her siblings were home when she arrived, while her mother was washing clothes in the river about 100 meters away. She did not tell any of them about the incident because she feared her father might kill them.

The incident was repeated on September 9, 2003. At about 3:00 o'clock in the morning of that day, appellant awakened "M." She noticed that her shorts and panty were missing. Her sister was sleeping beside her, but appellant pulled her towards the door. Near the door, appellant went on top of her and inserted his penis into her vagina while covering her mouth to silence her. It was then that her mother saw them. "M" was so afraid, and she sat on the stairs while she put on her panty and her shorts. Her mother, who was visibly upset, asked appellant what he was doing but he simply ignored her. Her mother reported the incident to the police authorities. Thereafter, they went to the residence of M's *Lola* Naty Astor to see a doctor.

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[1] Penned by Associate Justice Monina Arevalo-Zenarosa, with Associate Justices Edgardo F. Sundiam and Sixto C. Marella, Jr., concurring; *rollo*, pp. 2-21.

Dr. Nena L. Cruz, Municipal Health Officer of Sipocot, Camarines Sur, examined "M" on September 1, 2003. Dr. Cruz found old healed hymenal lacerations at the 4 o'clock and 9 o'clock positions in the victim's vagina. She further noted that the victim did not exhibit pain upon insertion of one finger; but, with two fingers, there was a slight resistance.

Appellant was charged with two counts of rape under the following Informations:

CRIMINAL CASE NO. L-3821

That on or about 3:00 o'clock in the morning of September 9, 2003 while the private offended party was sleeping inside their house at B[rg]y. Malaguico, Municipality of Sipocot, Province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lewd designs, did then and there willfully, unlawfully and feloniously succeed in having carnal knowledge with his own daughter, "M," a 12-year-old minor taking advantage of his moral ascendancy over the latter against her will and without her consent to her damage and prejudice in such amount as may be awarded by the Honorable Court.

ACTS CONTRARY TO LAW.[2]

CRIMINAL CASE NO. L-3822

That sometime [i]n March 2003 in a forested and grassy land owned by Mrs. Naty Astor at B[r]gy. Malaguico, Municipality of Sipocot, Province of Camarines Sur, Philippines while accompanied by the above-named accused to gather firewood, and within the jurisdiction of this Honorable Court, the above-named accused with lewd [design], did then and there willfully, unlawfully [and feloniously succeed in having carnal knowledge] with his own daughter, "M," an 11-year-old minor taking advantage of his moral ascendancy over the latter against her will and without her consent to her damage and prejudice in such amount as may be awarded by the Honorable Court.

ACTS CONTRARY TO LAW.[3]

When arraigned, appellant pleaded not guilty to the two charges.

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[2] *Id.* at 3.

[3] *Id.*

During the pretrial, appellant admitted that he is the biological father of "M" and that she was a minor at the time the incidents happened.

The victim's birth certificate shows that she was born on May 9, 1991. Thus, she was only 11 years and 9 months old when the first incident happened; and 12 years and four months old at the time of the second one.

Appellant belied the testimony of "M." He claimed that his wife told him that "M" was molested in the river by her uncle Benjamin, his wife's half-brother. At one time, "M" went with appellant to the farm, and there he asked her if she had been raped by her uncle. When she did not answer, he told her to undress and to lie down. While she was lying down, he examined her vagina and saw that the opening was already big, so he determined that she had sexual intercourse with her uncle. To further determine if she was no longer a virgin, he took a coconut leaf, measured her neck with it, placed it around her head, and let it slide down. When the coconut leaf slid down, he concluded that she was no longer a virgin. As to the incident of September 9, 2003, he said that he was asleep at about 3:00 o'clock in the morning because he was drunk then.

The Regional Trial Court (RTC) found appellant guilty beyond reasonable doubt of two counts of rape, thus:

> WHEREFORE, the prosecution having proved the guilt of accused beyond reasonable doubt, this court hereby finds LORENZO OLIVA *y* ROSELA, GUILTY in Criminal Case No. L-3821 and L-3822 of the crime of Rape defined and penalized under Article 266 A(1)(a) and Article 266 B(1) and Article 266 A(1)(d) and [Article] 266 B(1) respectively, and is hereby sentenced to suffer the supreme penalty of Death in each case, and in line with recent jurisprudence, to indemnify the victim [M] the sum of One Hundred Fifty Thousand Pesos (₱150,000.00) as civil indemnity in these two cases and the further sum of Seventy [F]ive Thousand Pesos (₱75,000.00) as moral damages, and to serve as a deterrent to fathers in sexually abusing their own flesh, this court also awards the amount of Twenty Five Thousand Pesos (₱25,000.00) as exemplary damages and to pay the costs of the suit.

SO ORDERED.[4]

The CA affirmed the RTC Decision with the following modifications: the penalty was reduced to *reclusion perpetua* for each offense, in view of Republic Act No. 9346, which prohibits the imposition of the death penalty; civil indemnity and moral damages were reduced to ₱100,000.00, each; and exemplary damages to ₱50,000.00.[5]

On appeal to this Court, both the Office of the Solicitor General and appellant manifested that they would no longer file supplemental briefs.

The appeal has no merit.

The Court sustains the decision of the trial court, as affirmed by the CA, finding appellant guilty beyond reasonable doubt of two counts of rape. The legal aphorism is that factual findings of the trial court, its calibration of the testimonies of the witnesses, and its assessment of their probative weight are given great respect if not conclusive effect, unless it ignored, misconstrued, misunderstood, or misinterpreted cogent facts and circumstances of substance which, if considered, would alter the outcome of the case.[6]

The victim's narration of the ordeal that she suffered at the hands of her own father was straightforward and categorical; hence, it must be given full faith and credit. Further, courts usually give credence to the testimony of a girl who is a victim of sexual assault particularly if it constitutes incestuous rape because, normally, no person would be willing to undergo the humiliation of a public trial and to testify on the details of her ordeal were it not to condemn an injustice. Needless to say, it is settled jurisprudence that testimonies of child victims are given full weight and credit, because when a woman, more so if she is a minor, says that she has been raped, she says in

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[4] CA *rollo*, p. 46.

[5] *Rollo*, p. 20.

[6] *People v. Alabado*, G.R. No. 176267, September 3, 2007, 532 SCRA 189, 206.

effect all that is necessary to show that rape was committed. Youth and immaturity are generally badges of truth and sincerity.[7]

To the contrary, appellant's explanation that he was just trying to confirm if "M" was still a virgin when he asked her to lie down and "examined" her vagina is too inane to be believed.

In an attempt to discredit the victim's testimony, appellant points out certain discrepancies in her testimony, such as the exact time they went to the farm of Naty Astor. Such discrepancy is trifling. The *gravamen* of rape is carnal knowledge of a woman under any of the circumstances provided by law.[8] Thus, the precise time when the rape took place has no substantial bearing on its commission. As such, the date or time need not be stated with absolute accuracy.[9]

The victim cannot be expected to store methodically in her memory the sordid details of a rape incident and, when called to testify in court, give a completely detailed and accurate account of the harrowing experience she suffered. Thus, minor inconsistencies in the narration are generally given liberal appreciation by the trial court.

As to the second incident, appellant simply averred that he was asleep at that time. Such defense fails in light of the categorical testimony of the victim. Mere denial, if unsubstantiated by clear and convincing evidence, has no weight in law and cannot be given greater evidentiary value than the positive testimony of a rape victim.[10]

The imposition of the penalty of death, which was reduced to *reclusion perpetua* in view of Republic Act No. 9346, was proper considering that the qualifying circumstance of

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[7] *People v. de Guzman*, 423 Phil. 313, 331 (2001).

[8] *People v. Rafon*, G.R. No. 169059, September 5, 2007, 532 SCRA 370, 380.

[9] *People v. Domingo*, G.R. No. 177744, November 23, 2007, 538 SCRA 733, 737-738.

[10] *People v. Lizano*, G.R. No. 174470, April 27, 2007, 522 SCRA 803, 811.

minority and relationship had been duly established. The Court, however, modifies the award of damages in light of more recent jurisprudence increasing the amount of civil indemnity to ₱75,000.00, moral damages to ₱75,000.00,[11] and exemplary damages to ₱30,000.00[12] to deter other persons with perverse or aberrant sexual behavior from sexually abusing their children.

WHEREFORE, the Court of Appeals Decision dated April 21, 2008, finding appellant Lorenzo Oliva guilty beyond reasonable doubt of two counts of qualified rape and sentencing him to suffer the penalty of *reclusion perpetua* for each count is *AFFIRMED WITH MODIFICATIONS*. Appellant is ordered to pay ₱150,000.00 as civil indemnity, ₱150,000.00 as moral damages, and ₱60,000.00 as exemplary damages.

SO ORDERED.

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

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[11] *People of the Philippines v. Lilio U. Achas*, G.R. No. 185712, August 4, 2009.

[12] *Id.*; *People of the Philippines v. Adelado Anguac y Ragadao*, G.R. No. 176744, June 5, 2009.

EN BANC

[A.M. No. 01-1-04-SC-PHILJA. September 25, 2009]

RE: FURTHER CLARIFYING AND STRENGTHENING THE ORGANIZATIONAL STRUCTURE AND ADMINISTRATIVE SET-UP OF THE PHILIPPINE JUDICIAL ACADEMY.

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; JUDICIAL DEPARTMENT; SUPREME COURT; PHILIPPINE JUDICIAL ACADEMY (PHILJA); ORGANIZATIONAL STRUCTURE AND ADMINISTRATIVE SET-UP; PHILJA'S STAFFING PATTERN, AMENDED IN CASE AT BAR. — [W]hile the Court grants the request of Justice Azcuna that the PHILJA Attorney VI (SG 27), a newly created item, be changed to a non-lawyer designation, the appropriate position title should be PHILJA Head Executive Assistant with same Salary Grade 27, instead of Judicial Staff Head, which has an assigned Salary Grade 28, per Index of Occupational Services, Position Titles and Salary Grades issued by the DBM. The change in the position title to PHILJA Head Executive Assistant will afford him the discretion to hire an individual, including a non-lawyer, who possesses the qualifications required for the highly sensitive and confidential position. The position of Judicial Staff Head is peculiar to the Offices of the Associate Justices performing functions pertaining to the adjudication of cases and administrative supervision and other confidential matters. Additionally, as PHILJA Chancellor, Justice Azcuna should be given a free hand to select his office staff based on his trust and confidence and, hence, the need to have some position status changed from permanent to coterminous. The position of Records Officer II should remain to be permanent as there is a need to ensure the continuity of workflow and preserve the records management.

2. ID.; ID.; ID.; ID.; ID.; ID.; ID.; ID.; PRIVATE SECRETARY POSITIONS; PERFORM FUNCTIONS WHICH ARE PRIMARILY CONFIDENTIAL IN NATURE, THUS, COTERMINOUS WITH THE OFFICIAL THEY SERVE; CASE

AT BAR. — [T]he changes in the nomenclature for the positions of PHILJA Attorney V to PHILJA Head Executive Assistant Supervisor (with same SG 26) for the Office of the Vice-Chancellor, and PHILJA Attorney IV to PHILJA Executive Assistant VI (with same SG 25) of the Office of the Executive Secretary, both being newly created and with position status of coterminous, are justified as the Vice-Chancellor and the Executive Secretary have the prerogative to hire heads of their office staff upon whom they can repose their trust and confidence. The heads of the three offices who occupy Private Secretary positions perform functions which are primarily confidential in nature and, thus, coterminous with the official they serve. In like manner, the hiring of key positions which are categorized as confidential should be reverted from permanent to coterminous, except the position of Clerk III (SG 6) in each office which should remain to be permanent as there is a need to ensure the continuity of workflow and preserve the records management.

R E S O L U T I O N

PERALTA, *J.*:

The present administrative matter arose from a letter dated June 17, 2009 of Justice Adolfo S. Azcuna, Chancellor of the Philippine Judicial Academy (PHILJA), addressed to Chief Justice Reynato S. Puno, Chairperson of the PHILJA Board of Trustees, requesting the Court's approval of the following amendments in the PHILJA's staffing pattern, solely referring to the Chancellor's Office. Thus:

We refer your Honor to the Court *En Banc* Resolution dated 23 September 2008, in Revised A.M. No. 01-1-04-SC-PHILJA, (*Further Clarifying and Strengthening the Organizational Structure and Administrative Set-up of the Philippine Judicial Academy*), which approved PHILJA's staffing pattern, hereto attached as Annex "A".

In reference to the abovementioned Resolution, may we respectfully request the Court's approval of the following amendments solely referring to the Chancellor's Office.

1) To convert the position of **PHILJA Attorney VI**, salary grade 27, to **Judicial Staff Head** with the same salary grade 27, and change it from permanent to coterminous.

The conversion of the position will accord the Chancellor the discretion to hire a non-lawyer for the position when necessary.

2) To revert the status of the following positions from permanent to coterminous:

SC Chief Judicial Staff Officer	SG 25
Judicial Staff Officer III	SG 18
Records Officer II	SG 14
Judicial Staff Assistant III	SG 10

Under the Revised A.M. No. 01-1-04-SC-PHILJA, the status of the above-mentioned positions were changed from coterminous to permanent status.

In view of the nature of work required by the Chancellor for the staff under the Office of the Chancellor, there is a need to appoint such personnel of trust and confidence of the Chancellor.

May we respectfully request that the permanent status of these positions be reverted to coterminous status.

For the Chief Justice's consideration and approval.[1]

In the Resolution dated June 23, 2009, the Court referred the matter to the Office of Administrative Services for comment thereon within ten (10) days from notice thereof.

In a Memorandum[2] dated July 22, 2009, Atty. Eden T. Candelaria, Deputy Clerk of Court and Chief Administrative Officer, Office of Administrative Services, made the following observation and recommendation:

This refers to the directive of the Honorable Court *En Banc* in its resolution dated June 23, 2009 to this Office to comment on the attached letter of Justice Adolfo S. Azcuna, Chancellor, PHILJA requesting the following:

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[1] Letter dated June 17, 2009, pp. 1-2.

[2] Memorandum dated July 22, 2009, pp. 1-6.

1. the conversion of the position of one (1) PHILJA Attorney VI (SG 27) in the Office of the Chancellor to Judicial Staff Head with the same Salary Grade 27; and

2. the reversion of the status from permanent to coterminous of the positions in the Office of the Chancellor enumerated below:

SC Chief Judicial Staff Officer	SG 25
Judicial Staff Officer III	SG 18
Records Officer II	SG 14
Judicial Staff Assistant III	SG 10

Under the Revised A.M. No. 01-1-04-SC-PHILJA, re: *"Further Clarifying and Strengthening the Organizational Structure and Administrative Set-up of the Philippine Judicial Academy,"* dated September 23, 2008, the status of the aforesaid positions, among others, was changed from coterminous to permanent.

Justice Azcuna avers that the nature of work required for the staff under the Office of Chancellor necessitates that their appointments be based on his trust and confidence.

Shown below is the plantilla of the Office of the Chancellor as approved pursuant to A.M. No. 01-1-SC-PHILJA, to wit:

No. of Positions	Position Title	SG	Existing Status
1	PHILJA Chancellor	31	
1	PHILJA Attorney VI	27	Coterm
2	PHILJA Attorney V	26	Coterm
1	SC Chief Judicial Staff Officer	25	Perm
1	Executive Assistant V	24	Coterm
1	Executive Assistant IV	22	Coterm
1	Judicial Staff Officer III	18	Perm
1	Records Officer II	14	Perm
1	Judicial Staff Assistant III	10	Perm
1	Chauffeur II	6	Coterm
1	Utility Worker II	3	Coterm
12	**Total Number of Positions**		

COMMENTS/OBSERVATIONS:

It may be stated that the results of the study made on the old plantillas of the PHILJA showed that there is a need for permanent positions in the Executive Offices (Offices of the PHILJA Chancellor, PHILJA Vice-Chancellor and PHILJA Executive Secretary) for purposes of continuity of workflow insofar as the records management therein is concerned.

We believe that the request of Justice Azcuna to convert the position of Court Attorney VI [*should be* PHILJA Attorney VI] (SG 27) in his Office is meritorious in order to give his Honor the discretion to hire a non-lawyer when necessary. However, with due respect to him, we cannot favorably recommend its conversion as Judicial Staff Head with the same Salary Grade of 27, primarily because the position of Judicial Staff Head is exclusively used only in the Offices of the Justices; and, secondly, per the Index of Occupational Services, Position Titles and Salary Grades issued by the Department of Budget and Management (DBM), the position of Judicial Staff Head has an assigned Salary Grade of 28, not Salary Grade 27.

As an alternative, we propose that the position of PHILJA Attorney VI in the Office of the Chancellor be converted and/or reclassified as PHILJA Head Executive Assistant with the same Salary Grade 27 as that of Court Attorney VI.

As regards the second request of Justice Azcuna, we propose the reversion of the status of the permanent positions in his Office to coterminous except, however, to the position of Records Officer II which we proposed to be retained as permanent in order that there would be continuity of the smooth operations in the office should there be a change of a new administration. All of the four (4) subject positions have existing funds.

Meanwhile, we believe that the restructuring of the Office of the Chancellor might as well affect the hierarchy of positions in the Offices of the Vice-Chancellor and Executive Secretary. Hence, with due respect also to Honorables Justo P. Torres and Marina L. Buzon, PHILJA Vice-Chancellor and PHILJA Executive Secretary, respectively, we propose that some changes be likewise made in their respective plantillas.

Shown below are the plantillas of the Offices of the PHILJA Vice-Chancellor and PHILJA Executive Secretary pursuant to the Revised A.M. No. 01-1-04-SC-PHILJA:

OFFICE OF THE PHILJA VICE-CHANCELLOR

No. of Positions	Position Title	SG	Existing Status
1	PHILJA Vice-Chancellor	30	
1	PHILJA Attorney V	26	Coterm
1	PHILJA Attorney IV	25	Coterm
1	PHILJA Attorney III	24	Coterm
1	SC Supervising Judicial Staff Officer	23	Perm
1	Executive Assistant III	20	Coterm
1	Judicial Staff Officer III	18	Perm
1	Executive Assistant II	17	Coterm
1	Clerk III	6	Perm
1	Chauffeur I	5	Coterm
1	Utility Worker II	3	Coterm
11	**Total Number of Positions**		

OFFICE OF THE PHILJA EXECUTIVE SECRETARY

No. of Positions	Position Title		SG	Existing Status
1	PHILJA Executive Secretary		29	
1	PHILJA Attorney IV		25	Coterm
1	PHILJA Attorney III		24	Coterm
1	Judicial Staff Officer VI		22	Perm
1	Executive Assistant III		20	Coterm
1	Judicial Staff Officer III		18	Perm
1	Executive Assistant II		17	Coterm
1	Clerk III		6	Perm
1	Chauffeur I		5	Coterm
1	Utility Worker II		3	Coterm
[10]	**Total Number of Positions [*should be* 10, not 11]**			

We propose that the following positions in their respective plantillas be likewise converted and/or reclassified, to wit:

OFFICE	POSITIONS PROPOSED TO BE CONVERTED/RECLASSIFIED			
	FROM	SG	TO	SG
Office of the Vice-Chancellor	PHILJA Attorney V	26	PHILJA Executive Assistant Supervisor	26
Office of the Executive Secretary	PHILJA Attorney IV	25	PHILJA Executive Assistant VI	25

and that all the positions therein be reverted as coterminous for the same reason of maintaining the hierarchy of positions in the Executive Offices in the PHILJA, except that of Clerk III (SG 6) in the aforesaid Offices which we propose to be retained as permanent. Moreover, except for Clerk III position, it would be logical to have the other positions coterminous since the Vice-Chancellor and the Executive Secretary serve only for a specific period of two (2) years.

Verification from the plantillas of the PHILJA Executive Officials shows that the aforesaid three (3) positions which we propose for conversion and/or reclassification (*i.e.*, PHILJA Attorney VI, PHILJA Attorney V, and PHILJA Attorney IV) are still unfilled, hence, no incumbent will be affected by the proposed conversion and/or reclassification thereof.

RECOMMENDATIONS:

In light of the foregoing, we respectfully recommend the following:

1. the conversion and/or reclassification of the position of Court Attorney VI [*should be* PHILJA Attorney VI] (SG 27) in the Office of the Chancellor and to retain its status as coterminous, to wit:

FROM	SG	TO	SG
PHILJA Attorney VI	27	PHILJA Head Executive Assistant	27

2. the reversion of the status from permanent to coterminous, but only insofar as the following positions in the Office of the Chancellor are concerned:

SC Chief Judicial Staff Officer	SG 25
Judicial Staff Officer III	SG 18
Judicial Staff Assistant III	SG 10

3. the retention of the status as permanent of the position of Records Officer II (SG 14) in the Office of the Chancellor for purposes of continuity of the smooth operations in the office should there be a change of new administration.

With due respect to Honorables Justo P. Torres and Marina L. Buzon, PHILJA Vice-Chancellor and PHILJA Executive Secretary, respectively, we likewise respectfully recommend the following changes in their respective plantillas for purposes of maintaining the hierarchy of positions in the Executive Offices of the PHILJA:

1. the conversion and/or reclassification of the following positions in the Offices of the Vice-Chancellor and of the Executive Secretary, and to retain their status as coterminous:

OFFICE	FROM	SG	TO	SG
Office of the Vice-Chancellor	PHILJA Attorney V	26	PHILJA Executive Assistant Supervisor	26
Office of the Executive Secretary	PHILJA Attorney IV	25	PHILJA Executive Assistant VI	25

2. the reversion of the status of the permanent positions in the Offices of the PHILJA Vice-Chancellor and PHILJA Executive Secretary to coterminous, except for the position of Clerk III in each Office which we respectfully recommend to be retained both as permanent.

3. the immediate filling up of the aforesaid three (3) converted/ reclassified new coterminous positions, with the funds to be drawn from the savings of the Court, pending the release of the Notice of Organization, Staffing and Compensation Action (NOSCA) by the DBM.

Should all these recommendations merit the approval of the Honorable Supreme Court, shown hereinbelow are the plantillas in the Executive Offices of the PHILJA showing the changes made therein, to wit:

OFFICE OF THE PHILJA CHANCELLOR

No. of Positions	Position Title	SG	Existing Status	Proposed Status
1	PHILJA Chancellor	31		
1	***PHILJA HEAD EXECUTIVE ASSISTANT*** (PHILJA Attorney VI)	27	Coterm	Coterm
2	PHILJA Attorney V	26	Coterm	Coterm
1	SC Chief Judicial Staff Officer	25	Perm	***COTERM***
1	Executive Assistant V	24	Coterm	Coterm
1	Executive Assistant IV	22	Coterm	Coterm
1	Judicial Staff Officer III	18	Perm	***COTERM***
1	Records Officer II	14	Perm	Perm
1	Judicial Staff Assistant III	10	Perm	***COTERM***
1	Chauffeur II	6	Coterm	Coterm
1	Utility Worker II	3	Coterm	Coterm
12	**Total Number of Positions**			

OFFICE OF THE PHILJA VICE-CHANCELLOR

No. of Positions	Position Title	SG	Existing Status	Proposed Status
1	PHILJA Vice-Chancellor	30		
1	***PHILJA EXECUTIVE ASSISTANT SUPERVISOR*** (PHILJA Attorney V)	26	Coterm	Coterm
1	PHILJA Attorney IV	25	Coterm	Coterm
1	PHILJA Attorney III	24	Coterm	Coterm
1	SC Supervising Judicial Staff Officer	23	Perm	***COTERM***
1	Executive Assistant III	20	Coterm	Coterm
1	Judicial Staff Officer III	18	Perm	***COTERM***
1	Executive Assistant II	17	Coterm	Coterm
1	Clerk III	6	Perm	Perm
1	Chauffeur I	5	Coterm	Coterm
1	Utility Worker II	3	Coterm	Coterm
11	**Total Number of Positions**			

OFFICE OF THE PHILJA EXECUTIVE SECRETARY

No. of Positions	Position Title	SG	Existing Status	Proposed Status
1	PHILJA Executive Secretary	29		
1	***PHILJA EXECUTIVE ASSISTANT VI*** (PHILJA Attorney IV)	25	Coterm	Coterm
1	PHILJA Attorney III	24	Coterm	Coterm
1	Judicial Staff Officer VI	22	Perm	***COTERM***
1	Executive Assistant III	20	Coterm	Coterm
1	Judicial Staff Officer III	18	Perm	***COTERM***
1	Executive Assistant II	17	Coterm	Coterm
1	Clerk III	6	Perm	Perm
1	Chauffeur I	5	Coterm	Coterm
1	Utility Worker II	3	Coterm	Coterm
[10]	**Total Number of Positions [*should be* 10, not 11]**			

On July 28, 2009, the Court directed the PHILJA to reply to the Memorandum dated July 22, 2009 of Atty. Candelaria, within ten (10) days from notice thereof.

In his letter dated August 12, 2009, addressed to the Chief Justice, Justice Azcuna stated that:

> Anent the Resolution of the Honorable Supreme Court dated July 28, 2009, received by us on August 6, 2009, A.M. No. 01-1-04-PHILJA (Re: Further Clarifying and Strengthening the Organizational Structure and Administrative Set-up of the Philippine Judicial Academy), the undersigned has no objection to the Memorandum date July 22, 2009 of Atty. Eden T. Candelaria, Deputy Clerk of Court and Chief Administrative Officer, insofar as the Office of the Chancellor is concerned, but respectfully prays that the proposed changes in the Offices of the Vice-Chancellor and the Executive Secretary be deferred until after the end of the terms of the present Vice-Chancellor and Executive Secretary, unless said officials agree to have the same effective during their terms.
>
> Respectfully submitted.

In the Resolution dated August 18, 2009, the Court required the Offices of the PHILJA, namely, Office of the Vice-Chancellor, Office of the Executive Secretary, and Administrative Division to comment on the letter dated June 17, 2009 and Letter-Compliance dated August 12, 2009 of PHILJA Chancellor, Justice Azcuna, as well as on the Memorandum dated July 22, 2009 of Atty. Candelaria, within ten (10) days from notice thereof, as these are the offices that will be affected by the proposed conversion and reclassification of the subject positions.

In their joint letter dated August 27, 2009, addressed to the Chief Justice, PHILJA Vice-Chancellor, Justice Justo P. Torres, PHILJA Executive Secretary, Justice Marina L. Buzon, and PHILJA Administrative Chief, Judge Thelma A. Ponferrada, with the conforme of PHILJA Chancellor, Justice Adolfo S. Azcuna, stated that:

> Anent A.M. No. 01-1-04-PHILJA (Re: Further Clarifying and Strengthening the Organizational Structure and Administrative Set-up of the Philippine Judicial Academy) and the Resolution of the Honorable Supreme Court therein dated August 18, 2009 and received by our office on August 26, 2009, the undersigned respectfully submit this Comment in compliance with the Resolution. Thus:
>
> 1. We respectfully agree with the Comment and Manifestation of Chancellor Adolfo S. Azcuna earlier filed on this matter dated August 12, 2009, copy of which is hereto attached as Annex "A", and adopts the same;
>
> 2. We join his urgent request that he be provided the staff he requested as recommended by Atty. Eden T. Candelaria, Chief, Office of Administrative Services of this Court, in her Memorandum dated July 22, 2009.
>
> Respectfully submitted.

The recommendation of Atty. Candelaria is well-taken. The Court grants the request of Justice Azcuna for the conversion of a position title and the reversion from permanent to coterminous status of certain positions, except the position of Records Officer III (SG 14), in the Office of the Chancellor, and approves and adopts the recommendation of Atty. Candelaria as to the change

in the position titles of the heads of each of the Offices of the Vice-Chancellor and Executive Secretary and, likewise, the reversion from permanent to coterminous status, except the position of Clerk III (SG 6) in each office, in the staffing pattern of the two offices.

Section 11 of Revised A.M. No. 01-1-04-SC-PHILJA, effective September 23, 2008, provides that:

Section 11. Staffing Pattern

In order to enhance efficiency and effectiveness, the staffing pattern of the Philippine Judicial Academy is hereby further strengthened to include sixty-nine (69) new positions to perform the functions of the new offices and divisions; reclassify four (4) existing positions; convert twenty (20) existing positions; change the status of eleven (11) co-terminous positions to permanent status and to realign some existing positions.

The staffing pattern shall be as follows:

OFFICE OF THE CHANCELLOR

1	PHILJA Chancellor		31
1	***PHILJA ATTORNEY VI***	***C.T.***	27
1	PHILJA Attorney V	c.t.	26
1	PHILJA Attorney V	c.t.	26
1	SC Chief Judicial Staff Officer	~~c.t.~~ P	25
1	Executive Assistant V	c.t.	24
1	Executive Assistant IV	c.t.	22
1	Judicial Staff Officer III	~~c.t.~~P	18
1	~~Stenographic Reporter IV~~ Records Officer II	~~c.t.~~P	14
1	Judicial Staff Assistant III	~~c.t.~~ P	10
1	Chauffeur II	c.t.	6
1	Utility Worker II	c.t.	3

12 Total number of items in the Office of the Chancellor

OFFICE OF THE VICE-CHANCELLOR

1	PHILJA Vice-Chancellor		30
1	***PHILJA ATTORNEY V***	***C.T.***	26
1	PHILJA Attorney IV	c.t.	25
1	PHILJA Attorney III	c.t.	24
1	SC Supervising Judicial Staff Officer	~~c.t.~~ P	23

1	Executive Assistant III	c.t.	20
1	Judicial Staff Officer III	~~c.t.~~ P	18
1	Executive Assistant II	c.t.	17
1	Clerk III	~~c.t.~~ P	6
1	Chauffeur I	c.t.	6
1	Utility Worker II	c.t.	3

11 Total number of items in the Office of the Vice-Chancellor

OFFICE OF THE EXECUTIVE SECRETARY

1	PHILJA Executive Secretary		29
1	***PHILJA ATTORNEY IV***	***C.T.***	25
1	PHILJA Attorney III	c.t.	24
1	Judicial Staff Officer VI	~~c.t.~~ P	22
1	Executive Assistant III	c.t.	20
1	Judicial Staff Officer III	~~c.t.~~ P	18
1	Executive Assistant II	c.t.	17
1	Clerk III	~~c.t.~~ P	6
1	Driver I	c.t.	3
1	Utility Worker II	c.t.	3

10 Total number of items in the Office of the Executive Secretary

x x x x x x x x x

*- item co-terminous with the Chief of Office

P – Permanent c.t. – co-terminous

Italic Bold Font – New Item, funding to be sourced from Existing DBM approved item

ITALIC BOLD FONT ALL CAPS – New Item, funding to be requested from DBM

Italic Underlined – converted/retitled position

Regular Font-Underlined – reclassified/upgraded position

Regular Font – Existing DBM approved item

Due to the increase in the programs and commitments of the PHILJA, the Court *en banc*[3] issued Revised A.M. No. 01-1-04-SC-PHILJA for the purpose of clarifying and strengthening the organizational structure and administrative set-up of the PHILJA, including the key operating systems, staffing pattern, and the need to make it more appropriate to

an academic institution. The Court amended the staffing pattern of the following offices of the PHILJA:

A. Office of the Chancellor:

1. PHILJA Attorney VI (SG 27) – newly created item; coterminous
2. SC Chief Judicial Staff Officer (SG 25) – from coterminous to permanent
3. Judicial Staff Officer III (SG 18) – from coterminous to permanent
4. Records Officer II [*formerly Stenographic Reporter IV (SG 13)*] (SG 14) - from coterminous to permanent
5. Judicial Staff Assistant III (SG 10) – from coterminous to permanent

B. Office of the Vice-Chancellor:

1. PHILJA Attorney V (SG 26) – newly created item; coterminous
2. SC Supervising Judicial Staff Officer (SG 23) – from coterminous to permanent
3. Judicial Staff Officer III (SG 18) – from coterminous to permanent
4. Clerk III (SG 6) – from coterminous to permanent

C. Office of the Executive Secretary:

1. PHILJA Attorney IV (SG 25) – newly created item; coterminous
2. Judicial Staff Officer VI (SG 23) – from coterminous to permanent
3. Judicial Staff Officer III (SG 18) – from coterminous to permanent
4. Clerk III (SG 6) – from coterminous to permanent

[3] Composed of Chief Justice Reynato S. Puno and Associate Justices Leonardo A. Quisumbing, Consuelo Ynares-Santiago, Antonio T. Carpio, Ma. Alicia Austria-Martinez (now retired), Renato C. Corona, Conchita Carpio Morales, Adolfo S. Azcuna (now retired and current PHILJA Chancellor, effective June 1, 2009), Dante O. Tinga (now retired), Minita Chico-Nazario, Presbitero J. Velasco, Jr., Antonio Eduardo B. Nachura, Ruben T. Reyes (now retired, whose vote was certified by Chief Justice Puno), Teresita J. Leonardo-De Castro, and Arturo D. Brion.

In *Re: Clarifying and Strengthening the Organizational Structure and Administrative Set-Up of the Philippine Judicial Academy*,[4] the Court saw the necessity of retaining the originally proposed titles and salary grades of the positions of SC Chief Judicial Staff Officer (SG 25) and Supervising Judicial Staff Officer (SG 23) in the PHILJA as part of further enhancing its organizational structure and administrative set-up.

Corollarily, while the Court grants the request of Justice Azcuna that the PHILJA Attorney VI (SG 27), a newly created item, be changed to a non-lawyer designation, the appropriate position title should be PHILJA Head Executive Assistant with same Salary Grade 27, instead of Judicial Staff Head, which has an assigned Salary Grade 28, per Index of Occupational Services, Position Titles and Salary Grades issued by the DBM. The change in the position title to PHILJA Head Executive Assistant will afford him the discretion to hire an individual, including a non-lawyer, who possesses the qualifications required for the highly sensitive and confidential position. The position of Judicial Staff Head is peculiar to the Offices of the Associate Justices performing functions pertaining to the adjudication of cases and administrative supervision and other confidential matters. Additionally, as PHILJA Chancellor, Justice Azcuna should be given a free hand to select his office staff based on his trust and confidence and, hence, the need to have some position status changed from permanent to coterminous. The position of Records Officer II should remain to be permanent as there is a need to ensure the continuity of workflow and preserve the records management.

Similarly, the changes in the nomenclature for the positions of PHILJA Attorney V to PHILJA Head Executive Assistant Supervisor (with same SG 26) for the Office of the Vice-Chancellor, and PHILJA Attorney IV to PHILJA Executive Assistant VI (with same SG 25) of the Office of the Executive Secretary, both being newly created and with position status of coterminous, are justified as the Vice-Chancellor and the

[4] A.M. No. 01-1-04-SC-PHILJA, January 31, 2006, 481 SCRA 1.

Executive Secretary have the prerogative to hire heads of their office staff upon whom they can repose their trust and confidence. The heads of the three offices who occupy Private Secretary positions perform functions which are primarily confidential in nature and, thus, coterminous with the official they serve.[5] In like manner, the hiring of key positions which are categorized as confidential should be reverted from permanent to coterminous, except the position of Clerk III (SG 6) in each office which should remain to be permanent as there is a need to ensure the continuity of workflow and preserve the records management.

Thus, the following will be the amended staffing pattern of the respective offices of the PHILJA:

A. Office of the Chancellor:

1. PHILJA Head Executive Assistant (SG 27) – newly-created item; coterminous
2. SC Chief Judicial Staff Officer (SG 25) – from permanent to coterminous
3. Judicial Staff Officer III (SG 18) – from permanent to coterminous
4. Judicial Staff Assistant III (SG 10) – from permanent to coterminous

B. Office of the Vice-Chancellor:

1. PHILJA Executive Assistant Supervisor (SG 26) newly-created item; coterminous
2. SC Supervising Judicial Staff Officer (SG 23) – from permanent to coterminous
3. Judicial Staff Officer III (SG 18) – from permanent to coterminous

C. Office of the Executive Secretary:

1. PHILJA Executive Assistant VI (SG 25) – newly-created item; coterminous

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[5] See *Montecillo v. Civil Service Commission*, G.R. No. 131954, June 28, 2001, 360 SCRA 99.

2. Judicial Staff Officer VI (SG 22) – from permanent to coterminous
3. Judicial Staff Officer III (SG 18) – from permanent to coterminous

WHEREFORE, in the best interest of service and to maintain optimum work efficiency in the Executive Offices of the Philippine Judicial Academy (PHILJA), namely, Office of the Chancellor, Office of the Vice-Chancellor, and Office of the Executive Secretary, the Court *RESOLVES***:**

1. To *GRANT* the request of Justice Adolfo S. Azcuna, Chancellor of the Philippine Judicial Academy (PHILJA), with regard to the Office of Chancellor, as follows:

a. The change in the position title from PHILJA Attorney VI, a newly-created item which is unfilled, to PHILJA Head Executive Assistant and maintaining the nature of the appointment as coterminous with Salary Grade 27;

b. The reversion of the position status from permanent to coterminous with regard to the following items in the plantilla:

SC Chief Judicial Staff Officer — Salary Grade 25
Judicial Staff Officer III — Salary Grade 18
Judicial Staff Assistant III — Salary Grade 10

However, the request to revert the position status of Records Officer II, with Salary Grade 14, from permanent to coterminous is *DENIED* and said position shall remain to be permanent to ensure the continuity of workflow and preserve the records management in the Office of the Chancellor.

2. To *APPROVE AND ADOPT* the recommendation of Atty. Eden T. Candelaria, Deputy Clerk of Court and Chief Administrative Officer, Office of Administrative Services, as to the following:

a. The reclassification of each position in the PHILJA Offices of the Vice-Chancellor and Executive Secretary, both having the status of coterminous:

Office of the Vice-Chancellor:

From PHILJA Attorney V to PHILJA Executive Assistant Supervisor, with Salary Grade 26; unfilled

Office of the Executive Secretary:

From PHILJA Attorney IV to PHILJA Executive Assistant VI, with Salary Grade 25; unfilled

2. The reversion of the position status from permanent to coterminous with regard to the following designated items in the plantilla of the PHILJA Offices of the Vice-Chancellor and Executive Secretary:

Office of the Vice-Chancellor:

a. SC Supervising Judicial Staff Officer (Salary Grade 23)

b. Judicial Staff Officer III (Salary Grade 18)

Office of the Executive Secretary:

a. Judicial Staff Officer VI (Salary Grade 22)

b. Judicial Staff Officer III (Salary Grade 18)

except the position of Clerk III (Salary Grade 6) in each office, which remains to be permanent to ensure the continuity of workflow and preserve the records management in each office; and

3. To *REQUEST* the Chancellor, Vice-Chancellor, Executive Secretary to appoint qualified personnel to the three (3) newly reclassified coterminous positions, namely:

Office of the Chancellor:

PHILJA Head Executive Assistant (Salary Grade 27)

Office of the Vice-Chancellor:

PHILJA Executive Assistant Supervisor (Salary Grade 26)

Office of the Executive Secretary:

PHILJA Executive Assistant VI (Salary Grade 25)

subject to availability of the funds of the Court, pending the release of the Notice of Organization, Staffing and Compensation Action (NOSCA) by the Department of Budget and Management.

SO ORDERED.

Ynares-Santiago Acting C.J., Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, Bersamin, Del Castillo, and *Abad, JJ.,* concur.

Puno C.J., Quisumbing, and *Carpio, JJ.,* on official leave.

EN BANC

[A.M. No. P-08-2433. September 25, 2009]
(Formerly OCA IPI No. 07-2667-P)

JUDGE JENNY LIND ALDECOA-DELORINO, *complainant, vs.* **MARILYN DE CASTRO REMIGIO-VERSOZA, Clerk III, Regional Trial Court, Branch 137, Makati City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; DISHONESTY AND FALSIFICATION OF OFFICIAL DOCUMENT; MAKING OF AN UNTRUTHFUL STATEMENT IN THE PERSONAL DATA SHEET, A CASE OF.— [T]he completion of PDS is done under oath and required by law to be submitted regularly. Even assuming that another person had actually falsified the documents respondent submitted in order to make it appear that the latter was qualified for her present position, the fact remains that the latter allowed said falsified PDS and tampered OTR to become part of her employment records. Respondent's duly accomplished PDS also bears the certification that "the answers given above are true and correct," to which she affixed her signature on June 8, 2001. This is tantamount to a statement made under oath which does not speak the truth. Thus, respondent is deemed to have expressly assented to the

falsehood or perversion of truth perpetrated by Ramos and, by reason thereof, is equally liable for falsification of an official document. x x x In *Administrative Case for Dishonesty and Falsification of Official Document Against Noel V. Luna, SC Chief Judicial Staff Officer,* the importance of accomplishing a PDS with utmost honesty has been emphasized, as the same is required under Section 5, Rule V of the Civil Service Rules and Regulations, in connection with employment in the government. The making of an untruthful statement therein amounts to dishonesty and falsification of an official document, which warrant dismissal from the service even for the first offense. In the present case, respondent falsified her PDS, an official document, to gain unwarranted advantage over other applicants who may have been more qualified for the same position. Respondent failed to measure up to the standards required of a public servant and, hence, should accordingly be sanctioned.

2. ID.; ID.; ID.; DISHONESTY; DEFINED. — By misrepresenting her educatinal attainment to qualify for her present position, respondent has committed dishonesty. Dishonesty has been defined as intentionally making a false statement on any material fact, or practicing or attempting to practice any deception or fraud in securing one's examination, registration, appointment or promotion. It is also understood to imply a disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.

3. ID.; ID.; ID.; DISHONESTY AND FALSIFICATION OF PUBLIC DOCUMENT; NATURE AND PENALTY. — Under Section 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 (Administrative Code of 1987) and other pertinent Civil Service Laws, dishonesty and falsification of a public document are considered grave offenses for which the penalty of dismissal is prescribed. Section 9 of the said Rule likewise provides that the penalty of dismissal shall carry with it cancellation of eligibility, forfeiture of leave credits and retirement benefits, and disqualification for re-employment in the government service. This penalty is without prejudice to the criminal liability of respondent arising from the said infraction.

4. ID.; ID.; ID.; ID.; PENALTY OF DISMISSAL; IMPOSED IN CASE AT BAR. — In the present case, the OCA recommended that

> respondent be dismissed from the service effective immediately, with forfeiture of all retirement benefits, except accrued leaves earned before October 5, 2001, when she was employed as Clerk I of the Personnel Coordinator and as Clerk I and II of the RTC, Branch 137 of Makati City, which were the positions for which she was qualified. The Court agrees that the gravity of respondent's offenses warrants dismissal, for it cannot countenance any act of dishonesty, especially when it is committed by a person who is tasked to uphold the administration of justice. Respondent's misrepresentation of her educational attainment in her PDS, which she executed under oath, constitutes dishonesty; and as she appended a falsified OTR to support her claim, she has also committed falsification of an official document. Dishonesty and falsification are malevolent acts that have no place in the Judiciary. Even if these acts be taken as one infraction so as to constitute her first offense, the Court cannot apply leniency and, thus, imposes upon respondent the penalty of dismissal from the service effective immediately, with forfeiture of all retirement benefits, except accrued leave credits earned before October 5, 2001.

D E C I S I O N

***PER CURIAM*:**

Before this Court is a letter-complaint[1] dated April 30, 2007 filed by complainant Judge Jenny Lind Aldecoa-Delorino, Presiding Judge of the Regional Trial Court (RTC) of Makati City, Branch 137, with the Office of the Court Administrator (OCA) against respondent Marilyn de Castro Remigio-Versoza, Clerk III of the RTC of Makati City, Branch 137 for falsification of school records and dishonesty.

On June 8, 2001, respondent applied for the position of Clerk III at the RTC of Makati City, Branch 137, where complainant was the Presiding Judge. In her application papers, respondent appended an Official Transcript of Records (OTR) ostensibly certifying that she finished two (2) years of Bachelor of Science (B.S.) in Secretarial Education at the Polytechnic University

[1] *Rollo,* p. 6.

of the Philippines (PUP) during the academic years 1976 to 1978. She likewise indicated in her Personal Data Sheet (PDS) dated June 8, 2001 that she graduated from the PUP with a degree in B.S. Secretarial, completing ninety (90) units of the said course for the academic years 1976 to 1978.

However, after respondent assumed her position as Clerk III, complainant received information that the former had falsified her school records in order to make herself appear qualified for the said position. Complainant learned that respondent did not actually take the said course of study at the PUP, although the latter's actual educational attainment could not be ascertained based on the records.

Complainant also discovered that respondent had previously used, or attempted to use, the payslip of one Catherine Aceveda, Legal Researcher of the RTC of Makati City, Branch 140, without the latter's knowledge or consent, as supporting documents in her application for a credit card. Complainant averred that respondent superimposed her own name and Tax Identification Number (TIN) over that of Aceveda. When Aceveda confronted respondent about the matter, the latter merely apologized, but failed to give a sufficient explanation as to how she was able to obtain the payslips belonging to Aceveda.

On April 30, 2007, complainant filed the present letter-complaint with the OCA, requesting that an investigation be conducted to prove that respondent falsified her scholastic records, so as to make herself appear qualified for the vacant position of Clerk III of the RTC, Branch 137 of Makati City.

In its 1st Indorsement[2] dated May 17, 2007, the Office of Administrative Services (OAS) of the OCA referred the complainant's letter-complaint dated April 30, 2007 to the OCA Legal Office for appropriate action, as complainant requested that an immediate investigation be conducted to ascertain the veracity of the respondent's scholastic records.

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[2] *Id* at 5.

In its 1st Indorsement[3] dated June 19, 2007, the OCA Legal Office required respondent to Comment on complainant's letter-complaint within ten (10) days from receipt thereof. It also sent a letter dated June 19, 2007 to the Registrar of the PUP, requesting that it be furnished with duly certified photocopies of the respondent's transcript of records.

Respondent, in her Comment[4] dated July 13, 2007, admitted that the OTR she submitted in her application for the position of Clerk III of Branch 137 of the RTC, Makati City had alterations, but maintained that she did not personally tamper it. She claimed that a certain Rowena Ramos, her officemate, prepared the former's application papers and filed them with this Court, assuring respondent that she was qualified for the position. Ramos later demanded an amount equivalent to respondent's salary for three months as payment for the assistance she had rendered in facilitating respondent's application. The latter averred that complainant would use her position to ease out court personnel she did not like, particularly one who occupied a lower position and with a lesser educational attainment, such as herself, as happened to Jessica Abellanosa, complainant's former court stenographer. Respondent also denied using Aceveda's payslip as supporting document when the former applied for a credit card.

Respondent, in turn, accused complainant of engaging the services of one who was not a court employee. She stated that complainant hired Socrates Manarang, a former legal researcher of then Presiding Judge Santiago Ranada, to draft decisions for her, which fact was admitted by Manarang himself. She narrated that a certain Daniel Benito, an officemate, told her that he once accompanied Lyndon Ramos, husband of Rowena Ramos, in delivering the records of a case to Manarang's house upon the instructions of complainant.[5]

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[3] *Id.* at 11.

[4] *Id.* at 16-18.

[5] *Id.*

In its Report[6] dated November 26, 2007, the OCA stated that the issue to be resolved was whether respondent may be held liable for falsification of transcript of records. Thus, the OCA recommended that the instant complaint be re-docketed as a regular administrative matter, and that respondent's Comment be considered as an administrative complaint against complainant, and required the complainant to file a comment thereon.

In its Resolution[7] dated February 13, 2008, acting upon the recommendations of the OCA, the Court re-docketed the instant complaint as a regular administrative complaint, treated respondent's Comment as a counter-administrative complaint against complainant, and required complainant to comment thereon within ten (10) days from notice.

In her Comment[8] dated April 2, 2008, complainant claimed that the counter-charge against her was respondent's act of retaliation arising from the letter-complaint she had earlier filed on April 30, 2007. She emphasized that respondent, when asked to comment on the former's letter-complaint, failed to categorically state that the OTR she submitted to this Court was authentic and regularly issued by the PUP. She argued that respondent, instead of explaining why the OTR turned out to be falsified, blamed Rowena Ramos for allegedly masterminding the submission of respondent's fake credentials; and proceeded to accuse complainant of being oppressive to her subordinates, and for allegedly maintaining Manarang as "ghost writer" for the decisions assigned to her for disposition.

Complainant denied that she would arbitrarily remove employees she disliked, particularly Abellanosa and respondent, so that she could replace them with employees who would do her bidding. Complainant reasoned that if such were true, she could have fired Abellanosa and respondent a long time ago based on other grounds without having to file administrative complaints against them.

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[6] *Id.* at 1-3.

[7] *Id.* at 24.

[8] *Id.* at 25-33.

Complainant also attached to her Comment a letter[9] dated March 28, 2008 by Melba Abaleta, University Registrar of the PUP, confirming that the subject OTR was a falsified document that did not emanate from the Registrar's Office of the said school. She stated that Abaleta returned the copy of the OTR with bold markings, which highlighted all the anomalous entries, to wit: (1) that the signatures thereon of a certain C.D. Carpio and Fe B. Agpaoa, as Registrar, were forgeries; (2) that "Secretarial" was not a degree or certificate course being offered by PUP; and (3) that certain subjects listed therein were either incorrect or were not course requirements.[10]

Complainant refuted respondent's allegation that the former paid Manarang to draft decisions for the cases assigned to her sala, or that she allowed him to bring case records outside the court premises, saying that he was an applicant for the position of Branch Clerk of Court in her sala. She asserted that Manarang worked as a legal researcher for then Presiding Judge Santiago Ranada, who was previously stationed at Branch 137 and, later, joined him when he was elevated to the Court of Appeals as an Associate Justice in May 2004. According to complainant, in January 2007, Manarang contacted Ramos, intimating that he was looking for work, as he had a family to support. At that time, the Branch Clerk of Court, Atty. Gemma Turingan, was on maternity leave. She had previously informed complainant that she was applying for a position at the Public Attorney's Office (PAO) in Tuguegarao City. Complainant encouraged the transfer of Atty. Turingan to PAO and started looking for the latter's replacement, so she interviewed Manarang. Though impressed with his work experience, complainant decided to give him a try-out case, so as to test his ability to research and draft resolutions. She stated that during the last week of February 2007, Manarang researched for and prepared a draft resolution on several incidents in consolidated Criminal Case Nos. 06-877 and 06-882, entitled *People v. Piccio, et al.*, inside the office premises, using the computer assigned to Atty. Turingan,

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[9] *Id.* at 69.

[10] *Id.* at 25-33.

who was still on maternity leave. Complainant maintained that while she was satisfied with Manarang's work for that particular case, she did not adopt the discussion he made. She claimed that she had already issued a Resolution on the pending incidents of the case on February 20, 2007, while the records showed that Manarang borrowed books from the court library that he used for his try-out on February 23, 2007. As he failed the bar examinations, and Atty. Turingan's transfer to Tuguegarao City did not push through, Manarang eventually migrated to Australia with his family. Before leaving the country, he executed an Affidavit dated July 17, 2007 to disprove the accusation that he was a "ghost writer" for complainant.[11]

In her letter[12] dated April 3, 2008 addressed to Chief Justice Reynato S. Puno, complainant requested an investigation on the veracity of the scholastic records of respondent, and expressed dismay at being administratively charged by the latter.

In a Resolution[13] dated June 23, 2008, the Court referred the case to the OCA for evaluation, report and recommendation within sixty (60) days from notice.

In its Report[14] dated October 29, 2008, the OCA made the following observations, to wit:

EVALUATION AND RECOMMENDATION

There are two (2) issues to resolve in this case, *to wit*: Whether or not the transcript of records Versoza submitted to the Court when she applied for the position of Clerk III in 2001 is a product of forgery; and whether or not Judge Delorino has been soliciting the help of an outsider to draft her decisions.

Anent the issue of the validity of the transcript of records submitted by Versoza to the court when she was applying for the position of Clerk III, we find the evidence adduced sufficient to hold Versoza administratively liable.

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[11] *Id.*

[12] *Id.* at 54-58.

[13] *Id.* at 81.

[14] *Id.* at 83-87.

In her Comment dated July 13, 2007, Versoza admits that the transcript of records she submitted to the Court was tampered, albeit denying that the forgery was her handiwork. She instead lays the blame on Rowena Ramos, claiming it was the latter who caused the preparation of the transcript in exchange for money. Versoza's admission, coupled by the March 28, 2008 statement from Ms. Melba D. Abaleta, University Registrar of PUP, that the subject transcript is a "falsified document," sealed her fate. In her March 28, 2008 letter addressed to Judge Delorino, Ms. Abaleta specifically stated that "the transcript of records submitted to your office [by Versoza] is a falsified document and did not originate from us." The defense of Versoza is pregnant with admissions of the act complained of. Versoza admits of the basic fact in the complaint that she submitted falsified records when she applied for the position of Clerk III in the lower court.

Even if we assume for the nonce that somebody else led her into the falsification scheme, it is very clear that she consented to its commission as she even paid the person who allegedly prepared the forged documents. Thus did Versoza state in her letter to the Court Administrator that: *"Pero kapalit ng pag-aayos niya ng mga papeles ko ay hiningi niya po sa akin ang tatlong (3) buwang sahod ko noong lumabas na ang aking appointment bilang kabayaran ng kanyang pag-aayos sa aking mga papeles na kanyang ipinasa sa Supreme Court."*

It should be emphasized that the information that she finished a B.S. Secretarial course in PUP is also reflected in Versoza's Personal Data Sheet (PDS) which she executed under oath on June 8, 2001. The position of Clerk III requires the completion of at least (two) 2 years of college studies and sub-professional eligibility from the Civil Service Commission (CSC). In her PDS, Versoza provided the information that she was able to finish a 2-year secretarial course in PUP. Without the said course, Versoza would not have qualified for the position. In *Dante de la Cruz Rivera vs. Acting Judge Reynaldo B. Bellosillo* (A.M. No. MTJ-00-1316, September 25, 2000), the Court held that "the truthful completion of Personal Data Sheet is a requirement for employment in the judiciary, the importance of answering the same with candor need not be gainsaid."

For having misrepresented in her PDS that she was able to finish a two-year course in college when in reality she did not, Versoza is liable for dishonesty by misrepresentation and falsification of a public document.

Under Section 23, Rule XIV of the Omnibus Rules Implementing Book V of EO 292 and other Pertinent Civil Service Laws, dishonesty and falsification of a public document are considered grave offenses for which the penalty of dismissal is prescribed even at the first instance. Section 9 of said Rule likewise provides that "The penalty of dismissal shall carry with it cancellation of eligibility, forfeiture of leave credits, and retirement benefits, and the disqualification for re-employment in the government service. This penalty is without prejudice to criminal liability of the respondent."

With respect to accrued leave credits, a distinction must be made with respect to any accrued leave credits Versoza earned *before* October 5, 2001, when she was designated as Clerk III (should be Clerk II) by then Court Administrator Presbitero J. Velasco Jr., to the credits Versoza may have earned from October 5, 2001 to the present, when she served as Clerk III of RTC, Branch 137, Makati City. Versoza is entitled to leave credits earned for the period January 2, 1992 to October 4, 2001, when she served as Clerk I, and Clerk II of the city government of Makati (albeit detailed at the RTC Branch 137, Makati City) the positions she was employed in for which her qualifications were not contested. Any credits earned from October 5, 2001 to the present are forfeited because of her ineligibility to assume the Clerk III position which requires a two-year college course.

Apropos the counter-complaint by Versoza against Judge Delorino, wherein the latter was accused of hiring an outsider to draft the decisions due from the court, this Office finds the allegation wanting in proof. The allegation, which was raised by Versoza in her Comment dated July 13, 2007, appears to have been concocted by her to divert the attention of the Court on the matter of her forged transcript of records. While the issue on the forged transcript was duly established by documentary evidence, the same cannot be said about the alleged outsider supposedly being paid by Judge Delorino to write court decisions.

In *Lopez vs. Fernandez* (99 SCRA 603), the Court held that "numerous administrative charges against erring judges have been filed to this Court and we reviewed them with utmost care, because proceedings of this character are in their nature highly penal in character and are to be governed by the rules of law application to criminal cases. **The charges must, therefore, be proved beyond reasonable doubt** [emphasis supplied]."

PREMISES CONSIDERED, we respectfully submit for the consideration of the Honorable Court the following recommendations:

(a) That Marilyn R. Versoza, Clerk III, Regional Trial Court, Branch 137, Makati City, be found **GUILTY** of Dishonesty and Falsification of Public Document;

(b) That Ms. Versoza be **DISMISSED** from the service effective immediately, with forfeiture of all retirement benefits, except accrued leave credits earned before October 5, 2001; *and*

(c) That the counter Complaint against Presiding Judge Jenny Lind R. Aldecoa-Delorino, RTC, Branch 137, Makati City, be **DISMISSED** for lack of merit.

In a Resolution[15] dated November 26, 2008, the Court required the parties to manifest whether they were willing to submit the case for decision on the basis of the pleadings or records already filed and submitted, within ten (10) days from notice.

While complainant filed a Manifestation[16] on January 27, 2009, the Court, in a Resolution[17] dated June 1, 2009, considered the case submitted for resolution in view of respondent's non-compliance with the said Resolution.

The Court finds the recommendation of the OCA to be well-taken and, thus, holds respondent administratively liable for dishonesty and falsification of official documents.

In her duly accomplished PDS dated June 8, 2001, particularly on the space provided for "Educational Attainment," respondent falsely indicated that she finished a B.S. Secretarial course at the PUP during the academic years 1976-1978, although her actual educational attainment cannot be determined from the records. She also appended an OTR to ostensibly certify her completion of a "Secretarial" degree, which was purportedly issued by the PUP. The material fact she sought to establish was, however, contrary to the letter dated March 28, 2008 from the University Registrar

[15] *Id.* at 88.

[16] *Id.* at 89.

[17] *Id.* at 96.

of the PUP, which attested that the OTR submitted by the respondent as part of her application had been falsified and did not originate from the said school. It, therefore, becomes evident that, having failed to repudiate the statement of the University Registrar, or present additional evidence to support her claim, respondent did not finish or actually take the said course of study. Clearly, the latter made a misrepresentation as to her educational attainment.

Respondent sought to exculpate herself from liability by arguing that she herself did not prepare the application papers and, instead, pointed to her officemate, Ramos, as the person who effected the falsification of the former's application papers, which rendered her eligible for the position of Clerk III.

Respondent's contention is unacceptable. The Code of Conduct and Ethical Standards for Public Officials and Employees, Republic Act No. 6713, enunciates the State's policy of promoting a high standard of ethics and utmost responsibility in the public service.[18] And no other office in the government service exacts a greater demand for moral righteousness and uprightness from an employee than the Judiciary.[19] Respondent's Service Record shows that she has been a government employee for seventeen (17) years now, having started her career as Clerk I of the Personnel Coordinator of the City Hall of Makati City in 1992. She then transferred to the RTC, Branch 137 of Makati City, where she served as Clerk I, then as Clerk II of the Law Department of the City Hall of Makati City, before being designated as Clerk III of the RTC. It, therefore, stands to reason that an employee with long years of experience, such as respondent, is expected to possess a higher degree of rectitude and honesty.

As with the Statement of Assets and Liabilities and other official documents, the completion of a PDS is done under oath

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[18] *Civil Service Commission v. Sta. Ana*, A.M. No. OCA-01-5, August 1, 2002, 386 SCRA 1, 8, citing *Alawi v. Alauya*, 268 SCRA 628 (1997).

[19] *Id.*, citing *Rabe v. Flores*, 272 SCRA 415 (1997).

and required by law to be submitted regularly.[20] Even assuming that another person had actually falsified the documents respondent submitted in order to make it appear that the latter was qualified for her present position, the fact remains that the latter allowed said falsified PDS and tampered OTR to become part of her employment records. Respondent's duly accomplished PDS also bears the certification that "the answers given above are true and correct," to which she affixed her signature on June 8, 2001. This is tantamount to a statement made under oath which does not speak the truth. Thus, respondent is deemed to have expressly assented to the falsehood or perversion of truth perpetrated by Ramos and, by reason thereof, is equally liable for falsification of an official document.

By misrepresenting her educational attainment to qualify for her present position, respondent has committed dishonesty. Dishonesty has been defined as intentionally making a false statement on any material fact, or practicing or attempting to practice any deception or fraud in securing one's examination, registration, appointment or promotion. It is also understood to imply a disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.[21]

In *Administrative Case for Dishonesty and Falsification of Official Document Against Noel V. Luna, SC Chief Judicial Staff Officer*,[22] the importance of accomplishing a PDS with utmost honesty has been emphasized, as the same is required under Section 5, Rule V of the Civil Service Rules and Regulations, in connection with employment in the government.[23]

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[20] *Cecilia T. Faelnar v. Felicidad Dadivas Palabrica, Court Stenographer III, Regional Trial Court, Branch 11, Manolo Fortich, Bukidnon*, A.M. No. P-06-2251, January 20, 2009.

[21] *Civil Service Commission v. Caridad S. Dasco, Stenographer II, MeTC, Branch 63, Makati City*, A.M. No. P-07-2335, September 22, 2008.

[22] A.M. No. 2003-7-SC, December 15, 2003, 418 SCRA 460.

[23] Sec. 5. Each appointment shall be prepared in the prescribed form and duly signed by the appointing authority.

The making of an untruthful statement therein amounts to dishonesty and falsification of an official document, which warrant dismissal from the service even for the first offense. In the present case, respondent falsified her PDS, an official document, to gain unwarranted advantage over other applicants who may have been more qualified for the same position. Respondent failed to measure up to the standards required of a public servant and, hence, should accordingly be sanctioned.

Under Section 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 (Administrative Code of 1987) and other pertinent Civil Service Laws, dishonesty and falsification of a public document are considered grave offenses for which the penalty of dismissal is prescribed. Section 9 of the said Rule likewise provides that the penalty of dismissal shall carry with it cancellation of eligibility, forfeiture of leave credits and retirement benefits, and disqualification for re-employment in the government service. This penalty is without prejudice to the criminal liability of respondent arising from the said infraction.[24]

In previous cases where employees of the judiciary have been found guilty of said offenses, the Court did not hesitate to impose such extreme punishment.

In *Judge Aglugub v. Perlez*,[25] therein respondent, Clerk of Court I of the Municipal Trial Court (MTC), Branch 2 of San Pedro, Laguna, who misrepresented herself to be a college graduate in her PDS, when in fact she failed to graduate because she received an incomplete grade in three (3) subjects, was found guilty of dishonesty and dismissed from the service immediately, with prejudice to re-employment in any government agency and government-owned and controlled corporation, and forfeiture of retirement benefits, except accrued leaves.

Each appointment shall be accompanied by the following:

(1)Personal Data Sheet (CS Form 212);

x x x x x x x x x

[24] *Supra* note 22.

[25] A.M. No. P-99-1348, October 15, 2007, 536 SCRA 20.

In *Re: Administrative Case for Falsification of Official Documents and Dishonesty against Randy S. Villanueva*,[26] where therein respondent made it appear in his Daily Time Record (DTR) that he rendered overtime service every Saturday covering the period of June to December 2003, and collected overtime pay per day, despite being enrolled in a college course and having whole day classes on Saturdays. He was also found guilty of falsification of official documents and dishonesty, and dismissed from the service, with forfeiture of all benefits and privileges, except accrued leave credits, if any, with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

In *Re: Administrative Case for Dishonesty and Falsification of Official Document: Benjamin Katly*,[27] therein respondent falsified his PDS on two occasions, stating that he was a college graduate, first when he applied for the position of Computer Maintenance Technologist III and, second, when he sought promotion for the position of Information Technology Officer I in the Systems Development for Judicial Application Division, Management Information Systems Office (MISO) of this Court. He was found guilty of dishonesty and falsification of official document and dismissed from the service immediately, with forfeiture of all retirement benefits, except accrued leave credits earned when he was employed in positions for which he was qualified.

In the present case, the OCA recommended that respondent be dismissed from the service effective immediately, with forfeiture of all retirement benefits, except accrued leaves earned before October 5, 2001, when she was employed as Clerk I of the Personnel Coordinator and as Clerk I and II of the RTC, Branch 137 of Makati City, which were the positions for which she was qualified. The Court agrees that the gravity of respondent's offenses warrants dismissal, for it cannot countenance any act of dishonesty, especially when it is committed by a person who

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[26] A.M. No. 2005-24-SC, August 10, 2007, 529 SCRA 679.

[27] A.M. No. 2003-9-SC, March 25, 2004, 426 SCRA 236.

is tasked to uphold the administration of justice. Respondent's misrepresentation of her educational attainment in her PDS, which she executed under oath, constitutes dishonesty; and as she appended a falsified OTR to support her claim, she has also committed falsification of an official document. Dishonesty and falsification are malevolent acts that have no place in the Judiciary.[28] Even if these acts be taken as one infraction so as to constitute her first offense, the Court cannot apply leniency and, thus, imposes upon respondent the penalty of dismissal from the service effective immediately, with forfeiture of all retirement benefits, except accrued leave credits earned before October 5, 2001.

Corollarily, as the counter-charges in the counter-complaint of respondent alleging that complainant hired an outsider to draft decisions for the cases assigned to her were not substantiated, the same is dismissed. What becomes telling is that respondent has an axe to grind against complainant because of a prior administrative complaint filed by the latter against her. The Court will not allow respondent to trifle with it through a baseless counter-administrative suit. In administrative proceedings, he who alleges bears the burden of proving, by substantial evidence, the allegations in the complaint.[29] Respondent having failed to substantiate her charge, the counter-complaint against complainant cannot prosper.

Let this case serve as a warning to all court personnel that the Court, in the exercise of its administrative supervision over all lower courts and their personnel, will not hesitate to enforce the full extent of the law in disciplining and purging from the Judiciary all those who are not befitting the integrity and dignity of the institution, even if it would mean their dismissal from the service despite their length of service.[30] Any act of dishonesty,

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[28] *Office of the Court Administrator v. Librada Puno, Cash Clerk III,* A.M. No. P-03-1748, September 22, 2008.

[29] *Pan v. Salamat,* A.M. No. P-03-1678, June 26, 2006, 492 SCRA 460, 466.

[30] *Aurora B. Go v. Margarito A. Costelo, Jr., Sheriff IV, Regional Trial Court, Branch 11, Calubian, Leyte,* A.M. No. P-08-2450, June 10, 2009.

misrepresentation, or falsification done by a court employee that may lead to moral decadence shall be dealt with severely.

WHEREFORE, respondent Marilyn de Castro Remigio-Versoza, Clerk III of the Regional Trial Court, Branch 137, Makati City, is found *GUILTY* of dishonesty and falsification of public records, and is *DISMISSED* from the service effective immediately, with forfeiture of all retirement benefits, except accrued leave credits earned before October 5, 2001, and with prejudice to her re-employment in any branch or agency of the government, including government-owned or controlled corporations, effective immediately.

The counter-charge against complainant, Presiding Judge Jenny Lind R. Aldecoa-Delorino of the Regional Trial Court, Branch 137, Makati City, accusing her of engaging the services of a personnel who is not a staff of the said court to draft decisions for the cases assigned to her, is *DISMISSED* for lack of merit.

SO ORDERED.

Ynares-Santiago,[*] *Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, Peralta, Bersamin, Del Castillo,* and *Abad, JJ.,* concur.

Puno, C.J., Quisumbing, and *Carpio, JJ.,* on official leave.

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[*] Acting Chief Justice.

THIRD DIVISION

[G.R. No. 176546. September 25, 2009]

FELICITAS P. ONG, *petitioner, vs.* **THE PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE SANDIGANBAYAN ARE CONCLUSIVE UPON THE SUPREME COURT; EXCEPTIONS.— It is a well-entrenched rule that factual findings of the Sandiganbayan are conclusive upon the Supreme Court except where: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjectures; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts and the findings of fact of the Sandiganbayan are premised on the absence of evidence and are contradicted by evidence on record.

2. CRIMINAL LAW; VIOLATION OF SECTION 3(E) OF REPUBLIC ACT NO. 3019 (THE ANTI-GRAFT AND CORRUPT PRACTICES ACT); ELEMENTS; PRESENT IN CASE AT BAR. — Section 3 (e) of RA No. 3019, as amended, provides: *"**Section 3.*** Corrupt practices of public officers.- *In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful* x x x (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions." The following essential elements must be present: 1. The accused must be a public officer discharging administrative, judicial or official functions; 2. He must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and 3. His action caused any undue injury to any party, including the government,

or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions. We find that all the elements of the offense charged have been duly established beyond reasonable doubt. Petitioner, being then the Mayor of Angadanan, Isabela is a public officer discharging administrative and official functions. The act of purchasing the subject truck without the requisite public bidding and authority from the Sangguniang Bayan displays gross and inexcusable negligence. Undue injury was caused to the Government because said truck could have been purchased at a much lower price.

3. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; PROPERTY AND SUPPLY MANAGEMENT IN THE LOCAL GOVERNMENT UNITS; PROCUREMENT WITHOUT PUBLIC BIDDING; NEGOTIATED PURCHASE; WHEN RESORTED TO. — [A] local chief executive could only resort to a *negotiated purchase* under Section 366 of RA No. 7160 and COA Resolution Nos. 95-244 and 95-244-A, if the following two requisites are present: (1) public biddings have failed for at least two consecutive times and; (2) no suppliers have qualified to participate or win in the biddings.

4. CRIMINAL LAW; VIOLATION OF SECTION 3(E) OF REPUBLIC ACT NO. 3019 (THE ANTI-GRAFT AND CORRUPT PRACTICES ACT); PENALTY. — The penalty for violation of Section 3(e) of RA 3019 is "imprisonment for not less than six years and one month nor more than fifteen years, and perpetual disqualification from public office." Under the Indeterminate Sentence Law, if the offense is punished by special law, as in the present case, an indeterminate penalty shall be imposed on the accused, the maximum term of which shall not exceed the maximum fixed by the law, and the minimum not less than the minimum prescribed therein. In view of the circumstances obtaining in the instant case, the Sandiganbayan correctly imposed the indeterminate prison term of six (6) years and one (1) month, as minimum, to ten (10) years and one (1) day, as maximum, with perpetual disqualification from public office.

APPEARANCES OF COUNSEL

Castro Castro & Associates for petitioners.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

Assailed in this petition for review is the Decision[1] of the Sandiganbayan dated November 13, 2006 in Criminal Case No. 24416, finding petitioner Felicitas P. Ong guilty beyond reasonable doubt of violation of Sec. 3 (e) of Republic Act No. 3019, otherwise known as the *Anti-Graft and Corrupt Practices Act.* Also assailed is the Resolution[2] dated February 2, 2007 denying the motion for reconsideration.

On August 12, 1996 petitioner in her capacity as Mayor of Angadanan, Isabela, bought[3] an Isuzu dump truck[4] for ₱750,000.00 from Josephine Ching for the use of the municipality.

On March 26, 1997, a letter-complaint[5] was filed against petitioner by her successor, Mayor Diosdado Siquian[6] and several other Sangguniang Bayan members[7] before the Office of the Ombudsman, accusing her of malversation of public funds and property in connection with several alleged irregularities committed during her term as Mayor of Angadanan, including the purchase of the dump truck for being grossly overpriced.

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[1] *Rollo*, pp. 83-94; penned by Associate Justice Norberto Y. Geraldez and concurred in by Associate Justices Godofredo L. Legaspi and Efren N. Dela Cruz.

[2] *Id.* at 109-111.

[3] Records, pp. 42-43; as evidenced by a Deed of Absolute Sale of a Motor Vehicle.

[4] With Plate No. T-BBB-206.

[5] Records, pp. 10-11.

[6] Also referred to as Diosdado *Sitiang* in the TSN.

[7] Raymundo T. Paggao, Mirasol P. Lappay, Maximiano J. Marayag, Jr., Alexandro B. Ayudan, Ruben P. Lappay and Gilbert D. Lopez.

On August 14, 1997, Graft Investigation Officer I Germain G. Lim found no probable cause to hold petitioner liable for the charges. Upon reconsideration however, she was indicted for violation of Sec. 3 (e) of RA No. 3019, as amended, with respect to the acquisition of the dump truck.

The Information[8] reads:

> That on or about August 1996, or sometime prior or subsequent thereto in the Municipality of Angadanan, Isabela, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Felicitas P. Ong, a public official, being the Municipal Mayor of Angadanan, Isabela, taking advantage of her official position and committing the offense in relation to her office, acting with manifest partiality, evident bad faith or gross inexcusable negligence, did then and there willfully, unlawfully and feloniously cause injury to the Municipality of Angadanan by causing and approving, without public bidding, the acquisition of an Isuzu dump truck with Plate Number T-BBB-206 from J.C. Trucking in the amount of SEVEN HUNDRED FIFTY THOUSAND PESOS (₱750,000.00) when the same or similar type of dump truck could have been bought at a much lower price of not more than FIVE HUNDRED THOUSAND PESOS (₱500,000.00), to the damage and prejudice of the Municipality of Angadanan in the amount of TWO HUNDRED AND FIFTY THOUSAND PESOS (₱250,000.00).
>
> CONTRARY TO LAW.

On January 12, 1999, petitioner was arraigned and entered a plea of "Not guilty."[9]

During trial, Ramon De Guzman Sevilla, Sales Manager of Christian Motor Sales in Cabanatuan City, Nueva Ecija, testified that the cost of a ten wheeler-front drive, military type Isuzu dump truck ranges from ₱190,000.00-₱490,000.00.[10]

Sangguniang Bayan members and complainants Ruben P. Lappay and Mirasol P. Lappay both testified that the dump

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[8] Records, pp. 81-82; Information dated November 21, 1997.

[9] *Id.* at 107; per Certificate of Arraignment dated January 12, 1999.

[10] TSN, September 19, 2003, pp. 7-8; 10.

truck was bought without conducting a public bidding or a resolution by the Sangguniang Bayan; that the truck was merely reconditioned and not brand new as can be seen from its deplorable condition, worn tires and old battery;[11] and that a subsequent canvass of other suppliers showed that better quality dump trucks cost no more than ₱500,000.00.[12]

In her defense, petitioner testified that in 1996, the municipality appropriated the amount of ₱1,000,000.00 for the purchase of a dump truck;[13] that pursuant to said appropriation, the subject vehicle was purchased on August 12, 1996 for ₱750,000.00 through a negotiated purchase from Josephine Ching of J.C. Trucking; that the public bidding and prior Sangguniang Bayan resolution were dispensed with pursuant to Commission on Audit (COA) Resolution Nos. 95-244[14] and 95-244-A[15] which do not require the conduct of a public bidding on any negotiated purchase in amounts not exceeding ₱10,000,000.00;[16] that the truck was not in disrepair as the same was inspected by the Regional Engineer from COA who declared it fit and in good running condition;[17] and that the purchase was allowed by COA because it did not issue a notice of disallowance.[18]

On November 13, 2006, the Sandiganbayan rendered its Decision finding petitioner guilty beyond reasonable doubt of violation of Sec. 3 (e) of RA No. 3019. The dispositive portion thereof reads:

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[11] TSN, January 20, 2005, pp. 7-9.

[12] TSN, May 11, 2005, pp. 11-19.

[13] TSN, November 8, 2005, p. 23.

[14] Adopted May 18, 1995 and entitled "Revocation of Paragraph 4.1 (a) of COA Circular No. 85-55A dated September 8, 1985 prescribing the limit of ₱50,000.00 for purchases subjected to public bidding."

[15] Adopted on September 7, 1995 and entitled *Amendment of COA Resolution No. 95-244*.

[16] TSN, November 8, 2005, pp. 7-8, 25.

[17] *Id.* at 13.

[18] *Id.* at 15.

WHEREFORE, the Court finds accused Felicitas P. Ong, GUILTY beyond reasonable doubt, for violation of Sec. 3 (e) of RA No. 3019, and is hereby sentenced to suffer the penalty of:

(A) Imprisonment of, after applying the Indeterminate Sentence Law, six years and one month as minimum, up to ten years, as maximum; and

(B) Perpetual disqualification from Public Office.

Accused is hereby ordered to RETURN to the Municipality of Angadanan the amount of ₱250,000.00.

SO ORDERED.[19]

The Sandiganbayan found that as Mayor of Angadanan, there is no dispute that petitioner was a public officer discharging administrative and official functions; that there is no merit to petitioner's claim that the purchase of the dump truck without public bidding was justified by COA Resolution Nos. 95-244 and 95-244-A; and that the prosecution was able to prove that had petitioner observed the proper procurement procedure, the municipality could have acquired a dump truck similar to, if not better than that which she bought, for a much lesser price.

Hence, this appeal where petitioner contends that the Sandiganbayan erred in finding her guilty of violation of Section 3 (e) of RA No. 3019. In particular, petitioner denies causing injury or giving anybody any unwarranted benefits, advantage or preference in the discharge of her official or administrative functions, or that she is guilty of any manifest partiality, evident bad faith or gross negligence.

We are not persuaded.

It is a well-entrenched rule that factual findings of the Sandiganbayan are conclusive upon the Supreme Court except where: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjectures; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts and the findings of fact of the Sandiganbayan are premised on the

[19] *Rollo*, p. 93.

absence of evidence and are contradicted by evidence on record.[20] None of the above exceptions obtains in this case.

Section 3 (e) of RA No. 3019, as amended, provides:

> ***Section 3***. Corrupt practices of public officers.- *In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful.*
>
> x x x x x x x x x
>
> (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

The following essential elements must be present:

1. The accused must be a public officer discharging administrative, judicial or official functions;
2. He must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and
3. His action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.[21]

We find that all the elements of the offense charged have been duly established beyond reasonable doubt. Petitioner, being then the Mayor of Angadanan, Isabela is a public officer discharging administrative and official functions. The act of purchasing the subject truck without the requisite public bidding and authority from the Sangguniang Bayan displays gross and inexcusable negligence. Undue injury was caused to the

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[20] *Suller v. Sandiganbayan*, G.R. No. 153686, July 22, 2003, 407 SCRA 201, 208.

[21] *Albert v. Sandiganbayan*, G.R. No. 164015, February 26, 2009.

Government because said truck could have been purchased at a much lower price.

The contention that the acquisition through a *negotiated purchase* was valid the same being pursuant to COA Resolution Nos. 95-244 and 95-244-A, is untenable. Petitioner's reliance on said COA Resolutions is misplaced. COA Resolution No. 95-244 as amended by Resolution No. 95-244-A states that there is no necessity of prescribing the limit of purchases not subject to public bidding since Executive Order No. 301[22] authorizes the heads of an agency with the approval of the Department Heads to enter into a *negotiated purchase* as long as the same is advantageous to the government.

Both resolutions are implementing guidelines which must be read and applied in conjunction with Title VI,[23] Book II, of Republic Act No. 7160 otherwise known as the Local Government Code of 1991. Section 356 thereof states the general rule that the acquisition of supplies by the local government units shall be through competitive bidding. The only instances when public bidding requirements can be dispensed with are provided under Section 366, to wit:

Section 366. ***Procurement without Public Bidding***. - Procurement of supplies may be made without the benefit of public bidding under any of the following modes:

(a) Personal canvass of responsible merchants;

(b) Emergency purchases;

(c) Negotiated purchase;

(d) Direct purchase from manufacturers or exclusive distributors; and,

(e) Purchase from other government entities. (Underscoring supplied)

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[22] Approved on July 26, 1987; provides exceptions to the bidding requirement and authorizes negotiated purchase in exceptional cases.

[23] Property and Supply Management in the Local Government Units.

The *negotiated purchase* is further qualified by Section 369 thereof which states:

Section 369. *Negotiated Purchase.-* (a) In cases where public biddings have failed for two (2) consecutive times and no suppliers have qualified to participate or win in the biddings, local government units may, through the local chief executive concerned, undertake the procurement of supplies by negotiated purchase, regardless of amount, without public bidding: provided, however, that the contract covering the negotiated purchase shall be approved by the Sanggunian concerned x x x.

Thus, a local chief executive could only resort to a *negotiated purchase* under Section 366 of RA No. 7160 and COA Resolution Nos. 95-244 and 95-244-A, if the following two requisites are present: (1) public biddings have failed for at least two consecutive times and; (2) no suppliers have qualified to participate or win in the biddings.

The Sandiganbayan correctly ruled that by procuring the subject truck through a *negotiated purchase* without public bidding, petitioner failed to comply with the above stated procedure. Indeed, as the local chief executive, petitioner is not only expected to know the proper procedure in the procurement of supplies, she is also duty bound to follow the same and her failure to discharge this duty constitutes gross and inexcusable negligence.

Price quotations obtained from several suppliers[24] as well as the testimonies of Ramon de Guzman Sevilla, Ruben Lappay and Mirasol Lappay proved that the dump truck purchased by petitioner was over-priced. Hence, had petitioner observed the proper procurement procedure, the municipality of Angadanan could have acquired a dump truck similar to, if not better than the one originally bought, at a much lower price of not more than ₱500,000.00. Without doubt, petitioner's negligence caused undue injury to the government while at the same time gave unwarranted benefits to Josephine Ching.

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[24] Records, pp. 99-101; Annexes '10', '11' and '12' from Tagumpay Motorworks, Del Rosario Motorworks and Dasig Motorworks.

The penalty for violation of Section 3(e) of RA 3019 is "imprisonment for not less than six years and one month nor more than fifteen years, and perpetual disqualification from public office."[25] Under the Indeterminate Sentence Law, if the offense is punished by special law, as in the present case, an indeterminate penalty shall be imposed on the accused, the maximum term of which shall not exceed the maximum fixed by the law, and the minimum not less than the minimum prescribed therein.[26]

In view of the circumstances obtaining in the instant case, the Sandiganbayan correctly imposed the indeterminate prison term of six (6) years and one (1) month, as minimum, to ten (10) years and one (1) day, as maximum, with perpetual disqualification from public office.

WHEREFORE, the petition is *DENIED*. The Decision of the Sandiganbayan dated November 13, 2006 finding petitioner Felicitas P. Ong guilty beyond reasonable doubt of violation of Section 3 (e) of Republic Act No. 3019 and sentencing her to suffer the penalty of six (6) years and one (1) month, as minimum, to ten (10) years and one (1) day, as maximum, with perpetual disqualification from holding public office and with order to return the amount of ₱250,000.00, is *AFFIRMED*.

SO ORDERED.

Chico-Nazario, Velasco, Jr., Nachura, and *Peralta, JJ.*, concur.

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[25] REPUBLIC ACT No. 3019, Sec. 9.

[26] *Nacaytuna v. People of the Philippines*, G.R. No. 171144, November 24, 2006, 508 SCRA 128,135.

SECOND DIVISION

[G.R. No. 177753. September 25, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **BENJAMIN OCAMPO,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ASSESSMENT THEREON BY TRIAL COURTS, GENERALLY NOT DISTURBED BY APPELLATE COURTS. — When an accused challenges his identification by witnesses, he in effect attacks their credibility. Appellate courts will not generally disturb the assessment by the trial court of the credibility of witnesses whose testimonies it has heard and their deportment and manner of testifying it has observed.

2. CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; TREACHERY; NOT NEGATED BY APPELLANT'S ALLEGED PSYCHOSIS IN CASE AT BAR. — The assessment of appellant's mental condition by the Department of Psychiatry of the Baguio General Hospital and Medical Center may not be appreciated to rule out treachery in the commission of the crime. As the Court of Appeals noted: x x x [T]he accused appellant only presented the Psychiatric Evaluation Report conducted on him stating that he was psychotic during, before and after the incident but admitted that the doctors who examined him were not presented in court. In failing to present Gwendolyn C. Cayad, the medical officer who prepared the questioned report as a witness, the report is considered **hearsay** evidence. And even if We admit this report as an exception to the hearsay rule, this report cannot be given evidentiary weight for it involves an opinion of one who must first be established as an expert witness. Without presenting the doctor who prepared the psychiatric report to show her qualifications as an expert witness, the report could not be given weight or credit. The report has very little probative value due to the absence of the examining physician. We agree with the Office of the Solicitor General that the trial court could not take judicial notice of the accused-appellant's psychosis. This requires presentation of competent proof. The defense cannot expect the trial court to

take judicial notice of the accused-appellant's psychosis based on his behavior and irrational statements during the trial for the presumption always is for sanity. To establish his insanity, this issue must be properly heard and ruled upon by the court. x x x At all events, the Report does not establish that appellant's alleged psychosis rendered him incapable of consciously adopting his chosen mode of attack at the time of the commission of the offense. It bears noting that when appellant was examined on November 12, 2003 and on December 4, 2003 or after the commission of the crime on October 9, 2003, the Report notes that he was conscious, oriented as to time, person, and place, and had intact remote, recent, and immediate memories.

3. CIVIL LAW; DAMAGES; INDEMNITY FOR LOSS OF EARNING CAPACITY; DOCUMENTARY EVIDENCE IS NECESSARY TO PROVE THE VICTIM'S ANNUAL INCOME; EXCEPTIONS. — The general rule is that documentary evidence is necessary to prove the victim's annual income. Excepted from the rule for testimonial evidence to suffice as proof is if the victim was either: (1) self-employed, earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the victim's line of work, no documentary evidence is available; or (2) employed as a daily wage worker earning less than the minimum wage under current labor laws.

4. ID.; ID.; ID.; ID.; ID.; NOT PRESENT IN CASE AT BAR. — During the lifetime of the victim, he was a self-employed dried fish dealer from Camarines Norte. For an award of indemnity for loss of earning capacity to be proper based solely on his wife's testimony, it has to be shown that during his lifetime, he earned less than minimum wage under current labor laws and no documentary evidence is available. The victim's wife testified that as a dried fish dealer, he earned ₱15,000 gross income per month and a net monthly income of ₱6,000. x x x [A]s the victim's daily wage was either within or above but never below the minimum wage range, no indemnity for loss of earning capacity can be awarded based on his wife's testimony alone. But even if the victim were earning below minimum wage, a third requirement has to be satisfied for testimonial evidence to suffice as basis for an award of indemnity for loss of earning capacity: that in the victim's line of work no documentary evidence is available. It is of common knowledge that a fish dealer keeps records of his transactions.

In fact, the victim's wife was able to testify as to his gross and net earnings — gross earnings being understood by her to be sold as the total amount of fish sold from which expenses are deducted — which would only be possible if records were being kept. The wife did not, however, present documentary proof showing how she arrived at her estimate of gross and net earnings. In fine, no indemnity for loss of earning capacity may be awarded based on the victim's wife's testimony alone.

5. ID.; ID.; TEMPERATE DAMAGES; RECOVERABLE ONLY WHEN SOME PECUNIARY LOSS HAS BEEN SUFFERED BUT ITS AMOUNT CANNOT, FROM THE NATURE OF THE CASE, BE PROVED WITH CERTAINTY. — The Court takes exception, too, to the award by the appellate court of temperate damages in the amount of ₱25,000, such kind of damage being recoverable only when some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty. In the case at bar, actual damages had been proven and awarded.

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.*:

Benjamin Ocampo (appellant) was indicted for Murder before the Regional Trial Court (RTC) of Baguio City, alleged to have been committed as follows:

That on or about the 9th day of October, 2003, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and with treachery, did then and there willfully, unlawfully and feloniously stab RUBEN NGO *Y* TYCHINGCO with a stainless knife, thereby inflicting upon the latter: stab wound on the neck, and as a result thereof the said Ruben Ngo *y* Tychingco died.

[*] Per Special Order No. 690 in lieu of the sabbatical leave of Senior Associate Justice Leonardo A. Quisumbing.

That the killing was attended by the qualifying circumstance of treachery considering that the accused suddenly attacked/stabbed the victim who did not have any means to defend himself.[1]

From the evidence for the prosecution consisting of, among other things, the testimony of eyewitnesses Mary Ann Lombay (Mary Ann) and Rosemarie Ngo, wife of Ruben Ngo (the victim), the following version of events is culled:[2]

At around 4:30 p.m. of October 9, 2003, while the victim and his wife were buying garlic chips from Mary Ann's store at 439 Old Market Building, Baguio City, appellant suddenly surfaced, pushed himself between the spouses, stabbed the victim at the right side of his neck with a kitchen knife, and walked away.

The post-mortem examination of the victim who died two hours after the stabbing yielded the following findings:

GENERAL:

Fairly developed, fairly nourished, previously embalmed male cadaver. Needle puncture noted at the left arm, left cubital region and left wrist.

HEAD AND NECK:

1. Incised wound, neck, measuring 10 x 4 cm, 6 cm right of the anterior midline with stitches applied.
2. Incised wound, neck, measuring 2 x .02 cm, just along the anterior midline with 4 stitches applied.
3. Incised wound, neck, measuring 13.5 x 3 cm, 6 cm left of the anterior midline.
   - The right sterno-cleido-mastoid muscle are noted to be hemorrhagic.
   - Incised wound noted at the trachea and esophagus.

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[1] Records, p. 1.

[2] *Vide* TSN, February 10, 2004, pp. 2-30; TSN, February 12, 2004, pp. 2-40; TSN, February 17, 2004, pp. 2-38; records, pp. 62-76; Exhibit "A", records, p. 9; Exhibits "B"- "J", Exhibits, pp. 1-22.

- Hemorrhages noted on areas of external and internal jugular veins, bilateral.
- Incised wound noted at the bifurcation of the left carotid artery.

x x x x x x x x x[3]

The cause of death of the victim was determined to be "hemorrhagic shock secondary to stab wound of the neck."[4]

Explaining the number and nature of the wounds on the victim's neck, Dr. Elizardo Daileg (Dr. Daileg) who conducted the post-mortem examination declared that the wounds along the anterior midline and at the left of the anterior midline were surgical wounds, while the wound at the right of the anterior midline was most likely a stab wound which was extended surgically for the exploration and ligation of the injured blood vessels;[5] and that the stab wound was 10 to 12 centimeters deep, and the carotid artery and jugular veins were injured.[6]

Dr. Daniel Recolizado, who attended to the victim when he was brought to the hospital, corroborated Dr. Daileg's testimony.[7]

Upon the other hand, appellant, denying the accusation and interposing alibi,[8] claimed as follows:

He was drinking with friends from 8:00 a.m. to 3:00 p.m. of October 9, 2003, after which he repaired to the Everlasting Memorial Park where his parents are buried and where he continued drinking as he was depressed over the death on October 5, 2003 of his brother. He stayed in the park until 6:30 p.m.

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[3] Exhibit "G", Exhibits, p. 16.

[4] *Ibid.*

[5] *Vide* TSN, February 17, 2004, pp. 12-13.

[6] *Id.* at 21.

[7] *Id.* at 30-36.

[8] *Vide* TSN, March 16, 2004, pp. 2-14.

From the park, he went to the house of his friend Manny Guanzon (Guanzon) at Brawer Road where he slept and washed his face. He then went to a beerhouse along Magsaysay Avenue where he continued drinking until 9:00 p.m. when he checked in at the Leisure Lodge where he spent the night.

Denying having gone to the public market in the afternoon of October 9, 2003, appellant claimed that he was a victim of a frame-up, of which the Chinese are the masterminds, he having been exposing a Chinese syndicate.[9]

By Decision of June 15, 2004, Branch 6 of the Baguio City RTC convicted appellant of Murder, disposing as follows:

> WHEREFORE, the Court finds the accused Benjamin Ocampo guilty beyond reasonable doubt of the offense of Murder, defined and penalized under Article 248 of the Revised Penal Code as charged in the Information and hereby sentences him to suffer the penalty of *Reclusion Perpetua*; to indemnify the heirs of the deceased Ruben Ngo the sum of ₱50,000.00 as civil indemnity for his death; ₱235,682.78 as actual damages incurred in connection with his death, ₱671,760.00 as unearned income; and ₱300,000.00 as moral damages for the mental anguish and pain suffered by his heirs as a result of his death; all indemnifications being without subsidiary imprisonment in case of insolvency, and to pay the costs.
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> The accused Benjamin Ocampo, being a detention prisoner, is entitled to be credited 4/5 of his preventive imprisonment in the service of his sentence in accordance with Article 29 of the Revised Penal Code.
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> SO ORDERED.[10] (Underscoring supplied)

Before the Court of Appeals to which appellant challenged the trial court's decision, he faulted the trial court as follows:

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> xxx IN FINDING [THAT] THE ACCUSED-APPELLANT WAS POSITIVELY IDENTIFIED BY THE PROSECUTION WITNESSES AS THE ASSAILANT.

[9] *Id.* at 7. Appellant, who was unemployed, gave no details on how he was "exposing a Chinese syndicate."

[10] Records, p. 117.

II

GRANTING *ARGUENDO* THAT THE ACCUSED-APPELLANT STABBED RUBEN NGO, THE COURT A QUO ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT FOR THE CRIME OF MURDER.[11]

By Decision[12] of February 13, 2007, the Court of Appeals affirmed the conviction of appellant but modified his civil liability in light of the following observations:

We reduce the award of actual damages from ₱235,682.78 to ₱69,681.70. x x x [O]nly substantiated and proven expenses or those that appear to have been genuinely incurred in connection with the death, wake or burial of the victim will be recognized. Based on the record, We cannot consider some of the receipts submitted by the prosecution for it was not shown that they were expended in relation to the death or funeral of the victim. The list submitted by Rosemarie Ngo with respect to the expenses incurred in the transfer of the body of the victim and the food served during the wake and burial is self-serving and cannot be considered competent proof. The court can only award actual damages if supported by receipts. However, current jurisprudence grants the award of ₱25,000.00 as temperate damages when it appears that the heirs of the victim had suffered pecuniary losses but the amount thereof cannot be proved with certainty.

Likewise, the award of moral damages should be reduced from ₱300,000.00 to ₱50,000.00 in line with the prevailing jurisprudence. Moral damages are not intended to enrich the victim's heirs but rather they are awarded to allow them to obtain means for diversion that could serve to alleviate their moral and psychological sufferings.

With respect to the award of ₱671,760.00 by way of loss of earning capacity, We hereby increase it to ₱671,999.97. As testified to by Rosemarie Ngo, the victim was receiving a net monthly income of ₱6,000.00 as a dried fish dealer. His annual income, computed at the rate of ₱6,000.00 per month multiplied by twelve (12) months is ₱72,000.00. From this amount will be deducted his necessary and incidental expenses estimated at fifty percent (50%) thereof, leaving

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[11] CA *rollo*, pp. 44-45.

[12] Penned by Court of Appeals Associate Justice Mariflor P. Punzalan Castillo, with the concurrence of Associate Justices Martin S. Villarama, Jr. and Rosmari D. Carandang. CA *rollo*, pp. 106-125.

a balance of ₱36,000.00. As the victim was fifty-two (52) years old at the time of his death, his life expectancy of eighteen point sixty seven (18.67) years is derived using this formula: 2/3 x [80-(age of victim at the time of death)]. Multiplying the balance of ₱36,000.00 by his life expectancy of 18.67 years, We arrive at ₱671.999.97 as his loss of earning capacity.

In addition to the civil indemnity and damages awarded by the trial court, exemplary damages in the amount of ₱25,000.00 must be awarded given the presence of treachery which qualified the killing to murder. Article 2230 of the Civil Code provides that in criminal offenses, exemplary damages may be imposed only when the crime was committed with one ore (sic) more aggravating circumstances. The term aggravating circumstances as used therein should be construed in its generic sense since it did not specify otherwise.[13] (Underscoring supplied)

Thus the Court of Appeals disposed:

WHEREFORE, premises considered, the Decision dated June 15, 2004 rendered by the Regional Trial Court of Baguio City, Branch 6 in Criminal Case No. 22124-R, finding him guilty of the crime of murder is hereby **AFFIRMED WITH MODIFICATON**. The award of loss of earning capacity is **increased** to ₱671,999.97. The award of actual and moral damages is **reduced** to ₱69,681.70 and ₱50,000.00, respectively. The accused-appellant is **further ordered to pay** the heirs of the victim Ruben Ngo ₱25,000.00 **as exemplary damages** and ₱25,000.00 as **temperate damages**. (Emphasis and underscoring supplied)

SO ORDERED.[14]

Before this Court at which appellant filed a Notice of Appeal,[15] he and the Solicitor General adopted and repleaded the arguments they raised in the briefs they respectively filed before the Court of Appeals.[16]

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[13] CA *rollo*, pp. 122-124.

[14] *Id.* at 124-125.

[15] *Id.* at 128.

[16] *Rollo*, pp. 28-35.

Appellant questions his identification by Mary Ann as the perpetrator of the crime, arguing that Mary Ann failed to point to him when the policeman showed her photographs of many possible suspects, but that when shown his photograph the following day, she identified him as the culprit. He thus posits that the power of suggestion might have influenced her to point to him as the culprit.[17]

When an accused challenges his identification by witnesses, he in effect attacks their credibility.[18] Appellate courts will not generally disturb the assessment by the trial court of the credibility of witnesses whose testimonies it has heard and their deportment and manner of testifying it has observed.[19]

In crediting the testimony of eyewitness Mary Ann, the appellate court observed:

> x x x Mary Ann Lomboy was unable to identify accused appellant-from several pictures shown to her by the policemen precisely because **accused-appellant was not in any of those photographs**. When shown a lone photograph of the accused-appellant, Mary Ann Lomboy positively identified him as Ruben Ngo's assailant because she knew and remembered him to be the assailant. **Her identification was based solely on her recollection as an eyewitness** and it cannot be said that she was influenced by the policemen to wrongly accuse the accused-appellant. There is no showing that the prosecution witnesses were ill-motivated to testify against him.[20] (Emphasis and underscoring supplied)

Appellant has not, however, refuted the foregoing observation of the appellate court.

Mary Ann's answer to the question of the trial court when it was eliciting from her the basis of her identification of appellant as the culprit should put the issue to rest.

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[17] CA *rollo*, pp. 46-47.

[18] *People v. Punsalan*, 421 Phil. 1058, 1068 (2001).

[19] *Ibid.*

[20] CA *rollo*, pp. 117-118.

Court: Just one question from the court because the counsel keeps on repeating that the picture was the basis for your identifying the accused. What is actually your basis for identifying the accused as the assailant? Was it the fact that you saw the stabbing or was it the picture shown to you?

[MARY ANN]

A: **He is the one I saw** when he stabbed the victim.

Q: So your basis is what you actually saw in the stabbing, **not the picture itself?**

A: Yes, Your Honor.[21]

x x x (Emphasis and underscoring supplied)

Notably, the victim's wife corroborated Mary Ann's identification of appellant as the assailant.[22]

Clutching at straws, appellant claims that he was suffering from delusions or psychosis, hence, he could not have consciously adopted a mode of attack without endangering himself, citing the assessment by the Department of Psychiatry of the Baguio General Hospital and Medical Center in its Psychiatric Evaluation Report which states that:

Mr. Ocampo was psychotic before, during, and after the alleged crime. He was psychotic before the alleged crime, as he firmly believed without rational basis that the "Chinese mafia" had influenced the jeepney driver of the vehicle that caused his brother's death. During the commission of the alleged crime, he was psychotic as he vowed to avenge his brother's death and reportedly stabbed to death a Chinese-looking passerby whom he firmly believed to be a member of the "Chinese mafia." He was also psychotic after the alleged crime, as he still harbored delusional beliefs that the "Chinese mafia" had infiltrated and influenced the government and that they were after him.[23] (Underscoring supplied)

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[21] TSN, February 10, 2004, pp. 28-29.

[22] *Vide* TSN, February 12, 2004, pp. 8-9.

[23] Records, p. 85.

Appellant thus appeals to the Court to take notice of his psychosis which, to him, was manifested by his behavior and irrational statements during the trial of the case.[24]

The assessment of appellant's mental condition by the Department of Psychiatry of the Baguio General Hospital and Medical Center may not be appreciated to rule out treachery in the commission of the crime. As the Court of Appeals noted:

> x x x [T]he accused appellant only presented the Psychiatric Evaluation Report conducted on him stating that he was psychotic during, before and after the incident but admitted that the doctors who examined him were not presented in court. In failing to present Gwendolyn C. Cayad, the medical officer who prepared the questioned report as a witness, the report is considered **hearsay** evidence. And even if We admit this report as an exception to the hearsay rule, this report cannot be given evidentiary weight for it involves an opinion of one who must first be established as an expert witness. Without presenting the doctor who prepared the psychiatric report to show her qualifications as an expert witness, the report could not be given weight or credit. The report has very little probative value due to the absence of the examining physician.
>
> We agree with the Office of the Solicitor General that the trial court could not take judicial notice of the accused-appellant's psychosis. This requires presentation of competent proof. The defense cannot expect the trial court to take judicial notice of the accused-appellant's psychosis based on his behavior and irrational statements during the trial for the presumption always is for sanity. To establish his insanity, this issue must be properly heard and ruled upon by the court. x x x[25] (Emphasis and underscoring supplied)

At all events, the Report does not establish that appellant's alleged psychosis rendered him incapable of consciously adopting his chosen mode of attack at the time of the commission of the offense. It bears noting that when appellant was examined on November 12, 2003 and on December 4, 2003 or after the commission of the crime on October 9, 2003, the Report notes that he was conscious, oriented as to time, person,

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[24] *Vide* CA *rollo*, pp. 51-52.

[25] CA *rollo*, pp. 120-121.

and place, and had intact remote, recent, and immediate memories.[26]

With respect to the appellate court's affirmance with modification (increase) of the trial court's award of compensation for the victim's loss of earning capacity, the Court takes exception thereto. As will be shown shortly, the testimony of the victim's wife that he had a ₱6,000 monthly net income as a dealer of dried fish does not suffice to grant such award.[27]

The general rule is that documentary evidence is necessary to prove the victim's annual income. Excepted from the rule[28] for testimonial evidence to suffice as proof is if the victim was either: (1) self-employed, earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the victim's line of work, no documentary evidence is available; or (2) employed as a daily wage worker earning less than the minimum wage under current labor laws.[29]

During the lifetime of the victim, he was a self-employed dried fish dealer from Camarines Norte. For an award of indemnity for loss of earning capacity to be proper based solely on his wife's testimony, it has to be shown that during his lifetime, he earned less than minimum wage under current labor laws and no documentary evidence is available.

The victim's wife testified that as a dried fish dealer, he earned ₱15,000 gross income per month and a net monthly income of ₱6,000.[30]

If the victim's daily wage is computed based on 22 working days a month, assuming that the victim did not work on Saturdays and Sundays, the result would be as follows:

₱6,000 net monthly income / 22 days per month = ₱273 per day

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[26] *Vide* records, pp. 83, 84.

[27] *Vide* TSN, February 12, 2004, p. 16.

[28] *Licyayo v. People*, G.R. No. 169425, March 4, 2008, 547 SCRA 598.

[29] *Id.,* at 615.

[30] TSN, February 12, 2004, p. 16.

The amount of ₱273 is *above* the minimum wage range for non-agricultural workers in Region V, which is ₱196-₱239 per day.[31]

If the victim's daily wage is computed based on 30 working days per month, assuming that the victim worked every day of the month (although it is of common knowledge that the usual practice is to rest on week-ends), the result would be as follows:

₱6,000 net monthly income / 30 days per month = ₱200 per day

Again, the amount of ₱200 per day is *within* the minimum wage range for non-agricultural workers in Region V, which is ₱196-₱239 per day.

If the Court bases the computation on 26 working days per month, assuming that the victim rested only on Sundays, the result would be as follows:

₱6,000 net monthly income / 26 days per month = ₱231 per day

The amount is still *within* the minimum wage range for non-agricultural workers in Region V.

If the Court bases the computation on 16 working days per month, based on the testimony that the victim stayed in Baguio three to four days to deliver goods[32] and assuming that the stay was every week, the result would be as follows:

₱6,000 net monthly income / 16 days per month = ₱375 per day.

The amount this time is *above* the minimum wage range for non-agricultural workers in Region V, which is ₱196-₱239 per day.

If the Court bases the computation on 12 working days per month, assuming that the victim stayed in Baguio three

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[31] www.nwpc.dole.gov.ph/pages/statistics/stat_current_regional.html,downloaded September 14, 2009.

[32] TSN, February 12, 2004, p. 32.

days per week to deliver his goods, the result would be as follows:

₱6,000 net income per month / 12 days per month = ₱500 per day

Again, the amount is *above* the minimum wage range for non-agricultural workers in Region V, which is ₱196-₱239 per day.

Based on the above computations, as the victim's daily wage was either within or above but never below the minimum wage range, no indemnity for loss of earning capacity can be awarded based on his wife's testimony alone.

But even if the victim were earning below minimum wage, a third requirement has to be satisfied for testimonial evidence to suffice as basis for an award of indemnity for loss of earning capacity: that in the victim's line of work no documentary evidence is available.

It is of common knowledge that a fish dealer keeps records of his transactions. In fact, the victim's wife was able to testify as to his gross and net earnings — gross earnings being understood by her to be sold as the total amount of fish sold from which expenses are deducted[33] — which would only be possible if records were being kept.[34] The wife did not, however, present documentary proof showing how she arrived at her estimate of gross and net earnings.

In fine, no indemnity for loss of earning capacity may be awarded based on the victim's wife's testimony alone.

The Court takes exception, too, to the award by the appellate court of temperate damages in the amount of ₱25,000, such kind of damage being recoverable only when some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty.[35] In

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[33] TSN, February 12, 2004, p. 16.

[34] *Vide* TSN, February 12, 2004, p. 16.

[35] Art. 2224, CIVIL CODE; *People v. Dizon*, G.R. No. 177775, Oct. 10, 2008, 568 SCRA 395, 400-401.

the case at bar, actual damages had been proven and awarded.

Finally, the Court, following current jurisprudence,[36] increases the civil indemnity to ₱75,000.

WHEREFORE, the February 13, 2007 Decision of the Court of Appeals is *AFFIRMED with the MODIFICATION* that the award of civil indemnity is increased to ₱75,000 and the awards of ₱671,999.97 for loss of earning capacity and of ₱25,000 as temperate damages are *DELETED*.

The Court thus finds the accused-appellant, Benjamin Ocampo, *GUILTY* beyond reasonable doubt of Murder and is sentenced to suffer the penalty of *reclusion perpetua*; to pay the heirs of Ruben Ngo ₱75,000 as civil indemnity, ₱235,682.78 as actual damages, and ₱25,000 exemplary damages; and to pay the costs.

SO ORDERED.

Ynares-Santiago,[**] *Brion, Del Castillo,* and *Abad, JJ.*, concur.

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[36] *People v. de Guzman*, G.R. No. 173477, February 4, 2009.

[**] Per Special Order No. 706 and additional member per Special Order No. 691.

SECOND DIVISION

[G.R. No. 179475. September 25, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **DANIEL SIBUNGA *Y* AGTOCA,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY INCONSISTENCIES IN THE TESTIMONY OF PROSECUTION WITNESSES WITH RESPECT TO MINOR DETAILS AND COLLATERAL MATTERS; CASE AT BAR. — The established rule of evidence is that inconsistencies in the testimony of prosecution witnesses with respect to minor details and collateral matters do not affect either the substance of their declaration, their veracity or the weight of their testimony. It bears pointing out that although initially PO2 Lag-ey testified, during his direct examination on July 14, 2005 or close to two years after the buy-bust operation, that he heard SPO4 Malateo tell appellant that they were buying two grams of *shabu*, he later clarified during cross examination on the same date that what he meant was "*isang bulto*" and not two grams. As for SPO4 Malateo's failure to correctly recall the denominations of the ₱8,000.00 - "show money," the same could just be a mere lapse of memory, given that the testimony was given on February 9, 2005 or one year and five months after the occurrence of the buy-bust transaction. Slight contradictions, after all, are badges against memorized perjury. What is important is that SPO4 Malateo and PO3 Lag-ey's respective testimonies are consistent insofar as the presence of the elements of the crime is concerned.

2. CRIMINAL LAW; VIOLATION OF SECTION 5, ARTICLE II OF REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT); SALE OF ILLEGAL DRUGS; SIMULTANEOUS EXCHANGE OF THE MARKED MONEY AND THE PROHIBITED DRUG BETWEEN THE POSEUR-BUYER AND THE PUSHER IN BUY-BUST OPERATIONS, NOT REQUIRED. — As for appellant's argument that no consummated sale of drugs occurred since no money changed

hands during the buy-bust operation, the same fails. The absence of marked money does not create a hiatus in the prosecution evidence as long as the drug subject of the illegal transaction (Exhibit "K") was presented at the trial court. There is no rule of law which requires that in buy-bust operations there must be a simultaneous exchange of the marked money and the prohibited drug between the poseur-buyer and the pusher.

3. REMEDIAL LAW; EVIDENCE; DEFENSE OF FRAME-UP IN DRUG CASES; MUST BE SUPPORTED BY CLEAR AND CONVINCING EVIDENCE. — [T]he defense of "frame-up" in drug cases is generally frowned upon, for like alibi, it is inherently weak as it is easy to concoct but difficult to prove. For it to prosper, it must be supported by clear and convincing evidence. This appellant failed to do. The presumption that the police officers performed their duties regularly thus remains.

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.*:

Daniel Sibunga *y* Agtoca (appellant) was convicted by the Regional Trial Court of Baguio City, Branch 61 of violation of Section 5, Article II of Republic Act No. 9165 (the Comprehensive Dangerous Drugs Act).

The accusatory portion of the Information[1] filed against appellant reads:

That on or about the 26th day of September 2003, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, and without authority of law, did then and there willfully, unlawfully and feloniously sell, distribute

[*] Per Special Order No. 690 in lieu of the sabbatical leave of Senior Associate Justice Leonardo A. Quisumbing.

[1] Records, p.1.

and/or deliver one (1) piece of medium heat-sealed plastic sachet divided into two containing white crystalline substance or *Shabu* weighing 2.01 grams knowing fully well that said white crystalline substance or *Shabu* is a dangerous drug, in violation of the aforementioned provision of law. (Underscoring supplied)

From the evidence for the prosecution, the following version is established:

At about 7:00 p.m. of September 26, 2003, while PO3 Albert Lag-ey, together with PO2 Vincent Lagan of the PNP, was conducting surveillance at the People's Park, Baguio City, he received a tip via telephone from a civilian asset or informant that "Marty" and "Daniel" were looking for prospective buyers of *shabu*. He thus instructed the informant to arrange a meeting with the two. And he and PO2 Lagan relayed the information to Inspector Melchor Nawi Ong who immediately formed a buy-bust team of which they formed part, together with SPO4 Malateo. The team thereupon coordinated[2] with the PDEA and submitted a Pre-operation Report.[3] And Inspector Ong gave the team members the amount of ₱8,000.00 as "show money."[4]

At 7:15 p.m. also on September 26, 2003, the members of the team motored to Bonifacio Street and met their informant infront of the Baguio Central University. As PO2 Lagan remained inside their vehicle, SPO4 Malateo, PO3 Lag-ey and the informant walked towards U Need Lumber,[5] also in Bonifacio Street, where they were to meet "Marty" and "Daniel."

Soon, two persons approached the informant who introduced the two officers to them as prospective buyers of *shabu*. The stouter one, later identified to be appellant, asked them how much they were buying to which SPO4 Malateo replied *"isang bulto lang."* The younger one, later identified to be Marty Ampadi (Ampadi), at once brought out one heat-sealed plastic

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[2] TSN, July 14, 2005, pp. 3-24.

[3] Records, p. 15.

[4] TSN, November 9, 2004, pp. 4-11.

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

sachet containing crystalline substance from his pocket and handed it to Ampadi who thereupon demanded payment from SPO4 Malateo. At that instant, SPO4 Malateo and PO3 Lag-ey introduced themselves as police officers, took the sachet, and arrested the two whom they brought to the Drug Enforcement Unit of the Baguio City Police Office for documentation.

The crime laboratory confirmed the contents of the seized sachet as *methamphetamine hydrochloride*,[6] hence, appellant's indictment.

As for Ampadi, the Public Prosecutor's Office recommended that he be charged for Illegal Possession of Dangerous Drug.[7] However, it is not apparent from the records of the case whether Ampadi was charged.

At the trial, SPO4 Malateo and PO3 Lag-ey positively identified appellant as one of the two persons they arrested during the buy-bust operation. And SPO4 Malateo identified the sachet of *shabu* (Exhibit "K") which they seized.[8]

Upon the other hand, appellant gave the following version:

On September 26, 2003, he, a resident of Bauang, La Union, went up to Baguio City. He repaired to a billiard hall along Bonifacio Street where he met Ampadi with whom he played for a bet of ₱150.00 per game. After playing, he, Ampadi and a certain Jun walked along Bonifacio Street in the course of which two men approached Jun and Ampadi and engaged them in a conversation. Suddenly, one who turned out to be SPO4 Malateo shouted "*arestado kayo.*" He (appellant) and Ampadi were then brought to the Drug Enforcement Unit (DEU). He was thereafter brought to the Baguio General Hospital where he was merely asked if he was in pain or if he had any tattoos on his body.[9]

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[6] Records, p. 148.5.

[7] *Id.* at 5.

[8] TSN, November 10, 2004, pp. 3-16.

[9] TSN, October 12, 2005, pp. 4-19.

In fine, appellant claimed that he was framed up.

By Decision of January 24, 2006, the trial court convicted appellant, disposing as follows:

> WHEREFORE, judgment is rendered finding accused Daniel Sibunga *y* Agtoca **GUILTY** as charged and he is hereby sentenced to life imprisonment and to pay a fine of ₱500,000.00.[10]

On appeal, the Court of Appeals, by Decision of June 1, 2007,[11] affirmed that of the trial court's.

The appellate court discredited appellant's claim of frame-up, holding that in buy-bust operations, absent any clear and convincing evidence that members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimonies deserve full faith and credit, hence, the presumption of regularity in the performance of official duty and the findings of the trial court on the credibility of witnesses prevail.[12]

The appellate court discredited too appellant's contention that since no payment for the *shabu* was given, no sale was consummated.

Hence, the present petition for review on *certiorari*.

Appellant questions the heavy reliance by the lower courts on the testimonies of SPO4 Malateo and PO3 Lag-ey despite the seeming inconsistency in their testimonies as to the actual weight/quantity of the drug that they were allegedly negotiating to buy. Thus he cites that while SPO4 Malateo testified that he told appellant and Ampadi that he wanted to buy *"isang bulto lang,"*[13] PO3 Lag-ey testified

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[10] Records, p. 206.

[11] Penned by Justice Cecil C. Librea-Leagogo, with the concurrence of Justices Conrado M. Vasquez, Jr. and Regalado E. Maambong, *rollo*, pp. 2-29.

[12] CA *rollo,* pp. 81-108.

[13] TSN, Nov. 10, 2004, p. 8.

that SPO4 Malateo answered that they were buying two (2) grams only.[14]

And appellant stresses that during his testimony, SPO4 Malateo was not sure of the denomination of the ₱8,000.00– "show money," the latter at first claiming that it consisted of ₱1,000.00 bills, but later claiming that it consisted of ₱500.00 bills.[15]

In any event, appellant claims that, if at all, his only participation in the transaction, based on the prosecution's evidence, was his alleged demand for the payment of the *shabu* from SPO4 Malateo.[16]

The appeal is bereft of merit.

Respecting the above-cited inconsistencies in the police officers' testimonies, the same are neither substantial nor of such a nature as to cast serious doubts on their credibility. The established rule of evidence is that inconsistencies in the testimony of prosecution witnesses with respect to minor details and collateral matters do not affect either the substance

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[14] TSN, July 14, 2005, p. 11.

PROS. CATRAL:

Q: You said that the Informant was approached by these two (2) persons, what happened next?

A: After a sort conversation and the Informant already introduced SPO4 Malateo, Daniel Sibunga asked how much will SPO4 Malateo buy, Sir.

Q: Were you able to listen to what SPO4 Malateo replied?

A: Yes, Sir.

Q: How far were you again when this person already talked with SPO4 Malateo?

A: During that time we were just a foot away, Sir.

Q: What did SPO4 Malateo say?

A: He answered two (2) grams only, Sir.

[15] CA *rollo*, p. 31.

[16] *Id.* at 39.

of their declaration, their veracity or the weight of their testimony.[17]

It bears pointing out that although initially PO2 Lag-ey testified, during his direct examination on July 14, 2005[18] or close to two years after the buy-bust operation, that he heard SPO4 Malateo tell appellant that they were buying two grams of *shabu*, he later clarified during cross examination on the same date that what he meant was "*isang bulto*" and not two grams.[19]

As for SPO4 Malateo's failure to correctly recall the denominations of the ₱8,000.00-"show money,"[20] the same could just be a mere lapse of memory, given that the testimony was given on February 9, 2005 or one year and five months after the occurrence of the buy-bust transaction. Slight contradictions, after all, are badges against memorized perjury.[21]

What is important is that SPO4 Malateo and PO3 Lag-ey's respective testimonies are consistent insofar as the presence of the elements of the crime is concerned.

As for appellant's argument that no consummated sale of drugs occurred since no money changed hands during the buy-bust operation, the same fails. The absence of marked money does not create a hiatus in the prosecution evidence as long as the drug subject of the illegal transaction (Exhibit "K") was presented at the trial court.[22] There is no rule of law which requires that in buy-bust operations there must be a simultaneous exchange of the marked money

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[17] *People v. Nicolas*, 311 Phil. 79, 88 (1995).

[18] TSN, July 14, 2005, p. 11.

[19] *Id.* at 22.

[20] TSN, February 9, 2005, pp. 11-13.

[21] *People v. Chua*, 416 Phil. 33, citing *People v. Sanchez*, G.R. Nos. 121039-45, 302 SCRA 21, 51-52 (1999).

[22] *People v. Nicolas*, 311 Phil. 79, 88 (1995).

and the prohibited drug between the poseur-buyer and the pusher.[23]

Finally, the defense of "frame-up" in drug cases is generally frowned upon, for like alibi, it is inherently weak as it is easy to concoct but difficult to prove.[24] For it to prosper, it must be supported by clear and convincing evidence. This appellant failed to do. The presumption that the police officers performed their duties regularly thus remains.[25]

WHEREFORE, the June 1, 2007 Decision of the Court of Appeals in CA-G.R. CR HC No. 02008 is *AFFIRMED*. No costs.

SO ORDERED.

Ynares-Santiago,[**] *Brion, Del Castillo,* and *Abad, JJ.,* concur.

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[23] *People v. Concepcion*, G.R. No. 178876, June 27, 2008, 556 SCRA 421, 442.

[24] *Juanito Chan y Lim, a.k.a. Zhang Zhenting vs. Secretary of Justice, Pablo C. Formaran III and Presidential Anti-Organized Crime Task Force, represented by PO3 Danilo L. Sumpay*, G.R. No. 147065, March 14, 2008, citing *Marilyn H. Co v. Republic of the Philippines*, G.R. No. 168811, November 28, 2007, 539 SCRA 147.

[25] *People v. Nicolas*, G.R. No. 110116. February 1, 1995, 241 SCRA 67.

[**] Per Special Order No. 706 and additional member per Special Order No. 691.

SECOND DIVISION

[G.R. No. 180453. September 25, 2009]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **DANTE C. ABRIL, represented by his Attorney-in-Fact, MANUEL C. BLANCO, JR.,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND TITLES AND DEEDS; PRESIDENTIAL DECREE NO. 1529 (THE PROPERTY REGISTRATION DECREE); REGISTRATION OF TITLE; REQUISITES. — The pertinent provision of Section 14 of the *Property Registration Decree* sets forth the requirements for registration of title, *viz*: "SECTION 14. Who may apply. — The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives: (1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of **alienable and disposable lands of the public domain** under a bona fide claim of ownership **since June 12, 1945, or earlier.** x x x" Under said provision of law, three requisites must thus be satisfied: (1) open, exclusive, and notorious possession and occupation of the land since June 12, 1945 or earlier; (2) alienable and disposable character of the land of the public domain, and (3) a *bona fide* claim of ownership.

2. ID.; ID.; ID.; ID.; ID.; TAX CLEARANCES AND TAX RECEIPTS; NOT INCONTROVERTIBLE EVIDENCE OF OWNERSHIP; CASE AT BAR. — The documentary evidence of respondent consists, in the main, of a 1999 Tax Clearance effective 1999 and Tax Receipt dated 1999. Not only do these documents refer to the year 1999, they are not incontrovertible evidence of ownership.

3. ID.; ID.; ID.; ID.; ID.; THE REQUISITE OF "OPEN, EXCLUSIVE AND NOTORIOUS POSSESSION AND OCCUPATION OF THE LAND SINCE JUNE 12, 1945 OR EARLIER," NOT SATISFIED IN CASE AT BAR. — Respondent's attorney-in-fact Blanco identified the Deed of Sale in support of his claim

that respondent purchased the lot from the heirs of Manlabao. But Blanco was not even a witness to the forging, as in fact he did not so state, of the Deed of Sale. Amalia Tapleras claimed that she was seven when she became aware that her father Manlabao was in possession of the lot. How Manlabao came into possession of the lot and what was the nature of his possession, Amalia was silent. The 62 year old (in 2000 when she testified) Samarita Francisco claimed to be an adjacent lot owner of the subject lot. She is not, however, among those listed by respondent in his Application as adjacent owner, which was earlier quoted. And as petitioner observes, her testimony that Manlabao had possessed the lot since she was five years old cannot be relied upon, given its vagueness and lack of details determinative of the nature of Manlabao's possession. Even by respondent's testimonial evidence which petitioner finds, to reflect mere conclusions of law and to which this Court agrees, respondent failed to prove that he and his predecessors-in-interest had been "in open, continuous, exclusive and notorious possession" of the lot under a *bona fide* claim of ownership since June 12, 1945 or earlier. In fine, as in his previous try to register the same subject lot, respondent failed to meet the first requisite for the purpose – open, exclusive and notorious possession of the land since June 12, 1945 or earlier.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Selwyn C. Ibarreta for respondent.

D E C I S I O N

CARPIO MORALES,[*] *J.*:

Dante C. Abril, (respondent) represented by his attorney-in-fact, Manuel C. Blanco, Jr. (Blanco), filed on December 16, 1997 before the Municipal Circuit Trial Court (MCTC) of Ibajay-Nabas, Aklan an Application dated November 18, 1997 for registration of title over a 25,969 square meter parcel of land

[*] Per Special Order No. 690 in lieu of the sabbatical leave of Senior Associate Justice Leonardo A. Quisumbing.

situated in Barangay Rizal, Nabas, Aklan, identified as Lot No. 9310, Cad. 578-D, Nabas Cadastre (the lot), which he claimed to have acquired by Deed of Sale from the "anterior owners" and which lot he claimed to be "presently in [his] possession . . . through his adjoining owners] whom he named as

N.: Lot 9316 – Esperanza Manlabao ------ Rizal, Nabas, Aklan
Lot 9317 – Jovita Colindon ---------- Rizal, Nabas, Aklan
Molada River

E.: Lot 9308 – Ursula Janoya ---------- Rizal, Nabas, Aklan
Lot 9309 – Gaudioso Baliguat --------- Rizal, Nabas, Aklan

S.: ---------- Molada River

W.: Lot 9315 – Rosario Manlabao --------- Rizal, Nabas, Aklan.[1]

The Application was docketed as LRC Case No. 053 (LRA Record No. 69113).

To the Application respondent attached as Annex "A" the Special Power of Attorney he executed in favor of his attorney-in-fact Blanco, notarized on March 27, 1995.

In support of his Application, respondent presented through his attorney-in-fact Blanco, among other documents, a carbon copy of a mimeographed form of a Deed of Sale[2] dated September 21, 1994, with typewritten entries thereon, bearing the signatures of the widow and children of Aurelio Manlabao (Manlabao), alleged possessor of the land; Declaration of Real Property (effective 1999) in petitioner's name;[3] Certified Machine Copy of Tax Receipt dated March 16, 1999 in petitioner's name;[4] and the technical description and survey plan of the lot.

Respondent also presented at the witness stand Blanco, Manlabao's daughter Amalia Tapleras, and Sanrita Francisco who claimed to be an adjacent lot owner.

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[1] Records, p. 2.

[2] Exhibit "R", *id.* at 108-110.

[3] Exhibit "S", *id.* at 111.

[4] Exhibit "Q", *id.* at 107.

Blanco testified that petitioner is a resident of San Pedro, Laguna; and that respondent acquired the lot from Manlabao by Deed of Sale dated September 21, 1994 which deed he identified and was marked Exhibits "R" to "R-2" inclusive. He identified too some of the documents in support of petitioner's Application.

Amalia Tapleras, a mat weaver who was 40 years old at the time she took the witness stand on November 5, 1999, stated that she came to know of the lot when she was seven years old, when it was in the "possession" of her father Manlabao.

Sanrita Francisco, a housekeeper, said to be 62 years old at the time she took the witness stand on February 18, 2000, claimed to be the owner of an adjacent lot ("beneath" respondent's lot), declared that she was five years old when Manlabao began to possess the lot "before 1945" or during World War II; and that when Manlabao died (she could not remember when), his wife continued the possession of the lot.

The Republic of the Philippines (petitioner), represented by the Office of the Solicitor General, opposed the Application, claiming that the requirements of Section 14 (1) of Presidential Decree No. 1529 or the *Property Registration Decree* were not complied with.

By Order of May 31, 2000, the MCTC granted respondent's Application in light of its finding that the requirements of Section 14 of P.D. No. 1529, specifically paragraphs 1, 2 and 4 which read:

Section 14. Who may apply. The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

> (1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier.

(2) Those who have acquired ownership of private lands by prescription under the provision of existing laws.

x x x x x x x x x

(4) Those who have acquired ownership of land in any other manner provided for by law.

x x x x x x x x x

have been satisfactorily met.

Thus the trial court disposed:

WHEREFORE, premises considered, judgment is hereby rendered GRANTING the application for registration of the parcel land designated in the approved Survey Plan (Exhibit "C") known as Lot No. 9310, Cad. 758-D, Nabas Cadastre and described in the Technical Description (Exhibit "D") with an area of TWENTY FIVE THOUSAND NINE HUNDRED SIXTY NINE (25,969) SQUARE METERS, more or less, situated at Barangay Rizal, Municipality of Nabas, Province of Aklan, Island of Panay, Philippines, under the Property Registration Decree (PD 1529), and title thereto registered and confirmed in the name of DANTE ABRIL, Filipino citizen, married to Helen Castillo, with postal address at 133 Magsaysay Cataquez Village, Landayan, San Pedro, Laguna, Philippines.

After this decision shall have become final and executory, an order for the issuance of the Decree of Registration of Title shall issue in favor of the applicant.

SO ORDERED.[5]

Petitioner appealed to the Court of Appeals, faulting the MCTC for granting respondent's Application despite his failure

I

. . . to submit the original tracing cloth plan.

II

. . . to prove that the land is alienable and disposable land of the public domain.

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[5] *Id.* at 124-125.

III

. . . to prove that he and his predecessors-in-interest had been in open, continuous and adverse possession of the land in the concept of owners for more than thirty (30) years in accordance with Section 44, Commonwealth Act No. 141 as amended.[6] (Underscoring supplied)

Brushing aside the first assigned error, the appellate court, held:

As long as the identity of the location of the lot can be established by other competent evidence like a duly approved blueprint copy of the plan of Lot 9310, Cad – 758-D, Nabas Cadastre and technical description of the said lot, containing and identifying the boundaries, actual area and location of the lot, the presentation of the original tracing cloth plan may be excused. In the case at bench, these competent evidence are obtaining.[7] (Underscoring supplied)

Respecting petitioner's second and third assigned errors, the appellate court brushed them aside too, holding that respondent was able to prove by preponderant evidence the alienable character of the lot and his entitlement to and ownership thereof. It quoted with approval the following portions of the MCTC decision crediting respondent's documentary and testimonial evidence:

Applicant Dante Abril has the property subject of this application declared in his name for taxation purposes, Exhibit "S", and paid taxes thereof from September 21, 1994 up to the present, it has never been disturbed of its possession at anytime by anybody, (tsn. p. 7, 6/18/99, Manuel C. Blanco, Jr.). That the property is planted to coconuts and mango trees which are "from 50 to 60 years old," (tsn. p. 7, 6/18/99, Manuel C. Blanco, Jr.). That it "was verified by this office to be within Project No. 12, alienable and disposable per LC Map No. 2922 certified as such on October 15, 1980.

While it is true that by themselves tax receipts and declarations of ownership for taxation purposes are not incontrovertible evidence of ownership they become strong evidence of ownership acquired by prescription by proof of actual possession of the property (*Republic*

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[6] CA *Rollo*, pp. 35-36

[7] *Id.* at 73-74.

vs. Court of Appeals, 131 SCRA 532)." Nobody ever disturbed the application in its possession up to the present. The land was never mortgaged nor encumbered. That the land subject of this application is "not needed by the government," Exhibit "T".

Having been in open, exclusive and undisputed possession for more than 30 years of alienable and disposable public land, applicant's possession has attained the character and duration equivalent to an express grant from the government. They shall be conclusively presumed to have performed all the conditions essential to a government grant and shall be entitled to a certificate of title (*Republic vs. De Porkan*, 151 SCRA 88). Alienable public land held by a possessor personally or thru his predecessor-in-interest, openly, continuously, for 30 years as prescribed by law, becomes private property (*Director of Lands vs. Bengson*, 151 SCRA 369). Moreover, where a parcel of land, registration to which is applied for has been possessed and cultivated by an applicant and his predecessors-in-interest for a considerable number of years without the government taking any action to dislodge the occupants from their holdings and where the lands has passed from one hand to another by inheritance or by purchase, the burden is upon the government to prove that land is a public domain (*Raymundo vs. Diaz, et al.*, 28 O.G. 37, September 10, 1962).[8] (Citation omitted)

The Court of Appeals thus affirmed the MCTC decision by Decision of October 8, 2007.[9]

Hence, the present petition for review on *certiorari* which echoes the second and third errors petitioner attributed to the MCTC before the appellate court.

The pertinent provision of Section 14 of the *Property Registration Decree* sets forth the requirements for registration of title, *viz*:

SECTION 14. Who may apply. — The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

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[8] *Id.* at 85-86.

[9] Penned by Associate Justice Isaias P. Dicdican, with the concurrence of Associate Justices Francisco P. Acosta and Stephen C. Cruz.

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of **alienable and disposable lands of the public domain** under a bona fide claim of ownership **since June 12, 1945, or earlier**.

x x x (Emphasis and underscoring supplied)

Under said provision of law, three requisites must thus be satisfied: (1) open, exclusive, and notorious possession and occupation of the land since June 12, 1945 or earlier; (2) alienable and disposable character of the land of the public domain, and (3) a *bona fide* claim of ownership.

The record shows that respondent had earlier sought the registration of the same lot. The October 19, 1999 Report of the Land Registration Authority (LRA) submitted to the MCTC reflects so:

x x x x x x x x x

2. LRA Records show that **the same subject lot was previously the subject of registration of title** in Land Reg. Case No. 430, LRA Record No. N-65380 by the **same applicant**, however, said application was **denied** for the following reasons as quoted from the decision dated 2 October 1996, to wit:

> 2. **The applicant has not shown that he and his predecessors-in-interest have been in continuous, exclusive and notorious possession of the subject property.** The petition did not state in what manner the applicant or his predecessors-in-interest came into possession of the property, either by possession as owner for more than thirty (30) years or possession since time immemorial. **The testimony of Emilia Baldevieso who is only 33 years old to the effect that her father, Aurelio Manlaban [*sic*], Sr., and before him, her grandfather, Martin Manlabao, were the prior owners of this property, are more conclusion of law which requires factual support and substantiation.** Of course, the Court noted that the applicant tried to cure this deficiency by presenting tax declarations **as early as 1953** in the name of Martin Manlabao

> but tax declarations are not sufficient to prove ownership. x x x
>
> 3. A letter of the Chief, Surveys Division, Lands Management Services, Region VI, Iloilo City dated August 13, 1999 was received by this Authority, with the information that lot **9310**, plan Ap-06-005304 is **not** a portion of previously approved isolated survey, and
>
> 4. This Authority is not in a position to verify whether or not the parcel of land subject of registration is already covered by land patent.[10] (Emphasis and underscoring supplied)

In the same Report, the LRA recommended that should the application be given due course, the DENR, Lands Management Bureau and CENRO be ordered to submit a report on the status of Lot 9310 to determine whether it is already covered by a land patent. The recommendation was not acted upon by the MCTC, however.

In vigorously sustaining its opposition to respondent's Application, the Republic posits

> The testimonies of respondent's witnesses only delved on the transfer of the subject property from a certain Aurelio Manlabao [*sic*] sometime in 1994. The testimony of witnesses Amalia Tapleras only tends to show that the subject property previously belonged to her father, Aurelio Manlabao. There is nothing from her testimony that would show the period when Aurelio Manlabao or the latter's heirs had been in possession of said property. Neither is there any evidence of specific acts showing the same nature of possession of Aurelio Manlabao or the latter's successors in-interest over the property. Equally important, it was not even clearly shown how the property was transferred from Aurelio Manlabao to his heirs, the vendors of the property to respondent.
>
> The testimony of respondent's attorney-in-fact Manuel C. Blanco with respect to the alleged actual, peaceful and adverse possession of respondent is merely conclusion of law unsupported by any evidence. His testimony that the property has been declared for taxation purposes in the name of respondent and that respondent

[10] Records, pp. 85-86.

has never been disturbed of his possession over the property from the time the property was transferred to him in 1994 does not prove respondent's nature of possession over the property. His statement regarding the existence of coconut trees which are about 50 to 60 years old is also unsupported by any independent and competent evidence. Even assuming it is true, its only supports the character of the property as timberland the possession thereof cannot ripen into ownership. It also bears pointing out that Manuel C. Blanco did not even try to point any cultivation or improvement done by respondent on the property.

The testimony of sixty-two year old witness Sanrita Francisco does not suffice to establish that Aurelio Manlabao had adverse possession of the property before 1945 as claimed by respondent. Although she claims that at the age of five, she remembered Aurelio Manlabao in possession of the land, her statement remained vague considering her claim that Aurelio Manlabao held the land "for a long time because it was their land." The same witness could not even remember her age during the second World War which was the time Aurelio Manlabao allegedly started possession of the property. She did not even specify the manner and the nature of the improvements introduced in the land. Given her failing recollection, her testimony does not deserve credence.

Clearly, the evidence adduced by respondent failed to establish the nature of possession by him and his predecessors-in-interest.

There was even no documentary proof on any payment made by the predecessors-in-interest of the real estate tax on the subject property. This failure to pay taxes belies respondent's allegation that his predecessors-in-interest had asserted claim or interest over the subject lot.

Equally important, there was no proof that Aurelio Manlabao or his heirs had introduced improvements on the property or cultivated the same during the alleged period that they were in possession of the property. x x x[11]

The Court finds for the Republic.

The documentary evidence of respondent consists, in the main, of a 1999 Tax Clearance effective 1999 and Tax Receipt

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

dated 1999. Not only do these documents refer to the year 1999, they are not incontrovertible evidence of ownership.

As for respondent's testimonial evidence, the same does not impress.

Respondent's attorney-in-fact Blanco identified the Deed of Sale in support of his claim that respondent purchased the lot from the heirs of Manlabao. But Blanco was not even a witness to the forging, as in fact he did not so state, of the Deed of Sale.

Amalia Tapleras claimed that she was seven when she became aware that her father Manlabao was in possession of the lot. How Manlabao came into possession of the lot and what was the nature of his possession, Amalia was silent.

The 62 year old (in 2000 when she testified) Samarita Francisco claimed to be an adjacent lot owner of the subject lot. She is not, however, among those listed by respondent in his Application as adjacent owner, which was earlier quoted. And as petitioner observes, her testimony that Manlabao had possessed the lot since she was five years old cannot be relied upon, given its vagueness and lack of details determinative of the nature of Manlabao's possession.

Even by respondent's testimonial evidence which petitioner finds, to reflect mere conclusions of law and to which this Court agrees, respondent failed to prove that he and his predecessors-in-interest had been "in open, continuous, exclusive and notorious possession" of the lot under a *bona fide* claim of ownership since June 12, 1945 or earlier.

In fine, as in his previous try to register the same subject lot, respondent failed to meet the first requisite for the purpose – open, exclusive and notorious possession of the land since June 12, 1945 or earlier.

This leaves it unnecessary to still dwell on the other requisites for a grant of respondent's Application.

WHEREFORE, the Court *SETS ASIDE* the assailed issuances of the Court of Appeals. LRC Case No. 053 (LRA

Record No. 69113), the Application for registration of respondent, Dante C. Abril over Lot No. 9310, Cad. 578-D, Nabas Cadastre, filed before the Municipal Circuit Trial Court of Ibajay-Nabas, Aklan, is *DISMISSED*.

SO ORDERED.

Ynares-Santiago,[*] *Brion, del Castillo,* and *Abad, JJ.,* concur.

THIRD DIVISION

[G.R. Nos. 180880-81. September 25, 2009]

KEPPEL CEBU SHIPYARD, INC., *petitioner, vs.* **PIONEER INSURANCE AND SURETY CORPORATION,** *respondent.*

[G.R. Nos. 180896-97. September 25, 2009]

PIONEER INSURANCE AND SURETY CORPORATION, *petitioner, vs.* **KEPPEL CEBU SHIPYARD, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-DELICTS; NEGLIGENCE; ELUCIDATED. — There is negligence when an act is done without exercising the competence that a reasonable person in the position of the actor would recognize as necessary to prevent an unreasonable risk of harm to another. Those who undertake any work calling for special skills are required to exercise reasonable care in what they do. Verily, there is an

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[*] Per Special Order No. 706 and additional member per Special Order No. 691.

obligation all persons have – to take due care which, under ordinary circumstances of the case, a reasonable and prudent man would take. The omission of that care constitutes negligence. Generally, the degree of care required is graduated according to the danger a person or property may be subjected to, arising from the activity that the actor pursues or the instrumentality that he uses. The greater the danger, the greater the degree of care required. Extraordinary risk demands extraordinary care. Similarly, the more imminent the danger, the higher degree of care warranted.

2. ID.; ID.; ID.; VICARIOUS LIABILITY OF EMPLOYERS FOR NEGLIGENT ACTS OF EMPLOYEES; PROOF THAT THE EMPLOYEE HAS, BY HIS NEGLIGENCE, CAUSED DAMAGE TO ANOTHER, REQUIRED; CASE AT BAR. — Sevillejo was negligent in the performance of his assigned task. His negligence was the proximate cause of the fire on board M/V "Superferry 3." As he was then definitely engaged in the performance of his assigned tasks as an employee of KCSI, his negligence gave rise to the vicarious liability of his employer under Article 2180 of the Civil Code, which provides— "Art. 2180. The obligation imposed by Article 2176 is demandable not only for one's own act or omission, but also for those of persons for whom one is responsible. x x x Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry. x x x The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage." KCSI failed to prove that it exercised the necessary diligence incumbent upon it to rebut the legal presumption of its negligence in supervising Sevillejo. Consequently, it is responsible for the damages caused by the negligent act of its employee, and its liability is primary and solidary. All that is needed is proof that the employee has, by his negligence, caused damage to another in order to make the employer responsible for the tortuous act of the former. From the foregoing disquisition, there is ample proof of the employee's negligence.

3. MERCANTILE LAW; INSURANCE LAW; ARTICLE 139 OF THE INSURANCE CODE; MARINE INSURANCE; CONSTRUCTIVE TOTAL LOSS; WHEN PRESENT. — In marine insurance, a

constructive total loss occurs under any of the conditions set forth in Section 139 of the Insurance Code, which provides— "Sec. 139. A person insured by a contract of marine insurance may abandon the thing insured, or any particular portion hereof separately valued by the policy, or otherwise separately insured, and recover for a total loss thereof, when the cause of the loss is a peril insured against: (a) If more than three-fourths thereof in value is actually lost, or would have to be expended to recover it from the peril; (b) If it is injured to such an extent as to reduce its value more than three-fourths; x x x."

4. ID.; ID.; ID.; APPLICABLE IN CASE AT BAR. — It appears, however, that in the execution of the insurance policies over M/V "Superferry 3," WG&A and Pioneer incorporated by reference the American Institute Hull Clauses 2/6/77, the Total Loss Provision of which reads— "Total Loss In ascertaining whether the Vessel is a constructive Total Loss the Agreed Value shall be taken as the repaired value and nothing in respect of the damaged or break-up value of the Vessel or wreck shall be taken into account. There shall be no recovery for a constructive Total Loss hereunder unless the expense of recovering and repairing the Vessel would exceed the Agreed Value in policies on Hull and Machinery." x x x KCSI denies the liability because, aside from its claim that it cannot be held culpable for negligence resulting in the destructive fire, there was no constructive total loss, as the amount of damage was only US$3,800,000.00 or ₱170,611,260.00, the amount of repair expense quoted by Simpson, Spence & Young. In the face of this apparent conflict, we hold that Section 139 of the Insurance Code should govern, because (1) Philippine law is deemed incorporated in every locally executed contract; and (2) the marine insurance policies in question expressly provided the following: "IMPORTANT — This insurance is subject to English jurisdiction, except in the event that loss or losses are payable in the Philippines, in which case if the said laws and customs of England shall be in conflict with the laws of the Republic of the Philippines, then the laws of the Republic of the Philippines shall govern."

5. ID.; ID.; ID.; THE WORD "MAY" IN THE PROVISION, CONSTRUED. — The CA held that Section 139 of the Insurance Code is merely permissive on account of the word "may" in the provision. This is incorrect. Properly considered, the word

"may" in the provision is intended to grant the insured (WG&A) the option or discretion to choose the abandonment of the thing insured (M/V "Superferry 3"), or any particular portion thereof separately valued by the policy, or otherwise separately insured, and recover for a total loss when the cause of the loss is a peril insured against. This option or discretion is expressed as a right in Section 131 of the same Code, to wit: "Sec. 131. A constructive total loss is one which gives to a person insured a right to abandon under Section one hundred thirty-nine."

6. CIVIL LAW; OBLIGATIONS AND CONTRACTS; DAMAGES; ACTUAL OR COMPENSATORY DAMAGES; SUBROGATION; EXPLAINED. — Subrogation is the substitution of one person by another with reference to a lawful claim or right, so that he who is substituted succeeds to the rights of the other in relation to a debt or claim, including its remedies or securities. The principle covers a situation wherein an insurer has paid a loss under an insurance policy is entitled to all the rights and remedies belonging to the insured against a third party with respect to any loss covered by the policy. It contemplates full substitution such that it places the party subrogated in the shoes of the creditor, and he may use all means that the creditor could employ to enforce payment.

7. ID.; ID.; ID.; ID.; ID.; RIGHT OF SUBROGATION; ACCRUES SIMPLY UPON PAYMENT BY THE INSURANCE COMPANY OF THE INSURANCE CLAIM. — We have held that payment by the insurer to the insured operates as an equitable assignment to the insurer of all the remedies that the insured may have against the third party whose negligence or wrongful act caused the loss. The right of subrogation is not dependent upon, nor does it grow out of, any privity of contract. It accrues simply upon payment by the insurance company of the insurance claim. The doctrine of subrogation has its roots in equity. It is designed to promote and to accomplish justice; and is the mode that equity adopts to compel the ultimate payment of a debt by one who, in justice, equity, and good conscience, ought to pay.

8. ID.; ID.; CONTRACT OF ADHESION; EXPLAINED; CASE AT BAR. — Clauses 20 and 22(a) of the Shiprepair Agreement are without factual and legal foundation. They are unfair and inequitable under the premises. It was established during arbitration that WG&A did not voluntarily and expressly agree

to these provisions. Engr. Elvin F. Bello, WG&A's fleet manager, testified that he did not sign the fine-print portion of the Shiprepair Agreement where Clauses 20 and 22(a) were found, because he did not want WG&A to be bound by them. However, considering that it was only KCSI that had shipyard facilities large enough to accommodate the dry docking and repair of big vessels owned by WG&A, such as M/V "Superferry 3," in Cebu, he had to sign the front portion of the Shiprepair Agreement; otherwise, the vessel would not be accepted for dry docking. Indeed, the assailed clauses amount to a contract of adhesion imposed on WG&A on a "take-it-or-leave-it" basis. A contract of adhesion is so-called because its terms are prepared by only one party, while the other party merely affixes his signature signifying his adhesion thereto. Although not invalid, *per se*, a contract of adhesion is void when the weaker party is imposed upon in dealing with the dominant bargaining party, and its option is reduced to the alternative of "taking it or leaving it," completely depriving such party of the opportunity to bargain on equal footing.

9. ID.; ID.; WAIVER OF RIGHTS; MUST BE POSITIVELY PROVED. — Clause 20 is also a void and ineffectual waiver of the right of WG&A to be compensated for the full insured value of the vessel or, at the very least, for its actual market value. There was clearly no intention on the part of WG&A to relinquish such right. It is an elementary rule that a waiver must be positively proved, since a waiver by implication is not normally countenanced. The norm is that a waiver must not only be voluntary, but must have been made knowingly, intelligently, and with sufficient awareness of the relevant circumstances and likely consequences. There must be persuasive evidence to show an actual intention to relinquish the right. This has not been demonstrated in this case.

10. ID.; ID.; CONTRACTS; A STIPULATION PROVIDING FOR THE PAYMENT OF AN AMOUNT VERY MUCH LOWER THAN THE ACTUAL DAMAGE OR LOSS SUSTAINED BY THE OTHER IS CONTRARY TO PUBLIC POLICY; CASE AT BAR. — Clause 20 is a stipulation that may be considered contrary to public policy. To allow KCSI to limit its liability to only ₱50,000,000.00, notwithstanding the fact that there was a constructive total loss in the amount of ₱360,000,000.00, would sanction the exercise of a degree of diligence short of what is

ordinarily required. It would not be difficult for a negligent party to escape liability by the simple expedient of paying an amount very much lower than the actual damage or loss sustained by the other.

11. MERCANTILE LAW; INSURANCE LAW; INSURANCE CODE; INSURANCE POLICY; DENOMINATES THE ASSURED AND THE BENEFICIARIES OF THE INSURANCE CONTRACT; CASE AT BAR. — Clause 22(a) cannot be upheld. The intention of the parties to make each other a co-assured under an insurance policy is to be gleaned principally from the insurance contract or policy itself and not from any other contract or agreement, because the insurance policy denominates the assured and the beneficiaries of the insurance contract. Undeniably, the hull and machinery insurance procured by WG&A from Pioneer named only the former as the assured. There was no manifest intention on the part of WG&A to constitute KCSI as a co-assured under the policies. To have deemed KCSI as a co-assured under the policies would have had the effect of nullifying any claim of WG&A from Pioneer for any loss or damage caused by the negligence of KCSI. No ship owner would agree to make a ship repairer a co-assured under such insurance policy. Otherwise, any claim for loss or damage under the policy would be rendered nugatory. WG&A could not have intended such a result.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez and Gatmaitan for Keppel Cebu Shipyard, Inc.

Arthur D. Lim Law Office for Pioneer Insurance Surety Corporation.

D E C I S I O N

NACHURA, *J.*:

Before us are the consolidated petitions filed by the parties—Pioneer Insurance and Surety Corporation[1] (Pioneer) and Keppel

[1] *Rollo* (G.R. Nos. 180896-97), pp. 33-109.

Cebu Shipyard, Inc.[2] (KCSI)—to review on *certiorari* the Decision[3] dated December 17, 2004 and the Amended Decision[4] dated December 20, 2007 of the Court of Appeals (CA) in CA-G.R. SP Nos. 74018 and 73934.

On January 26, 2000, KCSI and WG&A Jebsens Shipmanagement, Inc. (WG&A) executed a Shiprepair Agreement[5] wherein KCSI would renovate and reconstruct WG&A's M/V "Superferry 3" using its dry docking facilities pursuant to its restrictive safety and security rules and regulations. Prior to the execution of the Shiprepair Agreement, "Superferry 3" was already insured by WG&A with Pioneer for US$8,472,581.78. The Shiprepair Agreement reads—

SHIPREPAIR AGREEMENT[6]

Company: WG & A JEBSENS SHIPMANAGEMENT INC.
Address: Harbour Center II, Railroad & Chicago Sts.
Port Area, City of Manila

We, WG & A JEBSENS SHIPMGMT. Owner/Operator of M/V "SUPERFERRY 3" and **KEPPEL CEBU SHIPYARD, INC. (KCSI)** enter into an agreement that the Drydocking and Repair of the above-named vessel ordered by the Owner's Authorized Representative shall be carried out under the Keppel Cebu Shipyard Standard Conditions of Contract for Shiprepair, guidelines and regulations on safety and security issued by Keppel Cebu Shipyard. In addition, the following are mutually agreed upon by the parties:

1. The Owner shall inform its insurer of Clause 20[7] and 22 (a)[8] (refer at the back hereof) and shall include

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[2] *Rollo* (G.R. Nos. 180880-81), pp. 338-378.

[3] *Rollo* (G.R. Nos. 180896-97), pp. 116-144.

[4] *Id.* at 146-165.

[5] *Id.* at 483-484.

[6] The Shiprepair Agreement was duly acknowledged by the parties before a notary public.

[7] 20. The Contractor shall not be under any liability to the Customer either in contract or otherwise except for negligence and such liability shall itself be subject to the following overriding limitations and exceptions, namely

Keppel Cebu Shipyard as a co-assured in its insurance policy.

2. The Owner shall waive its right to claim for any loss of profit or loss of use or damages consequential on such loss of use resulting from the delay in the redelivery of the above vessel.

3. Owner's sub-contractors or workers are not permitted to work in the yard without the written approval of the Vice President – Operations.

4. In consideration of Keppel Cebu Shipyard allowing Owner to carry out own repairs onboard the vessel, the Owner shall indemnify and hold Keppel Cebu Shipyard harmless from any or all claims, damages, or liabilities arising from death or bodily injuries to Owner's workers, or damages to the vessel or other property however caused.

5. On arrival, the Owner Representative, Captain, Chief Officer and Chief Engineer will be invited to attend a conference with our Production, Safety and Security personnel whereby they will be briefed on, and given copies of Shipyard safety regulations.

6. An adequate number of officers and crew must remain on board at all times to ensure the safety of the vessel and compliance of safety regulations by crew and owner employed workmen.

7. The ship's officers/crew or owner appointed security personnel shall maintain watch against pilferage and acts of sabotage.

8. The yard must be informed and instructed to provide the necessary security arrangement coverage should there

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(a) The total liability of the Contractor to the Customer (including the liability to replace under Clause 17) or of any Sub-contractor shall be limited in respect of any and/or defect(s) or event(s) to the sum of Pesos Philippine Currency Fifty Million only x x x.

[8] 22(a) The Customer shall keep the vessel adequately insured for the vessel's hull and machinery, her crew and the equipment on board and on other goods owned or held by the Customer against any and all risks and liabilities and ensure that such insurance policies shall include the Contractor as a co-assured.

be inadequate or no crew on board to provide the expressed safety and security enforcement.

9. The Owner shall be liable to Keppel Cebu Shipyard for any death and/or bodily injuries for the [K]eppel Cebu Shipyard's employees and/or contract workers; theft and/or damages to Keppel Cebu Shipyard's properties and other liabilities which are caused by the workers of the Owner.

10. The invoice shall be based on quotation reference 99-KCSI-211 dated December 20, 1999 tariff dated March 15, 1998.

11. Payment term shall be as follows:

12. The Owner and Keppel Cebu Shipyard shall endeavor to settle amicably any dispute that may arise under this Agreement. Should all efforts for an amicable settlement fail, the disputes shall be submitted for arbitration in Metro Manila in accordance with provisions of Executive Order No. 1008 under the auspices of the Philippine Arbitration Commission.

(Signed)

BARRY CHIA SOO HOCK	(Signed)
(Printed Name/Signature Above Name)	(Printed Name/Signature Above Name)
Vice President – Operations Keppel Cebu Shipyard, Inc.	Authorized Representative for and in behalf of: WG & A Jebsens Shipmgmt.
JAN. 26, 2000 .	
Date	Date

On February 8, 2000, in the course of its repair, M/V "Superferry 3" was gutted by fire. Claiming that the extent of the damage was pervasive, WG&A declared the vessel's damage as a "total constructive loss" and, hence, filed an insurance claim with Pioneer.

On June 16, 2000, Pioneer paid the insurance claim of WG&A in the amount of US$8,472,581.78. WG&A, in turn, executed a Loss and Subrogation Receipt[9] in favor of Pioneer, to wit:

[9] *Rollo* (G.R. Nos. 180896-97), p. 526.

LOSS AND SUBROGATION RECEIPT

16 June 2000

Our Claim Ref: MH-NIL-H0-99-00018

US$8,472,581.78

RECEIVED from **PIONEER INSURANCE & SURETY CORPORATION** the sum of **U.S. DOLLARS EIGHT MILLION FOUR HUNDRED SEVENTY-TWO THOUSAND FIVE HUNDRED EIGHTY-ONE & 78/100 (US$ 8,472,581.78)** equivalent to **PESOS THREE HUNDRED SIXTY MILLION & 00/100 (Php 360,000,000.00)**, in full satisfaction, compromise and discharge of all claims for loss and expenses sustained to the vessel **"SUPERFERRY 3"** insured under Policy Nos. MH-H0-99-0000168-00-D (H&M) and MH-H0-99-0000169 (I.V.) by reason as follows:

Fire on board at Keppel Cebu Shipyard on 08 February 2000

and in consideration of which the undersigned hereby assigns and transfers to the said company each and all claims and demands against any person, persons, corporation or property arising from or connected with such loss or damage and the said company is subrogated in the place of and to the claims and demands of the undersigned against said person, persons, corporation or property in the premises to the extent of the amount above-mentioned.

WILLIAM, GOTHONG & ABOITIZ, INC. &/OR ABOITIZ SHIPPING CORP.
By: (Signed)

_____

Witnesses: (Signed)

_____

(Signed)

_____

Armed with the subrogation receipt, Pioneer tried to collect from KCSI, but the latter denied any responsibility for the loss

of the subject vessel. As KCSI continuously refused to pay despite repeated demands, Pioneer, on August 7, 2000, filed a Request for Arbitration before the Construction Industry Arbitration Commission (CIAC) docketed as CIAC Case No. 21-2000, seeking the following reliefs:

> 1. To pay to the claimant Pioneer Insurance and Surety Corporation the sum of U.S.$8,472,581.78 or its equivalent amount in Philippine Currency, plus interest thereon computed from the date of the "Loss and Subrogation Receipt" on 16 June 2000 or from the date of filing of [the] "Request for Arbitration," as may be found proper;
>
> 2. To pay to claimant WG&A, INC. and/or Aboitiz Shipping Corporation and WG&A Jebsens Shipmanagement, Inc. the sum of ₱500,000,000.00 plus interest thereon from the date of filing [of the] "Request for Arbitration" or date of the arbitral award, as may be found proper;
>
> 3. To pay to the claimants herein the sum of ₱3,000,000.00 for and as attorney's fees; plus other damages as may be established during the proceedings, including arbitration fees and other litigation expenses, and the costs of suit.
>
> It is likewise further prayed that Clauses 1 and 2 on the unsigned page 1 of the "Shiprepair Agreement" (Annex "A") as well as the hardly legible Clauses 20 and 22 (a) and other similar clauses printed in very fine print on the unsigned dorsal page thereof, be all declared illegal and void *ab initio* and without any legal effect whatsoever.[10]

KCSI and WG&A reached an amicable settlement, leading the latter to file a Notice of Withdrawal of Claim on April 17, 2001 with the CIAC. The CIAC granted the withdrawal on October 22, 2001, thereby dismissing the claim of WG&A against KCSI. Hence, the arbitration proceeded with Pioneer as the remaining claimant.

In the course of the proceedings, Pioneer and KCSI stipulated, among others, that: (1) on January 26, 2000, M/V "Superferry 3" arrived at KCSI in Lapu-Lapu City, Cebu, for dry docking and repairs; (2) on the same date, WG&A signed a ship repair

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[10] *Id.* at 167.

agreement with KCSI; and (3) a fire broke out on board M/V "Superferry 3" on February 8, 2000, while still dry docked in KCSI's shipyard.[11]

As regards the disputed facts, below are the respective positions of the parties, *viz.:*

Pioneer's Theory of the Case:

First, Pioneer (as Claimant) is the real party in interest in this case and that Pioneer has been subrogated to the claim of its assured. The Claimant claims that it has the preponderance of evidence over that of the Respondent. Claimant cited documentary references on the *Statutory Source of the Principle of Subrogation*. Claimant then proceeded to explain that the *Right of Subrogation:*

Is by Operation of Law
exists in Property Insurance
is not Dependent Upon Privity of Contract.

Claimant then argued that *Payment Operates as Equitable Assignment of Rights to Insurer* and that the *Right of Subrogation Entitles Insurer to Recover from the Liable Party.*

Second, Respondent Keppel had custody of and control over the M/V "Superferry 3" while said vessel was in Respondent Keppel's premises. In its Draft Decision, Claimant stated:

A. The evidence presented during the hearings indubitably proves that respondent not only took custody but assumed responsibility and control over M/V Superferry 3 in carrying out the dry-docking and repair of the vessel.

B. The presence on board the M/V Superferry 3 of its officers and crew does not relieve the respondent of its responsibility for said vessel.

C. Respondent Keppel assumed responsibility over M/V Superferry 3 when it brought the vessel inside its graving dock and applied its own safety rules to the dry-docking and repairs of the vessel.

D. The practice of allowing a shipowner and its sub-contractors to perform maintenance works while the vessel was within

[11] *Id.* at 236.

respondent's premises does not detract from the fact that control and custody over M/V Superferry 3 was transferred to the yard.

From the preceding statements, Claimant claims that Keppel is clearly liable for the loss of M/V Superferry 3.

Third, the Vessel's Safety Manual cannot be relied upon as proof of the Master's continuing control over the vessel.

Fourth, the Respondent Yard is liable under the Doctrine of *Res Ipsa Loquitur*. According to Claimant, the Yard is liable under the ruling laid down by the Supreme Court in the "Manila City" case. Claimant asserts that said ruling is applicable hereto as *The Law of the Case.*

Fifth, the liability of Respondent does not arise merely from the application of the Doctrine of *Res Ipsa Loquitur*, but from its *negligence* in this case.

Sixth, the Respondent Yard was the employer responsible for the negligent acts of the welder. According to Claimant;

In contemplation of law, Sevillejo was not a loaned servant/ employee. The yard, being his employer, is solely and exclusively liable for his negligent acts. Claimant proceeded to enumerate its reasons:

A. The "Control Test" – The yard exercised control over Sevillejo. The power of control is not diminished by the failure to exercise control.

B. There was no independent work contract between Joniga and Sevillejo – Joniga was not the employer of Sevillejo, as Sevillejo remained an employee of the yard at the time the loss occurred.

C. The mere fact that Dr. Joniga requested Sevillejo to perform some of the Owner's hot works under the 26 January 2000 work order did not make Dr. Joniga the employer of Sevillejo.

Claimant proffers that Dr. Joniga was not a Contractor of the Hot Work Done on Deck A. Claimant argued that:

A. The yard, not Dr. Joniga, gave the welders their marching orders, and

B. Dr. Joniga's authority to request the execution of owner's hot works in the passenger areas was expressly recognized by the Yard Project Superintendent Orcullo.

Seventh, the shipowner had no legal duty to apply for a hotworks permit since it was not required by the yard, and the owner's hotworks were conducted by welders who remained employees of the yard. Claimant contends that the need, if any, for an owner's application for a hot work permit was canceled out by the yard's actual knowledge of Sevillejo's whereabouts and the fact that he was in deck A doing owner's hotworks.

Eight[h], in supplying welders and equipment as per *The Work Order Dated 26 January 2000*, the Yard did so at its own risk, and acted as a *Less Than Prudent Ship Repairer*.

The Claimant then disputed the statements of Manuel Amagsila by claiming that Amagsila was a disgruntled employee. Nevertheless, Claimant claims that Amagsila affirmed that the five yard welders never became employees of the owner so as to obligate the latter to be responsible for their conduct and performance.

Claimant enumerated further *badges of yard negligence*.

According to Claimant:

A. Yard's water supply was inadequate.

B. Yard Fire Fighting Efforts and Equipment Were Inadequate.

C. Yard Safety Practices and Procedures Were Unsafe or Inadequate.

D. Yard Safety Assistants and Firewatch-Men were Overworked.

Finally, Claimant disputed the theories propounded by the Respondent (The Yard). Claimant presented its case against:

(i) Non-removal of the life jackets theory.

(ii) Hole-in-the[-]floor theory.

(iii) Need for a plan theory.

(iv) The unauthorized hot works theory.

(v) The Marina report theory.

The Claimant called the attention of the Tribunal (CIAC) on the non-appearance of the welder involved in the cause of the fire, Mr. Severino Sevillejo. Claimant claims that this is suppression of evidence by Respondent.

KCSI's Theory of the Case

1. The Claimant has no standing to file the Request for Arbitration and the Tribunal has no jurisdiction over the case:

   (a) There is no valid arbitration agreement between the Yard and the Vessel Owner. On January 26, 2000, when the ship repair agreement (which includes the arbitration agreement) was signed by WG&A Jebsens on behalf of the Vessel, the same was still owned by Aboitiz Shipping. Consequently, when another firm, WG&A, authorized WG&A Jebsens to manage the MV Superferry 3, it had no authority to do so. There is, as a result, no binding arbitration agreement between the Vessel Owner and the Yard to which the Claimant can claim to be subrogated and which can support CIAC jurisdiction.

   (b) The Claimant is not a real party in interest and has no standing because it has not been subrogated to the Vessel Owner. For the reason stated above, the insurance policies on which the Claimant bases its right of subrogation were not validly obtained. In any event, the Claimant has not been subrogated to any rights which the Vessel may have against the Yard because:

      i. The Claimant has not proved payment of the proceeds of the policies to any specific party. As a consequence, it has also not proved payment to the Vessel Owner.

      ii. The Claimant had no legally demandable obligation to pay under the policies and did so only voluntarily. Under the policies, the Claimant and the Vessel agreed that there is no Constructive Total Loss "unless the expense of recovering and repairing the vessel would exceed the Agreed Value" of ₱360 million assigned by the parties to the Vessel, a threshold which the actual repair cost for the Vessel did not reach. Since the Claimant opted to pay contrary to the provisions of the policies, its payment was voluntary, and there was no resulting subrogation to the Vessel.

iii. There was also no subrogation under Article 1236 of the Civil Code. First, if the Claimant asserts a right of payment only by virtue of Article 1236, then there is no legal subrogation under Article 2207 and it does not succeed to the Vessel's rights under the Ship [R]epair Agreement and the arbitration agreement. It does not have a right to demand arbitration and will have only a purely civil law claim for reimbursement to the extent that its payment benefited the Yard which should be filed in court. Second, since the Yard is not liable for the fire and the resulting damage to the Vessel, then it derived no benefit from the Claimant's payment to the Vessel Owner. Third, in any event, the Claimant has not proved payment of the proceeds to the Vessel Owner.

2. The Ship [R]epair Agreement was not imposed upon the Vessel. The Vessel knowingly and voluntarily accepted that agreement. Moreover, there are no signing or other formal defects that can invalidate the agreement.

3. The proximate cause of the fire and damage to the Vessel was not any negligence committed by Angelino Sevillejo in cutting the bulkhead door or any other shortcoming by the Yard. On the contrary, the proximate cause of the fire was Dr. Joniga's and the Vessel's deliberate decision to have Angelino Sevillejo undertake cutting work in inherently dangerous conditions created by them.

   (a) The Claimant's material witnesses lied on the record and the Claimant presented no credible proof of any negligence by Angelino Sevillejo.

   (b) Uncontroverted evidence proved that Dr. Joniga neglected or decided not to obtain a hot work permit for the bulkhead cutting and also neglected or refused to have the ceiling and the flammable lifejackets removed from underneath the area where he instructed Angelino Sevillejo to cut the bulkhead door. These decisions or oversights guaranteed that the cutting would be done in extremely hazardous conditions and were the proximate cause of the fire and the resulting damage to the Vessel.

   (c) The Yard's expert witness, Dr. Eric Mullen gave the only credible account of the cause and the mechanics of ignition of the fire. He established that: i) the fire started when the

cutting of the bulkhead door resulted in sparks or hot molten slag which fell through pre-existing holes on the deck floor and came into contact with and ignited the flammable lifejackets stored in the ceiling void directly below; and ii) the bottom level of the bulkhead door was immaterial, because the sparks and slag could have come from the cutting of any of the sides of the door. Consequently, the cutting itself of the bulkhead door under the hazardous conditions created by Dr. Joniga, rather than the positioning of the door's bottom edge, was the proximate cause of the fire.

(d) The *Manila City* case is irrelevant to this dispute and in any case, does not establish governing precedent to the effect that when a ship is damaged in dry dock, the shipyard is presumed at fault. Apart from the differences in the factual setting of the two cases, the *Manila City* pronouncements regarding the *res ipsa loquitur* doctrine are *obiter dicta* without value as binding precedent. Furthermore, even if the principle were applied to create a *presumption* of negligence by the Yard, however, that presumption is conclusively rebutted by the evidence on record.

(e) The Vessel's deliberate acts and its negligence created the inherently hazardous conditions in which the cutting work that could otherwise be done safely ended up causing a fire and the damage to the Vessel. The fire was a direct and logical consequence of the Vessel's decisions to: (1) take Angelino Sevillejo away from his welding work at the Promenade Deck restaurant and instead to require him to do unauthorized cutting work in Deck A; and (2) to have him do that without satisfying the requirements for and obtaining a hot work permit in violation of the Yard's Safety Rules and without removing the flammable ceiling and life jackets below, contrary to the requirements not only of the Yard's Safety Rules but also of the demands of standard safe practice and the Vessel's own explicit safety and hot work policies.

(f) The vessel has not presented any proof to show that the Yard was remiss in its fire fighting preparations or in the actual conduct of fighting the 8 February 2000 fire. The Yard had the necessary equipment and trained personnel and employed all those resources immediately and fully to putting out the 8 February 2000 fire.

4. Even assuming that Angelino Sevillejo cut the bulkhead door close to the deck floor, and that this circumstance rather than the extremely hazardous conditions created by Dr. Joniga and the Vessel for that activity caused the fire, the Yard may still not be held liable for the resulting damage.

   (a) The Yard's only contractual obligation to the Vessel in respect of the 26 January 2000 Work Order was to supply welders for the Promenade Deck restaurant who would then perform welding work "per owner['s] instruction." Consequently, once it had provided those welders, including Angelino Sevillejo, its obligation to the Vessel was fully discharged and no claim for contractual breach, or for damages on account thereof, may be raised against the Yard.

   (b) The Yard is also not liable to the Vessel/Claimant on the basis of quasi-delict.

      i. The Vessel exercised supervision and control over Angelino Sevillejo when he was doing work at the Promenade Deck restaurant and especially when he was instructed by Dr. Joniga to cut the bulkhead door. Consequently, the Vessel was the party with actual control over his tasks and is deemed his true and effective employer for purposes of establishing Article 2180 employer liability.

      ii. Even assuming that the Yard was Angelino Sevillejo's employer, the Yard may nevertheless not be held liable under Article 2180 because Angelino Sevillejo was acting beyond the scope of his tasks assigned by the Yard (which was only to do welding for the Promenade Deck restaurant) when he cut the bulkhead door pursuant to instructions given by the Vessel.

      iii. The Yard is nonetheless not liable under Article 2180 because it exercised due diligence in the selection and supervision of Angelino Sevillejo.

5. Assuming that the Yard is liable, it cannot be compelled to pay the full amount of ₱360 million paid by the Claimant.

   (a) Under the law, the Yard may not be held liable to the Claimant, as subrogee, for an amount greater than that which the Vessel could have recovered, even if the Claimant may have paid a

higher amount under its policies. In turn, the right of the Vessel to recover is limited to actual damage to the MV Superferry 3, at the time of the fire.

(b) Under the Ship [R]epair Agreement, the liability of the Yard is limited to ₱50 million – a stipulation which, under the law and decisions of the Supreme Court, is valid, binding and enforceable.

(c) The Vessel breached its obligation under Clause 22 (a) of the Yard's Standard Terms to name the Yard as co-assured under the policies – a breach which makes the Vessel liable for damages. This liability should in turn be set-off against the Claimant's claim for damages.

The Respondent listed what it believes the Claimant wanted to impress upon the Tribunal. Respondent enumerated and disputed these as follows:

1. Claimant's counsel contends that the cutting of the bulkhead door was covered by the 26 January 2000 Work Order.

2. Claimant's counsel contends that Dr. Joniga told Gerry Orcullo about his intention to have Angelino Sevillejo do cutting work at the Deck A bulkhead on the morning of 8 February 2000.

3. Claimant's counsel contends that under Article 1727 of the Civil Code, "The contractor is responsible for the work done by persons employed by him."

4. Claimant's counsel contends that "[t]he second reason why there was no job spec or job order for this cutting work, [is] the cutting work was known to the yard and coordinated with Mr. Gerry Orcullo, the yard project superintendent."

5. Claimant's counsel also contends, to make the Vessel's unauthorized hot works activities seem less likely, that they could easily be detected because Mr. Avelino Aves, the Yard Safety Superintendent, admitted that "No hot works could really be hidden from the Yard, your Honors, because the welding cables and the gas hoses emanating from the dock will give these hotworks away apart from the assertion and the fact that there were also safety assistants supposedly going around the vessel."

Respondent disputed the above by presenting its own argument in its Final Memorandum.[12]

On October 28, 2002, the CIAC rendered its Decision[13] declaring both WG&A and KCSI guilty of negligence, with the following findings and conclusions—

> The Tribunal agrees that the contractual obligation of the Yard is to provide the welders and equipment to the promenade deck. [The] Tribunal agrees that the cutting of the bulkhead door was not a contractual obligation of the Yard. However, by requiring, according to its own regulations, that only Yard welders are to undertake hotworks, it follows that there are certain qualifications of Yard welders that would be requisite of yard welders against those of the vessel welders. To the Tribunal, this means that yard welders are aware of the Yard safety rules and regulations on hotworks such as applying for a hotwork permit, discussing the work in a production meeting, and complying with the conditions of the hotwork permit prior to implementation. By the requirement that all hotworks are to be done by the Yard, the Tribunal finds that Sevillejo remains a yard employee. The act of Sevillejo is however mitigated in that he was not even a foreman, and that the instructions to him was (sic) by an authorized person. The Tribunal notes that the hotworks permit require[s] a request by at least a foreman. The fact that no foreman was included in the five welders issued to the Vessel was never raised in this dispute. As discussed earlier by the Tribunal, with the fact that what was ask (sic) of Sevillejo was outside the work order, the Vessel is considered equally negligent. This Tribunal finds the concurrent negligence of the Yard through Sevillejo and the Vessel through Dr. Joniga as both contributory to the cause of the fire that damaged the vessel.[14]

Holding that the liability for damages was limited to ₱50,000,000.00, the CIAC ordered KCSI to pay Pioneer the amount of ₱25,000,000.00, with interest at 6% per annum from the time of the filing of the case up to the time the decision is promulgated, and 12% interest per annum added to the award, or any balance thereof, after it becomes final and executory.

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[12] *Id.* at 236-242.

[13] *Id.* at 229-320.

[14] *Id.* at 286.

The CIAC further ordered that the arbitration costs be imposed on both parties on a *pro rata* basis.[15]

Pioneer appealed to the CA and its petition was docketed as CA-G.R. SP No. 74018. KCSI likewise filed its own appeal and the same was docketed as CA-G.R. SP No. 73934. The cases were consolidated.

On December 17, 2004, the Former Fifteenth Division of the CA rendered its Decision, disposing as follows:

> WHEREFORE, premises considered, the *Petition* of Pioneer (CA-G.R. SP No. 74018) is DISMISSED while the *Petition* of the Yard (CA-G.R. SP No. 73934) is GRANTED, dismissing petitioner's claims in its entirety. No costs.
>
> The Yard and The WG&A are hereby ordered to pay the arbitration costs pro-rata.
>
> SO ORDERED.[16]

Aggrieved, Pioneer sought reconsideration of the December 17, 2004 Decision, insisting that it suffered from serious errors in the appreciation of the evidence and from gross misapplication of the law and jurisprudence on negligence. KCSI, for its part, filed a motion for partial reconsideration of the same Decision.

On December 20, 2007, an Amended Decision was promulgated by the Special Division of Five – Former Fifteenth Division of the CA – in light of the dissent of Associate Justice Lucas P. Bersamin,[17] joined by Associate Justice Japar B. Dimaampao. The *fallo* of the Amended Decision reads—

> WHEREFORE, premises considered, the Court hereby decrees that:
>
> 1. Pioneer's *Motion for Reconsideration* is **PARTIALLY GRANTED**, ordering The Yard to pay Pioneer ₱25 Million, without legal interest, within 15 days from the finality of this *Amended Decision*, subject to the following modifications:

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[15] *Id.* at 319.

[16] *Id.* at 143-144.

[17] Now a member of this Court.

1.1 – Pioneer's *Petition* (CA-G.R. SP No. 74018) is **PARTIALLY GRANTED** as the Yard is hereby ordered to pay Pioneer ₱25 Million without legal interest;

2. The Yard is hereby declared as equally negligent, thus, the total GRANTING of its *Petition* (CA-G.R. SP No. 73934) is now reduced to **PARTIALLY GRANTED**, in so far as it is ordered to pay Pioneer ₱25 Million, without legal interest, within 15 days from the finality of this *Amended Decision*; and

3. The rest of the disposition in the original Decision remains the same.

SO ORDERED.[18]

Hence, these petitions. Pioneer bases its petition on the following grounds:

I

THE COURT OF APPEALS ERRED IN BASING ITS ORIGINAL *DECISION* ON ***NON-FACTS*** LEADING IT TO MAKE FALSE LEGAL CONCLUSIONS; ***NON-FACTS*** REMAIN TO INVALIDATE THE *AMENDED DECISION*. THIS ALSO VIOLATES SECTION 14, ARTICLE VIII OF THE CONSTITUTION.

II

THE COURT OF APPEALS ERRED IN LIMITING THE LEGAL LIABILITY OF THE YARD TO THE SUM OF ₱50,000,000.00, IN THAT:

A. *STARE DECISIS* RENDERS INAPPLICABLE ANY INVOCATION OF LIMITED LIABILITY BY THE YARD.

B. THE LIMITATION CLAUSE IS CONTRARY TO PUBLIC POLICY.

C. THE VESSEL OWNER DID NOT AGREE THAT THE YARD'S LIABILITY FOR LOSS OR DAMAGE TO THE VESSEL ARISING FROM YARD'S NEGLIGENCE IS LIMITED TO THE SUM OF ₱50,000,000.00 ONLY.

D. IT IS INIQUITOUS TO ALLOW THE YARD TO LIMIT LIABILITY, IN THAT:

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[18] *Id.* at 163-164.

(i) THE YARD HAD CUSTODY AND CONTROL OVER THE VESSEL (M/V "SUPERFERRY 3") ON 08 FEBRUARY 2000 WHEN IT WAS GUTTED BY FIRE;

(ii) THE DAMAGING FIRE INCIDENT HAPPENED IN THE COURSE OF THE REPAIRS EXCLUSIVELY PERFORMED BY YARD WORKERS.

III

THE COURT OF APPEALS ERRED IN ITS RULING THAT WG&A WAS CONCURRENTLY NEGLIGENT, CONSIDERING THAT:

A. DR. JONIGA, THE VESSEL'S PASSAGE TEAM LEADER, DID NOT SUPERVISE OR CONTROL THE REPAIRS.

B. IT WAS THE YARD THROUGH ITS PROJECT SUPERINTENDENT GERMINIANO ORCULLO THAT SUPERVISED AND CONTROLLED THE REPAIR WORKS.

C. SINCE ONLY YARD WELDERS COULD PERFORM HOT WORKS IT FOLLOWS THAT THEY ALONE COULD BE GUILTY OF NEGLIGENCE IN DOING THE SAME.

D. THE YARD AUTHORIZED THE HOT WORK OF YARD WELDER ANGELINO SEVILLEJO.

E. THE NEGLIGENCE OF ANGELINO SEVILLEJO WAS THE PROXIMATE CAUSE OF THE LOSS.

F. WG&A WAS NOT GUILTY OF NEGLIGENCE, BE IT DIRECT OR CONTRIBUTORY TO THE LOSS.

IV

THE COURT OF APPEALS CORRECTLY RULED THAT WG&A SUFFERED A CONSTRUCTIVE TOTAL LOSS OF ITS VESSEL BUT ERRED BY NOT HOLDING THAT THE YARD WAS LIABLE FOR THE VALUE OF THE FULL CONSTRUCTIVE TOTAL LOSS.

V

THE COURT OF APPEALS ERRED IN NOT HOLDING THE YARD LIABLE FOR INTEREST.

VI

THE COURT OF APPEALS ERRED IN NOT HOLDING THE YARD SOLELY LIABLE FOR ARBITRATION COSTS.[19]

On the other hand, KCSI cites the following grounds for the allowance of its petition, to wit:

1. ABSENCE OF YARD RESPONSIBILITY

IT WAS GRIEVOUS ERROR FOR THE COURT OF APPEALS TO ADOPT, WITHOUT EXPLANATION, THE CIAC'S RULING THAT THE YARD WAS EQUALLY NEGLIGENT BECAUSE OF ITS FAILURE TO REQUIRE A HOT WORKS PERMIT FOR THE CUTTING WORK DONE BY ANGELINO SEVILLEJO, AFTER THE COURT OF APPEALS ITSELF HAD SHOWN THAT RULING TO BE COMPLETELY WRONG AND BASELESS.

2. NO CONSTRUCTIVE TOTAL LOSS

IT WAS EQUALLY GRIEVOUS ERROR FOR THE COURT OF APPEALS TO RULE, WITHOUT EXPLANATION, THAT THE VESSEL WAS A CONSTRUCTIVE TOTAL LOSS AFTER HAVING ITSELF EXPLAINED WHY THE VESSEL COULD NOT BE A CONSTRUCTIVE TOTAL LOSS.

3. FAILURE OR REFUSAL TO ADDRESS KEPPEL'S MOTION FOR RECONSIDERATION

FINALLY, IT WAS ALSO GRIEVOUS ERROR FOR THE COURT OF APPEALS TO HAVE EFFECTIVELY DENIED, WITHOUT ADDRESSING IT AND ALSO WITHOUT EXPLANATION, KEPPEL'S PARTIAL MOTION FOR RECONSIDERATION OF THE ORIGINAL DECISION WHICH SHOWED: 1) WHY PIONEER WAS NOT SUBROGATED TO THE RIGHTS OF THE VESSEL OWNER AND SO HAD NO STANDING TO SUE THE YARD; 2) WHY KEPPEL MAY NOT BE REQUIRED TO REIMBURSE PIONEER'S PAYMENTS TO THE VESSEL OWNER IN VIEW OF THE CO-INSURANCE CLAUSE IN THE SHIPREPAIR AGREEMENT; AND 3) WHY PIONEER ALONE SHOULD BEAR THE COSTS OF ARBITRATION.

4. FAILURE TO CREDIT FOR SALVAGE RECOVERY

EVEN IF THE COURT OF APPEAL'S RULINGS ON ALL OF THE FOREGOING ISSUES WERE CORRECT AND THE YARD MAY

[19] *Rollo* (G.R. No. 180896-97), pp. 46-48.

PROPERLY BE HELD EQUALLY LIABLE FOR THE DAMAGE TO THE VESSEL AND REQUIRED TO PAY HALF OF THE DAMAGES AWARDED (₱25 MILLION), THE COURT OF APPEALS STILL ERRED IN NOT DEDUCTING THE SALVAGE VALUE OF THE VESSEL RECOVERED AND RECEIVED BY THE INSURER, PIONEER, TO REDUCE ANY LIABILITY ON THE PART OF THE YARD TO ₱9.874 MILLION.[20]

To our minds, these errors assigned by both Pioneer and KCSI may be summed up in the following core issues:

A. To whom may negligence over the fire that broke out on board M/V "Superferry 3" be imputed?

B. Is subrogation proper? If proper, to what extent can subrogation be made?

C. Should interest be imposed on the award of damages? If so, how much?

D. Who should bear the cost of the arbitration?

To resolve these issues, it is imperative that we digress from the general rule that in petitions for review under Rule 45 of the Rules of Court, only questions of law shall be entertained. Considering the disparate findings of fact of the CIAC and the CA which led them to different conclusions, we are constrained to revisit the factual circumstances surrounding this controversy.[21]

The Court's Ruling

A. The issue of negligence

Undeniably, the immediate cause of the fire was the hot work done by Angelino Sevillejo (Sevillejo) on the accommodation area of the vessel, specifically on Deck A. As established before the CIAC –

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[20] *Rollo* (G.R. Nos. 180880-81), pp. 356-357.

[21] *Prudential Shipping and Management Corporation v. Sta. Rita*, G.R. No. 166580, February 8, 2007, 515 SCRA 157.

The fire broke out shortly after 10:25 and an alarm was raised (Exh. 1-Ms. Aini Ling,[22] p. 20). Angelino Sevillejo tried to put out the fire by pouring the contents of a five-liter drinking water container on it and as he did so, smoke came up from under Deck A. He got another container of water which he also poured whence the smoke was coming. In the meantime, other workers in the immediate vicinity tried to fight the fire by using fire extinguishers and buckets of water. But because the fire was inside the ceiling void, it was extremely difficult to contain or extinguish; and it spread rapidly because it was not possible to direct water jets or the fire extinguishers into the space at the source. Fighting the fire was extremely difficult because the life jackets and the construction materials of the Deck B ceiling were combustible and permitted the fire to spread within the ceiling void. From there, the fire dropped into the Deck B accommodation areas at various locations, where there were combustible materials. Respondent points to cans of paint and thinner, in addition to the plywood partitions and foam mattresses on deck B (Exh. 1-Mullen,[23] pp. 7-8, 18; Exh. 2-Mullen, pp. 11-12).[24]

Pioneer contends that KCSI should be held liable because Sevillejo was its employee who, at the time the fire broke out, was doing his assigned task, and that KCSI was solely responsible for all the hot works done on board the vessel. KCSI claims otherwise, stating that the hot work done was beyond the scope of Sevillejo's assigned tasks, the same not having been authorized under the Work Order[25] dated January 26, 2000 or under the Shiprepair Agreement. KCSI further posits that WG&A was

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[22] The fire expert presented by Pioneer.

[23] Dr. Eric Mullen, the fire expert presented by KCSI.

[24] *Rollo* (G.R. Nos. 180896-97), p. 262.

[25] The Work Order dated January 26, 2000 provided to –

1. Supply of 5 welders & equipment as per Owner's instructions to promenade deck.

2. JO# 89/99 – Pull-out & clean w/ chemical of Aux. engine blower & change both ball bearing 15 kw, 27 amp, 440 Wtts as required.

3. Renew sleeve on endcover of motor as required.

4. Renew deteriorated side frames & fwd pls as required.

5. Renew deteriorated air vent and sides pls as required.

itself negligent, through its crew, particularly Dr. Raymundo Joniga (Dr. Joniga), for failing to remove the life jackets from the ceiling void, causing the immediate spread of the fire to the other areas of the ship.

We rule in favor of Pioneer.

First. The Shiprepair Agreement is clear that WG&A, as owner of M/V "Superferry 3," entered into a contract for the dry docking and repair of the vessel under KCSI's Standard Conditions of Contract for Shiprepair, and its guidelines and regulations on safety and security. Thus, the CA erred when it said that WG&A would renovate and reconstruct its own vessel merely using the dry docking facilities of KCSI.

Second. Pursuant to KCSI's rules and regulations on safety and security, only employees of KCSI may undertake hot works on the vessel while it was in the graving dock in Lapu-Lapu City, Cebu. This is supported by Clause 3 of the Shiprepair Agreement requiring the prior written approval of KCSI's Vice President for Operations before WG&A could effect any work performed by its own workers or sub-contractors. In the exercise of this authority, KCSI's Vice-President for Operations, in the letter dated January 2, 1997, banned any hot works from being done except by KCSI's workers, *viz.:*

> The Yard will restrict all hot works in the engine room, accommodation cabin, and fuel oil tanks to be carried out only by shipyard workers x x x.[26]

WG&A recognized and complied with this restrictive directive such that, during the arrival conference on January 26, 2000, Dr. Joniga, the vessel's passage team leader in charge of its hotel department, specifically requested KCSI to finish the hot works started by the vessel's contractors on the passenger accommodation decks.[27] This was corroborated by the statements

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[26] CIAC Decision, p. 28.

[27] Dr. Joniga gave this narration under oath:

> 5. That at the arrival conference on January 26, 2000, x x x we discussed the projected dry docking works and the shipyard safety regulations

of the vessel's hotel manager Marcelo Rabe[28] and the vessel's quality control officer Joselito Esteban.[29] KCSI knew of the unfinished hot works in the passenger accommodation areas. Its safety supervisor Esteban Cabalhug confirmed that KCSI was aware "that the owners of this vessel (M/V 'Superferry 3') had undertaken their own (hot) works

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particularly the restriction that only shipyard workers and welders can perform hot works on board the vessel.

During the said conference, I brought up the need of the hotel department specifically for the yard to provide welders to the passenger accommodations on Deck A, Deck B and Deck C, according to owner's instructions, meaning, the ship owner through me as the one in charge of the hotel department could request maintenance works in the passenger decks which may be determined and the need for which may arise only in the course of the dry docking and which will require hot works by the yard's welders subject to shipyard safety and billing regulations.

My aforementioned input was duly taken note of, and on that same date, a Work Order dated January 26, 2000 signed by the Ship Superintendent Manuel Amagsila and KCSI Project Superintendent Gerry Orcullo x x x. (Exhibit "C-Joniga," p. 2)

[28] 4. That upon request of Dr. Joniga during said arrival conference, a Work Order dated January 26, 2000 was signed whereby the ship owner could request for some hot work in the passenger decks "as per Owner's instructions" with the ship's hotel department indicating certain maintenance or renovation in the course of the dry docking but it will be the yard which will execute the hot works needed. (Exhibit "C-Rabe", p. 2.)

[29] 4. x x x I confirm that said Work Order [of 26 January 2000] required the Yard, and the Yard agreed, to supply "5 welders and equipment as per owner's instructions to promenade deck," because Dr. Joniga wanted that the unfinished hot works in the promenade deck and passenger areas that were started in Manila should be finished, otherwise the dry docking would be useless.

The place mentioned was "to promenade deck" because the bulk of the work was in the promenade deck, but included the unfinished hot works in the tourist and other passenger areas, which the Yard knew because they inspected and went around the vessel when we arrived on January 26, 2000.

The unfinished hot works in the passenger areas were also known to shipyard project superintendent Gerry Orcullo. Without the Yard's express knowledge or permission, no yard welder will just go to some part of the vessel and do some kind of hot work. As I said only Yard workers performed hot works on board the vessel. (Exhibit "A-Esteban", p. 2.)

prior to arrival alongside (sic) on 26th January," and that no hot work permits could thereafter be issued to WG&A's own workers because "this was not allowed for the Superferry 3."[30] This shows that Dr. Joniga had authority only to request the performance of hot works by KCSI's welders as needed in the repair of the vessel while on dry dock.

Third. KCSI welders covered by the Work Order performed hot works on various areas of the M/V "Superferry 3," aside from its promenade deck. This was a recognition of Dr. Joniga's authority to request the conduct of hot works even on the passenger accommodation decks, subject to the provision of the January 26, 2000 Work Order that KCSI would supply welders for the promenade deck of the ship.

At the CIAC proceedings, it was adequately shown that between February 4 and 6, 2000, the welders of KCSI: (a) did the welding works on the ceiling hangers in the lobby of Deck A; (b) did the welding and cutting works on the deck beam to access aircon ducts; and (c) did the cutting and welding works on the protection bars at the tourist dining salon of Deck B,[31] at a rate of ₱150.00/welder/hour.[32] In fact, Orcullo, Project Superintendent of KCSI, admitted that "as early as February 3, 2000 (five days before the fire) [the Yard] had acknowledged Dr. Joniga's authority to order such works or additional jobs."[33]

It is evident, therefore, that although the January 26, 2000 Work Order was a special order for the supply of KCSI welders to the promenade deck, it was not restricted to the promenade deck only. The Work Order was only a special arrangement

[30] Cabalhug's affidavit-direct testimony dated May 24, 2001.

[31] Exhibit "C-Joniga", par. 6; Exhibit "C-Rabe", par. 4; Exhibit "A-Esteban", par. 7.

[32] Per the affidavit of The Yard's Commercial Manager Khew Kah Khin who said, "Later I saw a copy of the work order for the supply of welders to the owners to carry out the same work and was asked for a quotation for this. I quoted verbally PhP150 per man per hour. This was an unusual arrangement and I cannot recall any other occasion on which the Yard welders were supplied in similar circumstances."

[33] TSN, Gerry Orcullo, May 22, 2002, pp. 167-170.

between KCSI and WG&A that meant additional cost to the latter.

Fourth. At the time of the fire, Sevillejo was an employee of KCSI and was subject to the latter's direct control and supervision.

Indeed, KCSI was the employer of Sevillejo—paying his salaries; retaining the power and the right to discharge or substitute him with another welder; providing him and the other welders with its equipment; giving him and the other welders marching orders to work on the vessel; and monitoring and keeping track of his and the other welders' activities on board, in view of the delicate nature of their work.[34] Thus, as such employee, aware of KCSI's Safety Regulations on Vessels Afloat/Dry, which specifically provides that "(n)o hotwork (welding/cutting works) shall be done on board [the] vessel without [a] Safety Permit from KCSI Safety Section,"[35] it was incumbent upon Sevillejo to obtain the required hot work safety permit before starting the work he did, including that done on Deck A where the fire started.

Fifth. There was a lapse in KCSI's supervision of Sevillejo's work at the time the fire broke out.

It was established that no hot works could be hidden from or remain undetected by KCSI because the welding cables and the gas hoses emanating from the dock would give the hot works away. Moreover, KCSI had roving fire watchmen and safety assistants who were moving around the vessel.[36] This was confirmed by Restituto Rebaca (Rebaca), KCSI's Safety Supervisor, who actually spotted Sevillejo on Deck A, two hours before the fire, doing his cutting work without a hot work permit, a fire watchman, or a fire extinguisher. KCSI contends that it did its duty when it prohibited Sevillejo from continuing the hot work. However, it is noteworthy that, after purportedly scolding

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[34] CIAC Decision, p. 58.

[35] *Id.* at 52.

[36] TSN, Avelino Aves (on cross-examination).

Sevillejo for working without a permit and telling him to stop until the permit was acquired and the other safety measures were observed, Rebaca left without pulling Sevillejo out of the work area or making sure that the latter did as he was told. Unfortunately for KCSI, Sevillejo reluctantly proceeded with his cutting of the bulkhead door at Deck A after Rebaca left, even disregarding the 4-inch marking set, thus cutting the door level with the deck, until the fire broke out.

This conclusion on the failure of supervision by KCSI was absolutely supported by Dr. Eric Mullen of the Dr. J.H. Burgoyne & Partners (International) Ltd., Singapore, KCSI's own fire expert, who observed that—

> 4.3. The foregoing would be compounded by Angelino Sevillejo being an electric arc welder, not a cutter. The dangers of ignition occurring as a result of the two processes are similar in that both electric arc welding and hot cutting produce heat at the work area and sparks and incendive material that can travel some distance from the work area. Hence, the safety precautions that are expected to be applied by the supervisor are the same for both types of work. However, the quantity and incendivity of the spray from the hot cutting are much greater than those of sparks from electric arc welding, and **it may well be that Angelino Sevillejo would not have a full appreciation of the dangers involved. This made it all the more important that the supervisor, who should have had such an appreciation, ensured that the appropriate safety precautions were carried out**.[37]

In this light, therefore, Sevillejo, being one of the specially trained welders specifically authorized by KCSI to do the hot works on M/V "Superferry 3" to the exclusion of other workers, failed to comply with the strict safety standards of KCSI, not only because he worked without the required permit, fire watch, fire buckets, and extinguishers, but also because he failed to undertake other precautionary measures for preventing the fire. For instance, he could have, at the very least, ensured that whatever combustible material may have been in the vicinity

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[37] Exhibit 2-Mullen (Supplementary Report on the fire on board Superferry 3).

would be protected from the sparks caused by the welding torch. He could have easily removed the life jackets from the ceiling void, as well as the foam mattresses, and covered any holes where the sparks may enter.

Conjunctively, since Rebaca was already aware of the hazard, he should have taken all possible precautionary measures, including those above mentioned, before allowing Sevillejo to continue with his hot work on Deck A. In addition to scolding Sevillejo, Rebaca merely checked that no fire had started yet. Nothing more. Also, inasmuch as KCSI had the power to substitute Sevillejo with another electric arc welder, Rebaca should have replaced him.

There is negligence when an act is done without exercising the competence that a reasonable person in the position of the actor would recognize as necessary to prevent an unreasonable risk of harm to another. Those who undertake any work calling for special skills are required to exercise reasonable care in what they do.[38] Verily, there is an obligation all persons have – to take due care which, under ordinary circumstances of the case, a reasonable and prudent man would take. The omission of that care constitutes negligence. Generally, the degree of care required is graduated according to the danger a person or property may be subjected to, arising from the activity that the actor pursues or the instrumentality that he uses. The greater the danger, the greater the degree of care required. Extraordinary risk demands extraordinary care. Similarly, the more imminent the danger, the higher degree of care warranted.[39] In this aspect, KCSI failed to exercise the necessary degree of caution and foresight called for by the circumstances.

We cannot subscribe to KCSI's position that WG&A, through Dr. Joniga, was negligent.

On the one hand, as discussed above, Dr. Joniga had authority to request the performance of hot works in the other areas of the vessel. These hot works were deemed included in the January

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[38] *Far Eastern Shipping Company v. CA*, 357 Phil. 703 (1998).

[39] *Id.*

26, 2000 Work Order and the Shiprepair Agreement. In the exercise of this authority, Dr. Joniga asked Sevillejo to do the cutting of the bulkhead door near the staircase of Deck A. KCSI was aware of what Sevillejo was doing, but failed to supervise him with the degree of care warranted by the attendant circumstances.

Neither can Dr. Joniga be faulted for not removing the life jackets from the ceiling void for two reasons – (1) the life jackets were not even contributory to the occurrence of the fire; and (2) it was not incumbent upon him to remove the same. It was shown during the hearings before the CIAC that the removal of the life jackets would not have made much of a difference. The fire would still have occurred due to the presence of other combustible materials in the area. This was the uniform conclusion of both WG&A's[40] and KCSI's[41]

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[40] Ms. Aini Ling, WG&A's fire expert, specifically testified:

"Sir, if there is no life jacket, of course, there is no ignition of life jackets. x x x

That doesn't mean that they (sic) might not be a fire, your Honor, because there are other combustible materials in the ceiling void." (TSN, May 21, 2002, pp. 319-320, as quoted in the CIAC Decision, p. 38).

[41] The pertinent testimony of Dr. Eric Mullen, The Yard's fire expert, is as follows:

ATTY. LOMBOS:

Now, you also heard Ms. Ling say that even if she concedes that the removal of the life jackets from under the ceiling void would have made the most likely source of the fire, ah, would have eliminated the most likely source of the fire, her opinion was still that there was a possibility of fire from say, wires or the ceiling material which was plywood she says on top of the Formica. Do you have any views regarding that?

DR. MULLEN:

In so far as my mechanism, which I firmly believe to be the case that the material fell through the holes, it would have made that much difference. Because you have the life jackets would ignite easily, the ceiling itself would ignite easily because the material that is falling down is very incendive (sic) and in some cases has flames on them. So, it wouldn't have made that much difference had the life jackets been removed, there was still possibility for fire. (TSN, May 23, 2002, pp. 132-133, as quoted in the CIAC Decision, pp. 38-39).

fire experts. It was also proven during the CIAC proceedings that KCSI did not see the life jackets as being in the way of the hot works, thus, making their removal from storage unnecessary.[42]

These circumstances, taken collectively, yield the inevitable conclusion that Sevillejo was negligent in the performance of his assigned task. His negligence was the proximate cause of the fire on board M/V "Superferry 3." As he was then definitely engaged in the performance of his assigned tasks as an employee of KCSI, his negligence gave rise to the vicarious liability of his employer[43] under Article 2180 of the Civil Code, which provides—

> Art. 2180. The obligation imposed by Article 2176 is demandable not only for one's own act or omission, but also for those of persons for whom one is responsible.
>
> x x x x x x x x x
>
> Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.
>
> x x x x x x x x x

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[42] This fact was admitted during cross-examination by Geoff Phoon, The Yard's president, who testified in this wise:

ATTY. LIM:

Q Did you require the vessel to take out the life jackets and put them somewhere else or some place else on board or on shore?

MR. PHOON:

A We don't touch the ship property.

Q You, in fact, did not require that?

A <u>It belongs to the ship, You asked me do I require, I said it belongs to the ship.</u>

Q Up to now you do not require despite –

A <u>We don't touch any item unless it is in the way of the work.</u> (TSN, May 22, 2002, pp. 54-55).

[43] *Garcia, Jr. v. Salvador*, G.R. No. 168512, March 20, 2007, 518 SCRA 568.

The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.

KCSI failed to prove that it exercised the necessary diligence incumbent upon it to rebut the legal presumption of its negligence in supervising Sevillejo.[44] Consequently, it is responsible for the damages caused by the negligent act of its employee, and its liability is primary and solidary. All that is needed is proof that the employee has, by his negligence, caused damage to another in order to make the employer responsible for the tortuous act of the former.[45] From the foregoing disquisition, there is ample proof of the employee's negligence.

B. The right of subrogation

Pioneer asseverates that there existed a total constructive loss so that it had to pay WG&A the full amount of the insurance coverage and, by operation of law, it was entitled to be subrogated to the rights of WG&A to claim the amount of the loss. It further argues that the limitation of liability clause found in the Shiprepair Agreement is null and void for being iniquitous and against public policy.

KCSI counters that a total constructive loss was not adequately proven by Pioneer, and that there is no proof of payment of the insurance proceeds. KCSI insists on the validity of the limited-liability clause up to ₱50,000,000.00, because WG&A acceded to the provision when it executed the Shiprepair Agreement. KCSI also claims that the salvage value of the vessel should be deducted from whatever amount it will be made to pay to Pioneer.

We find in favor of Pioneer, subject to the claim of KCSI as to the salvage value of M/V "Superferry 3."

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[44] *Lapanday Agricultural and Development Corporation (LADECO) v. Angala*, G.R. No. 153076, June 21, 2007, 525 SCRA 229.

[45] *Mercury Drug Corporation v. Huang*, G.R. No. 172122, June 22, 2007, 525 SCRA 427.

In marine insurance, a constructive total loss occurs under any of the conditions set forth in Section 139 of the Insurance Code, which provides—

> Sec. 139. A person insured by a contract of marine insurance may abandon the thing insured, or any particular portion hereof separately valued by the policy, or otherwise separately insured, and recover for a total loss thereof, when the cause of the loss is a peril insured against:
>
> (a) If more than three-fourths thereof in value is actually lost, or would have to be expended to recover it from the peril;
>
> (b) If it is injured to such an extent as to reduce its value more than three-fourths; x x x.

It appears, however, that in the execution of the insurance policies over M/V "Superferry 3," WG&A and Pioneer incorporated by reference the American Institute Hull Clauses 2/6/77, the Total Loss Provision of which reads—

> Total Loss
>
> In ascertaining whether the Vessel is a constructive Total Loss the Agreed Value shall be taken as the repaired value and nothing in respect of the damaged or break-up value of the Vessel or wreck shall be taken into account.
>
> There shall be no recovery for a constructive Total Loss hereunder unless the expense of recovering and repairing the Vessel would exceed the Agreed Value in policies on Hull and Machinery. In making this determination, only expenses incurred or to be incurred by reason of a single accident or a sequence of damages arising from the same accident shall be taken into account, but expenses incurred prior to tender of abandonment shall not be considered if such are to be claimed separately under the Sue and Labor clause. x x x.

In the course of the arbitration proceedings, Pioneer adduced in evidence the estimates made by three (3) disinterested and qualified shipyards for the cost of the repair of the vessel, specifically: (a) ₱296,256,717.00, based on the Philippine currency equivalent of the quotation dated April 17, 2000 turned in by Tsuneishi Heavy Industries (Cebu) Inc.; (b) ₱309,780,384.15, based on the Philippine currency equivalent of the quotation of

Sembawang Shipyard Pte. Ltd., Singapore; and (c) ₱301,839,974.00, based on the Philippine currency equivalent of the quotation of Singapore Technologies Marine Ltd. All the estimates showed that the repair expense would exceed ₱270,000,000.00, the amount equivalent to ¾ of the vessel's insured value of ₱360,000,000.00. Thus, WG&A opted to abandon M/V "Superferry 3" and claimed from Pioneer the full amount of the policies. Pioneer paid WG&A's claim, and now demands from KCSI the full amount of ₱360,000,000.00, by virtue of subrogation.

KCSI denies the liability because, aside from its claim that it cannot be held culpable for negligence resulting in the destructive fire, there was no constructive total loss, as the amount of damage was only US$3,800,000.00 or ₱170,611,260.00, the amount of repair expense quoted by Simpson, Spence & Young.

In the face of this apparent conflict, we hold that Section 139 of the Insurance Code should govern, because (1) Philippine law is deemed incorporated in every locally executed contract; and (2) the marine insurance policies in question expressly provided the following:

IMPORTANT

This insurance is subject to English jurisdiction, except in the event that loss or losses are payable in the Philippines, in which case if the said laws and customs of England shall be in conflict with the laws of the Republic of the Philippines, then the laws of the Republic of the Philippines shall govern. (Underscoring supplied.)

The CA held that Section 139 of the Insurance Code is merely permissive on account of the word "may" in the provision. This is incorrect. Properly considered, the word "may" in the provision is intended to grant the insured (WG&A) the option or discretion to choose the abandonment of the thing insured (M/V "Superferry 3"), or any particular portion thereof separately valued by the policy, or otherwise separately insured, and recover for a total loss when the cause of the loss is a peril insured against. This option or discretion is expressed as a right in Section 131 of the same Code, to wit:

Sec. 131. A constructive total loss is one which gives to a person insured a right to abandon under Section one hundred thirty-nine.

It cannot be denied that M/V "Superferry 3" suffered widespread damage from the fire that occurred on February 8, 2000, a covered peril under the marine insurance policies obtained by WG&A from Pioneer. The estimates given by the three disinterested and qualified shipyards show that the damage to the ship would exceed ₱270,000,000.00, or ¾ of the total value of the policies – ₱360,000,000.00. These estimates constituted credible and acceptable proof of the extent of the damage sustained by the vessel. It is significant that these estimates were confirmed by the Adjustment Report dated June 5, 2000 submitted by Richards Hogg Lindley (Phils.), Inc., the average adjuster that Pioneer had enlisted to verify and confirm the extent of the damage. The Adjustment Report verified and confirmed that the damage to the vessel amounted to a constructive total loss and that the claim for ₱360,000,000.00 under the policies was compensable.[46] It is also noteworthy that KCSI did not cross-examine Henson Lim, Director of Richards Hogg, whose affidavit-direct testimony submitted to the CIAC confirmed that the vessel was a constructive total loss.

Considering the extent of the damage, WG&A opted to abandon the ship and claimed the value of its policies. Pioneer, finding the claim compensable, paid the claim, with WG&A issuing a Loss and Subrogation Receipt evidencing receipt of the payment of the insurance proceeds from Pioneer. On this note, we find as unacceptable the claim of KCSI that there was no ample proof of payment simply because the person who signed the Receipt appeared to be an employee of Aboitiz Shipping Corporation.[47] The Loss and Subrogation Receipt issued by WG&A to Pioneer is the best evidence of payment of the insurance proceeds to the former, and no controverting evidence

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[46] CIAC Decision, p. 80.

[47] KCSI's Petition, pp. 31-32, *Rollo* (G.R. Nos. 180880-81), pp. 368-369.

was presented by KCSI to rebut the presumed authority of the signatory to receive such payment.

On the matter of subrogation, Article 2207 of the Civil Code provides—

> Art. 2207. If the plaintiff's property has been insured and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury.

Subrogation is the substitution of one person by another with reference to a lawful claim or right, so that he who is substituted succeeds to the rights of the other in relation to a debt or claim, including its remedies or securities. The principle covers a situation wherein an insurer has paid a loss under an insurance policy is entitled to all the rights and remedies belonging to the insured against a third party with respect to any loss covered by the policy. It contemplates full substitution such that it places the party subrogated in the shoes of the creditor, and he may use all means that the creditor could employ to enforce payment.[48]

We have held that payment by the insurer to the insured operates as an equitable assignment to the insurer of all the remedies that the insured may have against the third party whose negligence or wrongful act caused the loss. The right of subrogation is not dependent upon, nor does it grow out of, any privity of contract. It accrues simply upon payment by the insurance company of the insurance claim. The doctrine of subrogation has its roots in equity. It is designed to promote and to accomplish justice; and is the mode that equity adopts to compel the ultimate payment of a debt by one who, in justice, equity, and good conscience, ought to pay.[49]

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[48] *Lorenzo Shipping Corp. v. Chubb and Sons, Inc.*, G.R. No. 147724, June 8, 2004, 431 SCRA 266.

[49] *PHILAMGEN v. Court of Appeals*, 339 Phil. 455 (1997).

We cannot accept KCSI's insistence on upholding the validity Clause 20, which provides that the limit of its liability is only up to ₱50,000,000.00; nor of Clause 22(a), that KCSI stands as a co-assured in the insurance policies, as found in the Shiprepair Agreement.

Clauses 20 and 22(a) of the Shiprepair Agreement are without factual and legal foundation. They are unfair and inequitable under the premises. It was established during arbitration that WG&A did not voluntarily and expressly agree to these provisions. Engr. Elvin F. Bello, WG&A's fleet manager, testified that he did not sign the fine-print portion of the Shiprepair Agreement where Clauses 20 and 22(a) were found, because he did not want WG&A to be bound by them. However, considering that it was only KCSI that had shipyard facilities large enough to accommodate the dry docking and repair of big vessels owned by WG&A, such as M/V "Superferry 3," in Cebu, he had to sign the front portion of the Shiprepair Agreement; otherwise, the vessel would not be accepted for dry docking.[50]

Indeed, the assailed clauses amount to a contract of adhesion imposed on WG&A on a "take-it-or-leave-it" basis. A contract of adhesion is so-called because its terms are prepared by only one party, while the other party merely affixes his signature signifying his adhesion thereto. Although not invalid, *per se*, a contract of adhesion is void when the weaker party is imposed upon in dealing with the dominant bargaining party, and its option is reduced to the alternative of "taking it or leaving it," completely depriving such party of the opportunity to bargain on equal footing.[51]

Clause 20 is also a void and ineffectual waiver of the right of WG&A to be compensated for the full insured value of the vessel or, at the very least, for its actual market value. There

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[50] Exhibit "E-Bello", pp. 3-4.

[51] *ACI Philippines, Inc. v. Coquia*, G.R. No. 174466, July 14, 2008, 558 SCRA 300; *Development Bank of the Philippines v. Perez*, G.R. No. 148541, November 11, 2004, 442 SCRA 238.

was clearly no intention on the part of WG&A to relinquish such right. It is an elementary rule that a waiver must be positively proved, since a waiver by implication is not normally countenanced. The norm is that a waiver must not only be voluntary, but must have been made knowingly, intelligently, and with sufficient awareness of the relevant circumstances and likely consequences. There must be persuasive evidence to show an actual intention to relinquish the right.[52] This has not been demonstrated in this case.

Likewise, Clause 20 is a stipulation that may be considered contrary to public policy. To allow KCSI to limit its liability to only ₱50,000,000.00, notwithstanding the fact that there was a constructive total loss in the amount of ₱360,000,000.00, would sanction the exercise of a degree of diligence short of what is ordinarily required. It would not be difficult for a negligent party to escape liability by the simple expedient of paying an amount very much lower than the actual damage or loss sustained by the other.[53]

Along the same vein, Clause 22(a) cannot be upheld. The intention of the parties to make each other a co-assured under an insurance policy is to be gleaned principally from the insurance contract or policy itself and not from any other contract or agreement, because the insurance policy denominates the assured and the beneficiaries of the insurance contract. Undeniably, the hull and machinery insurance procured by WG&A from Pioneer named only the former as the assured. There was no manifest intention on the part of WG&A to constitute KCSI as a co-assured under the policies. To have deemed KCSI as a co-assured under the policies would have had the effect of nullifying any claim of WG&A from Pioneer for any loss or damage caused by the negligence of KCSI. No ship owner would agree to make a ship repairer a co-assured under such insurance policy. Otherwise, any claim for loss or damage under

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[52] *Premiere Development Bank v. Central Surety & Insurance Company, Inc.*, G.R. No. 176246, February 13, 2009.

[53] *Cebu Shipyard and Engineering Works, Inc. v. William Lines, Inc.*, G.R. No. 132607, May 5, 1999, 306 SCRA 762, 781.

the policy would be rendered nugatory. WG&A could not have intended such a result.[54]

Nevertheless, we concur with the position of KCSI that the salvage value of the damaged M/V "Superferry 3" should be taken into account in the grant of any award. It was proven before the CIAC that the machinery and the hull of the vessel were separately sold for ₱25,290,000.00 (or US$468,333.33) and US$363,289.50, respectively. WG&A's claim for the upkeep of the wreck until the same were sold amounts to ₱8,521,737.75 (or US$157,809.96), to be deducted from the proceeds of the sale of the machinery and the hull, for a net recovery of US$673,812.87, or equivalent to ₱30,252,648.09, at ₱44.8977/ $1, the prevailing exchange rate when the Request for Arbitration was filed. Not considering this salvage value in the award would amount to unjust enrichment on the part of Pioneer.

C. On the imposition of interest

Pursuant to our ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals*,[55] the award in favor of Pioneer in the amount of ₱350,146,786.89 should earn interest at 6% *per annum* from the filing of the case until the award becomes final and executory. Thereafter, the rate of interest shall be 12% *per annum* from the date the award becomes final and executory until its full satisfaction.

D. On the payment for the cost of arbitration

It is only fitting that both parties should share in the burden of the cost of arbitration, on a *pro rata* basis. We find that Pioneer had a valid reason to institute a suit against KCSI, as it believed that it was entitled to claim reimbursement of the amount it paid to WG&A. However, we disagree with Pioneer that only KCSI should shoulder the arbitration costs. KCSI cannot be faulted for defending itself for perceived wrongful acts and conditions. Otherwise, we would be putting a price on the right to litigate on the part of Pioneer.

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[54] *Id.* at 780.

[55] G.R. No. 97412, July 12, 1994, 234 SCRA 78.

WHEREFORE, the Petition of Pioneer Insurance and Surety Corporation in G.R. No. 180896-97 and the Petition of Keppel Cebu Shipyard, Inc. in G.R. No. 180880-81 are *PARTIALLY GRANTED* and the Amended Decision dated December 20, 2007 of the Court of Appeals is *MODIFIED*. Accordingly, KCSI is ordered to pay Pioneer the amount of ₱360,000,000.00 less ₱30,252,648.09, equivalent to the salvage value recovered by Pioneer from M/V "Superferry 3," or the net total amount of ₱329,747,351.91, with six percent (6%) interest per annum reckoned from the time the Request for Arbitration was filed until this Decision becomes final and executory, plus twelve percent (12%) interest per annum on the said amount or any balance thereof from the finality of the Decision until the same will have been fully paid. The arbitration costs shall be borne by both parties on a *pro rata* basis. Costs against KCSI.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 184285. September 25, 2009]

RODOLFO "RUDY" CANLAS, VICTORIA CANLAS, FELICIDAD CANLAS and SPOUSES PABLO CANLAS and CHARITO CANLAS, *petitioners, vs.* **ILUMINADA TUBIL,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; THEORIES; A CHANGE OF THEORY CANNOT BE ALLOWED; EXCEPTION; CASE AT BAR. — As a rule, a change of theory cannot be allowed. However, when the factual bases thereof would not require

presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory, as in this case, the Court may give due course to the petition and resolve the principal issues raised therein. The issue to be resolved is which court, the MTC or the RTC has jurisdiction over the subject matter. If it is an unlawful detainer case, the action was properly filed in the MTC. However, if the suit is one for *accion publiciana*, original jurisdiction is with the RTC, which is mandated not to dismiss the appeal but to decide the case on the merits pursuant to Section 8 of Rule 40 of the Rules of Court.

2. ID.; CIVIL PROCEDURE; PLEADINGS; COMPLAINT; THE NATURE OF THE ACTION AND THE COURT WHICH HAS JURISDICTION OVER THE CASE ARE DETERMINED BY THE ALLEGATIONS OF THE COMPLAINT. — Well-settled is the rule that what determines the nature of the action as well as the court which has jurisdiction over the case are the allegations in the complaint. In ejectment cases, the complaint should embody such statement of facts as to bring the party clearly within the class of cases for which the statutes provide a remedy, as these proceedings are summary in nature. The complaint must show enough on its face to give the court jurisdiction without resort to parol evidence.

3. ID.; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; DEFINED. — Unlawful detainer is an action to recover possession of real property from one who illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The possession of the defendant in unlawful detainer is originally legal but became illegal due to the expiration or termination of the right to possess.

4. ID.; ACTIONS; UNLAWFUL DETAINER AND *ACCION PUBLICIANA*, DISTINGUISHED. — An unlawful detainer proceeding is summary in nature, jurisdiction of which lies in the proper municipal trial court or metropolitan trial court. The action must be brought within one year from the date of last demand and the issue in said case is the right to physical possession. On the other hand, *accion publiciana* is the plenary action to recover the right of possession which should be brought in the proper regional trial court when dispossession

has lasted for more than one year. It is an ordinary civil proceeding to determine the better right of possession of realty independently of title. In other words, if at the time of the filing of the complaint, more than one year had elapsed since defendant had turned plaintiff out of possession or defendant's possession had become illegal, the action will be, not one of forcible entry or illegal detainer, but an *accion publiciana*.

5. ID.; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; COMPLAINT FOR UNLAWFUL DETAINER, WHEN SUFFICIENT. — In *Cabrera v. Getaruela*, the Court held that a complaint sufficiently alleges a cause of action for unlawful detainer if it recites the following: "(1) initially, possession of property by the defendant was by contract with **or by tolerance** of the plaintiff; (2)eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession; (3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and (4) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment."

6. ID.; ID.; ID.; ID.; CASE AT BAR. — In the instant case, respondent's allegations in the complaint clearly make a case for an unlawful detainer, essential to confer jurisdiction on the MTC over the subject matter. Respondent alleged that she was the owner of the land as shown by Original Certificate of Title No. 111999 issued by the Register of Deeds of Pampanga; that the land had been declared for taxation purposes and she had been paying the taxes thereon; that petitioners' entry and construction of their houses were tolerated as they are relatives; and that she sent on January 12, 2004 a letter demanding that petitioners vacate the property but they failed and refused to do so. The complaint for unlawful detainer was filed on June 9, 2004, or within one year from the time the last demand to vacate was made. It is settled that as long as these allegations demonstrate a cause of action for unlawful detainer, the court acquires jurisdiction over the subject matter. This principle holds, even if the facts proved during the trial do not support the cause of action thus alleged, in which instance the court — after acquiring jurisdiction — may resolve to dismiss the action for insufficiency of evidence.

7. ID.; ID.; ID.; POSSESSION BY TOLERANCE; RULE. — The rule is that possession by tolerance is lawful, but such possession becomes unlawful upon demand to vacate made by the owner and the possessor by tolerance refuses to comply with such demand.

8. ID.; ID.; ID.; REQUIREMENT THAT THE COMPLAINT SHOULD AVER JURISDICTIONAL FACTS, WHEN APPLICABLE. — The requirement that the complaint should aver jurisdictional facts, like when and how entry on the land was made by the defendants, applies only when at issue is the timeliness of the filing of the complaint before the MTC and not when the jurisdiction of the MTC is assailed as being one for *accion publiciana* cognizable by the RTC. Thus, in *Javelosa v. Court of Appeals*, it was held that: "The ruling in the *Sarona* case cited by petitioner *i.e.*, that a complaint for unlawful detainer should allege when and how entry on the land was made by the defendant, finds no application to the case at bar. In *Sarona*, the main issue was the timeliness of the filing of the complaint before the MTC. In forcible entry cases, the prescriptive period is counted from the date of defendant's actual entry on the land; in unlawful detainer, from the date of the last demand to vacate. **Hence, to determine whether the case was filed on time, there was a necessity to ascertain whether the complaint was one for forcible entry or unlawful detainer. In light of these considerations, the Court ruled that since the main distinction between the two actions is when and how defendant entered the land, the determinative facts should be alleged in the complaint.** Thus, in *Sarona*, the jurisdiction of the MTC over the complaint was never in issue for whether the complaint was one for forcible entry or unlawful detainer, the MTC had jurisdiction over it. The case at bar is different for at issue is the jurisdiction of the MTC over the unlawful detainer case for petitioner (defendant therein) asserts that the case is one for *accion publiciana* cognizable by the RTC." In the instant case, the timeliness of the filing of the complaint is not at issue as the dispossession of the property by the respondent has not lasted for more than one year. Thus, the ruling of the RTC that the length of time she was dispossessed of the property is almost 36 years, which made her cause of action beyond the ambit of unlawful detainer and became one for *accion publiciana*, lacks legal and factual basis.

9. ID.; ID.; ID.; ACTION FOR UNLAWFUL DETAINER, WHEN FILED. — Section 1, Rule 70 of the Rules of Court allows a plaintiff to bring an action in the proper inferior court for unlawful detainer within one year, after such unlawful withholding of possession, counted from the date of the last demand. The records show that respondent sent the demand to vacate the property to the petitioners on January 24, 2004 and filed the complaint for unlawful detainer on June 9, 2004, which is well within the one-year period.

APPEARANCES OF COUNSEL

Surla & Surla Law Office for petitioners.
Vicente A. Macalino for respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

Assailed in this petition for review on *certiorari* is the June 12, 2008 Decision[1] of the Court of Appeals in CA-G.R. SP No. 99736, which reversed the April 11, 2007 Decision[2] of the Regional Trial Court (RTC) of Guagua, Pampanga, Branch 50, in Special Civil Case No. G-06-544, and ordered said Regional Trial Court to decide the case on merits, pursuant to Section 8, par. 2 of Rule 40 of the Rules of Court. The RTC affirmed the Decision[3] of the Municipal Trial Court (MTC) of Guagua, Pampanga, Branch 2, which dismissed Civil Case No. 3582 for unlawful detainer filed by respondent Iluminada Tubil. Also assailed is the September 1, 2008 Resolution[4] of the Court of Appeals which denied the Motion for Reconsideration.

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[1] *Rollo*, pp. 24-27; penned by Associate Justice Isaias Dicdican and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Ramon R. Garcia.

[2] *Id.* at 57-64; penned by Judge Gregorio J. Pimentel, Jr.

[3] *Id.* at 48-56; penned by Judge Eda P. Dizon-Era.

[4] *Id.* at 38-39.

The facts are as follows:

On June 9, 2004, a complaint for unlawful detainer was filed by respondent Iluminada Tubil against petitioners Rodolfo Canlas, Victoria Canlas, Felicidad Canlas and spouses Pablo and Charito Canlas before the MTC. The pertinent allegations read:

x x x x x x x x x

3. That the plaintiff is the owner, together with the other heirs of her late husband Nicolas Tubil who are their children, of a residential land located at San Juan, Betis, Guagua, Pampanga, identified as Cadastral Lot No. 2420, with an area of 332 square meters, covered by Original Certificate of Title No. 11199 of the Registry of Deeds of Pampanga, x x x;

x x x x x x x x x

4. That before the aforesaid parcel of land was titled, it was declared for taxation purposes in the name of plaintiff Iluminada Tubil in the Municipal Assessor's Office of Guagua, Pampanga, x x x;

x x x x x x x x x

6. That sometime ago, the defendants Roldolfo 'Rudy' Canlas, Victoria Canlas and Felicidad Canlas erected a house in the aforesaid land of the plaintiff, which they are presently occupying as their residential house;

7. That likewise sometime ago defendants spouses Pablo Canlas and Charito Canlas erected a house in the aforesaid land of the plaintiff, which they are presently occupying as their residential house;

8. That the said houses of the defendants were erected in the aforesaid land and their stay therein was by mere tolerance of the plaintiff, as well as co-heirs, considering that defendants are plaintiff's relatives;

9. That plaintiff and her co-heirs wish to use and dedicate the aforesaid parcel of land fruitfully, demands were verbally made upon the defendants to vacate and remove their house therefrom, but defendants just ignored the plea of plaintiff and co-heirs, and instead failed and refused to remove the houses without any lawful and justifiable reason;

10. That in light of said refusal, the plaintiff referred the matter to a lawyer, who sent defendants demand letters to vacate dated

January 12, 2004, but inspite of receipt of the same defendants failed and refused to vacate and remove their houses and continue to fail and refuse to do so without lawful justification x x x;

11. That this matter was ventilated with before the *barangay* government for conciliation, mediation, arbitration and settlement prior to the filing of this case with this court, but no settlement was arrived at inspite of the effort exerted by the *barangay* authorities and so a certification to file action was issued by the Pangkat Chairman of Barangay San Juan, Betis, Guagua, Pampanga x x x;[5]

Petitioners filed a motion to dismiss alleging that the MTC is without jurisdiction over the subject matter, and that the case was not prosecuted in the name of the real parties in interest.[6]

On September 14, 2004, the MTC denied the motion because the grounds relied upon were evidentiary in nature which needed to be litigated.[7]

Thus, petitioners filed their answer where they denied the allegations in the complaint. They claimed that together with their predecessors-in-interest, they had been in open, continuous, adverse, public and uninterrupted possession of the land for more than 60 years; that respondent's title which was issued pursuant to Free Patent No. 03540 was dubious, spurious and of unlawful character and nature; and that respondent's cause of action was for an *accion publiciana*, which is beyond the jurisdiction of the MTC.[8]

On October 23, 2006, the MTC rendered judgment dismissing the complaint for unlawful detainer because respondent failed to show that the possession of the petitioners was by mere tolerance.

Respondent appealed to the RTC which rendered its Decision on April 11, 2007 affirming *in toto* the judgment of the MTC.

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[5] *Id.* at 40-43.

[6] Records (1), pp. 34-37.

[7] *Id.* at 70-72.

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

Respondent filed a motion for reconsideration but it was denied in an Order[9] dated June 8, 2007.

Respondent filed a petition for review with the Court of Appeals, which rendered the assailed decision on June 12, 2008, which reversed the Regional Trial Court's Decision, the dispositive portion of which reads:

> WHEREFORE, in view of all the foregoing premises, judgment is hereby rendered by us SETTING ASIDE the decision rendered by Branch 50 of the RTC in Guagua, Pampanga on April 11, 2007 in Special Civil Case No. G-06-544 and ORDERING the said regional trial court branch to decide Special Civil Case No. G-06-544 on the merits based on the entire record of the proceedings had in the Municipal Trial Court of Guagua, Pampanga in Civil Case No. 3582 and such memoranda as are filed therewith, without prejudice to the admission of amended pleadings and additional evidence in the interest of justice, pursuant to par. 2 of Section 8 of Rule 40 of the 1997 Revised Rules of Court.
>
> IT IS SO ORDERED.[10]

Petitioners moved for reconsideration but it was denied by the Court of Appeals in its September 1, 2008 Resolution.[11]

Hence, this petition for review on *certiorari* alleging that:

> x x x THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT SET ASIDE THE DECISION RENDERED BY BRANCH 50 OF THE REGIONAL TRIAL COURT OF GUAGUA, PAMPANGA ON APRIL 11, 2007 IN SPECIAL CIVIL CASE NO. G-06-544 AND IN ORDERING THE SAID COURT TO DECIDE SPECIAL CIVIL CASE NO. G-06-544 ON THE MERITS BASED ON THE ENTIRE RECORD OF THE PROCEEDINGS HAD IN THE MUNICIPAL TRIAL COURT OF GUAGUA, PAMPANGA IN CIVIL CASE NO. 3582, WITHOUT PREJUDICE TO THE ADMISSION OF AMENDED PLEADINGS AND ADDITIONAL EVIDENCE PURSUANT TO PARAGRAPH 2 OF SECTION 8 OF RULE 40 OF THE 1997 RULES OF CIVIL PROCEDURE AS AMENDED, DESPITE THE FACT THAT

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[9] *Id.* at 65-66.

[10] *Id.* at 37.

[11] *Id.* at 39.

BRANCH 50 OF THE REGIONAL TRIAL COURT OF GUAGUA, PAMPANGA DOES NOT HAVE ORIGINAL JURISDICTION OVER THE SUBJECT MATTER OF CIVIL CASE NO. 3582 FILED IN THE MUNICIPAL TRIAL COURT OF GUAGUA, PAMPANGA ON JUNE 9, 2004.[12]

Petitioners contend that the RTC does not have original jurisdiction over the subject matter of the case, thus, it cannot validly decide on the merits, as ordered by the Court of Appeals, pursuant to paragraph 2 of Section 8, Rule 40 of the Rules of Court, which reads:

> SEC. 8. *Appeal from orders dismissing case without trial; lack of jurisdiction.* –
>
> x x x x x x x x x
>
> If the case was tried on the merits by the lower court without jurisdiction over the subject matter, the Regional Trial Court on appeal shall not dismiss the case if it has original jurisdiction thereof, but shall decide the case in accordance with the preceding section, without prejudice to the admission of amended pleadings and additional evidence in the interest of justice.

We note that when petitioners filed their motion to dismiss before the MTC, they claimed that it is the RTC which has jurisdiction over the subject matter. However, in the instant petition for review, petitioners changed their theory; they now claim that it is the MTC, and not the RTC, which has jurisdiction over the subject matter since the dispossession was only for five months counted from respondent's last demand to the filing of the complaint for unlawful detainer before the MTC.

As a rule, a change of theory cannot be allowed.[13] However, when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory,[14] as in

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[12] *Id.* at 8.

[13] *Philippine National Construction Corporation v. Court of Appeals*, G.R. No. 159270, August 22, 2005, 467 SCRA 569, 584.

[14] *Quasha Ancheta Peña and Nolasco Law Office v. LCN Construction Corporation*, G.R. No. 174873, August 26, 2008.

this case, the Court may give due course to the petition and resolve the principal issues raised therein.

The issue to be resolved is which court, the MTC or the RTC has jurisdiction over the subject matter. If it is an unlawful detainer case, the action was properly filed in the MTC. However, if the suit is one for *accion publiciana*, original jurisdiction is with the RTC, which is mandated not to dismiss the appeal but to decide the case on the merits pursuant to Section 8 of Rule 40 of the Rules of Court.

Well-settled is the rule that what determines the nature of the action as well as the court which has jurisdiction over the case are the allegations in the complaint.[15] In ejectment cases, the complaint should embody such statement of facts as to bring the party clearly within the class of cases for which the statutes provide a remedy, as these proceedings are summary in nature. The complaint must show enough on its face to give the court jurisdiction without resort to parol evidence.[16]

Unlawful detainer is an action to recover possession of real property from one who illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The possession of the defendant in unlawful detainer is originally legal but became illegal due to the expiration or termination of the right to possess.[17]

An unlawful detainer proceeding is summary in nature, jurisdiction of which lies in the proper municipal trial court or metropolitan trial court. The action must be brought within one year from the date of last demand and the issue in said case is the right to physical possession.[18]

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[15] *Domalsin v. Valenciano*, G.R. No. 158687, January 25, 2006, 480 SCRA 114, 133.

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

[17] *Valdez v. Court of Appeals*, G.R. No. 132424, May 4, 2006, 489 SCRA 369, 376.

[18] *Id.*

On the other hand, *accion publiciana* is the plenary action to recover the right of possession which should be brought in the proper regional trial court when dispossession has lasted for more than one year. It is an ordinary civil proceeding to determine the better right of possession of realty independently of title. In other words, if at the time of the filing of the complaint, more than one year had elapsed since defendant had turned plaintiff out of possession or defendant's possession had become illegal, the action will be, not one of forcible entry or illegal detainer, but an *accion publiciana*.

In *Cabrera v. Getaruela*,[19] the Court held that a complaint sufficiently alleges a cause of action for unlawful detainer if it recites the following:

(1) initially, possession of property by the defendant was by contract with **or by tolerance** of the plaintiff;

(2) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession;

(3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and

(4) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.

In the instant case, respondent's allegations in the complaint clearly make a case for an unlawful detainer, essential to confer jurisdiction on the MTC over the subject matter. Respondent alleged that she was the owner of the land as shown by Original Certificate of Title No. 111999 issued by the Register of Deeds of Pampanga; that the land had been declared for taxation purposes and she had been paying the taxes thereon; that petitioners' entry and construction of their houses were tolerated as they are relatives; and that she sent on January 12, 2004 a letter demanding that petitioners vacate the property but they failed and refused to do so. The complaint for unlawful detainer

[19] G.R. No. 164213, April 21, 2009.

was filed on June 9, 2004, or within one year from the time the last demand to vacate was made.

It is settled that as long as these allegations demonstrate a cause of action for unlawful detainer, the court acquires jurisdiction over the subject matter. This principle holds, even if the facts proved during the trial do not support the cause of action thus alleged, in which instance the court - after acquiring jurisdiction - may resolve to dismiss the action for insufficiency of evidence.[20]

The ruling cited by the Court of Appeals in *Sarmiento v. Court of Appeals*,[21] *i.e.*, that jurisdictional facts must appear on the face of the complaint for ejectment such that when the complaint fails to faithfully aver facts constitutive of forcible entry or unlawful detainer, as where it does not state how entry was effected, or how and when dispossession started, the remedy should either be an *accion publiciana* or an *accion reinvindicatoria* in the proper regional trial court,[22] finds no application in the instant case. In *Sarmiento*, the complaint did not characterize the entry into the land as legal or illegal. It was also not alleged that dispossession was effected through force, intimidation, threat, strategy or stealth to make out a case of forcible entry, nor was there a contract, express or implied, as would qualify the case as unlawful detainer.[23] Contrarily, the complaint in this case specifically alleged that possession of the petitioners was by tolerance. The rule is that possession by tolerance is lawful, but such possession becomes unlawful upon demand to vacate made by the owner and the possessor by tolerance refuses to comply with such demand.[24] In *Sarmiento*, the claim that possession of the land

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[20] *Habagat Grill v. DMC-Urban Property Developer, Inc.*, 494 Phil. 603, 611 (2005).

[21] G.R. No. 116192, November 16, 1995, 250 SCRA 108.

[22] *Id.* at 117.

[23] *Id.* at 115.

[24] *Heirs of Rafael Magpily v. De Jesus*, G.R. No. 167748, November 8, 2005, 474 SCRA 366, 378.

was by tolerance was a mere afterthought, raised only in subsequent pleadings but not in the complaint.[25]

The requirement that the complaint should aver jurisdictional facts, like when and how entry on the land was made by the defendants, applies only when at issue is the timeliness of the filing of the complaint before the MTC and not when the jurisdiction of the MTC is assailed as being one for *accion publiciana* cognizable by the RTC. Thus, in *Javelosa v. Court of Appeals*,[26] it was held that:

> The ruling in the *Sarona* case cited by petitioner *i.e.*, that a complaint for unlawful detainer should allege when and how entry on the land was made by the defendant, finds no application to the case at bar. In *Sarona*, the main issue was the timeliness of the filing of the complaint before the MTC. In forcible entry cases, the prescriptive period is counted from the date of defendant's actual entry on the land; in unlawful detainer, from the date of the last demand to vacate. **Hence, to determine whether the case was filed on time, there was a necessity to ascertain whether the complaint was one for forcible entry or unlawful detainer. In light of these considerations, the Court ruled that since the main distinction between the two actions is when and how defendant entered the land, the determinative facts should be alleged in the complaint.** Thus, in *Sarona*, the jurisdiction of the MTC over the complaint was never in issue for whether the complaint was one for forcible entry or unlawful detainer, the MTC had jurisdiction over it. The case at bar is different for at issue is the jurisdiction of the MTC over the unlawful detainer case for petitioner (defendant therein) asserts that the case is one for *accion publiciana* cognizable by the RTC.

In the instant case, the timeliness of the filing of the complaint is not at issue as the dispossession of the property by the respondent has not lasted for more than one year. Thus, the ruling of the RTC that the length of time she was dispossessed of the property is almost 36 years, which made her cause of action beyond the ambit of unlawful detainer and became one for *accion publiciana*,[27] lacks legal and factual basis.

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[25] *Supra* note 20 at 115.

[26] 333 Phil. 331, 340 (1996).

[27] *Rollo*, p. 62.

Section 1, Rule 70 of the Rules of Court allows a plaintiff to bring an action in the proper inferior court for unlawful detainer within one year, after such unlawful withholding of possession, counted from the date of the last demand.[28] The records show that respondent sent the demand to vacate the property to the petitioners on January 24, 2004 and filed the complaint for unlawful detainer on June 9, 2004, which is well within the one-year period.

Having ruled that the MTC acquired jurisdiction over Civil Case No. 3582, it thus properly exercised its discretion in dismissing the complaint for unlawful detainer for failure of the respondent to prove tolerance by sufficient evidence. Consquently, Section 8 (2nd par.) of Rule 40 of the Rules of Court which ordains the Regional Trial Court not to dismiss the cases appealed to it from the metropolitan or municipal trial court which tried the same albeit without jurisdiction, but to decide the said case on the merits, finds no application here.

WHEREFORE, the petition is *GRANTED*. The June 12, 2008 Decision of the Court of Appeals in CA-G.R. SP No. 99736 ordering the Regional Trial Court of Guagua, Pampanga, Branch 50 to decide Special Civil Case No. G-06-544, as well as its September 1, 2008 Resolution denying the Motion for Reconsideration, are *REVERSED and SET ASIDE*. The October 23, 2006 Decision of the MTC of Guagua, Pampanga, Branch 2, dismissing the complaint for unlawful detainer for failure of respondent to show that petitioners' possession of the subject property was by mere tolerance is *REINSTATED* and *AFFIRMED*.

SO ORDERED.

Chico-Nazario, Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

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[28] *Heirs of Fernando Vinzons v. Court of Appeals,* 374 Phil. 146, 152 (1999).

EN BANC

[G.R. No. 185001. September 25, 2009]

RONNIE H. LUMAYNA, ROMEO O. CHULANA, HELEN A. BONHAON, PETER G. LAHINA, JR., JUANITO O. LICHNACHAN, JR., SAMMY C. CHANG-AGAN, BONIFACIO L. BAICHON, REYNALDO B. UCHAYAN, JOHN L. MARTIN, AUGUSTA C. PANITO, ROSENDO P. BONGYO, JR., KLARISA MAE C. CHAWANA, *petitioners, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; CASE AT BAR — ISSUE OF WHETHER MOTION FOR RECONSIDERATION IS TIMELY FILED.— On the other hand, petitioners allege that this argument on belated filing is misplaced considering that respondent COA already gave due course to their Motion for Reconsideration, the resolution of which was embodied in its Decision No. 2007-040. At any rate, petitioners argue that their failure to file the Motion for Reconsideration with respondent COA on 28 September 2006 was justified because the government offices in Metro Manila were closed due to typhoon "Feria." Petitioners' contention has merit. Records show that COA gave due course to the Motion for Reconsideration without stating in its Decision No. 2007-040 that it was filed out of time. For this reason, we find that the issue of whether the petitioners timely filed the Motion for Reconsideration has become moot.

2. ID.; ID.; APPEALS; FACTUAL FINDINGS OF ADMINISTRATIVE BODIES CHARGED WITH THEIR SPECIFIC FIELD OF EXPERTISE ARE AFFORDED GREAT WEIGHT BY THE COURTS.— At the outset, it must be stressed that factual findings of administrative bodies charged with their specific field of expertise are afforded great weight by the courts, and in the absence of substantial showing that such findings were made from an erroneous estimation of the evidence presented, they are conclusive, and in the interest of stability of the governmental structure, should not be disturbed.

3. POLITICAL LAW; PUBLIC OFFICERS; MISTAKES; NOT ACTIONABLE ABSENT A CLEAR SHOWING OF MALICE OR GROSS NEGLIGENCE AMOUNTING TO BAD FAITH.— Under prevailing jurisprudence, mistakes committed by a public officer are not actionable, absent a clear showing that he was motivated by malice or gross negligence amounting to bad faith. It does not simply connote bad moral judgment or negligence. Rather, there must be some dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a sworn duty through some motive or intent, or ill will. It partakes of the nature of fraud and contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill will for ulterior purposes.

APPEARANCES OF COUNSEL

Edmond M. Kindipan for petitioners.
The Solicitor General for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Assailed in this Petition for *Certiorari* under Rule 64 in relation to Rule 65 of the Rules of Court is the Decision No. 2005-071[1] dated 29 December 2005 of the Commission on Audit (COA) affirming the Notice of Disallowance[2] of the 5% salary increase of the municipal personnel of the Municipality of Mayoyao, Ifugao covering the period 15 February to 30 September 2002, in the amount of ₱895,891.50, and requiring petitioners to refund the same. Also assailed is the COA Decision No. 2007-040[3] dated 25 October 2007 denying the Motion for Reconsideration.

On 15 June 2001, the Department of Budget and Management (DBM) issued Local Budget Circular No. 74[4] (LBC No. 74),

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[1] *Rollo*, pp. 24-27.

[2] Annex "K", *id.* at 54.

[3] *Id.* at 28-32.

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

authorizing the grant of a maximum of 5% salary adjustment to personnel in the Local Government Units (LGUs) effective 1 July 2001, pursuant to Republic Act No. 9137[5] dated 8 June 2001.

On 13 May 2002, the *Sangguniang Bayan* of Mayoyao, Ifugao, (*Sangguniang Bayan*) enacted Resolution No. 41, s. 2002,[6] approving the 2002 Annual Municipal Budget, and appropriating the amount of ₱1,590,376.00 thereof for the salaries and benefits of 17 newly created positions in the municipality.[7] Upon review by the *Sangguniang Panlalawigan* of the Province of Ifugao (*Sangguniang Panlalawigan*), the 2002 Annual Municipal Budget of Mayoyao, Ifugao was declared operative subject to the conditions that the creation of 17 new positions shall in no case be made retroactive and that the filling up of such positions be made strictly in accordance with the Civil Service rules and regulations.[8]

On 8 July 2002, the *Sangguniang Bayan* approved Resolution No. 66, s. 2002, adopting a first class salary scheme for the municipality and implementing a 5% salary increase for its personnel in accordance with LBC No. 74.[9] For this purpose, it enacted Resolution No. 94, s. 2002, re-aligning the amount of ₱1,936,524.96[10] from the 2002 municipal budget originally appropriated for the salaries and benefits of the 17 new positions.[11]

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[5] An Act Appropriating The Sum of Ten Billion Nine Hundred Million Pesos (₱10,900,000,000.00) As Supplemental Appropriation For FY 2001 And For Other Purposes.

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

[7] *Id.* at 38-39.

[8] See Resolution No. 2002-556; *id.* at 40.

[9] *Id.* at 41.

[10] This includes the ₱1,590,376.00 appropriated for the 17 newly created positions and 5% salary increase of all officials and employees of the Municipality of Mayoyao, Ifugao.

[11] *Rollo,* p. 42.

On 12 July 2002, DBM issued Local Budget Circular No. 75[12] (LBC No. 75) providing guidelines on personal services limitation, pursuant to Section 325(a) of the Local Government Code of 1991 (LGC).

On 16 December 2002, the *Sangguniang Bayan* through Resolution No. 144, s. 2002, approved the 2003 Annual Municipal Budget stated in Appropriation Ordinance No. 03.[13] This was reviewed by the *Sangguniang Panlalawigan* and approved on 10 February 2003 *via* Resolution No. 2003-808.[14] The *Sangguniang Panlalawigan*, however, disallowed the 5% salary increase and the re-alignment of funds pursuant to Resolution No. 94, s. 2002, of the *Sangguniang Bayan* on the ground that the re-alignment is not sufficient in form to implement a salary increase.

On 9 June 2003, the *Sangguniang Bayan* enacted Resolution No. 73, s. 2003,[15] earnestly requesting the *Sangguniang Panlalawigan* to reconsider its Resolution.[16] Finding good faith on the part of the officials of the municipality, the *Sangguniang Panlalawigan* in its Resolution No. 2004-1185 reconsidered its earlier position. Thus, the *Sangguniang Panlalawigan* allowed the adoption of a first class salary schedule and the 5% salary increase of the Municipality of Mayoyao, Ifugao.

Meanwhile, the Regional Legal and Adjudication Office (RLAO) of the COA-Cordillera Administrative Region (COA-CAR) issued a Notice of Disallowance dated 16 May 2003 of the amount of ₱895,891.50, representing payments for salary increases of municipal personnel, for the period 15 February - 30 September 2002. According to COA-CAR, the grant of the increase was not in accordance with Sections 325 and 326 of the LGC; that the limitation on personal services had been

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[12] *Id.* at 43-48.

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

[14] *Id.* at 51-53.

[15] *Id.* at 62-63.

[16] *Id.* at 55-61.

exceeded; and that the *Sangguniang Bayan* resolution was not the appropriate manner of granting the increase. Pursuant thereto, the following persons, petitioners herein, were ordered to refund the said amount:

Helen A. Bonhain – Budget Officer
Peter G. Lahina, Jr. – Municipal Accountant
Ronnie H. Lumayna – Municipal Mayor

Romeo O. Chulana
Juanito O. Lichnachan, Jr.
Sammy C. Chang-agan
Bonifacio L. Baichon
Reynaldo B. Uchayan
John L. Martin
Augusta C. Panitio
Rosendo P. Bongyo, Jr.
Klarisa Mae C. Chawana
} SB Members who approved Resolution No. 94, s. 2002

Petitioners requested a reconsideration, which was denied on 5 August 2003 by the RLAO-COA-CAR.[17] Thus, petitioners filed a Notice of Appeal before the Director, LAO-Local of COA but it was denied on 10 November 2003 in Decision No. 2003-104.

Hence, petitioners filed a Petition for Review before respondent COA assailing LAO-Local Decision No. 2003-104.

On 29 December 2005, the COA rendered the herein assailed Decision No. 2005-071[18] denying the petition for lack of merit, and affirming the disallowance in the amount of ₱895,891.50. The COA held thus:

After a careful evaluation, this Commission answers in the negative subject to the extended discussions hereunder.

Anent the first assignment of error, the same has been judiciously passed upon in LAO-Local Decision No. 2003-104. While the

[17] *Id.* at 25.

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

Municipality of Mayoyao may grant salary increases pursuant to LBC No. 74, such grant should comply with the limitations provided by law, specifically Section 325 (a) of R.A. No. 7160. There is no doubt that in the grant of the 5% salary increase to the officials and employees of the Municipality of Mayoyao, the limitation for PS in the annual budget of said Municipality had been exceeded. In fact, in a recomputation made Ms. Virginia B. Farro, Provincial Budget Officer of Ifugao, as embodied in her letter dated July 04, 2003, it was revealed that the Annual Budget of the Municipality exceeded the PS limit by ₱3,944,568.05. Furthermore, Mr. Julian L. Pacificador, Jr., Regional Director, DBM-CAR, in his letter dated December 3, 3003 (sic) asserted that the grant of the increase through the adoption of higher salary class schedule is not included in the list of items and activities whereby PS limitation may be waived under LBC No. 75. It must also be noted that the Municipality's budget adopted the salary rates under LBC No. 69 and not the salary rates under LBC No. 74.

Anent the second assignment of error, the same will not suffice to over-turn the other grounds for the audit disallowance. The fact remains that the grant of the 5% salary increase contravened the limitation of the law as explicitly provided under item (a) of Section 325 of R.A. No. 7160.

Anent the third assignment of error, while the Sangggunian Panlalawigan of Ifugao, in its resolution No. 2002-556, has declared operative the 2002 Annual Budget of Mayoyao, the review of said Sanggunian was only limited to the provisions stated in the said budget which contained, among others, provisions for the funding of the 17 newly created positions and not the salary increases. Thus, the declaration of the Sangguniang Panlalawigan of Ifugao that the 2002 annual budget was operative did not include the grant of the 5% salary increase because the same was not actually contained in the said budget but in SB Resolution No. 66, series of 2002.

Anent the 4th assignment of error, the disallowance is not based solely on the results of the favorable review of the Sangguniang Panlalawigan of Ifugao since there are other grounds which would justify and uphold the disallowance.[19]

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[19] *Id.* at 26-27.

Petitioners filed a Motion for Reconsideration but it was denied by respondent COA on 25 October 2007 in its Decision No. 2007-040.[20]

Hence, this petition[21] under Rule 64 of the Rules of Court raising the following issues:

1. RESOLUTION NO. 66, S. 2002 ADOPTING A 5% INCREASE IN THE SALARY OF THE PERSONNEL OF LGU MAYOYAO PURSUANT TO DBM LBC 74, AND RESOLUTION NO. 94, S. 2002 PROVIDING THE FUND TO IMPLEMENT THE FORMER ARE VALID EXERCISES OF LOCAL LEGISLATIVE PREROGATIVE BY THE SANGGUNIANG BAYAN OF MAYOYAO, IFUGAO. THERE IS SUFFICIENT PROOF THAT THE BUDGET OF THE MUNICIPALITY OF MAYOYAO FOR 2002 DID NOT EXCEED THE PS LIMITATIONS FOR THAT PARTICULAR YEAR. IN THE SAME MANNER, THE REALIGNMENT OF FUNDS PURSUANT TO RESOLUTION NO. 94, S. 2002 DID NOT CREATE ANY INCREASE IN THE PERSONAL SERVICES ALLOCATION OF THE AFORESAID MUNICIPALITY FOR THAT PARTICULAR YEAR BECAUSE THE REALIGNMENT PERTAINS TO A REALIGNMENT OF AN EXISTING PERSONAL SERVICES FUND PARTICULARLY THE AMOUNT ORIGINALLY INTENDED FOR THE SEVENTEEN POSITIONS WHICH WERE VACATED AND/OR ABOLISHED, TO FUND THE SALARY INCREASE WHICH IN ITSELF IS A PERSONAL SERVICE EXPENDITURE. THE HONORABLE COMMISSION ON AUDIT, THEREFORE, GRAVELY ABUSED ITS DISCRETION WHEN IT HELD THAT THE REALIGNMENT PURSUANT TO RESOLUTION NO. 94, S. 2002 CAUSED THE LGU OF MAYOYAO TO EXCEED THE PS LIMITATIONS FOR 2002 AS PRESCRIBED BY LAW AND CONSEQUENTLY DECLARING AS INVALID RESOLUTION NO. 66 S. 2002 OF THE SANGGUNIANG BAYAN OF MAYOYAO, IFUGAO.
2. THE PERSONAL SERVICES ALLOCATION FOR THE MUNICIPALITY OF MAYOYAO, IFUGAO FOR FY 2002 WAS COMPUTED IN ACCORDANCE WITH DBM LBC 74 IN RELATION TO DBM LBC 69 WHICH WERE THE CIRCULARS IN EFFECT AT THE TIME THE BUDGET OF THE LGU FOR

[20] *Id.* at 28-32.

[21] *Id.* at 3-63, with Annexes.

FY 2002 WAS REVIEWED, APPROVED AND DECLARED OPERATIVE BY THE SANGGUNIANG PANLALAWIGAN OF THE PROVINCE OF IFUGAO THROUGH RESOLUTION NO. 2002-556. SOON THEREAFTER DBM LBC 75 WAS ISSUED WITH A CLEAR EFFECTIVITY CLAUSE EXEMPTING FROM ITS OPERATION BUDGETS WHICH HAVE ALREADY BEEN REVIEWED PRIOR TO ITS ISSUANCE. NOTICE OF DISALLOWANCE (ND) NO. 03-006 DATED MAY 16, 2003 IS PREMISED ON A RECOMPUTATION OF THE ALLOWABLE PS LIMITATION OF THE LGU BASED ON RATES STATED IN DBM LBC 75 CONTRARY TO THE CLEAR LANGUAGE OF ITS EFFECTIVITY CLAUSE. THE HONORABLE COMMISSION, THEREFORE, GRAVELY ABUSED ITS DISCRETION WHEN IT UPHELD THE NOTICE OF DISALLOWANCE (ND) NO. 03-007 WHICH DIRECTED THE HEREIN PETITIONERS TO REFUND THE AMOUNT DISALLOWED THEREIN.

3. PUBLIC OFFICERS ENJOY THE PRESUMPTION OF REGULARITY OF PERFORMANCE OF OFFICIAL FUNCTIONS AND DUTIES. FOR THIS REASON AND MORE, THE HONORABLE SUPREME COURT UPHELD CERTAIN NOTICES OF DISALLOWANCE ISSUED BY THE HONORABLE COMMISSION TO CERTAIN GOVERNMENT AGENCIES BUT DECLINED TO LET THE PERSONS LIABLE THEREFORE TO REFUND THE AMOUNT DISALLOWED ON THE GROUND OF GOOD FAITH. IN RESOLUTION NO. 2004-1185 OF THE SANGGUNIANG PANLALAWIGAN OF IFUGAO RECOGNIZED THE GOOD FAITH OF LGU MAYOYAO AND THE NOBLE INTENTIONS OF THE OFFICERS THEREOF TO GIVE THE EMPLOYEES A DECENT PAY. THE HONORABLE COMMISSION ON AUDIT, THEREFORE GRAVELY ABUSED ITS DISCRETION, WHEN IT FAILED TO CONSIDER THE GOOD FAITH OF THE OFFICERS WHO APPROVED THE QUESTIONED RESOLUTIONS AND DEMANDED THE REFUND BY HEREIN PETITIONERS OF THE WHOLE AMOUNT DISALLOWED THEREIN EVEN IF THE SAID AMOUNTS WERE ALREADY RECEIVED BY THE EMPLOYEES.[22]

The foregoing boils down to the core issue of whether the COA committed grave abuse of discretion in affirming the disallowance of the amount of ₱895,891.50, representing the

[22] *Id.* at 13-14.

5% salary increase of the personnel of the municipality of Mayoyao for the period 15 February to 30 September 2002, and in ordering petitioners to refund the same.

We first dispense with the procedural issue of whether the petition was timely filed.

Respondent, through the Office of the Solicitor General, argues that the petition should be dismissed outright for being filed beyond the reglementary period to appeal.[23] Respondent maintains that since petitioners received a copy of Decision No. 2005-071 on 29 August 2006, they only had 30 days or until 28 September 2006 within which to file a Motion for Reconsideration or a Petition for Review on *Certiorari* with the Supreme Court. As the Motion for Reconsideration was filed only on 2 October 2006, the COA Decision No. 2005-71 already attained finality.[24]

On the other hand, petitioners allege that this argument on belated filing is misplaced considering that respondent COA already gave due course to their Motion for Reconsideration, the resolution of which was embodied in its Decision No. 2007-040. At any rate, petitioners argue that their failure to file the Motion for Reconsideration with respondent COA on 28 September 2006 was justified because the government offices in Metro Manila were closed due to typhoon "Feria."[25]

Petitioners' contention has merit. Records show that COA gave due course to the Motion for Reconsideration without

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[23] Section 3, Rule 64 of the Rules of Court provides:

Time to file petition. — The petition shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial.

[24] *Rollo*, pp. 78-81.

[25] *Id.* at 91-93.

stating in its Decision No. 2007-040[26] that it was filed out of time. For this reason, we find that the issue of whether the petitioners timely filed the Motion for Reconsideration has become moot.

Going now to the merits of the case, petitioners contend that Resolution Nos. 66 and 94, s. 2002, are valid exercise of legislative prerogative in accordance with DBM LBC No. 74, which gave them the authority to grant a maximum of 5% salary adjustment to personnel in the LGU effective 1 July 2001. Petitioners cite as basis Resolution No. 2002-556 of the *Sangguniang Panlalawigan* which declared as operative the 2002 Annual Budget of the Municipality of Mayoyao, Ifugao on 10 June 2002.

Petitioners also claim that the amount allocated in the 2002 municipal budget for personal services is within the allowable limits prescribed by law. In declaring that the municipality exceeded the personal services limitation set by law, respondent COA based its finding on a computation using the rates prescribed in LBC No. 75, and not LBC No. 74, in relation to LBC No. 69, on which the municipality based its computation. Petitioners further explain that when the municipality enacted Resolution No. 94, s. 2002, re-aligning the amount appropriated for the 17 newly created positions to the 5% salary increase of the municipal personnel, it did so with the understanding that the 17 newly created positions were vacated and/or abolished. Thus, the re-alignment of the aforesaid amount was done without decreasing the whole amount originally earmarked for personal services.

Claiming good faith, petitioners insist that Resolution No. 66, s. 2002 was enacted on 2 July 2002, while LBC No. 75 was issued by DBM on 12 July 2002 and was received by them at a much later date; that Notice of Disallowance No. 03-006 was issued only on 16 May 2003, after the municipality had already implemented the 5% salary increase pursuant to Resolution Nos. 66 and 94, s. 2002; and that the *Sangguniang Panlalawigan* recognized the good faith of the municipality

[26] *Id.* at 28-32.

when it enacted Resolution No. 2004-1185 where it reconsidered its earlier Resolution No. 2003-808.

We PARTIALLY GRANT the petition.

The COA disallowed the amount of ₱895,891.50 on the ground that the 5% salary increase exceeded the total allowable appropriations of the municipality for personal services provided by law, specifically Section 325(a)[27] of the LGC. It based its finding on the recomputation made by Ms. Virginia B. Farro, Provincial Budget Officer of Ifugao, which showed that the Annual Budget of the municipality exceeded the personal services limit by ₱3,944,568.05.[28] According to the COA, the municipality's budget adopted the salary rates under LBC No. 69 instead of the salary rates prescribed under LBC No. 74 which is the applicable circular in this case.[29]

As regards petitioners' reliance on Resolution No. 2002-556 of the *Sangguniang Panlalawigan*, the COA in its Decision No. 2005-071 made it clear that the review of the 2002 municipal budget by the *Sangguniang Panlalawigan* was only limited to the provisions stated in the said budget which contained, among others, provisions for the funding of the 17 newly created

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[27] Section 325(a) of the Local Government Code, provides:

General Limitations. – The use of the provincial, city, and municipal funds shall be subject to the following limitations:

(a) The total appropriations, whether annual or supplemental, for personal services of a local government unit for one (1) fiscal year shall not exceed forty-five percent (45%) in the case of the first to third class provinces, cities, and municipalities, and fifty-five percent (55%) in the case of fourth class or lower, of the total annual income from regular sources realized in the next preceding fiscal year. The appropriations for salaries, wages, representation and transportation allowances of officials and employees of the public utilities and economic enterprises owned, operated, and maintained by the local government unit concerned shall not be included in the annual budget or in the computation of the maximum amount of personal services. The appropriations for the personal services of such economic enterprises shall be charged to their respective budgets.

[28] *Rollo*, p. 26.

[29] *Id.* at 31.

positions, and not its re-alignment to the 5% salary increase. Consequently, the declaration by the *Sangguniang Panlalawigan* in the said Resolution that the 2002 municipal budget was operative did not include the grant of the 5% salary increase, as the same was not contained in the said budget but in Resolution No. 66, s. 2002.[30]

We find that the COA correctly affirmed the disallowance of the amount of ₱895,891.50.

At the outset, it must be stressed that factual findings of administrative bodies charged with their specific field of expertise, are afforded great weight by the courts, and in the absence of substantial showing that such findings were made from an erroneous estimation of the evidence presented, they are conclusive, and in the interest of stability of the governmental structure, should not be disturbed.[31]

In this case, the assailed Decisions of the COA clearly presented the factual findings and adequately explained the legal basis for disallowing the said amount. Indeed, as computed by Ms. Virginia Farro, the Provincial Budget Officer of Ifugao, the annual budget of Mayoyao for 2002 exceeded the limit for personal services as prescribed in Section 325(a) of the LGC by ₱3,944,568.05. Further, it was established that the grant of the increase through the adoption of higher salary class schedule is not among the list of items and activities whereby the limitation for personal services may be waived pursuant to LBC No. 75. Finally, the municipality adopted the salary rates under LBC No. 69 and not the salary rates under LBC No. 74. No grave abuse of discretion amounting to lack or excess of jurisdiction can thus be attributed to respondent COA. Grave abuse of discretion exists where an act of a court or tribunal is performed with a capricious or whimsical exercise of judgment equivalent to lack of jurisdiction, or where the power is exercised in an arbitrary or despotic manner by reason of passion or personal

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[30] *Id.* at 27.

[31] *Ocampo v. Commission on Elections*, G.R. Nos. 136282 &137470, February 15, 2000, 325 SCRA 636, 645.

hostility which must be so patent and gross as to amount to an invasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law — mere abuse of discretion is not enough.[32]

However, we find that petitioners should not be ordered to refund the disallowed amount because they acted in good faith.

In *Abanilla v. Commission on Audit*,[33] the Board of Directors of the Metropolitan Cebu Water District (MCWD) issued several resolutions giving benefits and privileges to its personnel which included hospitalization privileges, monetization of leave credits, Christmas bonus, and longevity allowance. MCWD likewise entered into a collective bargaining agreement (CBA) with the employees' union providing for benefits, such as cash advances, 13th month pay, mid-year bonus, Christmas bonus, vacation and leave credits, hospitalization, medicare, uniform privileges and water allowance.

However, the COA disallowed the amount of ₱12,221,120.86 representing hospitalization benefits, mid-year bonus, 13th month pay, Christmas bonus and longevity pay on the ground that the compensation package of MCWD personnel may no longer be subject of a CBA, as its officers and employees were covered by the Civil Service laws, and not by the Labor Code.

On petition for *certiorari* before this Court, the disallowance by COA was sustained; however, the MCWD personnel who received those benefits were no longer required to refund the same. The Court held, thus:

> While we sustain the disallowance of the above benefits by respondent COA, however, we find that the MCWD *affected personnel who received the above mentioned benefits and privileges acted in good faith under the honest belief that the CBA authorized such payment. Consequently, they need not refund them.*

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[32] *VMC Rural Electric Service Cooperative, Inc. v. Court of Appeals*, G.R. No. 153144, October 16, 2006, 504 SCRA 336, 350.

[33] G.R. No. 142347, August 25, 2005, 468 SCRA 87.

In *Querubin vs. Regional Cluster Director, Legal and Adjudication Office, COA Regional Office VI, Pavia, Iloilo City*, citing, *De Jesus vs. Commission on Audit*, this Court held:

> "Considering, however, that all the parties here acted in good faith, we cannot countenance the refund of subject incentive benefits for the year 1992, which amounts the petitioners have already received. Indeed, no *indicia* of bad faith can be detected under the attendant facts and circumstances. The officials and chiefs of offices concerned disbursed such incentive benefits in the honest belief that the amounts given were due to the recipients and the latter accept the same with gratitude, confident that they richly deserve such benefits.
>
> x x x. Petitioners here received the additional allowances and bonuses in good faith under the honest belief that the LWUA Board Resolution No. 313 authorized such payment. At the time petitioners received the additional allowances and bonuses, the Court had not yet decided *Baybay Water District*. Petitioners had no knowledge that such payment was without legal basis. **Thus, being in good faith, petitioners need not refund the allowances and bonuses they received but disallowed by the COA.**"[34]

In *Blaquera v. Alcala*,[35] petitioners who were officials and employees of several government agencies were paid productivity incentive benefits for the year 1992 pursuant to Executive Order No. 292, otherwise known as the Administrative Code of 1987. On 19 January 1993, then President Fidel V. Ramos issued Administrative Order No. 29 limiting the grant of productivity incentive benefits for the year 1992 in the maximum amount of ₱1,000.00 and enjoining the grant of said benefit without prior approval of the President.

Consequently, all agencies that authorized the payment of productivity incentive benefits for the year 1992 in excess of ₱1,000.00 were directed to immediately cause the return/refund of the excess amount. Thus, respondents therein caused the

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

[35] G.R. Nos. 109406, 110642, 111494, 112056 & 119597, September 11, 1998, 295 SCRA 366.

deduction, from petitioners' salaries or allowances, of the amounts needed to cover the alleged overpayments.

On petition before the Court, it was held that Administrative Order No. 29 limiting the amount of incentive benefits and enjoining heads of government agencies from granting incentive benefits without prior approval of the President, was a valid exercise of the President's power of control and authority over executive departments. As regards petitioners' contention that respondents should be held personally liable for the refund in question, the Court held, thus:

> Untenable is petitioners' contention that the herein respondents be held personally responsible for the refund in question. Absent a showing of bad faith or malice, public officers are not personally liable for damages resulting from the performance of official duties.
>
> Every public official is entitled to the presumption of good faith in the discharge of official duties. Absent any showing of bad faith and malice, there is likewise a presumption of regularity in the performance of official duties.
>
> In upholding the constitutionality of AO 268 and AO 29, the Court reiterates the well-entrenched doctrine that "in interpreting statutes, that which will avoid a finding of unconstitutionality is to be preferred."
>
> Considering, however, that all the parties here acted in good faith, we cannot countenance the refund of subject incentive benefits for the year 1992, which amounts the petitioners have already received. Indeed, no *indicia* of bad faith can be detected under the attendant facts and circumstances. The officials and chiefs of offices concerned disbursed such incentive benefits in the honest belief that the amounts given were due to the recipients and the latter accepted the same with gratitude, confident that they richly deserve such benefits.[36]

This ruling has been consistently applied in several cases.[37]

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[36] *Id.* at 447-448.

[37] *De Jesus v. Commission on Audit*, G.R. No. 149154, 40, June 10, 2003, 403 SCRA 666; *Querubin v. Regional Cluster Director, Legal and Adjudication Office, COA Regional Office VI, Pavia, Iloilo City*, G.R. No. 159299, July 7, 2004, 433 SCRA 769; *Kapisanan ng mga Manggagawa*

In the instant case, although the 5% salary increase exceeded the limitation for appropriations for personal services in the Municipality of Mayoyao, this alone is insufficient to overthrow the presumption of good faith in favor of petitioners as municipal officials. It must be mentioned that the disbursement of the 5% salary increase of municipal personnel was done under the color and by virtue of resolutions enacted pursuant to LBC No. 74, and was made only after the *Sangguniang Panlalawigan* declared operative the 2002 municipal budget. In fact, the Notice of Disallowance was issued only on 16 May 2003, after the municipality had already implemented the salary increase. Moreover, in its Resolution No. 2004-1185,[38] the *Sangguniang Panlalawigan* reconsidered its prior disallowance of the adoption of a first class salary schedule and 5% salary increase of the Municipality of Mayoyao based on its finding that the municipal officials concerned acted in good faith, thus:

> WHEREAS, the Sangguniang Bayan of Mayoyao however justified that their realignment of the amount of Php 1,936,524.96 and the adoption of a first class salary was done in good faith and with the purpose of giving decent pay to officials and employees of the said Municipality considering the high cost of living;
>
> WHEREAS, this Body finding merit on the justification of the said Municipality hereby reconsiders its earlier stand on the disallowed adoption of a first class salary schedule and the 5% salary increase of the Municipality of Mayoyao, Ifugao;
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> x x x x x x x x x.[39]

Furthermore, granting *arguendo* that the municipality's budget adopted the incorrect salary rates, this error or mistake was

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sa Government Service Insurance System (KMG) v. Commission on Audit, G.R. No. 150769, August 31, 2004, 437 SCRA 371; *Home Development Mutual Fund v. Commission on Audit*, G.R. No. 157001, October 19, 2004, 440 SCRA 643; *Philippine Ports Authority v. Commission on Audit*, G.R. No. 159200, February 16, 2006, 482 SCRA 490; and *Barbo v Commission on Audit*, G.R. No. 157542, October 10, 2008.

[38] *Id.* at 62-63.

[39] *Id.* at 63.

not in any way indicative of bad faith. Under prevailing jurisprudence, mistakes committed by a public officer are not actionable, absent a clear showing that he was motivated by malice or gross negligence amounting to bad faith. It does not simply connote bad moral judgment or negligence. Rather, there must be some dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a sworn duty through some motive or intent, or ill will. It partakes of the nature of fraud and contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill will for ulterior purposes.[40] As we see it, the disbursement of the 5% salary increase was done in good faith. Accordingly, petitioners need not refund the disallowed disbursement in the amount of ₱895,891.50.

WHEREFORE, the instant Petition is *PARTIALLY GRANTED*. The Decision of the Commission on Audit No. 2005-071 dated 29 December 2005 and its Decision No. 2007-040 dated 25 October 2007 affirming the disallowance of the 5% salary increase of the municipal personnel of Mayoyao, Ifugao, covering the period 15 February to 30 September 2002 in the amount of ₱895,891.50, are *AFFIRMED* with *MODIFICATION* that petitioners need not refund the said disallowed amount of ₱895,891.50.

SO ORDERED.

Ynares-Santiago,[*] *Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, Peralta, Bersamin,* and *Abad, JJ.,* concur.

Puno, C.J., Quisumbing, and *Carpio, JJ.,* on official leave.

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[40] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, G.R. No. 145184, March 14, 2008, 548 SCRA 295.

[*] Acting Chief Justice per Special Order No. 706 dated September 17, 2009.

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— Courts have the general power to issue orders conformable to law and justice and to adopt means necessary to carry its jurisdiction into effect. *(Id.)*

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— The decision on whether to proceed with the conversion or defer action thereon until final adjudication of the issue of ownership over the sequestered shares pertains to the executive branch through the PCGG. *(Id.)*

— The loss of voting rights in the San Miguel Corporation through the conversion has no significant effect on PCGG's function to recover ill-gotten wealth or prevent dissipation of sequestered assets. *(Id.)*

— The PCGG does not exercise acts of ownership over sequestered assets but it may seek the approval of the proper court for the sale of the said assets. *(Id.)*

— The PCGG's approval of the conversion is a policy decision that cannot be interfered with in the absence of grave abuse of discretion. *(Id.)*

— The Republic, represented by the PCGG, surrenders its final arsenal in combating the maneuverings to frustrate the recovery of ill-gotten wealth once the conversion of the sequestered San Miguel Corporation common shares is accomplished. *(Id.)*

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Recovery of — Proper only when some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty. (People *vs*. Ocampo, G.R. No. 177753, Sept. 25, 2009) p. 839

TREACHERY

As an aggravating circumstance — Not negated by appellant's alleged psychosis in case at bar. (People *vs*. Ocampo, G.R. No. 177753, Sept. 25, 2009) p. 839

UNLAWFUL DETAINER

Complaint for — Distinguished from accion publiciana. (Canlas *vs*. Tubil, G.R. No. 184285, Sept. 25, 2009) p. 915

— Necessary allegations of the complaint, discussed. (Sps. Lydia Flores-Cruz and Reynaldo Cruz *vs*. Sps. Goli-Cruz, G.R. No. 172217, Sept. 18, 2009) p. 519

— When sufficient. (Canlas *vs*. Tubil, G.R. No. 184285, Sept. 25, 2009) p. 915

Definition — Discussed. (Canlas *vs*. Tubil, G.R. No. 184285, Sept. 25, 2009) p. 915

VAGRANCY

Nature — Considered a public order crime. (People *vs*. Siton, G.R. No. 169364, Sept. 18, 2009) p. 449

Public order law — Elucidated. (People *vs*. Siton, G.R. No. 169364, Sept. 18, 2009) p. 449

Vagrants — Defined. (People *vs*. Siton, G.R. No. 169364, Sept. 18, 2009) p. 449

VOID FOR VAGUENESS DOCTRINE

Concept — Explained; applicable to criminal statutes in appropriate cases. (People *vs*. Siton, G.R. No. 169364, Sept. 18, 2009) p. 449

WATER DISTRICTS

Board of Directors — Not entitled to the grant of compensation other than the payment of per diems. (Catindig *vs*. People, G.R. No. 183141, Sept. 18, 2009) p. 718

WITNESSES

Credibility of — 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. (Dizon *vs*. People, G.R. No. 170342, Sept. 18, 2009) p. 498

— Findings of trial court generally deserve great respect and are accorded finality; exceptions. (People *vs*. Ocampo, G.R. No. 177753, Sept. 25, 2009) p. 839

— 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. (People *vs*. Guiara, G.R. No. 186497, Sept. 17, 2009) p. 290

(People *vs*. Oliva, G.R. No. 187043, Sept. 18, 2009) p. 786

— Inconsistencies in the testimonies of prosecution witnesses with respect to minor details and collateral matters do not affect the substance of their declarations, their veracity, or the weight of their testimonies. (People *vs*. Sibunga, G.R. No. 179475, Sept. 25, 2009) p. 854

— Not adversely affected by the delay in reporting the rape incident due to threats of physical violence. (People *vs*. Cabiles, G.R. No. 181629, Sept. 18, 2009) p. 701

— Youth and immaturity are generally badges of truth and sincerity in rape cases. (People *vs*. Oliva, G.R. No. 187043, Sept. 18, 2009) p. 786

Ill-motive — Becomes inconsequential if there is an affirmative and credible declaration from the rape victim which clearly establishes the liability of the accused. (Dizon *vs*. People, G.R. No. 170342, Sept. 18, 2009) p. 498

— When not established. (People *vs*. Domingo, G.R. No. 184958, Sept. 17, 2009) p. 261

Testimony of — In rape cases, the testimony of the complainant must be considered and calibrated in its entirety, not in its truncated portion or isolated passages thereof. (Dizon *vs*. People, G.R. No. 170342, Sept. 18, 2009) p. 498

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