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FROM

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.M. No. P-09-2670. October 16, 2009]
(Formerly A.M. OCA IPI No. 09-3051-P)

OFFICE OF THE ADMINISTRATIVE SERVICES (OAS) — OFFICE OF THE COURT ADMINISTRATOR (OCA), *complainant, vs.* **RODRIGO C. CALACAL, Utility Worker I, Municipal Circuit Trial Court (MCTC), Alfonso Lista-Aguinaldo, Ifugao,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; OFFICE OF THE COURT ADMINISTRATOR CIRCULAR NO. 49-2003; PENALTY FOR LEAVING THE COUNTRY WITHOUT TRAVEL AUTHORITY; UNAWARENESS OF THE CIRCULAR IS NOT AN EXCUSE FOR NON-COMPLIANCE THEREWITH.— OCA Circular No. 49-2003 (B) (4), which has been effective since May 20, 2003, reads: 4. Judges and personnel who shall leave the country without travel authority issued by the Office of the Court Administrator shall be subject to disciplinary action. Unawareness of the circular is not an excuse for non-compliance therewith, violation of which is penalized with reprimand on the first offense, suspension for 1-30 days on the second offense, and dismissal on the third offense. This appears to be respondent's first offense.

R E S O L U T I O N

CARPIO MORALES, *J.*:

Rodrigo C. Calacal (respondent), a Utility Worker I of the Municipal Circuit Trial Court of Alfonso Lista-Aguinaldo, Ifugao, without obtaining a travel authority required by OCA Circular No. 49-2003,[1] left the country on May 15, 2008 for Singapore where he stayed up to June 6, 2008.

The Office of the Court Administrator (OCA) received on July 31, 2008 respondent's application for leave, and his daily time record for June 2008 showing that he reported back for work on June 10, 2008.[2]

On the Court's directive to explain why he failed to comply with OCA Circular 49-2003, respondent proffered unawareness of the circular as there is no copy in his office. Anyway, he stated that the Clerk of Court approved his leave application.

Finding respondent's explanation unsatisfactory, the OCA recommended that, pursuant to Rule IV, Section 52 (C) (3) of the Uniform Rules on Administrative Cases in the Civil Service, respondent be reprimanded for violation of reasonable office rules and regulations.[3]

The recommendation of the OCA is well-taken.

OCA Circular No. 49-2003 (B) (4), which has been effective since May 20, 2003, reads:

> 4. Judges and personnel who shall leave the country without travel authority issued by the Office of the Court Administrator shall be subject to disciplinary action. (Underscoring supplied)

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[1] *Rollo*, p. 4.

[2] *Ibid*.

[3] *Id.* at 7.

Unawareness of the circular is not an excuse for non-compliance therewith,[4] violation of which is penalized with reprimand on the first offense, suspension for 1-30 days on the second offense, and dismissal on the third offense. This appears to be respondent's first offense.

WHEREFORE, respondent Rodrigo C. Calacal, Utility Worker I of the Municipal Circuit Trial Court of Alfonso Lista-Aguinaldo, Ifugao is found *GUILTY* of violation of reasonable office rules and regulations. He is accordingly *REPRIMANDED* and *WARNED* that a repetition of the same or similar offense will be penalized more severely.

SO ORDERED.

Quisumbing, Acting C.J. (Chairperson), Nachura,[*] *Brion,* and *Abad, JJ.,* concur.

EN BANC

[A.M. No. RTJ-03-1781. October 16, 2009]

GEORGE P. MERCADO (SUBSTITUTED BY HIS WIFE, REBECCA ROYO-MERCADO, and children, namely, REBECCA GAY, KRISTINA EVITA, CRIS OLIVER and MARIAN RICA, all surnamed MERCADO), *complainants, vs.* **HON. ERASTO D. SALCEDO, (Ret.) Presiding Judge, Regional Trial Court of Tagum City, Davao Del Norte, Branch 31,** *respondent.*

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[4] *Vide Noynay-Arlos v. Selconag,* A.M. No. P-01-1503, January 27, 2004, 421 SCRA 138, 146; *Reports on the Financial Audit Conducted on the Books of Accounts of OIC Melinda Deseo, MTC, General Trias, Cavite,* A.M. No. 99-11-157-MTC, August 7, 2000, 337 SCRA 347, 352; *Re: Financial Audit in RTC, General Santos City,* A.M. No. 96-1-25-RTC, April 18, 1997, 271 SCRA 302, 311.

[*] Additional member per Special Order No. 730 dated October 5, 2009.

[A.M. No. RTJ-03-1782. October 16, 2009]

STATE PROSECUTOR EMMANUEL Y. VELASCO, *complainant, vs.* **HON. ERASTO D. SALCEDO, (Ret.) Presiding Judge, Regional Trial Court of Tagum City, Davao Del Norte, Branch 31,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; JUDGES; A JUDGE SHOULD CONDUCT HIMSELF AT ALL TIMES IN A MANNER THAT WOULD MERIT THE RESPECT AND CONFIDENCE OF THE PEOPLE.— Administrative cases against judges stem from the time-honored constitutional principle that a public office is a public trust. This principle requires a judge, like any other public servant and more so because of the sensitivity of his position, to exhibit at all times the highest degree of honesty and integrity; his high and exalted position in the Judiciary requires him to observe exacting standards of morality, decency and competence. As the visible representation of the law and given his task of dispensing justice, a judge should conduct himself at all times in a manner that would merit the respect and confidence of the people. He must conduct himself in a manner characterized by propriety and decorum; like Ceasar's wife, he must be above suspicion. As we held in *Padua v. Paz*: Court personnel charged with the dispensation of justice, from the presiding judge to the lowliest clerk, bear a heavy responsibility in insuring that their conduct is always beyond reproach. The preservation of the integrity of the judicial process is of paramount importance. All those occupying offices in the judiciary should at all times be aware that they are accountable to the people. They must serve with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice and lead modest lives. **The records show that respondent judge failed to live up to these exacting standards.**

2. ID.; ID.; IT IS THE DUTY OF THE INVESTIGATING JUDGE TO CONDUCT A THOROUGH AND OBJECTIVE INVESTIGATION AND TO MAKE A COMPLETE REPORT

OF HIS FINDINGS REGARDLESS OF HIS PERSONAL SENTIMENTS AND BELIEFS.— The respondent judge apparently forgot that his first and foremost duty was to conduct a thorough and objective investigation and to make a complete report of his findings *regardless of his personal sentiments and beliefs*. The task assigned to him was an assignment involving trust and the exercise of his functions as a judge. An administrative investigation is an essential component in the judicial machinery for the administrative supervision of courts and court personnel; it is a key process in determining violations of the norms of conduct and standards of service in the judiciary. The respondent judge, therefore, not only failed to do his duty, but violated as well the trust reposed in him as a judge.

3. ID.; ID.; UNAUTHORIZED ABSENCE AND IRREGULAR ATTENDANCE WARRANT THE IMPOSITION OF DISMISSAL OR SUSPENSION FROM SERVICE.— The absenteeism of judges or court employees and/or their irregular attendance at work is a serious charge that, if proven, may warrant the imposition of the penalty of dismissal or suspension from service. Unauthorized absence and irregular attendance are detrimental to the dispensation of justice and, more often than not, result in undue delay in the disposition of cases; they also translate to waste of public funds when the absent officials and employees are nevertheless paid despite their absence.

4. ID.; ID.; CODE OF JUDICIAL CONDUCT; CANON 3 THEREOF; FAILURE TO FAITHFULLY PERFORM ASSIGNED TASKS CONSTITUTES DISHONESTY, INEFFICIENCY AND SERIOUS MISCONDUCT.— As heretofore mentioned, the Supreme Court regulates the conduct of court officials and employees and it acts through its subordinates, among them in this case, the respondent judge. His responsibility in this administrative supervision is direct by virtue of the delegation made by this Court. By conducting a superficial investigation and by his slanted findings that caused the OCA to recommend the dismissal of the administrative complaint against Judge Agayan and his court personnel, the Court's administrative machinery failed; the respondent judge's intent to shield another judge, resulting in the lack of objectivity of his report, deprived the Court of the opportunity to act properly on the reported violations of the norms of conduct

of judges and court employees. For failing to faithfully perform the tasks assigned to him, the respondent committed dishonesty, inefficiency, and serious misconduct in violation of Canon 3 and Rule 3.08 of Canon 3, both of the Code of Judicial Conduct x x x.

5. ID.; ID.; ID.; CANON 2 THEREOF; IN DISPENSING JUSTICE, A JUDGE SHOULD APPLY THE LAW IMPARTIALLY, INDEPENDENTLY, HONESTLY AND IN A MANNER PERCEIVED BY THE PUBLIC TO BE IMPARTIAL, INDEPENDENT AND HONEST.— We also find that the respondent judge violated Rule 2.01, Canon 2 of the Code of Judicial Conduct, which states that "[*a*] *judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary*," in relation to Canon 31 of the Canons of Judicial Ethics, which requires that a judge's conduct be above reproach and that he administer justice according to law. This means that a judge, in dispensing justice, "should apply the law impartially, independently, honestly, and in a manner perceived by the public to be impartial, independent and honest."

6. ID.; ID.; ADMINISTRATIVE CHARGE; SERIOUS MISCONDUCT, DEFINED; GIVING PREMIUM TO PERSONAL RELATIONS AND PERSONAL FEELINGS RATHER THAN TO THE FAITHFUL DISCHARGE OF DUTY CONSTITUTES SERIOUS MISCONDUCT.— Serious misconduct, as defined, refers to weighty and serious transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. It warrants dismissal from the service when the judicial act is corrupt and inspired by an intention to violate the law, and when it translates to wrongful intention rather than mere error of judgment. In this case, by giving premium to personal relations and personal feelings rather than to the faithful discharge of his duty as investigating judge, the respondent judge acted dishonestly and inefficiently, coupled with a deliberate and wrongful intent to perform his duties unfaithfully. This is no less a serious misconduct than a corrupt act undertaken for monetary gains; one as well as the other eroded public confidence in a judge's ability to render justice.

7. ID.; ID.; ID.; PERMISSIBLE AND IMPERMISSIBLE BORROWING; ACT OF BORROWING A VEHICLE IS NOT PER SE A VIOLATION OF THE JUDICIAL NORMS AND STANDARDS; LIMITATIONS.— The act of borrowing a vehicle by a judge or any court employee is not *per se* a violation of judicial norms and standards established for court personnel, as borrowing is a legitimate and neutral act that can happen in everyday life. However, judges and court employees – by the nature of their functions and of the norms and standards peculiar to their positions – live their lives under restrictions not otherwise imposed on others; specifically, they cannot simply borrow in situations when this act may or can affect the performance of their duties because of the nature of the thing borrowed or the identity of the borrower, or in situations when borrowing would involve ethical questions under express rules. In this case, the complaint alleged that what the respondent judge borrowed was in fact a vehicle that was the subject of a previous litigation before his *sala*; the respondent judge borrowed, too, from a lender who still had cases before his *sala*. We hold, based on our examination and analysis of the records, that the respondent judge went over the dividing line that separates permissible from impermissible borrowing.

8. ID.; ID.; ID.; REPEATED AND DELIBERATE INTENTION TO DISREGARD AND VIOLATE THE LEGAL NORMS OF CONDUCT GOVERNING BEHAVIOR AND ACTION CONSTITUTE SERIOUS MISCONDUCT.— x x x. Thus, the respondent judge not only borrowed a vehicle that was the subject of an Anti-Fencing case before him; he also borrowed it from a lender who had other pending cases before him. In fact, he had to inhibit himself from hearing these cases because of the pendency of the present administrative cases. Under the circumstances, the respondent judge is liable for serious misconduct, given his repeated and deliberate intention to disregard and violate the legal norms of conduct governing his behavior and action as a judge. He committed serious misconduct, *first*, in using and possessing a vehicle with the knowledge that it was the subject of an anti-fencing case previously before him; and *second*, he borrowed this vehicle from a litigant who had pending cases before his *sala*. Both the character of the vehicle borrowed and the identity of the

lender precluded him from borrowing and using Leopoldo Gonzaga's Pajero. While the criminal case filed against the respondent judge by State Prosecutor Velasco was dismissed by the Department of Justice, we agree with Justice Tijam that the respondent judge's acts at least constitute irresponsible and improper conduct whose effect is to erode public confidence in the judiciary. As aptly stated by Justice Tijam, the respondent judge's act *compromised the image, integrity and uprightness of the courts of law;* it cast suspicion not only in his own impartiality, but also in the impartiality and integrity of his judicial office, thereby impairing public trust in the exercise of his judicial functions.

9. ID.; ID.; RULE 1.01, CANON 1 AND RULE 2.01, CANON 2 OF THE CODE OF JUDICIAL CONDUCT; VIOLATED BY THE RESPONDENT JUDGE IN CASE AT BAR; THE DUTY TO AVOID IMPROPER CONDUCT OR THE APPEARANCE OF IMPROPRIETY BECOMES MORE CRUCIAL WHEN ONE IS A TRIAL JUDGE WHO HAS CONSTANT DEALINGS WITH THE PUBLIC.— We explained in *Yu-Asensi v. Villanueva* that the duty to avoid improper conduct or the appearance of impropriety becomes more crucial when one is a trial judge who has constant dealings with the public: …[W]ithin the hierarchy of courts, trial courts stand as an important and visible symbol of government especially considering that as opposed to appellate courts, trial judges are those directly in contact with the parties, their counsel and the communities which the judiciary is bound to serve. Occupying as he does an exalted position in the administration of justice, a judge must pay a high price for the honor bestowed upon him. Thus, a judge must comport himself at all times in such manner that his conduct, official or otherwise, can bear the most searching scrutiny of the public that looks up to him as the epitome of integrity and justice. x x x it is essential that judges, like *Caesar's* wife, should be above suspicion. The evidence adduced in this charge showed that the respondent judge violated Rule 1.01, Canon 1 and Rule 2.01, Canon 2, both of the Code of Judicial Conduct, in failing to maintain the appearance of integrity and in failing to engage in conduct to promote public confidence in the judiciary. Likewise, he violated Canon 2 of the Code of Judicial Conduct

and Canon 3 of the Canons of Judicial Ethics relating to the avoidance of impropriety and the appearance of impropriety in all the judge's activities, official or otherwise.

10. ID.; ID.; MODIFYING A FINAL AND EXECUTORY DECISION IN THE COURSE OF ITS EXECUTION CONSTITUTES GROSS IGNORANCE OF THE LAW.— For modifying a final and executory decision in the course of its execution, we find the respondent judge guilty of gross ignorance of the law. Where the law is straightforward and its application to the facts plainly evident, not to know the law or to act as if one does not know it, constitutes gross ignorance of the law. The respondent judge violated Rule 3.01, Canon 3 of the Code of Judicial Conduct which mandates professional competence on the part of a judge. A judge owes the public and the court the duty to be proficient in the law and is expected to keep abreast of laws and prevailing jurisprudence; otherwise, he erodes the confidence of the public in the courts. *Ignorance of the law by a judge can easily be the mainspring of injustice.*

11. ID.; ID.; DEATH OF THE RESPONDENT JUDGE DOES NOT PRECLUDE A FINDING OF ADMINISTRATIVE LIABILITY; EXCEPTIONS; NOT PRESENT IN CASE AT BAR.— The retirement of the respondent judge and death of both the complainant and the respondent judge pending the investigation of these administrative cases are not deterrents to the resolution on the merits of the complaints and to the imposition of the sanctions demanded by the circumstances. Jurisprudence holds that the death of the complainant does not warrant the withdrawal of the charges against the respondent nor does this development render the complaint moot; the complainant is treated only as a witness in this type of proceedings. On the other hand, the death of the respondent in an administrative case, as a rule, does not preclude a finding of administrative liability. The recognized exceptions to this rule are: *first*, when the respondent has not been heard and continuation of the proceedings would deny him of his right to due process; *second*, where exceptional circumstances exist in the case leading to equitable and humanitarian considerations; and *third*, when the kind of penalty imposed or imposable would render the proceedings useless. None of these exceptional circumstances are present in the case.

12. ID.; ID.; MAXIMUM AMOUNT OF FINE IMPOSED ON THE RESPONDENT JUDGE FOR GRAVITY OF THE INFRACTIONS HE COMMITTED.— Thus, despite the above supervening events, we can still impose the penalty of fine against the respondent judge deductible from his retirement benefits. In this case, we find that the infractions he committed all constitute serious charges warranting the imposition of fine in the amount of ₱20,000.00 to ₱40,000.00 range. Considering the several violations he committed and the gravity and circumstances of these infractions, we find that the maximum amount of fine should be imposed on each charge. In so ruling, we note that this is not the first administrative infraction committed by the respondent judge; he had previously been fined ₱10,000.00 for undue delay in rendering decisions or orders.

13. ID.; ID.; CHARGE OF DISHONESTY, INEFFICIENCY AND SERIOUS MISCONDUCT; RESPONDENT JUDGE FOUND GUILTY THEREOF; IMPOSABLE PENALTY.— On the first charge (false investigation report on Judge Agayan), we find the respondent judge guilty of dishonesty, inefficiency, and serious misconduct. He violated the provisions of Rule 2.01 of Canon 2, Canon 3 and Rule 3.08 of Canon 3 of the Code of Judicial Conduct; and Canons 3 and 31 of the Canons of Judicial Ethics. Section 8, Rule 140 of the Rules of Court, classifies dishonesty and gross misconduct constituting violations of the Code of Judicial Conduct as serious charges. We impose a fine of ₱40,000.00 on the respondent judge on this charge.

14. ID.; ID.; RESPONDENT JUDGE FOUND GUILTY OF SERIOUS MISCONDUCT AND IMPROPRIETY FOR THE USE AND POSSESSION OF THE VEHICLE OF A LITIGANT; IMPOSABLE PENALTY.— On the second charge (use and possession of the vehicle of a litigant before his sala), the respondent judge is guilty of serious misconduct and impropriety as provided in Rule 1.01 of Canon 1, Canon 2 and Rule 2.01 of Canon 2 of the Code of Judicial Conduct, and Canon 3 of the Canons of Judicial Ethics. Considering the compounded administrative offenses, he is meted the maximum fine of ₱40,000.00.

15. ID.; ID.; GROSS IGNORANCE OF THE LAW; CONSIDERED A SERIOUS CHARGE; IMPOSABLE PENALTY.— For violation of Rule 3.01, Canon 3 of the Code of Judicial Conduct (in the execution of the decision of an agrarian case), the respondent judge is liable for gross ignorance of the law for which the maximum fine of ₱40,000.00 is imposed. Gross ignorance of law is considered a serious charge that warrants the imposition of the penalties provided under Section 11 (A), Rule 140 of the Rules of Court.

16. REMEDIAL LAW; JUDGMENTS; RULE OF IMMUTABILITY; EXCEPTIONS; NOT PRESENT IN CASE AT BAR.— The respondent judge ought to have known that the joint decision was already final and executory and could no longer be disturbed when he made his adjustments. This legal reality, known as the rule of immutability of judgment, is an elementary principle of law and procedure. Once a judgment becomes final, it may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the Highest Court of the land. The **only recognized exceptions** are the correction of clerical errors, or the making of so-called *nunc pro tunc* entries, which cause no prejudice to any party, and where the judgment is void. To be sure, the respondent judge's ground for modifying the joint decision is not among these recognized exceptions.

D E C I S I O N

***PER CURIAM*:**

These are consolidated administrative cases filed against Judge Erasto D. Salcedo (*respondent judge*), Regional Trial Court, Branch 31, Tagum City, charging him with violations of the Code of Judicial Conduct and the Canons of Judicial Ethics.[1]

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[1] Resolution dated August 13, 2002 of the Court En Banc; *rollo*, RTJ-03-1782, p. 12.

Administrative Matter No. RTJ-03-1781

In a series of letters-complaints dated January 2, 2001,[2] July 16, 2001,[3] August 28, 2001[4] and November 23, 2001[5] filed before the Office of the Court Administrator (*OCA*), George P. Mercado (*complainant*) charged respondent judge as summarized below.

In the **letter dated January 2, 2001**, the respondent judge was accused of bias and gross partiality in handling the investigation of the administrative case filed against Judge Napy Agayan (*Judge Agayan*) of the Municipal Circuit Trial Court of Kapalong-Talaingod, Davao del Norte. The complainant alleged that the respondent judge mishandled the investigation and based his "findings of facts" on "gossip and rumors"[6] to aid a fellow judge.

On January 16, 2001, the complainant formally charged the respondent judge of committing these unethical infractions:

1) Mishandling of, or rendering a false report to the Supreme Court on, his investigation of Judge Agayan;

2) Grave misconduct and impropriety in possessing and using a stolen Pajero vehicle with knowledge, actually and constructively, that it was a subject of an Anti-Fencing Law case, docketed as Criminal Case No. 11728, which he had earlier dismissed; and

3) Serious irregularities, dishonesty or grave misconduct relating to the handling and improper execution of the final decision in Agrarian Case Nos. 31-99 to 51-99, entitled *Soriano Fruits Corporation and Others versus Department of Agrarian Reform and/or Land Bank of the Philippines*, where the respondent judge modified

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[2] *Rollo*, RTJ-03-1781, p. 43.

[3] *Id.*, pp. 7-16.

[4] *Id.*, pp. 3-4.

[5] *Id.*, pp. 1-2.

[6] *Supra* note 2.

> the final judgment on the amount of just compensation from which the respondent judge benefited in the amount of Three Million Pesos (₱3,000,000.00).

The **letter-complaint dated August 28, 2001** was filed by the complainant to supplement his earlier allegations. The complainant alleged that in connection with the stolen Pajero, the respondent judge was one of the respondents in a criminal complaint for violation of the Anti-Carnapping Act of 1972 (*R.A. No. 6539*) and/or the Anti-Fencing Law of 1973 (Presidential Decree [*P.D.*] *1612*) filed by the Philippine National Police. In Agrarian Case Nos. 31-99 to 51-99, the respondent judge showed partiality in hastily resolving the motions filed by the plaintiff, but not the motions filed by the defendant.

Finally, the **letter-complaint dated November 23, 2001** was a reinforcement of the allegations in the earlier letters-complaints. The complainant additionally related that the use by the respondent judge of the stolen Pajero became a subject of media coverage.

The Office of the Chief Justice referred the letters-complaints dated January 2, 2001 and July 16, 2001 to Hon. Zenaida N. Elepaño as Acting Court Administrator.[7] Subsequently, then Court Administrator (now Supreme Court Associate Justice) Presbitero J. Velasco, Jr., in an Indorsement dated January 21, 2002, required the respondent judge to file his comment on the letter-complaint dated November 23, 2001.[8]

The respondent judge duly filed his Comment (dated February 22, 2002[9]), which the OCA received on February 27, 2002. The OCA summarized the respondent judge's position as follows:

Re: Investigation of Judge Napy Agayan.

Judge Salcedo contends that he has already submitted his recommendation to this Office and Mr. Mercado, through his

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[7] *Id.*, p. 33.

[8] *Id.*, p. 166.

[9] *Id.*, pp. 167-184.

complaint, would like to interfere and dictate what his recommendation would be. x x x

Re: Stolen Pajero found in his possession.

Judge Salcedo contends that Criminal Case No. 11728 against Leopoldo Gonzaga was dismissed in 1999 on motion of the prosecution because during the reinvestigation, the witness of the prosecution did not appear. He adds that from this dismissal the Traffic Management Group did not file any motion for reconsideration. Worse, the TMG authorized the change of color of the vehicle and allowed the buyer to use it for years.

Judge Salcedo avers that in June 2001, the owner lent him the vehicle and he did not know that it was the same vehicle subject of Criminal Case No. 11728, otherwise, he would not have used it for reason of *delicadeza*. According to him, there was no way of identifying the vehicle because the TMG authorized the change of color. The vehicle was green during the pendency of the criminal case while it was dirty white.

Re: Irregularities in Agrarian Case Nos. 31-99 to 51-99.

Judge Salcedo claims that he was designated as Acting Presiding Judge of the Special Agrarian Court in July 2000. He maintains that when he took over the said cases, the decision therein were already final and executory. Judge Salcedo asserts that he issued an order for the execution of the judgment which function is purely ministerial. He adds that if there was something wrong with the valuation of the land then the counsel for Land Bank should have questioned the same. As for the accusation that he received ₱3,000,000.00 for which he was able to construct a house in Tagum City, Judge Salcedo contends that the said house was constructed through a bank loan and the proceeds from the sale of a prime lot in Cagayan de Oro City.[10]

The complainant filed a Reply dated March 12, 2002.[11] He argued that the handling of the reinvestigation of the Anti-Fencing case against Leopoldo Gonzaga was hastily concluded and resolved by Prosecutor Matias Aquiatan, who conducted the reinvestigation merely two days after the order to reinvestigate was issued by the respondent judge. The complainant further advanced the

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[10] *Id*., pp. 603-609.

[11] *Id*., pp. 311-326.

view that the respondent judge merely relied on the prosecutor's findings and dismissed the case with undue haste. According to the complainant, Leopoldo Gonzaga also had three (3) pending cases in the respondent judge's sala at that time.

The complainant also pointed out that two (2) checks for ₱800,000.00 were drawn from the payments made by Land Bank in Agrarian Case Nos. 31-99 to 51-99. The proceeds of one of these checks were given to the wife of the respondent judge.

Administrative Case No. RTJ-03-1782

On December 18, 2001, State Prosecutor Emmanuel Y. Velasco (*State Prosecutor Velasco*) brought to the attention of then Chief Justice Hilario G. Davide, Jr. the indictment of the respondent judge for violation of P.D. No. 1612 and recommended that appropriate administrative charges be initiated by the Supreme Court against him for violations of the provisions of the Code of Judicial Conduct and of the Canons of Judicial Ethics.[12] State Prosecutor Velasco stated:

> …undersigned finds no cogent reason why Respondent JUDGE SALCEDO chose to use a vehicle which was the subject of a criminal case before his very own sala. There is no proof or evidence whatsoever that the Respondent Judge forgot that the alleged owner of the subject vehicle (Respondent LEOPOLDO GONZAGA) previously appeared before him as respondent in a criminal case. He could never forget it because the authorities apprehended him, Respondent JUDGE SALCEDO even showed them a copy of his very own July 7, 1999 Decision "exonerating" GONZAGA from the crime of Anti-Fencing. His contention that he did not know that he was using the very same vehicle (subject of the previous criminal complaint before his court) because its color has been changed is fallacious x x x Respondent JUDGE SALCEDO to be more cautious, out of *delicadeza*, in his dealing with GONZAGA, assuming for the sake of argument that he acted in good faith.[13]

In a Resolution dated April 10, 2002, we referred this administrative matter to the OCA and the respondent judge

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[12] *Rollo,* RTJ-03-1782, p. 1.

[13] *Id.,* pp. 5-6.

filed his Answer on August 30, 2002.[14] In addition to the arguments he had already raised, the respondent judge posited that the whole incident was a smear campaign engineered against him by a carnapping syndicate operating in Manila-Mindanao. The respondent judge also posited that there was no impropriety in using the subject vehicle since it was no longer in *custodia legis* as Criminal Case No. 11728 had already been dismissed.

Thereafter, we referred the administrative cases to Justice Noel G. Tijam[15] (*Justice Tijam*) of the Court of Appeals (*CA*) for investigation, report and recommendation. The referred cases involved:

a) The respondent judge's investigation of Judge Agayan, his possession of a stolen Pajero and the alleged irregularities he committed in Agrarian Case Nos. 31-99 to 51-99;

b) The suspension of Judge Salcedo pending the outcome of the instant case;

c) The dismissal of the complaint of George Mercado dated April 22, 2002 for grave abuse of authority for being *subjudice*;[16] and

d) The referral of the dismissal of Criminal Case No. 11728 to the Department of Justice for it's appropriate action on the possible administrative liability of Prosecutor Matias Aquitan.

Pending investigation of these administrative cases before the CA, several significant developments took place. *First*, the

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[14] *Id.,* pp. 13-24.

[15] Resolution dated April 21, 2003; *rollo,* RTJ-03-1781, p. 623. The case was initially assigned to Associate Justice Lucas P. Bersamin (now a member of this Court), but he requested to be disqualified considering that the respondent judge was a former classmate of his.

[16] *Administrative Complaint with Prayer for Preventive Suspension, etc*. in connection with the contempt orders issued by the respondent judge against the complainant. This was subject of a petition for *certiorari* before this Court, docketed as G.R. No. 151954, wherein we issued a temporary restraining order in favor of the complainant and referred the matter for appropriate action and disposition to the CA (docketed as CA-GR. No. 69246); *rollo,* RTJ-03-1781, p. 240.

respondent judge retired from the Judiciary on November 25, 2003. *Second*, the complainant was killed by unidentified men on April 14, 2004 and was substituted in the case by his wife and children.[17] *Lastly*, the respondent judge himself was killed on July 26, 2009.

CA Report and Recommendation

Justice Tijam found the respondent judge guilty of dishonesty, inefficiency, incompetency and violation of Rules 1.01, 2.01 and 3.01 of the Code of Judicial Conduct and of Canon 3 of the Canons of Judicial Ethics. Justice Tijam reported:

FIRST CAUSE OF ACTION[18]

IN THE MATTER OF THE ADMINISTRATIVE INVESTIGATION CONDUCTED BY RESPONDENT JUDGE OF THE ADMINISTRATIVE CASE AGAINST THE LATE MTC JUDGE NAPY AGAYAN AND HIS COURT PERSONNEL

The 1st Indorsement dated June 6, 2000 referring the complaint against Judge Agayan ***and his staff*** to the Respondent Judge expressly directed the Respondent Judge to investigate therein respondents' irregular attendance in court. Hence, even if Minda Amar was not specifically named by Complainant Mercado in his first letter-complaint, the fact that the charges involved the alleged repeated absence not only of Judge Agayan, but also of the personnel assigned in Judge Agayan's court, Respondent Judge's investigation should have also included the court attendance of Minda Amar, the Clerk of Court.

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. . . In the course of his investigation, the Respondent Judge would have discovered the fact of Minda Amar's prolonged absences. However, Respondent Judge failed to make any findings in this regard. Neither was there a statement that Clerk of Court Minda Amar was absent during said period of investigation and/or that her absences

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[17] CA Report and Recommendation, p. 4.

[18] *Id.*, pp. 9-10.

were authorized and approved by Judge Agayan. Instead, the Respondent Judge made a sweeping declaration that Complainant Mercado's charges of absenteeism against Judge Agayan's court personnel were unfounded.

There is no evidence that Respondent Judge examined the Court personnel's daily time records . . .

Indubitably, Respondent Judge was negligent and inefficient, if not dishonest, in his investigation of the administrative complaint filed against Judge Agayan and his court personnel. For this reason, the Respondent Judge must be held liable.

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SECOND CAUSE OF ACTION

IN THE MATTER OF THE STOLEN PAJERO VEHICLE[19]

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. . . although the criminal case against the Respondent Judge for violation of the Anti-Fencing Law was dismissed, the Respondent Judge could still be held liable for his improper conduct pursuant to **Rules 1.01**[20] **and 2.01**[21] **of the Code Judicial Conduct . . .** and **Canon 3 of the Canons of Judicial Ethics**[22] [Emphasis theirs]

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In this case, Respondent Judge displayed conduct that fell short of the standards expected of a magistrate of the law. Respondent Judge failed to be more circumspect in his dealings with Leopoldo Gonzaga.

Leopoldo Gonzaga was once an accused before Respondent Judge's sala in a criminal case for violation of the anti-fencing law which

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[19] *Id.*, pp. 13-14.

[20] Rule 1.01. A judge should be the embodiment of competence, integrity, and independence.

[21] Rule 2.01. A judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.

[22] Canon 3 (3). A judge's official conduct should be free from any appearance of impropriety and his personal behavior, not only in the bench and in the

was later dismissed by the Respondent Judge. From this fact alone, any association which Respondent Judge may have with Leopoldo Gonzaga would be a cause for suspicion. When Respondent Judge borrowed the subject vehicle from the accused, he already displayed improper and reproachable conduct.

The fact that the vehicle lent to Respondent Judge was the same Pajero vehicle which was the subject of the dismissed criminal case makes the act more unethical. Respondent tried to justify that it was only after Gonzaga assured him that the Pajero was not a carnapped vehicle that he allowed himself to use it. This is inexcusable.

Respondent Judge was wrong when he borrowed from the accused the same vehicle subject matter of the criminal case which was dismissed and decided in the accused's favor. Respondent Judge failed to comport himself in such a manner that his conduct, official or otherwise, can bear the most searching scrutiny of the public. x x x

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THIRD CAUSE OF ACTION[23]

IN THE MATTER OF THE CONSOLIDATED AGRARIAN CASES

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Complainant Mercado suggested that the Respondent Judge benefited from the awarded commissioner's fee. Complainant Mercado presented copies of the 3 cashier's checks and the deposit purportedly showing how Respondent Judge profited from said fees.

However, this claim is completely without factual basis. The complainant failed to adduce any substantial, direct and convincing evidence to substantiate his allegation that Respondent Judge materially benefited from the transaction. At most, such allegation is a mere suspicion or conjecture.

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performance of his official duties, but also in his everyday life, should be beyond reproach.

[23] Report and Recommendation of CA Associate Justice Noel G. Tijam, pp. 18- 22.

. . . unless there is direct and convincing evidence which will prove Respondent Judge materially benefited from the transaction, the Respondent judge cannot be held guilty of said charge.

However, . . . Respondent Judge is liable for gross ignorance of the law in according and/or modifying a final and executory decision.

As settled, when the judge's inefficiency springs from a failure to consider so basic and elemental a rule, a law, or a principle in the discharge of his duties, a judge is either too incompetent and undeserving of the position and title he holds, or is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority.

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Respondent Judge had clearly exhibited gross ignorance of the law when he amended the already final decision… He is therefore guilty of violating Rule 3.01[24] of the Code of Judicial Ethics.

Justice Tijam recommended the imposition of the following penalties:

a) First cause of action – a fine of ₱40,000.00;

b) Second cause of action – a fine of ₱20,000.00;

c) Third cause of action – a fine in the amount of ₱20,000.00.

The Court's Ruling

After considering the CA Report and the entire records, we find the Report to be substantially supported by the evidence on record, and by applicable law and jurisprudence. We therefore adopt the findings and recommendations of the CA Report, subject to the modifications indicated below.

Administrative cases against judges stem from the time-honored constitutional principle that a public office is a public trust. This principle requires a judge, like any other public servant and more so because of the sensitivity of his position, to exhibit

[24] Rule 3.01. A judge shall be faithful to the law and maintain professional competence.

at all times the highest degree of honesty and integrity;[25] his high and exalted position in the Judiciary requires him to observe exacting standards of morality, decency and competence. As the visible representation of the law and given his task of dispensing justice, a judge should conduct himself at all times in a manner that would merit the respect and confidence of the people.[26] He must conduct himself in a manner characterized by propriety and decorum; like Ceasar's wife, he must be above suspicion.[27] As we held in *Padua v. Paz*:[28]

> Court personnel charged with the dispensation of justice, from the presiding judge to the lowliest clerk, bear a heavy responsibility in insuring that their conduct is always beyond reproach. The preservation of the integrity of the judicial process is of paramount importance. All those occupying offices in the judiciary should at all times be aware that they are accountable to the people. They must serve with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice and lead modest lives.

The records show that respondent judge failed to live up to these exacting standards.

Investigation of Judge Agayan and his court personnel

In his report dated August 2, 2002 (in compliance with the OCA directive to investigate Judge Agayan), the respondent judge stated that the complaint against Judge Agayan and his court staff for absenteeism and irregular attendance had no merit. The respondent judge related that he went twice to the office of Judge Agayan to ascertain the veracity of the complaint and found that Judge Agayan was *really sickly* because of a heart condition that compelled him to take leaves of absence.[29] The

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[25] *Judiciary Planning Development and Implementation Office v. Calaguas*, A.M. No. P-95-1155, May 15, 1996, 256 SCRA 690.

[26] *Calilung v. Suriaga*, A.M. No. MTJ-99-1191, August 31, 2000, 339 SCRA 340.

[27] *Mirano v. Saavedra*, A.M. No. P-89-383, August 4, 1993, 225 SCRA 77.

[28] A.M. No. P-00-1445, April 30, 2003, 402 SCRA 21.

[29] *Rollo*, p. 156, Administrative Matter No. RTJ-03-1781.

respondent judge claimed that since the complainant failed to specify the particular dates when Judge Agayan failed to report to work, he could not ascertain whether his absences had been authorized. The respondent judge also stated that he personally inquired from other offices in the Municipality of Kapalong, Davao del Norte, from lawyers, and from party-litigants with pending cases in the sala of Judge Agayan; he found that *no complaint from party-litigants in the Municipality of Kapalong had been made involving the failure to attend to official transactions due to the absence of Court personnel. Neither was there any complaint from lawyers about proceedings "grinding to a halt." Like party-litigants, local officials are more concerned in the speedy disposition of cases when their constituents are involved. Yet, not a single local official made a complaint.*[30]

The respondent judge, in his Comment dated February 22, 2002, emphasized that the present complaint was simply an undue interference by the complainant in his recommendation in Judge Agayan's case.

In its investigation, the CA found evidence refuting the statements made by the respondent judge in his report to the OCA. One of these was the Certification dated February 6, 2003 issued by Jaime Mondejar, Clerk of Court II, Municipal Circuit Trial Court, Kapalong-Talaingod, Davao del Norte, attesting that one Minda Amar, the Clerk of Court in Judge Agayan's sala, had not reported for work prior to and during the dates the respondent judge reportedly conducted his investigation.[31] The CA investigation also found no evidence that the respondent judge ever examined the daily time records of Minda Amar and the court personnel assigned to Judge Agayan's sala.

Justice Tijam noted that since the act complained of was absenteeism, the investigator's first course of action should have been to check and verify the daily time records of the concerned personnel; from such examination the respondent judge would have known of the prolonged absences of Minda Amar and

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[30] *Id*., pp. 155 and 158.

[31] *Supra* note 17, p. 9.

others. Likewise, the respondent judge would have noticed Minda Amar's absence when he went to the sala of Judge Agayan on two occasions. These incidents, however, were not mentioned in the respondent judge's report.

In addition to these findings, we note that the respondent judge was similarly remiss in ascertaining Judge Agayan's absences. The respondent judge merely relied on the leave of absence filed by Judge Agayan for October 8, 1997, and did not at all consider the latter's absences, subject of the complaint, and the fact that the respondent judge conducted his investigation only in *February 2000*. At the very least, the gap of more than two (2) years between the leave of absence on record and the investigation of Judge Agayan's absences should have alerted the respondent judge to examine the former's records in the intervening period, particularly the period immediately prior to the complaint. The respondent judge failed to do this. We observe, too, that in the "course of his investigation," he did not appear to have asked Judge Agayan about his absences in any formal inquiry or, at the very least, in an interview. No record appears in the respondent judge's report on Judge Agayan's position on the matter under investigation. A close scrutiny of the report in fact shows that the respondent judge, instead of making an objective report on the results of his investigation, tried to downplay and deflect the issue of absenteeism and irregular attendance by stating that *nobody complained of the delay in the disposition of cases due to the absence and irregular attendance of Judge Agayan and his staff*.[32]

From all these, what appears clear to us is that the respondent judge conducted a very superficial investigation, if what he did can be labelled as an investigation at all. Based on this shallow effort, he prepared a slanted report that could not but lead to the exoneration of Judge Agayan. These actions tell us that the respondent judge *deliberately covered up* Judge Agayan's absences and irregular attendance. The motivation for all these is not hard to discern as it can be read between the lines in the respondent judge's report, considered in light of the attendant

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[32] *Rollo,* RTJ-03-1781, p. 155.

facts. He did all these under the mistaken notion of aiding a fellow judge, who was allegedly too sickly to fully perform his judicial duties. In rendering this assistance, the respondent judge also overlooked the absences and irregular attendance of the court staff of Judge Agayan.

The respondent judge apparently forgot that his first and foremost duty was to conduct a thorough and objective investigation and to make a complete report of his findings *regardless of his personal sentiments and beliefs*. The task assigned to him was an assignment involving trust and the exercise of his functions as a judge. An administrative investigation is an essential component in the judicial machinery for the administrative supervision of courts and court personnel; it is a key process in determining violations of the norms of conduct and standards of service in the judiciary. The respondent judge, therefore, not only failed to do his duty, but violated as well the trust reposed in him as a judge.

The absenteeism of judges or court employees and/or their irregular attendance at work is a serious charge that, if proven, may warrant the imposition of the penalty of dismissal or suspension from service.[33] Unauthorized absence and irregular attendance are detrimental to the dispensation of justice and, more often than not, result in undue delay in the disposition of cases; they also translate to waste of public funds when the absent officials and employees are nevertheless paid despite their absence. As heretofore mentioned, the Supreme Court regulates the conduct of court officials and employees and it acts through its subordinates, among them in this case, the respondent judge. His responsibility in this administrative supervision is direct by virtue of the delegation made by this Court. By conducting a superficial investigation and by his slanted findings that caused the OCA to recommend the dismissal of the administrative complaint against Judge Agayan and his court personnel, the Court's administrative machinery failed; the respondent judge's intent to shield another judge, resulting

[33] *Yu-Assensi v. Villanueva*, A.M. No. MTJ-00-1245, January 19, 2000, 322 SCRA 255.

in the lack of objectivity of his report, deprived the Court of the opportunity to act properly on the reported violations of the norms of conduct of judges and court employees.

For failing to faithfully perform the tasks assigned to him, the respondent committed dishonesty, inefficiency, and serious misconduct in violation of Canon 3 and Rule 3.08 of Canon 3, both of the Code of Judicial Conduct, which state:

Canon 3. A JUDGE SHOULD PERFORM OFFICIAL DUTIES HONESTLY, AND WITH IMPARTIALITY AND DILIGENCE.

Rule 3.08 – A judge should **diligently discharge administrative responsibilities**, maintain professional competence in court management, **and facilitate the performance of the administrative functions of other judges and court personnel**.

We also find that the respondent judge violated Rule 2.01, Canon 2 of the Code of Judicial Conduct, which states that "[*a*] *judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary*," in relation to Canon 31 of the Canons of Judicial Ethics, which requires that a judge's conduct be above reproach and that he administer justice according to law. This means that a judge, in dispensing justice, "should apply the law impartially, independently, honestly, and in a manner perceived by the public to be impartial, independent and honest."[34]

Serious misconduct, as defined, refers to weighty and serious transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer.[35] It warrants dismissal from the service when the judicial act is corrupt and inspired by an intention to violate the law, and when it translates to wrongful intention rather than mere error of judgment.[36]

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[34] *OCA v. Floro*, A.M. No. RTJ-99-1460, March 31, 2006, 486 SCRA 66.

[35] *Manuel v. Calimag*, A.M. No. RTJ-99-1441, May 28, 1999, 307 SCRA 657, citing *Amasco v. Magro*, 73 SCRA 108-109 (1976).

[36] *Id*.

In this case, by giving premium to personal relations and personal feelings rather than to the faithful discharge of his duty as investigating judge, the respondent judge acted dishonestly and inefficiently, coupled with a deliberate and wrongful intent to perform his duties unfaithfully. This is no less a serious misconduct than a corrupt act undertaken for monetary gains; one as well as the other eroded public confidence in a judge's ability to render justice.[37]

The Possession and Use of a Stolen Vehicle

In his defense on this issue, the respondent judge claimed that the case was filed by the complainant merely to harass him. He also claimed good faith and lack of knowledge that the vehicle he had borrowed from Leopoldo Gonzaga was the same vehicle involved in the Anti-Fencing case that he dismissed in 1999.

The act of borrowing a vehicle by a judge or any court employee is not *per se* a violation of judicial norms and standards established for court personnel, as borrowing is a legitimate and neutral act that can happen in everyday life. However, judges and court employees – by the nature of their functions and of the norms and standards peculiar to their positions – live their lives under restrictions not otherwise imposed on others; specifically, they cannot simply borrow in situations when this act may or can affect the performance of their duties because of the nature of the thing borrowed or the identity of the borrower, or in situations when borrowing would involve ethical questions under express rules. In this case, the complaint alleged that what the respondent judge borrowed was in fact a vehicle that was the subject of a previous litigation before his *sala*; the respondent judge borrowed, too, from a lender who still had cases before his *sala*.

We hold, based on our examination and analysis of the records, that the respondent judge went over the dividing line that separates permissible from impermissible borrowing.

First, during his cross-examination before the CA, the respondent judge admitted that he knew that the vehicle he

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[37] *Supra* note 34, pp. 139-140.

borrowed was owned by Leopoldo Gonzaga, who was the accused in the Anti-Fencing case previously before him.[38] The respondent judge could not have avoided this admission given the surrounding circumstances of the case; the vehicle in the Anti-Fencing case was a Pajero, while the vehicle he borrowed from Leopoldo Gonzaga was also a Pajero;[39] while the color of the vehicle had been changed from green to dirty white, it was shown that the vehicle consistently carried the same plate number – "UTN 571";[40] the respondent judge could not have missed the identity of the vehicle considering his admission that the Pajero was under the court's custody for several months.[41]

Second, the records show that the respondent judge's initial claim of lack of knowledge is not true. In the preliminary investigation conducted by State Prosecutor Velasco in the Anti-Fencing case involving the Pajero, the respondent judge, when apprehended by policemen, exhibited a court decision he penned in 1999 dismissing the Anti-Fencing case against Leopoldo Gonzaga for the same vehicle.[42] This incident, which the respondent judge never refuted, clearly indicated that he knew that the vehicle he possessed and used, despite its change of color, was the same vehicle involved in the 1999 Anti-Fencing case that came before him.

Third, the unrefuted statement of the complainant in his Affidavit (Direct Examination)[43] filed before the CA states:

> I know for a fact that Mr. Leopoldo Gonzaga had several cases pending in the two (2) salas presided by Executive Judge Salcedo . . . Also, I know for a fact that before the **Criminal Case No. 11728** . . . was dismissed by Executive Judge Erasto D. Salcedo, several

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[38] TSN, May 9, 2005, p. 70.

[39] *Id.*, p. 68.

[40] *Supra* note 17, p. 11.

[41] TSN, May 9, 2005, p. 68.

[42] Resolution dated December 18, 2001; *rollo*, RTJ-03-1782, p. 6.

[43] CA *Rollo*, p. 430.

cases of Mr. Leopoldo Gonzaga had been pending in the sala of Judge Salcedo. I also know for a fact that Executive Judge Erasto D. Salcedo inhibited himself from the cases of Mr. Leopoldo Gonzaga when there was a question raised on the propriety of his borrowing the Pajero from Mr. Gonzaga, a court litigant in his sala, during the pendency of this Administrative case. [Emphasis theirs]

Thus, the respondent judge not only borrowed a vehicle that was the subject of an Anti-Fencing case before him; he also borrowed it from a lender who had other pending cases before him. In fact, he had to inhibit himself from hearing these cases because of the pendency of the present administrative cases.

Under the circumstances, the respondent judge is liable for serious misconduct, given his repeated and deliberate intention to disregard and violate the legal norms of conduct governing his behavior and action as a judge. He committed serious misconduct, *first*, in using and possessing a vehicle with the knowledge that it was the subject of an anti-fencing case previously before him; and *second*, he borrowed this vehicle from a litigant who had pending cases before his *sala*. Both the character of the vehicle borrowed and the identity of the lender precluded him from borrowing and using Leopoldo Gonzaga's Pajero. While the criminal case filed against the respondent judge by State Prosecutor Velasco was dismissed by the Department of Justice, we agree with Justice Tijam that the respondent judge's acts at least constitute irresponsible and improper conduct whose effect is to erode public confidence in the judiciary.[44] As aptly stated by Justice Tijam, the respondent judge's act *compromised the image, integrity and uprightness of the courts of law*;[45] it cast suspicion not only in his own impartiality, but also in the impartiality and integrity of his judicial office, thereby impairing public trust in the exercise of his judicial functions.

In several cases of the same import, the Court penalized a judge for highly improper conduct.

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[44] *Supra* note 17, p. 15.

[45] *Ibid.*

In *Cabreana v. Avelino,*[46] the Court castigated the respondent judge who hitched a ride in the car of a party-litigant in going to and from the place of the ocular inspection. We ruled that the respondent judge's act exposed him and his office to suspicion and impaired the trust and faith of the people in the administration of justice.

In *Sibayan-Joaquin v. Javellana*,[47] we admonished the judge to be circumspect in his conduct and dealings with lawyers who had pending cases before him. It was established that the judge displayed before the public his close familiarity with one of the lawyers who appeared before him and whose car the judge sometimes borrowed.

We explained in *Yu-Asensi v. Villanueva* that the duty to avoid improper conduct or the appearance of impropriety becomes more crucial when one is a trial judge who has constant dealings with the public:[48]

> …[W]ithin the hierarchy of courts, trial courts stand as an important and visible symbol of government especially considering that as opposed to appellate courts, trial judges are those directly in contact with the parties, their counsel and the communities which the judiciary is bound to serve. Occupying as he does an exalted position in the administration of justice, a judge must pay a high price for the honor bestowed upon him. Thus, a judge must comport himself at all times in such manner that his conduct, official or otherwise, can bear the most searching scrutiny of the public that looks up to him as the epitome of integrity and justice. x x x it is essential that judges, like *Caesar's* wife, should be above suspicion.

The evidence adduced in this charge showed that the respondent judge violated Rule 1.01, Canon 1 and Rule 2.01, Canon 2, both of the Code of Judicial Conduct, in failing to maintain the appearance of integrity and in failing to engage in conduct to promote public confidence in the judiciary. Likewise, he violated Canon 2 of the Code of Judicial Conduct and Canon 3 of the

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[46] Adm. Matter No. 1733-CFI, September 30, 1981, 107 SCRA 640.

[47] A.M. No. RTJ-00-1601, November 13, 2001, 368 SCRA 503.

[48] *Supra* note 33, p. 266.

Canons of Judicial Ethics relating to the avoidance of impropriety and the appearance of impropriety in all the judge's activities, official or otherwise.

The Execution of a Final Judgment in the Consolidated Agrarian Cases

The pertinent portion of the joint decision dated February 7, 2000 rendered by the Special Agrarian Court in Agrarian Case Nos. 31-99 to 51-99 reads:

> WHEREFORE, all the foregoing premises duly considered, the Court hereby renders its judgment fixing, as it has judiciously determined, the just compensation for the landholdings and the improvements of all the herein petitioners in all these above-captioned docketed agrarian cases, as follows:
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> First – Hereby fixing, as determined, the just compensation of herein petitioners' aggregate landholdings of 123.4629 hectares hereby fixed and determined at ₱25,405,553.55, plus the fixed and determined just compensation for the existing improvements thereon of ₱32,800,000.00, or a total of ₱58,205,553.55; and proper-computed adjustment to make such valuation at par with current true value of the Philippine Peso *vis-à-vis* the US Dollar, said upgraded amount in its upgraded value totals ₱89,547,005.46; and further adding thereto the computed interests pegged at 6% per annum, which amounted to ₱21,986,680.68, the total amount of just compensation which Respondent-DAR through LBP must pay, jointly and severally, to petitioners for their landholdings and improvements would be, as it is hereby fixed in the aggregate amount of ₱111,533,686.14;
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> x x x x x x x x x

The respondent judge contends that he merely acted on the motion filed by the landowners who requested adjustments in enforcing the final judgment considering the statement in the dispositive portion of the judgment that allowed adjustments based on the *current true value of the Philippine Peso vis-à-vis the US Dollar.*

In his findings, Justice Tijam observed that the adjustment contemplated in the joint decision was already included in the dispositive portion, making it unnecessary for the respondent

judge to make any additional adjustment. We also note that this joint decision, after having become final and executory, was entered in the Book of Entries of Judgment of the Special Agrarian Court on May 3, 2000.[49] It was not until October 26, 2000 that the respondent judge made further "adjustment" of the judgment amount when he acted on the motion filed by the landowners.[50]

The respondent judge ought to have known that the joint decision was already final and executory and could no longer be disturbed when he made his adjustments. This legal reality, known as the rule of immutability of judgment, is an elementary principle of law and procedure. Once a judgment becomes final, it may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the Highest Court of the land.[51] The **only recognized exceptions** are the correction of clerical errors, or the making of so-called *nunc pro tunc* entries, which cause no prejudice to any party, and where the judgment is void.[52] To be sure, the respondent judge's ground for modifying the joint decision is not among these recognized exceptions.

For modifying a final and executory decision in the course of its execution, we find the respondent judge guilty of gross ignorance of the law. Where the law is straightforward and its application to the facts plainly evident, not to know the law or to act as if one does not know it, constitutes gross ignorance of the law.[53] The respondent judge violated Rule 3.01, Canon 3 of the Code of Judicial Conduct which mandates professional competence on the part of a judge. A judge owes the public and the court

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[49] *Land Bank of the Philippines, etc. v. Saludanes*, G.R. No. 146581, December 13, 2005, 477 SCRA 506.

[50] CA *Rollo*, p. 751.

[51] *Equitable Banking Corporation v. Sadac*, G.R. No. 164772, June 8, 2006, 490 SCRA 380.

[52] *Id*., p. 417.

[53] *Amante-Descallar v. Ramas*, A.M. No. RTJ-08-2142, March 20, 2009.

the duty to be proficient in the law and is expected to keep abreast of laws and prevailing jurisprudence;[54] otherwise, he erodes the confidence of the public in the courts.[55] *Ignorance of the law by a judge can easily be the mainspring of injustice.*[56]

The Penalty

The retirement of the respondent judge and death of both the complainant and the respondent judge pending the investigation of these administrative cases are not deterrents to the resolution on the merits of the complaints and to the imposition of the sanctions demanded by the circumstances. Jurisprudence holds that the death of the complainant does not warrant the withdrawal of the charges against the respondent nor does this development render the complaint moot; the complainant is treated only as a witness in this type of proceedings.[57] On the other hand, the death of the respondent in an administrative case, as a rule, does not preclude a finding of administrative liability. The recognized exceptions to this rule are: *first*, when the respondent has not been heard and continuation of the proceedings would deny him of his right to due process; *second*, where exceptional circumstances exist in the case leading to equitable and humanitarian considerations; and *third*, when the kind of penalty imposed or imposable would render the proceedings useless.[58] None of these exceptional circumstances are present in the case.

Thus, despite the above supervening events, we can still impose the penalty of fine against the respondent judge deductible from his retirement benefits. In this case, we find that the infractions he committed all constitute serious charges warranting the imposition of fine in the amount of ₱20,000.00 to ₱40,000.00 range.[59] Considering the several violations he committed and

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[54] *Id*.

[55] *Id*.

[56] *Id*.

[57] *Ferrer v. Tebelin*, A.C. No. 6590, June 27, 2005, 461 SCRA 207.

[58] *Gonzales v. Escalano*, A.M. No. P-03-1715, September 19, 2008.

[59] Section 11, Rule 140 of the Rules of Court.

the gravity and circumstances of these infractions, we find that the maximum amount of fine should be imposed on each charge. In so ruling, we note that this is not the first administrative infraction committed by the respondent judge; he had previously been fined ₱10,000.00 for undue delay in rendering decisions or orders.[60]

On the first charge (false investigation report on Judge Agayan), we find the respondent judge guilty of dishonesty, inefficiency, and serious misconduct. He violated the provisions of Rule 2.01 of Canon 2, Canon 3 and Rule 3.08 of Canon 3 of the Code of Judicial Conduct; and Canons 3 and 31 of the Canons of Judicial Ethics. Section 8, Rule 140 of the Rules of Court, classifies dishonesty and gross misconduct constituting violations of the Code of Judicial Conduct as serious charges. We impose a fine of ₱40,000.00 on the respondent judge on this charge.[61]

On the second charge (use and possession of the vehicle of a litigant before his sala), the respondent judge is guilty of serious misconduct and impropriety as provided in Rule 1.01 of Canon 1, Canon 2 and Rule 2.01 of Canon 2 of the Code of Judicial Conduct, and Canon 3 of the Canons of Judicial Ethics. Considering the compounded administrative offenses, he is meted the maximum fine of ₱40,000.00.[62]

For violation of Rule 3.01, Canon 3 of the Code of Judicial Conduct (in the execution of the decision of an agrarian case), the respondent judge is liable for gross ignorance of the law for which the maximum fine of ₱40,000.00 is imposed. Gross ignorance of law is considered a serious charge that warrants the imposition of the penalties provided under Section 11 (A), Rule 140 of the Rules of Court.[63]

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[60] *Report on the Judicial Audit Conducted in the RTC, Branches 2 and 31*, A.M. No. 04-1-56-RTC, February 17, 2005, 451 SCRA 605.

[61] *QBE Insurance Phils. v. Judge Laviña*, A.M. No. RTJ-06-1971, October 17, 2007, 536 SCRA 372.

[62] *Ibid.*

[63] *Alconera v. Madajucon*, A.M. No. MTJ-00-1313, April 27, 2005, 457 SCRA 378.

WHEREFORE, premises considered, we find Judge Erasto D. Salcedo *GUILTY* of the following administrative offenses:

1. Dishonesty, inefficiency and serious misconduct and violation of Rule 2.01 of Canon 2 and Rule 3.08 of Canon 3 of the Code of Judicial Conduct; and Canons 3 and 31 of the Canons of Judicial Ethics. We impose a *FINE* of ₱40,000.00.

2. Serious misconduct and impropriety in violation of Rule 1.01 of Canon 1 and Rule 2.01of Canon 2 of the Code of Judicial Conduct, as well as Canon 3 of the Canons of Judicial Ethics. He is meted a *FINE* of ₱40,000.00.

3. Gross ignorance of the law under Rule 3.01, Canon 3 of the Code of Judicial Conduct, for which a *FINE* of ₱40,000.00 is imposed.

The Office of the Court Administrator is hereby ordered to deduct the amount of One Hundred Twenty Thousand Pesos (₱120,000.00) from the retirement benefits due to Judge Erasto D. Salcedo, and to proceed with the processing and release of these benefits, unless there are other lawful causes for withholding them.

Finally, we refer to the Department of Justice for appropriate action the possible administrative liability of Prosecutor Matias Aquiatan arising from the imputations made by the complainant that he committed a hasty reinvestigation of Leopoldo Gonzaga in Criminal Case No. 11728.

SO ORDERED.

Quisumbing,[*] *Acting C.J., Carpio, Corona, Carpio Morales, Chico-Nazario, Nachura, Leonardo-de Castro, Brion, Peralta, Bersamin,* and *Abad, JJ.,* concur.

Puno, C.J., Velasco, Jr., and *Del Castillo, JJ.,* on official leave.

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[*] Acting Chief Justice from October 12 to 16, 2009 per Special Order No. 721 dated October 5, 2009.

SECOND DIVISION

[G.R. No. 153820. October 16, 2009]

DELFIN TAN, *petitioner, vs.* **ERLINDA C. BENOLIRAO, ANDREW C. BENOLIRAO, ROMANO C. BENOLIRAO, DION C. BENOLIRAO, SPS. REYNALDO TANINGCO and NORMA D. BENOLIRAO, EVELYN T. MONREAL, and ANN KARINA TANINGCO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS AND PRACTICES; MEMORANDUM; NO NEW ISSUES MAY BE RAISED IN A MEMORANDUM; REASON.— x x x. The Court's September 27, 2004 Resolution expressly stated that "*No new issues may be raised by a party in his/its Memorandum.*" Explaining the reason for this rule, we said that: The raising of additional issues in a memorandum before the Supreme Court is irregular, because said memorandum is supposed to be in support merely of the position taken by the party concerned in his petition, and the raising of new issues amounts to the filing of a petition beyond the reglementary period. The purpose of this rule is to provide all parties to a case a fair opportunity to be heard. No new points of law, theories, issues or arguments may be raised by a party in the Memorandum for the reason that to permit these would be offensive to the basic rules of fair play, justice and due process. Tan contravened the Court's explicit instructions by raising these additional errors. Hence, we disregard them and focus instead on the issues previously raised in the petition and properly included in the Memorandum.

2. ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ISSUES INVOLVING PURE QUESTIONS OF LAW ARE PROPERLY COGNIZABLE BY THE SUPREME COURT.— Contrary to the respondents' claim, the issue raised in the present petition – defined in the opening paragraph of this Decision – is a pure question of law. Hence, the petition and the issue it presents are properly cognizable by this Court.

3. ID.; PLEADINGS AND PRACTICES; *LIS PENDENS*; NOTICE OF *LIS PENDENS*, WHEN MAY BE VALIDLY ANNOTATED ON THE TITLE TO THE REAL PROPERTY.— Section 14, Rule 13 of the Rules enumerates the instances when a notice of *lis pendens* can be validly annotated on the title to real property: Sec. 14. Notice of *lis pendens*. In an **action affecting the title or the right of possession** of real property, the plaintiff and the defendant, when affirmative relief is claimed in his answer, may record in the office of the registry of deeds of the province in which the property is situated a notice of the pendency of the action. Said notice shall contain the names of the parties and the object of the action or defense, and a description of the property in that province affected thereby. Only from the time of filing such notice for record shall a purchaser, or encumbrancer of the property affected thereby, be deemed to have constructive notice of the pendency of the action, and only of its pendency against the parties designated by their real names. x x x The litigation subject of the notice of *lis pendens* must directly involve a specific property which is necessarily affected by the judgment.

4. ID.; ID.; ID.; ABSENT CLAIM OF OWNERSHIP, A PARTY HAS NO RIGHT TO ASK FOR THE ANNOTATION OF *LIS PENDENS* ON THE TITLE OF THE PROPERTY.— Furthermore, as will be explained in detail below, the contract between the parties was merely a contract to sell where the vendors retained title and ownership to the property until Tan had fully paid the purchase price. Since Tan had no claim of ownership or title to the property yet, he obviously had no right to ask for the annotation of a *lis pendens* notice on the title of the property.

5. ID.; ACTIONS; PROCEEDING *IN PERSONAM*, EXPLAINED; AIM AND OBJECT OF AN ACTION DETERMINE ITS CHARACTER.— Tan's complaint prayed for either the rescission or the reformation of the Deed of Conditional Sale. While the Deed does have real property for its object, we find that Tan's complaint is an *in personam* action, as Tan asked the court to compel the respondents to do something – either to rescind the contract and return the down payment, or to reform the contract by extending the period given to pay the

remaining balance of the purchase price. Either way, Tan wants to enforce his personal rights against the respondents, not against the property subject of the Deed. As we explained in *Domagas v. Jensen:* The settled rule is that the aim and object of an action determine its character. Whether a proceeding is *in rem*, or *in personam*, or *quasi in rem* for that matter, is determined by its nature and purpose, and by these only. A proceeding *in personam* is a proceeding to enforce personal rights and obligations brought against the person and is based on the jurisdiction of the person, although it may involve his right to, or the exercise of ownership of, specific property, or seek to compel him to control or dispose of it in accordance with the mandate of the court. The purpose of a proceeding *in personam* is to impose, through the judgment of a court, some responsibility or liability directly upon the person of the defendant. Of this character are suits to compel a defendant to specifically perform some act or actions to fasten a pecuniary liability on him.

6. CIVIL LAW; SPECIAL CONTRACTS; SALES; CONTRACT OF SALE DISTINGUISHED FROM CONTRACT TO SELL; CASE AT BAR.— A contract is what the law defines it to be, taking into consideration its essential elements, and not what the contracting parties call it. Article 1485 of the Civil Code defines a contract of sale x x x The very essence of a **contract of sale** is the **transfer of ownership** in exchange for a price paid or promised. In contrast, a **contract to sell** is defined as a bilateral contract whereby the prospective seller, while **expressly reserving the ownership of the property** despite delivery thereof to the prospective buyer, **binds himself to sell the property exclusively to the prospective buyer** upon fulfillment of the condition agreed, *i.e.*, full payment of the purchase price. A contract to sell may not even be considered as a **conditional contract of sale** where the seller may likewise **reserve title** to the property subject of the sale until the **fulfillment of a suspensive condition,** because **in a conditional contract of sale, the first element of consent is present**, although it is conditioned upon the happening of a contingent event which may or may not occur. In the present case, the true nature of the contract is revealed by paragraph D thereof, which states: x x x d) That in case, BUYER has complied with the terms and conditions of this

contract, then the SELLERS shall execute and deliver to the BUYER the appropriate Deed of Absolute Sale; x x x Jurisprudence has established that where the seller promises to execute a deed of absolute sale upon the completion by the buyer of the payment of the price, the contract is only a contract to sell. Thus, while the contract is denominated as a Deed of Conditional Sale, the presence of the above-quoted provision identifies the contract as being a mere contract to sell.

7. REMEDIAL LAW; SPECIAL PROCEEDINGS; SETTLEMENT OF ESTATE OF DECEASED PERSON; ANNOTATION ON THE NEW CERTIFICATE OF TITLE ISSUED PURSUANT TO THE DISTRIBUTION OF DECEDENT'S REAL PROPERTIES CREATES A LEGAL ENCUMBRANCE OR LIEN ON THE PROPERTY IN FAVOR OF THE EXCLUDED HEIRS OR CREDITORS; CANCELLATION OF THE SALE, WHEN PROPER.— An annotation is placed on new certificates of title issued pursuant to the distribution and partition of a decedent's real properties to warn third persons on the possible interests of excluded heirs or unpaid creditors in these properties. **The annotation, therefore, creates a legal encumbrance or lien on the real property in favor of the excluded heirs or creditors**. **Where a buyer purchases the real property despite the annotation, he must be ready for the possibility that the title could be subject to the rights of excluded parties.** The cancellation of the sale would be the logical consequence where: (a) the annotation clearly appears on the title, warning all would-be buyers; (b) the sale unlawfully interferes with the rights of heirs; and (c) the rightful heirs bring an action to question the transfer within the two-year period provided by law. As we held in *Vda. de Francisco v. Carreon*: And Section 4, Rule 74 x x x expressly authorizes the court to give to every heir his lawful participation in the real estate "notwithstanding any transfers of such real estate" and to "issue execution" thereon. All this implies that, **when within the amendatory period the realty has been alienated, the court in re-dividing it among the heirs has the authority to direct cancellation of such alienation in the same estate proceedings, whenever it becomes necessary to do so.** To require the institution of a separate

action for such annulment would run counter to the letter of the above rule and the spirit of these summary settlements.

8. CIVIL LAW; SPECIAL CONTRACTS; SALES; REMEDY OF RESCISSION CANNOT APPLY TO MERE CONTRACTS TO SELL; REASON; EFFECT OF NON-PAYMENT OF THE PURCHASE PRICE IN A CONTRACT TO SELL.— We have held in numerous cases that the remedy of rescission under Article 1191 cannot apply to mere contracts to sell. We explained the reason for this in *Santos v. Court of Appeals,* where we said: [I]n a contract to sell, title remains with the vendor and does not pass on to the vendee until the purchase price is paid in full. Thus, in a contract to sell, the payment of the purchase price is a positive suspensive condition. **Failure to pay the price agreed upon is not a mere breach, casual or serious, but a situation that prevents the obligation of the vendor to convey title from acquiring an obligatory force.** This is entirely different from the situation in a contract of sale, where non-payment of the price is a negative resolutory condition. The effects in law are not identical. In a contract of sale, the vendor has lost ownership of the thing sold and cannot recover it, unless the contract of sale is rescinded and set aside. **In a contract to sell, however, the vendor remains the owner for as long as the vendee has not complied fully with the condition of paying the purchase price.** If the vendor should eject the vendee for failure to meet the condition precedent, he is *enforcing the contract and not rescinding it.* x x x Article 1592 speaks of non-payment of the purchase price as a resolutory condition. It does not apply to a contract to sell. As to Article 1191, it is subordinated to the provisions of Article 1592 when applied to sales of immovable property. x x x We, therefore, hold that the contract to sell was terminated when the vendors could no longer legally compel Tan to pay the balance of the purchase price as a result of the legal encumbrance which attached to the title of the property. Since Tan's refusal to pay was due to the supervening event of a legal encumbrance on the property and not through his own fault or negligence, we find and so hold that the forfeiture of Tan's down payment was clearly unwarranted.

9. ID.; DAMAGES; ATTORNEY'S FEES; AWARD OF ATTORNEYS' FEES IN FAVOR OF THE PETITIONER PROPER IN CASE AT BAR.— As evident from our previous discussion, Tan had a valid reason for refusing to pay the balance of the purchase price for the property. Consequently, there is no basis for the award of attorney's fees in favor of the respondents. On the other hand, we award attorney's fees in favor of Tan, since he was compelled to litigate due to the respondents' refusal to return his down payment despite the fact that they could no longer comply with their obligation under the contract to sell, *i.e.*, to convey a clean title. Given the facts of this case, we find the award of ₱50,000.00 as attorney's fees proper.

10. ID.; ID.; MONETARY AWARD TO THE PETITIONER IS SUBJECT TO LEGAL INTEREST.— Undoubtedly, Tan made a clear and unequivocal demand on the vendors to return his down payment as early as May 28, 1993. Pursuant to our definitive ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals*, we hold that the vendors should return the ₱200,000.00 down payment to Tan, subject to the legal interest of 6% per annum computed from May 28, 1993, the date of the first demand letter. Furthermore, after a judgment has become final and executory, the rate of legal interest, whether the obligation was in the form of a loan or forbearance of money or otherwise, shall be 12% per annum from such finality until its satisfaction. Accordingly, the principal obligation of ₱200,000.00 shall bear 6% interest from the date of first demand or from May 28, 1993. From the date the liability for the principal obligation and attorney's fees has become final and executory, an annual interest of 12% shall be imposed on these obligations until their final satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

APPEARANCES OF COUNSEL

Renato A. Abejero for petitioner.
Cabrera Makalintal & Baliad Law Offices for respondents.

D E C I S I O N

BRION, *J.*:

Is an annotation made pursuant to Section 4, Rule 74 of the Rules of Court (*Rules*) on a certificate of title covering real property considered an encumbrance on the property? We resolve this question in the petition for review on *certiorari*[1] filed by Delfin Tan (*Tan*) to assail the decision of the Court of Appeals (*CA*) in CA-G.R. CV No. 52033[2] and the decision of the Regional Trial Court (*RTC*)[3] that commonly declared the forfeiture of his ₱200,000.00 down payment as proper, pursuant to the terms of his contract with the respondents.

THE ANTECEDENTS

The facts are not disputed. Spouses Lamberto and Erlinda Benolirao and the Spouses Reynaldo and Norma Taningco were the co-owners of a 689-square meter parcel of land (*property*) located in Tagaytay City and covered by Transfer Certificate of Title (*TCT*) No. 26423. On October 6, 1992, the co-owners executed a Deed of Conditional Sale over the property in favor of Tan for the price of ₱1,378,000.00. The deed stated:

a) An initial down-payment of TWO HUNDRED (₱200,000.00) THOUSAND PESOS, Philippine Currency, upon signing of this contract; then the remaining balance of ONE MILLION ONE HUNDRED SEVENTY EIGHT THOUSAND (₱1,178,000.00) PESOS, shall be payable within a period of one hundred fifty (150) days from date hereof without interest;

b) That for any reason, BUYER fails to pay the remaining balance within above mentioned period, the BUYER shall have a grace period of sixty (60) days within which to make the payment, provided that there shall be an interest of 15% per annum on the balance amount due from the SELLERS;

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[1] Under Rule 45 of the Rules of Court, dated July 25, 2002; *rollo*, pp. 30-50.

[2] Penned by Associate Justice Romeo J. Callejo, Sr. (retired member of this Court), with the concurrence of Associate Justice Remedios Salazar-Fernando and Associate Justice Danilo B. Pine; *id.*, pp. 6- 26.

[3] Dated September 8, 1995; *id*, pp. 76-82.

c) That should in case (sic) the BUYER fails to comply with the terms and conditions within the above stated grace period, then the SELLERS shall have the right to forfeit the down payment, and to rescind this conditional sale without need of judicial action;

d) That in case, BUYER have complied with the terms and conditions of this contract, then the SELLERS shall execute and deliver to the BUYER the appropriate Deed of Absolute Sale;

Pursuant to the Deed of Conditional Sale, Tan issued and delivered to the co-owners/vendors Metrobank Check No. 904407 for ₱200,000.00 as down payment for the property, for which the vendors issued a corresponding receipt.

On November 6, 1992, Lamberto Benolirao died intestate. Erlinda Benolirao (his widow and one of the vendors of the property) and her children, as heirs of the deceased, executed an extrajudicial settlement of Lamberto's estate on January 20, 1993. On the basis of the extrajudicial settlement, a new certificate of title over the property, TCT No. 27335, was issued on March 26, 1993 in the names of the Spouses Reynaldo and Norma Taningco and Erlinda Benolirao and her children. Pursuant to Section 4, Rule 74 of the Rules, the following annotation was made on TCT No. 27335:

x x x any liability to credirots (*sic*), excluded heirs and other persons having right to the property, for a period of two (2) years, with respect only to the share of Erlinda, Andrew, Romano and Dion, all surnamed Benolirao

As stated in the Deed of Conditional Sale, Tan had until March 15, 1993 to pay the balance of the purchase price. By agreement of the parties, this period was extended by two months, so Tan had until May 15, 1993 to pay the balance. Tan failed to pay and asked for another extension, which the vendors again granted. Notwithstanding this second extension, Tan still failed to pay the remaining balance due on May 21, 1993. The vendors thus wrote him a letter demanding payment of the balance of the purchase price within five (5) days from notice; otherwise,

they would declare the rescission of the conditional sale and the forfeiture of his down payment based on the terms of the contract.

Tan refused to comply with the vendors' demand and instead wrote them a letter (dated May 28, 1993) claiming that the annotation on the title, made pursuant to Section 4, Rule 74 of the Rules, constituted an encumbrance on the property that would prevent the vendors from delivering a clean title to him. Thus, he alleged that he could no longer be required to pay the balance of the purchase price and demanded the return of his down payment.

When the vendors refused to refund the down payment, Tan, through counsel, sent another demand letter to the vendors on June 18, 1993. The vendors still refused to heed Tan's demand, prompting Tan to file on June 19, 1993 a complaint with the RTC of Pasay City for specific performance against the vendors, including Andrew Benolirao, Romano Benolirao, Dion Benolirao as heirs of Lamberto Benolirao, together with Evelyn Monreal and Ann Karina Taningco (collectively, the *respondents*). In his complaint, Tan alleged that there was a novation of the Deed of Conditional Sale done without his consent since the annotation on the title created an encumbrance over the property. Tan prayed for the refund of the down payment and the rescission of the contract.

On August 9, 1993, Tan amended his Complaint, contending that if the respondents insist on forfeiting the down payment, he would be willing to pay the balance of the purchase price provided there is reformation of the Deed of Conditional Sale. In the meantime, Tan caused the annotation on the title of a notice of *lis pendens*.

On August 21, 1993, the respondents executed a Deed of Absolute Sale over the property in favor of Hector de Guzman (*de Guzman*) for the price of ₱689,000.00.

Thereafter, the respondents moved for the cancellation of the notice of *lis pendens* on the ground that it was inappropriate since the case that Tan filed was a personal action which did

not involve either title to, or possession of, real property. The RTC issued an order dated October 22, 1993 granting the respondents' motion to cancel the *lis pendens* annotation on the title.

Meanwhile, based on the Deed of Absolute Sale in his favor, de Guzman registered the property and TCT No. 28104 was issued in his name. Tan then filed a motion to carry over the *lis pendens* annotation to TCT No. 28104 registered in de Guzman's name, but the RTC denied the motion.

On September 8, 1995, after due proceedings, the RTC rendered judgment ruling that the respondents' forfeiture of Tan's down payment was proper in accordance with the terms and conditions of the contract between the parties.[4] The RTC ordered Tan to pay the respondents the amount of ₱30,000.00, plus ₱1,000.00 per court appearance, as attorney's fees, and to pay the cost of suit.

On appeal, the CA dismissed the petition and affirmed the ruling of the trial court *in toto*. Hence, the present petition.

THE ISSUES

Tan argues that the CA erred in affirming the RTC's ruling to cancel the *lis pendens* annotation on TCT No. 27335. Due to the unauthorized novation of the agreement, Tan presented before the trial court two alternative remedies in his complaint – either the rescission of the contract and the return of the down payment, or the reformation of the contract to adjust the payment period, so that Tan will pay the remaining balance of the purchase price only after the lapse of the required two-year encumbrance on the title. Tan posits that the CA erroneously disregarded the alternative remedy of reformation of contract when it affirmed the removal of the *lis pendens* annotation on the title.

Tan further contends that the CA erred when it recognized the validity of the forfeiture of the down payment in favor of the vendors. While admitting that the Deed of Conditional Sale

[4] *Id.,* pp. 76-82.

contained a forfeiture clause, he insists that this clause applies only if the failure to pay the balance of the purchase price was through his own fault or negligence. In the present case, Tan claims that he was justified in refusing to pay the balance price since the vendors would not have been able to comply with their obligation to deliver a "clean" title covering the property.

Lastly, Tan maintains that the CA erred in ordering him to pay the respondents ₱30,000.00, plus ₱1,000.00 per court appearance as attorney's fees, since he filed the foregoing action in good faith, believing that he is in the right.

The respondents, on the other hand, assert that the petition should be dismissed for raising pure questions of fact, in contravention of the provisions of Rule 45 of the Rules which provides that only questions of law can be raised in petitions for review on *certiorari*.

THE COURT'S RULING

The petition is granted.

No new issues can be raised in the Memorandum

At the onset, we note that Tan raised the following additional assignment of errors in his Memorandum: (a) the CA erred in holding that the petitioner could seek reformation of the Deed of Conditional Sale only if he paid the balance of the purchase price and if the vendors refused to execute the deed of absolute sale; and (b) the CA erred in holding that the petitioner was estopped from asking for the reformation of the contract or for specific performance.

The Court's September 27, 2004 Resolution expressly stated that "*No new issues may be raised by a party in his/its Memorandum.*" Explaining the reason for this rule, we said that:

> The raising of additional issues in a memorandum before the Supreme Court is irregular, because said memorandum is supposed to be in support merely of the position taken by the party concerned

in his petition, and the raising of new issues amounts to the filing of a petition beyond the reglementary period. The purpose of this rule is to provide all parties to a case a fair opportunity to be heard. No new points of law, theories, issues or arguments may be raised by a party in the Memorandum for the reason that to permit these would be offensive to the basic rules of fair play, justice and due process.[5]

Tan contravened the Court's explicit instructions by raising these additional errors. Hence, we disregard them and focus instead on the issues previously raised in the petition and properly included in the Memorandum.

Petition raises a question of law

Contrary to the respondents' claim, the issue raised in the present petition – defined in the opening paragraph of this Decision – is a pure question of law. Hence, the petition and the issue it presents are properly cognizable by this Court.

Lis pendens annotation not proper in personal actions

Section 14, Rule 13 of the Rules enumerates the instances when a notice of *lis pendens* can be validly annotated on the title to real property:

Sec. 14. Notice of *lis pendens*.

In an **action affecting the title or the right of possession** of real property, the plaintiff and the defendant, when affirmative relief is claimed in his answer, may record in the office of the registry of deeds of the province in which the property is situated a notice of the pendency of the action. Said notice shall contain the names of the parties and the object of the action or defense, and a description of the property in that province affected thereby. Only from the time of filing such notice for record shall a purchaser, or encumbrancer of the property affected thereby, be deemed to have constructive notice of the pendency of the action, and only of its pendency against the parties designated by their real names.

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[5] *Heirs of Marasigan v. Marasigan*, G.R. No. 156078, March 14, 2008, 548 SCRA 409.

The notice of *lis pendens* hereinabove mentioned may be cancelled only upon order of the court, after proper showing that the notice is for the purpose of molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be recorded.

The litigation subject of the notice of *lis pendens* must directly involve a specific property which is necessarily affected by the judgment.[6]

Tan's complaint prayed for either the rescission or the reformation of the Deed of Conditional Sale. While the Deed does have real property for its object, we find that Tan's complaint is an *in personam* action, as Tan asked the court to compel the respondents to do something – either to rescind the contract and return the down payment, or to reform the contract by extending the period given to pay the remaining balance of the purchase price. Either way, Tan wants to enforce his personal rights against the respondents, not against the property subject of the Deed. As we explained in *Domagas v. Jensen*:[7]

> The settled rule is that the aim and object of an action determine its character. Whether a proceeding is *in rem*, or *in personam*, or *quasi in rem* for that matter, is determined by its nature and purpose, and by these only. A proceeding *in personam* is a proceeding to enforce personal rights and obligations brought against the person and is based on the jurisdiction of the person, although it may involve his right to, or the exercise of ownership of, specific property, or seek to compel him to control or dispose of it in accordance with the mandate of the court. The purpose of a proceeding *in personam* is to impose, through the judgment of a court, some responsibility or liability directly upon the person of the defendant. Of this character are suits to compel a defendant to specifically perform some act or actions to fasten a pecuniary liability on him.

Furthermore, as will be explained in detail below, the contract between the parties was merely a contract to sell where the

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[6] *Heirs of Eugenio Lopez, Sr. v. Enriquez*, G.R. No. 146262, January 21, 2005, 449 SCRA 173.

[7] G.R. No. 158407, January 17, 2005, 448 SCRA 663.

vendors retained title and ownership to the property until Tan had fully paid the purchase price. Since Tan had no claim of ownership or title to the property yet, he obviously had no right to ask for the annotation of a *lis pendens* notice on the title of the property.

Contract is a mere contract to sell

A contract is what the law defines it to be, taking into consideration its essential elements, and not what the contracting parties call it.[8] Article 1485 of the Civil Code defines a contract of sale as follows:

> Art. 1458. By the contract of sale one of the contracting parties obligates himself to transfer the ownership and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.
>
> A contract of sale may be absolute or conditional.

The very essence of a **contract of sale** is the **transfer of ownership** in exchange for a price paid or promised.[9]

In contrast, a **contract to sell** is defined as a bilateral contract whereby the prospective seller, while **expressly reserving the ownership of the property** despite delivery thereof to the prospective buyer, **binds himself to sell the property exclusively to the prospective buyer** upon fulfillment of the condition agreed, *i.e.*, full payment of the purchase price.[10] A contract to sell may not even be considered as a **conditional contract of sale** where the seller may likewise **reserve title** to the property subject of the sale until the **fulfillment of a suspensive condition,** because **in a conditional contract of sale, the first element**

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[8] *Quiroga v. Parsons Hardware Co.*, 38 Phil. 501 (1918).

[9] *Schmid & Oberly, Inc. v. RJL Martinez Fishing Corp.*, G.R. No. 75198, October 18, 1988, 166 SCRA 493, citing *Commissioner of Internal Revenue v. Constantino*, 31 SCRA 779 (1970); *Ker & Co., Ltd. v. Lingad*, No. L-20871, April 30, 1971, 38 SCRA 524, citing *Salisbury v. Brooks*, 94 SE 117 (1917).

[10] *Sps. Ebrada v. Sps. Ramos*, G.R. No. 154413, August 31, 2005, 468 SCRA 597.

of consent is present, although it is conditioned upon the happening of a contingent event which may or may not occur.[11]

In the present case, the true nature of the contract is revealed by paragraph D thereof, which states:

x x x x x x x x x

d) That in case, BUYER has complied with the terms and conditions of this contract, then the SELLERS shall execute and deliver to the BUYER the appropriate Deed of Absolute Sale;

x x x x x x x x x

Jurisprudence has established that where the seller promises to execute a deed of absolute sale upon the completion by the buyer of the payment of the price, the contract is only a contract to sell.[12] Thus, while the contract is denominated as a Deed of Conditional Sale, the presence of the above-quoted provision identifies the contract as being a mere contract to sell.

A Section 4, Rule 74 annotation is an encumbrance on the property

While Tan admits that he refused to pay the balance of the purchase price, he claims that he had valid reason to do so – the sudden appearance of an annotation on the title pursuant to Section 4, Rule 74 of the Rules, which Tan considered an encumbrance on the property.

We find Tan's argument meritorious.

The annotation placed on TCT No. 27335, the new title issued to reflect the extrajudicial partition of Lamberto Benolirao's estate among his heirs, states:

x x x any liability to credirots (*sic*), excluded heirs and other persons having right to the property, for a period of two (2) years, **with respect only to the share of Erlinda, Andrew, Romano and Dion, all surnamed Benolirao** [Emphasis supplied.]

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[11] *Sps. Reyes v. Salvador, et al.*, G.R. No. 139047, September 11, 2008, citing *Coronel v. CA*, 263 SCRA 15 (1996).

[12] *Philippine National Bank v. Court of Appeals*, 330 Phil. 1048 (1996).

This annotation was placed on the title pursuant to Section 4, Rule 74 of the Rules, which reads:

Sec. 4. *Liability of distributees and estate.* – If it shall appear at any time within two (2) years after the settlement and distribution of an estate in accordance with the provisions of either of the first two sections of this rule, that an heir or other person has been unduly deprived of his lawful participation in the estate, such heir or such other person may compel the settlement of the estate in the courts in the manner hereinafter provided for the purpose of satisfying such lawful participation. And **if within** the same time of **two (2) years, it shall appear that there are debts outstanding against the estate which have not been paid, or that an heir or other person has been unduly deprived of his lawful participation payable in money, the court having jurisdiction of the estate may**, by order for that purpose, after hearing, **settle the amount of such debts or lawful participation and order how much and in what manner each distributee shall contribute in the payment thereof, and may issue execution,** if circumstances require, **against the bond provided in the preceding section or against the real estate belonging to the deceased**, or both. Such bond and such real estate shall remain charged with a liability to creditors, heirs, or other persons for the full period of two (2) years after such distribution, notwithstanding any transfers of real estate that may have been made. [Emphasis supplied.]

Senator Vicente Francisco discusses this provision in his book *The Revised Rules of Court in the Philippines*,[13] where he states:

The provision of Section 4, Rule 74 prescribes the procedure to be followed if within two years after an extrajudicial partition or summary distribution is made, an heir or other person appears to have been deprived of his lawful participation in the estate, or some outstanding debts which have not been paid are discovered. **When the lawful participation of the heir is not payable in money, because, for instance, he is entitled to a part of the real property that has been partitioned, there can be no other procedure than to cancel the partition so made and make a new division**, **unless**, of course, **the heir agrees to be paid the value of his participation**

[13] Volume V-A (1970 ed.).

with interest. But in case the lawful participation of the heir consists in his share in personal property of money left by the decedent, or in case unpaid debts are discovered within the said period of two years, the procedure is not to cancel the partition, nor to appoint an administrator to re-assemble the assets, as was allowed under the old Code, but the court, after hearing, shall fix the amount of such debts or lawful participation in proportion to or to the extent of the assets they have respectively received and, if circumstances require, it may issue execution against the real estate belonging to the decedent, or both. The present procedure is more expedient and less expensive in that it dispenses with the appointment of an administrator and does not disturb the possession enjoyed by the distributees.[14] [Emphasis supplied.]

An annotation is placed on new certificates of title issued pursuant to the distribution and partition of a decedent's real properties to warn third persons on the possible interests of excluded heirs or unpaid creditors in these properties. **The annotation, therefore, creates a legal encumbrance or lien on the real property in favor of the excluded heirs or creditors**. **Where a buyer purchases the real property despite the annotation, he must be ready for the possibility that the title could be subject to the rights of excluded parties.** The cancellation of the sale would be the logical consequence where: (a) the annotation clearly appears on the title, warning all would-be buyers; (b) the sale unlawfully interferes with the rights of heirs; and (c) the rightful heirs bring an action to question the transfer within the two-year period provided by law.

As we held in *Vda. de Francisco v. Carreon*:[15]

And Section 4, Rule 74 xxx expressly authorizes the court to give to every heir his lawful participation in the real estate "notwithstanding any transfers of such real estate" and to "issue execution" thereon. All this implies that, **when within the amendatory period the realty has been alienated, the court in re-dividing it among the heirs has the authority to direct**

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[14] *Id.*, pp. 701-702, citing *McMicking v. Sy Combieng*, 21 Phil. 211 (1912); *Lopez v. Enriquez*, 16 Phil. 336 (1910); *Espino v. Rovira*, 50 Phil. 152 (1927).

[15] 95 Phil. 237 (1954).

cancellation of such alienation in the same estate proceedings, whenever it becomes necessary to do so. To require the institution of a separate action for such annulment would run counter to the letter of the above rule and the spirit of these summary settlements. [Emphasis supplied.]

Similarly, in *Sps. Domingo v. Roces*,[16] we said:

The foregoing rule clearly covers transfers of real property to *any* person, as long as the deprived heir or creditor vindicates his rights within two years from the date of the settlement and distribution of estate. Contrary to petitioners' contention, **the effects of this provision are not limited to the heirs or original distributees of the estate properties, but shall affect *any* transferee of the properties**. [Emphasis supplied.]

Indeed, in *David v. Malay*,[17] although the title of the property had already been registered in the name of the third party buyers, we cancelled the sale and ordered the reconveyance of the property to the estate of the deceased for proper disposal among his rightful heirs.

By the time Tan's obligation to pay the balance of the purchase price arose on May 21, 1993 (on account of the extensions granted by the respondents), a new certificate of title covering the property had already been issued on March 26, 1993, which contained the encumbrance on the property; the encumbrance would remain so attached until the expiration of the two-year period. Clearly, at this time, the vendors could no longer compel Tan to pay the balance of the purchase since considering they themselves could not fulfill their obligation to transfer a clean title over the property to Tan.

Contract to sell is not rescinded but terminated

What then happens to the contract?

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[16] G.R. No. 147468, April 9, 2003, 401 SCRA 197.

[17] G.R. No. 132644, November 19, 1999, 318 SCRA 711.

We have held in numerous cases[18] that the remedy of rescission under Article 1191 cannot apply to mere contracts to sell. We explained the reason for this in *Santos v. Court of Appeals*,[19] where we said:

> [I]n a contract to sell, title remains with the vendor and does not pass on to the vendee until the purchase price is paid in full. Thus, in a contract to sell, the payment of the purchase price is a positive suspensive condition. **Failure to pay the price agreed upon is not a mere breach, casual or serious, but a situation that prevents the obligation of the vendor to convey title from acquiring an obligatory force.** This is entirely different from the situation in a contract of sale, where non-payment of the price is a negative resolutory condition. The effects in law are not identical. In a contract of sale, the vendor has lost ownership of the thing sold and cannot recover it, unless the contract of sale is rescinded and set aside. **In a contract to sell, however, the vendor remains the owner for as long as the vendee has not complied fully with the condition of paying the purchase price.** If the vendor should eject the vendee for failure to meet the condition precedent, he is *enforcing the contract and not rescinding it.* x x x Article 1592 speaks of non-payment of the purchase price as a resolutory condition. It does not apply to a contract to sell. As to Article 1191, it is subordinated to the provisions of Article 1592 when applied to sales of immovable property. Neither provision is applicable [to a contract to sell]. [Emphasis supplied.]

We, therefore, hold that the contract to sell was terminated when the vendors could no longer legally compel Tan to pay the balance of the purchase price as a result of the legal encumbrance which attached to the title of the property. Since Tan's refusal to pay was due to the supervening event of a legal encumbrance on the property and not through his own

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[18] *Gomez v. Court of Appeals*, G.R. No. 120747, September 21, 2000, 340 SCRA 720; *Padilla v. Paredes*, G.R. No. 124874, March 17, 2000, 328 SCRA 434; *Valarao v. Court of Appeals*, G.R. No. 130347, March 3, 1999, 304 SCRA 155; *Pangilinan v. Court of Appeals*, G.R. No. 83588, September 29, 1997, 279 SCRA 590; *Rillo v. Court of Appeals*, G.R. No. 125347, June 19, 1997, 274 SCRA 461.

[19] G.R. No. 120820, August 1, 2000, 337 SCRA 67.

fault or negligence, we find and so hold that the forfeiture of Tan's down payment was clearly unwarranted.

Award of Attorney's fees

As evident from our previous discussion, Tan had a valid reason for refusing to pay the balance of the purchase price for the property. Consequently, there is no basis for the award of attorney's fees in favor of the respondents.

On the other hand, we award attorney's fees in favor of Tan, since he was compelled to litigate due to the respondents' refusal to return his down payment despite the fact that they could no longer comply with their obligation under the contract to sell, *i.e.*, to convey a clean title. Given the facts of this case, we find the award of ₱50,000.00 as attorney's fees proper.

Monetary award is subject to legal interest

Undoubtedly, Tan made a clear and unequivocal demand on the vendors to return his down payment as early as May 28, 1993. Pursuant to our definitive ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals*,[20] we hold that the vendors should return the ₱200,000.00 down payment to Tan, subject

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[20] G.R. No. 97412, July 12, 1994, 234 SCRA 78.

The Court held:

"2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, **where the demand is established with reasonable certainty**, **the interest shall begin to run from the time the claim is made** judicially or **extrajudicially** (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date 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."

to the legal interest of 6% per annum computed from May 28, 1993, the date of the first demand letter.

Furthermore, after a judgment has become final and executory, the rate of legal interest, whether the obligation was in the form of a loan or forbearance of money or otherwise, shall be 12% per annum from such finality until its satisfaction. Accordingly, the principal obligation of ₱200,000.00 shall bear 6% interest from the date of first demand or from May 28, 1993. From the date the liability for the principal obligation and attorney's fees has become final and executory, an annual interest of 12% shall be imposed on these obligations until their final satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

WHEREFORE, premises considered, we hereby *GRANT* the petition and, accordingly, *ANNUL* and *SET ASIDE* the May 30, 2002 decision of the Court of Appeals in CA-G.R. CV No. 52033. Another judgment is rendered declaring the Deed of Conditional Sale terminated and ordering the respondents to return the ₱200,000.00 down payment to petitioner Delfin Tan, subject to legal interest of 6% per annum, computed from May 28, 1993. The respondents are also ordered to pay, jointly and severally, petitioner Delfin Tan the amount of ₱50,000.00 as and by way of attorney's fees. Once this decision becomes final and executory, respondents are ordered to pay interest at 12% per annum on the principal obligation as well as the attorney's fees, until full payment of these amounts. Costs against the respondents.

SO ORDERED.

Quisumbing (Chairperson),[*] *Carpio Morales, Nachura,*[**] and *Abad, JJ.,* concur.

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[*] Designated Acting Chief Justice effective October 12 to 16, 2009 per Special Order No. 721 dated October 5, 2009.

[**] Designated additional Member of the Second Division effective October 7, 2009 per Special Order No. 730 dated October 5, 2009.

FIRST DIVISION

[G.R. No. 158467. October 16, 2009]

SPOUSES JOEL and MARIETTA MARIMLA, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES and HON. OMAR T. VIOLA, RTC Judge, Branch 57, Angeles City,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; RULE ON HIERARCHY OF COURTS; EXCEPTION THERETO, APPLIED.— The general rule is that a party is mandated to follow the hierarchy of courts. However, in exceptional cases, the Court, for compelling reasons or if warranted by the nature of the issues raised, may take cognizance of petitions filed directly before it. In this case, the Court opts to take cognizance of the petition, as it involves the application of the rules promulgated by this Court in the exercise of its rule-making power under the Constitution.

2. ID.; CRIMINAL PROCEDURE; SEARCH WARRANT; THE HEADS OF THE PNP, NBI, PAOC-TF AND REACT-TF MAY DELEGATE THEIR DUTY OF ENDORSING THE APPLICATION FOR SEARCH WARRANT TO THEIR ASSISTANT HEADS; APPLICATION.— Nothing in A.M. No. 99-10-09-SC prohibits the heads of the PNP, NBI, PAOC-TF and REACT-TF from delegating their ministerial duty of endorsing the application for search warrant to their assistant heads. Under Section 31, Chapter 6, Book IV of the Administrative Code of 1987, an assistant head or other subordinate in every bureau may perform such duties as may be specified by their superior or head, as long as it is not inconsistent with law. x x x Director Wycoco's act of delegating his task of endorsing the application for search warrant to Deputy Director Nasol is allowed by the above quoted provision of law unless it is shown to be inconsistent with any law. Thus, Deputy Director Nasol's endorsement had the same force and effect as an endorsement issued by Director Wycoco himself. The finding of the RTC in the questioned Orders that Deputy

Director Nasol possessed the authority to sign for and in behalf of Director Wycoco is unassailable.

3. ID.; ID.; ID.; THE GUIDELINES IN THE ISSUANCE OF SEARCH WARRANTS IN SPECIAL CRIMINAL CASES BY THE RTC'S OF MANILA AND QUEZON CITY SHALL BE AN EXCEPTION TO SECTION 2, RULE 126 OF THE RULES OF COURT.— A.M. No. 99-10-09-SC provides that the guidelines on the enforceability of search warrants provided therein shall continue until further orders from this Court. In fact, the guidelines in A.M. No. 99-10-09-SC are reiterated in A.M. No. 03-8-02-SC entitled *Guidelines On The Selection And Designation Of Executive Judges And Defining Their Powers, Prerogatives And Duties,* which explicitly stated that the guidelines in the issuance of search warrants in special criminal cases by the RTCs of Manila and Quezon City shall be an exception to Section 2 of Rule 126 of the Rules of Court.

APPEARANCES OF COUNSEL

Rivera Perico David & Rivera Law Offices for petitioners.
The Solicitor General for respondents.

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. It seeks to annul the Order[1] dated September 6, 2002 of the Regional Trial Court (RTC) of Angeles City, Branch 57, denying petitioner spouses Joel and Marietta Marimla's Motion to Quash Search Warrant and to Suppress Evidence Illegally Seized, and the Order[2] dated April 21, 2003 denying the Motion for Reconsideration thereof.

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

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[*] Acting Chairperson as per Special Order No. 739.

[1] *Rollo*, pp. 29-32.

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

On February 15, 2002, Special Investigator (SI) Ray C. Lagasca of the NBI Anti-Organized Crime Division filed two (2) applications for search warrant with the RTC of Manila seeking permission to search: (1) petitioners' house located on RD Reyes St., Brgy. Sta. Trinidad, Angeles City[3] and (2) the premises on Maria Aquino St., Purok V, Brgy. Sta. Cruz, Porac, Pampanga,[4] both for Violation of Section 16, Article III of Republic Act (R.A.) No. 6425, as amended. The said applications uniformly alleged that SI Lagasca's request for the issuance of the search warrants was founded on his personal knowledge as well as that of witness Roland D. Fernandez (Fernandez), obtained after a series of surveillance operations and a test buy made at petitioners' house. The purpose of the application for search warrants was to seize the following articles/items:

> Undetermined amount of Methamphetamine Hydrochloride, popularly known as "*SHABU*," "MARIJUANA," weighing scale, plastic sachets, tooters, burner, rolling papers, and paraphernalia, all of which articles/items are being used or intended to be used in Violation of Republic Act 6425 as amended, and are hidden or being kept in said house/premises.[5]

Executive Judge Mario Guariña III (Judge Guariña III) examined in writing and under oath SI Lagasca and Fernandez, in the form of searching questions and answers, and found that based on facts personally known to SI Lagasca and Fernandez, petitioners had in their possession and control, inside their house located on RD Reyes St., Brgy. Sta. Trinidad, Angeles City, an undetermined amount of methamphetamine hydrochloride known as *shabu* and *marijuana*. Pursuant these findings, Judge Guariña III issued a search warrant docketed as Search Warrant No. 02-2677, which commanded any peace officer "to make immediate search, at any time of the day or night, not beyond 10 days from date hereof, of the premises above-mentioned and forthwith seize and take possession of the properties subject

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[3] *Id.* at 51.

[4] RTC Record, p. 61.

[5] See Notes 3 and 4.

of the offense and bring to his court said properties to be dealt with as the law directs."[6]

On the strength of this warrant, members of the NBI Anti-Organized Crime Division, namely, SI Lagasca, Primitivo M. Najera, Jr., Jesusa D. Jamasali, Horten Hernaez, and Ritche N. Oblanca, in coordination with the Philippine National Police of Angeles City, searched petitioners' house on February 19, 2002 at around 5:00 in the morning.[7] They were able to seize cash in the amount of ₱15,200.00[8] and the following items:

1. One (1) brick of dried flowering tops wrapped in a packing tape marked "RCL-1-2677," (net weight - 915.7 grams);
2. One (1) small brick of dried flowering tape (sic) wrapped in a newsprint marked "RCL-2-2677" (net weight - 491.5 grams);
3. Dried flowering tops separately contained in sixteen (16) transparent plastic bags, altogether wrapped in a newsprint marked "RCL-3-2677" (net weight - 127.9 grams); and
4. Dried flowering tops separately contained in nine (9) plastic tea bags, altogether placed in a yellow plastic bag marked "RCL-4-2677" (net weight - 18.2736 grams).[9]

On February 20, 2002, an Information[10] for Violation of Section 8, Article II of R.A. No. 6425, as amended by R.A. No. 7659, was filed against petitioners before the RTC of Angeles City, Branch 57, presided by herein respondent Judge Omar T. Viola.

On March 25, 2002, petitioners filed a Motion to Quash Search Warrant and to Suppress Evidence Illegally Seized[11] on the following grounds: (1) the application for search warrant was filed outside the territorial jurisdiction and judicial region of the

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[6] RTC Record, p. 11.

[7] *Id.* at. 12-13.

[8] Believed as proceeds from the earlier sale of prohibited drugs.

[9] RTC Record, p. 14.

[10] *Id.* at 1.

[11] *Rollo*, p. 35.

court where the alleged crime was committed; (2) the court which issued the questioned search warrant committed grave abuse of discretion when it issued the same because under the law it cannot issue a search warrant outside its territorial jurisdiction; (3) the questioned search warrant is void *ab initio*; and (4) the evidence illegally seized by virtue of the questioned search warrant is therefore inadmissible in evidence.

In support of the above motion, petitioners filed a Motion to Admit Documentary Evidence,[12] asking the court to admit the following documents: (1) application for Search Warrant No. 02-2677; (2) authorization letter dated February 12, 2002 with the signature of NBI Director Reynaldo G. Wycoco (*Director Wycoco*); (3) NBI ID No. 5370 of Agent Victor Emmanuel G. Lansang with the Signature of *Director Wycoco*; and (4) Administrative Matter (A.M.) No. 00-5-03-SC (Re: Proposed Revised Rules of Criminal Procedure [Rules 110-127, Revised Rules of Court]). Petitioners claim that the issuance of Search Warrant No. 02-2677 was "defective considering the application was not personally endorsed by [Dir.] Wycoco," and that the latter's signature in the authorization letter is different from that as appearing in the identification card, and therefore it is "not the true and genuine signature of [Dir.] Wycoco."[13]

In its Comment/Opposition to the Motion to Quash,[14] the Office of the City Prosecutor, Angeles City claims that the questioned search warrant does not fall within the coverage of Sec. 2 of Rule 126 of the Revised Rules on Criminal Procedure, but under A.M. No. 99-10-09-SC,[15] which authorizes the Executive Judges and Vice Executive Judges of the RTCs of Manila and Quezon City to act on all applications for search warrants involving dangerous drugs, among others, filed by the NBI, and provides that said warrants may be served in places outside the territorial jurisdiction of the RTCs of Manila and Quezon City.

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[12] *Id.* at 53-58.

[13] *Id.* at 53-54.

[14] *Id.* at 39

[15] Promulgated on January 25, 2000.

On August 14, 2009, SI Lagasca filed his Opposition and/or Answer to the Motion to Quash Search Warrant and to Suppress Evidence Illegally Seized.[16] He avers that Judge Guariña III issued Search Warrant No. 02-2677 by virtue of Administrative Order No. 20-97[17] issued on February 12, 1997. He also claims that it was NBI Deputy Director for Special Investigation Fermin Nasol who signed the authorization letter in behalf of *Director Wycoco*, for him to apply for a search warrant in the house/ premises of petitioners on RD Reyes St., Brgy. Sta. Trinidad, Angeles City and Maria Aquino St., Purok V, Brgy. Sta. Cruz, Porac, Pampanga for violation of R.A. No. 6425.

In an Order[18] dated September 6, 2002, Judge Omar T. Viola denied petitioners' Motion to Quash Search Warrant and to Suppress Evidence Illegally Seized for lack of merit, ratiocinating as follows:

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[16] *Rollo*, pp. 59-60.

[17] Administrative Order No. 20-97

In the interest of an effective administration of justice and pursuant to the powers vested in the Supreme Court by the Constitution, the Hon. Roberto A. Barrios, Executive Judge of the Regional Trial Court of Manila and in his absence the Hon. Rebecca de Guia Salvador, Presiding Judge, Regional Trial Court, Branch 1, Manila, the Hon. Maximo A. Savellano, Jr., Presiding Judge, Regional Trial Court, Branch 53, Manila and the Hon. Edgardo P. Cruz, Presiding Judge Regional Trial Court, Branch 27, Manila are hereby authorized to act on all applications for search warrants filed by the National Bureau of Investigation (NBI) by the Presidential Anti-Crime Commission (PACC) and by the Public Assistance and Reaction Against Crime (PARAC), duly certified by the legal officers and personally endorsed by the Heads of the said agencies, with the Regional Trial Court of Manila, for the search of places to be particularly described therein, and the seizure of property or things as prescribed in the Rules of Court, and to issue the warrants, if justified, which may be served in places even outside the territorial jurisdiction of said courts. This order is effective immediately and shall continue until further orders from this Court and shall be an exception to the provisions of Circular 13 dated October 1, 1985 and Circular No. 19 dated August 4, 1987. The authorization herein granted shall cover applications for search warrants involving illegal gambling, dangerous drugs, illegal possession of firearms and other major crimes. The authorized Judges shall keep a special docket book listing the details of the applications and the result of the searches and seizures made pursuant to the warrants issued.

[18] *Rollo*, pp. 29-32.

The public prosecutor was able to point out that the search warrant issued by Judge Mario Guariña III, the Executive Judge of the Manila Regional Trial Court, is in order considering that AM 99-10-09-SC allows or authorizes executive judges and vice executive judges of the Regional Trial Court of Manila and Quezon City to issue warrants which may be served in places outside their territorial jurisdiction in cases where the same was filed and, among others, by the NBI.

The NBI also was able to explain that the authority to apply search warrant was personally signed by Deputy Director for Special Investigation Fermin Nasol who is authorized to sign and that he was delegated the authority to sign for and in behalf of the NBI Director on documents of this like. Deputy Director Fermin Nasol having that authority to sign for and in behalf of the NBI Director, Reynaldo Wycoco, there is, therefore, compliance with the law regarding the issuance of authority to apply search warrant.

WHEREFORE, in view of the revelation, the Court has no other recourse but to agree with the views of the prosecution as well as the NBI. And this being so, the Court finds not enough ground to quash the search warrant issued against Spouses Joel and Marietta Marimla.

The motion filed by them and their supplement, is therefore denied, for lack of merit.

SO ORDERED.[19]

On September 23, 2002, petitioners filed a Motion for Reconsideration[20] on the ground that the denial of their Motion to Quash Search Warrant and to Suppress Evidence Illegally Seized is not in accordance with the law and existing jurisprudence. They claim that no evidence was presented by Deputy Director Nasol that he was authorized to sign for and in behalf of Director Wycoco.

Said Motion for Reconsideration was likewise denied by respondent court on the ground that the issues raised therein were mere reiterations of petitioners' arguments that had already been considered and passed upon in the Motion to Quash Search Warrant and to Suppress Evidence Illegally Seized. Respondent court added:

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[19] *Id.* at 31-32.

[20] *Id.* at 46-49.

To elaborate, this Court believes and is of the opinion that the Deputy Director of the NBI possesses the authority to sign for and in behalf of the NBI Director requesting for the issuance of a search warrant and nothing in the Administrative Matter 99-10-09 prohibits the delegation of such ministerial act to the Deputy Director who is an alter ego of the NBI Director. It is also quite clear that the NBI Director approved said authorization for SI Ray Lagasca to apply for a search warrant because said document was never recalled or amended by the Office of the Bureau Director up to the present.

The Court is also of the view that A.M. 99-10-09 is still valid, binding and legal by virtue of the fact that not even the Supreme Court (*sic*) did not make any pronouncement … withdrawing and or declaring the same ineffective, hence, until such order is issued, this Court must interpret and rule for its continued validity and applicability.[21]

Hence, this petition.

Petitioners claim that the search warrant was issued in violation of A.M. No. 99-10-09-SC and Section 2 of Rule 126 of the Revised Rules on Criminal Procedure.

The pivotal issue to be resolved in this petition is whether or not the respondent court acted with grave abuse of discretion amounting to lack or in excess of jurisdiction in issuing the assailed Orders dated September 6, 2002 and April 21, 2003, denying petitioners' Motion to Quash Search Warrant and to Suppress Evidence Illegally Seized and their Motion for Reconsideration, respectively.

At the onset, the Office of the Solicitor General (OSG) prays for the dismissal of this petition on the ground that the filing of the said petition directly with this Court runs afoul of the doctrine of hierarchy of courts. The OSG argues that while this Court has concurrent jurisdiction with the Court of Appeals (CA) over petitions for *certiorari*, this petition should have been filed with the CA. The OSG contends that the petitioners have not shown any compelling reason to justify the filing of the petition directly with this Court.

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

The general rule is that a party is mandated to follow the hierarchy of courts. However, in exceptional cases, the Court, for compelling reasons or if warranted by the nature of the issues raised, may take cognizance of petitions filed directly before it.[22] In this case, the Court opts to take cognizance of the petition, as it involves the application of the rules promulgated by this Court in the exercise of its rule-making power under the Constitution.[23]

At the heart of the present controversy are A.M. No. 99-10-09-SC, *Clarifying the Guidelines on the Application for the Enforceability of Search Warrants*, which was enacted on January 25, 2000; and A.M. No. 00-5-03-SC, the *Revised Rules on Criminal Procedure*, which took effect on December 1, 2000, specifically, Section 2, Rule 126 thereof. We quote the pertinent portions of the two issuances below:

Administrative Matter No. 99-10-09-SC

Resolution Clarifying the Guidelines on the Application for the Enforceability of Search Warrants

In the interest of an effective administration of justice and pursuant to the powers vested in the Supreme Court by the Constitution, the following are authorized to act on all applications for search warrants involving heinous crimes, illegal gambling, dangerous drugs and illegal possession of firearms.

The Executive Judge and Vice Executive Judges of Regional Trial Courts, Manila and Quezon City filed by the Philippine National Police (PNP), the National Bureau of Investigation (NBI), the Presidential Anti-Organized Crime Task Force (PAOC-TF) and the Reaction Against Crime Task Force (REACT-TF) with the Regional Trial Courts of Manila and Quezon City.

The applications shall be personally endorsed by the Heads of the said agencies, for the search of places to be particularly described therein, and the seizure of property of things as prescribed in the Rules of Court, and to issue the warrants of arrest, if justified, which may be served in places outside the territorial jurisdiction of said courts.

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[22] *United Laboratories, Inc. v. Isip*, G.R. No. 163858, June 28, 2005, 461 SCRA 574, 593.

[23] Sec. 5, Art. VIII of the Constitution.

The authorized judges shall keep a special docket book listing the details of the applications and the result of the searches and seizures made pursuant to the warrants issued.

This Resolution is effective immediately and shall continue until further orders from this Court and shall be an exemption to the provisions of Circular No. 13 dated 1 October 1985 and Circular No. 19 dated 4 August 1987. x x x

A.M. No. 00-5-03-SC

Revised Rules on Criminal Procedure

Rule 126

SEARCH AND SEIZURE

Sec. 2. *Court where application for search warrant shall be filed*. – An application for search warrant shall be filed with the following:

a) Any court within whose territorial jurisdiction a crime was committed.

b) For compelling reasons stated in the application, any court within the judicial region where the crime was committed if the place of the commission of the crime is known, or any court within the judicial region where the warrant shall be enforced.

However, if the criminal action has already been filed, the application shall only be made in the court where the criminal action is pending.

From the above, it may be seen that A.M. No. 99-10-09-SC authorizes the Executive Judge and Vice Executive Judges of the RTCs of Manila and Quezon City to act on all applications for search warrants involving heinous crimes, illegal gambling, dangerous drugs and illegal possession of firearms on application filed by the PNP, NBI, PAOC-TF, and REACT-TF. On the other hand, Rule 126 of the Revised Rules on Criminal Procedure provides that the application for search warrant shall be filed with: (a) any court within whose territorial jurisdiction a crime was committed, and (b) for compelling reasons, any court within the judicial region where the crime was committed if the place

of the commission of the crime is known, or any court within the judicial region where the warrant shall be enforced.

Petitioners contend that the application for search warrant was defective. They aver that the application for search warrant filed by SI Lagasca was not personally endorsed by the NBI Head, Director Wycoco, but instead endorsed only by Deputy Director Nasol and that while SI Lagasca declared that Deputy Director Nasol was commissioned to sign the authorization letter in behalf of Director Wycoco, the same was not duly substantiated. Petitioners conclude that the absence of the signature of Director Wycoco was a fatal defect that rendered the application on the questioned search warrant void per se, and the issued search warrant null and void "because the spring cannot rise above its source."[24]

We disagree. Nothing in A.M. No. 99-10-09-SC prohibits the heads of the PNP, NBI, PAOC-TF and REACT-TF from delegating their ministerial duty of endorsing the application for search warrant to their assistant heads. Under Section 31, Chapter 6, Book IV of the Administrative Code of 1987, an assistant head or other subordinate in every bureau may perform such duties as may be specified by their superior or head, as long as it is not inconsistent with law. The said provision reads:

Chapter 6 – POWERS AND DUTIES OF HEADS OF BUREAUS AND OFFICES

Sec. 31. *Duties of Assistant Heads and Subordinates*. – (1) Assistant heads and other subordinates in every bureau or office shall perform such duties as may be required by law or regulations, *or as may be specified by their superiors not otherwise inconsistent with law*.

(2) The head of bureau or office may, in the interest of economy, designate the assistant head to act as chief of any division or unit within the organization, in addition to his duties, without additional compensation, and

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[24] *Rollo*, p. 14.

(3) In the absence of special restriction prescribed by law, nothing shall prevent a subordinate officer or employee from being assigned additional duties by proper authority, when not inconsistent with the performance of the duties imposed by law.

Director Wycoco's act of delegating his task of endorsing the application for search warrant to Deputy Director Nasol is allowed by the above quoted provision of law unless it is shown to be inconsistent with any law. Thus, Deputy Director Nasol's endorsement had the same force and effect as an endorsement issued by Director Wycoco himself. The finding of the RTC in the questioned Orders that Deputy Director Nasol possessed the authority to sign for and in behalf of Director Wycoco is unassailable.

Petitioners also assert that the questioned Search Warrant was void *ab initio*. They maintain that A.M. No. 99-10-09-SC, which was enacted on January 25, 2000, was no longer in effect when the application for search warrant was filed on February 15, 2002. They argue that the Revised Rules on Criminal Procedure, which took effect on December 1, 2000, should have been applied, being the later law. Hence, the enforcement of the search warrant in Angeles City, which was outside the territorial jurisdiction of RTC Manila, was in violation of the law.

The petitioners' contention lacks merit.

A.M. No. 99-10-09-SC provides that the guidelines on the enforceability of search warrants provided therein shall continue until further orders from this Court. In fact, the guidelines in A.M. No. 99-10-09-SC are reiterated in A.M. No. 03-8-02-SC entitled *Guidelines On The Selection And Designation Of Executive Judges And Defining Their Powers, Prerogatives And Duties*, which explicitly stated that the guidelines in the issuance of search warrants in special criminal cases by the RTCs of Manila and Quezon City shall be an exception to Section 2 of Rule 126 of the Rules of Court, *to wit*:[25]

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[25] Effectivity date is February 15, 2004.

Chapter V. Specific Powers, Prerogatives and Duties of Executive Judges in Judicial Supervision

Sec. 12. *Issuance of search warrants in special criminal cases by the Regional Trial Courts of Manila and Quezon City*. – The Executive Judges and, whenever they are on official leave of absence or are not physically present in the station, the Vice-Executive Judges of the RTCs of Manila and Quezon City shall have authority to act on applications filed by the National Bureau of Investigation (NBI), the Philippine National Police (PNP) and the Anti-Crime Task Force (ACTAF), for search warrants involving heinous crimes, illegal gambling, illegal possession of firearms and ammunitions as well as violations of the Comprehensive Dangerous Drugs Act of 2002, the Intellectual Property Code, the Anti-Money Laundering Act of 2001, the Tariff and Customs Code, as amended, and other relevant laws that may hereafter be enacted by Congress, and included herein by the Supreme Court.

The applications shall be personally endorsed by the heads of such agencies and shall particularly describe therein the places to be searched and/or the property or things to be seized as prescribed in the Rules of Court. The Executive Judges and Vice-Executive Judges concerned shall issue the warrants, if justified, which may be served in places outside the territorial jurisdiction of the said courts.

The Executive Judges and the authorized Judges shall keep a special docket book listing names of Judges to whom the applications are assigned, the details of the applications and the results of the searches and seizures made pursuant to the warrants issued.

This Section shall be an exception to Section 2 of Rule 126 of the Rules of Court. (italics ours)

In sum, we cannot find any irregularity or abuse of discretion on the part of Judge Omar T. Viola for denying petitioners' Motion to Quash Search Warrant and to Suppress Evidence Illegally Seized. On the contrary, Judge Guariña III had complied with the procedural and substantive requirements for issuing the questioned search warrant.

WHEREFORE, the petition for *certiorari* is hereby *DISMISSED*. The Orders dated September 6, 2002 and April 21, 2003, both issued by respondent Judge Omar T. Viola of the RTC of Angeles City, Branch 57, are hereby *AFFIRMED*.

SO ORDERED.

Nachura,[**] *Brion,*[***] *Peralta,*[****] and *Bersamin, JJ.*, concur.

THIRD DIVISION

[G.R. No. 160236. October 16, 2009]

"G" HOLDINGS, INC., *petitioner, vs.* **NATIONAL MINES AND ALLIED WORKERS UNION Local 103 (NAMAWU); SHERIFFS RICHARD H. APROSTA and ALBERTO MUNOZ, all acting Sheriffs; DEPARTMENT OF LABOR AND EMPLOYMENT, Region VI, Bacolod District Office, Bacolod City,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; JUDICIAL NOTICE; COURTS MUST HAVE TAKEN JUDICIAL NOTICE OF PREVIOUS CASES AND RULINGS; APPLICATION.— Judicial notice must be taken by this Court of its Decision in *Maricalum Mining Corporation v. Hon. Arturo D. Brion and NAMAWU*, in which we upheld the right of herein private respondent, NAMAWU, to its labor claims. Upon the same principle of judicial notice, we acknowledge our Decision in

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[**] Additional member as per Special Order No. 740.

[***] Additional member as per Special Order No. 751.

[****] Additional member as per Special Order No. 754.

Republic of the Philippines, through its trustee, the Asset Privatization Trust v. "G" Holdings, Inc., in which GHI was recognized as the rightful purchaser of the shares of stocks of MMC, and thus, entitled to the delivery of the company notes accompanying the said purchase. x x x The assailed CA decision apparently failed to consider the impact of these two decisions on the case at bar. Thus, we find it timely to reiterate that: "courts have also taken judicial notice of previous cases to determine whether or not the case pending is a moot one or whether or not a previous ruling is applicable to the case under consideration." However, the CA correctly assessed that the authority of the lower court to issue the challenged writ of injunction depends on the validity of the third party's (GHI's) claim of ownership over the property subject of the writ of execution issued by the labor department. Accordingly, the main inquiry addressed by the CA decision was whether GHI could be treated as a third party or a stranger to the labor dispute, whose properties were beyond the reach of the Writ of Execution dated December 18, 2001. In this light, all the more does it become imperative to take judicial notice of the two cases aforesaid, as they provide the necessary perspective to determine whether GHI is such a party with a valid ownership claim over the properties subject of the writ of execution. x x x The two cases that we have taken judicial notice of are of such character, and our review of the instant case cannot stray from the findings and conclusion therein.

2. CIVIL LAW; MORTGAGE; IN VIEW OF THE GOVERNMENT'S PARTICIPATION IN THE TRANSACTION, THE MORTGAGE CANNOT BE CHARACTERIZED AS FRAUDULENT.— The participation of the Government, through APT, in this transaction is significant. Because the Government had actively negotiated and, eventually, executed the agreement, then the transaction is imbued with an aura of official authority, giving rise to the presumption of regularity in its execution. This presumption would cover all related transactional acts and documents needed to consummate the privatization sale, inclusive of the Promissory Notes. It is obvious, then, that the Government, through APT, consented to the "establishment and constitution" of the mortgages on the assets of MMC in favor of GHI, as provided in the notes. Accordingly, the notes (and the stipulations therein) enjoy the benefit of the same presumption of regularity

accorded to government actions. Given the Government consent thereto, and clothed with the presumption of regularity, the mortgages cannot be characterized as sham, fictitious or fraudulent.

3. ID.; ID.; LATE DOCUMENTATION OF A MORTGAGE DEED CANNOT GIVE RISE TO AN INFERENCE THAT IT IS A FRAUDULENT TRANSACTION.— While it is true that the Deed of Real Estate and Chattel Mortgage was executed only on September 5, 1996, it is beyond cavil that this formal document of mortgage was merely a derivative of the original mortgage stipulations contained in the Promissory Notes of October 2, 1992. The execution of this Deed in 1996 does not detract from, but instead reinforces, the manifest intention of the parties to "establish and constitute" the mortgages on MMC's real and personal properties. Apparently, the move to execute a formal document denominated as the Deed of Real Estate and Chattel Mortgage came about after the decision of the RTC of Manila in Civil Case No. 95-76132 became final in mid-1996. x x x With the RTC decision having become final owing to the failure of the Republic to perfect an appeal, it may have become necessary to execute the Deed of Real Estate and Chattel Mortgage on September 5, 1996, in order to enforce the trial court's decision of June 11, 1996. This appears to be the most plausible explanation for the execution of the Deed of Real Estate and Chattel Mortgage only in September 1996. Even as the parties had already validly constituted the mortgages in 1992, as explicitly provided in the Promissory Notes, a specific deed of mortgage in a separate document may have been deemed necessary for registration purposes. Obviously, this explanation is more logical and more sensible than the strained conjecture that the mortgage was executed on September 5, 1996 only for the purpose of defrauding NAMAWU. It is undeniable that the Deed of Real Estate and Chattel Mortgage was formally documented two weeks after NAMAWU filed its notice of strike against MMC on August 23, 1996. However, this fact alone cannot give rise to an adverse inference for two reasons. *First*, as discussed above, the mortgages had already been "established and constituted" as early as October 2, 1992 in the Promissory Notes, showing the clear intent of the parties to impose a lien upon MMC's properties. *Second,* the mere filing of a notice of strike by

NAMAWU did not, as yet, vest in NAMAWU any definitive right that could be prejudiced by the execution of the mortgage deed.

4. ID.; ID.; THE FACT THAT THE OBLIGATION IS NOT REFLECTED IN THE FINANCIAL STATEMENT OF THE CORPORATION IS NOT A SUFFICIENT BASIS TO INVALIDATE A MORTGAGE DEED.— The fact that MMC's obligation to GHI is not reflected in the former's financial statements – a circumstance made capital of by NAMAWU in order to cast doubt on the validity of the mortgage deed – is of no moment. By itself, it does not provide a sufficient basis to invalidate this public document. To say otherwise, and to invalidate the mortgage deed on this pretext, would furnish MMC a convenient excuse to absolve itself of its mortgage obligations by adopting the simple strategy of not including the obligations in its financial statements. It would ignore our ruling in *Republic, etc. v. "G" Holdings, Inc.*, which obliged APT to deliver the MMC shares and financial notes to GHI. Besides, the failure of the mortgagor to record in its financial statements its loan obligations is surely not an essential element for the validity of mortgage agreements, nor will it independently affect the right of the mortgagee to foreclose.

5. ID.; ID.; A MORTGAGE DEED CANNOT BE CONSIDERED AS A FICTITIOUS CONTRACT BY REASON OF ITS LATE REGISTRATION.— [W]e cannot see how NAMAWU's right was prejudiced by the Deed of Real Estate and Chattel Mortgage, or by its delayed registration, when substantially all of the properties of MMC were already mortgaged to GHI as early as October 2, 1992. Given this reality, the Court of Appeals had no basis to conclude that this Deed of Real Estate and Chattel Mortgage, by reason of its late registration, was a simulated or fictitious contract. x x x [T]here is nothing in Act No. 496, as amended by P.D. No. 1529, that imposes a period within which to register annotations of "conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land." If liens were not so registered, then it "shall operate only as a contract between the parties and as evidence of authority to the Registry of Deeds to make registration." If registered, it "shall be the operative act to convey or affect the land insofar as third persons are concerned."

The mere lapse of time from the execution of the mortgage document to the moment of its registration does not affect the rights of a mortgagee.

6. ID.; ID.; THE FORECLOSURE OF THE MORTGAGE DOES NOT NECESSARILY TRANSLATE TO HAVING BEEN EFFECTED TO PREVENT SATISFACTION OF THE JUDGMENT AWARD.— Neither will the circumstance of GHI's foreclosure of MMC's properties on July 31, 2001, or after the DOLE had already issued a Partial Writ of Execution on May 9, 2001 against MMC, support the conclusion of the CA that GHI's act of foreclosing on MMC's properties was *"effected to prevent satisfaction of the judgment award*." GHI's mortgage rights, constituted in 1992, antedated the Partial Writ of Execution by nearly ten (10) years. GHI's resort to foreclosure was a legitimate enforcement of a right to liquidate a *bona fide* debt. It was a reasonable option open to a mortgagee which, not being a party to the labor dispute between NAMAWU and MMC, stood to suffer a loss if it did not avail itself of the remedy of foreclosure. The well-settled rule is that a mortgage lien is inseparable from the property mortgaged. While it is true that GHI's foreclosure of MMC's mortgaged properties may have had the "effect to prevent satisfaction of the judgment award against the specific mortgaged property that first answers for a mortgage obligation ahead of any subsequent creditors," that same foreclosure does not necessarily translate to having been *"effected to prevent satisfaction of the judgment award"* against MMC. x x x [The] chronology of subsequent events shows that February 9, 2006 would have been the earliest date for the unimpeded enforcement of the Partial Writ of Execution, as it was only then that this Court resolved the issue. This happened four and a half years after July 31, 2001, the date when GHI foreclosed on the mortgaged properties. Thus, it is not accurate to say that the foreclosure made on July 31, 2001 was *"effected [only] to prevent satisfaction of the judgment award*."

7. ID.; ID.; THE RIGHT OF REDEMPTION WAS THE ONLY LEVIABLE PROPERTY RIGHT OF THE MORTGAGOR IN THE MORTGAGED REAL PROPERTIES.— Since the properties were already mortgaged to GHI, the only interest remaining in the mortgagor was its right to redeem said

properties from the mortgage. The right of redemption was the only leviable or attachable property right of the mortgagor in the mortgaged real properties.

8. ID.; ID.; EFFECT OF REGISTRATION OF THE MORTGAGE.— Prior registration of a lien creates a preference, as the act of registration is the operative act that conveys and affects the land, even against subsequent judgment creditors, such as respondent herein. Its registration of the mortgage was not intended to defraud NAMAWU of its judgment claims, since even the courts were already judicially aware of its existence since 1992. Thus, at that moment in time, with the registration of the mortgage, either NAMAWU had no properties of MMC to attach because the same had been previously foreclosed by GHI as mortgagee thereof; or by virtue of the DOLE's levy to enforce NAMAWU's claims, the latter's rights are subject to the notice of the foreclosure on the subject properties by a prior mortgagee's right. GHI's mortgage right had already been registered by then, and "it is basic that mortgaged properties answer primarily for the mortgaged credit, not for the judgment credit of the mortgagor's unsecured creditor."

9. COMMERCIAL LAW; CORPORATIONS; DOCTRINE OF PIERCING THE VEIL OF CORPORATE FICTION, NOT APPLICABLE.— Since the factual antecedents of this case do not warrant a finding that the mortgage and loan agreements between MMC and GHI were simulated, then their separate personalities must be recognized. To pierce the veil of corporate fiction would require that their personalities as creditor and debtor be conjoined, resulting in a merger of the personalities of the creditor (GHI) and the debtor (MMC) in one person, such that the debt of one to the other is thereby extinguished. But the debt embodied in the 1992 Financial Notes has been established, and even made subject of court litigation (Civil Case No. 95-76132, RTC Manila). This can only mean that GHI and MMC have separate corporate personalities. Neither was MMC used merely as an alter ego, adjunct, or business conduit for the sole benefit of GHI, to justify piercing the former's veil of corporate fiction so that the latter could be held liable to claims of third-party judgment creditors, like NAMAWU. In this regard, we find American jurisprudence

persuasive. In a decision by the Supreme Court of New York bearing upon similar facts, the Court denied piercing the veil of corporate fiction to favor a judgment creditor who sued the parent corporation of the debtor, alleging fraudulent corporate asset-shifting effected after a prior final judgment.

10. ID.; ID.; ID.; MERE INTERLOCKING OF DIRECTORS AND OFFICERS DOES NOT WARRANT PIERCING THE SEPARATE CORPORATE PERSONALITIES.— In this case, the mere interlocking of directors and officers does not warrant piercing the separate corporate personalities of MMC and GHI. Not only must there be a showing that there was majority or complete control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked, so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own. The mortgage deed transaction attacked as a basis for piercing the corporate veil was a transaction that was an offshoot, a derivative, of the mortgages earlier constituted in the Promissory Notes dated October 2, 1992. But these Promissory Notes with mortgage were executed by GHI with APT in the name of MMC, in a full privatization process. It appears that if there was any control or domination exercised over MMC, it was APT, not GHI, that wielded it. Neither can we conclude that the constitution of the loan nearly four (4) years prior to NAMAWU's notice of strike could have been the proximate cause of the injury of NAMAWU for having been deprived of MMC's corporate assets.

11. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; INJUNCTION; VALIDITY OF AN INJUNCTION TO PREVENT EXECUTION BY THE NLRC ON THE PROPERTIES OF THIRD-PARTY CLAIMANTS, UPHELD.— It is settled that a Regional Trial Court can validly issue a Temporary Restraining Order (TRO) and, later, a writ of preliminary injunction to prevent enforcement of a writ of execution issued by a labor tribunal on the basis of a third-party's claim of ownership over the properties levied upon. While, as a rule, no temporary or permanent injunction or restraining order in any case involving or growing out of a labor dispute shall be issued by any court— where the writ of execution issued by a labor tribunal is sought to be enforced upon the property of a stranger to the labor

dispute, even upon a mere *prima facie* showing of ownership of such claimant—a separate action for injunctive relief against such levy may be maintained in court, since said action neither involves nor grows out of a labor dispute insofar as the third party is concerned. x x x Likewise, since the third-party claimant is not one of the parties to the action, he cannot, strictly speaking, appeal from the order denying his claim, but he should file a separate reivindicatory action against the execution creditor or the purchaser of the property after the sale at public auction, or a complaint for damages against the bond filed by the judgment creditor in favor of the sheriff. A separate civil action for recovery of ownership of the property would not constitute interference with the powers or processes of the labor tribunal which rendered the judgment to execute upon the levied properties. The property levied upon being that of a stranger is not subject to levy. Thus, a separate action for recovery, upon a claim and *prima facie* showing of ownership by the petitioner, cannot be considered as interference. Upon the findings and conclusions we have reached above, petitioner is situated squarely as such third-party claimant. The questioned restraining order of the lower court, as well as the order granting preliminary injunction, does not constitute interference with the powers or processes of the labor department. The registration of the mortgage document operated as notice to all on the matter of the mortgagee's prior claims. Official proceedings relative to the foreclosure of the subject properties constituted a *prima facie* showing of ownership of such claimant to support the issuance of injunctive reliefs.

APPEARANCES OF COUNSEL

Quasha Ancheta Peña & Nolasco for petitioner.

Jose I. Lapak, Padilla & Associates, Law Firm of Lapena & Associates and *Beldad & Associates Law Office* for National Mines and Allied Workers Union Local 103.

Romulo Sumalinog for DOLE.

D E C I S I O N

NACHURA, *J.*:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the October 14, 2003 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 75322.

The Facts

The petitioner, "G" Holdings, Inc. (GHI), is a domestic corporation primarily engaged in the business of owning and holding shares of stock of different companies.[2] It was registered with the Securities and Exchange Commission on August 3, 1992. Private respondent, National Mines and Allied Workers Union Local 103 (NAMAWU), was the exclusive bargaining agent of the rank and file employees of Maricalum Mining Corporation (MMC),[3] an entity operating a copper mine and mill complex at Sipalay, Negros Occidental.[4]

MMC was incorporated by the Development Bank of the Philippines (DBP) and the Philippine National Bank (PNB) on October 19, 1984, on account of their foreclosure of Marinduque

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[1] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Delilah Vidallon Magtolis (retired) and Hakim S. Abdulwahid concurring. CA *rollo,* pp. 1268-1283.

[2] *Rollo,* Vol. 1, p. 574. The company's primary purpose, stated in the Articles of Incorporation, is as follows:

"To own and hold shares of stock of different companies such as but not limited to mining, manufacturing, trading and industrial concerns, and to deal, engage and transact directly or indirectly (sic) all forms of business and mercantile acts (sic) the transactions concerning all kinds of real or personal property, movable, semi-movable, goods, wares (sic) chattels, choses in action, tangible and intangible property (sic) technical and industrial equipments (sic) and machineries, personal and real rights and documents, securities, evidence of indebtedness or representative of value or other forms of obligations, services and all things, including future ones, which are not excluded from the commerce of man or which are not contrary to law or good morals." (*Id.*)

[3] CA *rollo,* p. 5.

[4] *Rollo,* Vol. 1, p. 604.

Mining and Industrial Corporation's assets. MMC started its commercial operations in August 1985. Later, DBP and PNB transferred it to the National Government for disposition or privatization because it had become a non-performing asset.[5]

On October 2, 1992, pursuant to a Purchase and Sale Agreement[6] executed between GHI and Asset Privatization Trust (APT), the former bought ninety percent (90%) of MMC's shares and financial claims.[7] These financial claims were converted into three Promissory Notes[8] issued by MMC in favor of GHI totaling ₱500M and secured by mortgages over MMC's properties. The notes, which were similarly worded except for their amounts, read as follows:

PROMISSORY NOTE

AMOUNT - Php114,715,360.00 [Php186,550,560.00 in the second note, and Php248,734,080.00 in the third note.]

MAKATI, METRO MANILA, PHILIPPINES, October 2, 1992

For Value Received, MARICALUM MINING CORPORATION (MMC) with postal address at 4th Floor, Manila Memorial Park Bldg., 2283 Pasong Tamo Extension, Makati, Metro Manila, Philippines, hereby promises to pay "G" HOLDINGS, INC., at its office at Phimco Compound, F. Manalo Street, Punta, Sta. Ana, Manila, the amount of PESOS ONE HUNDRED FOURTEEN MILLION, SEVEN HUNDRED FIFTEEN THOUSAND AND THREE HUNDRED SIXTY (Php114,715,360.00) ["PESOS ONE HUNDRED EIGHTY–SIX MILLION FIVE HUNDRED FIFTY THOUSAND FIFE (sic) HUNDRED AND SIXTY (Php186,550,560.00)" in the second note, and "PESOS TWO HUNDRED FORTY–EIGHT MILLION, SEVEN HUNDRED THIRTY–FOUR THOUSAND AND EIGHTY (Php248,734,080.00)" in the third note], PHILIPPINE CURRENCY, on or before October 2, 2002. Interest shall accrue on the amount

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[5] *Id.*

[6] *Id.* at 157-174.

[7] *Id.* at 158.

[8] *Id.* at 175-177.

of this Note at a rate per annum equal to the interest of 90-day Treasury Bills prevailing on the Friday preceding the maturity date of every calendar quarter.

As collateral security, MMC hereby establishes and constitutes in favor of "G" HOLDINGS, INC., its successors and/or assigns:

1. A mortgage over certain parcels of land, more particularly listed and described in the Sheriff's Certificate of Sale dated September 7, 1984 issued by the *Ex-Officio* Provincial Sheriff of Negros Occidental, Rolando V. Ramirez, with office at Bacolod City following the auction sale conducted pursuant to the provisions of Act 3135, a copy of which certificate of sale is hereto attached as Annex "A" and made an integral part hereof;

2. A chattel mortgage over assets and personal properties more particularly listed and described in the Sheriff's Certificate of Sale dated September 7, 1984 issued by the *Ex-Officio* Provincial Sheriff of Negros Occidental, Rolando V. Ramirez, with office at Bacolod City following the auction conducted pursuant to the provisions of Act 1508, a copy of which Certificate of Sale is hereto attached as Annex "B" and made an integral part hereof.

3. Mortgages over assets listed in APT Specific Catalogue GC-031 for MMC, a copy of which Catalogue is hereby made an integral part hereof by way of reference, as well as assets presently in use by MMC but which are not listed or included in paragraphs 1 and 2 above and shall include all assets that may hereinafter be acquired by MMC.

MARICALUM MINING CORPORATION
(Maker)

x x x x x x x x x[9]

Upon the signing of the Purchase and Sale Agreement and upon the full satisfaction of the stipulated down payment, GHI immediately took physical possession of the mine site and its facilities, and took full control of the management and operation of MMC.[10]

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[9] *Id.*

[10] *Id.* at 170 and 574.

Almost four years thereafter, or on August 23, 1996, a labor dispute (refusal to bargain collectively and unfair labor practice) arose between MMC and NAMAWU, with the latter eventually filing with the National Conciliation and Mediation Board of Bacolod City a notice of strike.[11] Then Labor Secretary, now Associate Justice of this Court, Leonardo A. Quisumbing, later assumed jurisdiction over the dispute and ruled in favor of NAMAWU. In his July 30, 1997 Order in OS-AJ-10-96-014 (Quisumbing Order), Secretary Quisumbing declared that the lay-off (of workers) implemented on May 7, 1996 and October 7, 1996 was illegal and that MMC committed unfair labor practice. He then ordered the reinstatement of the laid-off workers, with payment of full backwages and benefits, and directed the execution of a new collective bargaining agreement (CBA) incorporating the terms and conditions of the previous CBA providing for an annual increase in the workers' daily wage.[12] In two separate cases–G.R. Nos. 133519 and 138996–filed with this Court, we

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[11] Records, p. 320.

[12] CA *rollo*, p. 7. The dispositive portion of the Quisumbing Order reads:

"WHEREFORE, judgment is hereby rendered:

"1. Declaring that the lay-offs implemented on May 7, 1996 and October 7, 1996 as illegal;

"2. Ordering that all workers, whether union members or not, who were laid-off on May 7, 1996 and October 7, 1996 be immediately reinstated without gap in service, loss of seniority, and that their full backwages and benefits from the time of termination until actual reinstatement be paid;

"3. Declaring the Company to have violated the Labor Code provisions on Unfair Labor Practice for negotiating in bad faith and later refusing to negotiate; and

"4. Ordering the parties to enter into a new collective bargaining agreement incorporating all the terms and conditions of the previous collective bargaining agreement between the Company and the NFL, except the name of the exclusive bargaining agent, and providing for an annual across-the-board increase in the daily wage of all rank and file workers in the amount of ₱60.00 per day from February, 1996 until January, 1998 and another ₱50.00 increase annually effective February 1, 1998 until January 31, 2000.

"SO ORDERED."

sustained the validity of the Quisumbing Order, which became final and executory on January 26, 2000.[13]

On May 11, 2001, then Acting Department of Labor and Employment (DOLE) Secretary, now also an Associate Justice of this Court, Arturo D. Brion, on motion of NAMAWU, directed the issuance of a partial writ of execution (Brion Writ), and ordered the DOLE sheriffs to proceed to the MMC premises for the execution of the same.[14] Much later, in 2006, this Court, in G.R. Nos. 157696-97, entitled *Maricalum Mining Corporation v. Brion and NAMAWU*,[15] affirmed the propriety of the issuance of the Brion Writ.

The Brion Writ was not fully satisfied because MMC's resident manager resisted its enforcement.[16] On motion of NAMAWU, then DOLE Secretary Patricia A. Sto. Tomas ordered the issuance of the July 18, 2002 Alias Writ of Execution and Break-Open Order (Sto. Tomas Writ).[17] On October 11, 2002, the respondent acting sheriffs, the members of the union, and several armed men implemented the Sto. Tomas Writ, and levied on the properties of MMC located at its compound in Sipalay, Negros Occidental.[18]

On October 14, 2002, GHI filed with the Regional Trial Court (RTC) of Kabankalan City, Negros Occidental, Special Civil Action (SCA) No. 1127 for Contempt with Prayer for the Issuance of a Temporary Restraining Order (TRO) and Writ of Preliminary Injunction and to Nullify the Sheriff's Levy on Properties.[19] GHI contended that the levied properties were the subject of a

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[13] *Rollo,* Vol. 1, p. 1099; see *Maricalum Mining Corporation v. Brion and NAMAWU,* G.R. Nos. 157696-97, February 9, 2006, 482 SCRA 87, 93-94.

[14] *Id.* at 1099.

[15] *Supra* note 13.

[16] Records, p. 15.

[17] *Id.* at 15-18.

[18] *Id.* at 2.

[19] *Id.* at 1-11.

Deed of Real Estate and Chattel Mortgage, dated September 5, 1996[20] executed by MMC in favor of GHI to secure the aforesaid ₱550M promissory notes; that this deed was registered on February 24, 2000;[21] and that the mortgaged properties were already extrajudicially foreclosed in July 2001 and sold to GHI as the highest bidder on December 3, 2001, as evidenced by the Certificate of Sale dated December 4, 2001.[22]

The trial court issued *ex parte* a TRO effective for 72 hours, and set the hearing on the application for a writ of injunction.[23] On October 17, 2002, the trial court ordered the issuance of a Writ of Injunction (issued on October 18, 2002)[24] enjoining the DOLE sheriffs from further enforcing the Sto. Tomas Writ and from conducting any public sale of the levied-on properties, subject to GHI's posting of a ₱5M bond.[25]

Resolving, among others, NAMAWU's separate motions for the reconsideration of the injunction order and for the dismissal of the case, the RTC issued its December 4, 2002 Omnibus Order,[26] the dispositive portion of which reads:

> WHEREFORE, premises considered, respondent NAMAWU Local 103's Motion for Reconsideration dated October 23, 2002 for the reconsideration of the Order of this Court directing the issuance of Writ of Injunction prayed for by petitioner and the Order dated October 18, 2002 approving petitioner's Injunction Bond in the amount of ₱5,000,000.00 is hereby DENIED.
>
> Respondent's Motion to Dismiss as embodied in its Opposition to Extension of Temporary Restraining Order and Issuance of Writ of Preliminary Injunction with Motion to Dismiss and Suspend Period to File Answer dated October 15, 2002 is likewise DENIED.

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[20] *Id.* at 19-39.

[21] *Id.* at 19, CA *rollo*, pp. 992-993.

[22] Records, pp. 45-47.

[23] *Id.* at 70-71.

[24] *Id.* at 90.

[25] *Id.* at 85D-89.

[26] *Id.* at 344-364.

Petitioner's Urgent Motion for the return of the levied firearms is GRANTED. Pursuant thereto, respondent sheriffs are ordered to return the levied firearms and handguns to the petitioner provided the latter puts [up] a bond in the amount of ₱332,200.00.

Respondent's lawyer, Atty. Jose Lapak, is strictly warned not to resort again to disrespectful and contemptuous language in his pleadings, otherwise, the same shall be dealt with accordingly.

SO ORDERED.[27]

Aggrieved, NAMAWU filed with the CA a petition for *certiorari* under Rule 65, assailing the October 17, 18 and December 4, 2002 orders of the RTC.[28]

After due proceedings, on October 14, 2003, the appellate court rendered a Decision setting aside the RTC issuances and directing the immediate execution of the Sto. Tomas Writ. The CA ruled, among others, that the circumstances surrounding the execution of the September 5, 1996 Deed of Real Estate and Chattel Mortgage yielded the conclusion that the deed was sham, fictitious and fraudulent; that it was executed two weeks after the labor dispute arose in 1996, but surprisingly, it was registered only on February 24, 2000, immediately after the Court affirmed with finality the Quisumbing Order. The CA also found that the certificates of title to MMC's real properties did not contain any annotation of a mortgage lien, and, suspiciously, GHI did not intervene in the long drawn-out labor proceedings to protect its right as a mortgagee of virtually all the properties of MMC.[29]

The CA further ruled that the subsequent foreclosure of the mortgage was irregular, effected precisely to prevent the satisfaction of the judgment against MMC. It noted that the foreclosure proceedings were initiated in July 2001, shortly after the issuance of the Brion Writ; and, more importantly, the basis for the extrajudicial foreclosure was not the failure of MMC to pay the mortgage debt, but its failure "to satisfy any money

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[27] *Id.* at 164.

[28] *Supra* notes 24, 25 and 26.

[29] *Rollo,* Vol. 1, pp. 111-112.

judgment against it rendered by a court or tribunal of competent jurisdiction, in favor of any person, firm or entity, without any legal ground or reason."[30] Further, the CA pierced the veil of corporate fiction of the two corporations.[31] The dispositive portion of the appellate court's decision reads:

> WHEREFORE, in view of the foregoing considerations, the petition is GRANTED. The October 17, 2002 and the December 4, 2002 Order of the RTC, Branch 61 of Kabankalan City, Negros Occidental are hereby ANNULLED and SET ASIDE for having been issued in excess or without authority. The Writ of Preliminary Injunction issued by the said court is lifted, and the DOLE Sheriff is directed to immediately enforce the Writ of Execution issued by the Department of Labor and Employment in the case "In re: Labor Dispute in Maricalum Mining Corporation" docketed as OS-AJ-10-96-01 (NCMB-RB6-08-96).[32]

The Issues

Dissatisfied, GHI elevated the case to this Court *via* the instant petition for review on *certiorari*, raising the following issues:

I

WHETHER OR NOT GHI IS A PARTY TO THE LABOR DISPUTE BETWEEN NAMAWU AND MMC.

II

WHETHER OR NOT, ASSUMING *ARGUENDO* THAT THE PERTINENT DECISION OR ORDER IN THE SAID LABOR DISPUTE BETWEEN MMC AND NAMAWU MAY BE ENFORCED AGAINST GHI, THERE IS ALREADY A FINAL DEETERMINATION (sic) BY THE SUPREME COURT OF THE RIGHTS OF THE PARTIES IN SAID LABOR DISPUTE CONSIDERING THE PENDENCY OF G.R. NOS. 157696-97.

III

WHETHER OR NOT GHI IS THE ABSOLUTE OWNER OF THE PROPERTIES UNLAWFULLY GARNISHED BY RESPONDENTS SHERIFFS.

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[30] *Id.* at 112.

[31] *Id.* at 115-116.

[32] *Id.* at 116.

IV

WHETHER OR NOT THE HONORABLE HENRY D. ARLES CORRECTLY ISSUED A WRIT OF INJUNCTION AGAINST THE UNLAWFUL EXECUTIOIN (sic) ON GHI'S PROPERTIES.

V

WHETHER OR NOT THE VALIDITY OF THE DEED OF REAL AND CHATTEL MORTGAGE OVER THE SUBJECT PROPERTIES BETWEEN MMC AND GHI MAY BE COLLATERALLY ATTACKED.

VI

WHETHER OR NOT, ASSUMING *ARGUENDO* THAT THE VALIDITY OF THE SAID REAL AND CHATTEL MORTGAGE MAY BE COLLATERALLY ATTACKED, THE SAID MORTGAGE IS SHAM, FICTITIOUS AND FRAUDULENT.

VII

WHETHER OR NOT GHI IS A DISTINCT AND SEPARATE CORPORATE ENTITY FROM MMC.

VIII

WHETHER OR NOT GHI CAN BE PREVENTED THROUGH THE ISSUANCE OF A RESTRAINING ORDER OR INJUNCTION FROM TAKING POSSESSION OR BE DISPOSSESSED OF ASSETS PURCHASED BY IT FROM APT.[33]

Stripped of non-essentials, the core issue is whether, given the factual circumstances obtaining, the RTC properly issued the writ of injunction to prevent the enforcement of the Sto. Tomas Writ. The resolution of this principal issue, however, will necessitate a ruling on the following key and interrelated questions:

1. Whether the mortgage of the MMC's properties to GHI was a sham;
2. Whether there was an effective levy by the DOLE upon the MMC's real and personal properties; and
3. Whether it was proper for the CA to pierce the veil of corporate fiction between MMC and GHI.

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[33] *Id.* at 1093-1094.

Our Ruling

Before we delve into an extended discussion of the foregoing issues, it is essential to take judicial cognizance of cases intimately linked to the present controversy which had earlier been elevated to and decided by this Court.

Judicial Notice.

Judicial notice must be taken by this Court of its Decision in *Maricalum Mining Corporation v. Hon. Arturo D. Brion and NAMAWU*,[34] in which we upheld the right of herein private respondent, NAMAWU, to its labor claims. Upon the same principle of judicial notice, we acknowledge our Decision in *Republic of the Philippines, through its trustee, the Asset Privatization Trust v. "G" Holdings, Inc.*,[35] in which GHI was recognized as the rightful purchaser of the shares of stocks of MMC, and thus, entitled to the delivery of the company notes accompanying the said purchase. These company notes, consisting of three (3) Promissory Notes, were part of the documents executed in 1992 in the privatization sale of MMC by the Asset Privatization Trust (APT) to GHI. Each of these notes uniformly contains stipulations *"establishing and constituting in favor of GHI"* mortgages over MMC's real and personal properties. The stipulations were subsequently formalized in a separate document denominated Deed of Real Estate and Chattel Mortgage on September 5, 1996. Thereafter, the Deed was registered on February 4, 2000.[36]

We find both decisions critically relevant to the instant dispute. In fact, they should have guided the courts below in the disposition of the controversy at their respective levels. To repeat, these decisions respectively confirm the right of NAMAWU to its labor claims[37] and affirm the right of GHI to its financial and

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[34] *Supra* note 13.

[35] G.R. No. 141241, November 22, 2005, 475 SCRA 608.

[36] *Rollo*, Vol. 1, pp. 19-39.

[37] The Quisumbing Order was affirmed by this Court in *Maricalum Mining Corp. v. Brion and NAMAWU, supra* note 13.

mortgage claims over the real and personal properties of MMC, as will be explained below. The assailed CA decision apparently failed to consider the impact of these two decisions on the case at bar. Thus, we find it timely to reiterate that: "courts have also taken judicial notice of previous cases to determine whether or not the case pending is a moot one or whether or not a previous ruling is applicable to the case under consideration."[38]

However, the CA correctly assessed that the authority of the lower court to issue the challenged writ of injunction depends on the validity of the third party's (GHI's) claim of ownership over the property subject of the writ of execution issued by the labor department. Accordingly, the main inquiry addressed by the CA decision was whether GHI could be treated as a third party or a stranger to the labor dispute, whose properties were beyond the reach of the Writ of Execution dated December 18, 2001.[39]

In this light, all the more does it become imperative to take judicial notice of the two cases aforesaid, as they provide the necessary perspective to determine whether GHI is such a party with a valid ownership claim over the properties subject of the writ of execution. In *Juaban v. Espina*,[40] we held that "in some instances, courts have also taken judicial notice of proceedings in other cases that are closely connected to the matter in controversy. These cases may be so closely interwoven, or so clearly interdependent, as to invoke a rule of judicial notice." The two cases that we have taken judicial notice of are of such character, and our review of the instant case cannot stray from the findings and conclusions therein.

Having recognized these crucial Court rulings, situating the facts in proper perspective, we now proceed to resolve the questions identified above.

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[38] *Baguio v. Teofila L. Vda. de Jalagat, et al.,* 149 Phil. 436, 440 (1971).

[39] *Rollo*, Vol. 1, p. 110.

[40] G.R. No. 170049, March 14, 2008, 548 SCRA 588, 611; citing *Bongato v. Sps. Malvar,* 436 Phil. 109, 117-118 (2002).

The mortgage was not a sham.

Republic, etc. v. "G" Holdings, Inc. acknowledged the existence of the Purchase and Sale Agreement between the APT and the GHI, and recounts the facts attendant to that transaction, as follows:

> The series of negotiations between the petitioner Republic of the Philippines, through the APT as its trustee, and "G" Holdings culminated in the execution of a purchase and sale agreement on October 2, 1992. Under the agreement, the Republic undertook to sell and deliver 90% of the entire issued and outstanding **shares** of MMC, as well as its **company notes**, to "G" Holdings in consideration of the purchase price of ₱673,161,280. It also provided for a down payment of ₱98,704,000 with the balance divided into four tranches payable in installment over a period of ten years."[41]

The "company notes" mentioned therein were actually the very same three (3) Promissory Notes amounting to ₱550M, issued by MMC in favor of GHI. As already adverted to above, these notes uniformly contained stipulations "establishing and constituting" mortgages over MMC's real and personal properties.

It may be remembered that APT acquired the MMC from the PNB and the DBP. Then, in compliance with its mandate to privatize government assets, APT sold the aforesaid MMC shares and notes to GHI. To repeat, this Court has recognized this Purchase and Sale Agreement in *Republic, etc. v. "G" Holdings, Inc.*

The participation of the Government, through APT, in this transaction is significant. Because the Government had actively negotiated and, eventually, executed the agreement, then the transaction is imbued with an aura of official authority, giving rise to the presumption of regularity in its execution. This presumption would cover all related transactional acts and documents needed to consummate the privatization sale, inclusive of the Promissory Notes. It is obvious, then, that the Government, through APT, consented to the "establishment and constitution"

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[41] *Supra* note 35, at 613; emphasis supplied.

of the mortgages on the assets of MMC in favor of GHI, as provided in the notes. Accordingly, the notes (and the stipulations therein) enjoy the benefit of the same presumption of regularity accorded to government actions. Given the Government consent thereto, and clothed with the presumption of regularity, the mortgages cannot be characterized as sham, fictitious or fraudulent.

Indeed, as mentioned above, the three (3) Promissory Notes, executed on October 2, 1992, "established and constituted" in favor of GHI the following mortgages:

1. A mortgage over certain parcels of land, more particularly listed and described in the Sheriff's Certificate of Sale dated September 7, 1984 issued by the *Ex-Officio* Provincial Sheriff of Negros Occidental, Rolando V. Ramirez, with office at Bacolod City following the auction sale conducted pursuant to the provisions of Act 3135, a copy of which certificate of sale is hereto attached as Annex "A" and made an integral part hereof;

2. A chattel mortgage over assets and personal properties more particularly listed and described in the Sheriff's Certificate of Sale dated September 7, 1984 issued by the *Ex-Officio* Provincial Sheriff of Negros Occidental, Rolando V. Ramirez, with office at Bacolod City following the auction conducted pursuant to the provision of Act 1508, a copy of which Certificate of Sale is hereto attached as Annex "B" and made an integral part hereof.

3. Mortgages over assets listed in APT Specific catalogue GC-031 for MMC, a copy of which Catalogue is hereby made an integral part hereof by way of reference, as well as assets presently in use by MMC but which are not listed or included in paragraphs 1 and 2 above and shall include all assets that may hereinafter be acquired by MMC.[42]

It is difficult to conceive that these mortgages, already existing in 1992, almost four (4) years before NAMAWU filed its notice of strike, were a "fictitious" arrangement intended to defraud NAMAWU. After all, they were agreed upon long before the seeds of the labor dispute germinated.

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[42] *Rollo*, Vol. 1, pp. 175-177.

While it is true that the Deed of Real Estate and Chattel Mortgage was executed only on September 5, 1996, it is beyond cavil that this formal document of mortgage was merely a derivative of the original mortgage stipulations contained in the Promissory Notes of October 2, 1992. The execution of this Deed in 1996 does not detract from, but instead reinforces, the manifest intention of the parties to "establish and constitute" the mortgages on MMC's real and personal properties.

Apparently, the move to execute a formal document denominated as the Deed of Real Estate and Chattel Mortgage came about after the decision of the RTC of Manila in Civil Case No. 95-76132 became final in mid-1996. This conclusion surfaces when we consider the genesis of Civil Case No. 95-76132 and subsequent incidents thereto, as narrated in *Republic, etc. v. "G" Holdings, Inc., viz:*

> Subsequently, a disagreement on the matter of when installment payments should commence arose between the parties. The Republic claimed that it should be on the seventh month from the signing of the agreement while "G" Holdings insisted that it should begin seven months after the fulfillment of the closing conditions.
>
> Unable to settle the issue, "G" Holdings filed a complaint for specific performance and damages with the Regional Trial Court of Manila, Branch 49, against the Republic to compel it to close the sale in accordance with the purchase and sale agreement. The complaint was docketed as Civil Case No. 95-76132.
>
> During the pre-trial, the respective counsels of the parties manifested that the issue involved in the case was one of law and submitted the case for decision. On June 11, 1996, the trial court rendered its decision. It ruled in favor of "G" Holdings and held:
>
> > "In line with the foregoing, this Court having been convinced that the Purchase and Sale Agreement is indeed subject to the final closing conditions prescribed by Stipulation No. 5.02 and conformably to Rule 39, Section 10 of the Rules of Court, **accordingly orders that the Asset Privatization Trust execute the corresponding Document of Transfer of the subject shares and financial notes and cause the actual delivery of subject shares and notes to "G" Holdings, Inc., within a period of thirty (30) days from receipt of this**

> **Decision,** and after "G" Holdings Inc., shall have paid in full the entire balance, at its present value of ₱241,702,122.86, computed pursuant to the prepayment provisions of the Agreement. Plaintiff shall pay the balance simultaneously with the delivery of the Deed of Transfer and actual delivery of the shares and notes.
>
> SO ORDERED."

The Solicitor General filed a notice of appeal on behalf of the Republic on June 28, 1996. Contrary to the rules of procedure, however, the notice of appeal was filed with the Court of Appeals (CA), not with the trial court which rendered the judgment appealed from.

No other judicial remedy was resorted to until July 2, 1999 when the Republic, through the APT, filed a petition for annulment of judgment with the CA. It claimed that the decision should be annulled on the ground of abuse of discretion amounting to lack of jurisdiction on the part of the trial court. x x x

Finding that the grounds necessary for the annulment of judgment were inexistent, the appellate court dismissed the petition. x x x[43]

With the RTC decision having become final owing to the failure of the Republic to perfect an appeal, it may have become necessary to execute the Deed of Real Estate and Chattel Mortgage on September 5, 1996, in order to enforce the trial court's decision of June 11, 1996. This appears to be the most plausible explanation for the execution of the Deed of Real Estate and Chattel Mortgage only in September 1996. Even as the parties had already validly constituted the mortgages in 1992, as explicitly provided in the Promissory Notes, a specific deed of mortgage in a separate document may have been deemed necessary for registration purposes. Obviously, this explanation is more logical and more sensible than the strained conjecture that the mortgage was executed on September 5, 1996 only for the purpose of defrauding NAMAWU.

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[43] *Supra* note 35, at 613-615; emphasis supplied. It may be added that when the Republic, through the APT, elevated the case to the Court, we sustained the CA's dismissal of the Republic's petition, and as already adverted to, effectively upheld the right of GHI to the transfer and delivery of the shares and the financial notes.

It is undeniable that the Deed of Real Estate and Chattel Mortgage was formally documented two weeks after NAMAWU filed its notice of strike against MMC on August 23, 1996. However, this fact alone cannot give rise to an adverse inference for two reasons. *First,* as discussed above, the mortgages had already been "established and constituted" as early as October 2, 1992 in the Promissory Notes, showing the clear intent of the parties to impose a lien upon MMC's properties. *Second,* the mere filing of a notice of strike by NAMAWU did not, as yet, vest in NAMAWU any definitive right that could be prejudiced by the execution of the mortgage deed.

The fact that MMC's obligation to GHI is not reflected in the former's financial statements—a circumstance made capital of by NAMAWU in order to cast doubt on the validity of the mortgage deed—is of no moment. By itself, it does not provide a sufficient basis to invalidate this public document. To say otherwise, and to invalidate the mortgage deed on this pretext, would furnish MMC a convenient excuse to absolve itself of its mortgage obligations by adopting the simple strategy of not including the obligations in its financial statements. It would ignore our ruling in *Republic, etc. v. "G" Holdings, Inc.,* which obliged APT to deliver the MMC shares and financial notes to GHI. Besides, the failure of the mortgagor to record in its financial statements its loan obligations is surely not an essential element for the validity of mortgage agreements, nor will it independently affect the right of the mortgagee to foreclose.

Contrary to the CA decision, *Tanongon v. Samson*[44] is not "on all fours" with the instant case. There are material differences between the two cases. At issue in *Tanongon* was a third-party claim arising from a Deed of Absolute Sale executed between Olizon and Tanongon on July 29, 1997, after the NLRC decision became final and executory on April 29, 1997. In the case at bar, what is involved is a loan with mortgage agreement executed on October 2, 1992, well ahead of the union's notice of strike on August 23, 1996. No presumption of regularity inheres in

[44] 431 Phil. 729 (2002).

the deed of sale in *Tanongon,* while the participation of APT in this case clothes the transaction in 1992 with such a presumption that has not been successfully rebutted. In *Tanongon,* the conduct of a full-blown trial led to the finding—duly supported by evidence—that the voluntary sale of the assets of the judgment debtor was made in bad faith. Here, no trial was held, owing to the motion to dismiss filed by NAMAWU, and the CA failed to consider the factual findings made by this Court in *Republic, etc. v. "G" Holdings, Inc.* Furthermore, in *Tanongon,* the claimant did not exercise his option to file a separate action in court, thus allowing the NLRC Sheriff to levy on execution and to determine the rights of third-party claimants.[45] In this case, a separate action was filed in the regular courts by GHI, the third-party claimant. Finally, the questioned transaction in *Tanongon* was a plain, voluntary transfer in the form of a sale executed by the judgment debtor in favor of a dubious third-party, resulting in the inability of the judgment creditor to satisfy the judgment. On the other hand, this case involves an involuntary transfer (foreclosure of mortgage) arising from a loan obligation that well-existed long before the commencement of the labor claims of the private respondent.

Three other circumstances have been put forward by the CA to support its conclusion that the mortgage contract is a sham. First, the CA considered it highly suspect that the Deed of Real Estate and Chattel Mortgage was registered only on February 4, 2000, "three years after its execution, and almost one month after the Supreme Court rendered its decision in the labor dispute."[46] Equally suspicious, as far as the CA is concerned, is the fact that the mortgages were foreclosed on July 31, 2001, after the DOLE had already issued a Partial Writ of Execution on May 9, 2001.[47] To the appellate court,

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[45] In *Lim v. Court of Appeals,* G.R. No. 149748, November 16, 2006, 507 SCRA 38, 50, this Court ruled that "(t)he power of the sheriff to rule on the issue of ownership is settled."

[46] *Rollo,* Vol. 1, p. 111

[47] *Id.* at 112.

the timing of the registration of the mortgage deed was too coincidental, while the date of the foreclosure signified that it was "effected precisely to prevent the satisfaction of the judgment awards."[48] Furthermore, the CA found that the mortgage deed itself was executed without any consideration, because at the time of its execution, all the assets of MMC had already been transferred to GHI.[49]

These circumstances provided the CA with sufficient justification to apply Article 1387 of the Civil Code on presumed fraudulent transactions, and to declare that the mortgage deed was void for being simulated and fictitious.[50]

We do not agree. We find this Court's ruling in *MR Holdings, Ltd. v. Sheriff Bajar*[51] pertinent and instructive:

> Article 1387 of the Civil Code of the Philippines provides:
>
> "Art. 1387. All contracts by virtue of which the debtor alienates property by gratuitous title are presumed to have been entered into in fraud of creditors, when the donor did not reserve sufficient property to pay all debts contracted before the donation.
>
> Alienations by onerous title are also presumed fraudulent when made by persons against whom some judgment has been rendered in any instance or some writ of attachment has been issued. The decision or attachment need not refer to the property alienated, and need not have been obtained by the party seeking rescission.
>
> In addition to these presumptions, the design to defraud creditors may be proved in any other manner recognized by law and of evidence."
>
> This article presumes the existence of fraud made by a debtor. Thus, in the absence of satisfactory evidence to the contrary,

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[48] *Id.*

[49] *Id.* at 113.

[50] *Id.* at 114.

[51] 430 Phil. 443, 467-469 (2002).

> an alienation of a property will be held fraudulent if it is made after a judgment has been rendered against the debtor making the alienation. **This presumption of fraud is not conclusive and may be rebutted by satisfactory and convincing evidence. All that is necessary is to establish affirmatively that the conveyance is made in good faith and for a sufficient and valuable consideration.**

The "Assignment Agreement" and the "Deed of Assignment" were executed for valuable considerations. Patent from the "Assignment Agreement" is the fact that petitioner assumed the payment of US$18,453,450.12 to ADB in satisfaction of Marcopper's remaining debt as of March 20, 1997. Solidbank cannot deny this fact considering that a substantial portion of the said payment, in the sum of US$13,886,791.06, was remitted in favor of the Bank of Nova Scotia, its major stockholder.

The facts of the case so far show that the assignment contracts were executed in good faith. The execution of the "Assignment Agreement" on March 20, 1997 and the "Deed of Assignment" on December 8,1997 is not the *alpha* of this case. **While the execution of these assignment contracts almost coincided with the rendition on May 7, 1997 of the Partial Judgment in Civil Case No. 96-80083 by the Manila RTC,** however, there was no intention on the part of petitioner to defeat Solidbank's claim. It bears reiterating that as early as November 4, 1992, Placer Dome had already bound itself under a "Support and Standby Credit Agreement" to provide Marcopper with cash flow support for the payment to ADB of its obligations. When Marcopper ceased operations on account of disastrous mine tailings spill into the Boac River and ADB pressed for payment of the loan, Placer Dome agreed to have its subsidiary, herein petitioner, pay ADB the amount of US$18,453,450.12.

Thereupon, ADB and Marcopper executed, respectively, in favor of petitioner an "Assignment Agreement" and a "Deed of Assignment." **Obviously, the assignment contracts were connected with transactions that happened long before the rendition in 1997 of the Partial Judgment in Civil Case No. 96-80083 by the Manila RTC. Those contracts cannot be viewed in isolation.** If we may add, it is highly inconceivable that ADB, a reputable international financial organization, will connive with Marcopper to feign or simulate a contract in 1992 just to defraud Solidbank for its claim

four years thereafter. And it is equally incredible for petitioner to be paying the huge sum of US$18,453,450.12 to ADB only for the purpose of defrauding Solidbank of the sum of ₱52,970,756.89.

It is said that the test as to whether or not a conveyance is fraudulent is – does it prejudice the rights of creditors? **We cannot see how Solidbank's right was prejudiced by the assignment contracts considering that substantially all of Marcopper's properties were already covered by the registered "Deed of Real Estate and Chattel Mortgage" executed by Marcopper in favor of ADB as early as November 11, 1992. As such, Solidbank cannot assert a better right than ADB, the latter being a preferred creditor. It is basic that mortgaged properties answer primarily for the mortgaged credit, not for the judgment credit of the mortgagor's unsecured creditor.** Considering that petitioner assumed Marcopper's debt to ADB, it follows that Solidbank's right as judgment creditor over the subject properties must give way to that of the former.[52]

From this ruling in *MR Holdings,* we can draw parallel conclusions. The execution of the subsequent Deed of Real Estate and Chattel Mortgage on September 5, 1996 was simply the formal documentation of what had already been agreed in the seminal transaction (the Purchase and Sale Agreement) between APT and GHI. It should not be viewed in isolation, apart from the original agreement of October 2, 1992. And it cannot be denied that this original agreement was supported by an adequate consideration. The APT was even ordered by the court to deliver the shares and financial notes of MMC in exchange for the payments that GHI had made.

It was also about this time, in 1996, that NAMAWU filed a notice of strike to protest non-payment of its rightful labor claims.[53] But, as already mentioned, the outcome of that labor dispute was yet unascertainable at that time, and NAMAWU could only have hoped for, or speculated about, a favorable ruling. To paraphrase *MR Holdings,* we cannot see how NAMAWU's right was prejudiced by the Deed of Real Estate and Chattel Mortgage,

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[52] Emphasis supplied.

[53] The Notice of Strike was filed on August 23, 1996.

or by its delayed registration, when substantially all of the properties of MMC were already mortgaged to GHI as early as October 2, 1992. Given this reality, the Court of Appeals had no basis to conclude that this Deed of Real Estate and Chattel Mortgage, by reason of its late registration, was a simulated or fictitious contract.

The importance of registration and its binding effect is stated in Section 51 of the Property Registration Decree or Presidential Decree (P.D.) No. 1529,[54] which reads:

> SECTION 51. *Conveyance and other dealings by registered owner.*—An owner of registered land may convey, mortgage, lease, charge or otherwise deal with the same in accordance with existing laws. He may use such forms, deeds, mortgages, leases or other voluntary instrument as are sufficient in law. But no deed, mortgage, lease or other voluntary instrument, except a will purporting to convey or effect registered land, shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the Registry of Deeds to make registration.
>
> The act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned, and in all cases under this Decree, the registration shall be made in the Office of the Register of Deeds for the province or the city where the land lies.[55]

Under the Torrens system, registration is the operative act which gives validity to the transfer or creates a lien upon the land. Further, entrenched in our jurisdiction is the doctrine that registration in a public registry creates constructive notice to the whole world.[56] Thus, Section 51 of Act No. 496, as amended by Section 52 of P.D. No. 1529, provides:

> SECTION 52. *Constructive notice upon registration.*—Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered in the Office of the Register of Deeds for the province

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[54] *Talusan. v. Tayag,* 408 Phil. 373, 390 (2001).

[55] Underscoring supplied.

[56] *Olizon v. Court of Appeals*, G.R. No. 107075, September 1, 1994, 236 SCRA 148, 159.

or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering.

But, there is nothing in Act No. 496, as amended by P.D. No. 1529, that imposes a period within which to register annotations of "conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land." If liens were not so registered, then it "shall operate only as a contract between the parties and as evidence of authority to the Registry of Deeds to make registration." If registered, it "shall be the operative act to convey or affect the land insofar as third persons are concerned." The mere lapse of time from the execution of the mortgage document to the moment of its registration does not affect the rights of a mortgagee.

Neither will the circumstance of GHI's foreclosure of MMC's properties on July 31, 2001, or after the DOLE had already issued a Partial Writ of Execution on May 9, 2001 against MMC, support the conclusion of the CA that GHI's act of foreclosing on MMC's properties was "*effected to prevent satisfaction of the judgment award*." GHI's mortgage rights, constituted in 1992, antedated the Partial Writ of Execution by nearly ten (10) years. GHI's resort to foreclosure was a legitimate enforcement of a right to liquidate a *bona fide* debt. It was a reasonable option open to a mortgagee which, not being a party to the labor dispute between NAMAWU and MMC, stood to suffer a loss if it did not avail itself of the remedy of foreclosure.

The well-settled rule is that a mortgage lien is inseparable from the property mortgaged.[57] While it is true that GHI's foreclosure of MMC's mortgaged properties may have had the "effect to prevent satisfaction of the judgment award against the specific mortgaged property that first answers for a mortgage obligation ahead of any subsequent creditors," that same foreclosure does not necessarily translate to having been "*effected to prevent satisfaction of the judgment award*" against MMC.

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[57] *Consolidated Bank and Trust Corporation v. Court of Appeals*, G.R. No. 78771, January 23, 1991, 193 SCRA 158, 176; citing *Philippine National Bank v. Mallorca*, G.R. No. L-22538, October 31, 1967, 21 SCRA 694, 698.

Likewise, we note the narration of subsequent facts contained in the Comment of the Office of the Solicitor General. Therein, it is alleged that after the Partial Writ of Execution was issued on May 9, 2001, a motion for reconsideration was filed by MMC; that the denial of the motion was appealed to the CA; that when the appeal was dismissed by the CA on January 24, 2002, it eventually became the subject of a review petition before this Court, docketed as G.R. No. 157696; and that G.R. No. 157696 was decided by this Court only on February 9, 2006.

This chronology of subsequent events shows that February 9, 2006 would have been the earliest date for the unimpeded enforcement of the Partial Writ of Execution, as it was only then that this Court resolved the issue. This happened four and a half years after July 31, 2001, the date when GHI foreclosed on the mortgaged properties. Thus, it is not accurate to say that the foreclosure made on July 31, 2001 was "*effected [only] to prevent satisfaction of the judgment award*."

We also observe the error in the CA's finding that the 1996 Deed of Real Estate and Chattel Mortgage was not supported by any consideration since at the time the deed was executed, *"all the real and personal property of MMC had already been transferred in the hands of G Holdings*."[58] It should be remembered that the Purchase and Sale Agreement between GHI and APT involved large amounts (₱550M) and even spawned a subsequent court action (Civil Case No. 95-76132, RTC of Manila). Yet, nowhere in the Agreement or in the RTC decision is there any mention of real and personal properties of MMC being included in the sale to GHI in 1992. These properties simply served as mortgaged collateral for the 1992 Promissory Notes.[59] The Purchase and Sale Agreement and the Promissory Notes themselves are the best evidence that there was ample consideration for the mortgage.

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[58] *Rollo*, Vol. 1, p. 113.

[59] Under the Representations and Warranties clause of the Purchase and Sale Agreement dated October 2, 1992, paragraph (k) "Asset Catalogue GC 031" briefly describes **all** movable and immovable properties owned by or leased to MMC (*id.* at 165).

Thus, we must reject the conclusion of the CA that the Deed of Real Estate and Chattel Mortgage executed in 1996 was a simulated transaction.

On the issue of whether there had been an effective levy upon the properties of GHI.

The well-settled principle is that the rights of a mortgage creditor over the mortgaged properties are superior to those of a subsequent attaching creditor. In *Cabral v. Evangelista*,[60] this Court declared that:

> Defendants-appellants purchase of the mortgaged chattels at the public sheriff's sale and the delivery of the chattels to them with a certificate of sale did not give them a superior right to the chattels as against plaintiffs-mortgagees. Rule 39, Section 22 of the old Rules of Court (now Rule 39, Section 25 of the Revised Rules), cited by appellants precisely provides that "the sale conveys to the purchaser all the right which the debtor had in such property on the day the execution or attachment was levied." It has long been settled by this Court that "The right of those who so acquire said properties should not and can not be superior to that of the creditor who has in his favor an instrument of mortgage executed with the formalities of the law, in good faith, and without the least indication of fraud. This is all the more true in the present case, because, when the plaintiff purchased the automobile in question on August 22, 1933, he knew, or at least, it is presumed that he knew, by the mere fact that the instrument of mortgage, Exhibit 2, was registered in the office of the register of deeds of Manila, that said automobile was subject to a mortgage lien. In purchasing it, with full knowledge that such circumstances existed, it should be presumed that he did so, very much willing to respect the lien existing thereon, since he should not have expected that with the purchase, he would acquire a better right than that which the vendor then had." In another case between two mortgagees, we held that "As between the first and second mortgagees, therefore, the second mortgagee has at most only the right to redeem, and even when the second mortgagee goes through the formality of an extrajudicial foreclosure, the purchaser acquires no more than the right of redemption from the first mortgagee."

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[60] *Cabral, et al. v. Evangelista, et al.*, 139 Phil. 300, 306-307 (1969).

The superiority of the mortgagee's lien over that of a subsequent judgment creditor is now expressly provided in Rule 39, Section 16 of the Revised Rules of Court, which states with regard to the effect of levy on execution as to third persons that "The levy on execution shall create a lien in favor of the judgment creditor over the right, title and interest of the judgment debtor in such property at the time of the levy, subject to liens or encumbrances then existing."

Even in the matter of possession, mortgagees over chattel have superior, preferential and paramount rights thereto, and the mortgagor has mere rights of redemption.[61]

Similar rules apply to cases of mortgaged real properties that are registered. Since the properties were already mortgaged to GHI, the only interest remaining in the mortgagor was its right to redeem said properties from the mortgage. The right of redemption was the only leviable or attachable property right of the mortgagor in the mortgaged real properties. We have held that —

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[61] In *Northern Motors, Inc. v. Judge Coquia,* 160 Phil. 1091, 1095 (1975), in cases of chattel of mortgages, this Court pronounced:

We hold, under the facts of this case, that Northern Motors, Inc., as chattel mortgagee and unpaid vendor, should not be required to vindicate in a separate action its claims for the seven mortgaged taxicabs and for the proceeds of the execution sale of the other eight mortgaged taxicabs.

Inasmuch as the condition of the chattel mortgages had already been broken and Northern Motors, Inc. had in fact instituted an action for replevin so that it could take possession of the mortgaged taxicabs (Civil Case No. 20536, Rizal CFI) it has a superior, preferential and paramount right to have possession of the mortgaged taxicabs and to claim the proceeds of the execution sale (See *Bachrach Motor Co. v. Summer*, 42 Phil. 3; *Northern Motors, Inc. v. Herrera,* L-32674, February 22, 1973, 49 SCRA 392).

Respondent sheriff *wrongfully levied* upon the mortgaged taxicabs and erroneously took possession of them. He could have levied only upon *the right or equity of redemption* pertaining to the Manila Yellow Taxicab Co., Inc. as chattel mortgagor and judgment debtor, because that was the only leviable or attachable property right of the company in the mortgaged taxicabs (*Manila Mercantile Co. v. Flores,* 50 Phil. 759; *Levy Hermanos, Inc. v. Ramirez and Casimiro*, 60 Phil. 978, 981). "After a chattel mortgage is executed, there remains in the mortgagor a mere right of redemption" (citing *Tizon v. Valdez and Morales,* 48 Phil. 910, 916).

The main issue in this case is the nature of the lien of a judgment creditor, like the petitioner, who has levied an attachment on the judgment debtor's (CMI) real properties which had been mortgaged to a consortium of banks and were subsequently sold to a third party, Top Rate.

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The sheriff's levy on CMI's properties, under the writ of attachment obtained by the petitioner, was actually a levy on the interest only of the judgment debtor CMI on those properties. Since the properties were already mortgaged to the consortium of banks, the only interest remaining in the mortgagor CMI was its right to redeem said properties from the mortgage. The right of redemption was the only leviable or attachable property right of CMI in the mortgaged real properties. The sheriff could not have attached the properties themselves, for they had already been conveyed to the consortium of banks by mortgage (defined as a "conditional sale"), so his levy must be understood to have attached only the mortgagor's remaining interest in the mortgaged property — the right to redeem it from the mortgage.[62]

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There appears in the record a factual contradiction relating to whether the foreclosure by GHI on July 13, 2001[63] over some of the contested properties came ahead of the levy thereon, or the reverse. NAMAWU claims that the levy on two trucks was effected on June 22, 2001,[64] which GHI disputes as a misstatement because the levy was attempted on July 18, 2002, and not 2001.[65] What is undisputed though is that the mortgage of GHI was registered on February 4, 2000,[66] well ahead of any levy by NAMAWU. Prior registration of a lien creates a

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[62] *Quezon Bearing & Parts Corporation v. Court of Appeals,* G.R. No. 76537, August 28, 1989, 176 SCRA 825, 829-830.

[63] *Rollo*, Vol 1, p. 105

[64] *Id.*

[65] *Id.* at 47.

[66] February 24, 2000, as per the allegation of NAMAWU, cited in the Decision of RTC Br. 61, Negros Occidental, dated December 4, 2002.

preference, as the act of registration is the operative act that conveys and affects the land,[67] even against subsequent judgment creditors, such as respondent herein. Its registration of the mortgage was not intended to defraud NAMAWU of its judgment claims, since even the courts were already judicially aware of its existence since 1992. Thus, at that moment in time, with the registration of the mortgage, either NAMAWU had no properties of MMC to attach because the same had been previously foreclosed by GHI as mortgagee thereof; or by virtue of the DOLE's levy to enforce NAMAWU's claims, the latter's rights are subject to the notice of the foreclosure on the subject properties by a prior mortgagee's right. GHI's mortgage right had already been registered by then, and "it is basic that mortgaged properties answer primarily for the mortgaged credit, not for the judgment credit of the mortgagor's unsecured creditor."[68]

On the issue of piercing the veil of corporate fiction.

The CA found that:

"Ordinarily, the interlocking of directors and officers in two different corporations is not a conclusive indication that the corporations are one and the same for purposes of applying the doctrine of piercing the veil of corporate fiction. However, when the legal fiction of the separate corporate personality is abused, such as when the same is used for fraudulent or wrongful ends, the courts have not hesitated to pierce the corporate veil (*Francisco vs. Mejia*, 362 SCRA 738). In the case at bar, the Deed of Real Estate and Chattel Mortgage was entered into between MMC and G Holdings for the purpose of evading the satisfaction of the legitimate claims of the petitioner against MMC. The notion of separate personality is clearly being utilized by the two corporations to perpetuate the violation of a positive legal duty arising from a final judgment to the prejudice of the petitioner's right."[69]

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[67] *Macadangdang. v. Martinez,* G.R. No. 158682, January 31, 2005, 450 SCRA 363, 369.

[68] *MR Holdings, Ltd. v. Sheriff Bajar, supra* note 51, at 469.

[69] *Rollo*, Vol. 1, pp. 115-116.

Settled jurisprudence[70] has it that –

"(A) corporation, upon coming into existence, is invested by law with a personality separate and distinct from those persons composing it as well as from any other legal entity to which it may be related. By this attribute, a stockholder may not, generally, be made to answer for acts or liabilities of the said corporation, and vice versa. This separate and distinct personality is, however, merely a fiction created by law for convenience and to promote the ends of justice. For this reason, it may not be used or invoked for ends subversive to the policy and purpose behind its creation or which could not have been intended by law to which it owes its being. This is particularly true **when the fiction is used to defeat public convenience, justify wrong, protect fraud, defend crime, confuse legitimate legal or judicial issues, perpetrate deception or otherwise circumvent the law**. This is likewise true where the corporate entity is being **used as an alter ego, adjunct, or business conduit for the sole benefit of the stockholders or of another corporate entity.** In all these cases, the notion of corporate entity will be pierced or disregarded with reference to the particular transaction involved.

Given this jurisprudential principle and the factual circumstances obtaining in this case, we now ask: Was the CA correct in piercing the veil of corporate identity of GHI and MMC?

In our disquisition above, we have shown that the CA's finding that there was a "simulated mortgage" between GHI and MMC to justify a wrong or protect a fraud has struggled vainly to find a foothold when confronted with the ruling of this Court in *Republic v. "G" Holdings, Inc.*

The negotiations between the GHI and the Government—through APT, dating back to 1992—culminating in the Purchase and Sale Agreement, cannot be depicted as a contrived transaction. In fact, in the said *Republic, etc., v. "G" Holdings, Inc.*, this Court adjudged that GHI was entitled to its rightful claims—not just to the shares of MMC itself, or just to the financial notes that already contained the mortgage clauses over MMCs

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[70] *Land Bank of the Philippines v. Court of Appeals,* 416 Phil. 774, 782-783. emphasis supplied.

disputed assets, but also to the delivery of those instruments. Certainly, we cannot impute to this Court's findings on the case any badge of fraud. Thus, we reject the CA's conclusion that it was right to pierce the veil of corporate fiction, because the foregoing circumstances belie such an inference. Furthermore, we cannot ascribe to the Government, or the APT in particular, any undue motive to participate in a transaction designed to perpetrate fraud. Accordingly, we consider the CA interpretation unwarranted.

We also cannot agree that the presumption of fraud in Article 1387 of the Civil Code relative to property conveyances, when there was already a judgment rendered or a writ of attachment issued, authorizes piercing the veil of corporate identity in this case. We find that Article 1387 finds less application to an involuntary alienation such as the foreclosure of mortgage made before any final judgment of a court. We thus hold that when the alienation is involuntary, and the foreclosure is not fraudulent because the mortgage deed has been previously executed in accordance with formalities of law, and the foreclosure is resorted to in order to liquidate a *bona fide* debt, it is not the alienation by onerous title contemplated in Article 1387 of the Civil Code wherein fraud is presumed.

Since the factual antecedents of this case do not warrant a finding that the mortgage and loan agreements between MMC and GHI were simulated, then their separate personalities must be recognized. To pierce the veil of corporate fiction would require that their personalities as creditor and debtor be conjoined, resulting in a merger of the personalities of the creditor (GHI) and the debtor (MMC) in one person, such that the debt of one to the other is thereby extinguished. But the debt embodied in the 1992 Financial Notes has been established, and even made subject of court litigation (Civil Case No. 95-76132, RTC Manila). This can only mean that GHI and MMC have separate corporate personalities.

Neither was MMC used merely as an alter ego, adjunct, or business conduit for the sole benefit of GHI, to justify piercing

the former's veil of corporate fiction so that the latter could be held liable to claims of third-party judgment creditors, like NAMAWU. In this regard, we find American jurisprudence persuasive. In a decision by the Supreme Court of New York[71] bearing upon similar facts, the Court denied piercing the veil of corporate fiction to favor a judgment creditor who sued the parent corporation of the debtor, alleging fraudulent corporate asset-shifting effected after a prior final judgment. Under a factual background largely resembling this case at bar, *viz*:

> In this action, plaintiffs seek to recover the balance due under judgments they obtained against Lake George Ventures Inc. (hereinafter LGV), a subsidiary of defendant that was formed to develop the Top O' (sic) the World resort community overlooking Lake George, by piercing the corporate veil or upon the theory that LGV's transfer of certain assets constituted fraudulent transfers under the Debtor and Creditor Law. We previously upheld Supreme Court's denial of defendant's motion for summary judgment dismissing the complaint (252 A.D.2d 609, 675 N.Y.S.2d 234) and the matter proceeded to a nonjury trial. Supreme Court thereafter rendered judgment in favor of defendant upon its findings that, although defendant dominated LGV, it did not use that domination to commit a fraud or wrong on plaintiffs. Plaintiffs appealed.
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> The trial evidence showed that LGV was incorporated in November 1985. Defendant's principal, Francesco Galesi, initially held 90% of the stock and all of the stock was ultimately transferred to defendant. Initial project funding was provided through a $2.5 million loan from Chemical Bank, secured by defendant's guarantee of repayment of the loan and completion of the project. The loan proceeds were utilized to purchase the real property upon which the project was to be established. Chemical Bank thereafter loaned an additional $3.5 million to LGV, again guaranteed by defendant, and the two loans were consolidated into a first mortgage loan of $6 million. In 1989, the loan was modified by splitting the loan into a $1.9 term note on which defendant was primary obligor and a $4.1 million project note on which LGV was the obligor and defendant was a guarantor.

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[71] *George REBH, et al. v. ROTTERDAM VENTURES, INC., Doing Business as Galesi Group,* 277 A.D.2d 659, 716 N.Y.S.2d 457 (2000).

Due to LGV's lack of success in marketing the project's townhouses **and in order to protect itself from the exercise of Chemical Bank's enforcement remedies,** defendant was forced to make monthly installments of principal and interest on LGV's behalf. Ultimately, defendant purchased the project note from Chemical Bank for $3.1 million, paid the $1.5 million balance on the term note and took an assignment of the first mortgage on the project's realty. After LGV failed to make payments on the indebtedness over the course of the succeeding two years, defendant brought an action to foreclose its mortgage. Ultimately, defendant obtained a judgment of foreclosure and sale in the amount of $6,070,246.50. Defendant bid in the property at the foreclosure sale and thereafter obtained a deficiency judgment in the amount of $3,070,246.50.

Following the foreclosure sale, LGV transferred to defendant all of the shares of Top of the World Water Company, a separate entity that had been organized to construct and operate the water supply and delivery system for the project, in exchange for a $950,000 reduction in the deficiency judgment.

the U.S. Supreme Court of New York held—

Based on the foregoing, and accepting that defendant exercised complete domination and control over LGV, we are at a loss as to how plaintiffs perceive themselves to have been inequitably affected by defendant's foreclosure action against LGV, by LGV's divestiture of the water company stock or the sports complex property, or by defendant's transfer to LGV of a third party's uncollectible note, accomplished solely for tax purposes. **It is undisputed that LGV was, and for some period of time had been, unable to meet its obligations and, at the time of the foreclosure sale, liens against its property exceeded the value of its assets by several million dollars, even including the water company and sports complex at the values plaintiffs would assign to them.** In fact, even if plaintiffs' analysis were utilized to eliminate the entire $3 million deficiency judgment, **the fact remains that subordinate mortgages totaling nearly an additional $2 million have priority over plaintiffs' judgments.**

As properly concluded by Supreme Court, **absent a finding of any inequitable consequence to plaintiffs, both causes of action pleaded in the amended complaint must fail. Fundamentally, a**

party seeking to pierce the corporate veil must show complete domination and control of the subsidiary by the parent and also that such domination was used to commit a fraud or wrong against the plaintiff that resulted in the plaintiff's injury (252 A.D.2d 609, 610, 675 N.Y.S.2d 234, *supra;* see, *Matter of Morris v. New York State Dept. of Taxation & Fin.*, 82 N.Y.2d 135, 141, 603 N.Y.S.2d 807, 623 N.E.2d 1157). **Notably, "[e]vidence of domination alone does not suffice without an additional showing that it led to inequity, fraud or malfeasance"** (*TNS Holdings v. MKI Sec. Corp.*, 92 N.Y.2d 335, 339, 680 N.Y.S.2d 891, 703 N.E.2d 749).

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In reaching that conclusion, we specifically reject a number of plaintiffs' assertions, including the entirely erroneous claims that our determination on the prior appeal (252 A.D.2d 609, 675 N.Y.S.2d 234, *supra*) set forth a "roadmap" for the proof required at trial and mandated a verdict in favor of plaintiffs upon their production of evidence that supported the decision's "listed facts". To the contrary, our decision was predicated upon the existence of such evidence, absent which we would have granted summary judgment in favor of defendant. We are equally unpersuaded by plaintiffs' continued reliance upon defendant's December 1991 unilateral conversion of its intercompany loans with LGV from debt to equity, which constituted nothing more than a "bookkeeping transaction" and had no apparent effect on LGV's obligations to defendant or defendant's right to foreclose on its mortgage.[72]

This doctrine is good law under Philippine jurisdiction.

In *Concept Builders, Inc. v. National Labor Relations Commission*,[73] we laid down the test in determining the applicability of the doctrine of piercing the veil of corporate fiction, to wit:

1. Control, not mere majority or complete control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own.

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[72] Emphasis supplied.

[73] G.R. No. 108734, May 29, 1996, 257 SCRA 149, 159.

2. Such control must have been used by the defendant to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest and, unjust act in contravention of plaintiffs legal rights; and,

3. The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.

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Time and again, we have reiterated that mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not, by itself, a sufficient ground for disregarding a separate corporate personality.[74] It is basic that a corporation has a personality separate and distinct from that composing it as well as from that of any other legal entity to which it may be related. Clear and convincing evidence is needed to pierce the veil of corporate fiction.[75]

In this case, the mere interlocking of directors and officers does not warrant piercing the separate corporate personalities of MMC and GHI. Not only must there be a showing that there was majority or complete control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked, so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own. The mortgage deed transaction attacked as a basis for piercing the corporate veil was a transaction that was an offshoot, a derivative, of the mortgages earlier constituted in the Promissory Notes dated October 2, 1992. But these Promissory Notes with mortgage were executed by GHI with APT in the name of MMC, in a full privatization process. It appears that if there was any control or domination exercised over MMC, it was APT, not GHI, that wielded it. Neither can we conclude that the constitution of the loan nearly four (4) years prior to NAMAWU's notice of strike could have been

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[74] *Francisco v. Mejia,* G.R. No. 141617, August 14, 2001, 362 SCRA 738, 753.

[75] *Manila Hotel Corp. v. NLRC,* 397 Phil., 1, 19 (2000).

the proximate cause of the injury of NAMAWU for having been deprived of MMC's corporate assets.

On the propriety of injunction to prevent execution by the NLRC on the properties of third-party claimants

It is settled that a Regional Trial Court can validly issue a Temporary Restraining Order (TRO) and, later, a writ of preliminary injunction to prevent enforcement of a writ of execution issued by a labor tribunal on the basis of a third-party's claim of ownership over the properties levied upon.[76] While, as a rule, no temporary or permanent injunction or restraining order in any case involving or growing out of a labor dispute shall be issued by any court—where the writ of execution issued by a labor tribunal is sought to be enforced upon the property of a stranger to the labor dispute, even upon a mere *prima facie* showing of ownership of such claimant—a separate action for injunctive relief against such levy may be maintained in court, since said action neither involves nor grows out of a labor dispute insofar as the third party is concerned.[77] Instructively, *National Mines and Allied Workers' Union v. Vera*[78]

> Petitioners' reliance on the provision of Art. 254 of the New Labor Code (herein earlier quoted) which prohibits injunctions or restraining orders in any case involving or growing out of a 'labor dispute' is not well-taken. This has no application to the case at bar. Civil Case No. 2749 is one which neither "involves" nor "grows out" of a labor dispute. What 'involves' or 'grows out' of a labor dispute is the NLRC case between petitioners and the judgment debtor, Philippine Iron Mines. The private respondents are not parties to the said NLRC case. Civil Case No. 2749 does not put in issue either the fact or validity of the proceeding in the NLRC case nor the decision therein rendered, much less the writ of execution issued thereunder. It does not seek to enjoin the execution of the decision

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[76] *Penalosa v. Villanueva,* G.R. No. 75305, September 26, 1989, 177 SCRA 778, 786.

[77] *Id.*

[78] G.R. No. L-44230, November 19, 1984, 133 SCRA 259, 269-270.

against the properties of the judgment debtor. What is sought to be tried in Civil Case No. 2749 is whether the NLRC's decision and writ of execution, above mentioned, shall be permitted to be satisfied against properties of private respondents, and not of the judgment debtor named in the NLRC decision and writ of execution. Such a recourse is allowed under the provisions of Section 17, Rule 39 of the Rules of Court.

To sustain petitioners' theory will inevitably lead to disastrous consequences and lend judicial imprimatur to deprivation of property without due process of law. Simply because a writ of execution was issued by the NLRC does not authorize the sheriff implementing the same to levy on anybody's property. To deny the victim of the wrongful levy, the recourse such as that availed of by the herein private respondents, under the pretext that no court of general jurisdiction can interfere with the writ of execution issued in a labor dispute, will be sanctioning a greater evil than that sought to be avoided by the Labor Code provision in question. Certainly, that could not have been the intendment of the law creating the NLRC. For well-settled is the rule that the power of a court to execute its judgment extends only over properties unquestionably belonging to the judgment debtor.

Likewise, since the third-party claimant is not one of the parties to the action, he cannot, strictly speaking, appeal from the order denying his claim, but he should file a separate reivindicatory action against the execution creditor or the purchaser of the property after the sale at public auction, or a complaint for damages against the bond filed by the judgment creditor in favor of the sheriff.[79]

A separate civil action for recovery of ownership of the property would not constitute interference with the powers or processes of the labor tribunal which rendered the judgment to execute upon the levied properties. The property levied upon being that of a stranger is not subject to levy. Thus, a separate action for recovery, upon a claim and *prima facie* showing of ownership by the petitioner, cannot be considered as interference.[80]

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[79] *Yupangco Cotton Mills, Inc. v. Court of Appeals,* 424 Phil. 469, 480 (2002).

[80] *Id.* at 481.

Upon the findings and conclusions we have reached above, petitioner is situated squarely as such third-party claimant. The questioned restraining order of the lower court, as well as the order granting preliminary injunction, does not constitute interference with the powers or processes of the labor department. The registration of the mortgage document operated as notice to all on the matter of the mortgagee's prior claims. Official proceedings relative to the foreclosure of the subject properties constituted a *prima facie* showing of ownership of such claimant to support the issuance of injunctive reliefs.

As correctly held by the lower court:

> The subject incidents for TRO and/or Writ of Injunction were summarily heard and in resolving the same, the Court believes, that the petitioner has a clear and unmistakable right over the levied properties. The existence of the subject Deed of Real Estate and Chattel Mortgage, the fact that petitioner initiated a foreclosure of said properties before the Clerk of Court and Ex-Officio Sheriff, RTC Branch 61, Kabankalan City on July 13, 2001, the fact that said Ex-Officio Sheriff and the Clerk of Court issue a Notice of Foreclosure, Possession and Control over said mortgaged properties on July 19, 2001 and the fact that a Sheriff's Certificate of Sale was issued on December 3, 2001 are the basis of its conclusion. Unless said mortgage contract is annulled or declared null and void, the presumption of regularity of transaction must be considered and said document must be looked [upon] as valid.

Notably, the Office of the Solicitor General also aptly observed that when the respondent maintained that the Deed of Real Estate and Chattel mortgage was entered into in fraud of creditors, it thereby admitted that the mortgage was not void, but merely rescissible under Article 1381(3) of the Civil Code; and, therefore, an independent action is needed to rescind the contract of mortgage.[81] We, however, hold that such an independent action cannot now be maintained, because the mortgage has been previously recognized to exist, with a valid consideration, in *Republic, etc. v. "G" Holdings, Inc.*

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[81] *Rollo*, Vol. 1, p. 785.

A final word

The Court notes that the case filed with the lower court involves a principal action for injunction to prohibit execution over properties belonging to a third party not impleaded in the legal dispute between NAMAWU and MMC. We have observed, however, that the lower court and the CA failed to take judicial notice of, or to consider, our Decisions in *Republic, etc. v. "G" Holdings, Inc.*, and *Maricalum Mining Corporation v. Brion and NAMAWU*, in which we respectively recognized the entitlement of GHI to the shares and the company notes of MMC (under the Purchase and Sale Agreement), and the rights of NAMAWU to its labor claims. At this stage, therefore, neither the lower court nor the CA, nor even this Court, can depart from our findings in those two cases because of the doctrine of *stare decisis.*

From our discussion above, we now rule that the trial court, in issuing the questioned orders, did not commit grave abuse of discretion, because its issuance was amply supported by factual and legal bases.

We are not unmindful, however, of the fact that the labor claims of NAMAWU, acknowledged by this Court in *Maricalum,* still awaits final execution. As success fades from NAMAWU's efforts to execute on the properties of MMC, which were validly foreclosed by GHI, we see that NAMAWU always had, and may still have, ample supplemental remedies found in Rule 39 of the Rules of Court in order to protect its rights against MMC. These include the examination of the judgment obligor when judgment is unsatisfied,[82] the examination of the obligors of judgment obligors,[83] or even the resort to receivership.[84]

While, theoretically, this case is not ended by this decision, since the lower court is still to try the case filed with it and

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[82] Rules of Court, Rule 39, Sec. 36.

[83] Rules of Court, Rule 39, Sec 37.

[84] Rules of Court, Rule 39, Sec. 41.

decide it on the merits, the matter of whether the mortgage and foreclosure of the assets that are the subject of said foreclosure is ended herein, for the third and final time. So also is the consequential issue of the separate and distinct personalities of GHI and MMC. Having resolved these principal issues with certainty, we find no more need to remand the case to the lower court, only for the purpose of resolving again the matter of whether GHI owns the properties that were the subject of the latter's foreclosure.

WHEREFORE, the Petition is *GRANTED*. The Decision of the Court of Appeals dated October 14, 2003 is *SET ASIDE*. The Omnibus Order dated December 4, 2002 of the Regional Trial Court, Branch 61 of Kabankalan City, Negros Occidental is *AFFIRMED*. No costs.

SO ORDERED.

Carpio Morales,[*] *Chico-Nazario (Acting Chairperson)*,[**] *Peralta*, and *Abad*,[***] *JJ.*, concur.

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[*] Additional member vice Justice Antonio T. Carpio per Special Order No. 744 dated October 13, 2009.

[**] Acting Chairperson vice Justice Antonio T. Carpio per Special Order No. 743 dated October 13, 2009.

[***] Additional member vice Justice Presbitero J. Velasco, Jr. per Special Order No. 753 dated October 13, 2009.

SECOND DIVISION

[G.R. No. 160708. October 16, 2009]

PATROCINIA RAVINA and WILFREDO RAVINA, *petitioners, vs.* **MARY ANN P. VILLA ABRILLE, for herself and in behalf of INGRID D'LYN P. VILLA ABRILLE, INGREMARK D'WIGHT VILLA ABRILLE, INGRESOLL DIELS VILLA ABRILLE and INGRELYN DYAN VILLA ABRILLE,** *respondents.*

SYLLABUS

1. CIVIL LAW; PROPERTY RELATIONS BETWEEN HUSBAND AND WIFE; CONJUGAL PARTNERSHIP OF GAINS; THE PRESUMPTION THAT ALL PROPERTY ACQUIRED DURING THE MARRIAGE BELONGS TO THE CONJUGAL PARTNERSHIP, APPLIED.— Article 160 of the New Civil Code provides, "All property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife." There is no issue with regard to the lot covered by TCT No. T-26471, which was an exclusive property of Pedro, having been acquired by him before his marriage to Mary Ann. However, the lot covered by TCT No. T-88674 was acquired in 1982 during the marriage of Pedro and Mary Ann. No evidence was adduced to show that the subject property was acquired through exchange or barter. The presumption of the conjugal nature of the property subsists in the absence of clear, satisfactory and convincing evidence to overcome said presumption or to prove that the subject property is exclusively owned by Pedro. Petitioners' bare assertion would not suffice to overcome the presumption that TCT No. T-88674, acquired during the marriage of Pedro and Mary Ann, is conjugal. Likewise, the house built thereon is conjugal property, having been constructed through the joint efforts of the spouses, who had even obtained a loan from DBP to construct the house.

2. ID.; ID.; ID.; THE SALE OF THE CONJUGAL PROPERTY WITHOUT THE CONSENT OF THE WIFE IS ANNULABLE

AT HER INSTANCE WITHIN FIVE (5) YEARS FROM THE DATE OF SALE.— The particular provision in the New Civil Code giving the wife ten (10) years to annul the alienation or encumbrance was not carried over to the Family Code. It is thus clear that alienation or encumbrance of the conjugal partnership property by the husband without the consent of the wife is null and void. Hence, just like the rule in absolute community of property, if the husband, without knowledge and consent of the wife, sells conjugal property, such sale is void. If the sale was with the knowledge but without the approval of the wife, thereby resulting in a disagreement, such sale is annullable at the instance of the wife who is given five (5) years from the date the contract implementing the decision of the husband to institute the case. Here, respondent Mary Ann timely filed the action for annulment of sale within five (5) years from the date of sale and execution of the deed. However, her action to annul the sale pertains only to the conjugal house and lot and does not include the lot covered by TCT No. T-26471, a property exclusively belonging to Pedro and which he can dispose of freely without Mary Ann's consent.

3. ID.; SALES; BUYER IN GOOD FAITH; WHAT NEEDS TO BE DONE TO ESTABLISH THE STATUS AS A BUYER IN GOOD FAITH; CASE AT BAR.— As correctly held by the Court of Appeals, a purchaser in good faith is one who buys the property of another without notice that some other person has a right to, or interest in, such property and pays a full and fair price for the same at the time of such purchase, or before he has notice of the claim or interest of some other person in the property. To establish his status as a buyer for value in good faith, a person dealing with land registered in the name of and occupied by the seller need only show that he relied on the face of the seller's certificate of title. But for a person dealing with land registered in the name of and occupied by the seller whose capacity to sell is restricted, such as by Articles 166 and 173 of the Civil Code or **Article 124** of the Family Code, he must show that he inquired into the latter's capacity to sell in order to establish himself as a buyer for value in good faith.

4. ID.; ID.; ID.; CIRCUMSTANCES NEGATING THE CLAIM OF GOOD FAITH.— In the present case, the property is

registered in the name of Pedro and his wife, Mary Ann. Petitioners cannot deny knowledge that during the time of the sale in 1991, Pedro was married to Mary Ann. However, Mary Ann's conformity did not appear in the deed. Even assuming that petitioners believed in good faith that the subject property is the exclusive property of Pedro, they were apprised by Mary Ann's lawyer of her objection to the sale and yet they still proceeded to purchase the property without Mary Ann's written consent. Moreover, the respondents were the ones in actual, visible and public possession of the property at the time the transaction was being made. Thus, at the time of sale, petitioners knew that Mary Ann has a right to or interest in the subject properties and yet they failed to obtain her conformity to the deed of sale. Hence, petitioners cannot now invoke the protection accorded to purchasers in good faith.

5. ID.; ID.; ID.; A PERSON CANNOT CLAIM REIMBURSEMENTS FOR IMPROVEMENTS HE INTRODUCED ON THE LAND OF ANOTHER AFTER HIS GOOD FAITH HAD CEASED.— [T]his court rules that petitioners cannot claim reimbursements for improvements they introduced after their good faith had ceased. As correctly found by the Court of Appeals, petitioner Patrocinia Ravina made improvements and renovations on the house and lot at the time when the complaint against them was filed. Ravina continued introducing improvements during the pendency of the action. Thus, Article 449 of the New Civil Code is applicable. It provides that, "(h)e who builds, plants or sows in bad faith on the land of another, loses what is built, planted or sown without right to indemnity."

6. ID.; DAMAGES; AWARDED DUE TO THE ACTS THAT FALL SHORT OF THE ESTABLISHED CIVIL LAW STANDARDS.— The manner by which respondent and her children were removed from the family home deserves our condemnation. On July 5, 1991, while respondent was out and her children were in school, Pedro Villa Abrille acting in connivance with the petitioners surreptitiously transferred all their personal belongings to another place. The respondents then were not allowed to enter their rightful home or family abode despite their impassioned pleas. Firmly established in our civil law is the doctrine that: "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." When a right is exercised in a manner that does not conform with such norms and results in damages to another, a legal wrong is thereby committed for which the wrong doer must be held responsible. Similarly, 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 damages caused. It is patent in this case that petitioners' alleged acts fall short of these established civil law standards.

APPEARANCES OF COUNSEL

Edgar D. Rabor for petitioners.
J.V. Yap Law Office for respondents.

D E C I S I O N

QUISUMBING, *Acting C.J.*:

For review are the Decision[1] dated February 21, 2002 and the Resolution[2] dated October 7, 2003 of the Court of Appeals in CA-G.R. CV No. 54560. The appellate court modified the Decision[3] dated September 26, 1995 of the Regional Trial Court (RTC) of Davao City, Branch 15.

Simply stated, the facts as found by the Court of Appeals[4] are as follows:

Respondent Mary Ann Pasaol Villa Abrille and Pedro Villa Abrille are husband and wife. They have four children, who are also parties to the instant case and are represented by their mother, Mary Ann.

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[1] *Rollo*, pp. 44-70. Penned by Associate Justice Ruben T. Reyes (now a retired member of this Court), with Associate Justices Renato C. Dacudao and Mariano C. Del Castillo (now a member of this Court) concurring.

[2] *Id.* at 71.

[3] CA *rollo*, pp. 47-54. Penned by Judge Jesus V. Quitain.

[4] With editorial changes for brevity.

In 1982, the spouses acquired a 555-square meter parcel of land denominated as Lot 7, located at Kamuning Street, Juna Subdivision, Matina, Davao City, and covered by Transfer Certificate of Title (TCT) No. T-88674 in their names. Said lot is adjacent to a parcel of land which Pedro acquired when he was still single and which is registered solely in his name under TCT No. T-26471.

Through their joint efforts and the proceeds of a loan from the Development Bank of the Philippines (DBP), the spouses built a house on Lot 7 and Pedro's lot. The house was finished in the early 1980's but the spouses continuously made improvements, including a poultry house and an annex.

In 1991, Pedro got a mistress and began to neglect his family. Mary Ann was forced to sell or mortgage their movables to support the family and the studies of her children. By himself, Pedro offered to sell the house and the two lots to herein petitioners, Patrocinia and Wilfredo Ravina. Mary Ann objected and notified the petitioners of her objections, but Pedro nonetheless sold the house and the two lots without Mary Ann's consent, as evidenced by a Deed of Sale[5] dated June 21, 1991. It appears on the said deed that Mary Ann did not sign on top of her name.

On July 5, 1991 while Mary Ann was outside the house and the four children were in school, Pedro together with armed members of the Civilian Armed Forces Geographical Unit (CAFGU) and acting in connivance with petitioners[6] began transferring all their belongings from the house to an apartment.

When Mary Ann and her daughter Ingrid Villa Abrille came home, they were stopped from entering it. They waited outside the gate until evening under the rain. They sought help from the Talomo Police Station, but police authorities refused to intervene, saying that it was a family matter. Mary Ann alleged that the incident caused stress, tension and anxiety to her children, so much so that one flunked at school. Thus, respondents Mary

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[5] Records, pp. 144-145. Exh. "T".

[6] CA *rollo,* p. 53.

Ann and her children filed a complaint for Annulment of Sale, Specific Performance, Damages and Attorney's Fees with Preliminary Mandatory Injunction[7] against Pedro and herein petitioners (the Ravinas) in the RTC of Davao City.

During the trial, Pedro declared that the house was built with his own money. Petitioner Patrocinia Ravina testified that they bought the house and lot from Pedro, and that her husband, petitioner Wilfredo Ravina, examined the titles when they bought the property.

On September 26, 1995, the trial court ruled in favor of herein respondent Mary Ann P. Villa Abrille as follows:

WHEREFORE, judgment is rendered as follows:

1. The sale of lot 8 covered by TCT No. 26471 by defendant Pedro Abrille appearing in the Deed of Sale marked as Exh. "E" is void as to one half or 277.5 square meters representing the share of plaintiff Mary Villa Abrille.

2. That sale of Lot 7 covered by TCT No. [88674] by defendant Pedro Villa Abrille in the Deed of Sale (Exh. "A") is valid as to one half or 277.5 square meters of the 555 square meters as one half belongs to defendant Pedro Abrille but it is void as to the other half or 277.5 square meters as it belongs to plaintiff Mary Abrille who did not sell her share nor give her consent to the sale.

3. That sale of the house mentioned in the Deed of Sale (Exh. "A") is valid as far as the one half of the house representing the share of defendant Pedro Abrille is concerned but void as to the other half which is the share of plaintiff Mary Abrille because she did not give her consent/sign the said sale.

4. The defendants shall jointly pay the plaintiffs.

4. A. Seventeen Thousand Pesos (₱17,000.00) representing the value of the movables and belonging[s] that were lost when unknown men unceremoniously and without their knowledge and consent removed their movables from their house and brought them to an apartment.

4. B. One Hundred Thousand Pesos (₱ 100,000.00) to plaintiff Mary Abrille as moral damages.

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[7] Records, pp. 1-7.

4. C. Fifty Thousand Pesos (₱50,000.00) to each of the four children as moral damages, namely:

a) Ingrid Villa Abrille – Fifty Thousand Pesos (₱50,000.00), b) Ingremark Villa Abrille – Fifty Thousand Pesos (₱50,000.00), c) Ingresoll Villa Abrille – Fifty Thousand Pesos (₱50,000.00) and d) Ingrelyn Villa Abrille – Fifty Thousand Pesos (₱50,000.00).

5. Ten Thousand Pesos (₱10,000.00) as exemplary damages by way of example and correction for the public good.

6. The costs of suit.[8]

On appeal, the Court of Appeals modified the decision, thus:

WHEREFORE, the appealed judgment is hereby **MODIFIED** as follows:

1. The sale of lot covered by TCT No. 26471 in favor of defendants spouses Wilfredo and Patrocinia Ravina is declared valid.

2. The sale of lot covered by TCT No. 88674 in favor of said defendants spouses Ravina, together with the house thereon, is declared null and void.

3. Defendant Pedro Abrille is ordered to return the value of the consideration for the lot covered by TCT No. 88674 and the house thereon to co-defendants spouses Ravina.

4. Defendants spouses Ravina [a]re ordered to reconvey the lot and house covered by TCT No. 88674 in favor of spouses Pedro and Mary Villa Abrille and to deliver possession to them.

5. Plaintiffs are given the option to exercise their rights under Article [450] of the New Civil Code with respect to the improvements introduced by defendant spouses Ravina.

6. Defendants Pedro Villa Abrille and spouses Ravina are ordered to pay jointly and severally the plaintiffs as follows:

a) One Hundred Thousand Pesos (₱100,000.00) to plaintiff Mary Villa Abrille as moral damages.

b) Fifty Thousand Pesos (₱50,000.00) as moral damages to each of the four children, namely: Ingrid Villa Abrille, Ingremark Villa Abrille, Ingresoll Villa Abrille and Ingrelyn Villa Abrille.

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[8] CA *rollo*, pp. 53-54.

c) Ten Thousand (₱10,000.00) as exemplary damages by way of example and correction for the public good.

SO ORDERED.[9]

Their Motion for Reconsideration having been denied, petitioners filed this petition. Petitioners argue that:

I.

THE COURT OF APPEALS ERRED WHEN IT DECLARED x x x THE SALE OF LOT COVERED BY TCT NO. 88674 IN FAVOR OF SPOUSES RAVINA, TOGETHER WITH THE HOUSE THEREON, AS NULL AND VOID SINCE IT IS CLEARLY CONTRARY TO LAW AND EVIDENCE.

II.

THE COURT OF APPEALS ERRED WHEN IT RULED THAT PETITIONERS PATROCIN[I]A RAVINA AND WILFREDO RAVINA ARE NOT INNOCENT PURCHASERS FOR VALUE, THE SAME BEING CONTRARY TO LAW AND EVIDENCE.

III.

THE COURT OF APPEALS ERRED WHEN IT RULED THAT PETITIONERS PATROCIN[I]A RAVINA AND WILFREDO RAVINA ARE LIABLE FOR DAMAGES, THE SAME BEING CONTRARY TO LAW AND EVIDENCE.[10]

In essence, petitioners assail the appellate court's declaration that the sale to them by Pedro of the lot covered by TCT No. T-88674 is null and void. However, in addressing this issue, it is imperative to determine: (1) whether the subject property covered by TCT No. T-88674 is an exclusive property of Pedro or conjugal property, and (2) whether its sale by Pedro was valid considering the absence of Mary Ann's consent.

Petitioners assert that the subject lot covered by TCT No. T-88674 was the exclusive property of Pedro having been acquired by him through barter or exchange.[11] They allege

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[9] *Rollo,* pp. 68-69.

[10] *Id.* at 24.

[11] *Id.*

that the subject lot was acquired by Pedro with the proceeds of the sale of one of his exclusive properties. Allegedly, Pedro and his sister Carmelita initially agreed to exchange their exclusive lots covered by TCT No. T-26479 and TCT No. T-26472, respectively. Later, however, Pedro sold the lot covered by TCT No. T-26472 to one Francisca Teh Ting and purchased the property of Carmelita using the proceeds of the sale. A new title, TCT No. T-88674, was issued thereafter. Thus, petitioners insist that the subject lot remains to be an exclusive property of Pedro as it was acquired or purchased through the exclusive funds or money of the latter.

We are not persuaded. Article 160 of the New Civil Code provides, "All property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife."

There is no issue with regard to the lot covered by TCT No. T-26471, which was an exclusive property of Pedro, having been acquired by him before his marriage to Mary Ann. However, the lot covered by TCT No. T-88674 was acquired in 1982 during the marriage of Pedro and Mary Ann. No evidence was adduced to show that the subject property was acquired through exchange or barter. The presumption of the conjugal nature of the property subsists in the absence of clear, satisfactory and convincing evidence to overcome said presumption or to prove that the subject property is exclusively owned by Pedro.[12] Petitioners' bare assertion would not suffice to overcome the presumption that TCT No. T-88674, acquired during the marriage of Pedro and Mary Ann, is conjugal. Likewise, the house built thereon is conjugal property, having been constructed through the joint efforts of the spouses, who had even obtained a loan from DBP to construct the house.

Significantly, a sale or encumbrance of conjugal property concluded after the effectivity of the Family Code on August 3, 1988, is governed by Article 124 of the same Code that now treats such a disposition to be void if done (a) without the

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[12] See *Castro v. Miat*, G.R. No. 143297, February 11, 2003, 397 SCRA 271, 280.

consent of both the husband and the wife, or (b) in case of one spouse's inability, the authority of the court. Article 124 of the Family Code, the governing law at the time the assailed sale was contracted, is explicit:

> ART. 124. The administration and enjoyment of the conjugal partnership property shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy which must be availed of within five years from the date of the contract implementing such decision.
>
> In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include the powers of disposition or encumbrance which must have the authority of the court or the written consent of the other spouse. **In the absence of such authority or consent, the disposition or encumbrance shall be void**. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors. (Emphasis supplied.)

The particular provision in the New Civil Code giving the wife ten (10) years to annul the alienation or encumbrance was not carried over to the Family Code. It is thus clear that alienation or encumbrance of the conjugal partnership property by the husband without the consent of the wife is null and void.

Hence, just like the rule in absolute community of property, if the husband, without knowledge and consent of the wife, sells conjugal property, such sale is void. If the sale was with the knowledge but without the approval of the wife, thereby resulting in a disagreement, such sale is annullable at the instance of the wife who is given five (5) years from the date the contract implementing the decision of the husband to institute the case.[13]

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[13] M. STA. MARIA, *PERSONS AND FAMILY RELATIONS LAW,* p. 511 (4th ed., 2004).

Here, respondent Mary Ann timely filed the action for annulment of sale within five (5) years from the date of sale and execution of the deed. However, her action to annul the sale pertains only to the conjugal house and lot and does not include the lot covered by TCT No. T-26471, a property exclusively belonging to Pedro and which he can dispose of freely without Mary Ann's consent.

On the second assignment of error, petitioners contend that they are buyers in good faith.[14] Accordingly, they need not inquire whether the lot was purchased by money exclusively belonging to Pedro or of the common fund of the spouses and may rely on the certificates of title.

The contention is bereft of merit. As correctly held by the Court of Appeals, a purchaser in good faith is one who buys the property of another without notice that some other person has a right to, or interest in, such property and pays a full and fair price for the same at the time of such purchase, or before he has notice of the claim or interest of some other person in the property.[15] To establish his status as a buyer for value in good faith, a person dealing with land registered in the name of and occupied by the seller need only show that he relied on the face of the seller's certificate of title. But for a person dealing with land registered in the name of and occupied by the seller whose capacity to sell is restricted, such as by Articles 166 and 173 of the Civil Code or **Article 124** of the Family Code, he must show that he inquired into the latter's capacity to sell in order to establish himself as a buyer for value in good faith.[16]

In the present case, the property is registered in the name of Pedro and his wife, Mary Ann. Petitioners cannot deny knowledge that during the time of the sale in 1991, Pedro was married to Mary Ann. However, Mary Ann's conformity did not appear

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[14] *Rollo,* p. 32.

[15] *San Lorenzo Development Corporation v. Court of Appeals*, G.R. No. 124242, January 21, 2005, 449 SCRA 99, 117.

[16] *Bautista v. Silva*, G.R. No. 157434, September 19, 2006, 502 SCRA 334, 338-339.

in the deed. Even assuming that petitioners believed in good faith that the subject property is the exclusive property of Pedro, they were apprised by Mary Ann's lawyer of her objection to the sale and yet they still proceeded to purchase the property without Mary Ann's written consent. Moreover, the respondents were the ones in actual, visible and public possession of the property at the time the transaction was being made. Thus, at the time of sale, petitioners knew that Mary Ann has a right to or interest in the subject properties and yet they failed to obtain her conformity to the deed of sale. Hence, petitioners cannot now invoke the protection accorded to purchasers in good faith.

Now, if a voidable contract is annulled, the restoration of what has been given is proper. The relationship between the parties in any contract even if subsequently annulled must always be characterized and punctuated by good faith and fair dealing.[17] Hence, in consonance with justice and equity and the salutary principle of non-enrichment at another's expense, we sustain the appellate court's order directing Pedro to return to petitioner spouses the value of the consideration for the lot covered by TCT No. T-88674 and the house thereon.

However, this court rules that petitioners cannot claim reimbursements for improvements they introduced after their good faith had ceased. As correctly found by the Court of Appeals, petitioner Patrocinia Ravina made improvements and renovations on the house and lot at the time when the complaint against them was filed. Ravina continued introducing improvements during the pendency of the action.[18]

Thus, Article 449 of the New Civil Code is applicable. It provides that, "(h)e who builds, plants or sows in bad faith on the land of another, loses what is built, planted or sown without right to indemnity."[19]

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[17] *Heirs of Ignacia Aguilar-Reyes v. Mijares*, G.R. No. 143826, August 28, 2003, 410 SCRA 97, 109.

[18] *Rollo*, p. 63.

[19] *Lumungo v. Usman*, G.R. No. L-25359, September 28, 1968, 25 SCRA 255, 262.

On the last issue, petitioners claim that the decision awarding damages to respondents is not supported by the evidence on record.[20]

The claim is erroneous to say the least. The manner by which respondent and her children were removed from the family home deserves our condemnation. On July 5, 1991, while respondent was out and her children were in school, Pedro Villa Abrille acting in connivance with the petitioners[21] surreptitiously transferred all their personal belongings to another place. The respondents then were not allowed to enter their rightful home or family abode despite their impassioned pleas.

Firmly established in our civil law is the doctrine that: "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."[22] When a right is exercised in a manner that does not conform with such norms and results in damages to another, a legal wrong is thereby committed for which the wrong doer must be held responsible. Similarly, 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 damages caused.[23] It is patent in this case that petitioners' alleged acts fall short of these established civil law standards.

WHEREFORE, we deny the instant petition for lack of merit. The Decision dated February 21, 2002 and the Resolution dated October 7, 2003 of the Court of Appeals in CA-G.R. CV No. 54560 are *AFFIRMED*.

Costs against petitioners.

SO ORDERED.

Carpio Morales, Brion, Bersamin,[*] and *Abad, JJ.*, concur.

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[20] *Rollo*, p. 36.

[21] CA *rollo*, p. 53.

[22] CIVIL CODE, Art. 19.

[23] CIVIL CODE, Art. 21.

[*] Additional member per Special Order No. 761.

THIRD DIVISION

[G.R. No. 166383. October 16, 2009]

ASSOCIATED BANK,[*] *petitioner, vs.* **SPOUSES JUSTINIANO S. MONTANO, SR. and LIGAYA MONTANO and TRES CRUCES AGRO-INDUSTRIAL CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; FILING OF AN ANSWER OR A MOTION TO DISMISS ARE PROCEDURAL OPTIONS WHICH ARE NOT MUTUALLY EXCLUSIVE OF EACH OTHER.— Section 6, Rule 16 of the Rules of Court x x x is based on practicality. Both the parties and the court can conveniently save time and expenses necessarily involved in a case preparation and in a trial at large, when the issues involved in a particular case can otherwise be disposed of in a preliminary hearing. Since the rule provides that the "preliminary hearing may be had thereon as if a motion to dismiss had been filed," such hearing shall therefore be conducted in the manner provided in Section 2, Rule 16 of the Rules of Court. x x x It is, therefore, inconsequential that petitioner had already filed an answer to the complaint prior to its filing of a motion to dismiss. The option of whether to set the case for preliminary hearing after the filing of an answer which raises affirmative defenses, or to file a motion to dismiss raising any of the grounds set forth in Section 1, Rule 16 of the Rules are procedural options which are not mutually exclusive of each other.

2. ID.; ID.; ID.; TEST TO DETERMINE WHEN THE COMPLAINT SUFFICIENTLY STATES A CAUSE OF ACTION; APPLICATION.— When the ground for dismissal is that the complaint states no cause of action, such fact can be determined only from the facts alleged in the complaint and from no other, and the court cannot consider other matters *aliunde*. The test, therefore, is whether, assuming the allegations of fact in the

[*] Now United Overseas Bank Philippines, Inc.

complaint to be true, a valid judgment could be rendered in accordance with the prayer stated therein. Where the allegations are sufficient but the veracity of the facts is assailed, the motion to dismiss should be denied. In their complaint for reconveyance, respondents alleged that the transfer of the three parcels of land from TCAIC to ICCI was facilitated through threat, duress and intimidation employed by certain individuals. On its face, the complaint clearly states a cause of action and raises issues of fact that can be properly settled only after a full-blown trial. On this ground, petitioner's motion to dismiss must, perforce, be denied.

3. CIVIL LAW; PRESCRIPTION; AN ACTION FOR RECONVEYANCE OF PROPERTY BASED ON THREAT OR INTIMIDATION PRESCRIBES WITHIN FOUR YEARS FROM THE TIME SUCH THREAT OR INTIMIDATION IS DEEMED TO HAVE CEASED.— It is true that an action for reconveyance of real property resulting from fraud may be barred by the statute of limitations, which requires that the action shall be filed within four (4) years from the discovery of the fraud. The RTC, however, seemed to have overlooked the fact that the basis of respondents' complaint for reconveyance is not fraud but threat, duress and intimidation, allegedly employed by Marcos' cronies upon the relatives of the Montanos while the latter were on self-exile. In fact, fraud was neither specifically alleged nor remotely implied in the complaint. x x x In the circumstances prevailing in this case, the threat or intimidation upon respondents is deemed to have ceased only upon the ouster of then President Marcos from power on February 21, 1986. The four-year prescriptive period must, therefore, be reckoned from the said date. Thus, when respondents filed their complaint for reconveyance on September 15, 1989, the period provided for by law had not yet prescribed.

APPEARANCES OF COUNSEL

Reyno Tiu Domingo & Santos for petitioner.
Franco L. Loyola for respondents.

D E C I S I O N

NACHURA, *J.*:

Petitioner filed this Rule 45 petition seeking the review of the October 27, 2003 Decision[1] of the Court of Appeals (CA), as well as its December 13, 2004 Resolution,[2] in CA-G.R. CV No. 61383. The CA, in its assailed decision and resolution, set aside the April 14, 1997 Order[3] of the Regional Trial Court (RTC) dismissing the complaint filed by herein respondents for reconveyance of title over three parcels of land situated in Cavite.

Below are the facts.

In 1964, spouses Justiniano and Ligaya Montano (the Montanos) owned three (3) parcels of land situated in Tanza, Cavite with an aggregate area of 590,558 square meters, more or less,[4] utilized as an integrated farm and as a stud farm used for raising horses.[5] Justiniano was then serving as congressman for the lone district of Cavite and as minority floor leader. In 1972, when then President Ferdinand Marcos placed the country under martial law, Justiniano went on self-exile to the United States of America (USA) to avoid the harassment and threats made against him by the dictator.

Sometime in 1975, while still in the USA, the Montanos transferred the said properties to Tres Cruces Agro-Industrial Corporation (TCAIC) in exchange for shares of stock in the company,[6] allowing the Montanos to control 98% of the

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[1] Penned by Associate Justice Mario L. Guariña III, with Associate Justices Martin S. Villarama, Jr. and Jose C. Reyes, Jr., concurring; *rollo*, pp. 42-49.

[2] *Id.* at 50.

[3] CA *rollo*, pp. 70-80.

[4] Covered by TCT Nos. T-9294, T-9295, and T-9296 issued on February 6, 1964 in the names of Spouses Justiniano S. Montano and Ligaya Nazareno-Montano; *rollo*, pp. 63-66.

[5] *Rollo*, p. 55.

[6] *Id.* at 56.

stockholdings of TCAIC.[7] Thus, on February 17, 1975, the certificates of title registered in the name of the Montanos were cancelled and were replaced with transfer certificates of title (TCTs) in TCAIC's name.[8]

A year later, in October 1976, TCAIC sold the properties to International Country Club, Inc. (ICCI) for ₱6,000,000.00.[9] The sale resulted in the cancellation of the titles of TCAIC, and in their transfer to ICCI on May 27, 1977.[10]

After the transfer, ICCI immediately mortgaged the parcels of land to Citizens Bank and Trust Co. (later renamed as Associated Bank) for ₱2,000,000.00.[11] The loan matured but remained unpaid, prompting Associated Bank to foreclose the mortgage on May 31, 1984.[12] The properties were then put on public auction and were sold for ₱5,700,000.00 to Associated Bank, the sole and highest bidder.[13] Ownership over the said properties was consolidated by Associated Bank and, on May 19, 1987, new TCTs were issued in its name.[14]

Meanwhile, in 1986, following the ouster of Marcos, the Montanos returned to the country. After discovering the transfer of the properties, the Montanos immediately took physical possession of the same and began cultivating the land.[15] On September 15, 1989, the Montanos filed an action for reconveyance of title against herein petitioner, praying, in sum,

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[7] *Id.*

[8] Covered by TCT Nos. T-76107, T-76108, and T-76109 issued on February 17, 1975 to Trescruces (sic) Agro-Industrial Corporation (TCAIC); *id.* at 67-69.

[9] *Rollo*, p. 57.

[10] Covered by TCT Nos. T-90654, T-90655, and T-90656 issued on May 27, 1977 to International Country Club, Inc.; *id.* at 70-72.

[11] *Rollo*, p. 13.

[12] *Id.* at 110.

[13] *Id.* at 31.

[14] Covered by TCT Nos. T-221156, T-221157, and T-221158 issued on May 19, 1987 to Associated Bank; *id.* at 73-75.

[15] *Rollo*, pp. 56-58.

that the transfer of the properties from TCAIC to ICCI, and from ICCI to Associated Bank, be declared null and void.[16]

In their complaint, respondents averred that the transfer of the parcels of land to TCAIC was done only to avoid the confiscatory acts being applied by the dictator against the Montanos' properties, in retaliation for the latter's open opposition to Marcos.[17] They claimed that TCAIC was only forced to sell the properties to ICCI after the latter intimidated and threatened the relatives of the Montanos who were left in the country.[18] They also argued that the mortgage by ICCI to Associated Bank was made to generate money for the latter's corporate officers as evidenced by the lack of any effort on the part of ICCI to service the loan.[19]

On October 11, 1989, Associated Bank filed an Answer[20] setting forth affirmative defenses. Among its several pleas in avoidance were the arguments that the complaint did not state a cause of action; that the allegation of threat and intimidation was not averred with particularity; that the bank was an innocent purchaser for value; and that, even if the complaint stated a cause of action, the same had already prescribed or had been barred by estoppel and laches.[21]

On February 17, 1997, eight (8) years after Associated Bank filed its answer and while the case was still on its pretrial stage, the bank filed a Motion for Preliminary Hearing on the Affirmative Defenses and/or Motion to Dismiss[22] focused on two crucial points, namely: that the complaint stated no cause of action; and that the case was already barred by the statute of limitations.[23]

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[16] *Id.* at 53-62.

[17] *Id.* at 56.

[18] *Id.* at 57.

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

[20] *Id.* at 77-86.

[21] *Id.* at 44.

[22] *Id.* at 87-98.

[23] *Id.* at 87-88.

Respondents prayed for and were given an additional 10 days within which to file an omnibus opposition to petitioner's motion.[24] Respondents, however, failed to meet the trial court's deadline.[25]

On April 4, 1997, the trial court issued an Order[26] dismissing the complaint. In disposing of the case, the RTC explained:

> Now, assuming *gratia arguendo* the truth of the allegations of the instant complaint, the question that arises is whether or not this court could render a valid judgment in accordance with the prayer of the complaint. Surely, in the absence of controverting evidence when the allegations of the complaint by reason of the motion to dismiss based on the ground that the complaint states no cause of action become the gospel truth. Apropos, there is no room for doubt that this Court could render a valid judgment pursuant to the complaint's prayer. Needless to say, the motion to dismiss based on the ground that the complaint states no cause of action must necessarily crumble like a house of cards.
>
> Anent the second ground that the institution of the instant case is barred by the statute of limitations, this Court finds the same to be meritorious.
>
> An action for reconveyance of real property resulting from fraud may be barred by the statute of limitations, which requires that the action shall be filed within four (4) years from the discovery of the fraud (*Balbin versus Medalla,* 108 SCRA 666; *Alarcon versus Hon. Abdulwahid Bidin, et al.,* 120 SCRA 390). Under the circumstances of this case, such discovery must be deemed to have taken place when Transfer Certificate of Title Nos. T-76107, [T-]76108 and [T-]76109 were issued in the name of Tres Cruces in 1975 and TCT No[s]. T-90654, T-90655 and TCT No. T-90656 to the properties in the name of International Country Club, Inc., in 1977, because the registration of the deeds of sale is considered a constructive notice to the whole world of its contents, and all interests, legal and equitable, included therein (*Ramos versus Court of Appeals, et al.,* 112 SCRA 542). Here,

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[24] *Id.* at 103.

[25] *Id.* at 44.

[26] *Id.* at 104-114.

plaintiffs waited for a period of around fourteen (14) years or at least around twelve (12) years from the date of the issuance of the certificates of title before filing the instant complaint in 1989.

Besides, it is very clear from Section 35 of the Land Registration Act that although an original owner of a registered land may seek the annulment of a transfer thereof on the ground of fraud, such a remedy, however, is "without prejudice to the rights of any innocent value of the certification of title["] (*Medina, et al. versus Hon. Francisco M. Chanco, et al.*, 117 SCRA 201).

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The bottom line is that this Court finds merit in the Motion to Dismiss filed by defendant Westmont, anchored on the second ground. The cause of action filed by plaintiffs Spouses Montano for reconveyance of title of the three (3) parcels of land is a collateral attack on the indefeasible title of Westmont. x x x.

Parenthetically, this Court, it will not be amiss, to state, finds that the allegations of threats, intimidation, harassment made by plaintiffs are couched in general terms contrary to Section 5, Rule 8 of the Rules of Court which states that in (sic) all averments of fraud, or mistake, the circumstances constituting fraud or mistake must be stated with particularity.

This Court is not unmindful of the fact that in the various transactions of plaintiffs and defendants, all were for valuable considerations. The property for stocks arrangement in 1975 between plaintiffs and Tres Cruces was for the Montano's taking control of 98% of the stocks of Tres Cruces. The sale in 1977 from Tres Cruces to International Country Club was for six (6) Million Pesos (₱6,000,000.00). The foreclosure of mortgage and consolidation of title in 1987 was due to non-payment of a loan obtained by International Country Club from the Associated Bank (now Westmont) for which the three (3) parcels of land stood as security.

x x x x x x x x x

WHEREFORE, premises considered, the Motion to Dismiss is hereby GRANTED and the instant case is DISMISSED.

Apropos, the Register of Deeds for the Province of Cavite is thereby directed to cancel the notice of *lis pendens* annotated in the subject certificates of title.

SO ORDERED.[27]

Respondents moved for reconsideration, but the trial court denied the same. Upon appeal, the CA, on October 27, 2003, reversed the RTC's ruling and reinstated the case for further proceedings. The appellate court ratiocinated:

The trial court discusses the issue as if it is an established fact that the bank was a buyer in good faith and without prior notice of the adverse interests of the plaintiffs in the properties. We really do not know this until trial is held and evidence presented. That is why it is necessary that the parties be heard. The court fails to follow the basic and simple rule that in resolving a motion to dismiss based on insufficiency of the complaint, it must hypothetically admit the facts alleged. *Perpetual Savings Bank vs. Fajardo* 223 SCRA 720, *State Investment House vs. Court of Appeals* 206 SCRA 348. At this stage, the subject of determination is the sufficiency of the allegations of the complaint to test which it (sic) is only necessary to ask whether, assuming they are true, the facts alleged are sufficient to grant relief. *Calalang vs. Intermediate Appellate Court*, 194 SCRA 514, *Madrona vs. Rosal* 204 SCRA 1. If the bank had actually conspired with others to manipulate procedures to put the title out of reach of the plaintiffs, as alleged in the complaint, it is beyond peradventure that the court can render valid judgment in accordance with the prayer therein. It is not only a right but becomes the duty of the court to proceed to hear and adjudicate the case on its merits.

IN VIEW OF THE FOREGOING, the order of the trial court dismissing the case is SET ASIDE. The case is returned to the court of origin for further proceedings.

SO ORDERED.[28]

Associated Bank moved for reconsideration,[29] arguing that the cause of action of the Montanos, if there had been any, had

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[27] *Id.* at 108-114.

[28] *Id.* at 48.

[29] *Id.* at 188-201.

already prescribed. It also pointed out that the failure of the Montanos to file a comment on or an objection to the motion to dismiss despite opportunity to do so should be construed as a waiver in contesting the allegations and affirmative defenses raised by Associated Bank. The CA, however, in its Resolution[30] dated December 13, 2004, denied the motion for reconsideration.

Petitioner now comes to this Court raising, in essence, two issues: first, whether it is proper to file a motion to dismiss after an answer has already been filed; and second, whether the complaint should be dismissed on the grounds set forth therein.

We find in favor of respondents.

I. On the propriety of the motion to dismiss

Section 6, Rule 16 of the Rules of Court provides:

> SEC. 6. *Pleading grounds as affirmative defenses*. – If no motion to dismiss has been filed, any of the grounds for dismissal provided for in this Rule may be pleaded as an affirmative defense in the answer and, in the discretion of the court, a preliminary hearing may be had thereon as if a motion to dismiss had been filed.
>
> The dismissal of the complaint under this section shall be without prejudice to the prosecution in the same or separate action of a counterclaim pleaded in the answer.

The rule is based on practicality. Both the parties and the court can conveniently save time and expenses necessarily involved in a case preparation and in a trial at large, when the issues involved in a particular case can otherwise be disposed of in a preliminary hearing.[31]

Since the rule provides that the "preliminary hearing may be had thereon as if a motion to dismiss had been filed," such hearing shall therefore be conducted in the manner provided in Section 2, Rule 16 of the Rules of Court,[32] which reads:

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[30] *Supra* note 2.

[31] I Francisco, *Civil Procedure* (2001), p. 574.

[32] *Id*.

SEC. 2. *Hearing of motion*. – At the hearing of the motion, the parties shall submit their arguments on the question of law and their evidence on the questions of fact involved except those not available at that time. Should the case go to trial, the evidence presented during the hearing shall automatically be part of the evidence of the party presenting the same.

It is, therefore, inconsequential that petitioner had already filed an answer to the complaint prior to its filing of a motion to dismiss. The option of whether to set the case for preliminary hearing after the filing of an answer which raises affirmative defenses, or to file a motion to dismiss raising any of the grounds set forth in Section 1, Rule 16 of the Rules are procedural options which are not mutually exclusive of each other.

Moreover, as petitioner correctly pointed out, respondents failed to oppose the motion to dismiss despite having been given the opportunity to do so by the RTC. Therefore, any right to contest the same was already waived by them.

II. On whether the complaint for reconveyance should be dismissed

We agree with the RTC's and the CA's rulings that petitioner's argument on the failure of the complaint to state a cause of action is unavailing. When the ground for dismissal is that the complaint states no cause of action, such fact can be determined only from the facts alleged in the complaint and from no other, and the court cannot consider other matters *aliunde*.[33] The test, therefore, is whether, assuming the allegations of fact in the complaint to be true, a valid judgment could be rendered in accordance with the prayer stated therein. Where the allegations are sufficient but the veracity of the facts is assailed, the motion to dismiss should be denied.[34]

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[33] I Regalado, *Remedial Law Compendium*, 8th ed., p. 257, citing *Mindanao Realty Corporation v. Kinatanar, et al.*, 116 Phil. 1130 (1962); *Boncato v. Siason*, G.R. No. L-29094, September 5, 1985, 138 SCRA 414; *Salvador v. Frio*, G.R. No. L-25352, May 29, 1970, 33 SCRA 315; *Marabilles, et al. v. Quito*, 100 Phil. 64 (1956).

[34] *Suyom, et al. v. Hon. Judge Collantes, et al.*, 161 Phil. 667 (1976).

In their complaint for reconveyance, respondents alleged that the transfer of the three parcels of land from TCAIC to ICCI was facilitated through threat, duress and intimidation employed by certain individuals. On its face, the complaint clearly states a cause of action and raises issues of fact that can be properly settled only after a full-blown trial. On this ground, petitioner's motion to dismiss must, perforce, be denied.

We do not, however, subscribe to the RTC's ruling that the action has already prescribed.

It is true that an action for reconveyance of real property resulting from fraud may be barred by the statute of limitations, which requires that the action shall be filed within four (4) years from the discovery of the fraud.[35] The RTC, however, seemed to have overlooked the fact that the basis of respondents' complaint for reconveyance is not fraud but threat, duress and intimidation, allegedly employed by Marcos' cronies upon the relatives of the Montanos while the latter were on self-exile.[36] In fact, fraud was neither specifically alleged nor remotely implied in the complaint.

Article 1391 of the Civil Code provides:

Art. 1391. An action for annulment shall be brought within four years.

This period shall begin: In case of intimidation, violence or undue influence, from the time the defect of the consent ceases.

In case of mistake or fraud, from the time of the discovery of the same.

And when the action refers to contracts entered into by minors or other incapacitated persons, from the time the guardianship ceases.

In the circumstances prevailing in this case, the threat or intimidation upon respondents is deemed to have ceased only

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[35] *Alarcon v. Bidin*, G.R. No. 51791, January 28, 1983, 120 SCRA 390, 393; *Balbin v. Medalla*, G.R. No. L-46410, October 30, 1981, 108 SCRA 666, 677.

[36] *Rollo*, pp. 56-57.

upon the ouster of then President Marcos from power on February 21, 1986. The four-year prescriptive period must, therefore, be reckoned from the said date. Thus, when respondents filed their complaint for reconveyance on September 15, 1989, the period provided for by law had not yet prescribed. Therefore, petitioner's motion to dismiss should be denied.

WHEREFORE, premises considered, the instant petition is *DENIED* for lack of merit. The Regional Trial Court is ordered to proceed with the trial of the case with dispatch. Costs against petitioner.

SO ORDERED.

Carpio Morales,[**] *Chico-Nazario (Acting Chairperson),*[***] *Peralta,* and *Abad,*[****] *JJ.,* concur.

EN BANC

[G.R. No. 173615. October 16, 2009]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **CAYETANO A. TEJANO, JR.,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; EXECUTIVE ORDER NO. 80 (REVISED CHARTER OF PHILIPPINE NATIONAL BANK); EFFECTS OF CONVERTING THE

[**] Additional member in lieu of Associate Justice Antonio T. Carpio per Special Order No. 744 dated October 13, 2009.

[***] In lieu of Associate Justice Antonio T. Carpio per Special Order No. 743 dated October 13, 2009.

[****] Additional member in lieu of Associate Justice Presbitero J. Velasco, Jr. per Special Order No. 753 dated October 13, 2009.

BANK INTO A PRIVATE FINANCIAL AND BANKING INSTITUTION.— Section 6 of E.O. No. 80, also known as the *Revised Charter of PNB*, treats of the effects of converting the bank into a private financial and banking institution. x x x [It] only states no more than the natural, logical and legal consequences of opening to private ownership the majority of the bank's voting equity. This is very evident in the title of the section called *Change in Ownership of the Majority of the Voting Equity of the Bank.* Certainly, the transfer of the majority of the bank's voting equity from public to private hands is an inevitable effect of privatization or, conversely, the privatization of the bank would necessitate the opening of the voting equity thereof to private ownership. And as the bank ceases to be government depository, it would, accordingly be coming under the operation of the definite set of laws and rules applicable to all other private corporations incorporated under the general incorporation law. Perhaps the aspect of more importance in the present case is that the bank, upon its privatization, would no longer be subject to the coverage of government service-wide agencies such as the CSC and the Commission on Audit (COA).

2. ID.; ID.; ID.; THE CIVIL SERVICE COMMISSION (CSC) CANNOT BE DIVESTED OF JURISDICTION OVER PENDING DISCIPLINARY CASES INVOLVING ACTS COMMITTED BY PNB EMPLOYEES AT THE TIME THAT THE BANK WAS STILL A GOVERNMENT OWNED AND CONTROLLED CORPORATION.— By no stretch of intelligent and reasonable construction can the provisions in Section 6 of E.O. No. 80 be interpreted in such a way as to divest the CSC of jurisdiction over pending disciplinary cases involving acts committed by an employee of the PNB at the time that the bank was still a government-owned and controlled corporation. Stated otherwise, no amount of reasonable inference may be derived from the terms of the said Section to the effect that it intends to modify the jurisdiction of the CSC in disciplinary cases involving employees of the government. Sound indeed is the rule that where the law is clear, plain and free from ambiguity, it must be given its literal meaning and applied without any interpretation or even construction. This is based on the presumption that the words

employed therein correctly express its intent and preclude even the courts from giving it a different construction. Section 6 of E.O. No. 80 is explicit in terms. It speaks for itself. It does not invite an interpretation that reads into its clear and plain language petitioner's adamant assertion that it divested the CSC of jurisdiction to finally dispose of respondent's pending appeal despite the privatization of PNB.

3. ID.; ID.; ID.; THE FACT THAT SECTION 6 OF E.O. NO. 80 STATES THAT PNB WOULD BE REMOVED FROM THE COVERAGE OF THE CSC MUST BE TAKEN TO GOVERN ACTS COMMITTED BY THE BANK'S EMPLOYEES AFTER PRIVATIZATION.— While there is no denying that upon its privatization, the bank would consequently be subject to laws, rules and regulations applicable to private corporations — which is to say that disciplinary cases involving its employees would then be placed under the operation of the Labor Code of the Philippines — still, we cannot validate petitioner's own interpretation of Section 6 of E.O. No. 80 that the same must be applied to respondent's pending appeal with the CSC and that, resultantly, the CSC must abdicate its appellate jurisdiction without having to resolve the case to finality. It is binding rule, conformably with Article 4 of the Civil Code, that, generally, laws shall have only a prospective effect and must not be applied retroactively in such a way as to apply to pending disputes and cases. This is expressed in the familiar legal maxim *lex prospicit, non respicit* (the law looks forward and not backward.) The rationale against retroactivity is easy to perceive: the retroactive application of a law usually divests rights that have already become vested or impairs the obligations of contract and, hence, is unconstitutional. Although the rule admits of certain well-defined exceptions such as, for instance, where the law itself expressly provides for retroactivity, we find that not one of such exceptions that would otherwise lend credence to petitioner's argument obtains in this case. Hence, in other words, the fact that Section 6 of E.O. No. 80 states that PNB would be removed from the coverage of the CSC must be taken to govern acts committed by the bank's employees after privatization.

4. ID.; ID.; ID.; APPELLATE JURISDICTION OF THE CSC OVER THE CASE ONCE ATTACHED CONTINUES UNTIL

IT SHALL HAVE BEEN FINALLY TERMINATED.— [J]urisdiction is conferred by no other source than law. Once jurisdiction is acquired, it continues until the case is finally terminated. The disciplinary jurisdiction of the CSC over government officials and employees within its coverage is well-defined in Presidential Decree (P.D.) No. 807, otherwise known as *The Civil Service Decree of the Philippines.* Section 37 thereof materially provides that the CSC shall have jurisdiction over appeals in administrative disciplinary cases involving the imposition of the penalty of suspension for more than thirty days; or fine in an amount exceeding thirty days' salary; demotion in rank or salary or transfer, removal or dismissal from office. It bears to stress on this score that the CSC was able to acquire jurisdiction over the appeal of respondent merely upon its filing, followed by the submission of his memorandum on appeal. From that point, the appellate jurisdiction of the CSC at once attached, thereby vesting it with the authority to dispose of the case on the merits until it shall have been finally terminated.

5. ID.; ID.; ID.; E.O. NO. 80 DOES NOT AUTHORIZE THE TRANSFER OF CSC's JURISDICTION TO ANOTHER TRIBUNAL PRIOR TO THE ENACTMENT OF THE LAW.— [T]he provisions in Section 6 of E.O. No. 80 are too clear and unambiguous to be interpreted in such a way as to abort the continued exercise by the CSC of its appellate jurisdiction over the appeal filed before the privatization of PNB became effective. Suffice it to say that nowhere in the said Section can we find even the slightest indication that indeed it expressly authorizes the transfer of jurisdiction from the CSC to another tribunal over disciplinary and administrative cases already pending with the said Commission even prior to the enactment of the law.

APPEARANCES OF COUNSEL

Chief Legal Counsel (PNB) for petitioner.
Pedro R. Lazo for respondent.

D E C I S I O N

PERALTA, *J.*:

In this petition for review,[1] the Philippine National Bank assails the January 3, 2006 Decision[2] of the Court of Appeals in CA-G.R. SP No. 50084, which reversed Resolution Nos. 980716 and 983099 issued by the Civil Service Commission, respectively dated April 14, 1998 and December 7, 1998, and referred the case back to said office for further proceedings. The assailed Resolutions, in turn, dismissed respondent Cayetano A. Tejano's appeal from the resolution of the Board of Directors of the Philippine National Bank which found him guilty of grave misconduct in connection with a number of transactions with certain corporate entities.

The case stems from a number of alleged irregular and fraudulent transactions made by respondent Cayetano A. Tejano, Jr. supposedly with the participation of eight (8) other employees of petitioner Philippine National Bank (PNB) in its branch in Cebu City — namely Ma. Teresa Chan, Marcelino Magdadaro, Douglasia Canuel, Novel Fortich, Jacinto Ouano, Quirubin Blanco, Manuel Manzanares and Pedrito Ranile. Respondent, together with the other employees, allegedly committed grave misconduct, gross neglect of duty, conduct grossly prejudicial to the best interest of the service and acts violative of Republic Act No. 3019, relative to the corporate accounts of and transactions with Pat International Trading Corporation (PITC), Khun Tong International Trading Corporation (KITC), Pat Garments International Corporation (PGIC), Aqua Solar Trading Corporation, Dacebu Traders and Exporters, Mancao Mercantile Co., Inc. and V&G Better Homes Subdivision. All of these transactions transpired at the time that PNB was still a government-owned and controlled corporation.

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

[2] Penned by Associate Justice Monina Arevalo-Zenarosa, with Associate Justices Andres B. Reyes, Jr. and Rosmari D. Carandang, concurring; *rollo*, pp. 10-29.

Respondent, who was then the Vice-President and Manager of the bank, and the eight other employees were administratively charged before the PNB Management Hearing Committee on February 24 and March 17, 1994.[3] At the close of the hearing on the merits, the Committee found that with respect to respondent, he was guilty of gross misconduct in misappropriating the funds of V&G and of gross neglect in extending unwarranted credit accommodations to PITC, PGIC and KITC which must serve as an aggravating circumstance. The Committee then recommended that respondent be meted the penalty of forced resignation without forfeiture of benefits.[4]

The PNB Board of Directors differed. In its Resolution No. 88[5] dated June 21, 1995, it found that respondent's gross

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[3] *Rollo,* pp. 112-131.

[4] Memorandum for Respondent, *rollo*, p. 100. The Hearing Committee disposed of the case as follows:

WHEREFORE, IN VIEW OF THE FOREGOING, the respondents are hereby found guilty as follows:

a. Cayetano Tejano, Jr. — Grave Misconduct in connection with the misappropriation of bank funds in the V&G account. He is likewise found guilty of gross neglect in extending unwarranted credit accommodation to PITC, PGIC and KITC. However, pursuant to Section 17, Rule 14 of the Civil Service Rules Implementing Executive Order No. 292, the latter administrative offense is hereby considered as an aggravating circumstance.

b. Ma. Teresa Chan, Marcelino Magdadaro, Douglas Canuel, Quirubin Blanco, Manuel Manzanares, Jacinto Ouano, Pedrito Ranile, Novel Fortich — Simple Neglect in connection with the unwarranted credit accommodation to PITC, PGIC and KITC, insofar as their respective participation in any, two or all accounts appear.

ACCORDINGLY, it is respectfully recommended that respondents be meted the following penalties, taking into consideration the mitigating circumstances:

a. Cayetano, Jr. — Forced resignation with benefits;

b. Ma. Teresa Chan, Marcelino Magdadaro, Douglas Canuel, Quirubin Blanco, Manuel Manzanares, Jacinto Ouano, Pedrito Ranile, Novel Fortich— one (1) month suspension.

As to the supplemental charges, it is respectfully recommended that the same be dismissed.

[5] *Rollo,* p. 64.

neglect in giving unwarranted credit to PITC, PGIC and KITC must serve as an aggravating circumstance in relation to the offense of grave misconduct consisting of misappropriation of V&G funds and must serve the penalty of forced resignation with forfeiture of benefits.[6]

It appears that only herein respondent sought reconsideration but the Board of Directors, in its Resolution No. 107,[7] denied the same. Thereafter, on September 21, 1995, respondent appealed to the Civil Service Commission (CSC)[8] and, on October 19, 1995, he submitted his Memorandum on Appeal.[9]

In the meantime, on May 27, 1996, the PNB had ceased to be a government-owned and controlled corporation, and in view of its conversion into a private banking institution by virtue of

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[6] *Id.* The PNB Board of Directors resolved the case as follows:

RESOLVED, to approve and confirm the following:

a. As to Respondent Cayetano A. Tejano, Jr., Vice-President — After finding him guilty of grave misconduct in connection with the misappropriation of funds in the V&G account and gross neglect of duty in [giving] unwarranted credit accommodations to PITC, PGIC and KITC with the latter second grave offense of which he was found guilty to serve as aggravating circumstance pursuant to Civil Service rules that he be meted out the penalty of forced resignation without benefits;

b. As to Respondents Ma. Teresa B. Chan, Assistant Vice-President, and Douglasia R. Canuel, Assistant Department Manager II — After finding no sufficient basis to hold them liable for the offense charged, that they be exonerated.

c. As to Respondents Marcelino A. Magdadaro, Assistant Department Manager II; Novel G. Fortich, Assistant Department Manager II; Jacinto A. Ouano, Assistant Department Manager I; Quirubin G. Blanco, Assistant Department Manager I; Manuel A. Manzanares, Division Chief III; and Pedrito P. Ranile, Acting Chief, Loans and Discount Office — After finding them guilty of the light offense of neglect of duty in connection with the unwarranted credit accommodations to PITC, PGIC and KITC, that they be meted out the penalty of reprimand.

[7] Dated August 24, 1995; *rollo*, pp. 65-66.

[8] CA *rollo*, p. 233.

[9] *Id.* at 17-99.

Executive Order (E.O.) No. 80.[10] Despite this development, the CSC, on April 14 1998, issued Resolution No. 980716[11] dismissing respondent's appeal for being filed out of time.

Respondent filed a motion for reconsideration[12] on which the CSC required petitioner to comment. In its Comment, petitioner theorized that even granting respondent's appeal was filed on time, the same must, nevertheless, be dismissed on account of the privatization of PNB which thereby removed the case from the jurisdiction of the CSC. The CSC found this argument meritorious and, subsequently, in its Resolution No. 983099[13] dated December 7, 1998, it denied respondent's reconsideration on that ground.

Respondent elevated the matter to the Court of Appeals on petition for review,[14] docketed as CA-G.R. SP No. 50084.

Before the appellate court, respondent, on the one hand, ascribed error to the CSC in denying due course to his appeal on the basis of the privatization of PNB inasmuch as the incident subject of the case had transpired way back in 1992, when the bank was still a government-owned and controlled corporation. He particularly noted that the CSC, before the privatization of the bank, had already acquired jurisdiction over the appeal upon the filing thereof and subsequent submission of the memorandum on appeal. This, according to respondent, negated petitioner's theory that the CSC could no longer assume jurisdiction and dispose of the appeal on the merits, especially considering that jurisdiction once acquired generally continues until the final disposition of the case.[15] On the other hand, petitioner argued

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[10] Executive Order No. 80 is entitled "Providing for the 1986 Revised Charter of the Philippine National Bank."

[11] *Rollo*, pp. 60-61.

[12] CA *rollo*, pp. 102-106.

[13] *Rollo*, pp. 62-63.

[14] Filed under Rule 43 of the Rules of Court. CA *rollo*, pp. 6-15.

[15] CA *rollo*, pp. 8-14.

in essence that although the jurisdiction to act on the appeal must continue until the final disposition of the case, this rule admits of exceptions as where, in the present case, the law must be construed in a way as to operate on actions pending before its enactment.[16]

The Court of Appeals found merit in respondent's appeal. On January 3, 2006, it issued the assailed Decision reversing the twin resolutions of the CSC. The appellate court pointed out that respondent's appeal before the CSC had been filed on time and that the said commission had not lost jurisdiction over it despite the supervening privatization of PNB. But inasmuch as the assailed Resolutions did not permeate the merits of respondent's appeal, the appellate court found it wise to remand the case to the CSC for further proceedings. It disposed of the appeal as follows:

> WHEREFORE, premises considered, the instant petition for review under Rule 43 of the Rules of Court is hereby GRANTED. ACCORDINGLY, Resolution No. 980716 dated April 14, 1998 and Resolution No. 983099 dated December 7, 1998 of the Civil Service Commission are hereby REVERSED and the case is remanded to the Civil Service Commission for further proceedings.
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> SO ORDERED.[17]

Petitioner's motion for reconsideration was denied.[18] Hence, it filed the instant petition for review bearing the same issue as that raised previously.

At the core of the controversy is the question of whether E.O. No. 80 has the effect of removing from the jurisdiction of the CSC the appeal of respondent which was already pending before the CSC at the time the said law converted PNB into a private banking institution. Petitioner is insistent that, indeed, the law does have that effect, and this argument is perched on

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[16] *Id.* at 122.

[17] *Id.* at 239-240.

[18] *Id.* at 254-255.

Section 6 of E.O. No. 80, which materially provides that the bank would cease to be a government-owned and controlled corporation upon the issuance of its articles of incorporation by the Securities and Exchange Commission and would no longer be subject to the coverage of both the CSC and the Commission on Audit.[19] Petitioner believes that while indeed jurisdiction ordinarily continues until the termination of the case, it advances the opinion that the rule does not apply where the law provides otherwise or where the said law intends to operate on cases pending at the time of its enactment.[20]

For his part, respondent submits that Section 6 of E.O. No. 80 does not provide for the transfer of jurisdiction over his pending appeal from the CSC to another administrative authority, and that neither does the provision authorize its retroactive application in a way that would deprive the CSC of jurisdiction over cases already pending before it prior to its effectivity.[21] Additionally, he invokes estoppel against petitioner inasmuch as the latter has actively participated in the proceedings before the CSC and, hence, was already barred from raising the issue of jurisdiction, and alleges that petitioner's present recourse was taken merely to cause delay in the final resolution of the controversy.[22]

We draw no merit in the petition.

In essence, Section 6 of E.O. No. 80, also known as the *Revised Charter of PNB*, treats of the effects of converting the bank into a private financial and banking institution. It states:

Section 6. ***Change in Ownership of the Majority of the Voting Equity of the Bank.*** **-** When the ownership of the majority of the issued common voting shares passes to private investors, the stockholders shall cause the adoption and registration with the Securities and Exchange Commission of the appropriate Articles

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[19] *Rollo*, pp. 38-39, 77-78.

[20] *Id.* at 40.

[21] *Id.* at 71-72.

[22] *Id.* at 72-73.

of Incorporation and revised by-laws within three (3) months from such transfer of ownership. Upon the issuance of the certificate of incorporation under the provisions of the Corporation Code, this Charter shall cease to have force and effect, and shall be deemed repealed. Any special privileges granted to the Bank such as the authority to act as official government depositary, or restrictions imposed upon the Bank, shall be withdrawn, and the Bank shall thereafter be considered a privately organized bank subject to the laws and regulations generally applicable to private banks. **The Bank shall likewise cease to be a government-owned or controlled corporation subject to the coverage of service-wide agencies such as the Commission on Audit and the Civil Service Commission.**

The fact of the change of the nature of the Bank from a government-owned and controlled financial institution to a privately-owned entity shall be given publicity.[23]

In a language too plain to be mistaken, the quoted portion of the law only states no more than the natural, logical and legal consequences of opening to private ownership the majority of the bank's voting equity. This is very evident in the title of the section called *Change in Ownership of the Majority of the Voting Equity of the Bank.* Certainly, the transfer of the majority of the bank's voting equity from public to private hands is an inevitable effect of privatization or, conversely, the privatization of the bank would necessitate the opening of the voting equity thereof to private ownership. And as the bank ceases to be government depository, it would, accordingly be coming under the operation of the definite set of laws and rules applicable to all other private corporations incorporated under the general incorporation law. Perhaps the aspect of more importance in the present case is that the bank, upon its privatization, would no longer be subject to the coverage of government service-wide agencies such as the CSC and the Commission on Audit (COA).

By no stretch of intelligent and reasonable construction can the provisions in Section 6 of E.O. No. 80 be interpreted in

[23] Emphasis ours.

such a way as to divest the CSC of jurisdiction over pending disciplinary cases involving acts committed by an employee of the PNB at the time that the bank was still a government-owned and controlled corporation. Stated otherwise, no amount of reasonable inference may be derived from the terms of the said Section to the effect that it intends to modify the jurisdiction of the CSC in disciplinary cases involving employees of the government.

Sound indeed is the rule that where the law is clear, plain and free from ambiguity, it must be given its literal meaning and applied without any interpretation or even construction.[24] This is based on the presumption that the words employed therein correctly express its intent and preclude even the courts from giving it a different construction.[25] Section 6 of E.O. No. 80 is explicit in terms. It speaks for itself. It does not invite an interpretation that reads into its clear and plain language petitioner's adamant assertion that it divested the CSC of jurisdiction to finally dispose of respondent's pending appeal despite the privatization of PNB.

In the alternative, petitioner likewise posits that the portion of Section 6 of the E.O. No. 80, which states that the PNB would no longer be subject to the coverage of both the COA and the CSC, must be understood to be applicable to cases already pending with the CSC at the time of the bank's conversion into a private entity. We are not swayed.

While there is no denying that upon its privatization, the bank would consequently be subject to laws, rules and regulations applicable to private corporations — which is to say that disciplinary cases involving its employees would then be placed under the operation of the Labor Code of the Philippines —

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[24] *Estolas v. Mabalot*, 431 Phil. 462, 469 (2002); *Domingo v. Commission on Audit*, G.R. No. 112371, October 7, 1998, 297 SCRA 163, 168; *Republic v. Court of Appeals*, G.R. Nos. 103882 and 105276, November 25, 1998, 299 SCRA 199, 227.

[25] *Espiritu v. Cipriano,* G.R. No. L-32723, February 15, 1974, 55 SCRA 533, 539.

still, we cannot validate petitioner's own interpretation of Section 6 of E.O. No. 80 that the same must be applied to respondent's pending appeal with the CSC and that, resultantly, the CSC must abdicate its appellate jurisdiction without having to resolve the case to finality.

It is binding rule, conformably with Article 4 of the Civil Code, that, generally, laws shall have only a prospective effect and must not be applied retroactively in such a way as to apply to pending disputes and cases. This is expressed in the familiar legal maxim *lex prospicit, non respicit* (the law looks forward and not backward).[26] The rationale against retroactivity is easy to perceive: the retroactive application of a law usually divests rights that have already become vested or impairs the obligations of contract and, hence, is unconstitutional.[27] Although the rule admits of certain well-defined exceptions[28] such as, for instance, where the law itself expressly provides for retroactivity,[29] we find that not one of such exceptions that would otherwise lend credence to petitioner's argument obtains in this case. Hence, in other words, the fact that Section 6 of E.O. No. 80 states that PNB would be removed from the coverage of the CSC must be taken to govern acts committed by the bank's employees after privatization.

Moreover, jurisdiction is conferred by no other source than law. Once jurisdiction is acquired, it continues until the case is

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[26] *Land Bank of the Philippines v. De Leon*, 447 Phil. 495, 505 (2003).

[27] *Land Bank of the Philippines v. De Leon*, *supra*, citing *Francisco v. Certeza*, 3 SCRA 565 (1961).

[28] Exempted from prospective application are laws remedial in nature (*People v. Sumilang*, 77 Phil. 764 [1947]; *Guevarra v. Laico*, 64 Phil. 144 [1937]; *Laurel v. Misa*, 76 Phil. 372 [1946]); penal statutes favorable to the accused who is not a habitual delinquent (*US v. Cuna*, 12 Phil. 241 [1908]; *U.S. v. Soliman*, 36 Phil 5 [1917]); emergency laws issued in the exercise of the state's police power (*Valencia v. Surtido*, G.R. No. L-17277, May 31, 1961); curative laws (*Frivaldo v. COMELEC*, G.R. No. 120295, June 28, 1996).

[29] Civil Code, Art. 4; *Camacho v. Court of Industrial Relations*, 80 Phil. 848 (1948).

finally terminated.[30] The disciplinary jurisdiction of the CSC over government officials and employees within its coverage is well-defined in Presidential Decree (P.D.) No. 807,[31] otherwise known as *The Civil Service Decree of the Philippines.* Section 37[32] thereof materially provides that the CSC shall have jurisdiction over appeals in administrative disciplinary cases involving the

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[30] *Bernarte v. Court of Appeals*, G.R. No. 107741, October 18, 1996, 263 SCRA 323, 339; *Alindao v. Joson*, G.R. No. 114132, November 14, 1996, 264 SCRA 211, 221.

[31] It carries the title "Providing for the Organization of the Civil Service Commission in Accordance with the Provisions of the Constitution, Prescribing its Powers and Functions and for Other Purposes."

[32] **Section 37.** *Disciplinary Jurisdiction.*

(a) The Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days' salary, demotion in rank or salary or transfer, removal or dismissal from Office. A complaint may be filed directly with the Commission by a private citizen against a government official or employee in which case it may hear and decide the case or it may deputize any department or agency or official or group of officials to conduct the investigation. The results of the investigation shall be submitted to the Commission with recommendation as to the penalty to be imposed or other action to be taken.

(b) The heads of departments, agencies and instrumentalities, provinces, cities and municipalities shall have jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction. Their decisions shall be final in case the penalty imposed is suspension for not more than thirty days or fine in an amount not exceeding thirty days' salary. In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department and finally to the Commission and pending appeal, the same shall be executory except when the penalty is removal, in which case the same shall be executory only after confirmation by the department head.

(c) An investigation may be entrusted to regional director or similar officials who shall make the necessary report and recommendation to the chief of bureau or office or department within the period specified in Paragraph d of the following Section.

(d) An appeal shall not stop the decision from being executory, and in case the penalty is suspension or removal, the respondent shall be considered as having been under the preventive suspension during the pendency of the appeal in the event he wins an appeal.

imposition of the penalty of suspension for more than thirty days; or fine in an amount exceeding thirty days' salary; demotion in rank or salary or transfer, removal or dismissal from office.

It bears to stress on this score that the CSC was able to acquire jurisdiction over the appeal of respondent merely upon its filing, followed by the submission of his memorandum on appeal. From that point, the appellate jurisdiction of the CSC at once attached, thereby vesting it with the authority to dispose of the case on the merits until it shall have been finally terminated.

Petitioner, however, takes exception. It notes that, while indeed the general rule is that jurisdiction continues until the termination of the case and is not affected by new legislation on the matter, the rule does not obtain where the new law provides otherwise, or where said law is intended to apply to actions pending before its enactment. Again, petitioner insists that E.O. No. 80 is a new legislation of a character belonging to one of the exceptions inasmuch as supposedly Section 6 thereof expressly sanctions its application to cases already pending prior to its enactment — particularly that provision which treats of the jurisdiction of the CSC.[33]

The argument is unconvincing.

In *Latchme Motoomull v. Dela Paz*,[34] the Court had dealt with a situation where jurisdiction over certain cases was transferred by a supervening legislation to another tribunal. *Latchme* involved a perfected appeal from the decision of the SEC and pending with the Court of Appeals at the time P.D. No. 902-A was enacted which transferred appellate jurisdiction over the decisions of the SEC from the Court of Appeals to the Supreme Court. On the question of whether the tribunal with which the cases were pending had lost jurisdiction over the appeal upon the effectivity of the new law, the Court ruled in the negative, citing the earlier case of *Bengzon v. Inciong*,[35] thus:

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[33] *Rollo*, pp. 39-40.

[34] G.R. No. 45302, July 24, 1990, 187 SCRA 743.

[35] G.R. Nos. L-48706-07, June 29, 1979, 91 SCRA 248.

The rule is that where a court has already obtained and is exercising jurisdiction over a controversy, its jurisdiction to proceed to the final determination of the cause is not affected by new legislation placing jurisdiction over such proceedings in another tribunal. **The exception to the rule is where the statute expressly provides, or is construed to the effect that it is intended to operate as to actions pending before its enactment.** Where a statute changing the jurisdiction of a court has no retroactive effect, it cannot be applied to a case that was pending prior to the enactment of the statute.[36]

Petitioner derives support from the exceptions laid down in the cases of *Latchme Motoomull* and *Bengzon* quoted above. Yet, as discussed above, the provisions in Section 6 of E.O. No. 80 are too clear and unambiguous to be interpreted in such a way as to abort the continued exercise by the CSC of its appellate jurisdiction over the appeal filed before the privatization of PNB became effective. Suffice it to say that nowhere in the said Section can we find even the slightest indication that indeed it expressly authorizes the transfer of jurisdiction from the CSC to another tribunal over disciplinary and administrative cases already pending with the said Commission even prior to the enactment of the law.

All told, the Court finds that no error was committed by the Court of Appeals in reversing the twin resolutions issued by the CSC. The Court also agrees that because the merits of respondent's appeal with the said Commission have not been completely threshed out, it is only correct and appropriate to remand the case back to it for further proceedings.

With this disquisition, the Court finds it unnecessary to discuss the other issues propounded by the parties.

WHEREFORE, the petition is *DENIED*. The January 3, 2006 Decision of the Court of Appeals in CA-G.R. SP No. 50084, which reversed and set aside CSC Resolution

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[36] *Latchme Motoomull v. Dela Paz, supra* note 34, at 753-754. (Emphasis ours.)

Nos. 980716 and 983099 and ordered the remand of the case to the CSC for further proceedings, is hereby *AFFIRMED.*

SO ORDERED.

Quisumbing, Acting C.J., Carpio, Corona, Carpio Morales, Chico-Nazario, Nachura, Leonardo-de Castro, Brion, Bersamin, and *Abad, JJ.,* concur.

Puno, C.J. and *Velasco, Jr., J.,* on official leave.

Del Castillo, J., on leave.

THIRD DIVISION

[G.R. No. 177809. October 16, 2009]

SPOUSES OMAR and MOSHIERA LATIP, *petitioners, vs.* **ROSALIE PALAÑA CHUA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; JUDICIAL NOTICE; REQUISITE OF NOTORIETY, NOT MET.— [I]t is apparent that the matter which the appellate court took judicial notice of does not meet the requisite of notoriety. To begin with, only the CA took judicial notice of this supposed practice to pay goodwill money to the lessor in the Baclaran area. Neither the MeTC nor the RTC, with the former even ruling in favor of Rosalie, found that the practice was of "common knowledge" or notoriously known. We note that the RTC specifically ruled that Rosalie, apart from her bare allegation, adduced no evidence to prove her claim that the amount of ₱2,570,000.00 simply constituted the payment of goodwill money. Subsequently, Rosalie attached an annex to her petition for review before the CA, containing a joint declaration under oath by other stallholders in Roferxane Bldg. that they had paid goodwill

money to Rosalie as their lessor. On this score, we emphasize that the reason why our rules on evidence provide for matters that need not be proved under Rule 129, specifically on judicial notice, is to dispense with the taking of the usual form of evidence on a certain matter so notoriously known, it will not be disputed by the parties. However, in this case, the requisite of notoriety is belied by the necessity of attaching documentary evidence, *i.e.*, the Joint Affidavit of the stallholders, to Rosalie's appeal before the CA. In short, the alleged practice still had to be proven by Rosalie; contravening the title itself of Rule 129 of the Rules of Court – *What need not be proved.*

2. CIVIL LAW; CONTRACTS; INTERPRETATION; LEASE CONTRACT AND RECEIPTS OF PAYMENT, RECONCILED.— In interpreting the evidence before us, we are guided by the Civil Code provisions on interpretation of contracts. x x x The RTC was already on the right track when it declared that the receipts for ₱2,570,000.00 modified or supplemented the contract of lease. However, it made a quantum leap when it ruled that the amount was payment for rentals of the two (2) cubicles for the entire six-year period. We cannot subscribe to this finding. x x x There is nothing on the receipts and on record that the payment and receipt of ₱2,570,000.00 referred to full payment of rentals for the whole period of the lease. All three receipts state Rosalie's receipt of cash in varying amounts. The first receipt for ₱2,000,000.00 did state payment for two (2) cubicles, but this cannot mean full payment of rentals for the entire lease period when there are no words to that effect. Further, two receipts were subsequently executed pointing to the obvious fact that the ₱2,000,000.00 is not for full payment of rentals. Thus, since the contract of lease remained operative, we find that Rosalie's receipt of the monies should be considered as advanced rentals on the leased cubicles. This conclusion is bolstered by the fact that Rosalie demanded payment of the lease rentals only in 2000, a full year after the commencement of the lease. Finally, we note that the lease ended in 2005. Consequently, Spouses Latip can be ejected from the leased premises. They are liable to Rosalie for unpaid rentals on the lease of the two (2) cubicles in accordance with the stipulations on rentals in the Contract of Lease. However, the amount of ₱2,570,000.00, covering advance rentals, must be deducted from this liability of Spouses Latip to Rosalie.

APPEARANCES OF COUNSEL

Reynante L. San Gaspar for petitioners.
Elena P. Tec-Rodriguez for respondent.

D E C I S I O N

NACHURA, *J.*:

Challenged in this petition for review on *certiorari* is the Court of Appeals (CA) Decision in CA-G.R. SP No. 89300:[1] (1) reversing the decision of the Regional Trial Court (RTC), Branch 274, Parañaque City in Civil Case No. 04-0052;[2] and (2) reinstating and affirming *in toto* the decision of the Metropolitan Trial Court (MeTC), Branch 78, of the same city in Civil Case No. 2001-315.[3]

First, we sift through the varying facts found by the different lower courts.

The facts parleyed by the MeTC show that respondent Rosalie Chua (Rosalie) is the owner of Roferxane Building, a commercial building, located at No. 158 Quirino Avenue corner Redemptorist Road, Barangay Baclaran, Parañaque City.

On July 6, 2001, Rosalie filed a complaint for unlawful detainer plus damages against petitioners, Spouses Omar and Moshiera Latip (Spouses Latip). Rosalie attached to the complaint a contract of lease over two cubicles in Roferxane Bldg., signed by Rosalie, as lessor, and by Spouses Latip, as lessees thereof.

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[1] Penned by Associate Justice Lucenito N. Tagle (retired), with Associate Justices Rodrigo V. Cosico (retired) and Regalado E. Maambong (retired), concurring; *rollo*, pp. 43-56.

[2] Penned by Presiding Judge Fortunito L. Madrona, CA *rollo*. pp. 36-43.

[3] Penned by Presiding Judge Jansen R. Rodriguez, CA *rollo*, pp. 44-49.

The contract of lease reads:

CONTRACT OF LEASE

KNOW ALL MEN BY THESE PRESENTS:

This Contract of Lease is entered into by and between:

ROSALIE PALAÑA CHUA, Filipino, of legal age, married with office at 2/F JOFERXAN Building, F.B. Harrison St., Brgy. Baclaran, Parañaque City, and hereinafter referred to as the LESSOR,

- and -

OMAR LATIEF marriage (sic) to **MOSHIERA LATIEF,** also both Filipino, of legal age with address at 24 Anahan St. RGV Homes Parañaque City, and hereinafter referred to as the LESSEES.

W I T N E S S E T H

1. That the LESSOR is the owner of the commercial building erected at the lot of the Toribio G. Reyes Realty, Inc. situated at 158 Quirino Ave. corner Redemptorist Road, Barangay Baclaran in Parañaque Ctiy;

2. That LESSOR hereby leases two (2) cubicles located at the 1st & 2nd Floor, of said building with an area of 56 square meters under the following terms and conditions, to wit:

a. That the monthly rental of the two (2) cubicles in PESOS, SIXTY THOUSAND (₱60,000.00), Philippine Currency. However, due to unstable power of the peso LESSEES agrees to a yearly increase of ten (10%) percent of the monthly rental;

b. That any rental in-arrears shall be paid before the expiration of the contract to the LESSOR;

c. That LESSEES agree to pay their own water and electric consumptions in the said premises;

d. That the LESSEES shall not sub-let or make any alteration in the cubicles without a written permission from the LESSOR. Provided, however, that at the termination of the Contract, the lessee shall return the two cubicles in its original conditions at their expenses;

e. That the LESSEES agree to keep the cubicles in a safe and sanitary conditions, and shall not keep any kinds of flammable or combustible materials.

f. That in case the LESSEES fail to pay the monthly rental every time it falls due or violate any of the above conditions shall be enough ground to terminate this Contract of Lease. Provided, further, that, if the LESSEES pre-terminate this Contract they shall pay the rentals for the unused month or period by way of liquidated damages in favor of the LESSOR.

3. That this Contract of Lease is for six (6) yrs. only starting from December _____, 1999 or up to December _____, 2005.

IN WITNESS WHEREOF, the parties have hereunto affixed their hands this ___th day of December, 1999 at City of Manila, Philippines.

(sgd.)
ROSALIE PALAÑA-CHUA
L E S S O R

(sgd.)
MOSHIERA LATIEF
L E S S E E

(sgd.)
OMAR LATIEF
L E S S E E

SIGNED IN THE PRESENCE OF:

(sgd.)
1. Daisy C. Ramos

(sgd.)
2. Ferdinand C. Chua

Republic of the Philippines)
C i t y o f M a n i l a)s.s.

A C K N O W L E D G M E N T

BEFORE ME, a Notary Public for and in the City of Manila personally appeared the following persons:

Rosalie P. Chua with CTC No. 05769706 at Parañaque City on 2/1/99; Moshiera Latief with CTC No. 12885654 at Parañaque City on 11/11/99; Omar Latief with CTC No. 12885653 Parañaque City on Nov. 11, 1999.

known to me and to me known to be the same persons who executed this instrument consisting of two (2) pages duly signed by them and the two (2) instrumental witnesses and acknowledged to me that the same is their free and voluntarily acts and deeds.

IN FAITH AND TESTIMONY WHEREOF, I have hereunto affixed my hand and Notarial Seal this ____th day of December, 1999 at the City of Manila, Philippines.

Doc. No. _____
Page No. _____
Book No. LXV
Series of 1999

ATTY. CALIXTRO B. RAMOS
NOTARY PUBLIC
Until December 31, 2000
PTR # 374145-1/11/99/-Mla.
IBP # 00262-Life Member[4]

A year after the commencement of the lease and with Spouses Latip already occupying the leased cubicles, Rosalie, through counsel, sent the spouses a letter demanding payment of back rentals and should they fail to do so, to vacate the leased cubicles. When Spouses Latip did not heed Rosalie's demand, she instituted the aforesaid complaint.

In their Answer, Spouses Latip refuted Rosalie's claims. They averred that the lease of the two (2) cubicles had already been paid in full as evidenced by receipts showing payment to Rosalie of the total amount of ₱2,570,000.00. The three (3) receipts, in Rosalie's handwriting, read:

1. I received the amount of ₱2,000,000.00 (two million pesos) from [O]mar Latip & Moshi[e]ra Latip for the payment of 2 cubicles located at 158 Quirino Ave. corner Redemptorist Rd.[,] Baclaran P[arañ]aque City. ROFERLAND[5] Bldg. with the terms 6 yrs. Contract.

₱2,000,000.00
CHECK # 3767924
FAR EAST BANK

_____(sgd.)_____
Rosalie Chua

_____(sgd.)_____
Ferdinand Chua

2. Received cash
₱500,000.00
From Moshiera Latip

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[4] CA *rollo*, pp. 72-73.

[5] Except for this designation in the receipt, the building where the leased cubicles are located is referred to in the records as Roferxane Bldg.

(sgd.)
12/10/99 Rosalie Chua
Received by

3. Received cash
₱70,000.00 from
Moshiera Latip
12-11-99

(sgd.)
Received by:[6]

Spouses Latip asseverated that sometime in October 1999, Rosalie offered for sale lease rights over two (2) cubicles in Roferxane Bldg. Having in mind the brisk sale of goods during the Christmas season, they readily accepted Rosalie's offer to purchase lease rights in Roferxane Bldg., which was still under construction at the time. According to Spouses Latip, the immediate payment of ₱2,570,000.00 would be used to finish construction of the building giving them first priority in the occupation of the finished cubicles.

Thereafter, in December 1999, as soon as two (2) cubicles were finished, Spouses Latip occupied them without waiting for the completion of five (5) other stalls. Spouses Latip averred that the contract of lease they signed had been novated by their purchase of lease rights of the subject cubicles. Thus, they were surprised to receive a demand letter from Rosalie's counsel and the subsequent filing of a complaint against them.

The MeTC ruled in favor of Rosalie, *viz.*:

WHEREFORE, premises considered, the [Spouses Latip] and all persons claiming rights under them are hereby ordered to VACATE the property subject of this case located at the 1st and 2nd floors of a Roferxane Building situated at No. 158 Quirino Avenue corner Redemptorist Road, Barangay Baclaran, Parañaque City. The [Spouses Latip] are also ordered to PAY [Rosalie] the amount of SEVEN HUNDRED TWENTY THOUSAND PESOS (₱720,000.00) as rent arrearages for the period of December 1999 to December 2000

[6] CA *rollo*, pp. 99, 102, 103.

and thereafter to PAY [Rosalie] the amount of SEVENTY TWO THOUSAND PESOS (₱72,000.00) per month from January 2001 to December 2002, plus ten percent (10%) increase for each and every succeeding years thereafter as stipulated in paragraph 2(a) of the Contract of Lease x x x, until the [Spouses Latip] have completely vacated the leased premises subject of this lease. Finally[,] the [Spouses Latip] are hereby ordered to PAY [Rosalie] the amount of TWENTY THOUSAND PESOS (₱20,000.00) as attorney's fees and TWO THOUSAND PESOS (₱2,000.00) per [Rosalie's] appearance in Court as appearance fee and to PAY the cost of this suit.

[Spouses Latip's] counterclaim is hereby DISMISSED for lack of merit.

SO ORDERED.[7]

In stark contrast, the RTC reversed the MeTC and ruled in favor of Spouses Latip. The RTC did not give credence to the contract of lease, ruling that it was not notarized and, in all other substantial aspects, incomplete. Further on this point, the RTC noted that the contract of lease lacked: (1) the signature of Ferdinand Chua, Rosalie's husband; (2) the signatures of Spouses Latip on the first page thereof; (3) the specific dates for the term of the contract which only stated that the lease is for "six (6) y[ea]rs only starting from December 1999 or up to December 2005"; (4) the exact date of execution of the document, albeit the month of December and year 1999 are indicated therein; and (5) the provision for payment of deposit or advance rental which is supposedly uncommon in big commercial lease contracts.

The RTC believed the claim of Spouses Latip that the contract of lease was modified and supplemented; and the entire lease rentals for the two (2) cubicles for six (6) years had already been paid by Spouses Latip in the amount of ₱2,570,000.00. As to Rosalie's claim that her receipt of ₱2,570,000.00 was simply goodwill payment by prospective lessees to their lessor, and not payment for the purchase of lease rights, the RTC shot this down and pointed out that, apart from her bare allegations, Rosalie did not adduce evidence to substantiate this claim. On

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

the whole, the RTC declared an existent lease between the parties for a period of six (6) years, and already fully paid for by Spouses Latip. Thus, Spouses Latip could not be ejected from the leased premises until expiration of the lease period.

The RTC disposed of the appeal, *viz.*:

> WHEREFORE, all the foregoing considered, the appealed decision of the [MeTC] dated January 13, 2004 is reversed as judgment is hereby rendered for the [Spouses Latip] and against [Rosalie], ordering the latter to pay the former –
>
> (1) the sum of PhP1,000,000.00 as moral damages;
>
> (2) the sum of PhP500,000.00 as exemplary damages;
>
> (3) the sum of PhP250,000.00 plus PhP3,000.00 per court appearance as and for attorney's fees; and
>
> (4) costs of suit.
>
> SO ORDERED.[8]

In yet another turn of events, the CA, as previously mentioned, reversed the RTC and reinstated the decision of the MeTC. The CA ruled that the contract of lease, albeit lacking the signature of Ferdinand and not notarized, remained a complete and valid contract. As the MeTC had, the CA likewise found that the alleged defects in the contract of lease did not render the contract ineffective. On the issue of whether the amount of ₱2,570,000.00 merely constituted payment of goodwill money, the CA took judicial notice of this common practice in the area of Baclaran, especially around the Redemptorist Church. According to the appellate court, this judicial notice was bolstered by the Joint Sworn Declaration of the stallholders at Roferxane Bldg. that they all had paid goodwill money to Rosalie prior to occupying the stalls thereat. Thus, ruling on Rosalie's appeal, the CA disposed of the case:

> WHEREFORE, in view of the foregoing, the Petition for Review is hereby GRANTED. The assailed decision of RTC Parañaque City

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[8] *Id.* at 42.

Branch 274 dated September 24, 2004 is hereby REVERSED and SET ASIDE, and the January 13, 2004 decision of the MeTC is REINSTATED and AFFIRMED *en toto*.

SO ORDERED.[9]

Not surprisingly, Spouses Latip filed the present appeal.

The singular issue for our resolution is whether Spouses Latip should be ejected from the leased cubicles.

As previously adverted to, the CA, in ruling for Rosalie and upholding the ejectment of Spouses Latip, took judicial notice of the alleged practice of prospective lessees in the Baclaran area to pay goodwill money to the lessor.

We disagree.

Sections 1 and 2 of Rule 129 of the Rules of Court declare when the taking of judicial notice is mandatory or discretionary on the courts, thus:

SECTION 1. *Judicial notice, when mandatory*. – A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.

SEC. 2. *Judicial notice, when discretionary*. – A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration or ought to be known to judges because of their judicial functions.

On this point, *State Prosecutors v. Muro*[10] is instructive:

I. The doctrine of judicial notice rests on the wisdom and discretion of the courts. **The power to take judicial notice is to be exercised by courts with caution; care must be taken that the requisite**

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[9] *Rollo*, p. 55.

[10] A.M. No. RTJ-92-876, September 19, 1994, 236 SCRA 505, 521-522.

notoriety exists; and every reasonable doubt on the subject should be promptly resolved in the negative.

Generally speaking, matters of judicial notice have three material requisites: (1) the matter must be one of common and general knowledge; (2) it must be well and authoritatively settled and not doubtful or uncertain; and (3) it must be known to be within the limits of the jurisdiction of the court. **The principal guide in determining what facts may be assumed to be judicially known is that of notoriety. Hence, it can be said that judicial notice is limited to facts evidenced by public records and facts of general notoriety.**

To say that a court will take judicial notice of a fact is merely another way of saying that the usual form of evidence will be dispensed with if knowledge of the fact can be otherwise acquired. This is because the court assumes that the matter is so notorious that it will not be disputed. **But judicial notice is not judicial knowledge. The mere personal knowledge of the judge is not the judicial knowledge of the court, and he is not authorized to make his individual knowledge of a fact, not generally or professionally known, the basis of his action.** Judicial cognizance is taken only of those matters which are "commonly" known.

Things of "common knowledge," of which courts take judicial notice, may be matters coming to the knowledge of men generally in the course of the ordinary experiences of life, or they may be matters which are generally accepted by mankind as true and are capable of ready and unquestioned demonstration. Thus, facts which are universally known, and which may be found in encyclopedias, dictionaries or other publications, are judicially noticed, provided they are of such universal notoriety and so generally understood that they may be regarded as forming part of the common knowledge of every person.[11]

We reiterated the requisite of notoriety for the taking of judicial notice in the recent case of *Expertravel & Tours, Inc. v. Court of Appeals*,[12] which cited *State Prosecutors*:

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[11] Emphasis supplied.

[12] G.R. No. 152392, May 26, 2005, 459 SCRA 147, 162.

Generally speaking, matters of judicial notice have three material requisites: (1) the matter must be one of common and general knowledge; (2) it must be well and authoritatively settled and not doubtful or uncertain; and (3) it must be known to be within the limits of the jurisdiction of the court. The principal guide in determining what facts may be assumed to be judicially known is that of notoriety. Hence, it can be said that judicial notice is limited to facts evidenced by public records and facts of general notoriety. Moreover, a judicially noticed fact must be one not subject to a reasonable dispute in that it is either: (1) generally known within the territorial jurisdiction of the trial court; or (2) capable of accurate and ready determination by resorting to sources whose accuracy cannot reasonably be questionable.

Things of "common knowledge," of which courts take judicial notice, may be matters coming to the knowledge of men generally in the course of the ordinary experiences of life, or they may be matters which are generally accepted by mankind as true and are capable of ready and unquestioned demonstration. Thus, facts which are universally known, and which may be found in encyclopedias, dictionaries or other publications, are judicially noticed, provided, they are such of universal notoriety and so generally understood that they may be regarded as forming part of the common knowledge of every person. As the common knowledge of man ranges far and wide, a wide variety of particular facts have been judicially noticed as being matters of common knowledge. *But a court cannot take judicial notice of any fact which, in part, is dependent on the existence or non-existence of a fact of which the court has no constructive knowledge*.

From the foregoing provisions of law and our holdings thereon, it is apparent that the matter which the appellate court took judicial notice of does not meet the requisite of notoriety. To begin with, only the CA took judicial notice of this supposed practice to pay goodwill money to the lessor in the Baclaran area. Neither the MeTC nor the RTC, with the former even ruling in favor of Rosalie, found that the practice was of "common knowledge" or notoriously known.

We note that the RTC specifically ruled that Rosalie, apart from her bare allegation, adduced no evidence to prove her claim that the amount of ₱2,570,000.00 simply constituted the

payment of goodwill money. Subsequently, Rosalie attached an annex to her petition for review before the CA, containing a joint declaration under oath by other stallholders in Roferxane Bldg. that they had paid goodwill money to Rosalie as their lessor. On this score, we emphasize that the reason why our rules on evidence provide for matters that need not be proved under Rule 129, specifically on judicial notice, is to dispense with the taking of the usual form of evidence on a certain matter so notoriously known, it will not be disputed by the parties.

However, in this case, the requisite of notoriety is belied by the necessity of attaching documentary evidence, *i.e.*, the Joint Affidavit of the stallholders, to Rosalie's appeal before the CA. In short, the alleged practice still had to be proven by Rosalie; contravening the title itself of Rule 129 of the Rules of Court – *What need not be proved*.

Apparently, only that particular division of the CA had knowledge of the practice to pay goodwill money in the Baclaran area. As was held in *State Prosecutors*, justices and judges alike ought to be reminded that the power to take judicial notice must be exercised with caution and every reasonable doubt on the subject should be ample reason for the claim of judicial notice to be promptly resolved in the negative.

Ultimately, on the issue of whether Spouses Latip ought to be ejected from the leased cubicles, what remains in evidence is the documentary evidence signed by both parties – the contract of lease and the receipts evidencing payment of ₱2,570,000.00.

We need not be unduly detained by the issue of which documents were executed first or if there was a novation of the contract of lease. As had been found by the RTC, the lease contract and the receipts for the amount of ₱2,570,000.00 can be reconciled or harmonized. The RTC declared:

Definitely, the parties entered into a lease agreement over two (2) cubicles of the 1st and 2nd floors of Roferxane (Roferland) Building, a commercial building located at 158 Quirino Avenue, corner Redemptorist Road, Baclaran, Parañaque City and belonging to [Rosalie]. The lease agreement is for a term of six (6) years

commencing in December 1999 up to December 2005. This agreement was embodied in a Contract of Lease x x x. The terms of this lease contract, however, are modified or supplemented by another agreement between the parties executed and or entered into in or about the time of execution of the lease contract, which exact date of execution of the latter is unclear.[13]

We agree with the RTC's holding only up to that point. There exists a lease agreement between the parties as set forth in the contract of lease which is a complete document. It need not be signed by Ferdinand Chua as he likewise did not sign the other two receipts for ₱500,000.00 and ₱70,000.00, respectively, which contained only the signature of Rosalie. Besides, it is undisputed that Rosalie owns and leases the stalls in Roferxane Bldg.; thus, doing away with the need for her husband's consent. The findings of the three lower courts concur on this fact.

The contract of lease has a period of six (6) years commencing in December 1999. This fact is again buttressed by Spouses Latip's admission that they occupied the property forthwith in December 1999, bearing in mind the brisk sales during the holiday season.

On the conflicting interpretations by the lower courts of the receipts amounting to ₱2,570,000.00, we hold that the practice of payment of goodwill money in the Baclaran area is an inadequate subject of judicial notice. Neither was Rosalie able to provide sufficient evidence that, apart from the belatedly submitted Joint Affidavit of the stallholders of Roferxane Bldg., the said amount was simply for the payment of goodwill money, and not payment for advance rentals by Spouses Latip.

In interpreting the evidence before us, we are guided by the Civil Code provisions on interpretation of contracts, to wit:

Art. 1371. In order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered.

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

Art. 1372. However general the terms of a contract may be, they shall not be understood to comprehend things that are distinct and cases that are different from those which the parties intended to agree.

Art. 1373. If some stipulation of any contract should admit of several meanings, it shall be understood as bearing that import which is most adequate to render it effectual.

The RTC was already on the right track when it declared that the receipts for ₱2,570,000.00 modified or supplemented the contract of lease. However, it made a quantum leap when it ruled that the amount was payment for rentals of the two (2) cubicles for the entire six-year period. We cannot subscribe to this finding. To obviate confusion and for clarity, the contents of the receipts, already set forth above, are again reproduced:

1. I received the amount of ₱2,000,000.00 (two million pesos) from [O]mar Latip & Moshi[e]ra Latip for the payment of 2 cubicles located at 158 Quirino Ave. corner Redemptorist Rd.[,] Baclaran P[arañ]que City. ROFERLAND Bldg. with the terms 6 yrs. Contract.

₱2,000,000.00 _____(sgd.)_____
CHECK # 3767924 Rosalie Chua
FAR EAST BANK

_____(sgd.)_____
Ferdinand Chua

2. Received cash
₱500,000.00
From Moshiera Latip

(sgd.)
12/10/99 Rosalie Chua
Received by

3. Received cash
₱70,000.00 from
Moshiera Latip
12-11-99

___(sgd.)_____
Received by:[14]

[14] *Supra* note 6.

There is nothing on the receipts and on record that the payment and receipt of ₱2,570,000.00 referred to full payment of rentals for the whole period of the lease. All three receipts state Rosalie's receipt of cash in varying amounts. The first receipt for ₱2,000,000.00 did state payment for two (2) cubicles, but this cannot mean full payment of rentals for the entire lease period when there are no words to that effect. Further, two receipts were subsequently executed pointing to the obvious fact that the ₱2,000,000.00 is not for full payment of rentals. Thus, since the contract of lease remained operative, we find that Rosalie's receipt of the monies should be considered as advanced rentals on the leased cubicles. This conclusion is bolstered by the fact that Rosalie demanded payment of the lease rentals only in 2000, a full year after the commencement of the lease.

Finally, we note that the lease ended in 2005. Consequently, Spouses Latip can be ejected from the leased premises. They are liable to Rosalie for unpaid rentals on the lease of the two (2) cubicles in accordance with the stipulations on rentals in the Contract of Lease. However, the amount of ₱2,570,000.00, covering advance rentals, must be deducted from this liability of Spouses Latip to Rosalie.

WHEREFORE, premises considered, the petition is hereby *GRANTED*. The decision of the Court of Appeals in CA-G.R. SP No. 89300 is *REVERSED*. The petitioners, spouses Omar and Moshiera Latip, are liable to respondent Rosalie Chua for unpaid rentals minus the amount of ₱2,570,000.00 already received by her as advance rentals. No costs.

SO ORDERED.

Carpio Morales,[*] *Chico-Nazario(Acting Chairperson),*[**] *Peralta,* and *Abad,*[***] *JJ.,* concur.

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[*] Additional member *vice* Associate Justice Antonio T. Carpio per Special Order No. 744 dated October 13, 2009.

[**] Acting Chairperson *vice* Associate Justice Antonio T. Carpio per Special Order No. 743 dated October 13, 2009.

[***] Additional member *vice* Associate Justice Presbitero J. Velasco, Jr. per Special Order No. 753 dated October 13, 2009.

SECOND DIVISION

[G.R. No. 180778. October 16, 2009]

RURAL BANK OF DASMARIÑAS, INC., *petitioner, vs.* **NESTOR JARIN, APOLINAR OBISPO, and VICENTE GARCIA in his capacity as Register of Deeds of the Province of Cavite,** *respondents.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; PRESIDENTIAL DECREE NO. 27; FARM LOTS ACQUIRED THEREUNDER CANNOT BE THE SUBJECT OF FORECLOSURE EXCEPT BY THE LAND BANK; RATIONALE.— Presidential Decree No. 27 provides: Title to land acquired pursuant to this Decree or the Land Reform Program of the Government shall not be transferable **except** by hereditary succession or to the Government in accordance with the provisions of this Decree, the Code of Agrarian Reforms and other existing laws and regulations. Respondents' farm lots subject of the mortgages are thus not subject to foreclosure, except by the Land Bank, because foreclosure contemplates the transfer of ownership over the mortgaged lands. x x x The policy behind the prohibition in Presidential Decree No. 27 precludes expanding the exceptions therein. x x x To insure [the farmer's] continued possession and enjoyment of the property, he *could not*, under the law, make any valid form of transfer **except** to the government or by hereditary succession, to his successors. x x x The prohibition against transfers to persons other than the heirs of other qualified beneficiaries stems from the policy of the Government to **develop generations of farmers to attain its avowed goal to have an adequate and sustained agricultural production.** With certitude, such objective will not see the light of day if lands covered by agrarian reform can easily be converted for non-agricultural purposes.

APPEARANCES OF COUNSEL

Kalaw Sy Selva and Campos for petitioner.
Public Interest Law Center for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Respondents Nestor Jarin (Jarin) and Apolinar Obispo (Obispo) were awarded Certificates of Land Transfer (CLT) over portions of a parcel of land in Burol, Dasmariñas, Cavite which was covered by Transfer Certificate of Title (TCT) No. 2295.

Before respondents could be issued Emancipation Patents (EP), they obtained on December 21, 1988 a loan from petitioner, Rural Bank of Dasmariñas, Inc. (RBDI), in whose favor they executed a Real Estate Mortgage over the parcels of land covered by their CLT (hereafter farm lots). As the farm lots were still covered by TCT No. 2295, the owner thereof, Dr. Paulo Campos (Campos), executed a Special Power of Attorney in respondents' favor authorizing them to encumber the farm lots. Respondents undertook to surrender their EPs as soon as they were released.

On June 18, 1990, respondents obtained additional loans from RBDI, secured by a mortgage over the same farm lots.

Respondents failed to settle their loans, hence, the mortgages were foreclosed and RBDI purchased the farm lots as the highest bidder. As at that time the EPs were still not yet issued, respondents authorized RBDI to receive them.

The EPs were eventually released on November 26, 1997. Campos' Transfer Certificate of Title (TCT) No. 2295 was thereupon cancelled and in its stead, TCT Nos. 994 and 996 were issued by the Office of the Registry of Deeds of Cavite in respondent Jarin's name. It appears that TCT No. 995 was also issued but there is no indication in the Records in whose name it was issued.[1]

On August 20, 1998, RBDI consolidated its ownership over the farm lots but the consolidation of ownership could not be registered as the owners' copies of the TCTs covering them

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[1] Only copies of TCT Nos. 994 and 996, in the name of Jarin, are found in the records (pp. 312-315).

were with respondents. RBDI thus demanded the delivery to it of the owners' copies but respondents refused to receive RBDI's demand letters, drawing RBDI to file a complaint[2] against them for delivery of the owners' copies of TCT Nos. 994, 995, and 996, and damages, with prayer for the issuance of a writ of injunction and/or temporary restraining order.

In their Answer, respondents claimed that from the proceeds of the original loan, Obispo received ₱266,750 while Jarin received ₱150,000; and that they were later forced to sign additional affidavits requesting additional loans for ₱435,000 in the case of Jarin, and ₱260,000 in the case of Obispo, which amounts were "manufactured" to circumvent Presidential Decree No. 315 allowing financial institutions to accept as collateral for loans duly registered CLTs issued by the government to tenant farmers provided that, among other things, the amount of the loans is not less than 60% of the value of the landholdings as determined under Presidential Decree No. 27.[3]

Respondents furthermore claimed that they were forced to sign affidavits waiving their rights in the farm lots,[4] which affidavits Campos used as bases of the cancellation of their EPs,[5] albeit the cancellation was reversed by Department of Agrarian Reform Secretary Ernesto D. Garilao on their motion for reconsideration.[6]

In sum, respondents answered in the negative the issue of "whether or not a CLT or an EP can be transferred other than through hereditary succession or to the government."[7]

Obispo died during the pendency of the case and was substituted by his spouse.[8]

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[2] *Id.* at 1-11.

[3] Exhibits "16" and "17", *id.* at 400-403.

[4] Exhibits "21"-"22", *id.* at 412-413.

[5] Exhibit "19", *id.* at 406-409.

[6] Exhibit "26", *id.* at 428-430.

[7] *Id.* at 124.

[8] *Id.* at 239-242.

Branch 22 of the Regional Trial Court (RTC) of Imus, Cavite found that, indeed, mortgaging the farm lots was a scheme conceived by Campos to recover them. It concluded that the farm lots could not be validly foreclosed under Presidential Decree No. 27. Finding, however, that respondents received the proceeds of the loan, the RTC ordered the payment thereof to RBDI. Thus the RTC disposed:

> WHEREFORE, premises considered, judgment is rendered:
>
> 1. Ordering defendant Nestor Jarin to pay plaintiff the amount of ₱150,000.00 representing the amount received, plus interest at the prevailing rural bank[']s rate computed from December 26, 1988 until January 14, 1999;
>
> 2. Ordering the heirs of defendant Apolinar Obispo to pay plaintiff the amount of ₱266,750.00 representing the amount received plus interest at the prevailing rural bank[']s rate computed from December 26, 1988 until January 14, 1999;
>
> 3. Ordering the Register of Deeds for the Province of Cavite to cancel Entry Nos. 4349-96 (Certificate of Sale); 8095-96 (Affidavit); 8096-96 (Affidavit); and 106 (Affidavit of Adverse Claim) in TCT Nos. EP-994 V-B; EP-995 V-B; EP-996 V-B on file with the said register of deeds;
>
> 4. Dismissing the Complaint.
>
> SO ORDERED.[9]

The Court of Appeals affirmed the RTC Decision.[10]

Hence, RBDI's present Petition for Review on *Certiorari*,[11] alleging that the Court of Appeals erred in holding that a) there is no right of foreclosure in its favor; b) it committed fraud; and c) it is not entitled to damages.[12]

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

[10] Decision of June 28, 2007, penned by Court of Appeals Associate Justice Japar B. Dimaampao, with the concurrence of Associate Justices Mario L. Guariña III and Sixto C. Marella, Jr., CA *rollo*, pp. 161-174.

[11] *Rollo*, pp. 8-29.

[12] *Id.* at 15.

The petition is bereft of merit.

That fraud was committed against respondents is supported by the evidence on record. As the RTC observed:

> As stated at the outset, the land awarded to defendants pursuant to PD 27 was **formerly owned by Dr. Paulo Campos** who, at the time of the transactions x x x and at the time of the filing of the case, was the **president of the plaintiff.** In addition, the certification dated May 13, 1999 (Exhibit "1") issued by Genoveva Hernandez, accountant of plaintiff, on the shareholdings of Dr. Paulo C. Campos and his family, as well as the testimony of plaintiff's witness Shirley Enobal (TSN, May 13, 1999) will clearly prove that Dr. Campos and his family are the only shareholders of the plaintiff. In other words, **plaintiff is a family corporation.**
>
> Defendants Jarin and Obispo, on the other hand, are both uneducated and have not finished any kind of formal education. They cannot read nor write in English and they have always been, since their early years, farmers or farmworkers.
>
> x x x x x x x x x
>
> The fact alone that the real estate mortgages were executed even before the Special Power of Attorney[13] to mortgage the property was issued and that both were already in existence even when there was no loan application yet, clearly indicates the **premeditated efforts of plaintiff, its officers and Dr. Campos in illegally recovering the subject properties through fraudulent and simulated means**. In addition, a perusal of the real estate mortgage shows that the interest rate was not even stated. More importantly, while the mortgage deeds make reference to promissory notes with regard to the due date of the obligations, no promissory notes were presented in evidence if in fact they were executed. The foregoing acts are not normal banking practices. x x x
>
> In addition, plaintiff's manager, Shirley Enobal, testified on cross-examination that defendants Jarin and Obispo were **assisted by Dr. Campos**. x x x
>
> x x x x x x x x x

[13] The Special Power of Attorney was executed on December 20, 1988 while the mortgages were executed on December 19, 1988. *Vide* Exhibits "8" – "10", *id.* at 390-393.

It is very surprising, to say the least, that plaintiff's president himself would assist two farmers in obtaining loans when plaintiff surely has sufficient employees assigned to perform such functions. Added to this is the fact that it was plaintiff's manager herself who was principally involved and was instrumental in the documentation of the aforesaid transactions (Exhibits "A" and "4"). These are clear indications on the objective of Dr. Campos to recover the land through plaintiff by means of anomalous and irregular bank processes.

Plaintiff continued these machinations through a supposed Special Power of Attorney dated June 16, 1990 executed by Dr. Campos appointing defendants Jarin and Obispo again as his attorneys-in-fact and authorizing them to secure additional loans with plaintiff and to mortgage the subject properties (Exhibits "E" and "11"). Similarly, plaintiff again simulated Real Estate Mortgages dated June 15, 1990, purportedly executed by defendants Jarin and Obispo mortgaging in favor of plaintiff the subject properties as attorney[s]-in-fact of Dr. Campos for the alleged additional loans (Exhibits "F", "F-1", "12" and "13").

x x x And to strengthen its purpose of defrauding the defendants, plaintiff produced demand letters seeking payment of the principal amounts of the loan (Exhibits "H", "H-1", "14", and "15").

x x x x x x x x x

The fraud persisted when defendants Jarin and Obispo were made to sign spurious "Sinumpaang Salaysay sa Pagbibitiw" prepared by plaintiff dated February 15, 1995 and allegedly acknowledging the 1988 loan with plaintiff, misrepresenting that they allegedly failed to pay the same; and that they allegedly were voluntarily surrendering their right to till the subject property (Exhibits "21" and "22").

The overall scheme and machinations of plaintiff and its officers x x x became very patent when a request was filed by Dr. Campos with the Department of Agrarian Reform (DAR) for the release of the EPs generated in the names of defendants Jarin and Obispo. Based on the Order dated August 7, 1996 (Exhibit "19") issued by the then Secretary of DAR, the said "Sinumpaang Salaysay sa Pagbibitiw" and the Deed of Donation over the subject property executed by Dr. Campos in favor of the Municipality of Dasmariñas, Cavite and the Immaculate Conception Academy, Inc. were submitted with the request. In the said Order, however, the then Secretary of DAR denied the request for the release of the Emancipation Patents of

defendants over the subject properties, cancelled and revoked the same, and directed the reallocation of the properties to "qualified beneficiaries who are capable of making it agricultural".

Under the threat of losing the land awarded to them and after having finally realized that they had been defrauded and taken advantage of, defendants Jarin and Obispo sought help from their relatives who might be able to help them with their problem, which they never understood in the first place until circumstances became clear.

Thus, in a letter dated May 26, 1997 written by defendants Jarin and Obispo as well as their respective heirs addressed to the then Secretary of DAR, the said defendants requested, among others, that the subject properties be returned to them for tilling or that the same be transferred to their respective heirs (Exhibit "23"). This was supplemented in a letter dated August 17, 1997 written by the defendants addressed to the then Secretary of DAR, reiterating their pleas and prayers over the subject properties as contained in their earlier letter dated May 26, 1997 ("Exhibit 25"). This second letter included a Sworn Statement dated July 15, 1997 (Exhibit "25-A") executed by defendants Jarin and Obispo and their respective spouses disowning the "Sinumpaang Salaysay sa Pagbibitiw" dated February 15, 1995 (Exhibits "21" and "22") for lack of voluntariness. On the basis of the foregoing, an Order dated October 8, 1997 was issued by the then Secretary of DAR setting aside the earlier Order dated August 7, 1996 (Exhibit "19") and directing the issuance of Emancipation Patents to defendants Jarin and Obispo (Exhibit "26").

It was likewise brought to the attention of this Court that even prior to the institution of the instant case, plaintiff and its officers unsuccessfully attempted to consolidate their claim and title over the subject property through the filing of a Petition dated April 15, 1997, for an Action to Remove Cloud or Quiet Title to the Real Property and for Preliminary Injunction and Prayer for TRO against the then Secretary of DAR and defendants Jarin and Obispo (Exhibits "24", "24-A" to "24-G").

The foregoing will clearly establish that the transactions subject of this case were attended with fraud and formed part of a grand design to defraud the defendants Jarin and Obispo to enable plaintiff to recover the subject property awarded to said defendants.[14] (Emphasis and underscoring supplied)

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[14] *Id.* at 497-501.

Respecting RBDI's right to foreclose the mortgages, Presidential Decree No. 27 provides:

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

Respondents' farm lots subject of the mortgages are thus not subject to foreclosure, except by the Land Bank, because foreclosure contemplates the transfer of ownership over the mortgaged lands.[15]

RBDI invokes, however, Section 1 of Presidential Decree No. 315 which amended Presidential Decree No. 27, which reads:

> SECTION 1. All financing institutions shall hereafter accept as collateral for loans any duly registered Land Transfer Certificate issued by the Government, through the Department of Agrarian Reform to tenant-farmers in an amount not less than sixty percent (60%) of the value of the farmholding as determined under Presidential Decree No. 27; Provided, That such loans shall be guaranteed by the Guarantee Fund established by the Samahang Nayon (Barrio Association) in which a tenant-farmer is a full-pledged member; Provided, Further, That the loans obtained shall be used in the improvement or development of the farmholding of the tenant-farmer or the establishment of facilities that will enhance production or marketing of agricultural products or increase farm income therefrom. (Underscoring supplied)

To the RBDI, "[t]he mere fact that the farmer-beneficiary is allowed by the Government to offer his landholdings as collateral to the financial institutions shows the Government's intent to include foreclosure of [*sic*] creditor-banks as one of the modes for transferring titles to land acquired pursuant to PD No. 27."[16] RBDI's position does not impress.

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[15] Hector S. De Leon, *Textbook on Agrarian Reform and Taxation (with Cooperatives)*, 2000 Edition, p. 116.

[16] *Rollo*, p. 17.

The policy behind the prohibition in Presidential Decree No. 27 precludes expanding the exceptions therein. So this Court declared:

> Upon the promulgation of Presidential Decree No. 27 on October 21, 1972, petitioner was DEEMED OWNER of the land in question. As of that date, he was declared emancipated from the bondage of the soil. As such, he gained the rights to possess, cultivate, and enjoy the landholding for himself. Those rights over that particular property were granted by the government to him and to no other. To insure his continued possession and enjoyment of the property, he *could not*, under the law, make any valid form of transfer **except** to the government or by hereditary succession, to his successors.[17]
>
> x x x The prohibition against transfers to persons other than the heirs of other qualified beneficiaries stems from the policy of the Government to **develop generations of farmers to attain its avowed goal to have an adequate and sustained agricultural production.** With certitude, such objective will not see the light of day if lands covered by agrarian reform can easily be converted for non-agricultural purposes.[18] (Capitalization in the original; italics, emphasis and underscoring supplied)

In light of the foregoing discussion, resolution of the issue of whether RBDI is entitled to damages is rendered unnecessary.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals dated June 28, 2007 is *AFFIRMED*.

Costs against petitioner.

SO ORDERED.

Quisumbing, Acting C.J. (Chairperson),[*] *Nachura,*[**] *Brion,* and *Abad, JJ.,* concur.

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[17] *Torres v. Ventura*, G.R. No. 686044, July 2, 1990, 187 SCRA 96, 104.

[18] *Estate of the Late Encarnacion Vda. De Panlilio v. Dizon*, G.R. No. 148777, October 18, 2007, 536 SCRA 565, 600-601.

[*] Acting Chief Justice per Special Order No. 721 dated October 5, 2009.

[**] Additional member per Special Order No. 730 dated October 5, 2009.

THIRD DIVISION

[G.R. No. 181255. October 16, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ERNESTO PILI,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; GUIDING PRINCIPLES IN REVIEWING RAPE CASES.— In reviewing rape cases, this Court has been guided by the following well-entrenched principles: (a) 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; (b) due to the nature of the crime of rape where only two persons are usually involved, the testimony of the private complainant must be scrutinized with extreme caution; and (c) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.

2. ID.; ID.; RAPE IS NOT A RESPECTER OF PLACE OR TIME.— This Court has, time and again, ruled that rape can be committed in the same room where other members of the family are also sleeping, in a house where there are other occupants or even in places which to many might appear unlikely and high-risk venues for its commission. Rape is not a respecter of place or time. Neither is it necessary for the rape to be committed in an isolated place, for rapists bear no respect for locale and time in carrying out their evil deed.

3. ID.; ID.; FAILURE OF THE VICTIM TO SHOUT OR OFFER TENACIOUS RESISTANCE DID NOT MAKE THE SEXUAL INTERCOURSE VOLUNTARY.— AAA's alleged failure to cry out for help during the time the rape was supposed to have been committed, in spite of the physical proximity of her relatives, or to report the incident to them, did not make her testimony improbable. The argument of the defense that no resistance was offered by the victim to prevent accused-appellant from inserting his penis inside her vagina, lacks merit. The fact that AAA did not shout or make an outcry when her relatives were nearby does not mean that she was not raped by accused-

appellant. Failure of the victim in rape cases to shout or offer tenacious resistance did not make the sexual intercourse voluntary. The workings of a human mind when placed under emotional stress are unpredictable and people react differently. In such a situation, some may shout; others may faint; some may be shocked into insensibility; while others may welcome the intrusion. Verily, the law does not impose on the rape victim the burden of proving resistance where force or threats and intimidation were used on her. Resistance of the victim is not an element of the crime. The fact that AAA did not exert tenacious resistance did not mean that her submission to the lustful desire of accused-appellant is voluntary. In rape cases, it is not necessary that the victim should have resisted unto death. The prosecution has established beyond doubt that accused-appellant made threats on the life of AAA, as well as on the lives of her two nieces. This threat alone is sufficient for AAA to revoltingly submit to the bestial act of the accused. It bears to emphasize that accused-appellant covered her mouth when she fought him off and shouted. It was then that he threatened to kill her and her nieces should she again shout. His threat to kill them intimidated her. At this juncture, AAA could only cry helplessly when accused-appellant ravished her against her will.

4. ID.; ID.; SIX DAYS DELAY IN REPORTING THE RAPE INCIDENT TO THE PROPER AUTHORITIES IS IRRELEVANT.— Delay in reporting the crime is not an indication of a fabricated charge and does not necessarily detract from the witness' credibility as long as it is satisfactorily explained. In some cases, even a delay of three years was not considered to detract from the complainant witness' credibility. It is noteworthy that the alleged delay involved here, as contemplated by the defense, concerns only a period of six days from the time of the incident. Said period is hardly a delay. The reason thereof was also sufficiently explained. x x x It is not unusual for a victim immediately following the sexual assault to conceal at least momentarily the incident, for it is not uncommon for a victim of rape to be intimidated into silence and conceal for sometime the violation of her honor, even by the mildest threat on her life.

5. REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; ABSENCE OF ILL MOTIVE IN CASE AT

BAR.— As to accused-appellant's allegation that he was charged with rape because AAA's family wanted to extort money from him upon learning that his sister was about to sell a fishpond worth ₱2,000,000.00 is too flimsy a reason, as correctly found by the trial court and appellate court. It is unnatural for a parent to use his offspring as an engine of malice. Moreover, this mere say-so which was not substantiated by any evidence is not enough to impugn a sincere prosecution for the grave crime of rape. In fact, private complainant had come to know accused-appellant only on 11 June 1998 when he moved residence to Apalit, Pampanga which is seven days prior to the date of the rape. Accused-appellant admitted that at the time the rape incident allegedly took place, he had no misunderstanding with AAA. There was no reason why AAA would accuse him of sexually abusing her if it were not true. Thus, the absence of any ill motive on the part of AAA and her family for imputing this charge of rape, added to the credibility of the charges against accused-appellant.

6. ID.; ID.; ID.; RECANTATION OF THE VICTIM, NOT GIVEN CREDENCE; REASONS.— The RTC was correct in rejecting AAA's recantation of her testimony in court. A thorough evaluation of her Affidavit of Recantation and her recantation in court manifests that AAA did not negate the commission of the rape. In fact, her Affidavit of Recantation confuses more than it clarifies matters. While stating therein that she consented to what the accused had done to her and that she was neither intimidated nor threatened in declaring her recantation, she also stated: "I voluntarily manifest that I have forgiven and pardoned the accused." What was there to forgive and pardon? The trial court correctly explained why the recantation could hardly be given any credence: The Court cannot close its eyes in observing the fact that AAA was crying profusely when she was presented by the Public Prosecutor to affirm her affidavit in support of the Motion to Dismiss. x x x Said AAA did not stop crying and it has been made clear to the Court that what she was telling at that time was against her will. Retractions are generally unreliable and are looked upon with considerable disfavor by the courts. In *People v. Ballabare*, we held that a retraction of a witness does not necessarily negate an original testimony. Affidavits of retraction can easily be secured from poor and ignorant witnesses usually for a monetary consideration. Like any other testimony, recantations are subject

to the test of credibility based on the relevant circumstances and, especially, on the demeanor of the witness on the stand.

7. CRIMINAL LAW; RAPE; AWARD OF CIVIL INDEMNITY AND MORAL DAMAGES, PROPER.— With respect to the monetary awards, the award of ₱50,000.00 as civil indemnity is proper. In *People v. Biong* and *People v. Zamoraga*, we held that upon a finding of the fact of rape, the award of civil indemnity *ex delicto* is mandatory in the amount of ₱50,000.00. Award of moral damages is also in order. Moral damages in the amount of ₱50,000.00 is automatically granted in addition without need of further proof inasmuch as it is assumed that a victim of rape has actually suffered moral injuries that entitles her to such an award.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

CHICO-NAZARIO, *J.*:

For Review under Rule 45 of the Revised Rules of Court is the Court of Appeals Decision[1] dated 13 August 2007 in CA-G.R. CR-H.C. No. 01260 entitled ***People of the Philippines v. Ernesto Pili***, affirming the Decision[2] rendered by the Regional Trial Court (RTC) of Macabebe, Pampanga, Branch 55, in Criminal Case No. 98-2130 (M), finding Ernesto Pili (accused-appellant) guilty beyond reasonable doubt of the crime of rape, and sentenced with *reclusion perpetua* and ordered to indemnify the offended party the amount of ₱50,000.00.

Accused-appellant appeals his conviction of rape.

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[1] Penned by Associate Justice Lucas P. Bersamin (now a member of this Court) with Associate Justices Portia Aliño Hormachuelos and Estela M. Perlas-Bernabe, concurring; *rollo*, pp. 4-16.

[2] Penned by Judge Reynaldo V. Roura; records, pp. 118-120.

On 14 August 1998, accused-appellant was charged with rape in a Criminal Information filed before the RTC, Branch 55, of Macabebe, Pampanga, docketed as Criminal Case No. 98-2130 (M), as follows:

> That on or about the 18th day of June, 1998, in the municipality of Apalit, province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused ERNESTO PILI, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with (AAA)[3] against her will and without her consent.[4]

Accused-appellant, with the assistance of counsel, pleaded NOT GUILTY to the charge.[5]

A pre-trial conference was held on 14 September 1998 in the presence of the government prosecutor, the accused-appellant, and his counsel. Based on the pre-trial order issued by the trial court on the same date, the prosecution marked in evidence the following documents, to wit:

Exhibits A and A-1 – the *Sinumpaang Salaysay* of the complaining witness AAA;[6]

Exhibit B – the Medico Legal O.B. Gyne Report of Dr. Emerita Cristobal;[7]

Exhibit C – the Criminal Complaint docketed as Criminal Case No. 92-93 at the Municipal Circuit Trial Court Apalit-San Simon, Apalit, Pampanga;[8] [and]

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[3] The name and address of the victim are withheld to protect her privacy, pursuant to Republic Act No. 9262 (The Anti-Violence Against Women and Their Children Act of 2004) and its implementing rules; and Administrative Matter No. 04-10-11-SC (The Supreme Court Rule on Violence Against Women and their Children), effective 15 November 2004. (See also *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419.)

[4] Records, p. 2.

[5] *Id.* at 20.

[6] *Id.* at 56.

[7] *Id.* at 58.

[8] *Id.* at 59.

Exhibits D and D-1 – the Police Investigation Report of PO1 Conchita Guevarra;[9]

Exhibit E – the *Sinumpaang Salaysay* of the mother of the victim AAA.[10]

The defense denied Exhibits A, D, and E; but admitted Exhibits B and C as to their existence.

Thereafter, trial on the merits ensued.

The prosecution presented private complainant AAA, whose version of the events has been summarized by the Office of the Solicitor General as follows:

At about 8 o'clock in the evening of 18 June 1998, AAA was inside a rented room located at XXX, Apalit, Pampanga, accompanied by her two nieces ages four years and one year old, respectively, who were then both asleep. Momentarily, she heard someone knocking at the door. Thinking that it was her sister BBB, she opened the door. T hereupon, she saw accused-appellant Ernesto Pili who pushed her backward and continued to do so until she was forced to lie down on the wooden bed. AAA screamed and tried to fight back. However, accused-appellant covered her mouth and threatened to kill her and her two nieces if she would persist in shouting. Intimidated by appellant's threat, AAA quieted down. Accused-appellant forcibly kissed AAA all over her body and, despite her resistance, he was able to remove her pants and panty. He raised her blouse and mashed her breasts. Thereafter, accused-appellant placed himself on top of her. AAA crossed her legs but accused-appellant forcibly spread them apart and thereafter inserted his penis into her vagina. Accused-appellant had sexual intercourse with AAA. She felt extreme pain and because of her helplessness, she just cried. After satisfying his lust, accused-appellant hurriedly left. The incident was reported to the police authorities on 24 June 1998. On 25 June 1998, AAA was subjected to a medico-legal examination at the Jose B. Lingad Hospital in San Fernando,

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[9] *Id.* at 60.

[10] *Id.* at 7.

Pampanga. Upon physical examination, it was determined that AAA had a deep laceration in her hymen.

On the other hand, the defense presented its version of the facts through the testimonies of its five witnesses, namely: (1) Francisco Pangilinan (Pangilinan); (2) Efren Bernarte Sabado; (3) DDD (a relative of AAA); (4) Emma P. Santos, a sister of accused-appellant; (5) Ernesto Pili, accused-appellant.

Francisco Pangilinan testified, among other things, that he and his family were renting a room inside the house of accused-appellant, which room is adjacent to the room rented by BBB, the sister of AAA. The two rooms were separated only by a hollow block wall with an open space before the roofing. On 18 June 1998 at about 7:00 o'clock in the evening, DDD arrived at the room rented by them. At that time, accused-appellant was already inside the room conversing with the witness. Efren Sabado and CCC (brother-in-law of AAA) were also inside the room. They then started drinking liquor and were conversing. As the room of Pangilinan is small, they occupied the front portion near the door and window of the room. While they were drinking liquor, BBB, wife of CCC, came and asked money from CCC, and the latter told BBB that he did not have money. When BBB was not able to get money from her husband CCC, she left. Upon hearing that BBB asked money from her husband and was not given money, DDD told accused-appellant who was then seated by the door to give BBB the amount of ₱20.00 and accused-appellant obliged. According to the witness, the room occupied by AAA was about seven steps from the door of his room, with accused-appellant taking only a few seconds to give the money and return to the room of Pangilinan. Pangilinan saw accused-appellant hand the ₱20.00 bill to BBB and accused-appellant, after giving the money, returned to Pangilinan's room. Accused-appellant did not even enter the room of AAA and that the only time he left the room where they were drinking liquor was when DDD asked him to give money to BBB. It was about past 9:00 o'clock in the evening when DDD, Efren Sabado, accused-appellant, and CCC, left his room. From 7:00 to 9:00 o'clock in the evening, CCC, the brother-in-law of AAA, was with the above-named persons drinking liquor. According

to him, during the time their group was inside his room, they did not hear any shouts or commotion inside the adjacent room occupied by AAA and her sister BBB.

DDD and Efren Sabado took the witness stand to corroborate the testimony of Pangilinan, affirming his earlier testimony that they were at the room rented by him on 18 June 1998 from 7:00 to past 9:00 o'clock in the evening. Both testified to DDD handing over ₱20.00 to accused-appellant and requesting the latter to give BBB the ₱20.00 bill. Accused-appellant handed over the ₱20.00 bill to BBB and he thereafter returned to Pangilinan's room where they were drinking and conversing, after only a few seconds from the time they left. CCC, the brother-in-law of AAA, was with them from 7:00 to past 9:00 o'clock at the room of Pangilinan. As in the testimony of Pangilinan, it was elicited from the testimonies of the two witnesses that accused-appellant did not leave the room except for a very few seconds when he gave the money to BBB. They did not notice any commotion or shouts inside the adjacent room occupied by AAA and her sister.

Emma P. Santos, a sister of accused-appellant, testified that she is the caretaker of the house (which is owned by her sister Elsa who is based in Japan) rented by Pangilinan, accused-appellant, AAA and her sister. According to Santos, on 18, 19, 20, 21, 22, and 23 of June 1998, Santos visited her parents and accused-appellant, wherein she also happened to see AAA and BBB. During the times she encountered AAA on those dates, nothing was relayed to her in relation to the filing of a complaint against her brother.

The last witness for the defense was accused-appellant himself who denied the rape charges against him by AAA. He affirmed the testimony of Pangilinan that he and his wife were inside the room of Pangilinan on 18 June 1998 before 7:00 in the evening up to past 9:00 o'clock in the evening. DDD, Efren Sabado and CCC, brother-in-law of AAA, were drinking liquor and conversing inside the room of Pangilinan on said date and time. Since he was seated near the door of the room of Pangilinan, accused-appellant was requested by DDD, a relative of AAA and BBB, to give ₱20.00 to BBB who was at the room adjacent to their

room. Accused-appellant then complied with the request of DDD and gave the ₱20.00 to BBB who was then near the door of the room where they were drinking. The distance from the door of Pangilinan's room to the door of the room of BBB is only about seven steps away. Accused-appellant returned to the room of Pangilinan immediately after giving the money to BBB. Accused-appellant did not enter the room of AAA and no commotion or shouts were heard. The following day, accused-appellant saw AAA in front of their rented room, who gave the usual friendly gestures to him. On subsequent dates, or from 20-23 June 1998, AAA stayed at their rented room and maintained the same friendly attitude towards him. On 24 June 1998, AAA left their rented room. AAA did not accuse him of doing anything wrong before leaving their rented room on 24 June 1998. Accused-appellant denies AAA's rape accusations against him alleging that the charges were fabricated because AAA and her mother became aware that his mother's land was being sold for a considerable amount and they just wanted the case settled for money.

Giving more credence to the evidence for the prosecution, the trial court rendered judgment on 23 August 1999 convicting accused-appellant as charged, disposing as follows:

> WHEREFORE, all the foregoing considered, the Court finds the accused Ernesto Pili guilty beyond reasonable doubt of the crime of rape penalized under Article 335 of the Revised Penal Code, as amended and as a consequence of which, he is hereby sentenced to suffer the mandatory penalty of *reclusion perpetua* and to indemnify the offended party the amount of ₱50,000.00.[11]

Claiming that the constitutional presumption of innocence was not overcome by the evidence of the prosecution, accused-appellant filed a Motion for Reconsideration[12] with the same court on 15 September 1999.

While the motion for reconsideration was still pending resolution, Assistant Prosecutor Olimpio Datu asked for leave

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[11] *Id.* at 20.

[12] *Id.* at 128-133.

to confer with the trial judge in chambers, which request was granted by the trial court. Thereafter, Assistant Prosecutor Datu filed a Motion to Dismiss[13] on the basis of an Affidavit of Recantation[14] allegedly executed before him by AAA on 17 September 1999. The Motion to Dismiss dated 20 September 1999 contained these allegations:

1. That the private complainant (AAA) executed her Affidavit of Recantation attached hereto, stating therein the reasons for doing so;

2. That considering that the above-entitled case was already decided by this Honorable Court convicting the accused of the crime charged, the undersigned lost no time to talk to the private complainant regarding the probable effects and consequences of her recantation;

3. That after a thorough and intense conference with the private complainant and immediate members of her family, the private complainant attested to the truth of what was stated in her Affidavit of Recantation, as well as her knowledge of the consequences of such an act;

4. That the private complainant reiterated that she was not forced nor coerced into making her recantation, neither was it in exchange for any valuable consideration but was made voluntarily following the dictates of her conscience;

WHEREFORE, in the interest of justice, it is respectfully prayed that the above entitled case be dismissed.[15]

On 21 September 1999, AAA personally affirmed under oath the contents of her affidavit of recantation during the hearing of the pending motions, reiterating the following statements in her affidavit:

That I very careful(sic) considered the facts and circumstances that cause(sic) the filing of the above entitled complaint and have finally ascertained that what transpired between me, and the

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[13] *Id.* at 136.

[14] Exhibit A; records, p. 142.

[15] Records, p. 136.

accused, the subject of the above-entitled complaint is a mere misunderstanding and out of revenge and to save face and embarrassment, I made it appear in my *salaysay* and testimony given in court that I was raped by the accused, the truth of the matter is that what accused did to me was done with my consent and that I was not intimidated neither threatened by the accused;

That whatever transpired between me and the accused and whatever he had done to me, by virtue of this affidavit, I voluntarily manifest that I have forgiven and pardoned the accused;

That I will not have peace of mind if the above entitled case be not re-opened in order to make known to the Honorable Court the true facts of the case, to save an innocent person languishing (sic) jail through out his life;

That by virtue of this affidavit, I am recanting the allegations stated in my *Salaysay* and my testimony given in court the truth of the matter relative to the above entitled case is that stated above.[16]

The court *a quo* refused to give credence to the Affidavit of Recantation of AAA, denying the Motion for Reconsideration filed by the defense and holding complainant AAA liable for Direct Contempt of Court.[17] In its Order dated 24 September 1999, the RTC resolved:

WHEREFORE, the Motion for Reconsideration is denied. At the same time, the Court finds the complainant AAA guilty of Direct Contempt of Court and hereby sentence her to imprisonment of ten (10) days and pay a fine of ₱2,000.00.

The Provincial Prosecutor is directed to conduct appropriate preliminary investigation for the crime of perjury against AAA and if evidence warrant, to file the corresponding information before the proper court and to report to this court the action taken thereon.

Likewise the Hon. Secretary of Justice is called upon to conduct if it so warrants, appropriate administrative proceedings against Assistant Prosecutor Olimpio R. Datu for committing the foregoing questionable acts and who shall also be charged in a separate order,

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[16] *Id.* at 142.

[17] *Id.* at 145-148.

to be docketed separately, and heard and tried by this Court for Indirect Contempt of Court pursuant to Sec. 3 (a) and (d), Rule 71 of the Revised Rules of Court.

A duplicate original of this Order is hereby furnished the Hon. Secretary of Justice by way of 1st Indorsement for appropriate action.[18]

Accused-appellant interposed an appeal to the Court of Appeals. Finding no sufficient basis to overturn the findings of the lower court, the Court of Appeals, on 13 August 2007, rendered the assailed decision affirming the findings and conclusions of the trial court. The appellate court, however, clarified that the RTC incorrectly cited Article 335 of the Revised Penal Code as the legal provision applicable to the case[19] but Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353, which reclassified rape as a crime against persons.

Accused-appellant filed a Notice of Appeal with this Court.[20] The records of the case were elevated to the Court which required the parties to simultaneously file their respective supplemental briefs, if they so desire, within 30 days from notice.[21] Both parties, however, manifested that they were adopting their respective briefs submitted to the appellate court.

Accused-appellant raises the following assignments of error:

I. THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF RAPE DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II. THE TRIAL COURT ERRED ANEW WHEN IT ISSUED AN ORDER DATED SEPTEMBER 24, 1999 DENYING THE MOTION FOR RECONSIDERATION DATED SEPTEMBER 13, 1999 AND FURTHER DISREGARDED THE AFFIDAVIT OF

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[18] *Id.* at 147-148.

[19] *Rollo*, pp. 14-15.

[20] Pursuant to Section 13, Rule 124 of the Revised Rules on Criminal Procedure, as amended by A.M. No. 00-5-03-SC.

[21] *Rollo*, p. 16.

THE PRIVATE COMPLAINANT AAA RECANTING HER SALAYSAY AND TESTIMONIES IN OPEN COURT.

In this appeal, accused-appellant Pili makes furor concerning the following: AAA's Affidavit of Recantation; failure of the victim to shout or offer tenacious resistance; the alleged delay in filing the complaint which impairs AAA's credibility; the alleged impossibility of committing the rape inside the room of the victim AAA which is just adjacent to where AAA's brother-in-law was; the plausibility of his denial and corroborative testimonies of the defense witnesses.

We find no cogent reason to reverse the assailed judgment of the trial court and the Court of Appeals.

At the time the crime was allegedly committed, Republic Act No. 8353 or the Anti-Rape Law of 1997,[22] amending Article 335 of the Revised Penal Code and classifying rape as a crime against persons, was already in effect. The new provisions on rape, embodied in Article 266-A of the Revised Penal Code, provide:

ART. 266-A. *Rape; When and How Committed*. - Rape is committed:

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

   (a) Through force, threat or intimidation; x x x.

In reviewing rape cases, this Court has been guided by the following well-entrenched principles: (a) 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; (b) due to the nature of the crime of rape where only two persons are usually involved, the testimony of the private complainant must be scrutinized with extreme caution; and (c) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[23]

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[22] Took effect on 22 October 1997.

[23] *People v. Ruales*, 457 Phil. 160, 169 (2003); *People v. Rizaldo*, 439 Phil. 528, 533 (2002).

It is well-established that when a woman says that she has been raped, she says, in effect, all that is necessary to show that she has indeed been raped.[24] A victim of rape would not come out in the open if her motive were anything other than to obtain justice. Her testimony as to who abused her is credible where she has absolutely no motive to incriminate and testify against the accused.[25]

The records herein establish beyond reasonable doubt that at about eight in the evening of 18 June 1998, AAA was ravished by accused-appellant inside the rented room occupied by her and her sister's family. The sexual assault happened after AAA opened the door believing it was her sister who had knocked. At that time, AAA was inside the room with her 2 sleeping nieces who were aged 1 and 4 years old.

The fact that accused-appellant was part of a drinking party on the date and time of the rape did not preclude the opportunity for him to sneak undetected into the room where AAA was, and commit the rape against her. The room was adjacent to where the drinking party was, and was only a few steps away. The rape was committed in a matter of minutes. Thus, it is highly probable that the members of the drinking party would not have noticed accused-appellant's absence for a few minutes. Certainly, it is unbelievable that their attention was focused all the time to the movements of accused-appellant. The testimony of Emma Santos, being a relative and a sister of accused-appellant, is highly suspect and should be received with caution.[26] In fact, her testimony was bereft of any evidence that would negate the commission of the offense by accused-appellant. Significantly, her testimony pertained to negative averments *vis-à-vis* complainant's affirmative testimony. An affirmative testimony is far weightier than a negative one, especially when the former comes from a credible witness.[27] Hence, we discredit totally

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[24] *People v. Miñon*, G.R. Nos. 148397-400, 7 July 2004, 433 SCRA 671, 681.

[25] *People v. Novio*, 452 Phil. 568, 584 (2003).

[26] *People v. Suarez*, 496 Phil. 231, 247 (2005).

[27] *People v. Agsaoay, Jr.*, G.R. Nos. 132125-26, 3 June 2004, 430 SCRA 450, 465.

the testimonies of Pangilinan, Sabado, DDD, Santos, and accused-appellant.

In contrast, AAA narrated the harrowing events which transpired that night:

Q. While you were inside the room on that specific date and time, what, if anything, happened?

A. At about eight o'clock in the evening, sir, somebody knocked on the door of the room.

Q. When somebody knocked, what, if anything did you do?

A. I opened the door because I thought it was my sister, but instead, I saw Ernesto Pili, sir.

Q. Ernesto Pili, the accused in this case?

A. Yes, sir.

Q. And then when you opened the door and saw Ernesto Pili, what transpired next?

A. He pushed me towards the wooden bed, sir.

Q. What happened to you when you were pushed by Ernesto Pili towards the wooden bed?

A. Due to the force of his push, I was made to sit on the wooden bed, sir.

Q. And then, what happened next?

x x x x x x x x x

A. He forced me to lay down on the wooden bed, sir.

Q. When he forced you to lay down on the wooden bed, what, if anything, did you do?

A. I shouted, sir.

Q. And then what happened next?

A. I fought back, sir.

Q. You said that you fought back, why did you fight back?

A. Because he was forcing me to lay down, sir.

Q. Aside from forcing you to lay down, what else, if any, did the accused do?

x x x x x x x x x

A. I happened to lay down, sir.

Q. What happened next?

A. I shouted, sir.

Q. Why did you shout?

A. To ask for help, sir.

Q. Why were you calling for help?

A. Because he was intending to rape me, sir.

x x x x x x x x x

Q. After you shouted for help, what happened next?

A. He covered my mouth, sir.

Q. And then what happened next?

A. He threatened to kill me, sir, and my nieces.

Q. And then what happened after that?

A. I got scared of his threat to kill us, sir.

Q. After that what else happened?

A. I was scared of his threat, sir.

COURT:

Q. Is there anything that the accused did to you?

A. He forcibly kissed me, sir.

x x x x x x x x x

PROSECUTOR DATU:

Q. And then, when he was forcibly kissing you, what else, if anything, did you do?

x x x x x x x x x

A. I fought back, sir.

Q. After that, what happened next?

A. He forcibly removed my pants, sir.

Q. What else did the accused remove aside from your pants?

A. He removed my panty, sir.

Q. After the accused was able to remove your pants and panty, what transpired next?

A. He placed his body on top of me, sir.

PROSECUTOR DATU:

At this juncture, your honor, may we make it of record that the private complainant starts to shed tears.

ATTY. SIGUA:

I do not see any tears rolling down on the face of the witness, your honor.

COURT:

The Court expects that. Let the Court make his own observation.

PROSECUTOR DATU:

Q. After the accused went on top of you, what happened next?

A. I crossed my legs, sir, but he forcibly spread them apart.

Q. After the accused forcibly opened your legs, what else transpired?

A. He forcibly inserted his genital into mine, sir.

Q. How many times did the accused forcibly insert his private organ into yours?

A. Twice, sir.

Q. What did you feel after the accused was able to penetrate his private organ into yours?

A. I was hurt, sir; It was painful.

Q. After that, what happened next?

A. I shouted, sir.

Q. What else did you do, if any?

A. I just cried, sir.

Q. Where was the accused then when you shouted and cried?

A. He hurriedly left, sir.

Q. After that, what else transpired?

A. I just cried and cried, sir.[28]

AAA's testimony was supported by the medico-legal report dated 25 June 1998, with the following findings:

EXTERNAL GENITALIA & PERINEUM:	
LABIA MAJORA:	
LABIA MINORA:	Coaptated
HYMEN:	with healed deep laceration at 6 o'clock.
PELVIC EXAM:	
I.E. FINDINGS:	introitus admits 2 fingers, uterus not enlarged, no adnexial mass.
LABORATORY REQUEST:	
Pregnancy test –	negative
Smear for Spermatozoa –	negative[29]

Accused-appellant challenges the prosecution's accusation against him by harping on the fact that the alleged rape could not have taken place since AAA's room where the rape was supposed to have taken place was adjacent to the room where AAA's brother-in-law CCC and uncle DDD, were conversing and drinking liquor with other people. Her nieces were also with her inside the room.

His argument deserves scant consideration and is no aid for his denial. This Court has, time and again, ruled that rape can be committed in the same room where other members of the family are also sleeping,[30] in a house where there are other

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[28] TSN, 5 October 1998, pp. 4-8.

[29] Records, p. 58.

[30] *People v. Villorente*, G.R. No. 100198, 1 July 1992, 210 SCRA 647, 659.

occupants or even in places which to many might appear unlikely and high-risk venues for its commission.[31] Rape is not a respecter of place or time.[32] Neither is it necessary for the rape to be committed in an isolated place, for rapists bear no respect for locale and time in carrying out their evil deed.

AAA's alleged failure to cry out for help during the time the rape was supposed to have been committed, in spite of the physical proximity of her relatives, or to report the incident to them, did not make her testimony improbable. The argument of the defense that no resistance was offered by the victim to prevent accused-appellant from inserting his penis inside her vagina, lacks merit. The fact that AAA did not shout or make an outcry when her relatives were nearby does not mean that she was not raped by accused-appellant. Failure of the victim in rape cases to shout or offer tenacious resistance did not make the sexual intercourse voluntary. The workings of a human mind when placed under emotional stress are unpredictable and people react differently. In such a situation, some may shout; others may faint; some may be shocked into insensibility; while others may welcome the intrusion. Verily, the law does not impose on the rape victim the burden of proving resistance where force or threats and intimidation were used on her. Resistance of the victim is not an element of the crime. The fact that AAA did not exert tenacious resistance did not mean that her submission to the lustful desire of accused-appellant is voluntary. In rape cases, it is not necessary that the victim should have resisted unto death.[33] The prosecution has established beyond doubt that accused-appellant made threats on the life of AAA, as well as on the lives of her two nieces. This threat alone is sufficient for AAA to revoltingly submit to the bestial act of the accused. It bears to emphasize that accused-appellant covered her mouth when she fought him off and shouted. It

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[31] *People v. Malones*, 469 Phil. 301, 326 (2004).

[32] *People v. Alviz*, G.R. Nos. 144551-55, 29 June 2004, 433 SCRA 164, 172.

[33] *People v. Espinosa*, G.R. No. 138742, 15 June 2004, 432 SCRA 86, 95; *People v. Almanzor*, 433 Phil. 667, 700 (2002); *People v. Gumahob*, 332 Phil. 855, 867 (1996).

was then that he threatened to kill her and her nieces should she again shout. His threat to kill them intimidated her. At this juncture, AAA could only cry helplessly when accused-appellant ravished her against her will.

Accused-appellant contends that after the alleged rape, AAA did not report immediately to her mother, and that it took her six (6) days to report the incident to the police authorities. Delay in reporting the crime is not an indication of a fabricated charge and does not necessarily detract from the witness' credibility as long as it is satisfactorily explained.[34] In some cases, even a delay of three years was not considered to detract from the complainant witness' credibility. It is noteworthy that the alleged delay involved here, as contemplated by the defense, concerns only a period of six days from the time of the incident. Said period is hardly a delay. The reason thereof was also sufficiently explained. As rationalized by the trial court:

> Because of the threat made by the accused, she opted to remain silent and did not immediately inform her family about the incident. She goes on with her life as if nothing happened but not after June 22, 1998 when another attempt on her womanhood was made by Elmer Pili, brother of the accused, and for fear that the sexual assault on her person might be repeated, she broke her silence and revealed the sexual abuse committed against her by the accused, as well as the attempt made by Elmer Pili, to her mother and the same was reported to the police authorities on June 24, 1998.[35]

It is not unusual for a victim immediately following the sexual assault to conceal at least momentarily the incident, for it is not uncommon for a victim of rape to be intimidated into silence and conceal for sometime the violation of her honor, even by the mildest threat on her life.

As to accused-appellant's allegation that he was charged with rape because AAA's family wanted to extort money from him upon learning that his sister was about to sell a fishpond worth

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[34] *People v. Barcena*, G.R. No. 168737, 18 February 2006, 482 SCRA 543, 555.

[35] Records, p. 120.

₱2,000,000.00 is too flimsy a reason, as correctly found by the trial court and appellate court. It is unnatural for a parent to use his offspring as an engine of malice.[36] Moreover, this mere say-so which was not substantiated by any evidence is not enough to impugn a sincere prosecution for the grave crime of rape. In fact, private complainant had come to know accused-appellant only on 11 June 1998 when he moved residence to Apalit, Pampanga which is seven days prior to the date of the rape. Accused-appellant admitted that at the time the rape incident allegedly took place, he had no misunderstanding with AAA. There was no reason why AAA would accuse him of sexually abusing her if it were not true. Thus, the absence of any ill motive on the part of AAA and her family for imputing this charge of rape, added to the credibility of the charges against accused-appellant.

The RTC was correct in rejecting AAA's recantation of her testimony in court. A thorough evaluation of her Affidavit of Recantation and her recantation in court manifests that AAA did not negate the commission of the rape. In fact, her Affidavit of Recantation confuses more than it clarifies matters. While stating therein that she consented to what the accused had done to her and that she was neither intimidated nor threatened in declaring her recantation, she also stated: "I voluntarily manifest that I have forgiven and pardoned the accused." What was there to forgive and pardon?

The trial court correctly explained why the recantation could hardly be given any credence:

> The Court cannot close its eyes in observing the fact that AAA was crying profusely when she was presented by the Public Prosecutor to affirm her affidavit in support of the Motion to Dismiss. After observing and comparing her demeanor when she was testifying during the trial and her testimony in support of the Motion to Dismiss, the Court believes that it has to sustain its findings of facts established during the trial. Her Affidavit of Recantation prepared and presented by Prosecutor Datu cannot be given credit by the Court.

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[36] *People v. Ching*, 310 Phil. 269, 287 (1995); *People v. Suarez*, 496 Phil. 231, 248 (2005).

Moreover, the Court wonders why it occurred to the mind of the Public Prosecutor to file his Motion to Dismiss on the basis of the Affidavit of Recantation of the private complainant despite the fact that said complainant was presented by him during the trial and from which the court based its decision mainly and purely on the truthfulness and merit of such testimony. The prosecutor should have seriously considered not to proceed with his presentation of AAA who has been crying all the time that she was testifying on her Affidavit of Recantation supporting the Motion to Dismiss of the said prosecutor. Said AAA did not stop crying and it has been made clear to the Court that what she was telling at that time was against her will.[37]

Retractions are generally unreliable and are looked upon with considerable disfavor by the courts.[38] In *People v. Ballabare*,[39] we held that a retraction of a witness does not necessarily negate an original testimony. Affidavits of retraction can easily be secured from poor and ignorant witnesses usually for a monetary consideration.[40] Like any other testimony, recantations are subject to the test of credibility based on the relevant circumstances and, especially, on the demeanor of the witness on the stand.[41]

Rape, defined and penalized under paragraph 1(a) of Article 266-A, in relation to Article 266-B, of the Revised Penal Code, as amended by Republic Act No. 8353, is punishable by *reclusion perpetua*, *viz*:

ARTICLE 266-B. *Penalties*. – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

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[37] Records, p. 147.

[38] *Reano v. Court of Appeals*, G.R. No. 80992, 21 September 1988, 165 SCRA 525, 530; *People v. Morales*, 199 Phil. 157, 163 (1982).

[39] 332 Phil. 384 (1996).

[40] *People v. Ayuman*, 471 Phil. 167, 180 (2004); *People v. Dalabajan*, 345 Phil. 945, 957 (1997); *Lopez v. Court of Appeals*, G.R. No. 101507, 29 December 1994, 239 SCRA 562, 565.

[41] *People v. Alejo*, 458 Phil. 461, 474 (2003); *People v. Gonzales*, 393 Phil. 338, 353-354 (2000).

With respect to the monetary awards, the award of ₱50,000.00 as civil indemnity is proper. In *People v. Biong*[42] and *People v. Zamoraga*,[43] we held that upon a finding of the fact of rape, the award of civil indemnity *ex delicto* is mandatory in the amount of ₱50,000.00. Award of moral damages is also in order. Moral damages in the amount of ₱50,000.00 is automatically granted in addition without need of further proof inasmuch as it is assumed that a victim of rape has actually suffered moral injuries that entitles her to such an award.[44]

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. CR-HC No. 01260 dated 13 August 2007 finding herein accused-appellant ERNESTO PILI guilty beyond reasonable doubt of violating Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353,[45] and sentencing him to suffer the penalty of *reclusion perpetua* is hereby *AFFIRMED* with *MODIFICATION* as to the award of damages. Accused-appellant is ordered to pay private complainant AAA the amounts of ₱50,000.00 as civil indemnity, and ₱50,000.00 as moral damages. Costs *de oficio.*

SO ORDERED.

Carpio Morales,[*] *Nachura, Peralta,* and *Abad,*[**] *JJ.*, concur.

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[42] 450 Phil. 432, 448 (2003).

[43] G.R. No. 178066, 6 February 2008, 544 SCRA 143, 154.

[44] *People v. Espinosa*, G.R. No. 138742, 15 June 2004, 432 SCRA 86, 103.

[45] *Id.*

[*] Per Special Order No. 744, dated 14 October 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Conchita Carpio Morales to replace Associate Justice Antonio T. Carpio, who is on official leave.

[**] Per Special Order No. 753, dated 13 October 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Roberto A. Abad to replace Associate Justice Presbitero J. Velasco, Jr., who is on official leave.

FIRST DIVISION

[G.R. No. 185726. October 16, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DARWIN BERNABE *y* GARCIA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; THE ATTEMPT OF THE WITNESSES TO DOWNPLAY THEIR PARTICIPATION IN THE CRIME DID NOT RENDER WEIGHTLESS THE EVIDENTIARY VALUE OF THEIR TESTIMONIES.— True, there were discrepancies in the testimonies of the two eyewitnesses, particularly as to their participation (or non-participation) in the murder of the victim. There was an apparent attempt on the part of both witnesses, especially of Alvin, to downplay their role in the whole incident. These discrepancies, however, are not sufficient to negate the guilt of accused-appellant. The evident attempt of Alvin and Jomar to downplay their participation in the commission of the crime did not completely render weightless the evidentiary value of their testimonies.

2. ID.; ID.; CREDIBILITY OF WITNESSES; MINOR INCONSISTENCIES IN THE TESTIMONIES OF WITNESSES DO NOT IMPAIR THEIR CREDIBILITY.— Alvin and Jomar were consistent in pointing to accused-appellant as the one who hit the victim with a metal pipe in the head causing the latter to lose consciousness, and who strangled the victim to death using a G.I. wire (*alambre*). The Court has held that although there may be inconsistencies in the testimonies of witnesses on minor details, they do not impair their credibility where there is consistency in relating the principal occurrence and positive identification of the assailants.

3. ID.; ID.; ALIBI; ACCUSED'S ALIBI DOES NOT MEET THE REQUIREMENT OF PHYSICAL IMPOSSIBILITY.— As to accused-appellant's defenses of alibi and denial, he must prove not only that he was at some other place at the time of the commission of the crime but also that it was physically

impossible for him to be at the *locus delicti* or within its immediate vicinity. Between the categorical statements of the prosecution witnesses on one hand and the bare denial of accused-appellant on the other, the former must perforce prevail. Accused-appellant's alibi does not meet the requirement of physical impossibility as he was within the immediate vicinity of the scene of the crime. The *manukan* was merely five (5) streets away from his house, while *Manuyo II* is also within *Las Piñas City*.

4. ID.; ID.; ID.; THE FACT THAT THE ACCUSED HAS TWO BROKEN FINGERS DID NOT RENDER HIM INCAPABLE OF PERPETRATING THE CRIME.— [A]ccused-appellant claims that he is physically incapable of perpetrating the alleged criminal act against the victim because the bones of his two fingers were already broken. Evidence on record reveals that the disability relied upon by accused-appellant did not render him incapable of perpetrating the crime. The testimony of defense witness Dr. Francisco Raura, the surgeon who operated on accused-appellant's hand on June 15, 2003, belied accused-appellant's claim.

5. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; PRESENT IN CASE AT BAR.— The two courts below correctly appreciated treachery, which qualified the killing of Jann Michael Olivo to Murder. The essence of treachery is the sudden and unexpected attack by an aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victim. As affirmed by the CA, the RTC found, thus: x x x, the attack on the victim Jann Michael Olivo *y* Francia was sudden wherein the victim had no inkling or opportunity to anticipate the imminence of the attack of the accused nor was he in a position to defend himself or repel the aggression because he was unarmed. To ensure the success of his criminal design, the accused hit the legs of the deceased victim several times with a piece of wood so the latter would be crippled and have no means to escape. Then, the accused hit the victim with a piece of pipe on the head which rendered the victim unconscious. Lastly, the accused strangled the victim to death by the use of a wire.

6. ID.; AGGRAVATING CIRCUMSTANCES; CRUELTY, CORRECTLY APPRECIATED; CIRCUMSTANCES SHOWING CRUELTY.— We agree with the CA when it appreciated cruelty as an aggravating circumstance in the murder of the victim. Accused-appellant, with unmitigated cruelty, inhumanly augmented the suffering of the victim. We quote with approval the following disquisition of the CA on this matter: x x x In the instant case, appellant slapped the victim; hit the victim's legs with a piece of wood; tied the victim's hands at his back; hit him on the head by a piece of pipe; and when he lost consciousness, appellant strangled him with a wire. Witness Jomar further narrated in his *Sinumpaang Salaysay* (Exhibit 'Q-1'), *viz*: *S: Nakita kong pinalo ng kahoy ni Bong iyong nakalikmong lalaki (biktima) sa ibabang tuhod nito na napa-aray sa sakit at dalawa (2) pang sunod na hataw na nagpatumba sa biktima. Nabali iyong kahoy sa huling hataw ni BONG kaya lalong nagalit ito at pinatayo itong biktima na umaaringking sa sakit. Pagkatapos ay nagalit ito at pinatayo itong biktima na umaaringking sa sakit. Pagkatapos ay nag-utos itong si BONG na maghubad ng kanyang suot na damit at sapatos itong biktima na noon ay naka-briefs na lang. Nakita kung pumunta sa parating kusina itong si BONG at kumuha ng sepilyo at lotion na nakalagay sa sisidlang bilog at inutusan ang noon ang takot na umiiyak na biktima na hubarin ang kanyang briefs. Pinatuwad ni Bong and biktima na hubad na ang briefs at pinahiran ito ng lotion sa puwet.* 08T: *Pagkatapos ano ang sumunod na pangyayari? S: Isinaksak ni BONG and hawak na sepilyo sa puwet ng biktima at napasigaw sa sakit ito at nagmakaawa pero parang sayang saya itong si Bong na nagsabi ng 'IYAN ANG PEBORIT KONG LARO, MASARAP BA GUSTO MONG ULITIN KO?* It is clear from the foregoing that cruelty attended the appellant's commission of the crime.

7. ID.; MURDER; AWARD OF DAMAGES TO THE HEIRS— When death occurs as a result of a crime, the heirs of the deceased are entitled to civil indemnity for the death of the victim without need of proof of damages. Prevailing jurisprudence dictates the award of civil indemnity in the amount of ₱75,000.00. Likewise, the awarded moral damages should be increased to ₱75,000.00 and the exemplary damages increased to ₱30,000.00 to conform with current jurisprudence.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

LEONARDO-DE CASTRO,[*] *J.*:

Before the Court is an appeal from a Decision[1] of the Court of Appeals (CA) dated July 10, 2008 in *CA-G.R.-CR-HC No. 02619* affirming with modification the decision[2] of the Regional Trial Court of Las Piñas City, Branch 202 (RTC) in *Criminal Case No. 05-0683* finding accused-appellant Darwin Bernabe *y* Garcia *a.k.a.* "Bong" guilty beyond reasonable doubt of the crime of Murder.

The information,[3] dated June 7, 2005, charged accused-appellant with Murder, to wit:

> That on or about the 26th day of May, 2005, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and without justifiable motive, did, then and there, willfully, unlawfully and feloniously, with treachery, evident premeditation abuse of superior strength, and cruelty, assault, attack, hit the head of one JANN MICHAEL OLIVO *y* FRANCIA with an iron pipe, causing the latter to fall unconscious, in which state said accused strangled the victim with a G.I. wire, directly causing the death of said JANN MICHAEL OLIVO *y* FRANCIA.
>
> CONTRARY TO LAW.

When arraigned, accused-appellant pleaded not guilty and trial on the merits ensued.

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[*] Acting Chairperson as per Special Order No. 739.

[1] Penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Mario L. Guariña III and Ricardo R. Rosario concurring; *rollo*, pp. 2-35.

[2] Record, pp. 156-172.

[3] *Id.* at 1.

The prosecution presented six witnesses, namely, Alvin Tarrobago (Alvin), and Jomar Butalid (Jomar), who both witnessed the commission of the crime; Dr. Ruperto Sambilon, Jr., the Medico Legal Officer who performed the autopsy on the victim's body; Nora Olivo, the victim's mother; SPO2 Roger Bato; and Prudencio Aristan. The following narration of events is culled from the testimonies of eyewitnesses Alvin and Jomar, as well as those of the other witnesses.

In the evening of May 25, 2005, accused-appellant invited Jomar, Alvin, and three girls known only as Kambal, Mandy, and Cherry to his house for a drinking spree. Accused-appellant allowed his guests to stay on and sleep in his bedroom.

At about 2:00 a.m. of May 26, 2005, Jomar was awakened by the voice of accused-appellant telling Alvin to join him in buying some cigarettes. Outside the house, they met the victim Jann Michael Olivo. While the three were walking along Chico Street, the victim told accused-appellant that he knew the latter. Accused-appellant poked a gun at the victim and ordered the latter to go with them to accused-appellant's house where he started questioning the victim why the latter was roaming around the house. Jomar, who was in the bedroom, heard accused-appellant strongly utter the words, "*Sino ang nagbayad sa iyo na subaybayan ako*," to which the victim answered "*Walang nagutos sa akin na subaybayan ka*." Then, Jomar heard some punching sounds and then he heard a person plead, "*Kuya Bong parang awa niyo na ho kahit dito na lang ako tumira sa inyo, huwag mo lang akong patayin*." Accused-appellant replied, "*Hindi naman kita papatayin, aminin mo lang sa akin kung sinong nagbayad sa iyo para subaybayan ako. Sabihin mo lang sa akin at dodoblehin ko ang bayad*."[4]

Unable to go back to sleep, Jomar peeped outside the bedroom. He saw accused-appellant holding a piece of wood while the victim was sitting near the front door of the house. He also saw Alvin, who was seemingly frightened, seated near another room. Jomar stayed inside the bedroom from where he saw

[4] *Id.* at 10.

accused-appellant hit the victim thrice with the piece of wood until it broke. Accused–appellant then instructed the weakened victim to undress while he went to the kitchen to get a toothbrush and some lotion. Accused-appellant commanded the victim to bend over and the former then put lotion on the victim's butt. The victim shouted in pain as accused-appellant inserted the toothbrush into the victim's anus.[5]

Accused-appellant continued to interrogate the victim and hit the latter two times with a metal pipe. He then ordered the victim to lie down and tied the latter's hands with a plastic straw. Accused-appellant got GI wire or "*alambre*," placed a gray shirt over the victim's head, and then strangled the latter with the wire. While doing this, accused-appellant called out to Jomar and Alvin and ordered the two to hold the struggling victim's feet. When the victim stopped breathing, accused-appellant got hold of two sacks from his *bodega* or stockroom, put the lifeless body inside the sacks, placed it at a corner of the house, and covered it with "*yero*" or GI sheets. In the afternoon of May 26, 2005, accused-appellant and Alvin borrowed the sidecar of Prudencio Aristan (Aristan).[6]

At dawn of May 27, 2005, accused-appellant commanded Alvin and Jomar to load the victim's body on the sidecar and dispose of the same. The two dumped the corpse in a water lily-filled vacant lot located on Guyabano St., Golden Acres Subdivision, Talon Uno, Las Piñas. Thereafter, accused-appellant threatened Alvin and Jomar that he will kill them if they report the incident to the police. Jomar and Alvin then went their separate ways and into hiding.[7]

The victim's body was found at 11:30 a.m. on May 27, 2005 and brought to the Funeraria Filipinas where an autopsy was performed by Medico Legal Officer Dr. Ruperto J. Sambilon, Jr. The Autopsy Report[8] contained the following findings:

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[5] *Id.* at 11.

[6] *Id.* at 13, 77.

[7] TSN, Jan. 23, 2006, pp. 46-49.

[8] Record, p. 85.

Body in early to moderate state of decomposition, bloated and with eyeballs having prominent appearance and seemingly about to pop-out from the eye sockets.

Cyanosis, marked, head, neck and upper areas of the torso.

Lacerated wound, 3.0 cm., forehead, left aspect.

Ligature marks:

1. Neck, 55.0 cm. long circumference, oriented horizontally around the neck below the thyroid cartilage. Widest portion 0.7 cm. at the right side and the narrowest portion 0.3 cm. at the left antero-lateral aspect. Approximate depth 0.4-0.5 cm.

2. Left wrist area, two (2) in number. Upper one is 16.0 cm long and 2.5 cm. wide and 0.2-0.3 cm. deepest portion, almost completely surrounding the distal 3rd of the left forearm near the wrist joint; 12.0 cm. long and 1.0 cm. wide 0.2-0.3 cm. deepest portion, and almost completely [surrounding] the wrist.

3. Right wrist area, 16.0 cm. long, 1.0 cm. wide and approximately 0.2 cm. deepest portion, incompletely surrounding the wrist.

Fracture, windpipe (trachea), 2nd ring below the thyroid cartilage, complete, close.

Hemorrhage, moderate, soft tissues, surrounding fractured ring. Neck muscular layer, anterior to trachea.

Heart and lungs: with several Tardieu's spots noted in the subepicardial and subpleural layers.

Tracheal wall, markedly congested.

Brain, in moderate liquefaction.

Other visceral organs, congested.

Stomach, about ¼ filled with yellowish fluid.

CAUSE OF DEATH: ASPHYXIA BY STRANGULATION (Words in brackets ours.)

On June 3, 2005, relatives of Jomar and Alvin arranged the surrender of the two minors to the authorities. Upon inquiry, they divulged what they witnessed and how they allegedly accidentally participated in the commission of the crime. They voluntarily offered themselves to help in the immediate arrest of accused-appellant.[9] On June 4, 2005, Alvin and Jomar executed their respective *Sinumpaang Salaysay*.[10]

On or about 7:30 p.m. of June 3, 2005, accused-appellant was arrested on follow-up operation at his hideout on Camias St., Golden Acres Subdivision, Talon Uno, Las Piñas. Confiscated from the possession of the accused-appellant were: a) a black nylon holster; b) one (1) live ammunition for a caliber .38 revolver; and c) a knife. The accused-appellant was brought to the Las Piñas Police Station for investigation and proper disposition.[11]

The testimony of Dr. Ruperto J. Sambilon, Jr. was dispensed with in view of the stipulation of facts[12] entered into by the prosecution and the defense, *viz*:

1. Dr. Sambilon was an expert witness;
2. He conducted an autopsy on the cadaver of the victim Jann Michael Olivo; and
3. Based on his findings, the cause of death of the victim was asphyxia by strangulation.

In lieu of the testimony of the victim's mother, Nora Olivo, the prosecution and the defense entered into the following stipulation of facts:[13]

1. She is the mother of the victim, Jann Michael Olivo;
2. She can identify her affidavit and certain documents relative to the case;

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[9] *Id.* at 14.

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

[11] *Id.* at 14.

[12] *Id.* at 50.

[13] *Id.* at 53.

3. Before the death of her son, Jann Michael Olivo, the latter was employed, as per Certification[14] issued by his employer;

4. The witness will present several documents to prove the expenses incurred for the burial of the victim; and

5. The witness will present the death certificate[15] and the certificate of live birth[16] of the victim, as well as [a] picture of the victim.

Anent the testimony of SPO2 Roger Bato, the prosecution and the defense entered into the following stipulation of facts:[17]

1. That the witness was a member of the arresting team who apprehended accused-appellant;

2. Upon investigation conducted, two persons by the name of Jomar Butalid and Alvin Tarrobago narrated the incident pertaining to the death of one Jann Michael Olivo;

3. In connection with the said investigation, Jomar Butalid and Alvin Tarrobago pointed to accused Darwin Bernabe as the one who killed Jann Michael Olivo; and

4. After investigation, the arresting team caused the arrest of the accused-appellant.

The defense made a counter-stipulation that SPO2 Bato had no personal knowledge of the alleged commission of the crime; that the arresting team was not armed with any warrant at the time of arrest; and that the accused-appellant was only arrested eight to nine days after the commission of the crime.

With regard to the testimony of Aristan, the prosecution and the defense entered into a stipulation[18] that both accused-appellant and Alvin borrowed Aristan's pedicab in the afternoon of May 26, 2005.

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[14] *Id.* at 102.

[15] *Id.* at 17.

[16] *Id.* at 95.

[17] *Id.* at 66.

[18] *Supra* note 6.

The defense had another version of the facts. It presented as witnesses accused-appellant Darwin Bernabe, Amy Bandala, and Dr. Francisco Raura. Accused-appellant's account of the incident is as follows:

In the afternoon of May 25, 2005, accused-appellant was cleaning his backyard when Jomar and Alvin arrived and asked him if they could stay in his house. Since he had known the two for more than five (5) months already, accused-appellant allowed the two to stay on condition that they help him clean his backyard. He brought Alvin and Jomar along to the "*manukan,*" which was five (5) streets away from his house, to visit his fighting cocks. After checking the food and medication of his roosters, he invited his caretaker, Noel Wagas, for a drinking session. Alvin and Jomar took some shots of liquor. At around 8:30 p.m., the two asked accused-appellant's permission to go back to the latter's house. Accused-appellant handed them the key to his gate and stayed behind.

Accused-appellant arrived home at around 2:00 a.m. of May 26, 2005 and found Alvin and Jomar having an argument with the victim, who was allegedly unknown to him at the time. He pacified the three and asked the name of the victim who introduced himself as Jann-jann. He told Alvin and Jomar to fix the problem and have Jann-jann leave his house. He then entered his bedroom where he saw three girls sleeping. He got mad and scolded Jomar and Alvin. He slept in another room until around 7:00 a.m. When he woke up, the victim was already gone, while the three girls were still sleeping. He found Jomar and Alvin fixing things on the table.

He went to the *manukan* to check on his roosters and returned home at around 1:00 p.m. to take his lunch. He rested until 5:00 p.m. and then instructed Alvin to borrow a sidecar in the nearby junkshop and to dispose of the garbage. Thereafter, he proceeded to his brother-in-law's house in *Manuyo II, Las Pinãs City* to borrow money for the vitamins of his fighting cocks. However, his brother-in-law was not there. After waiting for some time, accused-appellant went home. He arrived at his house at around 11:00 p.m. He invited Jomar and Alvin to drink.

He noticed that Alvin was nervous. The following morning, he observed Jomar and Alvin pacing back and forth and having a conversation under the *aratiles* tree, but he did not hear what they were talking about.

According to accused-appellant, Jomar asked if he could borrow money because they were going to some place. He then told the two to sell the scraps in the stockroom and from the proceeds amounting to ₱500.00, he gave them ₱300.00, and kept the remaining ₱200.00. Jomar and Alvin left for Cavite between 7:00 to 7:30 p.m. of May 27, 2005.

Accused-appellant denied the charges hurled against him. He claimed that he had no capacity to strangle the victim because he could not use his left hand effectively after undergoing an operation on his two (2) fingers.

In lieu of the oral testimony of Amy Bandala, the prosecution and the defense entered into a stipulation[19] that Amy Bandala was the Medical Records Supervisor of *Las Piñas Doctor's Hospital* and she caused the production of the original copy of the Record of Operation[20] of accused-appellant which showed that on June 15, 2003, Dr. Francisco Raura operated on the accused-appellant's neglected fracture on the 4th and 5th metacarpal fingers.

On December 4, 2006, the RTC rendered its judgment convicting accused-appellant of the crime charged, thus:

> WHEREFORE, accused Darwin Bernabe *y* Garcia *a.k.a.* "Bong" is hereby pronounced guilty beyond reasonable doubt of the crimes (*sic*) of murder defined in Article 248 of the Revised Penal Code, as amended, and there being no mitigating or aggravating circumstances in the commission of the crime is meted the penalty of ***reclusion perpetua***. Accordingly, herein accused is hereby ordered to pay the heirs of the victim the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages and ₱33,000.00 as actual damages.
>
> SO ORDERED.[21]

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[19] *Id.* at 131.

[20] *Id.* at 126, 148.

[21] *Id.* at 88.

On appeal, the CA rendered the herein challenged decision dated July 10, 2008, which affirmed with modification the decision of the RTC. The pertinent portions of the CA decision read:

Contrary to the trial court's finding of actual damages in the amount of ₱33,000.00, the actual damages established in evidence is only ₱23,000.00, broken down as follows: Official Receipt No. 1333222 (Exhibit "D") dated 05/31/2005 issued by the Manila Memorial Park Cemetery, Inc. in the amount of ₱10,000.00 for cremation fee; and Official Receipt No. 4191 (Exhibit "I") dated 10 June 2005 issued by the Funeraria Filipinas, Inc. in the sum of ₱13,000.00 as payment for the funeral services.

When actual damages proven by receipts during the trial amount to less than ₱25,000.00, such as in the present case, the award of temperate damages for ₱25,000.00, is justified in lieu of actual damages for a lesser amount. Hence, the amount of ₱25,000.00 as temperate damages is awarded to the heirs of the victim in lieu of the actual damages of ₱23,000.00 as proven by said official receipts. In addition to the damages awarded, We also impose on all the amounts of damages an interest at the legal rate of 6% from this date until fully paid.

The trial court also found that there was no aggravating nor mitigating circumstance and imposed on appellant the penalty of *reclusion perpetua.*

We modify.

The qualifying circumstance of treachery being present, the crime committed by the appellant is Murder under Article 248. The penalty for murder under Article 248 of the Revised Penal Code is *reclusion perpetua* to death. With the aggravating circumstance of cruelty and no mitigating circumstance, the penalty imposed should be in its maximum, which is death. However, in view of Republic Act No. 9346, entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines," signed into law on June 24, 2006, the penalty imposed must be reduced from death to *reclusion perpetua* without eligibility for parole.

WHEREFORE, premises considered, the appeal is **DENIED.** The Decision dated 04 December 2006 in *Crim. Case No. 05-0683* of the Regional Trial Court, Las Piñas City, Branch 202,

which found accused-appellant Darwin Bernabe *y* Garcia *a.k.a.* "Bong" guilty beyond reasonable doubt of Murder under Article 248 of the Revised Penal Code, as amended, is **AFFIRMED** with **MODIFICATION** in that, the accused-appellant is hereby sentenced to *reclusion perpetua* without eligibility for parole and ordered to indemnify the heirs of the victim Jann Michael Francia Olivo the amounts of Php 75,000.00 as civil indemnity, Php 50,000.00 as moral damages, Php 25,000.00 as exemplary damages, Php 25,000.00 as temperate damages and an interest on all the damages awarded at the legal rate of 6% from this date until fully paid.[22]

On March 6, 2009 and April 2, 2009, the Office of the Solicitor General (OSG) and accused-appellant filed their respective manifestations that they would no longer file any supplemental brief and they were submitting the case for decision based on the pleadings filed.

The instant appeal is anchored on the catch-all argument that accused-appellant's guilt has not been proven beyond reasonable doubt.

Accused-appellant capitalizes on the alleged inconsistencies in the testimonies of eyewitnesses Alvin and Jomar in their direct examination and cross examination. Accused-appellant points out that Alvin had testified that he and accused-appellant first saw the victim outside accused-appellant's house. However, on cross examination, Alvin stated that they saw the victim on *Chico Street*, the street next to *Camias Street* where accused-appellant's house was located. Alvin likewise testified that he was locked up inside the bedroom while accused-appellant was inflicting harm upon the victim. He witnessed the incident because the bedroom window was facing the living room, where the incident allegedly took place. However, on cross examination, he allegedly admitted that it was impossible for him to have seen what was happening at the *sala* through the bedroom window. While Jomar corroborated the testimony of Alvin that it was the accused-appellant who killed the victim, he never testified that they were locked inside the room when the incident

[22] *Id.* at 34-35.

allegedly happened. According to him, he witnessed the incident because he went outside the room. Accused-appellant even ordered him and Alvin to hold the victim's feet, which order they obeyed.

Accused-appellant suggests that *it is quite strange why Alvin and Jomar went into hiding right after the incident, if they were not the ones who killed the victim*, while he remained in his house. He could have fled if he was indeed responsible for the crime. Lastly, accused-appellant maintains that he was incapable of strangling the victim because the bones of his two fingers were broken.

We are not persuaded by the aforesaid arguments of accused-appellant. Hence, the appeal must be denied.

True, there were discrepancies in the testimonies of the two eyewitnesses, particularly as to their participation (or non-participation) in the murder of the victim. There was an apparent attempt on the part of both witnesses, especially of Alvin, to downplay their role in the whole incident. These discrepancies, however, are not sufficient to negate the guilt of accused-appellant. The evident attempt of Alvin and Jomar to downplay their participation in the commission of the crime did not completely render weightless the evidentiary value of their testimonies.

Alvin, who was seventeen (17) years old when presented in court, recounted the acts of accused-appellant in killing the victim, thus:

Q When you further saw Bong hitting Jann-Jann with a piece of wood in his leg, what happened next after that?
A When he repeatedly harm (*sic*) Jann-Jann, it was at that time when he tied the hands of Jann-Jann at his back, Sir.

x x x x x x x x x.

Q Now what happened afterwards when he finished tying both hands of Jann-Jann at Jann-Jann's back?
A Jann-Jann pleaded not to kill him, Sir.

Q Now, after Jann-Jann pleaded to Darwin not to kill him, what did Darwin do, if any?
A Bong did not [heed] such plea and he [seemed] to be out of his mind, Sir.

Q And, what happened afterwards?
A Then, he hit Jann-Jann with a piece of pipe [on] his head, Sir.

Q What object did Bong use in hitting Jann-Jann in his head?
A *Bakal,* Sir.

Q When he hit Jann-Jann with a hard metal object in his head, what happened to Jann-Jann?
A He lost consciousness, Sir.

Q After Jann-Jann lost consciousness because of the hit (*sic*) in his head with the use of a metal object by Bong, what happened afterwards?
A It was at that time that Bong strangled Jann-Jann, Sir.

Q With the use of what, Mr. Witness?
A With a wire, Sir.

Q How did he do that? What did he do with the wire before he strangled Jann-Jann?
A *Tinali po sa leeg niya*, sir.

SP QUIAMBAO

Your Honor, the witness has just demonstrated on how the accused Bong alias Darwin Bernabe wrapped … the wire around the neck of the deceased Jann Michael Olivo.

Q And, what did he do after he finished '*tinali sa leeg iyong* wire' in the neck of the deceased Jann Michael Olivo?
x x x x x x x x x.
A He strangled viciously Jann-Jann, Sir.

Q With the use of what instrument, Mr. Witness?
A The wire was wrapped around his hands, Sir.

Q What happened when he strangled Jann Michael Olivo with the use of a metal wire?
A When he saw Jann-Jann dead, it was the time he put Jann-Jann's body inside a sack, Sir.

Q Are you saying, Mr. Witness, that when Bong strangled Jann-Jann with the use of that wire, that was the time you came to know that Jann Michael Olivo has died?
A Yes, sir.[23] (Words in brackets ours.)

Alvin's testimony was corroborated by Jomar, who was sixteen (16) years old when he was presented in court. The trial court summarized his testimony, thus:

The aforesaid testimony was, likewise, corroborated by witness Jomar Butalid in his affidavit dated *June 4, 2005*. He narrated that on the day of the incident, he saw the accused holding a piece of wood while Alvin was sitting near another room seemingly frightened. He also saw the victim sitting near the front door of the house. Frightened at the scenery he saw, Jomar never left the room. Subsequently, Bong called him and ordered him to guard the said victim. He then saw Bong hit the victim thrice with the piece of wood until it broke. After which, he again saw the accused [strike] the victim's head with a pipe and later, strangled him to death with a wire.[24]

Alvin and Jomar were consistent in pointing to accused-appellant as the one who hit the victim with a metal pipe in the head causing the latter to lose consciousness, and who strangled the victim to death using a G.I. wire (*alambre*).

The Court has held that although there may be inconsistencies in the testimonies of witnesses on minor details, they do not impair their credibility where there is consistency in relating the principal occurrence and positive identification of the assailants.[25]

In *People v. Togahan*,[26] the Court likewise held:

While witnesses may differ in their recollections of an incident, it does not necessarily follow from their disagreement that all of them should be disbelieved as liars and their testimonies

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[23] TSN, Jan. 23, 2006, pp. 32-37.

[24] *Supra* note 2, at 168. *Supra* note 10, at 11.

[25] *People v. Valla*, G.R. No. 111285, January 24, 2000, 323 SCRA 74, 82.

[26] G.R. No. 174064, June 8, 2007, 524 SCRA 557, 572.

completely discarded as worthless. As long as the mass of testimony jibes on material points, the slight clashing statements neither dilute the witnesses' credibility nor the veracity of their testimony, for indeed, such inconsistencies are but natural and even enhance credibility as these discrepancies indicate that the responses are honest and unrehearsed.

The trial court is correct in disregarding the minor inconsistencies in the testimonies of Alvin and Jomar. We quote with approval its findings on this matter:

> In the case at bar, there may be a few minor inconsistencies in both the statements of the prosecution witnesses as Alvin Tarrobago stated that he was at the room where Jomar Butalid was sleeping and saw through a window facing the sala the ordeal that the victim [had] gone through in the hands of the accused while Jomar Butalid narrated that he went out of the said room and saw the accused hitting the victim whereas Alvin was merely sitting in the sala. However, these matters do not affect the undeniable fact that the accused [had] committed the crime charge[d]. The primordial concern is the fact that it was the accused himself who killed the victim through strangulation and as testified by the two (2) prosecution witnesses who saw the said dastardly act. The qualifying circumstances of treachery and cruelty indeed attended the killing of Jann Michael Olivo. Assuming *ex gratia arguendo* that the statement of Jomar Butalid would be believed, *i.e.*, that he and Alvin helped the accused in holding the legs of the victim, they would still be exempted from criminal liability as they did the said act because of fear. **Article 12 of the Revised Penal Code** exempts a person from criminal liability if he acts under the compulsion of an irresistible force, or under the impulse of an uncontrollable fear of equal or greater injury, because such persons did not act with freedom.

The trial court accorded greater weight to the testimonies of the prosecution witnesses and dismissed accused-appellant's defenses of denial and alibi, holding the same as self-serving evidence that cannot be given evidentiary weight greater than that of credible witnesses who testify on affirmative matters. As often stressed by this Court, the issue of credibility of witnesses is a function properly lodged with the trial court, whose findings

are entitled to great weight and accorded the highest respect by the reviewing courts.[27]

Accused-appellant attempts to deflect culpability to Alvin and Jomar by pointing out that they were the ones who went into hiding right after the incident. As the Court held in *People v. Simon*,[28] however, different people react differently to a given situation, and there is no standard form of behavioral response when one is confronted with a strange, startling, or frightful experience. In this case, we take into account the fact that Alvin and Jomar were still minors at the time they witnessed accused-appellant's brutality. Moreover, accused-appellant threatened to kill said witnesses if they reported the matter to the authorities, as shown in Alvin's testimony below:

Q And, after you were able to [dispose of] the body of the deceased, what happened afterwards?
A I and Jomar were led off by Bong and we were told by Bong not to tell anything to the police because he is going to kill us, Sir.

Q What did you feel when you were threatened by accused Darwin Bernabe that you and Jomar would be killed if ever you are going to tell to the police as to what happened?
A Jomar and I were so afraid, Sir.

Q And, eventually, what did you do after the lapse of certain number of days after this incident happened?
A Jomar and I went separate ways and we [hid] for a while and we were bothered by our conscience, Sir.[29]

Likewise in *People v. Simon*,[30] the Court belittled the defense's attempt to destroy the credibility of the prosecution witness, declaring thus:

xxx There is no clear cut standard form of behavior that can be drawn. Witnesses are usually reluctant to volunteer information

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[27] *People v. Francisco Buban*, G.R. No. 170471, May 11, 2007, 523 SCRA 118, 130-131.

[28] G.R. No. 130531, May 27, 2004, 429 SCRA 330, 351.

[29] TSN, Jan. 23, 2003, pp. 48-49.

[30] *Supra* note 28.

about a criminal case or are unwilling to be involved in or dragged into criminal investigations due to a variety of valid reasons. One may immediately report the incident to the proper authorities, while another, in fear and/or avoiding involvement in a criminal investigation, may keep to himself what he had witnessed. Others reveal the perpetrator of the crime only after the lapse of one year or so to make sure that the possibility of a threat to his life or to his loved ones is already diminished, if not totally avoided.

As to accused-appellant's defenses of alibi and denial, he must prove not only that he was at some other place at the time of the commission of the crime but also that it was physically impossible for him to be at the *locus delicti* or within its immediate vicinity. Between the categorical statements of the prosecution witnesses on one hand and the bare denial of accused-appellant on the other, the former must perforce prevail. Accused-appellant's alibi does not meet the requirement of physical impossibility as he was within the immediate vicinity of the scene of the crime. The *manukan* was merely five (5) streets away from his house, while *Manuyo II* is also within *Las Piñas City*. In *People v. Crisanto,*[31] the Court reiterated:

> It is jurisprudentially-embedded that where the distance between the scene of the crime and the alleged whereabouts of the accused is only two (2) kilometers, three (3) kilometers, or even five (5) kilometers, the same are not considered to be too far as to preclude the possibility of the presence of the accused at the *locus criminis,* even if the sole means of traveling between the two places at that time was only by walking. xxx

Alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law. They are considered with suspicion and always received with caution, not only because they are inherently weak and unreliable but also because they are easily fabricated and concocted.[32]

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[31] G.R. No. 120701, June 19, 2001, 358 SCRA 647, 658-659.

[32] *People v. Baniega,* G.R. No. 139578, February 15, 2002, 377 SCRA 170, 181.

Lastly, accused-appellant claims that he is physically incapable of perpetrating the alleged criminal act against the victim because the bones of his two fingers were already broken.

Evidence on record reveals that the disability relied upon by accused-appellant did not render him incapable of perpetrating the crime. The testimony of defense witness Dr. Francisco Raura, the surgeon who operated on accused-appellant's hand on June 15, 2003, belied accused-appellant's claim, thus:

Q: But, after the surgery that you performed on the accused on June 15, 2003, would you say that accused has lost total function of his left hand?
A: Temporarily, yes Sir.

Q: So, in the long period of time after the surgery, is it a consequence after that surgery that the accused would regain the total function of his left hand?
A: Usually, Sir, but not all.

Q: But at this time, you could tell this Honorable Court that the accused, at this time, has lost the total function of his left hand?
A: Sir, when we speak of total function is not capable of doing anything.

Q: Yes, that is what I am trying to ask you?
A: The affected bone is only 4th and 5th and the majority bones that are needed for the proper function to which are your first, second and third, it is only fourth and fifth. So, if ever there would be some problem after the procedure, it is a little percentage only, Sir.

Q: So, you are definite in stating, Mr. Witness, that the first, second and third hand bones of the accused, he is still capable of making use of his left hand?
A: Yes, Sir.[33]

The two courts below correctly appreciated treachery, which qualified the killing of Jann Michael Olivo to Murder. The essence of treachery is the sudden and unexpected attack by an aggressor

[33] TSN, August 23, 2006, pp. 167-168.

on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victim. As affirmed by the CA, the RTC found, thus:

> As vividly narrated by the prosecution witnesses, the attack on the victim Jann Michael Olivo *y* Francia was sudden wherein the victim had no inkling or opportunity to anticipate the imminence of the attack of the accused nor was he in a position to defend himself or repel the aggression because he was unarmed. To ensure the success of his criminal design, the accused hit the legs of the deceased victim several times with a piece of wood so the latter would be crippled and have no means to escape. Then, the accused hit the victim with a piece of pipe on the head which rendered the victim unconscious. Lastly, the accused strangled the victim to death by the use of a wire.[34]

We agree with the CA when it appreciated cruelty as an aggravating circumstance in the murder of the victim. Accused-appellant, with unmitigated cruelty, inhumanly augmented the suffering of the victim. We quote with approval the following disquisition of the CA on this matter:

> We also appreciate the presence of the aggravating circumstance of cruelty as appellant deliberately and inhumanly augmented the suffering of the victim. Paragraph 21, Article 14 of the Revised Penal Code provides that there is cruelty in the commission of a felony when the wrong done in the commission of the crime is deliberately augmented by causing other wrong not necessary for its commission. There is no cruelty when the other wrong is done after the victim is already dead. The test in appreciating cruelty as an aggravating circumstance is whether the accused deliberately and sadistically augmented the wrong by causing another wrong not necessary for its commission, or inhumanly increased the victim's suffering or outraged or scoffed at his person or corpse. In the instant case, appellant slapped the victim; hit the victim's legs with a piece of wood; tied the victim's hands at his back; hit him on the head by a piece of pipe; and when he lost consciousness, appellant strangled him with a wire. Witness Jomar further narrated in his *Sinumpaang Salaysay* (Exhibit 'Q-1'), *viz*:

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[34] *Supra* note 2 at 170.

S: Nakita kong pinalo ng kahoy ni Bong iyong nakalikmong lalaki (biktima) sa ibabang tuhod nito na napa-aray sa sakit at dalawa (2) pang sunod na hataw na nagpatumba sa biktima. Nabali iyong kahoy sa huling hataw ni BONG kaya lalong nagalit ito at pinatayo itong biktima na umaaringking sa sakit. Pagkatapos ay nagalit ito at pinatayo itong biktima na umaaringking sa sakit. Pagkatapos ay nag-utos itong si BONG na maghubad ng kanyang suot na damit at sapatos itong biktima na noon ay naka-briefs na lang. Nakita kung pumunta sa parating kusina itong si BONG at kumuha ng sepilyo at lotion na nakalagay sa sisidlang bilog at inutusan ang noon ang takot na umiiyak na biktima na hubarin ang kanyang briefs. Pinatuwad ni Bong and biktima na hubad na ang briefs at pinahiran ito ng lotion sa puwet.

08T: Pagkatapos ano ang sumunod na pangyayari?

S: Isinaksak ni BONG and hawak na sepilyo sa puwet ng biktima at napasigaw sa sakit ito at nagmakaawa pero parang sayang saya itong si Bong na nagsabi ng 'IYAN ANG PEBORIT KONG LARO, MASARAP BA GUSTO MONG ULITIN KO?

It is clear from the foregoing that cruelty attended the appellant's commission of the crime.

The CA's ruling finds support in *People v. Bonito*,[35] where the Court held, thus:

xxx The test in appreciating cruelty as an aggravating circumstance is whether the accused deliberately and sadistically augmented the wrong by causing another wrong not necessary for its commission and inhumanly increased the victim's suffering or outraged or scoffed at his/her person or corpse. The victim in this case was already weak and almost dying when appellant Bonito inserted the cassava trunk inside her private organ. What appellant Bonito did to her was totally unnecessary for the criminal act intended and it undoubtedly inhumanly increased her suffering. xxx

The penalty for murder under Article 248 of the Revised Penal Code is *reclusion perpetua* to death. With the aggravating circumstance of cruelty and no mitigating circumstance, the penalty imposed should be in its maximum, which is death.

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[35] G.R. No. 128002, October 10, 2000, 342 SCRA 405, 427.

However, in view of Republic Act No. 9346,[36] which was signed into law on June 24, 2006, the penalty imposed must be reduced from death to *reclusion perpetua* without eligibility for parole.

We now review the award of damages. The CA modified the damages awarded by the trial court and made the following awards: ₱75,000.00 as civil indemnity, ₱25,000.00 as temperate damages, ₱50,000 as moral damages, and ₱25,000.00 as exemplary damages.

As to damages awarded by the CA, modification is in order. When death occurs as a result of a crime, the heirs of the deceased are entitled to civil indemnity for the death of the victim without need of proof of damages. Prevailing jurisprudence dictates the award of civil indemnity in the amount of ₱75,000.00.[37] Likewise, the awarded moral damages should be increased to ₱75,000.00 and the exemplary damages increased to ₱30,000.00 to conform with current jurisprudence.[38]

The two courts below made no pronouncement as to the loss of earning capacity. Indemnification for loss of earning capacity partakes of the nature of actual damages which must be duly proven. The certificate of employment which did not state the victim's salary is not enough proof for lost income to be recovered. There must likewise be an unbiased proof of the deceased's average income. An award for loss of earning capacity refers to the net income of the deceased, *i.e.*, his total income net of expenses.[39]

WHEREFORE, the appeal is hereby *DENIED* and the assailed Decision convicting accused-appellant, imposing the penalty of *reclusion perpetua* without eligibility for parole, is *AFFIRMED* with the *MODIFICATION* that the monetary awards to be paid by accused-appellant are as follows: ₱75,000.00 as civil

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[36] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

[37] *People v. Regalario,* G.R. No. 174483, March 31, 2009.

[38] *Ibid.*

[39] *People v. Panabang*, G.R. Nos. 137514-15, January 16, 2002, 373 SCRA 560, 575.

indemnity, ₱75,000.00 as moral damages, ₱30,000.00 as exemplary damages, and ₱25,000.00 as temperate damages; and interest on all the damages awarded at the legal rate of 6% per annum from this date until fully paid is imposed.[40]

SO ORDERED.

Nachura,[**] *Brion,*[***] *Peralta,*[****] and *Bersamin, JJ.*, concur.

EN BANC

[G.R. No. 186006. October 16, 2009]

NORLAINIE MITMUG LIMBONA, *petitioner, vs.* **COMMISSION ON ELECTIONS and MALIK "BOBBY" T. ALINGAN,** *respondents.*

SYLLABUS

POLITICAL LAW; ELECTIONS; DISQUALIFICATION OF A CANDIDATE; FAILURE TO COMPLY WITH ONE-YEAR RESIDENCY REQUIREMENT TO RUN FOR MAYOR WAS AN ISSUE ALREADY SETTLED IN *LIMBONA* CASE.— The issue of petitioner's disqualification for failure to comply with the one-year residency requirement has been resolved by this Court in *Norlainie Mitmug Limbona v. Commission on Elections and Malik "Bobby" T. Alingan.* This case stemmed from the first disqualification case filed by herein respondent against petitioner, docketed as SPA No. 07-611. Although the petitioner had withdrawn the Certificate of Candidacy subject

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[40] *People v. Guevarra*, G.R. No. 182192, October 29, 2008.

[**] Additional member as per Special Order No. 740.

[***] Additional member as per Special Order No. 751.

[****] Additional member as per Special Order No. 754.

of the disqualification case, the Comelec resolved the petition and found that petitioner failed to comply with the one-year residency requirement, and was, therefore, disqualified from running as mayor of Pantar. A unanimous Court upheld the findings of the Comelec. x x x [O]ur ruling therein has now attained finality. Consequently, the issue of petitioner's compliance with the one-year residency requirement is not settled. We are bound by this Court's ruling in the earlier *Limbona* case where the issue was squarely raised and categorically resolved. We cannot now rule anew on the merits of this case, especially since the present Petition merely restates issues already passed upon by the Comelec and affirmed by this Court.

APPEARANCES OF COUNSEL

Dimnatang T. Saro for petitioner.
The Solicitor General for public respondent.
Tingcap T. Mortaba for private respondent.

R E S O L U T I O N

NACHURA, *J.*:

Before this Court is a Petition for *Certiorari* under Rule 65, in relation to Rule 64, assailing the Resolution[1] dated November 23, 2007 of the Second Division of the Commission on Elections (Comelec) and the Resolution[2] of the Comelec *En Banc* dated January 14, 2009 in SPA No. 07-621.

The factual and procedural antecedents are as follows:

Prior to the May 14, 2007 elections, petitioner Norlainie Mitmug Limbona and her husband, Mohammad "Exchan" Limbona, each filed a Certificate of Candidacy for Mayor of Pantar, Lanao del Norte. On April 2, 2007, private respondent Malik "Bobby" Alingan filed a disqualification case against Mohammad before the Provincial Election Supervisor of Lanao del Norte. On

[1] *Rollo*, pp. 51-57.

[2] *Id.* at 58-72.

April 12, 2007, Alingan also filed a petition for disqualification against petitioner.[3] Both disqualification cases were premised on the ground that petitioner and her husband lacked the one-year residency requirement and both were not registered voters of Pantar.[4]

On April 17, 2007, petitioner executed an Affidavit of Withdrawal of her certificate of candidacy,[5] which was subsequently approved by the Comelec.[6] Petitioner also filed a Motion to Dismiss the disqualification case against her for being moot and academic.[7]

On election day, May 14, 2007, the Comelec resolved to postpone the elections in Pantar because there was no final list of voters yet. A special election was scheduled for July 23, 2007.[8]

On May 24, 2007, the Comelec First Division promulgated a Resolution disqualifying Mohammad as candidate for mayor for failure to comply with the one-year residency requirement.[9] Petitioner then filed her Certificate of Candidacy as substitute candidate on July 21, 2007. On July 23, 2007, Alingan filed a petition for disqualification against petitioner for, among others, lacking the one-year residency requirement (SPA No. 07-621).[10]

In a Resolution in SPA No. 07-621[11] dated November 23, 2007, the Comelec Second Division ruled that petitioner was disqualified from running for Mayor of Pantar. The Comelec held that petitioner only became a resident of Pantar in November 2006. It explained that petitioner's domicile of origin was Maguing,

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[3] Docketed as SPA No. A07-011, *id.* at 124-130.

[4] *Rollo*, pp. 51-52.

[5] *Id.* at 134.

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

[7] *Id.* at 11-12.

[8] *Id.* at 52.

[9] *Id.* at 135-140.

[10] *Id.* at 103-111.

[11] *Id.* at 51-57.

Lanao del Norte, her birthplace. When she got married, she became a resident of *Barangay* Rapasun, Marawi City, where her husband was *Barangay* Chairman until November 2006. *Barangay* Rapasun, the Comelec said, was petitioner's domicile by operation of law under the Family Code. The Comelec found that the evidence petitioner adduced to prove that she has abandoned her domicile of origin or her domicile in Marawi City two years prior to the elections consisted mainly of self-serving affidavits and were not corroborated by independent and competent evidence. The Comelec also took note of its resolution in another case where it was found that petitioner was not even a registered voter in Pantar. Petitioner filed a Motion for Reconsideration.[12]

The Comelec resolved the motion in an *En Banc* Resolution dated January 14, 2009,[13] affirming the Second Division's Resolution disqualifying petitioner. The Comelec said that the issue of whether petitioner has complied with the one-year residency rule has been decided by the Supreme Court in *Norlainie Mitmug Limbona v. Commission on Elections and Malik "Bobby" T. Alingan* promulgated on June 25, 2008. The Comelec noted that, in said case, the Supreme Court upheld the Comelec First Division's Decision in SPA No. 07-611 disqualifying petitioner from running for mayor of Pantar for failure to comply with the residency requirement.

Petitioner is now before this Court assailing the Comelec's November 23, 2007 and January 14, 2009 Resolutions. She posits that the Comelec erred in disqualifying her for failure to comply with the one-year residency requirement. She alleges that in a disqualification case against her husband filed by Nasser Macauyag, another mayoralty candidate, the Comelec considered her husband as a resident of Pantar and qualified to run for any elective office there. Petitioner avers that since her husband was qualified to run in Pantar, she is likewise qualified to run.[14]

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[12] *Id.* at 73-92.

[13] *Id.* at 58-72.

[14] *Id.* at 16-18.

Petitioner also stresses that she was actually residing and was physically present in that municipality for almost two years prior to the May 2007 elections. During the time she had been residing in Pantar, she associated and mingled with residents there, giving her ample time to know the needs, difficulties, aspirations, and economic potential of the municipality. This, she said, is proof of her intention to establish permanent residency there and her intent to abandon her domicile in Marawi City.

She next argues that, even as her husband was *Punong Barangay* of Rapasun, Marawi City, he never abandoned Pantar as his hometown and domicile of origin. She avers that the performance of her husband's duty in Rapasun did not prevent the latter from having his domicile elsewhere. Hence, it was incorrect for the Comelec to have concluded that her husband changed his domicile only on November 11, 2006.[15] At the very least, petitioner says, the Comelec's conflicting resolutions on the issue of her husband's residence should create a doubt that should be resolved in her and her husband's favor.[16]

She further contends that to disqualify her would disenfranchise the voters of Pantar, the overwhelming majority of whom elected her as mayor during the July 23, 2007 special elections.[17]

The Comelec, through the Office of the Solicitor General (OSG), filed its Comment, insisting that the Comelec correctly disqualified petitioner from running as mayor for lack of the one-year residency requirement.[18] The OSG argues that there is no evidence that petitioner has abandoned her domicile of origin or her domicile in Marawi City.[19] Moreover, the OSG said that this Court has ruled on the issue of petitioner's residency in *Norlainie Mitmug Limbona v. Commission on Elections*

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[15] *Id.* at 24.

[16] *Id.* at 21-22.

[17] *Id.* at 32.

[18] *Id.* at 314.

[19] *Id.* at 316.

and Malik "Bobby" T. Alingan.[20] Lastly, the OSG contends that the Comelec's ruling in *Nasser A. Macauyag v. Mohammad Limbona* is not binding on petitioner because she was not a party to the case.[21]

We dismiss the Petition.

The issue of petitioner's disqualification for failure to comply with the one-year residency requirement has been resolved by this Court in *Norlainie Mitmug Limbona v. Commission on Elections and Malik "Bobby" T. Alingan.*[22] This case stemmed from the first disqualification case filed by herein respondent against petitioner, docketed as SPA No. 07-611. Although the petitioner had withdrawn the Certificate of Candidacy subject of the disqualification case, the Comelec resolved the petition and found that petitioner failed to comply with the one-year residency requirement, and was, therefore, disqualified from running as mayor of Pantar.

A unanimous Court upheld the findings of the Comelec, to wit:

WHEREFORE, the petition for *certiorari* is **DISMISSED.** The September 4, 2007 Resolution of the Commission on Elections in SPA Case No. 07-611 disqualifying petitioner Norlainie Mitmug Limbona from running for office of the Mayor of Pantar, Lanao del Norte, and the January 9, 2008 Resolution denying the motion for reconsideration, are **AFFIRMED.** In view of the permanent vacancy in the Office of the Mayor, the proclaimed Vice-Mayor shall **SUCCEED** as Mayor. The temporary restraining order issued on January 29, 2008 is ordered **LIFTED.**

SO ORDERED.[23]

The Court found that petitioner failed to satisfy the one-year residency requirement. It held:

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[20] *Id.* at 318-319.

[21] *Id.* at 320.

[22] *En Banc* Decision penned by Justice Consuelo Ynares-Santiago (a retired member of this Court), G.R. No. 181097, June 25, 2008, 555 SCRA 391.

[23] *Limbona v. Commission on Elections*, *id.* at 404-405.

The Comelec correctly found that petitioner failed to satisfy the one-year residency requirement. The term "residence" as used in the election law is synonymous with "domicile," which imports not only intention to reside in a fixed place but also personal presence in that place, coupled with conduct indicative of such intention. The manifest intent of the law in fixing a residence qualification is to exclude a stranger or newcomer, unacquainted with the conditions and needs of a community and not identified with the latter, from an elective office to serve that community.

For purposes of election law, the question of residence is mainly one of intention. There is no hard and fast rule by which to determine where a person actually resides. Three rules are, however, well established: first, that a man must have a residence or domicile somewhere; *second,* that where once established it remains until a new one is acquired; and *third,* a man can have but one domicile at a time.

In order to acquire a domicile by choice, there must concur (1) residence or bodily presence in the new locality, (2) an intention to remain there, and (3) an intention to abandon the old domicile. A person's "domicile" once established is considered to continue and will not be deemed lost until a new one is established.

To successfully effect a change of domicile one 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. In other words, there must basically be *animus manendi* coupled with *animus non revertendi*. The purpose to remain in or at the domicile of choice must be for an indefinite period of time; the change of residence must be voluntary; and the residence at the place chosen for the new domicile must be actual.

Petitioner's claim that she has been physically present and actually residing in Pantar for almost 20 months prior to the elections, is self-serving and unsubstantiated. As correctly observed by the Comelec:

> In the present case, the evidence adduced by respondent, which consists merely of self-serving affidavits cannot persuade Us that she has abandoned her domicile of origin or her domicile in Marawi City. It is alleged that respondent "*has been staying, sleeping and doing business in her house for more than 20 months"* in Lower Kalanganan and yet, there is no independent and competent evidence that would corroborate such statement.

> Further, We find no other act that would indicate respondent's intention to stay in Pantar for an indefinite period of time. The filing of her Certificate of Candidacy in Pantar, standing alone, is not sufficient to hold that she has chosen Pantar as her new residence. We also take notice of the fact that in SPA No. 07-611, this Commission has even found that she is not a registered voter in the said municipality warranting her disqualification as a candidate.

We note the findings of the Comelec that petitioner's domicile of origin is Maguing, Lanao del Norte, which is also her place of birth; and that her domicile by operation of law (by virtue of marriage) is Rapasun, Marawi City. The Comelec found that Mohammad, petitioner's husband, effected the change of his domicile in favor of Pantar, Lanao del Norte only on November 11, 2006. Since it is presumed that the husband and wife live together in one legal residence, then it follows that petitioner effected the change of her domicile also on November 11, 2006. Articles 68 and 69 of the Family Code provide:

> Art. 68. **The husband and wife are obliged to live together**, observe mutual love, respect and fidelity, and render mutual help and support.
>
> Art. 69. **The husband and wife shall fix the family domicile**. In case of disagreement, the court shall decide. **The court may exempt one spouse from living with the other if the latter should live abroad or there are other valid and compelling reasons for the exemption**. However, such exemption shall not apply if the same is not compatible with the solidarity of the family. (Emphasis ours)

Considering that petitioner failed to show that she maintained a separate residence from her husband, and as there is no evidence to prove otherwise, reliance on these provisions of the Family Code is proper and is in consonance with human experience.

Thus, for failure to comply with the residency requirement, petitioner is disqualified to run for the office of mayor of Pantar, Lanao del Norte. x x x.[24]

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[24] *Id.* at 401-404.

Petitioner's Motion for Reconsideration of the above-quoted Decision was denied with finality on March 3, 2009.[25] Petitioner filed another Motion for Reconsideration,[26] which the Court treated as a Second Motion for Reconsideration and, consequently, denied in a Resolution dated June 2, 2009.[27] Of late, petitioner has filed a "Manifestation" that raises yet again the issues already resolved in the petition and which the Court has, accordingly, merely noted without action.[28] Thus, our ruling therein has now attained finality.

Consequently, the issue of petitioner's compliance with the one-year residency requirement is now settled. We are bound by this Court's ruling in the earlier *Limbona* case where the issue was squarely raised and categorically resolved. We cannot now rule anew on the merits of this case, especially since the present Petition merely restates issues already passed upon by the Comelec and affirmed by this Court.

WHEREFORE, the foregoing premises considered, the Petition is *DISMISSED* and the Resolution dated November 23, 2007 of the Second Division of the Commission on Elections and the Resolution of the Commission on Elections *En Banc* dated January 14, 2009 in SPA No. 07-621 are *AFFIRMED*.

SO ORDERED.

Quisumbing, Acting C.J., Carpio, Corona, Carpio Morales, Chico-Nazario, Leonardo-de Castro, Brion, Peralta, Bersamin, and *Abad, JJ.,* concur.

Puno, C.J. and *Velasco, Jr., J.,* on official leave.

Del Castillo, J., on leave.

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[25] *Rollo* (G.R. No. 181097), pp. 501-502.

[26] *Id.* at 438-474.

[27] *Id.* at 539-540.

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

THIRD DIVISION

[G.R. No. 186418. October 16, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALFREDO LAZARO, JR. *a.k.a* JUN LAZARO *y* AQUINO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. No. 9165); ILLEGAL SALE OF *SHABU*; ELEMENTS, ESTABLISHED.— To secure a conviction for **illegal sale** of *shabu*, the following essential elements must be established: (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 thereof. In prosecutions for illegal sale of *shabu*, 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. In the case at bar, the prosecution was able to establish, through testimonial, documentary and object evidence, the said elements.

2. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS, ESTABLISHED.— [I]n **illegal possession** of dangerous drugs, such as *shabu*, the elements are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug. All these elements have been established. SPO1 Indunan testified that after appellant sold to him *shabu*, he (SPO1 Indunan) and the members of the buy-bust team arrested appellant. He then frisked appellant and recovered from the latter a green box which contained plastic sachet with white granules. The chemistry report of Forensic Analyst Albon confirms that such plastic sachet found inside the green box contains 0.04 gram of *shabu*.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL COURT THEREON.— The testimonies of the prosecution

witnesses regarding appellant's illegal sale and possession of *shabu* are consistent with the documentary and object evidence submitted by the prosecution. The RTC and the Court of Appeals found the testimonies of the prosecution witnesses to be credible. Both courts also found no ill motive on their part to testify against appellant. The rule is that the findings of the trial court on the credibility of witnesses are entitled to great respect because trial courts have the advantage of observing the demeanor of the witnesses as they testify. This is more true if such findings were affirmed by the appellate court. When the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon this Court.

4. ID.; ID.; DEFENSES; DENIAL AND FRAME-UP MUST BE PROVED WITH STRONG AND CONVINCING EVIDENCE.— The defenses of denial and frame-up have been invariably viewed by this Court with disfavor for it can easily be concocted and is a common and standard defense ploy in prosecutions for violation of Dangerous Drugs Act. In order to prosper, the defenses of denial and frame-up must be proved with strong and convincing evidence. In the cases before us, appellant failed to present sufficient evidence in support of his claims. Aside from his self-serving assertions, no plausible proof was presented to bolster his allegations.

5. ID.; ID.; TESTIMONY OF WITNESSES; LACK OF IMPROPER MOTIVE TO TESTIFY.— Appellant imputes ill motive on the part of the buy-bust team by asseverating that he had a previous quarrel with PO3 Lubos and that he knows some members of the buy-bust team. Withal, this allegation is uncorroborated and unsubstantiated. Hence, the imputation of improper motive should be negated. When the police officers involved in the buy-bust operation have no motive to testify against the accused, the courts shall uphold the presumption that they have performed their duties regularly.

6. ID.; ID.; ID.; MOTIVE IS NOT ESSENTIAL FOR CONVICTION WHEN THE CULPRIT HAS BEEN POSITIVELY IDENTIFIED.— [M]otive is not essential for conviction for a crime when there is no doubt as to the identity of the culprit, and that lack of motive for committing the crime does not preclude conviction for such crime when the crime and

participation of the accused are definitely proved. In the instant cases, SPO1 Indunan positively identified appellant as the one who sold to him *shabu* during the buy-bust operation. He also testified that he recovered *shabu* from appellant's possession during said incident.

7. ID.; ID.; ID.; INCONSISTENCY IN THE TESTIMONY OF A WITNESS IS IRRELEVANT WHEN IT DOES NOT PERTAIN TO THE ELEMENTS OF THE CRIME.— For a discrepancy or inconsistency in the testimony of a witness to serve as basis for acquittal, it must refer to the significant facts vital to the guilt or innocence of the accused for the crime charged. An inconsistency which has nothing to do with the elements of the crime cannot be a ground for the acquittal of the accused. The inconsistency cited by appellant refers to trivial matter and is clearly beyond the elements of illegal sale of *shabu* because it does not pertain to the actual buy-bust itself – that crucial moment when appellant was caught selling *shabu*. Such inconsistency is also irrelevant to the elements of illegal possession of *shabu*.

8. CRIMINAL LAW; INSTIGATION; ABSENT IN CASE AT BAR.— As to the claim of instigation, where the police or its agent lures the accused into committing the offense in order to prosecute him and which is deemed contrary to public policy and considered an absolutory cause, there is nothing in the records which clearly and convincingly shows that appellant was instigated by the informant to sell *shabu* to SPO1 Indunan. What is apparent therein is that the informant merely introduced SPO1 Indunan to appellant as a user and buyer of *shabu* and that the informant did not in any way allure or persuade appellant to sell *shabu* to SPO1 Indunan. Also, after such introduction, it was appellant who hastily asked SPO1 Indunan how much worth of *shabu* the latter would want to buy. This obviously manifests that the idea to sell *shabu* originated from appellant without any instigation from SPO1 Indunan or the informant. Indeed, what have transpired in the instant case was a legitimate buy-bust operation and not instigation.

9. ID.; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. No. 9165); THE ISSUE OF NON-COMPLIANCE WITH SECTION 21, ARTICLE II THEREOF CANNOT BE

RAISED FOR THE FIRST TIME ON APPEAL.— It should be noted that appellant raised the buy-bust team's alleged non-compliance with Section 21, Article II of Republic Act No. 9165 for the first time on appeal. This, he cannot do. It is too late in the day for him to do so.

10. ID.; ID.; NON-COMPLIANCE WITH SECTION 21, ARTICLE II OF R.A. 9165 IS NOT FATAL AS LONG AS THE INTEGRITY OF THE SEIZED ITEMS WAS PRESERVED.— [W]e have held in several cases that non-compliance with Section 21, Article II of Republic Act No. 9165 is not fatal and will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance 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 present case, the integrity of the drugs seized from appellant was preserved. The chain of custody of the drugs subject matter of the instant case was shown not to have been broken.

11. ID.; ID.; THE CHAIN OF CUSTODY OF THE SEIZED DRUG MUST BE CLEARLY ESTABLISHED NOT TO HAVE BEEN BROKEN AND THE DRUGS SEIZED WERE PROPERLY IDENTIFIED.— [N]ot all people who came into contact with the seized drugs are required to testify in court. There is nothing in Republic Act No. 9165 or in any rule implementing the same that imposes such a requirement. As long as the chain of custody of the seized drug was clearly established not to have been broken and that the prosecution did not fail to identify properly the drugs seized, it is not indispensable that each and every person who came into possession of the drugs should take the witness stand.

12. ID.; ID.; PENALTY FOR ILLEGAL SALE OF *SHABU*.— Under Section 5, Article II of Republic Act No. 9165, the unauthorized sale of *shabu*, regardless of its quantity and purity, carries with it the penalty of life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (₱500,000.00) to Ten Million Pesos (₱10,000,000.00). Pursuant, however, to the enactment of Republic Act No. 9346 entitled, "An Act Prohibiting the Imposition of Death Penalty in the Philippines," only life imprisonment and fine shall be imposed. Thus, the

RTC and the Court of Appeals were correct in imposing the penalty of life imprisonment and fine of ₱500,000.00 on appellant in Criminal Case No. 2322**7**-R.

13. ID.; ID.; PENALTY FOR ILLEGAL POSSESSION OF LESS THAN FIVE GRAMS OF *SHABU*.— Section 11(3), Article II of Republic Act No. 9165 provides that illegal possession of less than five grams of *shabu* is penalized with imprisonment of twelve (12) years and one day to twenty (20) years, plus a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00). Appellant was charged with and found to be guilty of illegal possession of 0.04 gram of *shabu* in Criminal Case No. 2322**9**-R. Hence, the RTC and the Court of Appeals aptly sentenced appellant to imprisonment of 12 years and one day, as minimum, to 15 years, as maximum, and fined him ₱300,000.00, since said penalties are within the range of penalties prescribed by the aforequoted provision.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

CHICO-NAZARIO, *J.*:

For review is the Decision[1] dated 18 July 2008 of the Court of Appeals in CA-G.R. CR-HC No. 02258 which affirmed with modification the Decision[2] dated 27 April 2006 of the Regional Trial Court (RTC), Branch 61, Baguio City, in Criminal Cases No. 2322**7**-R, No. 2322**8**-R and No. 2322**9**-R, finding accused-appellant Alfredo Lazaro, Jr. *a.k.a.* Jun Lazaro *y* Aquino guilty of illegal sale, possession and use of *methamphetamine*

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[1] Penned by Associate Justice Hakim S. Abdulwahid with Associate Justices Fernanda Lampas-Peralta and Teresita Dy-Liacco Flores concurring; *rollo*, pp. 2-23.

[2] Penned by Judge Antonio C. Reyes; records (Crim. Case No. 23229-R), pp. 293-304.

hydrochloride, popularly known as *shabu*, under Sections 5, 11, and 15, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The facts gathered from the records are as follows:

On 17 June 2004, two separate informations were filed before the RTC against appellant for illegal sale and possession of *shabu* under Sections 5 and 11, Article II of Republic Act No. 9165. The accusatory portion of the informations read:

Criminal Case No. 23227-R

The undersigned accuses ALFREDO LAZARO, JR. *a.k.a* JUN LAZARO *y* AQUINO for VIOLATION OF SECTION 5, ARTICLE II OF REPUBLIC ACT 9165 otherwise known as the COMPREHENSIVE Dangerous Drugs Act of 2002, committed as follows:

That on June 15, 2004, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, x x x, and without authority of law, did then and there willfully, unlawfully and feloniously sell, distribute and/or deliver One (1) small heat sealed transparent plastic sachet containing Methamphetamine Hydrochloride known as *Shabu* in the amount of ₱3,000.00 [should be ₱300], weighing 0.05 gram to Poseur Buyer SPO1 Dennis G. Indunan, knowing fully well that said Methamphetamine Hydrochloride known as *Shabu* is a dangerous drug, in violation of the aforementioned provision of law.[3]

Criminal Case No. 23229-R

The undersigned accuses JUN LAZARO *y* AQUINO for VIOLATION OF SECTION 11, ARTICLE II OF REPUBLIC ACT 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002 committed as follows:

That on June 15, 2004, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused x x x, did then and there willfully, unlawfully and feloniously have in his possession and control One (1) small heat sealed transparent plastic sachet containing Methamphetamine Hydrochloride known as *Shabu* weighing 0.04 gram, a dangerous

[3] Records (Crim. Case No. 23227-R), p. 1.

drug, without the corresponding license or prescription in violation of the aforecited provision of law.[4]

On 18 June 2004, an information was filed with the RTC against appellant for illegal use of *shabu* under Section 15, Article II of Republic Act No. 9165, thus:

Criminal Case No. 2322**8**-R

The undersigned accuses JUN LAZARO for VIOLATION OF SECTION 15 [ARTICLE II] OF REPUBLIC ACT 9165 [otherwise known as the Comprehensive Dangerous Drugs Act of 2002], committed as follows:

That on or about the 15th day of June, 2004, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously use Dangerous Drugs particularly Methamphetamine per the result of a Qualitative Examination conducted on the urine sample taken from him, in violation of the aforecited provision of law.[5]

Subsequently, these cases were consolidated. When arraigned on 28 June 2004, appellant, assisted by counsel *de oficio*, pleaded "Not guilty" to each of the charges.[6] Trial on the merits thereafter followed.

The prosecution presented as witnesses Police Senior Inspector Hordan T. Pacatiw, Senior Police Officer (SPO) 1 Dennis G. Indunan, SPO1 Emerson A. Lingbawan and PO3 Paulino A. Lubos, all of whom are members of the Philippine National Police and were assigned at the Criminal Investigation and Detection Group, Anti-Illegal Drugs Team unit, Baguio City. Their testimonies, taken together, bear the following:

On 15 June 2004, at about 12:30 p.m., an informant went to the Criminal Investigation and Detection Group (CIDG), Anti-Illegal Drugs Team unit (AIDT), Baguio City, and reported to

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[4] Records (Crim. Case No. 23229-R), p. 1.

[5] Records (Crim. Case No. 23228-R), p. 1.

[6] Records (Crim. Case No. 23229-R), p. 25.

PO3 Paulino Lubos (PO3 Lubos) the drug trafficking activities of appellant in Central Bakakeng, Baguio City. PO3 Lubos relayed the information to Police Senior Inspector Hordan T. Pacatiw (Inspector Pacatiw), head of AIDT, who in turn, referred the matter to Senior Superintendent Marvin V. Bolabola (Superintendent Bolabola), chief of CIDG, Baguio City, for appropriate action. Superintendent Bolabola formed a team and planned a buy-bust operation. The team was composed of Inspector Pacatiw who would act as the team leader; SPO1 Dennis G. Indunan (SPO1 Indunan) as the poseur-buyer; PO3 Lubos as the seizing officer; and SPO1 Emerson A. Lingbawan (SPO1 Lingbawan) as the arresting officer. Superintendent Bolabola handed SPO1 Indunan three One Hundred Peso (₱100.00) bills to be utilized as buy-bust money. SPO1 Indunan marked the monies with "DG-06-15-04." Thereafter, the team coordinated the planned buy-bust operation with the Philippine Drug Enforcement Agency (PDEA).

At around 2:30 p.m. of the same date, the team, together with the informant, went to appellant's house at 181 Km. 3, Central Bakakeng, Baguio City. Upon arriving thereat, the informant and SPO1 Indunan saw appellant standing at the balcony of the third floor of the three-storey house. The informant proceeded inside appellant's house and talked with appellant at the balcony of the third floor, while SPO1 Indunan stood outside the house at a distance of 10 meters. The rest of the team positioned themselves outside appellant's house at a distance of 25 meters. Later, the informant signaled SPO1 Indunan to approach him and appellant at the balcony of the third floor. Thereupon, the informant introduced SPO1 Indunan to appellant as user and buyer of *shabu*. The informant subsequently excused himself and left SPO1 Indunan and appellant. Appellant then asked SPO1 Indunan how much worth of *shabu* he would want to buy. SPO1 Indunan answered he would like to purchase three hundred pesos (₱300.00) worth of *shabu*. Appellant knocked at the door of a room in the balcony and called a certain "Bong." Bong is appellant's brother whose full name is Ferdinand Bong Lazaro. A man opened the door and handed a green box to

appellant. Appellant opened the green box, took a plastic sachet from it, handed the plastic sachet to SPO1 Indunan, and demanded payment from the latter. After examining the contents of the plastic sachet and believing that the same contained *shabu*, SPO1 Indunan gave the three marked one hundred peso bills to appellant. At this juncture, SPO1 Indunan removed his sunglasses and placed it in his pocket as pre-arranged signal to the other members of the team.

The other members of the team rushed to the crime scene and identified themselves as police officers. Appellant tried to resist arrest but he was subdued by the team. Inspector Pacatiw then apprised appellant of his constitutional rights. Afterwards, SPO1 Indunan frisked and recovered from appellant the buy-bust money and the green box which contained another plastic sachet with white substance. SPO1 Indunan marked with "DG-06-15-04" the plastic sachet containing white substance sold to him by appellant, as well as the plastic sachet with white substance found inside the green box.

Meanwhile, Inspector Pacatiw knocked at the door of a room on the balcony and called on Bong to open the door but to no avail. Inspector Pacatiw and some members of the team then forcibly opened the door. Although the team found no one inside the room, they, however, subsequently saw a man, whom they believed to be Bong, running down the basement of the house and exiting through its back door. The man then disappeared.

Thereafter, the team discovered and seized at the third floor of the house several drug paraphernalias. The team made a written inventory on said paraphernalias, as well as the plastic sachet sold by appellant to SPO1 Indunan and the plastic sachet recovered in appellant's possession, in the presence of representatives from media, the Department of Justice (DOJ) and the *barangay*. Said representatives signed the inventory document on the seized items. Inspector Pacatiw took custody of the said seized items.

The team immediately brought appellant, as well as the items seized, to the office of the CIDG, Baguio City. Thereupon, the

team made a booking sheet, arrest report, a "Joint Affidavit of Arrest" and an "Affidavit of Poseur-Buyer" as regards the buy-bust operation. Superintendent Bolabola made a written request for physical examination of appellant to the PNP Benguet Provincial Crime Laboratory Office. After conducting a physical examination on appellant, Dr. Elizardo D. Daileg, medico-legal officer of the PNP Benguet Provincial Crime Laboratory Office, issued a medico-legal certificate attesting that no injuries were found on appellant's body. Superintendent Bolabola also made separate written requests to the PNP Benguet Provincial Crime Laboratory Office for drug test on appellant and a laboratory examination on the plastic sachet containing white substance sold by appellant to SPO1 Indunan and the plastic sachet with white substance found in appellant's possession. After conducting a laboratory examination on the urine sample taken from appellant, Police Officer 1 Juliet Valentin Albon, Forensic Analyst of the PNP Benguet Provincial Crime Laboratory Office (Forensic Analyst Albon), issued a report stating that appellant was positive for *shabu*. Likewise, after making laboratory tests, Forensic Analyst Albon issued a chemistry report certifying that the plastic sachet sold by appellant to SPO1 Indunan contained 0.05 gram of *shabu* while the plastic sachet recovered from appellant's possession contained 0.04 gram of *shabu*.[7]

The prosecution also adduced documentary and object evidence to buttress the testimonies of its witnesses, to wit: (1) joint affidavit of the arresting officers signed by Inspector Pacatiw, SPO1 Lingbawan and PO3 Lubos (Exhibit A);[8] (2) affidavit of the poseur-buyer signed by SPO1 Indunan (Exhibit B);[9] (3) booking sheet and arrest report for appellant (Exhibit C);[10] (4) request to conduct laboratory examination on the two plastic sachets recovered from appellant which was signed by

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[7] TSN, 23 November 2004, 4 April 2005, 5 April 2005, 26 April 2005, 30 May 2005, 1 June 2005, 13 September 2005 and 14 September 2005.

[8] Records (Crim. Case No. 23229-R), pp. 6-7.

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

[10] *Id.* at 8.

Superintendent Bolabola;[11] (5) request for drug test on appellant signed by Superintendent Bolabola (Exhibit D);[12] (6) request for physical examination on appellant signed by Superintendent Bolabola (Exhibit E);[13] (7) medico-legal certificate signed by Dr. Daileg (Exhibit E-1);[14] (8) chemistry report on the drug test of appellant signed by Forensic Analyst Albon (Exhibit H);[15] (9) chemistry report on the content of plastic sachet sold by appellant to SPO1 Indunan and the content of the plastic sachet recovered from possession of appellant signed by Forensic Analyst Albon (Exhibit I);[16] (10) inquest disposition issued by the Office of the City Prosecutor, Baguio City (Exhibit J);[17] (11) written inventory on the items seized from appellant signed by representatives from the media, DOJ and *barangay* (Exhibit M);[18] (12) coordination sheet with the PDEA (Exhibit N);[19] (13) receipt of the items seized from appellant signed by the members of the buy-bust team (Exhibit O);[20] (14) two plastic sachet containing *shabu* sold by and recovered from the possession of appellant (Exhibit K);[21] and (15) buy-bust money confiscated from appellant (Exhibit L).[22]

For its part, the defense proffered the testimonies of appellant and his father, namely Alfredo Lazaro, Sr. to refute the foregoing accusations. Appellant denied any liability and claimed he was framed.

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[11] *Id.* at 15.

[12] *Id.* at 13.

[13] *Id.* at 11.

[14] *Id.* at 12.

[15] *Id.* at 14.

[16] *Id.* at 16.

[17] *Id.* at 181.

[18] *Id.* at 8.

[19] *Id.* at 139.

[20] *Id.* at 18.

[21] *Id.* at 45 and 237.

[22] *Id.* at 10.

Appellant testified that on 15 June 2004, between 2:00 p.m. to 3:00 p.m., he was sleeping in his room at the third floor of a three-storey house located at 181 Km. 3, Central Bakakeng, Baguio City. He was roused from his sleep by the barking of dogs outside his house. He opened the door of his room and saw PO3 Lubos, Inspector Pacatiw, SPO1 Lingbawan, SPO1 Indunan and some members of the CIDG, Baguio City, namely Warren Lacangan, Jojo Unata and Jun Digula approaching. PO3 Lubos tried to hit him with the gun but he evaded it. Inspector Pacatiw hit him several times in the stomach with a gun. Said policemen kicked him several times causing him to fall on the floor. Thereafter, the policemen destroyed the door of his brother's (Ferdinand Bong Lazaro) room and entered therein. He was dragged inside the said room. Inspector Pacatiw, SPO1 Lingbawan and PO3 Lubos then took the laptop, diskman, Buddha coin bank and power tools inside the room. Subsequently, the policemen brought him to the second floor of the house where he saw Jade Salazar (Jade), the live-in partner of his brother, Renato Lazaro. The policemen apprehended Jade, took the latter's bag and a green box, and asked her the whereabouts of Bong. He and Jade were later brought to the CIDG office, Baguio City. Thereupon, the policemen took his wallet, demanded an amount of ₱200,000.00, and told him to contact Bong so that the latter may help him settle his case.

While appellant and Jade were being held at CIDG office, Baguio City, a certain Rosita Salazar (Salazar), allegedly a Municipal Trial Court (MTC) Judge from Abra and Jade's grandmother, arrived and introduced herself to the policemen. The policemen ignored Salazar as the latter did not have any identification card. The policemen then brought appellant and Jade to the PNP Benguet Provincial Crime Laboratory Office where they were subjected to physical examination. Upon their return to the CIDG office, the policemen showed them three plastic sachets of *shabu* which would be used against them as evidence. Later, however, appellant learned that Jade was released by the policemen in exchange for a certain amount of money. During his detention in the CIDG office, he saw PO3 Lubos

preparing the marked money. At that point, he realized that a case would be filed against him in court.

Appellant denied having sold to SPO1 Indunan one plastic sachet containing 0.05 gram of *shabu* on 15 June 2004. He claimed that it was impossible for the back-up members of the buy-bust team to have witnessed his alleged sale of *shabu* to SPO1 Indunan because there were big trees beside the three-storey house which blocked the view of persons on the ground looking up to the balcony of the third floor. He denied having received from Bong a green box during the alleged buy-bust and averred that Jade owned the green box.[23]

Alfredo Lazaro, Sr., appellant's father, testified that on 15 June 2004, at about 2:00 p.m., he was watching television inside his room at the third floor of the three-storey house situated at 181 Km. 3, Central Bakakeng, Baguio City. Later, he heard the barking of dogs outside the house. Curious, he opened the door of his room. He then saw PO3 Lubos and several policemen mauling appellant. Shocked, he uttered "*apay dayta?*" (Why is that?). PO3 Lubos and the policemen stopped beating appellant. As he was already experiencing chest pains, he returned to his room. Subsequently, he saw the policemen carrying a backpack and a plastic bag the contents of which belonged to Bong.[24]

The defense also submitted a written undertaking of Jade and a receipt of custody signed by Salazar in support of its contentions.[25]

After trial, the RTC rendered a Decision convicting appellant in all of the criminal cases. In Criminal Case No. 2322**7**-R, appellant was found guilty of violating Section 5 of Republic Act No. 9165 (illegal sale of *shabu*) and was sentenced to life imprisonment. He was also ordered to pay a fine of ₱500,000.00. On the other hand, in Criminal Case No. 2322**8**-R, appellant was found guilty of violating Section 15 of Republic Act

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[23] TSN, 15 and 16 November 2005.

[24] TSN, 30 November 2005.

[25] Records (Crim. Case No. 23229-R), p. 193.

No. 9165 (illegal use of *shabu*) and was penalized with six months drug rehabilitation in a government center. With respect to Criminal Case No. 2322**9**-R, appellant was found guilty of violating Section 11 of Republic Act No. 9165 (illegal possession of *shabu*) and was meted an imprisonment of twelve (12) years and one (1) day as minimum, to fifteen (15) years, as maximum. He was further ordered to pay a fine of ₱300,000.00.

Appellant appealed to the Court of Appeals. On 18 July 2008, the Court of Appeals promulgated its Decision partly granting the appeal. The appellate court affirmed the conviction of appellant in Criminal Cases No. 2322**7**-R and No. 2322**9**-R. However, it reversed the RTC's ruling in Criminal Case No. 2322**8**-R by acquitting appellant in the said criminal case.

Appellant filed a Notice of Appeal on 12 August 2008.[26]

In his Brief[27] and Supplemental Brief,[28] appellant assigned the following errors:

I.

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE GUILT OF THE APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT;

II.

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE TESTIMONY OF THE PROSECUTION WITNESSESS WHILE TOTALLY DISREGARDING THE EVIDENCE ADDUCED BY THE DEFENSE;

III.

THE TRIAL COURT ERRED IN DISREGARDING THE PROSECUTION'S FAILURE TO COMPLY WITH THE PROCEDURES LAID DOWN IN RA 9165.[29]

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[26] CA *rollo*, p. 146.

[27] *Id.* at 51-69.

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

[29] CA *rollo*, p. 61.

In the main, appellant argues that the prosecution failed to establish his guilt for illegal sale and possession of *shabu*.

To secure a conviction for **illegal sale** of *shabu*, the following essential elements must be established: (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 thereof. In prosecutions for illegal sale of *shabu*, 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.[30] In the case at bar, the prosecution was able to establish, through testimonial, documentary and object evidence, the said elements.

SPO1 Indunan, the poseur-buyer, testified that appellant sold to him *shabu* during a legitimate buy-bust operation.[31] Per chemistry report of Forensic Analyst Albon, the substance, weighing 0.05 gram, which was bought by SPO1 Indunan from appellant for ₱300.00, was examined and found to be *methamphetamine hydrochloride* or *shabu*. SPO1 Indunan narrated the transaction with appellant as follows:

Q What happened next when you were already at the residence of the accused?

A When we were near the house, we saw a man standing at the balcony, Sir.

Q How many storeys is the house of the accused?

A About three (3), Sir.

Q Where is the balcony where the man was standing?

A At the third floor, Sir.

Q What happened next?

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[30] *People v. Naquita,* G.R. No. 180511, 28 July 2008, 560 SCRA 430, 449; *People v. Del Monte*, G.R. No. 179940, 23 April 2008, 552 SCRA 627, 637-638; *People v. Santiago,* G.R. No. 175326, 28 November 2007, 539 SCRA 198, 212.

[31] TSN, 5 April 2005.

A The Informant told me to wait first and he would go ahead and talk to Jun, Sir.

Q What happened next?

A After talking, the Informant signaled me to go near them, sir.

x x x x x x x x x

Q What happened next?

A The Informant signaled me to go near them, Sir.

x x x x x x x x x

Q What happened next?

A I was introduced to Jun as user and buyer of *shabu*, Sir.

Q Were you introduced by name?

A No, Sir.

Q What happened next?

A The Informant excused himself, Sir.

Q And them?

A We talked with Jun and asked me how much will I buy, Sir.

Q In what language or dialect?

A Tagalog, Sir.

Q How?

A "*Magkano bang bibilhin mo*" and I said "*tatlong daan lang*," Sir.

Q What happened next?

A He knocked at the door and called out for "Bong." Sir.

Q What happened next?

A Bong opened the door and handed Jun something a green box, Sir.

Q How did you know that it was Bong?

A That is what I heard, Sir.

Q Were you able to see the face of Bong during that time?

A Yes, Sir.

Q After Bong had opened the door, what happened next? All this time you were beside Jun?

A Yes, Sir.

Q What happened next after the green box was handed to Jun?

A The person told Jun "*eto na yong* box," Sir.

Q What happened next?

A And Jun opened the box and brought out one (1) plastic sachet and handed it to me and demanded for the payment, Sir.

Q How?

A He said "*akina yong bayad*," Sir.

Q After he handed to you that sachet and asked for the payment what did you say also?

A I first examined the content and after believing that it was *shabu*, I handed the marked money, Sir.

x x x x x x x x x

Q After that what happened next?

A After handling him the money, I gave the pre-arranged signal, Sir.

Q What was your pre-arranged signal?

A By removing my sunglasses and placing it in my pocket, Sir.

Q After you have made the signal what happened next?

A My back-up team rushed to where I am (sic), Sir.

x x x x x x x x x

PROS. CATRAL:

Q The subject of your operation you already know him initially as Jun, did you eventually come to know his full name?

A Yes, Sir.

Q What is his full name?

A Jun Aquino Lazaro, Sir.

Q If Jun Aquino Lazaro is in the courtroom would you be able to identify him?

A Yes, Sir.

INTERPRETER:

Witness pointed to a male person who gave his name as Jun Lazaro.[32]

Inspector Pacatiw, SPO1 Lingbawan and PO3 Lubos corroborated the aforesaid testimony of SPO1 Indunan on relevant points.

The prosecution adduced as its documentary and object evidence the transparent plastic sachet of *shabu* sold by appellant to SPO1 Indunan during the buy-bust operation, the chemistry report of Forensic Analyst Albon confirming that the plastic sachet sold by appellant to SPO1 Indunan contained 0.05 gram of *shabu*, and the marked money used during the buy-bust operation.

Parenthetically, in **illegal possession** of dangerous drugs, such as *shabu*, the elements are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.[33] All these elements have been established. SPO1 Indunan testified that after appellant sold to him *shabu*, he (SPO1 Indunan) and the members of the buy-bust team arrested appellant. He then frisked appellant and recovered from the latter a green box which contained plastic sachet with white granules. The chemistry report of Forensic Analyst Albon confirms that such plastic sachet found inside the green box contains 0.04 gram of *shabu*. The relevant portion of the testimony of SPO1 Indunan is as follows:

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[32] TSN, 5 April 2005, pp. 13-28.

[33] *People v. Naquita*, *supra* note 30; *People v. Del Monte*, *supra* note 30; *People v. Santiago*, *supra* note 30.

Q What happened next?

A After we controlled Jun we brought him to our office, Sir.

Q Immediately?

A Yes, Sir.

Q He was not searched at the area of operation?

A He was searched, Sir.

Q Who searched him?

A I, Sir.

Q What was the result of your search?

A I was able to find the marked money, Sir.

Q Aside from the money what else did you recover from the person?

A The content of the box there is still one (1) sachet, Sir.

Q If this sachet which you recovered from the accused will be shown to you again will you be able to identify it?

A Yes, Sir.

Q How sure are you that you would be able to identify it?

A I placed my initials, Sir.

Q I am showing to you another sachet, please tell us if this is the same sachet that you said that was confiscated?

A Yes, Sir.

Q Please point to your initial?

A Yes, Sir.

Q When did you place that?

A After the arrest of the accused, Sir.

PROS. CATRAL:

The other sachet may we pray that this be marked as Exhibit "K-1", your Honor.

COURT:

Mark it please.[34]

The testimonies of the prosecution witnesses regarding appellant's illegal sale and possession of *shabu* are consistent with the documentary and object evidence submitted by the prosecution. The RTC and the Court of Appeals found the testimonies of the prosecution witnesses to be credible. Both courts also found no ill motive on their part to testify against appellant.

The rule is that the findings of the trial court on the credibility of witnesses are entitled to great respect because trial courts have the advantage of observing the demeanor of the witnesses as they testify. This is more true if such findings were affirmed by the appellate court. When the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon this Court.[35]

To rebut the overwhelming evidence for the prosecution, appellant interposed the defense of denial and frame-up. Appellant denied he sold *shabu* to SPO1 Indunan and he possessed a green box containing *shabu* during the buy-bust operation. He claimed that said green box was seized from Jade and that the arresting officers tried to extort money from him in exchange for his freedom.

The defenses of denial and frame-up have been invariably viewed by this Court with disfavor for it can easily be concocted and is a common and standard defense ploy in prosecutions for violation of Dangerous Drugs Act. In order to prosper, the defenses of denial and frame-up must be proved with strong and convincing evidence.[36] In the cases before us, appellant failed to present sufficient evidence in support of his claims.

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[34] TSN, 5 April 2005, pp. 22-24.

[35] *People v. Naquita*, *supra* note 30 at 444; *People v. Santiago*, *supra* note 30 at 217; *People v. Concepcion*, G.R. No. 178876, 27 June 2008, 556 SCRA, 421, 440.

[36] *Id*.

Aside from his self-serving assertions, no plausible proof was presented to bolster his allegations.

It is true that appellant submitted a written undertaking of Jade and a receipt of custody signed by alleged Abra MTC Judge Salazar in support of his contentions that the green box was seized from Jade and that he was framed. Nonetheless, there was nothing in said documents which proved his defenses. In the said undertaking, Jade merely declares (1) that on 15 June 2004, at about 2:30 p.m., she was apprehended in the house of appellant by the officers of the CIDG, Baguio City, for alleged violation of Republic Act No. 9165; (2) that she was informed of her constitutional rights by the CIDG officers; (3) that she was humanely treated by the CIDG officers during her investigation and that none of her personal property was taken or damaged by said officers; (4) that she had no complaint whatsoever against the CIDG officers; and (5) that she promised to appear if called upon in the investigation regarding said incident. On the other hand, the receipt of custody signed by Salazar merely states (1) that she received in good health the living person of Jade from the custody of CIDG, Baguio City; and (2) that she promised to present Jade for investigation as regards the incident if required by the proper authorities. Indeed, the above-cited documents merely describe the circumstances and conditions of Jade during and after the incident. There was no reference at all to appellant's claim that the green box was seized from Jade and that he was framed.[37]

Further, it should be noted that appellant has not filed a single complaint for frame-up or extortion against the buy-bust team. This inaction clearly betrays appellant's claim of frame-up.

Appellant imputes ill motive on the part of the buy-bust team by asseverating that he had a previous quarrel with PO3 Lubos and that he knows some members of the buy-bust team. Withal, this allegation is uncorroborated and unsubstantiated. Hence, the imputation of improper motive should be negated. When the police officers involved in the buy-bust operation have no

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[37] Records (Crim. Case No. 23229-R), p. 193.

motive to testify against the accused, the courts shall uphold the presumption that they have performed their duties regularly.[38]

Moreover, motive is not essential for conviction for a crime when there is no doubt as to the identity of the culprit, and that lack of motive for committing the crime does not preclude conviction for such crime when the crime and participation of the accused are definitely proved.[39] In the instant cases, SPO1 Indunan positively identified appellant as the one who sold to him *shabu* during the buy-bust operation. He also testified that he recovered *shabu* from appellant's possession during said incident.

The defense presented appellant's father, Alfredo Lazaro, Sr. to corroborate appellant's version of the incident. Initially, it must be emphasized that the testimony of Alfredo Lazaro, Sr. should be received with caution he being the father of appellant.[40] Alfredo Lazaro, Sr. testified that upon opening the door of his room, he saw PO3 Lubos and some policemen beating appellant. He uttered *"apay dayta?"* (Why is that?), left the scene, and went back to his room. There was no testimony at all from him that he tried to restrain PO3 Lubos and the policemen from mauling appellant, or that he immediately called or sought the help of *barangay* officials or higher authorities. His court statement hardly inspires belief as it would be highly unnatural for a father not to react defensively or sought help if his child is being maltreated in his presence. In addition, the physical examination report on appellant states that no injuries were observed on appellant's body immediately after his arrest. His testimony, therefore, deserves scant consideration.

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[38] *People v. Soriano*, G.R. No. 173795, 3 April 2007, 520 SCRA 458, 468-469; *People v. Nicolas*, G.R. No. 170234, 8 February 2007, 515 SCRA 187, 204; *People v. Villanueva*, G.R. No. 172116, 30 October 2006, 506 SCRA 280, 288.

[39] *People v. Quillosa*, G.R. No. 115687, 17 February 2000, 325 SCRA 747, 754-755.

[40] *People v. Suarez*, G.R. Nos. 153573-76, 15 April 2005, 456 SCRA 333, 349; *People v. Cortez*, G.R. No. 131924, 26 December 2000, 348 SCRA 663, 669; *People v. San Pascual*, G.R. No. 137746, 15 October 2002, 391 SCRA 49, 63; *People v. Legaspi*, G.R. No. 117802, 27 April 2000, 331 SCRA 95, 114.

Given the foregoing circumstances, the positive and credible testimonies of the prosecution witnesses prevail over the defenses of denial and frame-up of appellant.

Appellant tried to cast doubt on the credibility of the prosecution witnesses based on the following reasons: (1) there was inconsistency in the testimonies of the prosecution witnesses as to what language was used in apprising appellant of his constitutional rights; (2) the informant was not presented as witness during the trial; and (3) there was no buy-bust operation because appellant was merely instigated by the informant to sell *shabu* to SPOI Indunan.[41]

For a discrepancy or inconsistency in the testimony of a witness to serve as basis for acquittal, it must refer to the significant facts vital to the guilt or innocence of the accused for the crime charged. An inconsistency which has nothing to do with the elements of the crime cannot be a ground for the acquittal of the accused.[42]

The inconsistency cited by appellant refers to trivial matter and is clearly beyond the elements of illegal sale of *shabu* because it does not pertain to the actual buy-bust itself – that crucial moment when appellant was caught selling *shabu*. Such inconsistency is also irrelevant to the elements of illegal possession of *shabu*. Besides, the inconsistency even bolsters the credibility of the prosecution witnesses as it erased any suspicion of a rehearsed testimony.[43]

Anent the failure of the prosecution to present the testimony of the informant, it is well-settled that the testimony of an informant in drug-pushing cases is not essential for conviction and may be dispensed if the poseur-buyer testified on the same.[44]

As to the claim of instigation, where the police or its agent lures the accused into committing the offense in order to prosecute

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[41] CA *rollo*, pp. 63-68.

[42] *People v. Santiago, supra* note 30.

[43] *Id.*

[44] *People v. Naquita; supra* note 30*; People v. Santiago, supra* note 30.

him and which is deemed contrary to public policy and considered an absolutory cause,[45] there is nothing in the records which clearly and convincingly shows that appellant was instigated by the informant to sell *shabu* to SPO1 Indunan. What is apparent therein is that the informant merely introduced SPO1 Indunan to appellant as a user and buyer of *shabu* and that the informant did not in any way allure or persuade appellant to sell *shabu* to SPO1 Indunan.[46] Also, after such introduction, it was appellant who hastily asked SPO1 Indunan how much worth of *shabu* the latter would want to buy.[47] This obviously manifests that the idea to sell *shabu* originated from appellant without any instigation from SPO1 Indunan or the informant. Indeed, what have transpired in the instant case was a legitimate buy-bust operation and not instigation. A buy-bust operation is a form of entrapment which in recent years has been accepted as a valid means of arresting violators of the Dangerous Drugs Law. It is commonly employed by police officers as an effective way of apprehending law offenders in the act of committing a crime. In a buy-bust operation, the idea to commit a crime originates from the offender, without anybody inducing or prodding him to commit the offense.

Appellant further posits that the prosecution did not strictly comply with the procedures laid down in Section 21, Article II of Republic Act No. 9165 because: (1) although the written inventory of the seized items bore signatures of representatives from the DOJ, the media, and the *barangay*, only the representative from the media was named; (2) no pictures of the seized items were taken; (3) Forensic Analyst Albon did not testify with regard to her chemistry report on the subject drugs; (4) there were gaps in the chain of custody of the subject drugs because the officer who received the request for laboratory examination of the same did not testify, and the custodian of the subject drugs from the time they were examined up to their

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[45] *People v. Boco*, 368 Phil. 341, 367 (1999).

[46] TSN, 5 April 2005, pp. 14-15.

[47] *Id.* at 15.

presentation in trial was not identified; and (5) the prosecution failed to show the condition of the subject drugs and the precautions taken in preserving their condition.[48]

It should be noted that appellant raised the buy-bust team's alleged non-compliance with Section 21, Article II of Republic Act No. 9165 for the first time on appeal. This, he cannot do. It is too late in the day for him to do so. In *People v. Sta. Maria*[49] in which the very same issue was raised, we held:

> The law excuses non-compliance under justifiable grounds. However, whatever justifiable grounds may excuse the police officers involved in the buy-bust operation in this case from complying with Section 21 will remain unknown, because appellant did not question during trial the safekeeping of the items seized from him. Indeed, the **police officers' alleged violations** of Sections 21 and 86 of Republic Act No. 9165 **were not raised before the trial court but were instead raised for the first time on appeal. In no instance did appellant least intimate at the trial court that there were lapses in the safekeeping of seized items that affected their integrity and evidentiary value. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection, he cannot raise the question for the first time on appeal."** (Emphases supplied.)

Moreover, we have held in several cases[50] that non-compliance with Section 21, Article II of Republic Act No. 9165 is not fatal and will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance 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.[51] In the present case,

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[48] CA *rollo,* pp. 51-60.

[49] G.R. No. 171019, 23 February 2007, 516 SCRA 621, 633-634.

[50] *People v. Agulay,* G.R. No. 181747, 26 September 2008, 566 SCRA 571-595; *People v. Naquita, supra* note 30; *People v. Concepcion, supra* note 35; *People v. Del Monte, supra* note 30.

[51] *Id.*

the integrity of the drugs seized from appellant was preserved. The chain of custody of the drugs subject matter of the instant case was shown not to have been broken.

Records revealed that after SPO1 Indunan confiscated two transparent plastic sachets containing *shabu* from appellant, he marked each of the two sachets of *shabu* with "DG-06-15-04" and turned them over to Superintendent Bolabola, who, in turn, handed them to Inspector Pacatiw who brought the same to PO1 Guingahan of CIDG office, Baguio City. The latter then delivered the two plastic sachets each marked with "DG-06-15-04" to the PNP Benguet Provincial Crime Laboratory Office for laboratory examination. The same two sachets were received by SPO1 Carino of PNP Benguet Provincial Crime Laboratory Office.[52] After a qualitative examination conducted on the contents of the two sachets each marked "DG-06-15-04," Forensic Analyst Albon found them to be positive for *methamphetamine hydrochloride* or *shabu*. Upon being weighed, the one plastic sachet sold by appellant to SPO1 Indunan was found to be containing 0.05 gram while the other plastic sachet found in appellant's possession was determined to have 0.04 gram of *shabu*.

When the prosecution presented the two sachets of *shabu* each marked with "DG-06-15-04," SPO1 Indunan positively identified them as the very same sachets he bought and recovered from appellant in the buy-bust operation. The two plastic sachets containing 0.05 and 0.04 gram of *shabu*, respectively, each had the marking "DG-06-15-04" as attested by Forensic Analyst Albon in her chemistry report. The existence, due execution, and genuineness of the said chemistry report, as well as the qualifications of Forensic Analyst Albon were admitted by the defense.[53] Further, SPO1 Indunan categorically declared during the trial that he put "DG-06-15-04" marking on each of the two transparent plastic sachets of *shabu* recovered from appellant. Clearly, the identity of the drugs recovered from appellant has been duly preserved and established by the prosecution.

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[52] *Id.*

[53] Records (Crim. Case No. 23229-R), p. 62.

The fact that Forensic Analyst Albon and the persons who had possession or custody of the subject drugs were not presented as witnesses to corroborate SPO1 Indunan's testimony is of no moment. The prosecution dispensed with the testimony of Forensic Analyst Albon because the defense had already agreed in the substance of her testimony to be given during trial, to wit: (1) that she examined the subject drugs; (2) that she found them to be positive for *shabu*; and (3) that she prepared and issued a chemistry report pertaining to the subject drugs.

Further, not all people who came into contact with the seized drugs are required to testify in court. There is nothing in Republic Act No. 9165 or in any rule implementing the same that imposes such a requirement. As long as the chain of custody of the seized drug was clearly established not to have been broken and that the prosecution did not fail to identify properly the drugs seized, it is not indispensable that each and every person who came into possession of the drugs should take the witness stand.[54] In *People v. Zeng Hua Dian*,[55] we ruled:

> After a thorough review of the records of this case, we find that the chain of custody of the seized substance was not broken and that the prosecution did not fail to identify properly the drugs seized in this case. The non-presentation as witnesses of other persons such as SPO1 Grafia, the evidence custodian, and PO3 Alamia, the officer on duty, is not a crucial point against the prosecution. The matter of presentation of witnesses by the prosecution is not for the court to decide. The prosecution has the discretion as to how to present its case and it has the right to choose whom it wishes to present as witnesses.

Since appellant's violation of Sections 5 and 11, Article II of Republic Act No. 9165 were duly established by the prosecution's evidence, we shall now ascertain the penalties imposable on him.

Under Section 5, Article II of Republic Act No. 9165, the unauthorized sale of *shabu*, regardless of its quantity and purity, carries with it the penalty of life imprisonment to death and a

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[54] *People v. Hernandez*, G.R. No. 184804, 18 June 2009.

[55] G.R. No. 145348, 14 June 2004, 432 SCRA 25, 32.

fine ranging from Five Hundred Thousand Pesos (₱500,000.00) to Ten Million Pesos (₱10,000,000.00).

Pursuant, however, to the enactment of Republic Act No. 9346 entitled, "An Act Prohibiting the Imposition of Death Penalty in the Philippines," only life imprisonment and fine shall be imposed. Thus, the RTC and the Court of Appeals were correct in imposing the penalty of life imprisonment and fine of ₱500,000.00 on appellant in Criminal Case No. 2322**7**-R.

Section 11(3), Article II of Republic Act No. 9165 provides that illegal possession of less than five grams of *shabu* is penalized with imprisonment of twelve (12) years and one day to twenty (20) years, plus a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00).

Appellant was charged with and found to be guilty of illegal possession of 0.04 gram of *shabu* in Criminal Case No. 2322**9**-R. Hence, the RTC and the Court of Appeals aptly sentenced appellant to imprisonment of 12 years and one day, as minimum, to 15 years, as maximum, and fined him ₱300,000.00, since said penalties are within the range of penalties prescribed by the aforequoted provision.

WHEREFORE, the Decision dated 18 July 2008 of the Court of Appeals in CA-G.R. CR-HC No. 02258 is hereby *AFFIRMED in toto*.

SO ORDERED.

Carpio Morales,[*] *Nachura*, *Leonardo-de Castro,*[**] and *Abad,*[***] *JJ.,* concur.

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[*] Per Special Order No. 744, dated 14 October 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Conchita Carpio Morales to replace Associate Justice Antonio T. Carpio, who is on official leave.

[**] Associate Justice Teresita J. Leonardo-De Castro was designated to sit as additional member replacing Associate Justice Diosdado M. Peralta per Raffle dated 20 April 2009.

[***] Per Special Order No. 753, dated 13 October 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Roberto A. Abad to replace Associate Justice Presbitero J. Velasco, Jr., who is on official leave.

EN BANC

[G.R. No. 187428. October 16, 2009]

EUGENIO T. REVILLA, SR., *petitioner, vs.* **THE COMMISSION ON ELECTIONS and GERARDO L. LANOY,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ELECTION LAWS; COMELEC RULES OF PROCEDURE; IT IS THE COMELEC *EN BANC* WHICH HAS THE DISCRETION TO RESOLVE MOTIONS FOR RECONSIDERATION.— [T]he February 4 and March 9, 2009 Orders are null and void as they were issued by a division of the COMELEC, instead of the COMELEC *en banc*, pursuant to Article IX-C, Section 3, of the 1987 Constitution and to Rule 19, Section 5 and 6, of the COMELEC Rules of Procedure. This rule should apply whether the motion fee has been paid or not. It is the COMELEC *en banc*, not the division, which has the discretion either to refuse to take action until the motion fee is paid, or to dismiss the action or proceeding.

2. ID.; ID.; ID.; WHEN THE NON-PAYMENT OF ADDITIONAL APPEAL FEE DOES NOT AFFECT THE PERFECTION OF THE APPEAL AND DOES NOT RESULT IN THE OUTRIGHT DISMISSAL OF THE APPEAL.— Considering the urgent need to resolve election cases and since the issue was raised in this petition, we likewise rule that the dismissal of Revilla's appeal was improper. His payment of the appeal fee of ₱1,000.00 before the MCTC on March 31, 2008 already perfected his appeal pursuant to A.M. No. 07-4-15-SC (Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and *Barangay* Officials). The non-payment or the insufficient payment of the additional appeal fee of ₱3,200.00 to the COMELEC Cash Division does not affect the perfection of the appeal and does not result in the outright or *ipso facto* dismissal of the appeal. Under Rule 22, Section 9(a), of the COMELEC Rules, the appeal *may* be dismissed. And under Rule 40, Section 18 of the same rules, if the fees are not paid, the COMELEC *may* refuse to take action thereon

until they are paid and *may* dismiss the action or the proceeding. Considering that the payment of the appeal fee was made three and a half months before the issuance of the clarificatory COMELEC Resolution No. 8486 and after the perfection of the appeal, we find the dismissal of the appeal by the COMELEC Second Division as grave abuse of its discretion.

APPEARANCES OF COUNSEL

Luciano G. Cameros for petitioner.
The Solicitor General for public respondent.
Marc Dominic Fernandez for private respondent.

R E S O L U T I O N

NACHURA, *J.*:

This is a petition for *certiorari* under Rule 64 of the Rules of Court ascribing grave abuse of discretion to the Commission on Elections (COMELEC) Second Division in EAC (BRGY) No. 148-2008 for issuing its Order dated March 9, 2009, denying petitioner's motion for reconsideration as violative of the 1987 Constitution and the COMELEC Rules of Procedure both mandating that a motion for reconsideration can be disposed only by the COMELEC *en banc*.

The factual background is as follows—

Petitioner Eugenio T. Revilla, Sr. (Revilla) and private respondent Gerardo L. Lanoy (Lanoy) were candidates for *Punong Barangay* of *Barangay* Cabligan, Matanao, Davao del Sur during the October 29, 2007 *barangay* elections. When the votes were counted, the results showed that Revilla garnered 309 votes as against the 307 votes garnered by Lanoy. The *Barangay* Board of Canvassers thus proclaimed Revilla as the duly elected *Punong Barangay* of *Barangay* Cabligan.

Lanoy then filed an election protest before the Second Municipal Circuit Trial Court (MCTC) of Hagonoy-Matanao, Davao del Sur against Revilla, on the ground that the Board of Election Tellers failed to credit in his favor at most 13 votes in the three

precincts despite the absence and failure of the watchers of the precincts to object orally and cause their objections to be recorded.

After revision, it appeared that Lanoy garnered 312 votes while Revilla got only 311. Consequently, the MCTC decided in favor of Lanoy.

On March 31, 2008, Revilla filed a notice of appeal from the MCTC decision and paid ₱1,000.00, the assessed appeal fee. The MCTC gave due course to the notice of appeal in its Order dated March 31, 2008 and ordered the transmittal of the records to the COMELEC for appropriate action.

On December 18, 2008, the COMELEC Second Division issued an Order dismissing the appeal for failure to pay the appeal fee of ₱3,200.00 in accordance with COMELEC Resolution No. 8486.

On January 23, 2009, Revilla paid the appeal fee and filed a motion for reconsideration of the December 18, 2008 Order.

On February 4, 2009, the COMELEC Second Division denied the motion for reconsideration because only ₱300.00 was paid as motion fee, not the full ₱500.00 as required by COMELEC Resolution No. 02-0130.

On February 19, 2009, Revilla paid the ₱200.00 differential amount of the motion fee and filed a second motion for reconsideration. Upon learning about it, Lanoy filed a motion for execution before the MCTC. Revilla opposed the motion.

On March 9, 2009, the COMELEC Second Division issued its Order denying Revilla's motion, being a second motion for reconsideration; hence, this petition.

The petition should be granted.

It is worthy to note that this case has the same factual backdrop as in *Jerry B. Aguilar v. The Commission on Elections and Romulo R. Insoy.*[1] In that case, petitioner Aguilar won as *barangay* chairperson of *Barangay* Bansarvil 1, Kapatagan, Lanao del Norte over private respondent Insoy by a one-vote margin and was duly proclaimed. Insoy protested before the Municipal Trial

[1] G.R. No. 185140, June 30, 2009.

Court (MTC) of Kapatagan, which, after revision, decided in his favor. On April 21, 2008, Aguilar filed his notice of appeal and paid the MTC the appeal fee of ₱1,000.00. When the COMELEC received the records of the case, the First Division ordered the dismissal of the appeal for failure to pay the proper appeal fee. Aguilar moved for reconsideration, but the COMELEC First Division denied his motion for failure to pay the complete motion fee of ₱700.00. Aguilar filed another motion for reconsideration, arguing that the COMELEC *en banc* should have ruled upon his motion for reconsideration. The same COMELEC division, however, issued an Order denying the motion, being a second motion for reconsideration which is a prohibited pleading.

We find that *Aguilar* is squarely applicable in this case. We, therefore, hold that the COMELEC Second Division acted with grave abuse of discretion in denying petitioner's motions for reconsideration and dismissing his appeal.

Indeed, the February 4 and March 9, 2009 Orders are null and void as they were issued by a division of the COMELEC, instead of the COMELEC *en banc*, pursuant to Article IX-C, Section 3,[2] of the 1987 Constitution and to Rule 19, Sections 5[3] and 6,[4] of the COMELEC Rules of Procedure. This rule should apply whether the motion fee has been paid or not. It is the

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[2] Sec. 3. The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission *en banc*. (Underscoring supplied.)

[3] Sec. 5. **How Motion for Reconsideration Disposed Of.** –Upon the filing of a motion to reconsider a decision, resolution, order or ruling of a Division, the Clerk of Court concerned shall, within twenty-four (24) hours from the filing thereof, notify the Presiding Commissioner. The latter shall within two (2) days thereafter certify the case to the Commission *en banc*. (Underscoring supplied.)

[4] Sec. 6. **Duty of Clerk of Court of Commission to Calendar Motion for Reconsideration.**—The Clerk of Court concerned shall calendar the motion for reconsideration for the resolution of the Commission *en banc* within ten (10) days from the certification thereof. (Underscoring supplied.)

COMELEC *en banc*, not the division, which has the discretion either to refuse to take action until the motion fee is paid, or to dismiss the action or proceeding.[5]

Considering the urgent need to resolve election cases and since the issue was raised in this petition, we likewise rule that the dismissal of Revilla's appeal was improper. His payment of the appeal fee of ₱1,000.00 before the MCTC on March 31, 2008[6] already perfected his appeal pursuant to A.M. No. 07-4-15-SC (Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and *Barangay* Officials). The non-payment or the insufficient payment of the additional appeal fee of ₱3,200.00 to the COMELEC Cash Division[7] does not affect the perfection of the appeal and does not result in the outright or *ipso facto* dismissal of the appeal. Under Rule 22, Section 9(a), of the COMELEC Rules, the appeal *may* be dismissed. And under Rule 40, Section 18 of the same rules, if the fees are not paid, the COMELEC *may* refuse to take action thereon until they are paid and *may* dismiss the action or the proceeding. Considering that the payment of the appeal fee was made three and a half months before the issuance of the clarificatory COMELEC Resolution No. 8486 and after the perfection of the appeal, we find the dismissal of the appeal by the COMELEC Second Division as grave abuse of its discretion.

WHEREFORE, the petition for *certiorari* is *GRANTED*. The December 18, 2008, February 4, 2009 and March 9, 2009 Orders issued by the COMELEC Second Division in EAC (BRGY) No. 148-2008 are *ANNULLED* and *SET ASIDE*. The case is *REMANDED* to the COMELEC Second Division for disposition in accordance with this Resolution.

SO ORDERED.

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[5] *Olanolan v. Commission on Elections*¸ G.R. No. 165491, March 31, 2005, 454 SCRA 807, 812, 815-816.

[6] Around three and a half months prior to the issuance of the COMELEC Resolution No. 8486 on July 15, 2008 pegging the appeal fee at ₱3,200.00.

[7] Pursuant to Rule 40, Section 3, of the COMELEC Rules of Procedure, as amended.

Quisumbing, Acting C.J., Carpio, Corona, Carpio Morales, Chico-Nazario, Leonardo-de Castro, Brion, Peralta, Bersamin, and *Abad, JJ.,* concur.

Puno, C.J. and *Velasco, Jr., J.,* on official leave.

Del Castillo, J., on leave.

THIRD DIVISION

[G.R. No. 187531. October 16, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ELMER PERALTA *y* HIDALGO,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; GUIDING PRINCIPLES IN REVIEWING RAPE CASES.— Three principles guide the courts in resolving rape cases: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the 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 be allowed to draw strength from the weakness of the evidence for the defense.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; WHAT IS PRIMODIAL IN THE DETERMINATION OF GUILT FOR THE CRIME OF RAPE IS THE CREDIBILITY OF THE COMPLAINANT'S TESTIMONY; APPLICATION.— In a determination of guilt for the crime of rape, primordial is the credibility of complainant's testimony, because, in rape cases, the accused may be convicted solely on the testimony of the victim, provided

it is credible, natural, convincing, and consistent with human nature and the normal course of things. This eloquent testimony of the victim, coupled with the medical findings attesting to her non-virgin state, should be enough to confirm the truth of her charges. In the instant case, the victim testified that she was raped and identified the appellant as the one who maligned her. Her narration was further supported by medical findings, coupled by the testimony of the examining physician, with regard to her non-virgin state.

3. ID.; ID.; ID.; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL COURT THEREON.— Of note moreover is that the trial court, which had the undisputed vantage in the evaluation and appreciation of testimonial evidence, found the victim's narration of her painful ordeal as clear, categorical, straightforward, sincere, and truthful. Well-entrenched in our jurisprudence is the rule that the findings of the trial court on the credibility of witnesses are entitled to the highest respect and are not to be disturbed on appeal in the absence of any clear showing that the trial court overlooked, misunderstood or misapplied facts or circumstances of weight and substance that would have affected the result of the case.

4. ID.; ID.; DENIAL AND ALIBI; DEFENSES THEREOF ARE DISFAVORED; APPLICATION.— Appellant's defenses of denial and alibi cannot also demolish the victim's clear and convincing narration and positive identification of her assailant. Denial and alibi are disfavored on account of the facility with which they can be concocted to suit the defense of an accused. In this case, appellant has not even shown that it was physically impossible for him to have been at the crime scene.

5. CRIMINAL LAW; STATUTORY RAPE; TWO ELEMENTS THEREOF, ESTABLISHED.— As provided for in the Revised Penal Code (RPC), sexual intercourse with a girl below 12 years old is statutory rape. The two elements of the crime are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman was below 12 years of age. In the instant case, the first element has been satisfied by the testimony of the victim as explained above; and the second, by her birth certificate presented during the trial, showing that she was born on November 7, 1998.

6. ID.; ID.; THE PRESENCE OF THE QUALIFYING CIRCUMSTANCE THAT THE VICTIM WAS A CHILD BELOW SEVEN (7) YEARS OLD RAISED THE CRIME OF STATUTORY RAPE TO QUALIFIED RAPE.— [A] qualifying circumstance is present in this case, which will raise the nature of the crime to a higher category, *i.e.*, the victim was a child below seven (7) years old. The presence of the foregoing qualifying circumstance raised the crime of statutory rape to qualified rape.

7. ID.; ID.; DAMAGES AWARDED WITHOUT NEED OF PROOF.— With regard to the damages awarded by the trial court, the Court finds the same to be deficient. Following settled jurisprudence, the Court orders the appellant to pay the victim civil indemnity of ₱75,000.00, exemplary damages of ₱30,000.00, and moral damages of ₱75,000.00 without need of pleading or proof of basis thereof.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

NACHURA, *J.*:

For final review by the Court is the trial court's conviction of appellant Elmer Peralta *y* Hidalgo for statutory rape. In the November 27, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02772, the appellate court, on intermediate review, affirmed *in toto* the February 13, 2007 Decision[2] of the Regional Trial Court (RTC), Branch 30 of San Fernando City, La Union in Criminal Case No. 6789.

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[1] Penned by Associate Justice Arcangelita M. Romilla-Lontok (retired), with Associate Justices Mariano C. del Castillo (now a member of this Court) and Romeo F. Barza, concurring; *rollo*, pp. 2-8.

[2] CA *rollo*, pp. 52-61.

As found by both the trial and the appellate courts, the rape incident transpired during the wake of the victim's late grandmother. It was around 8 p.m. on January 2, 2005 when the victim, then a six-year-old lass, on her way to the restroom, saw appellant, a guest in the wake. Appellant asked the young girl to accompany him in buying something from the nearby store. He, however, brought the girl to a grassy area where he carried out his bestial act. Expectedly, the hapless child felt pain in her genitals and protested the intrusion, but her resistance proved futile. After appellant was done molesting her, he threatened the girl that he would beat up her parents if she uttered a word about the incident.[3]

The child, with tears in her eyes, rushed home to her parents. When asked about what had happened, she remained mum. The girl, nevertheless, eventually narrated her harrowing ordeal to her parents after her mother, who was to put her to bed, discovered bloodstains on her underwear. Shocked and infuriated, her father sought the help of the authorities and proceeded to the house of appellant, where the latter was apprehended.[4]

The medical examination of the child revealed that her hymen was gaping with a laceration at the 11 o'clock position and with minimal bleeding. Her cervix could further admit the examining finger with ease, a finding unusual for a child of tender years.[5]

An Information[6] for rape was consequently filed with the trial court on January 11, 2005, pertinently stating the following:

That on or about the 2nd day of January, 2005 in the City of San Fernando (La Union), Philippines and within the jurisdiction of this Honorable Court, the above-named accused with lewd design and by means of force, violence and intimidation did then and there willfully, unlawfully and feloniously have sexual intercourse with

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[3] *Id.* at 53.

[4] *Id.* at 53-54.

[5] *Id.* at 54.

[6] *Id.* at 5.

the offended party [name omitted], minor six (6) years of age against her will, to the damage and prejudice of said [name omitted].

CONTRARY TO LAW.[7]

For his defense, appellant relied on denial and alibi, contending in the main that he was on a drinking spree near the place of the wake but he eventually went home at 7 p.m.[8]

After trial on the merits, the RTC rendered its February 13, 2007 Decision,[9] convicting the appellant of statutory rape. The court lent credence to the firm and straightforward testimony of the victim and to her positive identification of appellant as the perpetrator of the bestial act. The dispositive portion of the trial court's decision reads:

WHEREFORE, premises considered, the Court hereby finds the accused guilty beyond reasonable doubt of the crime of statutory rape and sentences him to suffer imprisonment of *reclusion perpetua* and orders him to pay the complainant FIFTY THOUSAND (Php 50,000.00) PESOS as civil indemnity and another FIFTY THOUSAND (Php 50,000.00) PESOS as moral damages. With costs.

SO ORDERED.[10]

On intermediate review, the CA, in its November 27, 2008 Decision,[11] affirmed *in toto* the decision of the trial court. Thus, the Court now finally reviews the trial court's and the appellate court's uniform findings.

The Court affirms appellant's conviction.

Three principles guide the courts in resolving rape cases: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape

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[7] *Id.*

[8] *Id.* at 55, 59.

[9] *Supra* note 2.

[10] CA *rollo*, p. 61.

[11] *Supra* note 1.

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 be allowed to draw strength from the weakness of the evidence for the defense.[12]

In a determination of guilt for the crime of rape, primordial is the credibility of complainant's testimony, because, in rape cases, the accused may be convicted solely on the testimony of the victim, provided it is credible, natural, convincing, and consistent with human nature and the normal course of things.[13] This eloquent testimony of the victim, coupled with the medical findings attesting to her non-virgin state, should be enough to confirm the truth of her charges.[14]

In the instant case, the victim testified that she was raped and identified the appellant as the one who maligned her. Her narration was further supported by medical findings, coupled by the testimony of the examining physician, with regard to her non-virgin state. Of note moreover is that the trial court, which had the undisputed vantage in the evaluation and appreciation of testimonial evidence, found the victim's narration of her painful ordeal as clear, categorical, straightforward, sincere, and truthful.[15] Well-entrenched in our jurisprudence is the rule that the findings of the trial court on the credibility of witnesses are entitled to the highest respect and are not to be disturbed on appeal in the absence of any clear showing that the trial court overlooked, misunderstood or misapplied facts or circumstances of weight and substance that would have affected the result of the case.[16]

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[12] *People v. Glivano*, G.R. No. 177565, January 28, 2008, 542 SCRA 656, 662; citing *People v. Malones*, 425 SCRA 318, 329.

[13] *People v. Pascua*, G.R. No. 151858, November 27, 2003, 416 SCRA 548, 552.

[14] *People v. Oden*, G.R. Nos. 155511-22, April 14, 2004, 427 SCRA 634, 655.

[15] CA *rollo*, p. 58.

[16] *People v. Sta. Ana*, G.R. Nos. 115657-59, June 26, 1998, 291 SCRA 188, 202.

Appellant's defenses of denial and alibi cannot also demolish the victim's clear and convincing narration and positive identification of her assailant. Denial and alibi are disfavored on account of the facility with which they can be concocted to suit the defense of an accused.[17] In this case, appellant has not even shown that it was physically impossible for him to have been at the crime scene.

As provided for in the Revised Penal Code (RPC), sexual intercourse with a girl below 12 years old is statutory rape. The two elements of the crime are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman was below 12 years of age.[18] In the instant case, the first element has been satisfied by the testimony of the victim as explained above; and the second, by her birth certificate presented during the trial, showing that she was born on November 7, 1998.[19] Further, a qualifying circumstance is present in this case, which will raise the nature of the crime to a higher category, *i.e.*, the victim was a child below seven (7) years old. The presence of the foregoing qualifying circumstance raised the crime of statutory rape to qualified rape.[20]

Hence, the Court finds the appellant guilty beyond reasonable doubt of the crime of qualified rape. The imposable penalty under the RPC for the said crime is death. However, following Republic Act No. 9346,[21] in lieu of the death penalty, the penalty of *reclusion perpetua* without eligibility for parole is imposed.

With regard to the damages awarded by the trial court, the Court finds the same to be deficient. Following settled

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[17] *People v. Alvarez*, G.R. Nos. 140388-91, November 11, 2003, 415 SCRA 523, 530.

[18] *People v. Ramos*, G.R. No. 179030, June 12, 2008, 554 SCRA 423, 430.

[19] CA *rollo*, p. 97.

[20] *People v. Gloria*, G.R. No. 168476, September 27, 2006, 503 SCRA 742, 756.

[21] Entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines," approved on June 24, 2006.

jurisprudence, the Court orders the appellant to pay the victim civil indemnity of ₱75,000.00, exemplary damages of ₱30,000.00, and moral damages of ₱75,000.00 without need of pleading or proof of basis thereof.[22]

WHEREFORE, premises considered, the November 27, 2008 Decision of the Court of Appeals in CA-G.R. CR-HC No. 02772, affirming the February 13, 2007 Decision of the Regional Trial Court, Branch 30, of San Fernando City, La Union in Criminal Case No. 6789, is likewise *AFFIRMED* with the following *MODIFICATIONS*: (1) the appellant is found guilty of the crime of qualified rape; (2) the appellant is sentenced to suffer the penalty of *reclusión perpetua* without eligibility for parole; and (3) the appellant is ordered to pay the victim civil indemnity of ₱75,000.00, moral damages of ₱75,000.00, and exemplary damages of ₱30,000.00.

SO ORDERED.

Carpio Morales,[*] *Chico-Nazario (Acting Chairperson),*[**] *Peralta,* and *Abad,*[***] *JJ.,* concur.

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[22] *People of the Philippines v. Adelado Anguac y Ragadao,* G.R. No. 176744, June 5, 2009; *People v. Glivano, supra* note 12, at 665; *People v. Gloria*, *supra* note 20, at 756; *People v. Audine*, G.R. No. 168649, December 6, 2006, 510 SCRA 531, 553; *People v. Cayabyab*, G.R. No. 167147, August 3, 2005, 465 SCRA 681, 693; *People v. Alfaro*, 458 Phil. 942, 963 (2003).

[*] Additional member vice Associate Justice Antonio T. Carpio per Special Order No. 744 dated October 13, 2009.

[**] Acting Chairperson vice Associate Justice Antonio T. Carpio per Special Order No. 743 dated October 13, 2009.

[***] Additional member vice Associate Justice Presbitero J. Velasco, Jr. per Special Order No. 753 dated October 13, 2009.

SECOND DIVISION

[A.M. No. P-07-2415. October 19, 2009]
(Formerly A.M. No. 07-10-279-MCTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **ALFREDO MANASAN, Clerk of Court II, MCTC, Orani-Samal, Bataan,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; DELAYED AND INADEQUATE COMPLIANCE WITH THE COURT'S RESOLUTION CONSTITUTES DISRESPECT; FINE, IMPOSED.— The Court finds well-taken the recommendation of the OCA that respondent be fined in the amount of ₱5,000 for failure to comply with the December 12, 2007 Resolution issued by the Court. An order or resolution of the Court is not to be construed as a mere request which could be complied with partially, inadequately or selectively. To do so shows disrespect to the Court. Without the least delay, every court officer or employee is duty bound to obey the orders and processes of the Court and to exercise at all times a high degree of professionalism.

2. ID.; ID.; ID.; DELAY IN DEPOSITING FUNDS COLLECTED CONSTITUTES SIMPLE NEGLECT OF DUTY; PENALTY.— Respondent, being a clerk of court, has the duty to immediately deposit the various funds he collects because he is not authorized to keep them in his custody. He failed in his duty, however. Delay in depositing funds collected constitutes simple neglect of duty which, under Section 52 (B) (1) of the *Uniform Rules on Administrative Cases in the Civil Service*, is penalized with suspension for one month and one day to six months on the first offense, and dismissal for the second offense. It appearing that this is respondent's first offense for simple neglect of duty, he faces suspension for one month and one day.

D E C I S I O N

CARPIO MORALES, *J.*:

The Office of the Court Administrator (OCA) directed the conduct of a financial audit on the books and accounts of Municipal Circuit Trial Court (MCTC), Orani-Samal, Bataan, for the period July 1, 1999 up to September 24, 2007.

Narciso Tolentino, Jr., Court Interpreter I and former Officer-in-Charge of the MCTC who handled the financial transactions of the court from July 1, 1999 up to May 31, 2001 was cleared by the audit team of any accountability.

In the case of Alfredo P. Manasan (respondent), Clerk of Court II of the MCTC who handled the financial transactions of the court from June 1, 2001 up to September 24, 2007, the audit team found that he had an unremitted total collection of ₱83,110, broken down as follows:

FUNDS	PERIOD COVERED	AMOUNT
Judiciary Development Fund	04/03/07-09/18/07	₱8,921
Special Allowance for the Judiciary Fund	04/07/07-09/18/07	13,429
Fiduciary Fund	04/13/97-09/12/07	54,000
Mediation Fund	04/03/07-09/07/07	6,500
Legal Research Fund	04/03/07-09/07/07	260
TOTAL		83,110

In its October 19, 2007 Memorandum,[1] the audit team reported:

> Surprisingly, upon demand… to produce the supposedly cash on hand, [respondent] **was not able to do so.** According to [respondent]**,** the unremitted collections was *allegedly kept in their house for safekeeping*. The audit team immediately informed him that the practice of not remitting the Court's collection on time is strictly prohibited. [Respondent] started explaining the reason why he was safe keeping it instead of depositing it to the depositary bank.

[1] *Rollo*, pp. 3-9.

According to him, he was traumatized by an incident which happened when he allegedly lost an amount approximately more than **Sixty Thousand [P]esos (₱60,000.00).** He showed to the audit team his affidavit stating therein that, allegedly, on the day of August 19, 2005, he was victimized by a pickpocket when he failed to catch up with the last banking hours of Land Bank and proceeded instead to a drugstore to buy medicine for he was not feeling well that day and to buy as well some basic needs for his family; that upon arriving at his house, to his surprise, the envelope containing the cash bond placed in his pocket was allegedly missing. The incident, according to him, was reported to the police and entered in the police blotter logbook. The said ₱60,000.00 pertains to cash bond posted for Criminal Case No. 10094 under OR No. 17871671 collected on August 19, 2005 which was deposited and restituted by [respondent] only last January 24, 2006.

[Respondent] was directed thru a letter prepared by the audit team leader to deposit immediately the supposed cash on hand consisting of unremitted collections amounting to **Eighty-Three Thousand One Hundred Ten [P]esos (₱83,110.00)** in their respective bank accounts on the following banking day; and EX[P]LAIN in a form of Affidavit the reason why he incurred such accountability….

On September 24, 2007, Monday, three o'clock in the afternoon, after the team leader and [respondent] had a reconciliation of the balances to be deposited to LBP, the former asked the latter the deposit slips of the said amount, [respondent] replied that he failed to go to the bank because, according to him, he was completing the Monthly Report of Cases. [Respondent] just made a promise to deposit it on the following day.

On September 25, 2007, while [respondent] was not yet around, the team leader had a talk with Presiding Judge Ma. Cristina J. Mendoza-Pizarro. The purpose of the conversation was to relieve [respondent] of his financial duties and designate someone else suited for the task. Since former Officer-In-Charge Narciso P. Tolentino, Court Interpreter, is the one next-in-rank to the position of Clerk of Court II, he was designated as new accountable officer replacing [respondent]. [Respondent] came late in the afternoon and only by that time he was informed that his function as Accountable Officer was suspended. But before the audit team had the opportunity of telling him about the suspension of his financial duties, he hurriedly informed the team that *he has not yet deposited the amount to the*

LBP. Allegedly, he had in his hand the cash but decided not to deposit it when he realized the danger in doing it [to] him and [it] came on his thoughts the trauma of the pickpocket incident.

On September 28, 2007, [respondent] submitted to the team via LBC **the validated duplicate copies of deposit slips** together with his explanation.[2] (Emphasis in the original; italics and underscoring supplied)

Accordingly, the audit team gave its Observations as follows:

It was noted by the team that *it took him a week before he restituted the cash shortages* totaling to **Eighty-Three Thousand One Hundred Ten Pesos (₱83,110.00)** and only by the time the team had left the place.

Based on the financial records of the MCTC-Orani-Samal, collections and remittances as well as withdrawals of cash bonds were properly done by Mr. Manasan since June 2001 until March 2007. *The cash shortages in his accountability started to accumulate in April 2007 until the audit date.*

x x x x x x x x x

Further examination of the court's financial transactions for the period covered from July 1, 1999 to August 31, 2007 disclosed the following audit findings and/or observations per fund:

1. JUDICIARY DEVELOPMENT FUND:

Total Collections, July 1, 1999 – Aug. 31, 2007	₱	272,192.69
Less: Total Remittances, same period		266,685.09
Balance of Accountability		5,507.60
Less: Deposits Made: 09/27/07		6,576.00
DIFFERENCE (OVERAGE)	**₱**	**(1,066.60)**

The above balance of accountability was paid and deposited on September 27, 2007. The said deposit resulted to over remittance

[2] *Id.* at 4-5.

of collections of One thousand Sixty-Six pesos and 60/100 **(₱1,066.60)**, which is the sum of over-remittances on April 11, 2006 and on February 21, 2007, ₱989.80 and ₱76.80, respectively. The audit team noted as well that this Court is remitting the net interest earned on Fiduciary Fund deposits to this account without issuing a receipt for the amount deposited.

2. SPECIAL ALLOWANCE FOR THE JUDICIARY FUND:

Total Collections, Nov. 11, 2003[-]Aug. 31, 2007	₱	107,606.30
Less: Total remittances, same period		96,865.50
Balance of Accountability		10,740.80
Less: Deposits Made, 9/27/07		10,740.80
DIFFERENCE	₱	0.00

The unremitted collections was paid and deposited on September 27, 2007 and October 3, 2007.

x x x x x x x x x

4. FIDUCIARY FUND:

BEGINNING BALANCE	₱	792,500.00
ADD: Total Collections, 07/01/99 – 08/31/07		2,137,700.00
TOTAL COLLECTIONS		2,930,200.00
Less: Total Withdrawals, same period		2,541,000.00
Balance of Unwithdrawn FF as of 8/31/07		389,200.44
Deduct: Adjusted bank balance as of 8/31/07		341,200.00
Balance of Accountability	₱	48,000.00
Add: Erroneous Withdrawal, 7/22/03		2,000.00
Total Balance of Accountability		50,000.00

Less: Deposit Made, 9/27/07		48,000.00
SHORTAGE	**₱**	**2,000.00**

The unremitted collections as of August 31, 2007 totalling to Forty-eight Thousand pesos (₱48,000.00) was paid and deposited on September 27, 2007, broken down as follows:

DATE COLLECTED	O.R. NO.	CASE NO.	AMOUNT COLLECTED
4/13/07	17871690	3612	₱ 30,000.00
8/13/07	17871691	6101	12,000.00
8/17/07	17871692	6052	6,000.00
			₱ 48,000.00

The shortage of Two Thousand pesos (₱2,000.00) is the erroneous withdrawal from the Fiduciary Fund account of MCTC-Orani-Samal, Bataan for Criminal Case No. 5634 which was collected under Official Receipt No. 5746103 dated June 17, 2002 by MTC-Abucay, Bataan.

5. MEDIATION FUND:

Total Collections, July 1, 1999 – Aug. 31, 2007	₱	51,500.00
Less: Total remittances, same period		46,500.00
Balance of Accountability		5,000.00
Less: Deposits Made, 9/27/07		5,000.00
DIFFERENCE	**₱**	**0.00**

The above shortage was deposited on September 27, 2007.

6. SHERIFF/PROCESS SERVER TRUST FUND:

x x x x x x x x x

As shown in the Subsidiary Ledger of the Revenue Section-Accounting Division, FMO, OCA, the Municipal Circuit Trial Court, Orani-Samal, Bata[a]n *failed to submit to the Supreme Court the monthly reports of collections/deposits/withdrawals for the period covered from April 2007 to August 2007, which is a clear violation of the court's circulars and other issuances on the proper handling*

of funds.[3] (Capitalization, emphasis, underscoring in the original; Italics supplied)

The audit team thus recommended that:

1. This financial audit report **be *DOCKETED*** as a regular Administrative Matter against **Mr. Alfredo P. Manasan,** Clerk of Court II, MCTC-Orani-Samal, Bataan.

2. **Mr. ALFREDO P. MANASAN, Clerk of Court II,** be **DIRECTED** to

   2.1 ***COORDINATE*** with the Clerk of Court of MTC-Abucay, Bataan for the withdrawal of Two Thousand Pesos (**₱2,000**) representing cash bond collection of MTC-Abucay, Bataan under Official Receipt No. 5746103 dated June 17, 2002 which was erroneously withdrawn on July 22, 2003 from the Fiduciary Fund account of MCTC-Orani-Samal, Bataan;

   2.2 ***SUBMIT*** to the Fiscal Monitoring Division, Court Management Office a copy of the validated deposit slips pertaining to no. 2.1 above;

   x x x[4] (Capitalization, emphasis and italics in the original)

By Resolution of December 12, 2007, the Court, acting on the Report of the audit team, required respondent to manifest whether he was willing to submit the matter for resolution on the basis of his explanation and to submit to the Fiscal Monitoring Division, Court Management Office, a copy of the validated deposit slip for the ₱2,000 reflected in the Report which should be restored to the Fiduciary Fund Account of the MCTC.[5]

Respondent failed to comply, however, with this Court's December 12, 2007 Resolution. Thus, by Resolution of August 4, 2008,[6] the Court required him to show cause why he should not be disciplinary dealt with or held in contempt, and to comply

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[3] *Id.* at 5-8.

[4] *Id.* at 8.

[5] *Id.* at 19-20.

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

with its December 12, 2007 Resolution. By letter of September 29, 2008,[7] respondent attributed his failure to comply with the December 12, 2007 Resolution to his father's being "so sick" and hospitalized as he in fact had "reached his time."

As to the directive under par. 2b of the December 12, 2007 Resolution which required him to submit to the Fiscal Monitoring Division, Court Management Office, a copy of the validated deposit slips pertaining to the ₱2,000 which was erroneously withdrawn from the Fiduciary Fund Account of MCTC, respondent explained that since a monthly report[8] was already forwarded to the OCA, he was confident that the report would "get your attention that the mistake done was already corrected" hence, he did not bother to send a copy of the validated deposit slip.

By Resolution of November 26, 2008,[9] the Court referred respondent's September 29, 2008 letter to the OCA for evaluation, report and recommendation.

By its January 20, 2009 Memorandum,[10] the OCA came up with the following evaluation:

> … Manasan's explanation [is] completely unsatisfactory. He cannot simply shrug off his non-compliance with the Court's directive and pass the blame to his faltering memory to justify his inaction. His explanation displays a cavalier attitude that mocks the lawful authority of this Court.
>
> It should be stressed that a [r]esolution of the Supreme Court is not to be construed as a mere request nor should it be complied with partially, inadequately or selectively. Directives issued by this Court are not to be treated lightly, certainly not on the pretext that one has forgotten said directives. Effective and efficient administration of justice demands nothing less than faithful adherence to the rules and orders laid down by the Court and in this regard, the respondent

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[7] *Id.* at 24. It was received by the Division Clerk of Court and the OCA on October 14, 2008.

[8] *Id.* at 27-30. The monthly report was done by Narciso P. Tolentino, Jr.

[9] *Id.* at 36.

[10] *Id.* at 37-39.

failed to show such adherence. Instead, he demonstrated his defiance of the Court's clear order which he should have obeyed without delay.

Further, respondent Manasan still failed to comply with the Court's directive to submit to the Fiscal Monitoring Division of OCA's Court Management Office a copy of the validated deposit slip evidencing deposit of the ₱2,000.00 to the Fiduciary Account of the MCTC, Orani-Samal, Bataan. Rather than submit a copy of the said deposit slip to the FMO, CMO, respondent Manasan merely relied on the Monthly Report submitted by Mr. Narciso P. Tolentino, Court Interpreter I, MCTC, Orani-Samal, Bataan. We find such attitude indicative of his arrogance.

Indifference to or defiance of the Court's orders or resolutions may be punished with dismissal, suspension, or fine as warranted by the circumstances.

In the case at bar, we deem it sufficient that a fine be imposed on respondent Manasan considering that this is his first administrative offense.[11] (Underscoring supplied)

Thus, the OCA recommended that

…for his disobedience to and defiance of the Court's Resolution, respondent Alfredo P. Manasan, Clerk of Court, Municipal Circuit Trial Court, Orani-Samal, Bataan, be FINED in the amount of Five Thousand Pesos (₱5,000.00), which fine shall be payable to the Cash Division, OCA; and that he be directed to COMPLY with the Resolution dated 12 December 2007 [which required him to submit a copy of the deposit slip of the ₱2,000 to the Fiduciary Fund]. Payment of the fine and compliance with the Court's Resolution dated 12 December 2007 should be effected within a NON-EXTENDIBLE period of ten (10) days from notice hereof.[12] (Capitalization in the original)

In compliance with the Court's March 9, 2009 Resolution,[13] respondent submitted his May 5, 2009 letter-manifestation[14]

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[11] *Id.* at 38-39.

[12] *Id.* at 39.

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

[14] *Id.* at 43.

stating that he was willing to submit the matter on the basis of the pleadings already filed. He also attached a copy of his transmittal letter to the Fiscal Monitoring Division, Court Management Office bearing a copy of the validated deposit slip and other supporting documents.

The Court finds well-taken the recommendation of the OCA that respondent be fined in the amount of ₱5,000 for failure to comply with the December 12, 2007 Resolution issued by the Court.

An order or resolution of the Court is not to be construed as a mere request which could be complied with partially, inadequately or selectively. To do so shows disrespect to the Court.[15]

Without the least delay, every court officer or employee is duty bound to obey the orders and processes of the Court and to exercise at all times a high degree of professionalism.[16]

Respondent, being a clerk of court, has the duty to immediately deposit the various funds he collects because he is not authorized to keep them in his custody. He failed in his duty, however.[17]

Delay in depositing funds collected constitutes simple neglect of duty[18] which, under Section 52 (B) (1) of the *Uniform Rules on Administrative Cases in the Civil Service*,[19] is penalized with suspension for one month and one day to six months on the first offense, and dismissal for the second offense. It appearing that this is respondent's first offense for simple neglect of duty, he faces suspension for one month and one day.

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[15] *Dee C. Chuan and Sons, Inc. v. William Simon P. Peralta,* A.M. No. RTJ-05-1917, April 16, 2009.

[16] *Areola v. Ilano,* A.M. No. RTJ-09-2163, February 18, 2009.

[17] *Vide In-House Financial Audit, Conducted in the Books of Accounts of Khalil B. Dipatuan, RTC-Malabang, Lanao del Norte*, A.M. No. P-06-2121, June 26, 2008, 555 SCRA 417, 422-423.

[18] *Id.*

[19] Resolution No. 991936, August 31, 1999.

WHEREFORE, respondent, Alfredo P. Manasan, is *FINED* in the amount of Five Thousand Pesos (₱5,000) for his delayed and partial and inadequate compliance with this Court's December 12, 2007 Resolution. And for simple neglect of duty, he is *SUSPENDED* for one month and one day, without pay. He is *WARNED* that a repetition of the same or similar acts shall be dealt with more severely.

SO ORDERED.

Quisumbing (Chairperson), Nachura,[*] *Brion,* and *Abad, JJ.,* concur.

SECOND DIVISION

[G.R. No. 170790. October 23, 2009]

ANGELITO COLMENARES, *petitioner, vs.* **HAND TRACTOR PARTS AND AGRO-INDUSTRIAL CORP.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; QUESTIONS OF FACT CANNOT BE THE SUBJECT OF A RULE 45 PETITION; EXCEPTION THERETO, NOT APPLICABLE.— [I]t is obvious that petitioner's submissions involve factual issues that call for review of all evidence presented before the trial court. Whether petitioner was respondent's customer before the subject transaction, whether petitioner purchased the paddle wheels, whether his unpaid account exists, whether the documents presented as evidence are questionable, anomalous or fabricated, are all questions of fact. It is settled that questions of fact cannot be the subject of a petition for review under Rule 45 of the Rules of Court. The rule finds more stringent application

[*] Additional member per Special Order No. 730 dated October 5, 2009.

where the Court of Appeals upholds the findings of fact of the trial court. In such instance, as in this case, this Court is generally bound to adopt the facts as determined by the lower courts. This Court has held also that when supported by substantial evidence, the findings of fact of the Court of Appeals are conclusive and binding on the parties and are not reviewable by this Court. Needless to stress, under Section 1, Rule 45 of the Rules of Court, the petition shall raise only questions of law. The reason is that this Court is not a trier of facts, and is not to review and calibrate the evidence on record. Here, we find no exception to the general rule.

2. ID.; EVIDENCE; WHEN A PARTY'S UNPAID ACCOUNT WAS PROVEN BY PREPONDERANT EVIDENCE.— [P]etitioner's unpaid account was duly proven by the charge invoice for his credit purchase worth ₱80,200 and official receipts for his partial payment of ₱38,000 only. Petitioner, in his belabored challenge to respondent's evidence, has not informed the Court what other evidence could possibly prove his unpaid account. Perhaps he could think of no other because any evidence other than proof of credit and proof of partial payment would only be superfluous in proving his unpaid account. And his reply to the demand letter only confirms what he has to settle. Thus, we are in agreement that respondent was able to prove by preponderant evidence, which means evidence which is of greater weight or is more convincing than that which is in opposition to it, that petitioner ought to pay his unpaid account.

3. CIVIL LAW; LOAN; INTEREST; THE INTEREST STATED IN THE CHARGE INVOICE PREVAILS OVER THE UNEXPLAINED HANDWRITTEN MODIFICATION IN IT.— [P]etitioner contends that the award of 3% interest per month is baseless because the legal rate is 12% per annum. The charge invoice also states 12% interest per annum on overdue accounts. x x x On this issue, petitioner is partly correct. The interest payable for an overdue account as stated in the charge invoice is only 12% per annum, not 3% per month. The handwritten modification to 36% was not explained by respondent.

4. ID.; DAMAGES; ATTORNEY'S FEES AWARDED IN VIEW OF THE STIPULATION IN THE CHARGE INVOICE.—

> [W]e agree with the lower courts on the award of attorney's fees. Article 2208 of the Civil Code provides that in the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered. In this case, however, the charge invoice provides that "25% of the amount due is further charged for attorney's fees and cost of collection in case of suit." Thus, we agree that respondent is also entitled to 25% of ₱108,032 or ₱27,008 as attorney's fees.

APPEARANCES OF COUNSEL

Valencia Ciocon Dabao Valencia De La Paz Dionela Ravina and Pandan Law Offices for petitioner.

D E C I S I O N

QUISUMBING, *J.*:

Petitioner Angelito Colmenares assails the Decision[1] dated July 27, 2005 of the Court of Appeals in CA-G.R. CV No. 57877 and its Resolution[2] dated November 15, 2005, denying his motion for reconsideration. The Court of Appeals had affirmed the judgment of the trial court which ordered petitioner to pay a sum of money to respondent Hand Tractor Parts and Agro-Industrial Corporation.

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

Respondent is a domestic corporation[3] engaged in selling tractor and agro-industrial parts. Petitioner is one of its customers.[4]

On June 15, 1988, petitioner bought on credit paddle wheels from respondent.[5] The paddle wheels were delivered on June 18

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[1] *Rollo*, pp. 28-33. Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Vicente L. Yap and Enrico A. Lanzanas concurring.

[2] *Id.* at 35-36.

[3] Records, p. 1.

[4] *Id.* at 92.

[5] TSN, March 10, 1997, pp. 5-6.

and 29, 1988.[6] On November 9, 1988, respondent issued to petitioner a charge invoice[7] for ₱80,200, the price of the paddle wheels and their accessories. Petitioner paid ₱25,000 on November 16, 1988, ₱10,000 on May 18, 1991 and ₱3,000 on April 17, 1993[8] or a total of ₱38,000.

In a letter[9] dated September 18, 1995, respondent's counsel demanded that petitioner pay ₱156,266 for his unpaid account, including interest computed at 3% per month.[10] In response, petitioner wrote:

x x x x x x x x x

While I do not deny the fact that I have purchased some tractor parts from your client on credit, my records of my account with your client do not show that I am indebted to your client in the amount of ₱156,266.00.

May I ask therefore from your client a period of 45 days from today, to check my records, compare them with the records of your client and settle my actual accountability with your client within said period.[11]

On November 28, 1995, respondent sued petitioner for a sum of money.[12] Respondent claimed that despite demand, petitioner failed to pay.

For his defense, petitioner testified that he did not purchase the paddle wheels and accessories stated in the November 9, 1988 charge invoice.[13]

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[6] Records, pp. 55-56.

[7] *Id.* at 54.

[8] *Id.* at 59-60.

[9] *Id.* at 58.

[10] *Id.* at 57.

[11] *Id.* at 61.

[12] *Id.* at 1-4.

[13] TSN, June 5, 1997, pp. 10-11.

The Regional Trial Court (RTC) of Bacolod City, Branch 44, found petitioner liable to respondent. It ruled that petitioner's denial of his obligation was insufficient against the invoices, delivery receipts, and official receipts showing his partial payments. Petitioner was ordered to pay respondent ₱166,466 plus 3% interest per month from June 1996 and 25% of the net amount due as attorney's fees and cost of collection.[14]

On appeal, the Court of Appeals affirmed the decision of the trial court.[15] It found respondent's testimonial and documentary evidence sufficient to support the trial court's decision. The Court of Appeals ruled:

> Exhibit "A" [charge invoice] … will show that, on June 18, 1988, [petitioner] purchased from [respondent] several farm implements.
>
> Other than his bare denial, [petitioner] failed to present other convincing testimonial and documentary evidence to rebut [respondent's] evidence.
>
> Exhibits "B" and "C" [delivery receipts] … will show that the farm implements … were delivered to [petitioner] through his representative.
>
> It is easy for the [petitioner] to deny outright receiving such items and likewise deny to have authorized persons to receive said items. However, again, [petitioner] failed to present witnesses and other documentary evidence to support his allegation.
>
> As to the rest of the evidence adduced by the [respondent], we find the [trial court] to have correctly weighed and appreciated the same when it held:
>
> > "The [petitioner's] mere denial of his obligation would not suffice against the invoices and delivery receipts, especially the official receipts issued by the [respondent]. It would be absurd for the [respondent] to fabricate official receipts just to solicit a phony obligation. As agreed upon by the [petitioner] himself, he was a customer of the [respondent] before the controversial sale was made. Thus, the general manager of the

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[14] Records, p. 109.

[15] *Rollo*, p. 33.

> [respondent] cannot mistake him for anyone of their other clients, considering their transactions were done in personal. xxx"[16]

After his motion for reconsideration was denied, petitioner filed the instant petition which raised the following issues:

I.

WHETHER OR NOT THE DECISION OF THE COURT OF APPEALS IS IN ACCORD WITH LAW AND SUPREME COURT DECISIONS ON SUFFICIENCY OF EVIDENCE TO MEET THE QUANTUM OF PROOF IN CIVIL CASES WHICH IS "PREPONDERANCE OF EVIDENCE."

II.

WHETHER OR NOT THE DECISION OF THE COURT OF APPEALS IS IN ACCORD WITH LAW AND SUPREME COURT DECISIONS ON "BURDEN OF PROOF" IN CIVIL CASES.

III.

WHETHER OR NOT THE DECISION OF THE COURT OF APPEALS IS IN ACCORD WITH LAW AND SUPREME COURT DECISIONS ON "AWARD OF DAMAGES."[17]

Essentially, the issues are: (1) Was respondent able to prove by a preponderance of evidence its claim for a sum of money against petitioner? (2) Was the award of interest and attorney's fees proper?

Petitioner contests the finding that he was respondent's customer even before the sale of the paddle wheels. He says that respondent's lone witness even testified that the first and last transaction between him (witness) and petitioner was on June 29, 1988. He adds that the Court of Appeals also made a presumptuous finding that on June 18, 1988 he purchased from respondent several farm implements and the same were delivered to him. Petitioner claims that he or his duly authorized representative never signed the exhibits cited for this finding. The delivery

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[16] *Id.* at 32.

[17] *Id.* at 133.

receipts are also anomalous or questionable because they are consecutively numbered although the deliveries had a gap of 11 days. Moreover, the statement of account and the demand letter cannot prove his account. Not all statements of account are truthful statements and not all demand letters contain valid demands. In addition, the official receipts may be good proof of payment but they are not good proof of the existence of his account. While the transaction was in June 1988, the official receipts show that the first payment was made five months after the purchase, the second payment was made two years and six months after the first payment, the third payment was made one year and 11 months after the second payment, and respondent sued him seven years after he obtained credit. Petitioner concludes that respondent failed to prove its affirmative assertions and there is no evidence to prove the existence of his account with respondent. Consequently, he avers, the decision of the Court of Appeals is not supported by sufficient evidence. For it to conclude that "it would be absurd for the [respondent] to fabricate official receipts just to solicit a phony obligation" is error because said documents, according to petitioner, are plainly and simply self-serving, fabricated pieces of evidence with no probative value.[18]

Respondent counters that petitioner has raised factual issues, and that petitioner assails its evidence but has failed to present his own countervailing evidence other than mere denial.[19]

On the first issue, we find for the respondent.

Indeed, it is obvious that petitioner's submissions involve factual issues that call for review of all evidence presented before the trial court. Whether petitioner was respondent's customer before the subject transaction, whether petitioner purchased the paddle wheels, whether his unpaid account exists, whether the documents presented as evidence are questionable, anomalous or fabricated, are all questions of fact.

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[18] *Id.* at 139-140.

[19] *Id.* at 107.

It is settled that questions of fact cannot be the subject of a petition for review under Rule 45 of the Rules of Court. The rule finds more stringent application where the Court of Appeals upholds the findings of fact of the trial court. In such instance, as in this case, this Court is generally bound to adopt the facts as determined by the lower courts.[20] This Court has held also that when supported by substantial evidence, the findings of fact of the Court of Appeals are conclusive and binding on the parties and are not reviewable by this Court.[21] Needless to stress, under Section 1, Rule 45 of the Rules of Court, the petition shall raise only questions of law.[22] The reason is that this Court is not a trier of facts, and is not to review and calibrate the evidence on record.[23]

Here, we find no exception to the general rule. The trial court and the Court of Appeals are one in finding that petitioner bought paddle wheels from respondent, that the same were delivered to petitioner through his representative, and that petitioner failed to fully pay the price as he made partial payments only. This finding is amply supported by the evidence on record. Raul Chua, respondent's general manager, testified on petitioner's credit purchase. Respondent also presented the delivery receipts, charge invoice, official receipts of partial payment, and petitioner's reply to the demand letter.

Regarding petitioner's denial of his obligation, we find him less than candid in his submissions. He conveniently ignores his admission captured by the transcripts and the evidence he

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[20] *Ong v. Ong*, G.R. No. 153206, October 23, 2006, 505 SCRA 76, 85.

[21] *Ontimare, Jr. v. Elep*, G.R. No. 159224, January 20, 2006, 479 SCRA 257, 265; *Ramirez v. National Labor Relations Commission*, G.R. No. 155150, August 29, 2006, 500 SCRA 104, 106.

[22] Section 1. *Filing of petition with Supreme Court*. — xxx The petition shall raise only questions of law which must be distinctly set forth.

[23] *JMM Promotions and Management, Inc. v. Court of Appeals*, G.R. No. 139401, October 2, 2002, 390 SCRA 223, 229-230; *Honoridez v. Mahinay*, G.R. No. 153762, August 12, 2005, 466 SCRA 646, 654; *Boston Bank of the Philippines v. Manalo*, G.R. No. 158149, February 9, 2006, 482 SCRA 108, 127.

himself wrote. *First*, he contests the finding that he was respondent's customer before the subject transaction. But he has testified that he used to purchase farm implements from respondent in cash or credit.[24] Thus, we see nothing wrong in the conclusion of the trial court and the Court of Appeals which was based on his testimony. *Second*, petitioner assails the finding that the paddle wheels were delivered to him through his representative. We note that Raul Chua identified petitioner's secretary as the one who received the deliveries.[25] Petitioner, on the other hand, denied knowing the person who received the deliveries and having said person in his employ.[26] Interestingly, petitioner's counsel, Atty. Cris Dionela, manifested after petitioner's testimony that he will present petitioner's secretary during the next hearing.[27] Since petitioner denied knowing the person who received the deliveries, the reason should be clear why we do not find on record the testimony of his secretary. This time, however, petitioner laments that "the persons who only the respondent claimed to be [petitioner's] employees" were never presented in court to be identified and confronted by him.[28] *Third*, that there is no evidence of petitioner's account with respondent is belied by petitioner himself when he replied to the demand letter and said that he will check his records and settle his actual accountability within 45 days.

Relatedly, petitioner's unpaid account was duly proven by the charge invoice for his credit purchase worth ₱80,200 and official receipts for his partial payment of ₱38,000 only. Petitioner, in his belabored challenge to respondent's evidence, has not informed the Court what other evidence could possibly prove his unpaid account. Perhaps he could think of no other because any evidence other than proof of credit and proof of partial payment would only be superfluous in proving his unpaid

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[24] TSN, June 5, 1997, p. 7.

[25] TSN, March 10, 1997, p. 8.

[26] TSN, June 5, 1997, pp. 13-16.

[27] *Id.* at 30.

[28] *Rollo,* p. 135.

account. And his reply to the demand letter only confirms what he has to settle.

Thus, we are in agreement that respondent was able to prove by preponderant evidence, which means evidence which is of greater weight or is more convincing than that which is in opposition to it,[29] that petitioner ought to pay his unpaid account.

On the matter of damages, petitioner contends that the award of 3% interest per month is baseless because the legal rate is 12% per annum. The charge invoice also states 12% interest per annum on overdue accounts. The award of attorney's fees and cost of collection is also baseless in view of the policy that no premium should be placed on the right to litigate.

Respondent counters that attorney's fees may be awarded when a party is compelled to litigate.

On this issue, petitioner is partly correct. The interest payable for an overdue account as stated in the charge invoice is only 12% per annum,[30] not 3% per month. The handwritten modification to 36% was not explained by respondent. In its comment,[31] respondent did not even dispute petitioner's assertion and limited its argument on the propriety of attorney's fees.

Accordingly, as of November 28, 2008, 13 years after respondent's judicial demand, petitioner's unpaid account amounts to ₱108,032, computed as follows:

Unpaid Account = Unpaid Price + Interest

Unpaid Account = (80,200 – 38,000) + [(80,200-38,000)x .12 x 13]

Unpaid Account = 42,200 + 65,832

Unpaid Account = ₱108,032

Additional interest can be computed after November 28, 2008.

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[29] *Reyes v. Court of Appeals*, G.R. No. 147758, June 26, 2002, 383 SCRA 471, 480.

[30] Records, p. 54.

[31] *Rollo*, pp. 106-107.

Finally, we agree with the lower courts on the award of attorney's fees. Article 2208[32] of the Civil Code provides that in the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered. In this case, however, the charge invoice provides that "25% of the amount due is further charged for attorney's fees and cost of collection in case of suit." Thus, we agree that respondent is also entitled to 25% of ₱108,032 or ₱27,008 as attorney's fees.

WHEREFORE, the petition is *PARTLY GRANTED*. The assailed Decision dated July 27, 2005 and Resolution dated November 15, 2005 of the Court of Appeals in CA-G.R. CV No. 57877 are hereby *MODIFIED*. Petitioner is *ORDERED* to pay respondent (a) ₱108,032 plus additional interest after November 28, 2008, and (b) ₱27,008 as attorney's fees.

No pronouncement as to costs.

SO ORDERED.

Carpio,[*] *Carpio Morales, Bersamin,*[**] and *Abad, JJ.*, concur.

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[32] ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered,...

x x x x x x x x x

[*] Additional member per Special Order No. 757.

[**] Additional member per Special Order No. 765.

SECOND DIVISION

[G.R. No. 178229. October 23, 2009]

MIGUEL A. PILAPIL, EDUARDO GODEN, GAUDENCIO C. BAURA, ISMAEL ESPANOLA, JEREMIAS B. CUBIAN, JR., NELSON A. CAL, RAMON G. GILLO, MARIO ENEGENTE, MARLON C. ERONICO, JULIAN C. RODADO, JR., ROMAN LANIA, ERNESTO P. NARVASA, RICKY PROCHINA, VICTORINO ARGOMIDO, JR., CLEMENTE D. BUTAD, RAMON S. OLE, JOSEPH Y. BUENO, GEORGE B. DAGAAS, ROGER C. ABAYATA, ARTEMIO A. MENDEZ, ROGELIO VILLA, RODULFO SARANDONA, BONIFACIO L. MINOZA, ROGILDO M. LANGUAY, ALBERTO O. CAIBIGAN, ALBERTO P. ZARCO, MANUEL W. ABECIA, REYNO D. BATOMALAQUE, LEO DEMETRIO, ELPIDIO N. MUNEZ, MAXIMO EDQUILANG, CLEMENTE M. SURBAN, ARTURO G. BEDUYA, ERNESTO M. ABADINES, CELSO S. ALABAT, SR., DOMINARDOR LAGUNZAD, ANTONIO P. CABALO, DARIO Y. AXALAN, NERIO A. BAGOLOR, SR., NOMERTO M. AYSO, RODOLFO A. BALA, LORETO BUENO, DAMIANO E. SAJOL, CONRADO A. MA, GUILLERMO S. BABAO, FERNANDITO MONTOYA, FEDERICO S. GETIGAN, SR., ARMANDO P. MACAPAZ, ALBERTO T. RESULA, JR., GABRIEL Q. LOPEZ, RICARDO E. SAJOL, EDILBERTO L. ERABON, JR., LINO L. BARONG, RODRIGO P. JUMILLA, FELICIANO S. ANG SIO, JESUS S. ANDRADE, JOEL U. ROBILLO, RUSTICO Y. CUYNO, ARSENIO P. MANEGO, JULIUS R. TAYABAS, BIENVENIDO C. MACADINE, EDGARDO M. PEROMINGAN, GRACIANO M. JALBUNA, JOVEN BAILLO, TEODORO S. MAGPUSAO, ARIEL Q. AGRAVANTE, FELIX P. BALBUTIN, ANDREO C. ARGOMIDO, BIENVENIDO A. SAYSON, ARTEMIO

T. CALES, MARCELINO E. TAMPOS, JORGE BETO, PEREGRINO CAHARIAN, SANTOS E. LUNGAY, PORFERIO ROBLES, PAULITO G. SERATO, CARLITO FERNANDEZ, NESTOR B. BUNCALAN, CEFERINO P. DOMINGO, ERNESTO T. PANTILLO, LEONARDO B. QUIZO, ALFREDO M. FULGUERINAS, EDGARDO C. LAGUNA, LAUREANO C. MOSQUITE, JR., ALEJANDRO C. SALAMANES, CARLITO B. MAGLACION, MARIO L. LAVESORES, ALEX D. MAMACANG, DIONES BATERBONIA, JOSE A. NAVARRO, ALBERTO T. LEBANTE, AGUSTIN B. VENENOSO, LEO TILOS, EDGARDO C. LOBO, ALBERTO E. ESPERA, TEODORO SOCOBOS, ROGELIO P. DANAS, DIOMEDES G. AYOP, MANSUETO S. GAMIL, EDGARDO CAMPOSO, CIRILO S. LADICA, LEONARDO J. BANGGOS, ORLANDO A. LACERONA, REYNALDO S. ROCHA, LENILO O. HUISO, ARTEMIO B. TAGA AMO, NICANOR T. TORREFIEL, SEVERINO T. SANIEL, BARTOLOME D. DELFINO, DOMINGO P. HUEVOS, JR., REYNALDO CALUPAS, SONNY M. INTIA, MODESTO G. COMANDA, SANTIAGO S. LINGO, SIMON V. MARTINETE, NAZARIO B. AGUSTINO, VICENTE MONTEHERMOSO, DANIEL N. ALBARICO, PEDRO T. TORREON, ANTONIO AMIMITA, CONCORDIO PELIGRO (DECEASED), ALFREDO T. TORRALBA, SAMUEL CABREROS, WILFREDO M. PUWEBLO, ROSENDO BULLANDAY, RAMON PANDAY, MEDARDO P. ARCELO, ROGELIO S. LINGO, FRANCISCO G. MALABAD, SOTERO M. BACALSO, FRANCISCO O. SUCAYRE, RAMIR B. ORDANIEL, LUCIANO A. GARCIA, SATURNINO COJANO, NICANOR S. ESTOQUE, JR., SAMUEL D. OCULAR, JUAN S. SARDOMA, CARLITO L. PANGANORON, SR., ADRIANO B. ABABA, FELIPE HILLA, ELMER S. LLANTO, RECAREDO E. AMESONA, JOSE P. TOQUIB,

ROLANDO C. ARCENO, JULIUS BUCAO, SR., SAMUEL BODIONGAN, PEPTIO TARCELO, LEO O. EROY, JR., GENESITO A. SIGUE, LEO LUNA, HENRY T. PONTEMAYOR, ALBERTO TINAMBACAN, RODRIGO MANALO, SEGUNDINO I. GESALAN, WILFREDO A. GURREA, VICENTE MUNOZ, FRANCISCO YANGKEE, ANTONIO BALUNTANG, ROMIE BASINDAHAN, RENALDO TAPIA, GEROSIMO LICARDO, ARMANDO S. LEE, MANUEL L. PELENIO, ELIEZER B. ALCALDE, WILFREDO G. MERQUITA, SEVERINO P. REGIDOR, ALBERTO B. JABAGAT, DANIEL B. GALACE, ARSENIO A. OROZCO, EDGARDO A. PILAPIL, BARTOLOME P. SALANGO, BUENAVENTURA ANINON, ROLANDO C. PEREZ, RODOLFO L. ALONZO, ROBERTO S. LULU, APOLINARIO NEGRIDO, GIOVANIE H. CANATOY, DEOMEDES G. ORIAS, ROMEO A. TAYAPAN, SR., ENRIQUE L. LUMAPAS, JR., ALBERTO S. MACALOLOT, ISABELO LEJARE, JOSE E. DUERME, EMILIO PATOLA, RODRIGO ABIERA, TEODORO A. BAO, MARCELINO A. ABARCA, WILLIAM G. YUSON, and REYNALDO C. MARANON, *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION (NLRC), FIFTH DIVISION; AND C. ALCANTARA & SONS, INC., EDITHA ALCANTARA, President, and NELIA CLAUDIO, Vice-President for Finance & Administration,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ABANDONMENT; ELEMENTS.— For abandonment to exist, it is essential that (a) the employee must have failed to report for work or must have been absent without valid or justifiable reason; and (b) there must have been a clear intention to sever the employer-employee relationship manifested by some overt acts.

2. ID.; ID.; ID.; ID.; ID.; EMPLOYEES' INTENTION TO SEVER THE EMPLOYER-EMPLOYEE RELATIONSHIP IS MANIFESTED BY THE LENGTH OF TIME THEY REFUSED TO RETURN TO WORK.— In petitioners' case, despite the directive *cum* caveat of CASI for them to report back for work within two days from receipt thereof, they failed to comply therewith. After three years, as reflected above, they offered to return to work. Their intention to sever the employer-employee relationship with CASI is manifested, however, by the length of time they refused to return to work, for they had, in the interim, been looking for other jobs.

APPEARANCES OF COUNSEL

Gregorio A. Pizarro for petitioners.

Laguesma Magsalin Consulta & Gastardo Law Offices for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Petitioners, 188 in all, were employees of C. Alcantara and Sons, Inc. (CASI) and members of the *Nagkahiusang Mamumuo sa Alsons*, Southern Philippines Federation of Labor (NAMAAL-SPFL or the union). NAMAAL-SPFL and CASI forged a collective bargaining agreement (CBA) effective January 10, 1995 up to December 31, 1999.

On the proposal of NAMAAL-SPFL, negotiation for the modification of the CBA was commenced but ended in a deadlock.

On July 8 1998, NAMAAL-SPFL filed a Notice of Strike before the National Conciliation and Mediation Board (NCMB) on the ground of "deadlock in collective bargaining."

As conciliation efforts failed, a vote was conducted in which majority of the employees voted for the holding of a strike. NAMAAL-SPFL, led by its president Felixberto Irag, thereupon staged a strike at 11:00 P.M. of August 23, 1998. With makeshift

structures, huge streamers and banners, the strikers barricaded the main private road leading to, and prevented ingress to and egress from, the CASI compound, thereby paralyzing CASI's operations.

On August 26, 1998, CASI, amid received reports that the strikers harassed and intimidated its managerial and supervisory employees entering the compound, filed a petition to declare the strike illegal before the National Labor Relations Commission (NLRC), RAB No. XI, Davao City, docketed as NLRC Case No. RAB-11-08-010664-98, against the officers and members of the union, excluding petitioners, who were alleged to be responsible for some of the prohibited and illegal activities during the strike.

CASI alleged that the striker-respondents conducted illegal activities and violated the "no-strike-no-lock-out clause" of the CBA. It prayed for the issuance of a writ of preliminary injunction with a prayer for the issuance of a temporary restraining order (TRO) *ex-parte* and writ of preliminary injunction.

The NLRC issued a TRO but the strikers defied it. The NLRC later issued a Writ of Preliminary Injunction ordering the striking union officers and their agents and sympathizers to lift their barricades and remove all obstructions to the CASI premises.[1] The attempt to enforce the writ on two occasions was foiled by the strikers. The third attempt to enforce was met with violent confrontation during which at least 23 non-striking workers were injured. After still several attempts, with the assistance of the city officials of Davao and some church representatives, the writ was finally enforced on October 28, 1998.

CASI thereupon resumed operations. On November 7, 1998, it sent letters directing petitioners to return to work within two (2) days from receipt thereof, with the caveat that if they don't, it would take necessary measures for the protection of its interest.[2]

Petitioners ignored CASI's directive.

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[1] *Vide* NLRC records, Vol. 2, p. 48.

[2] CA *rollo*, p. 759. *Vide* NLRC records Vol. 1, pp. 127-255.

By Decision dated June 29, 1999, Labor Arbiter (LA) Antonio M. Villanueva declared the strike illegal. On appeal, the NLRC affirmed the LA's decision with modification, prompting NAMAAL-SPFL to file a petition for *certiorari* before the Court of Appeals.

In the meantime, or on October 21, 2001, 61 of the present petitioners wrote CASI stating:

> Until now we have not found any job equal to the positions we held in Alsons. We understand that many of the strikers had returned to work, including some of those who were convicted of illegal strike. Thus, the picketing had been lifted.
>
> We awaited for [*sic*] the outcome of the strike since August 23, 1998, and only recently we were informed that we were not among those included in the case filed by the Company against the Nagkahiusang Mamumu-o sa Alsons (NMAAL)-SPFL).
>
> For these reasons, we are therefore voluntarily offering to return to work.[3] (Underscoring supplied)

By letter of January 4, 2002, CASI, through counsel, refused the offer in this wise:

> x x x x x x x x x
>
> We are informed that sometime in 1998, all the striking workers/ members of NAMAAL-SPFL, were advised by our client to return to work as the company had resumed operations after the preliminary injunction issued by the National Labor Relations Commission (5th Division) was implemented despite your violent opposition thereto. Several management representatives went to the extent of personally relaying the company's resumption of operations to you and the other striking members of NAMAAL-SPFL. The common reply was the stand of the union through your president Felixberto Irag that you will not return to work until the strike case shall have been decided. This reply we understand, was premised on the assurance by Irag that all of you will be reinstated with full payment of strike duration pays. Because of your adamant refusal to heed the request of management, our client was constrained to make do with the workers

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[3] *Id.* at 294.

who returned to work. Thus presently, the company is operating smoothly with these ample number of workers.

As you must be aware, the strike was declared illegal by Labor Arbiter Antonio Villanueva of the Davao City Branch of the NLRC in his decision dated June 29, 1999. Said decision was affirmed with partial modification by the NLRC (5th Division) on November 8, 1999. Your union then filed a petition for *certiorari* before the Court of Appeals last July 10, 2000 where it is presently pending resolution. Since it is your desire to wait until the case is decided, so be it.

In the light of the foregoing, our client regrets that it cannot accede to your request.[4] (Underscoring supplied)

Petitioners thereupon filed separate complaints[5] (NLRC Case No. RAB-1-02-00164-02 and related cases) for constructive dismissal which were consolidated.

In the meantime or on March 20, 2002, the Court of Appeals affirmed the NLRC decision finding the strike illegal.[6]

By Decision of December 27, 2002, LA Miriam A. Libron-Barroso found in NLRC Case No. RAB-11-02-00164-02 and the related cases that petitioners had abandoned their jobs and were not constructively dismissed, but that CASI failed to perform the final operative act to declare complainants to have abandoned their jobs pursuant to the rules. Thus the LA disposed:

WHEREFORE, premises considered, judgment is hereby rendered dismissing for lack of merit the complaint for constructive dismissal. However, complainants' dismissal being improper, respondent C. Alcantara and Sons, Inc. is hereby ordered to pay the above-mentioned complainanants the total amount of PESOS: TWENTY TWO MILLION EIGHT HUNDRED FOURTEEN THOUSAND SIX HUNDRED NINETY SIX and 77/100 (₱22,814,696.77) representing separation pay.

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[4] *Id.* at 300-301.

[5] *Id.* at 1-84.

[6] *Vide id.* at 271-279.

The monetary award of Samuel Ocular shall be computed during the execution stage for his failure to state in the complaint the date of his employment.

All other claims are dismissed for lack of merit.

SO ORDERED.[7]

Both petitioners and CASI appealed to the NLRC.[8] The NLRC, finding merit only in the appeal of CASI, nullified the Decision of the LA.

Their Motion for Reconsideration[9] having been denied,[10] petitioners assailed the dismissal of their complaint for constructive dismissal via *Certiorari*[11] before the Court of Appeals which it dismissed by Decision[12] of September 21, 2006.

Hence, the present Petition for Review[13] contending that contrary to the findings of the Court of Appeals,

I. X X X ARTICLE 264 (A) OF THE LABOR CODE IS SQUARELY APPLICABLE IN THE CASE AT BAR.

II. X X X THE PETITIONERS WERE EITHER ACTUALLY OR CONSTRUCTIVELY DISMISSED.

III. X X X THE PETITIONERS DID NOT ABANDON THEIR EMPLOYMENT.

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[7] *Id.* at 375-376.

[8] NLRC records Vol. 2, pp. 1-39, 145-175.

[9] *Id.* at 561-593.

[10] *Id.* at 660-666.

[11] CA *rollo*, pp. 2-44.

[12] Penned by Court of Appeals Associate Justice Teresita Dy-Liacco Flores, with the concurrence of Associate Justices Rodrigo F. Lim, Jr. and Mario V. Lopez, CA *rollo*, pp. 742-766.

[13] *Rollo*, pp. 15-69.

IV. XXX THE PETITIONERS ARE ENTITLED TO REINSTATEMENT, BACKWAGES, DAMAGES AND ATTORNEY'S FEES AS PRAYED FOR IN THE PETITION.[14] (Underscoring supplied)

The petition is bereft of merit.

Petitioners' citation in their favor of Article 264 (A) of the Labor Code which provides that "mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike" is misplaced. *First*, the strike in which petitioners participated was declared illegal. *Second*, petitioners were not dismissed for their participation in the strike but for abandonment of their jobs.

For abandonment to exist, it is essential that (a) the employee must have failed to report for work or must have been absent without valid or justifiable reason; and (b) there must have been a clear intention to sever the employer-employee relationship manifested by some overt acts.[15]

In petitioners' case, despite the directive *cum* caveat of CASI for them to report back for work within two days from receipt thereof, they failed to comply therewith. After three years, as reflected above, they offered to return to work. Their intention to sever the employer-employee relationship with CASI is manifested, however, by the length of time they refused to return to work, for they had, in the interim, been looking for other jobs.

Petitioners' justification for their delay in heeding CASI's directive – that they had been "recently" informed that they were not parties to the case filed by CASI against the union – does not persuade. As the Court of Appeals observed, petitioners "were never summoned to appear in said case, [but e]ven granting that they were confused, they would have verified from the

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[14] *Id.* at 30.

[15] *Kams Int'l., Inc. v. NLRC*, 373 Phil. 950, 958 (1999).

union's counsel if they were part of those sued [but] they did not x x x."[16]

IN FINE, as petitioners were not constructively dismissed for they abandoned their jobs, they are not entitled to reinstatement, backwages, damages, and attorney's fees.

WHEREFORE, the petition is *DENIED*.

Costs against petitioners.

SO ORDERED.

Quisumbing (Chairperson), Carpio,[*] *Bersamin,*[**] and *Abad, JJ.,* concur.

SECOND DIVISION

[G.R. No. 178429. October 23, 2009]

JOSE C. GO, *petitioner, vs.* **BANGKO SENTRAL NG PILIPINAS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION; POLICY ON THE SUFFICIENCY OF THE ALLEGATIONS IN THE INFORMATION, DISCUSSED.— The Rules of Court, in implementing the [accused's right to be informed], specifically require that the acts or omissions complained of as constituting the offense, including the qualifying and aggravating circumstances, must be stated in ordinary and concise language, not necessarily in

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[16] CA *rollo,* p. 760.

[*] Additional member per Special Order No. 757 dated October 12, 2009.

[**] Additional member per Special Order No. 765 dated October 21, 2009.

the language used in the statute, but in terms sufficient to enable a person of common understanding to know what offense is being charged and the attendant qualifying and aggravating circumstances present, so that the accused can properly defend himself and the court can pronounce judgment. To broaden the scope of the right, the Rules authorize the quashal, upon motion of the accused, of an Information that fails to allege the acts constituting the offense. Jurisprudence has laid down the fundamental test in appreciating a motion to quash an Information grounded on the insufficiency of the facts alleged therein. We stated in *People v. Romualdez* that: The determinative test in appreciating a motion to quash x x x is the sufficiency of the averments in the information, that is, whether the facts alleged, if hypothetically admitted, would establish the essential elements of the offense as defined by law without considering matters *aliunde*. As Section 6, Rule 110 of the Rules of Criminal Procedure requires, **the information only needs to state the ultimate facts; the evidentiary and other details can be provided during the trial.** x x x The facts and circumstances necessary to be included in the Information are determined by reference to the definition and elements of the specific crimes. **The Information must allege clearly and accurately the elements of the crime charged.**

2. CRIMINAL LAW; REPUBLIC ACT NO. 337 (GENERAL BANKING ACT); ELEMENTS TO CONSTITUTE A VIOLATION OF THE FIRST PARAGRAPH OF SECTION 83 THEREOF, EXPLAINED.— Under Section 83, RA 337, the following elements must be present to constitute a violation of its first paragraph: 1. the offender is a director or officer of any banking institution; 2. the offender, either directly or indirectly, for himself or as representative or agent of another, performs any of the following acts: a. he borrows any of the deposits or funds of such bank; or b. he becomes a guarantor, indorser, or surety for loans from such bank to others, or **c. he becomes in any manner an obligor for money borrowed from bank or loaned by it;** 3. the offender has performed any of such acts without the written approval of the majority of the directors of the bank, excluding the offender, as the director concerned. x x x **The essence of the crime is becoming an obligor of the bank without securing the**

necessary written approval of the majority of the bank's directors. The second element merely lists down the various modes of committing the offense. The third mode, by declaring that "*[no director or officer of any banking institution shall xxx]* ***in any manner be an obligor for money borrowed from the bank or loaned by it,***" in fact serves a catch-all phrase that covers any situation when a director or officer of the bank becomes its obligor. **The prohibition is directed against a bank director or officer who becomes in any manner an obligor for money borrowed from or loaned by the bank without the written approval of the majority of the bank's board of directors.** To make a distinction between the act of borrowing and guarantying is therefore unnecessary because in either situation, the director or officer concerned becomes an obligor of the bank against whom the obligation is juridically demandable.

3. ID.; ID.; THE COURT CANNOT ADOPT A LIBERAL CONSTRUCTION THAT WOULD DEFEAT THE LEGISLATURE'S INTENT IN ENACTING THE SAID LAW.— The language of the law is broad enough to encompass either act of borrowing or guaranteeing, or both. While the first paragraph of Section 83 is penal in nature, and by principle should be strictly construed in favor of the accused, the Court is unwilling to adopt a liberal construction that would defeat the legislature's intent in enacting the statute. The objective of the law should allow for a reasonable flexibility in its construction. Section 83 of RA 337, as well as other banking laws adopting the same prohibition, was enacted to ensure that loans by banks and similar financial institutions to their own directors, officers, and stockholders are above board. Banks were not created for the benefit of their directors and officers; they cannot use the assets of the bank for their own benefit, except as may be permitted by law. Congress has thus deemed it essential to impose restrictions on borrowings by bank directors and officers in order to protect the public, especially the depositors. Hence, when the law prohibits directors and officers of banking institutions from becoming in any manner an obligor of the bank (unless with the approval of the board), the terms of the prohibition shall be the standards to be applied to directors' transactions such as those involved in the present case.

4. ID.; ID.; CREDIT ACCOMMODATION LIMIT IS NOT AN EXCEPTION NOR IT IS AN ELEMENT OF THE OFFENSE UNDER THE FIRST PARAGRAPH OF SECTION 83; THREE RESTRICTIONS IMPOSED BY SECTION 83, EXPLAINED.— Contrary to Go's claims, the second paragraph of Section 83, RA 337 does not provide for an exception to a violation of the first paragraph thereof, nor does it constitute as an element of the offense charged. Section 83 of RA 337 actually imposes three restrictions: *approval, reportorial, and ceiling requirements*. The **approval requirement** (found in the first sentence of the first paragraph of the law) refers to the written approval of the majority of the bank's board of directors required before bank directors and officers can in any manner be an obligor for money borrowed from or loaned by the bank. Failure to secure the approval renders the bank director or officer concerned liable for prosecution and, upon conviction, subjects him to the penalty provided in the third sentence of first paragraph of Section 83. The **reportorial requirement**, on the other hand, mandates that any such approval should be entered upon the records of the corporation, and a copy of the entry be transmitted to the appropriate supervising department. The reportorial requirement is addressed to the bank itself, which, upon its failure to do so, subjects it to *quo warranto* proceedings under Section 87 of RA 337. The **ceiling requirement** under the second paragraph of Section 83 regulates the amount of credit accommodations that banks may extend to their directors or officers by limiting these to an amount equivalent to the respective outstanding deposits and book value of the paid-in capital contribution in the bank. Again, this is a requirement directed at the bank. In this light, a prosecution for violation of the first paragraph of Section 83, such as the one involved here, does not require an allegation that the loan exceeded the legal limit. Even if the loan involved is below the legal limit, a written approval by the majority of the bank's directors is still required; otherwise, the bank director or officer who becomes an obligor of the bank is liable. Compliance with the ceiling requirement does not dispense with the approval requirement. Evidently, the failure to observe the three requirements under Section 83 paves the way for the prosecution of three different offenses, each with its own set of elements. A successful indictment for failing to comply

with the approval requirement will not necessitate proof that the other two were likewise not observed.

5. REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION; THE PROSECUTION SHOULD BE GIVEN A CHANCE TO CORRECT A DEFECTIVE INFORMATION.— Assuming that the facts charged in the Information do not constitute an offense, we find it erroneous for the RTC to immediately order the dismissal of the Information, without giving the prosecution a chance to amend it. x x x Although an Information may be defective because the facts charged do not constitute an offense, the dismissal of the case will not necessarily follow. The Rules specifically require that the prosecution should be given a chance to correct the defect; the court can order the dismissal only upon the prosecution's failure to do so. The RTC's failure to provide the prosecution this opportunity *twice* constitutes an arbitrary exercise of power that was correctly addressed by the CA through the *certiorari* petition.

APPEARANCES OF COUNSEL

Pacheco Law Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

BRION, *J.*:

Through the present petition for review on *certiorari*,[1] petitioner Jose C. Go (*Go*) assails the October 26, 2006 decision[2] of the Court of Appeals (*CA*) in CA-G.R. SP No. 79149, as well as its June 4, 2007 resolution.[3] The CA decision and

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[1] Under Rule 45 of the Rules of Court; *rollo*, pp. 9-26

[2] Penned by Associate Justice Regalado Maambong (retired), with Associate Justice Marina Buzon and Associate Justice Japar Dimaampao, concurring; *id.*, pp. 28-44.

[3] *Id.,* pp. 46-47.

resolution annulled and set aside the May 20, 2003[4] and June 30, 2003[5] orders of the Regional Trial Court (*RTC*), Branch 26, Manila which granted Go's motion to quash the Information filed against him.

THE FACTS

On August 20, 1999, an Information[6] for violation of Section 83 of Republic Act No. 337 (*RA 337*) or the General Banking Act, as amended by Presidential Decree No. 1795, was filed against Go before the RTC. The charge reads:

> That on or about and during the period comprised between June 27, 1996 and September 15, 1997, inclusive, in the City of Manila, Philippines, **the said accused, being then the Director and the President and Chief Executive Officer of the Orient Commercial Banking Corporation (Orient Bank)**, a commercial banking institution created, organized and existing under Philippines (sic) laws, with its main branch located at C.M. Recto Avenue, this City, and taking advantage of his position as such officer/director of the said bank, did then and there **wilfully, unlawfully and knowingly borrow, either directly or indirectly, for himself or as the representative of his other related companies, the deposits or funds of the said banking institution and/or become a guarantor, indorser or obligor for loans from the said bank to others, by then and there using said borrowed deposits/ funds of the said bank in facilitating and granting and/or caused the facilitating and granting of credit lines/loans and, among others, to the New Zealand Accounts loans** in the total amount of TWO BILLION AND SEVEN HUNDRED FIFTY-FOUR MILLION NINE HUNDRED FIVE THOUSAND AND EIGHT HUNDRED FIFTY-SEVEN AND 0/100 PESOS, Philippine Currency, **said accused knowing fully well that the same has been done by him without the written approval of the majority of the Board of Directors of said Orient Bank** and which approval the said accused deliberately failed to obtain and enter the same upon the records of said banking institution and to transmit a copy of which

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[4] Penned by Judge Oscar Barrientos; *id.*, pp. 65-69.

[5] *Id.*, pp. 80-81.

[6] *Id.*, pp. 49-50.

to the supervising department of the said bank, as required by the General Banking Act.

CONTRARY TO LAW. [Emphasis supplied.]

On May 28, 2001, Go pleaded not guilty to the offense charged.

After the arraignment, both the prosecution and accused Go took part in the pre-trial conference where the marking of the voluminous evidence for the parties was accomplished. After the completion of the marking, the trial court ordered the parties to proceed to trial on the merits.

Before the trial could commence, however, Go filed on February 26, 2003[7] a motion to quash the Information, which motion Go amended on March 1, 2003.[8] **Go claimed that the Information was defective, as the facts charged therein do not constitute an offense under Section 83 of RA 337 which states:**

No director or officer of any banking institution shall either directly or indirectly, for himself or as the representative or agent of another, borrow any of the deposits of funds of such banks, nor shall he become a guarantor, indorser, or surety for loans from such bank, to others, or in any manner be an obligor for money borrowed from the bank or loaned by it, except with the written approval of the majority of the directors of the bank, excluding the director concerned. Any such approval shall be entered upon the records of the corporation and a copy of such entry shall be transmitted forthwith to the appropriate supervising department. The office of any director or officer of a bank who violates the provisions of this section shall immediately become vacant and the director or officer shall be punished by imprisonment of not less than one year nor more than ten years and by a fine of not less than one thousand nor more than ten thousand pesos.

The Monetary Board may regulate the amount of credit accommodations that may be extended, directly or indirectly, by banking institutions to their directors, officers, or stockholders.

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[7] *Id.,* pp. 51-57.

[8] *Id.,* pp. 58-64.

However, the outstanding credit accommodations which a bank may extend to each of its stockholders owning two percent (2%) or more of the subscribed capital stock, its directors, or its officers, shall be limited to an amount equivalent to the respective outstanding deposits and book value of the paid-in capital contribution in the bank. Provided, however, that loans and advances to officers in the form of fringe benefits granted in accordance with rules and regulations as may be prescribed by Monetary Board shall not be subject to the preceding limitation. (As amended by PD 1795)

In addition to the conditions established in the preceding paragraph, no director or a building and loan association shall engage in any of the operations mentioned in said paragraphs, except upon the pledge of shares of the association having a total withdrawal value greater than the amount borrowed. (As amended by PD 1795)

In support of his motion to quash, Go averred that based on the facts alleged in the Information, he was being prosecuted for borrowing the deposits or funds of the Orient Bank **and/or** acting as a guarantor, indorser or obligor for the bank's loans to other persons. The use of the word "and/or" meant that he was charged for being either a borrower or a guarantor, or for being both a borrower and guarantor. Go claimed that the charge was not only vague, but also did not constitute an offense. He posited that Section 83 of RA 337 penalized only directors and officers of banking institutions who acted either as borrower or as guarantor, but not as both.

Go further pointed out that the Information failed to state that his alleged act of borrowing and/or guarantying was not among the exceptions provided for in the law. According to Go, the second paragraph of Section 83 allowed banks to extend credit accommodations to their directors, officers, and stockholders, provided it is "limited to an amount equivalent to the respective outstanding deposits and book value of the paid-in capital contribution in the bank." Extending credit accommodations to bank directors, officers, and stockholders is not *per se* prohibited, unless the amount exceeds the legal limit. Since the Information failed to state that the amount he purportedly borrowed and/or guarantied was beyond the limit

set by law, Go insisted that the acts so charged did not constitute an offense.

Finding Go's contentions persuasive, the RTC granted Go's motion to quash the Information on May 20, 2003. It denied on June 30, 2003 the motion for reconsideration filed by the prosecution.

The prosecution did not accept the RTC ruling and filed a petition for *certiorari* to question it before the CA. The Information, the prosecution claimed, was sufficient. The word "and/or" did not materially affect the validity of the Information, as it merely stated a mode of committing the crime penalized under Section 83 of RA 337. Moreover, the prosecution asserted that the second paragraph of Section 83 (referring to the credit accommodation limit) cannot be interpreted as an exception to what the first paragraph provided. The second paragraph only sets borrowing limits that, if violated, render the bank, not the director-borrower, liable. A violation of the second paragraph of Section 83 – under which Go is being prosecuted – is therefore separate and distinct from a violation of the first paragraph. Thus, the prosecution prayed that the orders of the RTC quashing the Information be set aside and the criminal case against Go be reinstated.

On October 26, 2006, the CA rendered the assailed decision granting the prosecution's petition for *certiorari*.[9] The CA declared that the RTC misread the law when it decided to quash the Information against Go. It explained that the allegation that Go acted either as a borrower or a guarantor or as both borrower and guarantor merely set forth the different modes by which the offense was committed. It did not necessarily mean that Go acted both as borrower and guarantor for the same loan at the same time. It agreed with the prosecution's stand that the second paragraph of Section 83 of RA 337 is not an exception to the first paragraph. Thus, the failure of the Information to state that the amount of the loan Go borrowed or guaranteed exceeded the legal limits was, to the CA, an irrelevant issue. For these

[9] *Supra* note 2.

reasons, the CA annulled and set aside the RTC's orders and ordered the reinstatement of the criminal charge against Go. After the CA's denial of his motion for reconsideration,[10] Go filed the present appeal by *certiorari*.

THE PETITION

In his petition, Go alleges that the appellate court legally erred in overturning the trial court's orders. He insists that the Information failed to allege the acts or omissions complained of with sufficient particularity to enable him to know the offense being charged; to allow him to properly prepare his defense; and likewise to allow the court to render proper judgment.

Repeating his arguments in his motion to quash, Go reads Section 83 of RA 337 as penalizing a director or officer of a banking institution for either *borrowing* the deposits or funds of the bank, or *guaranteeing* or indorsing loans to others, but not for assuming *both* capacities. He claimed that the prosecution's shotgun approach in alleging that he acted as borrower and/or guarantor rendered the Information highly defective for failure to specify with certainty the specific act or omission complained of. To petitioner Go, the prosecution's approach was a clear violation of his constitutional right to be informed of the nature and cause of the accusation against him.

Additionally, Go reiterates his claim that credit accommodations by banks to their directors and officers are legal and valid, provided that these are limited to their outstanding deposits and book value of the paid-in capital contribution in the bank. The failure to state that he borrowed deposits and/or guaranteed loans beyond this limit rendered the Information defective. He thus asks the Court to reverse the CA decision to reinstate the criminal charge.

In its Comment,[11] the prosecution raises the same defenses against Go's contentions. It insists on the sufficiency of the allegations in the Information and prays for the denial of Go's petition.

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[10] *Supra* note 3.

[11] *Rollo*, pp. 229-244.

THE COURT'S RULING

The Court does not find the petition meritorious and accordingly denies it.

The Accused's Right to be Informed

Under the Constitution, a person who stands charged of a criminal offense has the right to be informed of the nature and cause of the accusation against him.[12] The Rules of Court, in implementing the right, specifically require that the acts or omissions complained of as constituting the offense, including the qualifying and aggravating circumstances, must be stated in ordinary and concise language, not necessarily in the language used in the statute, but in terms sufficient to enable a person of common understanding to know what offense is being charged and the attendant qualifying and aggravating circumstances present, so that the accused can properly defend himself and the court can pronounce judgment.[13] To broaden the scope of the right, the Rules authorize the quashal, upon motion of the accused, of an Information that fails to allege the acts constituting the offense.[14] Jurisprudence has laid down the fundamental test in appreciating a motion to quash an Information grounded on the insufficiency of the facts alleged therein. We stated in *People v. Romualdez*[15] that:

> The determinative test in appreciating a motion to quash xxx is the sufficiency of the averments in the information, that is, whether the facts alleged, if hypothetically admitted, would establish the essential elements of the offense as defined by law without considering matters *aliunde*. As Section 6, Rule 110 of the Rules of Criminal Procedure requires, **the information only needs to state the ultimate facts; the evidentiary and other details can be provided during the trial.**

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[12] CONSTITUTION, Article III, Section 14 (1).

[13] RULES OF COURT, Rule 110, Section 9.

[14] *Id.,* Rule 117, Section 3 (a).

[15] G.R. No. 166510, July 23, 2008.

To restate the rule, **an Information only needs to state the ultimate facts constituting the offense, not the finer details of why and how the illegal acts alleged amounted to undue injury or damage** – matters that are appropriate for the trial. [Emphasis supplied]

The facts and circumstances necessary to be included in the Information are determined by reference to the definition and elements of the specific crimes. **The Information must allege clearly and accurately the elements of the crime charged.**[16]

Elements of Violation of Section 83 of RA 337

Under Section 83, RA 337, the following elements must be present to constitute a violation of its first paragraph:

1. the offender is a director or officer of any banking institution;
2. the offender, either directly or indirectly, for himself or as representative or agent of another, performs any of the following acts:
   a. he borrows any of the deposits or funds of such bank; or
   b. he becomes a guarantor, indorser, or surety for loans from such bank to others, or
   c. he becomes in any manner an obligor for money borrowed from bank or loaned by it;
3. the offender has performed any of such acts without the written approval of the majority of the directors of the bank, excluding the offender, as the director concerned.

A simple reading of the above elements easily rejects Go's contention that the law penalizes a bank director or officer only either for borrowing the bank's deposits or funds or for guarantying loans by the bank, but not for acting in both capacities. **The essence of the crime is becoming an obligor of the bank without securing the necessary written approval of the majority of the bank's directors.**

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[16] *Lazarte v. Sandiganbayan*, G.R. No. 180122, March 13, 2009.

The second element merely lists down the various modes of committing the offense. The third mode, by declaring that *"[no director or officer of any banking institution shall xxx]* ***in any manner be an obligor for money borrowed from the bank or loaned by it,"*** in fact serves a catch-all phrase that covers any situation when a director or officer of the bank becomes its obligor. **The prohibition is directed against a bank director or officer who becomes in any manner an obligor for money borrowed from or loaned by the bank without the written approval of the majority of the bank's board of directors.** To make a distinction between the act of borrowing and guarantying is therefore unnecessary because in either situation, the director or officer concerned becomes an obligor of the bank against whom the obligation is juridically demandable.

The language of the law is broad enough to encompass either act of borrowing or guaranteeing, or both. While the first paragraph of Section 83 is penal in nature, and by principle should be strictly construed in favor of the accused, the Court is unwilling to adopt a liberal construction that would defeat the legislature's intent in enacting the statute. The objective of the law should allow for a reasonable flexibility in its construction. Section 83 of RA 337, as well as other banking laws adopting the same prohibition,[17] was enacted to ensure that loans by banks and similar financial institutions to their own directors, officers, and stockholders are above board.[18] Banks were not created for the benefit of their directors and officers; they cannot use the assets of the bank for their own benefit, except as may be permitted by law. Congress has thus deemed it essential to impose restrictions on borrowings by bank directors and officers in order to protect the public,

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[17] *Supra* note 15; See Section 5 of RA 7353 (An Act Providing For The Creation, Organization And Operation Of Rural Banks, And For Other Purposes) and Presidential Decree No. 264, as amended by RA 6848 (An Act Creating the Philippine Amanah Bank); See also Section 18 of RA 1300 (Revised Charter of the Philippine National Bank) and Section 16 of RA 3518 (An Act Creating The Philippine Veterans' Bank, And For Other Purposes).

[18] See *Ramos v. Court of Appeals*, G.R. No. 117416, December 8, 2000, 347 SCRA 463.

especially the depositors.[19] Hence, when the law prohibits directors and officers of banking institutions from becoming in any manner an obligor of the bank (unless with the approval of the board), the terms of the prohibition shall be the standards to be applied to directors' transactions such as those involved in the present case.

Credit accommodation limit is not an exception nor is it an element of the offense

Contrary to Go's claims, the second paragraph of Section 83, RA 337 does not provide for an exception to a violation of the first paragraph thereof, nor does it constitute as an element of the offense charged. Section 83 of RA 337 actually imposes three restrictions: *approval, reportorial, and ceiling requirements.*

The **approval requirement** (found in the first sentence of the first paragraph of the law) refers to the written approval of the majority of the bank's board of directors required before bank directors and officers can in any manner be an obligor for money borrowed from or loaned by the bank. Failure to secure the approval renders the bank director or officer concerned liable for prosecution and, upon conviction, subjects him to the penalty provided in the third sentence of first paragraph of Section 83.

The **reportorial requirement**, on the other hand, mandates that any such approval should be entered upon the records of the corporation, and a copy of the entry be transmitted to the appropriate supervising department. The reportorial requirement is addressed to the bank itself, which, upon its failure to do so, subjects it to *quo warranto* proceedings under Section 87 of RA 337.[20]

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[19] See *People v. Knapp*, 28 N.Y.Crim.R. 285, 206 N.Y. 373, 99 N.E. 841.

[20] Section 87. Unless otherwise herein provided, the violation of any of the provisions of the Act shall be punished by a fine of not more than two thousand pesos or by imprisonment for not more than two years, or by both. **If the violation is committed by a corporation, the same shall, upon such violation being proved, be dissolved by *quo warranto* proceedings instituted by the Solicitor General:** Provided, that nothing in this section shall be construed as repealing the other causes for the dissolution of corporations prescribed by existing law, and the remedy provided for in this section shall be considered as additional to the remedies already existing. [Emphasis supplied.]

The **ceiling requirement** under the second paragraph of Section 83 regulates the amount of credit accommodations that banks may extend to their directors or officers by limiting these to an amount equivalent to the respective outstanding deposits and book value of the paid-in capital contribution in the bank. Again, this is a requirement directed at the bank. In this light, a prosecution for violation of the first paragraph of Section 83, such as the one involved here, does not require an allegation that the loan exceeded the legal limit. Even if the loan involved is below the legal limit, a written approval by the majority of the bank's directors is still required; otherwise, the bank director or officer who becomes an obligor of the bank is liable. Compliance with the ceiling requirement does not dispense with the approval requirement.

Evidently, the failure to observe the three requirements under Section 83 paves the way for the prosecution of three different offenses, each with its own set of elements. A successful indictment for failing to comply with the approval requirement will not necessitate proof that the other two were likewise not observed.

Rules of Court allow amendment of insufficient Information

Assuming that the facts charged in the Information do not constitute an offense, we find it erroneous for the RTC to immediately order the dismissal of the Information, without giving the prosecution a chance to amend it. Section 4 of Rule 117 states:

> SEC. 4. *Amendment of complaint or information.*—If the motion to quash is based on an alleged defect of the complaint or information which can be cured by amendment, the court shall order that an amendment be made.
>
> **If it is based on the ground that the facts charged do not constitute an offense, the prosecution shall be given by the court an opportunity to correct the defect by amendment. The motion shall be granted if the prosecution fails to make the amendment, or the complaint or information still suffers from the same defect despite the amendment.** [Emphasis supplied]

Although an Information may be defective because the facts charged do not constitute an offense, the dismissal of the case will not necessarily follow. The Rules specifically require that the prosecution should be given a chance to correct the defect; the court can order the dismissal only upon the prosecution's failure to do so. The RTC's failure to provide the prosecution this opportunity *twice*[21] constitutes an arbitrary exercise of power that was correctly addressed by the CA through the *certiorari* petition. This defect in the RTC's action on the case, while not central to the issue before us, strengthens our conclusion that this criminal case should be resolved through full-blown trial on the merits.

WHEREFORE, we *DENY* the petitioner's petition for review on *certiorari* and *AFFIRM* the decision of the Court of Appeals in CA-G.R. SP No. 79149, promulgated on October 26, 2006, as well as its resolution of June 4, 2007. The Regional Trial Court, Branch 26, Manila is directed to *PROCEED* with the hearing of Criminal Case No. 99-178551. Costs against the petitioner.

SO ORDERED.

Quisumbing (Chairperson), Carpio,[*] *Carpio Morales,* and *Abad, JJ.,* concur.

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[21] Both the May 20, 2003 Order (granting Go's motion to quash the Information) and the June 30, 2003 Order (denying the prosecution's motion for reconsideration of the May 20, 2003 Order) of the RTC did not contain a provision requiring the prosecution to correct the allegedly defective Information.

[*] Designated additional Member of the Second Division in lieu of Associate Justice Mariano C. Del Castillo, per Special Order No. 757 dated October 12, 2009.

SECOND DIVISION

[G.R. No. 178479. October 23, 2009]

METROPOLITAN BANK & TRUST CO., *petitioner, vs.* **NIKKO SOURCES INTERNATIONAL CORP., and SUPERMAX PHILIPPINES, INC.,** *respondents.*

SYLLABUS

CIVIL LAW; MORTGAGE; FORECLOSURE; REPUBLICATION AND REPOSTING OF THE NOTICE OF SALE IS REQUIRED IF THE FORECLOSURE DOES NOT PROCEED ON THE DATE ORIGINALLY INTENDED; REASON.— The sale at public auction of the properties covered by the foreclosed mortgage in *Philippine National Bank v. Nepomuceno Productions, Inc.* cited by petitioner took place in 1976, also prior to the effectivity on April 22, 2002 of this Court's Circular No. 7-2002. The Court therein held that under Act No. 3135, as amended, republication as well as reposting of the notice of sale is required if the foreclosure does not proceed on the date *originally* intended. The principal object of a notice of sale in a foreclosure of mortgage is not so much to notify the mortgagor as to inform the public generally of the nature and condition of the property to be sold, and of the time, place, and terms of the sale. Notices are given to secure bidders and prevent a sacrifice of the property. Clearly, the statutory requirements of posting and publication are mandated, not for the mortgagor's benefit, but **for the public or third persons**. In fact, personal notice to the mortgagor in extrajudicial foreclosure proceedings is not even necessary, unless stipulated. As such, it is imbued with public policy considerations and any waiver thereon would be inconsistent with the intent and letter of Act No. 3135.

APPEARANCES OF COUNSEL

Perez Calima Law Office for petitioner.
A. Tan Zoleta and Associates Law Firm for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Respondent Supermax Philippines, Inc. (Supermax) obtained loans in 1999 from Metropolitan Bank and Trust Company (petitioner) totaling ₱24,600,000.[1] To secure the loans, its co-respondent Nikko Sources International Corporation mortgaged a parcel of land covered by Transfer Certificate of Title No. T-763001 in its name.[2]

Supermax failed to pay the loans upon maturity, hence, petitioner filed a petition for extra-judicial foreclosure of the mortgage before a notary public in Cavite.[3] A Notice of Sale[4] scheduled on August 4, 2000 was rescheduled to November 7, 2000 on petitioner's request,[5] and finally to November 14, 2000 on respondent's request.

Four days before the finally rescheduled public auction sale or on November 10, 2000, respondents filed before the Regional Trial Court (RTC) of Bacoor, Cavite a Complaint[6] against petitioner and the notary public, docketed as Civil Case No. BCV 2000-146, for declaration of nullity of notice of sale and increase in interest rates and damages, with prayer for the issuance of temporary restraining order (TRO) and/or writ of preliminary injunction, alleging that their failure to pay the loans was due to the unilateral imposition of exorbitant interest rate by petitioner from 16.453% to 18.5% in a matter of months;[7] and that petitioner reset the auction sale to November 14,

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[1] Exhibits "1" – "2", records, pp. 16-19.

[2] *Id.* at 20-21; Exhibit "3", *id.* at 22-24.

[3] *Rollo*, pp. 61-64.

[4] *Id.* at 65-66.

[5] Exhibits "10" – "12", records, pp. 111-114.

[6] *Id.* at 1-15.

[7] *Id.* at 4.

2000 without complying with the posting and publication requirements.[8]

Branch 19 of the Bacoor RTC issued a TRO and eventually a writ of preliminary injunction.[9] Petitioner filed a Motion to Dissolve the writ[10] which the trial court denied,[11] it finding that, among other things, petitioner did not comply with the requirements of the law on notice and publication of the auction sale. Its Motion for Reconsideration[12] having been denied,[13] petitioner filed a petition[14] for *Certiorari* before the Court of Appeals.

By Decision[15] of December 4, 2006, the Court of Appeals, finding that petitioner failed to comply with Section 3 of Act No. 3135 (AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL ESTATE MORTGAGES), as amended and Circular No. 7-2002 (GUIDELINES FOR THE ENFORCEMENT OF SUPREME COURT RESOLUTION OF DECEMBER 14, 1999 IN ADMINISTRATIVE MATTER NO. 99-10-05-0 (RE: PROCEDURE IN EXTRA-JUDICIAL FORECLOSURE OF MORTGAGE), AS AMENDED BY THE RESOLUTIONS DATED JANUARY 30, 2001 AND AUGUST 7, 2001)[16] of this Court, dismissed the petition. Petitioner's Motion

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

[9] *Id.* at 60-63, 121-122.

[10] *Id.* at 146-149.

[11] *Id.* at 178-179.

[12] *Id.* at 181-187.

[13] *Id.* at 214.

[14] CA *rollo*, pp. 2-25.

[15] Penned by Court of Appeals Associate Justice Arcangelita M. Romilla-Lontok, with the concurrence of Associate Justices Portia Aliño Hormachuelos and Amelita G. Tolentino, *id.* at 245-253.

[16] Sec. 3 of Act. No. 3135:

SEC. 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city

for Reconsideration[17] having been denied,[18] it filed the present Petition for Review,[19] alleging that the Court of Appeals

x x x DECIDED A QUESTION IN A WAY NOT IN ACCORDANCE WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE HON. SUPREME COURT WHEN IT UPHELD THE ASSAILED ORDERS OF THE LOWER COURT AND ENJOINED THE AUCTION SALE OF THE SUBJECT PROPERTY DESPITE THE EXISTENCE OF VALID AND LEGAL GROUNDS [FOR] DISSOLVING THE WRIT OF PRELIMINARY INJUNCTION.

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where the property is situated and if such property is worth more than Four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city.

Supreme Court Circular No. 7-2002:

Sec. 4. The Sheriff to whom the application for extra-judicial foreclosure of mortgage was raffled shall do the following:

a. Prepare a Notice of Extra-judicial Sale using the following form:

"NOTICE OF EXTRA-JUDICIAL SALE"

Upon extra-judicial petition for sale under Act 3135/1508 filed _____ against (name and address of Mortgagor/s) to satisfy the mortgage indebtedness which as of _____ amounts to ₱_____, excluding penalties, charges, attorney's fees and expenses of foreclosure, the undersigned or his duly authorized deputy will sell at public auction on (date of sale) _____ at 10:00 A.M. or soon thereafter at the main entrance of the _____ (place of sale) to the highest bidder, for cash or manager's check and in Philippine Currency, the following property with all its improvements, to wit:

"(Description of Property)"

"All sealed bids must be submitted to the undersigned on the above stated time and date."

"In the event the public auction should not take place on the said date, it shall be held on _____, _____ without further notice."

_____(date)

[17] *Id.* at 256-266.

[18] *Id.* at 273-274.

[19] *Rollo*, pp. 3-40.

x x x DEPARTED FROM THE USUAL COURSE OF PROCEEDING OR SANCTIONED SUCH DEPARTURE BY THE LOWER COURT IN THAT ACT NO. 3135, AS AMENDED, REQUIRES THE REPUBLICATION OF THE NOTICE OF SALE DESPITE THE FACT THAT THE RESPONDENTS REQUESTED FOR THREE POSTPONEMENTS OF THE AUCTION SALE AND WHICH WAS SCHEDULED LONG BEFORE THE EFFECTIVITY OF CIRCULAR NO. 7-2002.[20] (Emphasis in the original)

In the meantime, the trial court dismissed Civil Case No. BCV-2000-146 for failure of respondents and their counsel to appear during pre-trial.[21] Respondents' Motion for Reconsideration[22] was denied,[23] hence, they filed a Notice of Appeal[24] which the trial court gave due course to.[25]

Petitioner now contends that with the dismissal of Civil Case No. BV-2000-146, the Writ of Preliminary Injunction being challenged by them in the present petition *ipso facto* ceased to exist.[26] Respondents counter, however, that their Notice of Appeal of the dismissal of the case was given due course by the trial court, hence, the writ stands.

On the merits, petitioner argues:

x x x [I]n deciding to uphold the ruling of the trial court, the Honorable Court of Appeals reasoned that, under *Circular No. 7-2002*, which took effect on 22 April 2002, republication of a subsequent date of the foreclosure sale is *unnecessary*, *provided* that the said subsequent date be indicated in the original Notice of Sale. Hence, as the foreclosure sale in this instance was intended to be held on 14 November 2000, **before** the said Circular took

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

[21] Records, p. 276.

[22] *Id.* at 278-281.

[23] *Id.* at 294.

[24] *Id.* at 300-302.

[25] *Id.* at 304.

[26] *Rollo,* p. 634.

effect, there was a need for the Notice of Sale to be re-published and re-posted.

However, **prior to the effectivity of Circular No. 7-2002, there was neither any statute nor judicial pronouncement from the Hon. Supreme Court requiring republication and reposting of a Notice of Sale in the event foreclosure did not proceed on the date originally intended.**

The Honorable Court of Appeals, however, anchored its Decision [on] the case of ***Philippine National Bank vs. Nepomuceno Productions, Inc.*, 394 SCRA 405,** which was, however, promulgated by the Hon. Supreme Court on **27 December 2002** or more than two (2) years *after* the intended auction sale in the instant case on **14 November 2000**.[27] (Emphasis and underscoring in the original; italics supplied)

The sale at public auction of the properties covered by the foreclosed mortgage in *Philippine National Bank v. Nepomuceno Productions, Inc.*[28] cited by petitioner took place in 1976, also prior to the effectivity on April 22, 2002 of this Court's Circular No. 7-2002. The Court therein held that under Act No. 3135, as amended, republication as well as reposting of the notice of sale is required if the foreclosure does not proceed on the date *originally* intended.

The principal object of a notice of sale in a foreclosure of mortgage is not so much to notify the mortgagor as to inform the public generally of the nature and condition of the property to be sold, and of the time, place, and terms of the sale. Notices are given to secure bidders and prevent a sacrifice of the property. Clearly, the statutory requirements of posting and publication are mandated, not for the mortgagor's benefit, but **for the public or third persons**. In fact, personal notice to the mortgagor in extrajudicial foreclosure proceedings is not even necessary, unless stipulated. As such, it is imbued with public policy considerations and any waiver thereon would be inconsistent with the intent and letter of Act No. 3135.

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[27] *Id.* at 630-631.

[28] 394 SCRA 405 (2002).

Moreover, statutory provisions governing publication of notice of mortgage foreclosure sales must be strictly complied with and slight deviations therefrom will invalidate the notice and render the sale at the very least voidable.

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Thus, in the recent case of *Development Bank of the Philippines v. Aguirre*,[29] the foreclosure sale held more than two (2) months after the published date of sale was considered void for lack of republication. Similarly, in the instant case, the lack of republication of the notice of the December 20, 1976 foreclosure sale renders it **void**.

The right of a bank to foreclose a mortgage upon the mortgagor's failure to pay his obligation must be exercised according to its clear mandate, and every requirement of the law must be complied with, lest the valid exercise of the right would end. The exercise of a right ends when the right disappears, and it disappears when it is abused especially to the prejudice of others.[30] (Emphasis and underscoring supplied)

Petitioner not having republished the notice of the finally rescheduled auction sale, its petition must fail.

WHEREFORE, the petition is *DENIED*.

Costs against petitioner.

SO ORDERED.

Quisumbing (Chairperson), Carpio,[*] *Bersamin,*[**] and *Abad, JJ.,* concur.

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[29] 417 Phil. 235 (2001).

[30] *Philippine National Bank v. Nepomuceno Productions, Inc.,* 442 Phil. 655, 663-665 (2002).

[*] Additional member per Special Order No. 757 dated October 12, 2009.

[**] Additional member per Special Order No. 765 dated October 21, 2009.

SECOND DIVISION

[G.R. No. 179063. October 23, 2009]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **UNITED COCONUT PLANTERS BANK,** *respondent.*

SYLLABUS

TAXATION; CREDITABLE WITHHOLDING TAXES (CWT) AND DOCUMENTARY STAMP TAXES (DST); PERIOD FOR PAYMENT OF CWT AND DST IN RELATION TO EXTRA JUDICIAL FORECLOSURE SALE, EXPLAINED AND APPLIED.— [T]he Supreme Court had occasion under its resolution in Administrative Matter 99-10-05-0 to rule that the certificate of sale shall issue only upon approval of the executive judge who must, in the interest of fairness, first determine that the requirements for extrajudicial foreclosures have been strictly followed. For instance, in *United Coconut Planters Bank v. Yap*, this Court sustained a judge's resolution requiring payment of notarial commission as a condition for the issuance of the certificate of sale to the highest bidder. Here, the executive judge approved the issuance of the certificate of sale to UCPB on March 1, 2002. Consequently, the three-month redemption period ended only on June 1, 2002. Only on this date then did the deadline for payment of CWT and DST on the extrajudicial foreclosure sale become due. x x x [U]nder Revenue Memorandum Circular, x x x [I]f the property is an ordinary asset of the mortgagor, the creditable expanded withholding tax shall be due and paid within **ten (10) days following the end of the month in which the redemption period expires.** x x x Moreover, the payment of the documentary stamp tax and the filing of the return thereof shall have to be made within **five (5) days from the end of the month when the redemption period expires.** UCPB had, therefore, until July 10, 2002 to pay the CWT and July 5, 2002 to pay the DST. Since it paid both taxes on July 5, 2002, it is not liable for deficiencies.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Carag De Mesa & Zaballero for respondent.

D E C I S I O N

ABAD, *J.*:

This is an action involving a disputed assessment for deficiencies in the payment of creditable withholding tax and documentary stamps tax due from a foreclosure sale.

The Facts and the Case

Respondent United Coconut Planters Bank (UCPB) granted loans of ₱68,840,000.00 and ₱335,000,000.00 to George C. Co, Go Tong Electrical Supply Co., Inc., and Tesco Realty Co. that the borrowers caused to be secured by several real estate mortgages. When the latter later failed to pay their loans, UCPB filed a petition for extrajudicial foreclosure of the mortgaged properties. Pursuant to that petition, on December 31, 2001 a notary public for Manila held a public auction sale of the mortgaged properties. UCPB made the highest winning bid of ₱504,785,000.00 for the whole lot.

On January 4, 2002 the notary public submitted the Certificate of Sale to the Executive Judge of Regional Trial Court (RTC) of Manila for his approval.[1] But, on February 18, 2002 the executive judge returned it with instruction to the notary public to explain an inconsistency in the tax declaration of one mortgaged property. The executive judge further ordered the notary public to show proof of payment of the Sheriff's percentage of the bid price.[2] The notary public complied.[3] On March 1, 2002

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[1] CTA *rollo*, pp. 43-44.

[2] *Id.* at 46.

[3] *Id.* at 47-48.

the executive judge finally signed the certificate of sale and approved its issuance to UCPB as the highest bidder.[4]

On June 18, 2002 UCPB presented the certificate of sale to the Register of Deeds of Manila for annotation on the transfer certificates of title of the foreclosed properties. On July 5, 2002 the bank paid creditable withholding taxes (CWT) of ₱28,640,700.00 and documentary stamp taxes (DST) of ₱7,160,165.00 in relation to the extrajudicial foreclosure sale. It then submitted an affidavit of consolidation of ownership to the Bureau of Internal Revenue (BIR) with proof of tax payments and other documents in support of the bank's application for a tax clearance certificate and certificate authorizing registration.

Petitioner Commissioner of Internal Revenue (CIR), however, charged UCPB with late payment of the corresponding DST and CWT, citing Section 2.58 of Revenue Regulation 2-98, which stated that the CWT must be paid within 10 days after the end of each month, and Section 5 of Revenue Regulation 06-01, which required payment of DST within five days after the close of the month when the taxable document was made, signed, accepted or transferred. These taxes accrued upon the lapse of the redemption period of the mortgaged properties. The CIR pointed out that the mortgagor, a juridical person, had three months after foreclosure within which to redeem the properties.[5]

The CIR theorized that the three-month redemption period was to be counted from the date of the foreclosure sale. Here, he said,

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[4] *Id.* at 53-58.

[5] Section 47 of the General Banking Law (R.A. 8791) reads:

Section 47. *Foreclosure of Real Estate Mortgage*. –

x x x x x x x x x

Notwithstanding Act 3135, juridical persons whose property is being sold pursuant to an extrajudicial foreclosure, shall have the right to redeem the property in accordance with this provisions until, but not after, the registration of the certificate of foreclosure sale with the applicable Register of Deeds which in no case shall be more than **three months after foreclosure**, whichever is earlier. x x x

the redemption period lapsed three months from December 31, 2001 or on March 31, 2002. Thus, UCPB was in default for having paid the CWT and DST only on July 5, 2002. For this reason the CIR issued a Pre-Assessment Notice[6] and, subsequently, a Final Assessment Notice[7] to UCPB for deficiency CWT of ₱8,617,210.00 and deficiency DST of ₱2,173,051.75.

UCPB protested the assessment. It claimed that the redemption period lapsed on June 1, 2002 or three months after the executive judge of Manila approved the issuance of the certificate of sale. "Foreclosure" under Section 47 of the General Banking Law, said UCPB, referred to the date of approval by the executive judge, and not the date of the auction sale. But the CIR denied UCPB's protest, prompting UCPB to file a petition for review with the CTA in CTA Case 7164.

On July 26, 2006 the CTA Second Division set aside the decision of the CIR and held that the redemption period lapsed three months after the executive judge approved the certificate of sale. It said that "foreclosure" under the law referred to the whole process of foreclosure which included the approval and issuance of the certificate of sale. There was no sale to speak of which could be taxed prior to such approval and issuance. Since the executive judge approved the issuance only on March 1, 2002, the redemption period expired on June 1, 2002. Hence, UCPB's payments of CWT and DST in early July were well within the prescribed period. On appeal to the CTA *En Banc* in CTA EB 234, the latter affirmed the decision of the Second Division on June 5, 2007. With the denial of its motion for reconsideration, petitioner has taken recourse to this Court *via* a petition for review on *certiorari*.

Issue

The key issue in this case is whether or not the three-month redemption period for juridical persons should be reckoned from the date of the auction sale.

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[6] CTA *rollo*, p. 74.

[7] *Id.* at 31-32.

Ruling

The CIR argues that he has the more reasonable position: the redemption period should be reckoned from the date of the auction sale for, otherwise, the taxing authority would be left at the mercy of the executive judge who may unnecessarily delay the approval of the certificate of sale and thus prevent the early payment of taxes.

But the Supreme Court had occasion under its resolution in Administrative Matter 99-10-05-0[8] to rule that the certificate of sale shall issue only upon approval of the executive judge who must, in the interest of fairness, first determine that the requirements for extrajudicial foreclosures have been strictly followed. For instance, in *United Coconut Planters Bank v. Yap*,[9] this Court sustained a judge's resolution requiring payment of notarial commission as a condition for the issuance of the certificate of sale to the highest bidder.

Here, the executive judge approved the issuance of the certificate of sale to UCPB on March 1, 2002. Consequently, the three-month redemption period ended only on June 1, 2002. Only on this date then did the deadline for payment of CWT and DST on the extrajudicial foreclosure sale become due.

Under Section 2.58 of Revenue Regulation 2-98, the CWT return and payment become due within 10 days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year. On the other hand, under Section 5 of Revenue Regulation 06-01, the DST return and payment become due within five days after the close of the month when the taxable document was made, signed, accepted, or transferred.

The BIR confirmed and summarized the above provisions under Revenue Memorandum Circular 58-2008 in this manner:

[I]f the property is an ordinary asset of the mortgagor, the creditable expanded withholding tax shall be due and paid within **ten (10)**

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[8] Re: Procedure in Extrajudicial Foreclosure of Mortgage.

[9] 432 Phil. 536 (2002).

days following the end of the month in which the redemption period expires. x x x Moreover, the payment of the documentary stamp tax and the filing of the return thereof shall have to be made within **five (5) days from the end of the month when the redemption period expires.**

UCPB had, therefore, until July 10, 2002 to pay the CWT and July 5, 2002 to pay the DST. Since it paid both taxes on July 5, 2002, it is not liable for deficiencies. Thus, the Court finds no reason to reverse the decision of the CTA.

Besides, on August 15, 2008, the Bureau of Internal Revenue issued Revenue Memorandum Circular 58-2008 [10] which clarified among others, the time within which to reckon the redemption period of real estate mortgages. It reads:

> For purposes of reckoning the one-year redemption period in the case of individual mortgagors, or the three-month redemption period for juridical persons/mortgagors, the same shall be reckoned **from the date of the confirmation of the auction sale which is the date when the certificate of sale is issued.**

The CIR must have in the meantime conceded the unreasonableness of the previous position it had taken on this matter.

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

Quisumbing (Chairperson), Carpio,[*] *Carpio Morales,* and *Bersamin,*[**] *JJ.,* concur.

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[10] Re: Clarifying the Time Within Which to Reckon the Redemption Period on the Foreclosed Asset and the Period Within Which to Pay Capital Gains Tax or Creditable Withholding Tax and Documentary Stamp Tax on the Foreclosure of Real Estate Mortgage by Those Governed by the General Banking Law of 2000 (Republic Act No. 8791), as Well as the Venue for the Payment of These Taxes, August 15, 2008.

[*] Designated as additional member in lieu of Associate Justice Mariano C. Del Castillo, per Special Order No. 757 dated October 12, 2009.

[**] Designated as additional member in lieu of Associate Justice Arturo D. Brion, per Special Order No. 765 dated October 21, 2009.

SECOND DIVISION

[G.R. No. 179537. October 23, 2009]

PHILIPPINE ECONOMIC ZONE AUTHORITY, *petitioner, vs.* **EDISON (BATAAN) COGENERATION CORPORATION,** *respondent.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; ARBITRATION; R.A. 876 CONFINES THE COURT'S AUTHORITY ONLY TO DETERMINE WHETHER THERE IS AN AGREEMENT IN WRITING PROVIDING FOR ARBITRATION; APPLICATION.— R.A. No. 876 "explicitly confines the court's authority only to the determination of whether or not there is an agreement in writing providing for arbitration." Given petitioner's admission of the material allegations of respondent's complaint including the existence of a written agreement to resolve disputes through arbitration, the assailed appellate court's affirmance of the trial court's grant of respondent's Motion for Judgment on the Pleadings is in order.

2. ID.; ID.; ID.; THE DOCTRINE OF SEPARABILITY, EXPLAINED AND APPLIED.— Petitioner argues that it tendered an issue in its Answer as it disputed the legality of the pre-termination fee clause of the PSPA. Even assuming *arguendo* that the clause is illegal, it would not affect the agreement between petitioner and respondent to resolve their dispute by arbitration. The doctrine of separability, or severability as other writers call it, enunciates that an arbitration agreement is independent of the main contract. The arbitration agreement is to be treated as a separate agreement and the arbitration agreement does not automatically terminate when the contract of which it is a part comes to an end. The separability of the arbitration agreement is especially significant to the determination of whether the invalidity of the main contract also nullifies the arbitration clause. Indeed, the doctrine denotes that the invalidity of the main contract, also referred to as the "container" contract, does **not** affect the validity of the

arbitration agreement. Irrespective of the fact that the main contract is invalid, the arbitration clause/agreement still remains valid and enforceable.

3. ID.; ID.; ID.; WHEN THE LEGALITY OF THE PRE-TERMINATION FEE CLAUSE IS AN ISSUE SUBJECT TO ARBITRATION.— Petitioner nevertheless contends that the legality of the pre-termination fee clause is not arbitrable, citing *Gonzales v. Climax Mining Ltd.* which declared that the therein complaint should be brought before the regular courts, and not before an arbitral tribunal, as it involved a judicial issue. x x x The ruling in *Gonzales* was, on motion for reconsideration filed by the parties, modified, however, in this wise: x x x The adjudication of the petition in G.R. No. 167994 effectively modifies part of the Decision dated 28 February 2005 in **G.R. No. 161957**. Hence, we now hold that **the validity of the contract** containing the agreement to submit to arbitration **does not affect the applicability of the arbitration clause itself**. A contrary ruling would suggest that a party's mere repudiation of the main contract is sufficient to avoid arbitration. That is exactly the situation that the separability doctrine, as well as jurisprudence applying it, seeks to avoid. We add that when it was declared in **G.R. No. 161957** that the case should not be brought for arbitration, it should be clarified that the case referred to is the case actually filed by Gonzales before the DENR Panel of Arbitrators, which was for the **nullification of the main contract** on the ground of fraud, as it had already been determined that the case should have been brought before the regular courts involving as it did judicial issues. x x x It bears noting that respondent does not seek to nullify the main contract. It merely submits these issues for resolution by the arbitration committee, *viz*: x x x c. Whether or not as a result of (a) and (b) above, Claimant is entitled to terminate the Agreement; d. Whether or not Respondent accorded preferential treatment to EAUC in violation of the Agreement; e. Whether or not as a result of (d) above, Claimant is entitled to terminate the Agreement; f. Whether or not Claimant is entitled to a termination fee equivalent to ₱708,691,543.00; and g. Who between Claimant and Respondent shall bear the cost and expenses of the arbitration, including arbitrator's fees, administrative expenses and legal fees. In fine, the issues raised

by respondent are subject to arbitration in accordance with the arbitration clause in the parties' agreement.

ABAD, *J.*, concurring opinion:

CIVIL LAW; CONTRACTS; ARBITRATION; ISSUES RESPECTING ALLEGED VIOLATION OF THE AGREEMENT IS SUBJECT TO ARBITRATION.— I fully agree with the *ponencia* of Justice Conchita Carpio Morales in holding that PEZA's answer to the complaint acknowledged the existence of the remedy of arbitration concerning any dispute that might arise between them involving their agreement, in this case, PEZA's alleged refusal to grant Edison tariff rate adjustments as their agreement provided. PEZA's own answer alleged that it did not yet deny the requested tariff rate adjustments and that the delay in its action on such request had been brought about by Edison's refusal to submit the documents and data required of it. Whether or not PEZA did deny such request itself actually presents a dispute between the parties. Arbitration of the disputes between them respecting alleged violations of the agreement is, therefore, inevitable.

APPEARANCES OF COUNSEL

Procolo M. Olaivar & Norma B. Cajulis for petitioner.
Castillo Laman Tan Pantaleon and San Jose for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Petitioner Philippine Economic Zone Authority (PEZA) and Edison (Bataan) Cogeneration Corporation (respondent) entered into a Power Supply and Purchase Agreement (PSPA or agreement) for a 10-year period effective October 25, 1997 whereby respondent undertook to construct, operate, and maintain a power plant which would sell, supply and deliver electricity to PEZA for resale to business locators in the Bataan Economic Processing Zone.

In the course of the discharge of its obligation, respondent requested from PEZA a tariff increase with a mechanism for

adjustment of the cost of fuel and lubricating oil, which request it reiterated on March 5, 2004.

PEZA did not respond to both requests, however, drawing respondent to write PEZA on May 3, 2004. Citing a tariff increase which PEZA granted to the East Asia Utilities Corporation (EAUC), another supplier of electricity in the Mactan Economic Zone, respondent informed PEZA of a violation of its obligation under Clause 4.9 of the PSPA not to give preferential treatment to other power suppliers.

After the lapse of 90 days, respondent terminated the PSPA, invoking its right thereunder, and demanded ₱708,691,543.00 as pre-termination fee. PEZA disputed respondent's right to terminate the agreement and refused to pay the pre-termination fee, prompting respondent to request PEZA to submit the dispute to arbitration pursuant to the arbitration clause of the PSPA.

Petitioner refused to submit to arbitration, however, prompting respondent to file a Complaint[1] against PEZA for specific performance before the Regional Trial Court (RTC) of Pasay, alleging that, *inter alia*:

x x x x x x x x x

4. Under Clauses 14.1 and 14.2 of the Agreement, the dispute shall be resolved through arbitration before an Arbitration Committee composed of one representative of each party and a third member who shall be mutually acceptable to the parties: x x x

x x x x x x x x x

5. Conformably with the Agreement, plaintiff notified defendant in a letter dated September 6, 2004 requesting that the parties submit their dispute to arbitration. In a letter dated September 8, 2004, which defendant received on the same date, defendant unjustifiably refused to comply with the request for arbitration, in violation of its undertaking under the Agreement. Defendant likewise refused to nominate its representative to the Arbitration Committee as required by the Agreement.

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[1] Records, pp. 3-7.

6. Under Section 8 of Republic Act No. 876 (1953), otherwise known as the Arbitration Law, (a) if either party to the contract fails or refuses to name his arbitrator within 15 days after receipt of the demand for arbitration; or (b) if the arbitrators appointed by each party to the contract, or appointed by one party to the contract and by the proper court, shall fail to agree upon or to select the third arbitrator, **then this Honorable Court shall appoint the arbitrator or arbitrators**.[2] (Emphasis and underscoring supplied)

Respondent accordingly prayed for judgment

x x x (a) designating (i) an arbitrator to represent defendant; and (ii) the third arbitrator who shall act as Chairman of the Arbitration Committee; and (b) referring the attached Request for Arbitration to the Arbitration Committee to commence the arbitration.[3]

and for other just and equitable reliefs.

In its Answer,[4] PEZA (hereafter petitioner):

1. ADMIT[TED] the allegations in paragraphs 1, 2, 3, 4, and 6 of the complaint, with the qualification that the alleged dispute subject of the plaintiff's Request for Arbitration dated October 20, 2004 is **not an arbitrable issue,** considering that the provision on pre-termination fee in the Power Sales and Purchase Agreement (PSPA), is gravely onerous, unconscionable, greatly disadvantageous to the government, against public policy and therefore invalid and unenforceable.

2. ADMIT[TED] the allegation in paragraph 5 of the complaint with the qualification that the refusal of the defendant to arbitrate is justified considering that the **provision on the pre-termination fee** subject of the plaintiff's Request for Arbitration is **invalid and unenforceable**. Moreover, the pre-termination of the PSPA is whimsical, has no valid basis and in violation of the provisions thereof, constituting breach of contract on the part of the plaintiff.[5] (Emphasis and underscoring supplied)

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[2] *Id.* at 4-5.

[3] *Id.* at 5.

[4] *Id.* at 17-25.

[5] *Id.* at 17.

Respondent thereafter filed a Reply and Motion to Render Judgment on the Pleadings,[6] contending that since petitioner

> x x x does not challenge the fact that (a) there is a dispute between the parties; (b) the dispute must be resolved through arbitration before a three-member arbitration committee; and (c) defendant refused to submit the dispute to arbitration by naming its representative in the arbitration committee,

judgment may be rendered directing the appointment of the two other members to complete the composition of the arbitration committee that will resolve the dispute of the parties.[7]

By Order of April 5, 2005, Branch 118 of the Pasay City RTC granted respondent's Motion to Render Judgment on the Pleadings, disposing as follows:

> WHEREFORE, all the foregoing considered, this Court hereby renders judgment in favor of the plaintiff and against the defendant. Pursuant to Section 8 of RA 876, also known as the Arbitration Law, and Power Sales and Purchase Agreement, this Court hereby appoints, subject to their agreement as arbitrators, retired Supreme Court Chief Justice Andres Narvasa, as chairman of the committee, and retired Supreme Court Justices Hugo Gutierrez, and Justice Jose Y. Feria, as defendant's and plaintiff's representative, respectively, to the arbitration committee. Accordingly, let the Request for Arbitration be immediately referred to the Arbitration Committee so that it can commence with the arbitration.
>
> SO ORDERED.[8] (Underscoring supplied)

On appeal,[9] the Court of Appeals, by Decision of April 10, 2007, affirmed the RTC Order.[10] Its Motion for Reconsideration[11]

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[6] *Id.* at 52-66.

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

[8] *Id.* at 223.

[9] *Id.* at 251-252.

[10] Penned by Court of Appeals Associate Justice Vicente S.E. Veloso, with the concurrence of Associate Justices Juan Q. Enriquez, Jr. and Estela M. Perlas-Bernabe. CA *rollo*, pp. 339-349.

[11] *Id.* at 356-364.

having been denied,[12] petitioner filed the present Petition for Review on *Certiorari*,[13] faulting the appellate court

I

. . . WHEN IT DISMISSED PETITIONER'S APPEAL AND AFFIRMED THE 05 APRIL 2004 ORDER OF THE TRIAL COURT WHICH RENDERED JUDGMENT ON THE PLEADINGS, DESPITE THE FACT THAT PETITIONER'S ANSWER TENDERED AN ISSUE.

II

. . . WHEN IT AFFIRMED THE ORDER OF THE TRIAL COURT WHICH REFERRED RESPONDENT'S REQUEST FOR ARBITRATION DESPITE THE FACT THAT THE ISSUE PRESENTED BY THE RESPONDENT IS NOT AN ARBITRABLE ISSUE.[14] (Underscoring supplied)

The petition fails.

The dispute raised by respondent calls for a proceeding under Section 6 of Republic Act No. 876, "AN ACT TO AUTHORIZE THE MAKING OF ARBITRATION AND SUBMISSION AGREEMENTS, TO PROVIDE FOR THE APPOINTMENT OF ARBITRATORS AND THE PROCEDURE FOR ARBITRATION IN CIVIL CONTROVERSIES, AND FOR OTHER PURPOSES" which reads:

SECTION 6. Hearing by court. — A party aggrieved by the failure, neglect or refusal of another to perform under an agreement in writing providing for arbitration may petition the court for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days notice in writing of the hearing of such application shall be served either personally or by registered mail upon the party in default. The court shall hear the parties, and upon being satisfied that the making of the agreement or such failure to comply therewith is not in issue, shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. If the making of the agreement or default be in issue

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[12] *Id.* at 382.

[13] *Rollo*, pp. 9-48.

[14] *Id.* at 26.

the court shall proceed to summarily hear such issue. If the finding be that no agreement in writing providing for arbitration was made, or that there is no default in the proceeding thereunder, the proceeding shall be dismissed. If the finding be that a written provision for arbitration was made and there is a default in proceeding thereunder, an order shall be made summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

x x x (Underscoring supplied)

R.A. No. 876 "explicitly confines the court's authority only to the determination of whether or not there is an agreement in writing providing for arbitration."[15] Given petitioner's admission of the material allegations of respondent's complaint including the existence of a written agreement to resolve disputes through arbitration, the assailed appellate court's affirmance of the trial court's grant of respondent's Motion for Judgment on the Pleadings is in order.

Petitioner argues that it tendered an issue in its Answer as it disputed the legality of the pre-termination fee clause of the PSPA. Even assuming *arguendo* that the clause is illegal, it would not affect the agreement between petitioner and respondent to resolve their dispute by arbitration.

The doctrine of separability, or severability as other writers call it, enunciates that an arbitration agreement is independent of the main contract. The arbitration agreement is to be treated as a separate agreement and the arbitration agreement does not automatically terminate when the contract of which it is a part comes to an end.

The separability of the arbitration agreement is especially significant to the determination of whether the invalidity of the main contract also nullifies the arbitration clause. Indeed, the doctrine denotes that the invalidity of the main contract, also referred to as the "container" contract, does **not** affect the validity of the arbitration agreement. Irrespective of the fact that the main contract is invalid, the arbitration clause/agreement still remains valid and enforceable.[16] (Emphasis in the original; underscoring supplied)

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[15] *Gonzales v. Climax Mining, Ltd.*, G.R. No.167994, January 22, 2007, 512 SCRA 148, 169.

[16] *Id.* at 170.

Petitioner nevertheless contends that the legality of the pre-termination fee clause is not arbitrable, citing *Gonzales v. Climax Mining Ltd.*[17] which declared that the therein complaint should be brought before the regular courts, and not before an arbitral tribunal, as it involved a judicial issue. Held the Court:

> We agree that the case should not be brought under the ambit of the Arbitration Law xxx. The question of validity of the contract containing the agreement to submit to arbitration will affect the applicability of the arbitration clause itself. A party cannot rely on the contract and claim rights or obligations under it and at the same time impugn its existence or validity. Indeed, litigants are enjoined from taking inconsistent positions. As previously discussed, the complaint should have been filed before the regular courts as it involved issues which are judicial in nature.[18]

The ruling in *Gonzales* was, on motion for reconsideration filed by the parties, modified, however, in this wise:

> x x x The adjudication of the petition in G.R. No. 167994 effectively modifies part of the Decision dated 28 February 2005 in **G.R. No. 161957**. Hence, we now hold that **the validity of the contract** containing the agreement to submit to arbitration **does not affect the applicability of the arbitration clause itself**. A contrary ruling would suggest that a party's mere repudiation of the main contract is sufficient to avoid arbitration. That is exactly the situation that the separability doctrine, as well as jurisprudence applying it, seeks to avoid. We add that when it was declared in **G.R. No. 161957** that the case should not be brought for arbitration, it should be clarified that the case referred to is the case actually filed by Gonzales before the DENR Panel of Arbitrators, which was for the **nullification of the main contract** on the ground of fraud, as it had already been determined that the case should have been brought before the regular courts involving as it did judicial issues.[19] (Emphasis and underscoring supplied)

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[17] **G.R. No. 161957**, February 28, 2005, 452 SCRA 607.

[18] *Id.*, at 625.

[19] *Gonzales v. Climax Mining, Ltd.*, G.R. No. 167994, January 22, 2007, 512 SCRA 148, 172-173.

It bears noting that respondent does not seek to nullify the main contract. It merely submits these issues for resolution by the arbitration committee, *viz*:

a. Whether or not the interest of Claimant in the project or its economic return in its investment was materially reduced as a result of any laws or regulations of the Philippine Government or any agency or body under its control;

b. Whether or not the parties failed to reach an agreement on the amendments to the Agreement within 90 days from notice to respondent on May 3, 2004 of the material reduction in claimant's economic return under the Agreement;

c. Whether or not as a result of (a) and (b) above, Claimant is entitled to terminate the Agreement;

d. Whether or not Respondent accorded preferential treatment to EAUC in violation of the Agreement;

e. Whether or not as a result of (d) above, Claimant is entitled to terminate the Agreement;

f. Whether or not Claimant is entitled to a termination fee equivalent to ₱708,691,543.00; and

g. Who between Claimant and Respondent shall bear the cost and expenses of the arbitration, including arbitrator's fees, administrative expenses and legal fees.[20]

In fine, the issues raised by respondent are subject to arbitration in accordance with the arbitration clause in the parties' agreement.

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

Quisumbing (Chairperson), Carpio,[*] and *Bersamin,*[**] *JJ.*, concur.

Abad, J., see concurring opinion.

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[20] Records, pp. 73-74.

[*] Additional member per Special Order No. 757 dated October 12, 2009.

[**] Additional member per Special Order No. 765 dated October 21, 2009.

CONCURRING OPINION

ABAD, *J.*:

Petitioner Philippine Economic Zone Authority (PEZA)[1] and respondent Edison (Bataan) Cogeneration Corporation (Edison) entered into a 10-year power supply and purchase agreement (agreement) that was to take effect on October 25, 1997. Edison undertook to construct, operate, and maintain a power plant that would supply electricity to establishments operating at the PEZA zone in Bataan.

On October 22, 2004 Edison filed a complaint for specific performance against PEZA before the Regional Trial Court of Pasay City in Civil Case 04-0736-CFM.[2] The complaint alleged in substance that a dispute arose between Edison and PEZA rooted on their agreement that Edison was to supply power to PEZA at a rate that was in some way pegged to what National Power Corporation (NPC) charged its Luzon utility customers.

Edison further alleged that, because the NPC began in 1999 to yield to popular demand for lower rates than what it costs to generate power, it was compelled to sell the power it produced to PEZA at artificially low rates. Still Edison managed to make a profit because of NPC's fuel support scheme. When its side contract with NPC ended, however, Edison claimed that PEZA unjustifiably rejected its request for tariff rate increases to which it was entitled under their agreement.

Edison also claimed that PEZA granted tariff rate relief to a power supplier in Cebu but would not consider extending such relief to Edison, entitling the latter to terminate their agreement and recover a pre-termination fee of over ₱708 million. Because PEZA refused Edison's demand for an end to their agreement and for PEZA to pay pre-termination fee arising from its violation

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[1] A government-owned corporation created by P.D. 66 (1972).

[2] Complaint, *rollo*, p. 121, in relation to the Request for Arbitration dated October 20, 2004, p. 260.

of the agreement, Edison claimed a right to resort to arbitration as their agreement provided. But PEZA, according to Edison, declined its demands, entitling it to come to court conformably with the terms of their agreement and seek an order for the constitution of a committee of arbitrators to hear their disputes.

In its answer to the complaint,[3] while PEZA admitted that Edison has claims against it for alleged refusal to grant tariff rate adjustments that it had given other power suppliers and that PEZA had refused to pay the pre-termination fee Edison asked, PEZA claimed that the supposed disputes were not proper for arbitration since the pre-termination fee in the agreement was "gravely onerous, unconscionable, greatly disadvantageous to the government, against public policy, and therefore, invalid and unenforceable."

PEZA further claimed a) that Edison's termination of the agreement was whimsical and baseless, in itself a breach of the agreement; b) that during the negotiations for the requested power rate increase, Edison declined to submit relevant data that PEZA needed to act on the request; c) that, in utter bad faith, Edison cut off power supply to PEZA on August 13, 2004; d) that Edison's motive was to maneuver PEZA into paying its demand for unconscionable and illegal pre-termination fee rather than to get its tariff rate adjusted; and e) that this ill motive was evidenced by the fact that Edison had been negotiating to sell its power engines to NPC even before it asked PEZA for tariff rate adjustment.

Edison filed a reply and a motion to render judgment on the pleadings, contending that since PEZA did not challenge the fact that there are disputes between the parties, Edison is entitled to a resolution of such disputes by a three-member arbitration committee to be constituted by the RTC. Acting on this motion and on the belief that PEZA's answer did not tender a genuine issue, on April 5, 2005 the RTC issued an order constituting an Arbitration Committee with Chief Justice Andres Narvasa as

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[3] Answer, *id*. at 126.

chairman and retired Supreme Court Justices Hugo Gutierrez and Jose Y. Feria, as members with power to arbitrate the disputes between Edison and PEZA. The RTC denied PEZA's motion for reconsideration of the order.

On appeal to the Court of Appeals, the latter court affirmed the RTC's order under a decision dated April 10, 2007, prompting PEZA to come to this Court on petition for review by *certiorari*.

I fully agree with the *ponencia* of Justice Conchita Carpio Morales in holding that PEZA's answer to the complaint acknowledged the existence of the remedy of arbitration concerning any dispute that might arise between them involving their agreement, in this case, PEZA's alleged refusal to grant Edison tariff rate adjustments as their agreement provided. PEZA's own answer alleged that it did not yet deny the requested tariff rate adjustments and that the delay in its action on such request had been brought about by Edison's refusal to submit the documents and data required of it. Whether or not PEZA did deny such request itself actually presents a dispute between the parties. Arbitration of the disputes between them respecting alleged violations of the agreement is, therefore, inevitable.

I would like to add, however, that in voting to grant the petition, it is clear to me that the Court does not resolve today the issue that PEZA raises: whether or not the pre-termination clause of its agreement with Edison is "gravely onerous, unconscionable, greatly disadvantageous to the government, against public policy, and therefore, invalid and unenforceable." In fact, if the Arbitration Committee should uphold its defense that it had not arbitrarily denied Edison's claim for tariff rate adjustment, the issue concerning the invalidity of the pre-termination clause of their agreement may not even come to pass.

SECOND DIVISION

[G.R. No. 180718. October 23, 2009]

HENLIN PANAY COMPANY and/or EDWIN FRANCISCO/ ANGEL LAZARO III, *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION (NLRC) and NORY A. BOLANOS,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUST CAUSES; NEGLECT OF DUTY; ABANDONMENT OF A JOB IS A FORM THEREOF; ELEMENTS.— To constitute abandonment, there must be a clear and deliberate intent to discontinue one's employment without any intention of returning. Two elements must concur: (1) failure to report for work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts.

2. ID.; ID.; ID.; ID.; ID.; ID.; BURDEN OF PROOF TO SHOW A DELIBERATE AND UNJUSTIFIED REFUSAL OF THE EMPLOYEE TO RESUME HIS EMPLOYMENT WITHOUT ANY INTENTION OF RETURNING IS WITH THE EMPLOYER; CASE AT BAR.— x x x It is the employer who has the burden of proof to show a deliberate and unjustified refusal of the employee to resume his employment without any intention of returning. In the instant case, petitioners failed to prove that it was Bolanos who refused to report for work despite being asked to return to work. Petitioners merely presented the affidavits of the officers of Henlin Panay narrating their version of the facts. These affidavits, however, are not only insufficient but also undeserving of credit as they are self-serving. Petitioners failed to present memoranda or show-cause letters served on Bolanos at her last known address requiring her to report for work or to explain her absence, with a warning that her failure to report would be construed as

abandonment of work. Also, if indeed Bolanos abandoned her work, petitioners should have served her a notice of termination as required by law. Petitioners' failure to comply with said requirement bolsters Bolanos's claim that she did not abandon her work but was dismissed.

3. ID.; ID.; ID.; FILING BY AN EMPLOYEE OF A COMPLAINT FOR ILLEGAL DISMISSAL IS PROOF OF THE EMPLOYEE'S DESIRE TO RETURN TO WORK.— x x x [I]f Bolanos had indeed forsaken her job, she would not have bothered to file a complaint for illegal dismissal. It is well settled that the filing by an employee of a complaint for illegal dismissal is proof of her desire to return to work, thus negating the employer's charge of abandonment.

4. ID.; ID.; ID.; ILLEGAL DISMISSAL; A CASE OF.— Clearly, Bolanos's case is one of illegal dismissal. First, there is no just or authorized cause for petitioners to terminate her employment. Her alleged act of dishonesty of "passing out" food for free was not proven. Neither was there incompetence on her part when some food items were not punched in the cash register as she was not the cashier manning it when the food items were ordered. In fact, the other cashier even owned up to said mistake. Second, Bolanos was not afforded due process by petitioners before she was dismissed. A day after the incident, she was verbally dismissed from her employment without being given the chance to be heard and defend herself.

5. ID.; ID.; ID.; ID.; REINSTATEMENT, NOT PROPER IN CASE AT BAR.— Article 279 of the Labor Code, as amended, provides that an illegally dismissed employee shall be entitled to reinstatement without loss of seniority rights, full backwages and other benefits or their monetary equivalent computed from the time her compensation was withheld from her up to her actual reinstatement. In the instant case, however, we will not order Bolanos's reinstatement as she did not pray for it and considering that antagonism caused a severe strain in the parties' employer-employee relationship. Instead, she is awarded separation pay pegged at one month pay for every year of service reckoned from her first day of employment up to the finality of this decision.

6. ID.; ID.; ID.; ID.; AWARD OF BACKWAGES AND OTHER BENEFITS ARE TO BE COMPUTED FROM THE DATE OF THE ILLEGAL DISMISSAL UNTIL THE FINALITY OF THE DECISION.— This Court notes that the NLRC awarded backwages, 13th month pay, and service incentive leave pay from July 10, 2005 to January 23, 2007 only. It is evident that these should not be limited to said period. These should be computed from the date of her illegal dismissal until this decision attains finality. Though Bolanos did not appeal the computation of the NLRC's award as affirmed by the Court of Appeals, we are not barred from ordering its modification. This Court is imbued with sufficient authority and discretion to review matters, not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice. Besides, substantive rights like the award of backwages, 13th month pay and service incentive leave pay resulting from illegal dismissal must not be prejudiced by a rigid and technical application of the rules. The computation of the award for backwages and other benefits from the time the compensation was withheld up to the time of actual reinstatement is a mere legal consequence of the finding that respondent was illegally dismissed by petitioners.

APPEARANCES OF COUNSEL

Montesa and Associates for petitioners.
Public Attorney's Office for private respondent.

D E C I S I O N

QUISUMBING, *J.*:

For review on *certiorari* are the Decision[1] dated October 9, 2007 and the Resolution[2] dated November 26, 2007 of the Court

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[1] *Rollo*, pp. 26-38. Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Noel G. Tijam and Myrna Dimaranan Vidal concurring.

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

of Appeals in CA-G.R. SP No. 98814. The appellate court had affirmed the Resolution[3] dated January 31, 2007 of the National Labor Relations Commission (NLRC) in NLRC NCR Case No. 00-08-06773-05[4] declaring petitioners liable for illegally dismissing respondent Nory A. Bolanos.

The facts as found by the appellate court and the NLRC are as follows:

Private respondent Nory A. Bolanos started working on September 26, 2004 as service crew for petitioner Henlin Panay Company where she worked for eight hours a day from Sunday to Friday and was paid ₱325 per day. Henlin Panay is owned by VMD Food House Company whose president is petitioner Angel Lazaro III.

On July 8, 2005, around 7:00 p.m., while Bolanos was manning Henlin Panay's Counter B, her brother-in-law, Febe Javier (Javier), arrived and ordered wanton mami from her. Javier gave her a 500-peso bill for his order and was given his corresponding change. Petitioner Edwin Francisco (Francisco), the store supervisor, who was just near the counter and was about to take his break, asked Bolanos who her customer was to which she replied that he is her brother-in-law. Afterwards, Francisco took his break.

Bolanos served one more customer before she closed Counter B. Later, Javier ordered an additional siopao and softdrink from Counter A manned by Fe Niyam Combo (Combo).

After taking his break, Francisco returned to the dine-in area and noticed that Javier was already having siopao and softdrink. He then checked the journal tape of Counter B but did not find said food items punched in the cash register. At that time, Javier already left Henlin Panay. Francisco then asked Bolanos about the additional items ordered by Javier, but she told him that they were ordered at Counter A. When Francisco scrutinized

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[3] CA *rollo*, pp. 24-31.

[4] Also docketed as NLRC NCR CA No. 048820-06.

the journal tape of Counter A, it did not also reflect the siopao and softdrink ordered by Javier. Francisco asked Combo about the matter and the latter told him that she remembered giving Javier siopao and softdrink. Combo said that she might have made an erroneous entry in the cash register by punching in siomai and lemonade instead. When Bolanos and Combo checked the order slips, where the order of each customer was first written before being punched in the cash register, they found one indicating siopao and softdrink. Despite Combo's admission of her mistake, Francisco did not believe her. Bolanos offered to bring along her brother-in-law the next day to prove that the additional food items were ordered from and paid for at Counter A, but Francisco dismissed the idea and remarked that Javier would naturally side with her. He just instructed her to call him the following day.

As instructed, Bolanos called Francisco the next day, and was ordered not to report the following day. She inquired why she was being penalized as she did nothing wrong, to which Francisco replied that she was not only being suspended but was already dismissed from service. Bolanos protested as she was not served a notice of termination. However, Francisco simply replied that he has the authority to terminate the employment of employees; hence, a notice of termination was not necessary. Bolanos wanted to go to VMD's office to explain her side further, but Francisco remained adamant. He told her that even if she brought her lawyer along with her, his decision would not change.

On July 11, 2005, Bolanos went to the NLRC and was advised that she might have been illegally dismissed. The NLRC scheduled a mediation between Bolanos and petitioners on July 26, 2005, but the same failed. Hence, Bolanos filed an illegal dismissal complaint[5] on August 3, 2005, docketed as NLRC NCR Case No. 00-08-06773-05.

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[5] Records, p. 2.

Petitioners, for their part, presented a different version of the events.[6] They alleged that when Francisco did not see in the journal tapes of both Counters A and B the additional food items ordered by Javier, he asked Bolanos why said items were not punched in or unpaid. Bolanos allegedly did not give an explanation and merely said, "*Babayaran ko na lang yan.*" Francisco replied, "*Di iyon ang* point *ko doon. Ang* point *ko ay naglabas ka ng pagkain na hindi nabayaran at* dishonesty *yun*." Bolanos became speechless. After her duty that night, Francisco instructed her to call him the next day.

During their phone conversation on July 9, 2005, Francisco told Bolanos that he had already informed Susan Lim of VMD and Cecille Navarro of M & H Food Corporation, owner of the Henlin franchise, about the incident and both said that the matter should be investigated. Before the call ended, Bolanos remarked, "*Siguro ginagawa mo iyon dahil alam mo*." Francisco replied that it was just part of his job to watch out for fraudulent schemes like "passing out" of food.

On July 11, 2005, Lim informed Bolanos to report to her and explain her side. When she came later that day, Lim told her that there was no decision yet since the investigation was still ongoing and requested that Bolanos obtain the receipt from Javier if he still has it. Lim likewise required Bolanos to report for work that day, but the latter said that she will just go to work on July 12, 2005.

On July 12, 2005, Bolanos called Lim and said that she cannot go to work as she accidentally slipped. Lim then just told her to take a rest.

The following day, Lim was surprised to receive a Notice/ Invitation[7] from the NLRC Conciliation and Mediation Center with an Information Sheet[8] executed by Bolanos charging Henlin Panay of illegal dismissal.

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[6] *Id.* at 16-20, 22.

[7] *Id.* at 21.

[8] CA *rollo*, p. 36.

On February 28, 2006, the Labor Arbiter rendered a Decision,[9] the dispositive portion of which reads:

WHEREFORE, premises considered, the claim for illegal termination is dismissed.

However, respondent is directed to pay the complainant a proportionate 13th month pay for 2005 in the amount of ₱4,386.96 (1/2/05 – 7/9/05 = 6.23 mos.; ₱325 x 26 days x 6.23 mos./12).

SO ORDERED.[10]

Bolanos appealed to the NLRC, which reversed the Labor Arbiter's decision on January 31, 2007 as follows:

WHEREFORE, the foregoing premises considered, the instant appeal is **GRANTED.** The decision appealed from is **REVERSED** and **SET ASIDE,** thereby declaring the respondents-appellees guilty of illegal dismissal.

Accordingly, respondents-appellees are ordered to pay the complainant-appellant her full backwages computed from the time she was dismissed up to the finality of this Resolution and separation pay equivalent to one (1) month's salary plus her proportionate 13th month pay for the year 2005. As computed, complainant-appellant is entitled to the following monetary award as of January 23, 2007, viz:

A) Backwages			
1. Basic salary 7/10/05-1/23/07 ₱325 x 26 x 18.43		₱155,733.50	
2. 13th mo. pay ₱155,733.50/12		12,977.80	
3. SILP ₱325 x 5/12 x 18.43		2,495.73	171,207.03
B) Separation Pay 9/26/04-1/23/07 ₱ 325 x 26 x 2			16,900.00

[9] Records, pp. 69-78.

[10] *Id.* at 77-78.

C) Proportionate 13th mo. [P]ay
1/2/05-7/9/05
₱325 x 26 x 6.23/12 4,386.96
Total Award ₱192,493.99

SO ORDERED.[11]

Petitioners elevated the case to the Court of Appeals which affirmed the findings of the NLRC. Petitioners now come before us raising the following arguments for this Court's consideration:

I.

THE HONORABLE COURT OF APPEALS HAD DISMISSED PETITIONERS' PETITION FINDING NO GRAVE ABUSE OF DISCRETION ON THE PART OF RESPONDENT NLRC FINDING PETITIONERS GUILTY OF ILLEGAL DISMISSAL NOTWITHSTANDING THAT THE SAME WAS UTTERLY NOT IN ACCORDANCE WITH LAW AND WITH THE APPLICABLE DECISIONS OF THE HONORABLE COURT … ON THE MATTER; AND

II.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT DISMISSING PRIVATE RESPONDENT'S COMPLAINT FOR ILLEGAL DISMISSAL.[12]

Simply stated, the issue is whether petitioners are liable for illegal dismissal.

Petitioners argue that no illegal dismissal took place. They aver that Francisco just informed Bolanos that her case was still under investigation. Indeed, the Henlin Panay management did not give her any notice of termination nor prevented her from coming to work. Neither was she stripped of her right to work in the premises. They insist that it was Bolanos who, after the incident, refused to work despite being required to report for duty. They aver that Francisco had no authority to dismiss employees.

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[11] CA *rollo*, p. 30.

[12] *Rollo*, pp. 10-11.

Bolanos for her part, counters that she was not only suspended, but was in fact dismissed from her job by Henlin Panay through Francisco. She belies petitioners' claim that she refused to report to work, and argues that petitioners have the burden of proof to show that she abandoned her work.

After careful consideration, we find that the petition lacks merit.

To constitute abandonment, there must be a clear and deliberate intent to discontinue one's employment without any intention of returning. Two elements must concur: (1) failure to report for work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts.[13] It is the employer who has the burden of proof to show a deliberate and unjustified refusal of the employee to resume his employment without any intention of returning.[14]

In the instant case, petitioners failed to prove that it was Bolanos who refused to report for work despite being asked to return to work. Petitioners merely presented the affidavits of the officers of Henlin Panay narrating their version of the facts. These affidavits, however, are not only insufficient but also undeserving of credit as they are self-serving. Petitioners failed to present memoranda or show-cause letters served on Bolanos at her last known address requiring her to report for work or to explain her absence, with a warning that her failure to report would be construed as abandonment of work. Also, if indeed Bolanos abandoned her work, petitioners should have served her a notice of termination as required by law. Petitioners' failure to comply with said requirement bolsters Bolanos's claim that she did not abandon her work but was dismissed.

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[13] *Camua, Jr. v. National Labor Relations Commission*, G.R. No. 158731, January 25, 2007, 512 SCRA 677, 682.

[14] *City Trucking, Inc., v. Balajadia*, G.R. No. 160769, August 9, 2006, 498 SCRA 309, 315; *Big AA Manufacturer v. Antonio*, G.R. No. 160854, March 3, 2006, 484 SCRA 33, 45.

Moreover, if Bolanos had indeed forsaken her job, she would not have bothered to file a complaint for illegal dismissal. It is well settled that the filing by an employee of a complaint for illegal dismissal is proof of her desire to return to work, thus negating the employer's charge of abandonment.[15]

Also, as correctly held by the appellate court, there is no basis for petitioners' theory that it is only in Bolanos's mind that she was dismissed from her job. It is hard to believe that Bolanos would imagine or think that she was dismissed from work when in fact she was not. Petitioners claim that being a mere store supervisor, Francisco had no authority to dismiss employees from their employment. However, Francisco may have convincingly appeared to have authority to dismiss employees for Bolanos to think that she was indeed fired from work. Petitioners could have dispelled this false belief of Bolanos, if after the alleged dismissal they required her to report for work through a memorandum or letter. This, however, they failed to do. Hence, even if Francisco had no authority to dismiss employees, his act of dismissing Bolanos was ratified by the management when it failed to rectify Francisco's pretense which was allegedly beyond the scope of his functions as store supervisor.

Clearly, Bolanos's case is one of illegal dismissal. First, there is no just or authorized cause for petitioners to terminate her employment. Her alleged act of dishonesty of "passing out" food for free was not proven. Neither was there incompetence on her part when some food items were not punched in the cash register as she was not the cashier manning it when the food items were ordered. In fact, the other cashier even owned up to said mistake. Second, Bolanos was not afforded due process by petitioners before she was dismissed. A day after the incident, she was verbally dismissed from her employment without being given the chance to be heard and defend herself.

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[15] *Veterans Security Agency, Inc. v. Gonzalvo, Jr.*, G.R. No. 159293, December 16, 2005, 478 SCRA 298, 305; *Hodieng Concrete Products v. Emilia*, G.R. No. 149180, February 14, 2005, 451 SCRA 249, 254.

Article 279[16] of the Labor Code, as amended, provides that an illegally dismissed employee shall be entitled to reinstatement without loss of seniority rights, full backwages and other benefits or their monetary equivalent computed from the time her compensation was withheld from her up to her actual reinstatement.

In the instant case, however, we will not order Bolanos's reinstatement as she did not pray for it and considering that antagonism caused a severe strain in the parties' employer-employee relationship. Instead, she is awarded separation pay pegged at one month pay for every year of service reckoned from her first day of employment up to the finality of this decision.

This Court notes that the NLRC awarded backwages, 13th month pay, and service incentive leave pay from July 10, 2005 to January 23, 2007 only. It is evident that these should not be limited to said period. These should be computed from the date of her illegal dismissal until this decision attains finality. Though Bolanos did not appeal the computation of the NLRC's award as affirmed by the Court of Appeals, we are not barred from ordering its modification. This Court is imbued with sufficient authority and discretion to review matters, not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice. Besides, substantive rights like the award of backwages, 13th month pay and service incentive leave pay resulting from illegal dismissal must not be prejudiced by a rigid and technical application of the rules. The computation of the award for backwages and other benefits from the time the compensation

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[16] **ART. 279. Security of Tenure.** —In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

was withheld up to the time of actual reinstatement is a mere legal consequence of the finding that respondent was illegally dismissed by petitioners.[17]

WHEREFORE, the petition is *DENIED.* The assailed Decision dated October 9, 2007 and the Resolution dated November 26, 2007 of the Court of Appeals in CA-G.R. SP No. 98814 are *AFFIRMED with MODIFICATION.* Private respondent's separation pay is to be reckoned from the first day of employment up to the finality of this decision while her backwages, 13th month pay, and service incentive leave pay are to be computed from the date of illegal dismissal up to the finality of this decision.

Let the records of this case be remanded to the Labor Arbiter for the proper computation of the exact amounts due respondent Nory A. Bolanos.

SO ORDERED.

Carpio,[*] *Carpio Morales, Bersamin,*[**] and *Abad, JJ.,* concur.

SECOND DIVISION

[G.R. No. 180803. October 23, 2009]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **J. L. JOCSON AND SONS,** *respondent.*

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[17] *Cocomangas Hotel Beach Resort and/or Susan Munro v. Federico F. Visca, et al.,* G.R. No. 167045, August 29, 2008, 563 SCRA 705, 722.

[*] Additional member per Special Order No. 757.

[**] Additional member per Special Order No. 765.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 42 OF THE RULES OF COURT IS THE APPROPRIATE MODE OF APPEAL FROM DECISIONS OF THE SPECIAL AGRARIAN COURTS; QUESTIONS THAT MAY BE RAISED.— *Gabatin v. Land Bank of the Philippines* reiterated the settled rule that a petition for review under Rule 42 of the Revised Rules of Court, and not an ordinary appeal under Rule 41, is the appropriate mode of appeal from decisions of RTCs acting as SACs. In *Gabatin*, the Court sustained the appellate court's assumption of jurisdiction over an appeal from the SAC even if its dismissal had been sought on the ground that the issues presented before the appellate court were purely legal in nature. Also *apropos* is this Court's ruling in *Land Bank of the Philippines v. De Leon*: *Third*, far from being in conflict, Section 61 of RA 6657 can easily be harmonized with Section 60. The reference to the Rules of Court means that the specific rules for petitions for review in the Rules of Court and other relevant procedures in appeals filed before the Court of Appeals shall be followed in appealed decisions of Special Agrarian Courts. Considering that RA 6657 cannot and does not provide the details on how the petition for review shall be conducted, a suppletory application of the pertinent provisions of the Rules of Court is necessary. In fact, Section 61 uses the word "review" to designate the mode by which the appeal is to be effected. The reference therefore by Section 61 to the Rules of Court only means that the procedure under Rule 42 for petitions for review is to be followed for appeals in agrarian cases. Clearly, jurisdiction over appeals from decisions of the SAC resides in the Court of Appeals *via* a Rule 42 petition for review, which may raise either questions of fact, or of law, or mixed questions of fact and law.

2. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 6657 (COMPREHENSIVE AGRARIAN REFORM LAW OF 1988); APPLICABLE LAW IN THE DETERMINATION OF JUST COMPENSATION IN CASE AT BAR; EXPLAINED.— x x x In the recent case of *Land Bank of the*

Philippines v. Chico, the Court declared in no uncertain terms that R.A. No. 6657 is the relevant law for determining just compensation after noting several decided cases where the Court found it more equitable to determine just compensation based on the value of the property *at the time of payment*. This was a clear departure from the Court's earlier stance in *Gabatin v. Land Bank of the Philippines* where it declared that the reckoning period for the determination of just compensation is the time when the land was taken applying P.D. No. 27 and E.O. No. 228. P.D. No. 27/E.O. No. 228 *vis a vis* R.A. No. 6657 was applied to cases involving lands placed under the coverage of P.D. No. 27/E.O. No. 228 where payment of just compensation had not been completed. When in the *interim* R.A. No. 6657 was passed before the full payment of just compensation, as in the case at bar, the provisions of R.A. No. 6657 on just compensation control. Discussing the retroactive application of the provisions of R.A. No. 6657 for lands yet to be paid by the government although expropriated under P.D. No. 27, this Court in *Land Bank of the Philippines v. Estanislao* ratiocinated: x x x This Court held in *Land Bank of the Philippines v. Natividad* that seizure of landholdings or properties covered by P.D. No. 27 did not take place on October 21, 1972, but upon the payment of just compensation. Taking into account the passage in 1988 of R.A. No. 6657 pending the settlement of just compensation, this Court concluded that it is R.A. No. 6657 which is the applicable law, with P.D. No. 27 and E.O. 228 having only suppletory effect. Land Bank's contention that the property was acquired for purposes of agrarian reform on October 21, 1972, the time of the effectivity of PD 27, ergo just compensation should be based on the value of the property as of that time and not at the time of possession in 1993, is likewise erroneous. *In Office of the President, Malacañang, Manila v. Court of Appeals*, we ruled that the **seizure** of the landholding did not take place on the date of effectivity of PD 27 but **would take effect on the payment of just compensation**. Under the factual circumstances of this case, the agrarian reform process is still incomplete as the just compensation to be paid private respondents has yet to be settled. Considering the passage of Republic Act No. 6657 (RA 6657) before the completion of this process, the just compensation should be determined and

the process concluded under the said law. Indeed, *RA 6657 is the applicable law, with PD 27 and EO 228 having only suppletory effect, conformably with our ruling in Paris v. Alfeche.* x x x It would certainly be inequitable to determine just compensation based on the guideline provided by PD 27 and EO 228 considering the DAR's failure to determine the just compensation for a considerable length of time. *That* ***just compensation should be determined in accordance with RA 6657****, and not PD 27 or EO 228, is especially imperative considering that just compensation should be the full and fair equivalent of the property taken from its owner by the expropriator, the equivalent being real, substantial, full and ample.* In this case, the trial court arrived at the just compensation due private respondents for their property, taking into account its nature as irrigated land, location along the highway, market value, assessor's value and the volume and value of its produce. This Court is convinced that the trial court correctly determined the amount of just compensation due private respondents in accordance with, and guided by, RA 6657 and existing jurisprudence." The SAC's adoption of ₱300.00 as GSP for one cavan of 50 kilos of palay for 1992 is thus in order, petitioner not having adduced any evidence that a different or contrary figure should apply for that period.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EXPROPRIATION; DETERMINATION OF JUST COMPENSATION IN EMINENT DOMAIN CASES IS A JUDICIAL FUNCTION; SPECIAL AGRARIAN COURT IN CASE AT BAR DID NOT ACT ARBITRARILY.— The determination of just compensation in eminent domain cases is a judicial function, and the Court does not find the SAC to have acted capriciously or arbitrarily in setting the price at ₱93,657.00 per hectare as the said amount does not appear to be grossly exorbitant or otherwise unjustified. For the Court notes that the SAC properly took into account various factors such as the nature of the land, when it is irrigated, the average harvests per hectare (expressed as AGP based on three normal crop years) at 117.73 cavans per hectare, and the higher valuation applied by the DAR to a similar adjacent landholding belonging to Estacion. Petitioner itself admits that a higher land valuation formula was applied to Estacion's property because it had been acquired under R.A. No. 6657.

APPEARANCES OF COUNSEL

LBP Legal Services Group CARP Legal Services Department for petitioner.

Eugenio T. Sanicas for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Subject of the present controversy is a 27.3808-hectare portion (the property) of two (2) parcels of tenanted rice land located at Barangay Magallon Cadre, Moises Padilla, Negros Occidental, covered by Transfer Certificates of Title (TCT) Nos. T-72323 and T-72324 registered in the name of J. L. Jocson and Sons[1] (respondent).

The property was placed under the coverage of the government's Operation Land Transfer[2] (OLT) pursuant to Presidential Decree (P.D.) No. 27[3] and awarded to the tenant-beneficiaries by the Department of Agrarian Reform (DAR), which valued the compensation therefor in the total amount of ₱250,563.80 following the formula prescribed in P.D. No. 27 and Executive Order (E.O.) No. 228.[4]

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[1] A partnership with offices in Bacolod City.

[2] The records do not indicate exactly what year the property was acquired and distributed to the tenant-beneficiaries by the DAR.

[3] DECREEING THE EMANCIPATION OF TENANTS FROM THE BONDAGE OF THE SOIL, TRANSFERRING TO THEM THE OWNERSHIP OF THE LAND THEY TILL AND PROVIDING THE INSTRUMENTS AND MECHANISM THEREFOR, Promulgated On October 21, 1972.

[4] DECLARING FULL LAND OWNERSHIP TO QUALIFIED FARMER BENEFICIARIES COVERED BY PRESIDENTIAL DECREE NO. 27: DETERMINING THE VALUE OF REMAINING UNVALUED RICE AND CORN LANDS SUBJECT TO P.D. NO. 27; AND PROVIDING FOR THE MANNER OF PAYMENT BY THE FARMER BENEFICIARY AND MODE OF COMPENSATION TO THE LANDOWNER, issued on July 17, 1987.

The valuation was later increased to ₱903,637.03 after computing the 6% annual interest increment[5] due on the property per DAR Administrative Order No. 13, series of 1994, which amount respondent withdrew in 1997, without prejudice to the outcome of the case it had filed hereunder to fix just compensation.

Finding the DAR's offer of compensation for the property to be grossly inadequate, respondent filed a complaint[6] on July 18, 1997 before the Regional Trial Court of Bacolod City, Br. 46, sitting as a Special Agrarian Court (SAC), against the Land Bank (petitioner),[7] the DAR, and the tenant-beneficiaries, for "Determination and Fixing of Just Compensation for the Acquisition of Land and Payment of Rentals."

The complaint prayed that petitioner and the DAR be ordered to compute the just compensation for the property in accordance with the guidelines laid down in Section 17 of Republic Act (R.A.) No. 6657[8] or the *Comprehensive Agrarian Reform Law of 1988*.

In their respective Answers, petitioner and the DAR claimed that the property was acquired by the government under its OLT program and their valuation thereof constituted just compensation, having been made pursuant to the guidelines set by E.O. No. 228 and P.D. No. 27.

By Decision[9] of May 19, 2003, the SAC, after noting the report contained in a Compliance[10] submitted on February 29,

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[5] Increment at 6% interest compounded from 1972 to 1994 (22 years) totaling ₱653,073.23.

[6] Records, pp. 1-6.

[7] A government financial institution, organized and existing under Republic Act (R.A.) No. 3844, as the duly designated financial intermediary of the Comprehensive Agrarian Reform Program under R.A. No. 6657, as amended.

[8] AN ACT INSTITUTING A COMPREHENSIVE AGRARIAN REFORM PROGRAM TO PROMOTE SOCIAL JUSTICE AND INDUSTRIALIZATION, PROVIDING THE MECHANISM FOR ITS IMPLEMENTATION, AND FOR OTHER PURPOSES, approved on June 10, 1988.

[9] Records, pp. 179-187.

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

2000 of the Commissioners[11] appointed to receive and evaluate evidence on the amount of compensation to be paid to respondent, fixed the just compensation at ₱2,564,403.58[12] (inclusive of the ₱903,637.03 earlier withdrawn).

In arriving at the just compensation, the SAC adopted a higher valuation (₱93,657.00/hectare) which the DAR had applied to a similar landholding belonging to one Pablo Estacion adjacent to respondent's. Thus the SAC disposed:

> WHEREFORE, premises considered, judgment is hereby rendered ordering defendant Land Bank of the Philippines to pay plaintiff the total amount of ₱1,660,766.55.
>
> No pronouncement as to costs.
>
> SO ORDERED.[13]

Both petitioner and the DAR filed motions for reconsideration of the SAC Decision but the same were denied,[14] prompting petitioner to appeal to the Court of Appeals[15] via petition for review[16] pursuant to Section 60[17] of R.A. No. 6657 *vis a vis* Rule 42 of the Revised Rules of Court.

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[11] Commissioners Carlito R. Mamon and Serlito M. De Los Santos.

[12] Land value (LV) was arrived at by multiplying 117.73 cavans per hectare, the average gross production (AGP) as determined by the Barangay Committee on Land Production, by 2.5, the result of which was multiplied by ₱300, the government support price (GSP) for one cavan of 50 kilos of *palay* as of 1992, equals ₱88,297.50 multiplied by 27.3808 hectares; Records, p. 186.

[13] *Vide* note 9 at 187.

[14] *Vide* September 12, 2003 Order; Records, pp. 246-247.

[15] Records indicate that the DAR had filed a separate petition for review with the CA docketed as CA-G.R. SP No. 80153 which had already been decided on November 23, 2006 and awaiting entry of judgment, *Vide* May 10, 2007 Resolution; CA *Rollo*, pp. 227-228.

[16] CA *rollo*, pp. 8-32.

[17] Section 60. Appeals. – An appeal may be taken from the decision of the Special Agrarian Courts by filing a petition for review with the Court of Appeals within fifteen (15) days (from) receipt of notice of the decision; otherwise, the decision shall become final.

Assailing the SAC's decision fixing the amount of just compensation for respondent's properties at ₱2,564,403.58 as a violation of P.D. No. 27 and E.O. No. 228, petitioner insisted that the SAC erred in using ₱300.00 as the government support price (GSP) in 1992, instead of ₱35.00 as provided under E.O. No. 228, considering that respondent's property was acquired under OLT pursuant to P.D. No. 27.

The appellate court dismissed petitioner's petition for review for lack of jurisdiction. It held that aside from the fact that the SAC's factual findings were not controverted, the main issue - whether P.D. No. 27 and E.O. No. 228, as claimed by petitioner, or R.A. No. 6657, as claimed by respondent, should govern in determining the value of the property - involved pure questions of law and, as such, cognizable only by this Court.[18]

Its Motion for Reconsideration having been denied,[19] the present petition for review was filed, petitioner arguing that "the allegations in petitioner LBP's Petition for Review filed with the Court of Appeals raise mixed questions of fact and law, . . . [hence,] cognizable by the Court of Appeals."[20]

The petition is partly impressed with merit.

Gabatin v. Land Bank of the Philippines[21] reiterated the settled rule that a petition for review under Rule 42 of the Revised Rules of Court, and not an ordinary appeal under Rule 41, is the appropriate mode of appeal from decisions of RTCs acting as SACs. In *Gabatin*, the Court sustained the appellate court's assumption of jurisdiction over an appeal from the SAC even if its dismissal had been sought on the ground that the issues presented before the appellate court were purely legal in

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[18] *Vide* Decision of July 11, 2007; penned by Associate Justice Stephen C. Cruz, concurred in by Associate Justices Isaias P. Dicdican and Antonio L. Villamor, CA *rollo*, pp. 235-236.

[19] *Vide*, Resolution of November 29, 2007, *id.* at 274-279.

[20] *Rollo*, pp. 35-36.

[21] G.R. No. 148223, November 25, 2004, 444 SCRA 176, 182 citing *Land Bank v. De Leon*, G.R. No. 143275, September 10, 2002, 388 SCRA 537.

nature. Also *apropos* is this Court's ruling in *Land Bank of the Philippines v. De Leon*:[22]

> *Third*, far from being in conflict, Section 61 of RA 6657 can easily be harmonized with Section 60. The reference to the Rules of Court means that the specific rules for petitions for review in the Rules of Court and other relevant procedures in appeals filed before the Court of Appeals shall be followed in appealed decisions of Special Agrarian Courts. Considering that RA 6657 cannot and does not provide the details on how the petition for review shall be conducted, a suppletory application of the pertinent provisions of the Rules of Court is necessary. In fact, Section 61 uses the word "review" to designate the mode by which the appeal is to be effected. The reference therefore by Section 61 to the Rules of Court only means that the procedure under Rule 42 for petitions for review is to be followed for appeals in agrarian cases. (Underlining supplied.)

Clearly, jurisdiction over appeals from decisions of the SAC resides in the Court of Appeals *via* a Rule 42 petition for review, which may raise either questions of fact, or of law, or mixed questions of fact and law.[23]

AT ALL EVENTS, this Court resolves to exercise its mandate as a court of justice and equity,[24] taking into account that more than a decade has passed since the case was filed before the SAC, and thus disposes of the lone substantive issue raised – whether the SAC erred in using ₱300.00 as the GSP in 1992.

Petitioner maintains that the SAC erred in adopting such GSP rate in determining just compensation for rice and corn lands; and that the factual question brought before the appellate court for resolution is: "What is the GSP that must be used in valuing subject property? Is it THIRTY FIVE PESOS (Php 35.00), as mandated under P.D. No. 27/E.O. No. 228? Or THREE HUNDRED PESOS (Php 300.00), the alleged GSP for 1992?"[25]

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[22] *Supra* note 21 at 545.

[23] Section 2, Rule 42 of the REVISED RULES OF COURT.

[24] *Republic v. Ballocanag*, G.R. No. 163794, November 28, 2008, 572 SCRA 436, 453.

[25] *Rollo*, p. 38.

What petitioner essentially assails is the SAC's application of R.A. No. 6657 in the valuation of properties acquired under P.D. No. 27's OLT.

Citing *National Power Corp. v. Gutierrez,*[26] petitioner argues that the determination of just compensation should be based on the value of the land at the time it was taken by the government, and since it is not disputed that respondent's property falls under the coverage of OLT, then P.D. No. 27 should apply *vis a vis* Section 2 of E.O. No. 228 which laid down the formula for determining the value of remaining unvalued rice and corn lands subject to P.D. No. 27, to wit:

> SECTION 2. Henceforth, the valuation of rice and corn lands covered by P.D. No. 27 shall be based on the average gross production determined by the *Barangay* Committee on Land Production in accordance with Department Memorandum Circular No. 26, Series of 1973, and related issuances and regulations of the Department of Agrarian Reform. The average gross production per hectare shall be multiplied by two and a half (2.5), the product of which shall be multiplied by Thirty Five Pesos (₱35.00), the government support price for one cavan of 50 kilos of palay on October 21, 1972, or Thirty One Pesos (₱31.00), the government support price for one cavan of 50 kilos of corn on October 21, 1972, and the amount arrived at shall be the value of the rice and corn land, as the case may be, for the purpose of determining its cost to the farmer and compensation to the landowner.

Petitioner's interpretation is flawed. In the recent case of *Land Bank of the Philippines v. Chico,*[27] the Court declared in no uncertain terms that R.A. No. 6657 is the relevant law for determining just compensation after noting several decided cases[28] where the Court found it more equitable to determine just

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[26] G.R. No. 60077, January 18, 1991, 193 SCRA 1 (1991).

[27] G.R. No. 168453, March 13, 2009.

[28] *Lubrica v. Land Bank of the Philippines*, G.R. No. 170220, November 20, 2006, 507 SCRA 415; *Meneses v. Secretary of Agrarian Reform*, G.R. No. 156304, October 23, 2006, 505 SCRA 90; *Land Bank of the Philippines v. Natividad*, G.R. No. 127198, May 16, 2005, 458 SCRA 441.

compensation based on the value of the property *at the time of payment*. This was a clear departure from the Court's earlier stance in *Gabatin v. Land Bank of the Philippines*[29] where it declared that the reckoning period for the determination of just compensation is the time when the land was taken applying P.D. No. 27 and E.O. No. 228.

P.D. No. 27/E.O. No. 228 *vis a vis* R.A. No. 6657 was applied to cases involving lands placed under the coverage of P.D. No. 27/E.O. No. 228 where payment of just compensation had not been completed. When in the *interim* R.A. No. 6657 was passed before the full payment of just compensation, as in the case at bar, the provisions of R.A. No. 6657 on just compensation control.[30]

Discussing the retroactive application of the provisions of R.A. No. 6657 for lands yet to be paid by the government although expropriated under P.D. No. 27, this Court in *Land Bank of the Philippines v. Estanislao*[31] ratiocinated:

> Petitioner, citing *Gabatin v. Land Bank of the Philippines*, contends that the taking of the subject lots was deemed effected on October 21, 1972, when respondents were, under P.D. No. 27 deprived of ownership over the subject lands in favor of qualified beneficiaries.
>
> Petitioner further contends that the fixing of the value of the land under E.O. 228, using the government support price of ₱35 for one cavan of 50 kilos of *palay* as of October 21, 1972, was in keeping with the settled rule that just compensation should be based on the value of the property at the time of taking.
>
> The petition is bereft of merit.
>
> This Court held in *Land Bank of the Philippines v. Natividad* that seizure of landholdings or properties covered by P.D. No. 27

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[29] *Supra* note 21.

[30] *Land Bank of the Philippines v. Heirs of De Leon*, G.R. No. 164025, May 8, 2009; *Land Bank of the Philippines v. Gallego, Jr.*, G.R. No. 173226, January 20, 2009 citing *Paris v. Alfeche*, 416 Phil. 473 (2001) and *Land Bank of the Philippines v. Court of Appeals*, 378 Phil. 1248 (1999).

[31] G.R. No. 166777, July 10, 2007, 527 SCRA 181, 186-188.

did not take place on October 21, 1972, but upon the payment of just compensation. Taking into account the passage in 1988 of R.A. No. 6657 pending the settlement of just compensation, this Court concluded that it is R.A. No. 6657 which is the applicable law, with P.D. No. 27 and E.O. 228 having only suppletory effect.

Land Bank's contention that the property was acquired for purposes of agrarian reform on October 21, 1972, the time of the effectivity of PD 27, ergo just compensation should be based on the value of the property as of that time and not at the time of possession in 1993, is likewise erroneous. In *Office of the President, Malacañang, Manila v. Court of Appeals*, we ruled that the **seizure** of the landholding did not take place on the date of effectivity of PD 27 but **would take effect on the payment of just compensation**.

Under the factual circumstances of this case, the agrarian reform process is still incomplete as the just compensation to be paid private respondents has yet to be settled. Considering the passage of Republic Act No. 6657 (RA 6657) before the completion of this process, the just compensation should be determined and the process concluded under the said law. Indeed, *RA 6657 is the applicable law, with PD 27 and EO 228 having only suppletory effect, conformably with our ruling in Paris v. Alfeche.*

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It would certainly be inequitable to determine just compensation based on the guideline provided by PD 27 and EO 228 considering the DAR's failure to determine the just compensation for a considerable length of time. *That* ***just compensation should be determined in accordance with RA 6657****, and not PD 27 or EO 228, is especially imperative considering that just compensation should be the full and fair equivalent of the property taken from its owner by the expropriator, the equivalent being real, substantial, full and ample.*

In this case, the trial court arrived at the just compensation due private respondents for their property, taking into account its nature as irrigated land, location along the highway, market value, assessor's value and the volume and value of its produce. This Court is convinced that the trial court correctly determined the amount of just compensation due private respondents in accordance with, and guided by, RA 6657 and existing jurisprudence." (Emphasis and italics supplied; citations omitted)

The SAC's adoption of ₱300.00 as GSP for one cavan of 50 kilos of *palay* for 1992 is thus in order, petitioner not having adduced any evidence that a different or contrary figure should apply for that period.

The determination of just compensation in eminent domain cases is a judicial function, and the Court does not find the SAC to have acted capriciously or arbitrarily in setting the price at ₱93,657.00 per hectare as the said amount does not appear to be grossly exorbitant or otherwise unjustified. For the Court notes that the SAC properly took into account various factors such as the nature of the land, when it is irrigated, the average harvests per hectare (expressed as AGP based on three normal crop years) at 117.73 cavans per hectare, and the higher valuation applied by the DAR to a similar adjacent landholding belonging to Estacion. Petitioner itself admits that a higher land valuation formula was applied to Estacion's property because it had been acquired under R.A. No. 6657.[32]

WHEREFORE, the assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 79663 are *SET ASIDE*. The May 19, 2003 Decision of the Bacolod City RTC, Br. 46, sitting as a SAC in Special Carp Case No. 97-9886, is *REINSTATED.*

SO ORDERED.

Quisumbing (Chairperson), Carpio,[*] *Brion,* and *Abad, JJ.*, concur.

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[32] *Vide* Petition for Review, CA *rollo,* pp. 19-20.

[*] Additional member per Special Order No. 757 dated October 12, 2009.

SECOND DIVISION

[G.R. No. 181085. October 23, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **NEMESIO ABURQUE,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ONE WHO INVOKES SELF-DEFENSE IN EFFECT ASSUMED THE *ONUS PROBANDI* TO SUBSTANTIATE THE SAME.— Where an accused charged with the killing of a person admits having caused that death but invokes self-defense to escape criminal liability, it becomes incumbent upon him to prove by clear and convincing evidence the positiveness of that justifying circumstance; otherwise, having admitted the killing, conviction is inescapable. When appellant invoked self-defense he, in effect, assumed the *onus probandi* to substantiate the same. It became his inescapable burden to prove clearly and convincingly the elements of self-defense.

2. ID.; ID.; ID.; ID.; ELEMENTS.— The requirements for the plea of self-defense to prosper are: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to repel the aggression; and (3) lack of sufficient provocation on the part of the accused.

3. ID.; ID.; ID.; ID.; ID.; NO UNLAWFUL AGGRESSION PROVED, NO SELF-DEFENSE, WHETHER COMPLETE OR INCOMPLETE, MAY BE SUCCESSFULLY PLEADED; CASE AT BAR.— Although all three elements must concur, self-defense must rest on proof of unlawful aggression on the part of the victim. The requisite of *unlawful aggression* is indispensable. There can be no self-defense unless it is proven that there had been unlawful aggression on the part of the person injured or killed by the assailant. If no unlawful aggression has been proved, no self-defense may be successfully pleaded, whether complete or incomplete. In this case, we agree that

appellant failed to prove the existence of unlawful aggression. He maintains that it was the victim who, without provocation on his part, suddenly attacked him. However, his testimony was seriously flawed with inconsistencies and as a whole is undeserving of credence.

4. ID.; ID.; ID.; ID.; A PLEA THEREOF CANNOT BE JUSTIFIABLY ENTERTAINED WHERE IT IS NOT ONLY UNCORROBORATED BY ANY SEPARATE COMPETENT EVIDENCE BUT IT IS ALSO EXTREMELY DOUBTFUL IN ITSELF.— Against the positive declarations of the prosecution witnesses who testified that appellant stabbed Miguel Ablay abruptly without any provocation on the part of the latter, appellant's self-serving and uncorroborated assertion deserves scant consideration. It is a well-settled rule that a plea of self-defense cannot be justifiably entertained where it is not only uncorroborated by any separate competent evidence but is also extremely doubtful in itself. Absent any showing that the prosecution witnesses were moved by improper motive to testify against the appellant, their testimonies are entitled to full faith and credit.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; GENERALLY, FINDINGS OF THE TRIAL COURT THEREON WILL NOT BE DISTURBED ON APPEAL.— It is a well-settled rule that where the credibility of witnesses is in issue, the appellate courts will generally not disturb the findings of the trial court, which is in a better position to determine the issue, having the advantage of hearing and witnessing the deportment of the witnesses during trial. While this rule admits of exceptions, this Court finds no reason to apply any to the instant appeal.

6. CRIMINAL LAW; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; AGGRAVATING CIRCUMSTANCES; TREACHERY; ELUCIDATED.— We likewise subscribe to the ruling of the trial court and the appellate court that treachery attended the commission of the crime. As held in *People v. Mara*, the essence of treachery is the sudden and unexpected attack by the aggressors on unsuspecting victims, depriving the latter of any real chance to defend themselves, thereby ensuring its commission without risk to the aggressors, and without the slightest provocation on the part of the victims.

> What is decisive is that attack was executed in a manner that the victim was rendered defenseless and unable to retaliate. Here, the circumstances testified to by prosecution witnesses clearly show that appellant stabbed the victim without any provocation from the latter. The attack was so swift and unexpected that the victim, who was unarmed, could not have put up any resistance. As apparent from the prosecution witnesses' testimonies, the victim was merely sitting when appellant suddenly stood up, pulled out his bolo and stabbed the victim. Since treachery attended the killing of the victim, the crime is indisputably murder.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

QUISUMBING, *J.*:

On appeal is the Decision[1] dated November 15, 2006 of the Court of Appeals in CA-G.R. CR HC No. 00112. The Court of Appeals had affirmed *in toto* the Decision[2] dated October 17, 2001 of the Regional Trial Court (RTC) of Negros Oriental, Branch 34, in Criminal Case No. 13714, finding appellant Nemesio Aburque guilty of murder, beyond reasonable doubt.

In an Information[3] dated October 19, 1998, appellant was charged of murder committed as follows:

> That on or about October 5, 1998, at about 11:00 o'clock in the evening, at Sitio Jagnaya, Barangay Tubigon, Sibulan, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, and attended with the

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[1] *Rollo*, pp. 4-16. Penned by Associate Justice Romeo F. Barza, with Associate Justices Isaias P. Dicdican and Priscilla Baltazar-Padilla concurring.

[2] CA *rollo*, pp. 23-32. Penned by Judge Rosendo B. Bandal, Jr.

[3] Records, p. 1.

qualifying circumstances of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and stab one MIGUEL ABLAY, with the use of a long bolo, locally known as "*pinuti*", with which the said accused was then armed and provided, thereby inflicting upon the victim "a stab wound, epigastric area, 5 cm. with evisceration of incised intestines," which injury caused the death of the victim shortly thereafter.

That the circumstance of dwelling aggravates the offense as the offense was committed in the dwelling of the victim who did not give any provocation.

Contrary to Article 248 of the Revised Penal Code.

At the arraignment, appellant admitted killing the victim, but he interposed the justifying circumstance of self-defense. A reverse trial was thereafter conducted.

The facts, as found by the appellate court, are as follows:

For his defense, accused Nemesio Aburque testified that upon invitation of Miguel Ablay, he went to the latter's house on 5 October 1998 at around five o'clock in the afternoon after he was done with his day's work at the farm. A ritual for unknown spirits was going to be held at the residence of the Ablays. Other guests were in attendance which included Baldo Aklan and Primo Banaybanay.

According to the accused Aburque, they began drinking tuba upon getting to the house of Ablay. He was able to witness the ritual and when it was done, dinner was served. Thereafter, they continued drinking tuba and partaking the *pulutan* served on them. The guests started leaving at around 10:30 in the evening. Miguel Ablay closed the door when the visitors left. Only the accused, Baldo Aklan, Primo Banaybanay and Miguel Ablay were left. They sat on the floor and continued with their drinking and eating.

While they were having their drinks, accused noticed that Ablay took out something which was wrapped in a cloth. Ablay unwrapped it and it yielded a knife or a bolo without a handle and a scabbard. He then started swinging it around. This was witnessed by Aburque, Aklan and Banaybanay. Accused advised Ablay to keep the weapon away to which the latter acceded. The group continued drinking until Ablay took out two (2) arnis sticks and again, in front of his guests, started swinging it around. Accused had to advise Ablay

again to sit down, stop playing with the arnis and keep them away. Ablay stopped but gave one of the arnis sticks to Aklan, and told the latter to stand up as they would practice arnis. Aklan remained seated and held on to the arnis stick. Ablay remained standing and kept on twirling the arnis stick.

At this point, while he was facing down and eating, accused Aburque felt that something hit his forehead which made him dizzy and caused him to fall. As it was painful, he reached out for his bolo, held it close to his chest and slung it over his shoulder. According to Aburque, while he was slowly opening the door, Ablay kicked him and pinned him to the door with Ablay's feet. He then heard Ablay say, "Why don't I just finish you of (*sic*) or, what if I finish you of (*sic*)?"

As accused was lying on the floor wounded, he saw Ablay reached (*sic*) for the handle of his bolo. Fearing that he would be hacked, Aburque took out his bolo and stabbed Ablay in the stomach. The accused exhibited before the trial court the scars he sustained from that wound.

Upon seeing that Ablay has been stabbed, Aklan and Banaybanay started hitting Aburque. He passed out and only regained consciousness when he hit the ground after Aklan and Banaybanay threw him out.

Thereafter, as narrated by the accused, he was dragged towards an open area. He saw Aklan picked (*sic*) up a big stone to be smashed on his face but he was able to get away when he rolled over. It hit his shoulder and in open court [he] showed the slight scars on his right breast. Aklan and Banaybanay continued beating him up. And since the house of Ablay is located on a hilly area, Aburque rolled down the slope, until he saw Aklan and Banaybanay leave.

Accused testified that he slowly dragged himself, crawled beneath the bushes to rest and spent the night in a grassy area because he was so tired. At sunrise, he started to crawl towards his house but did not pass through the road for fear that he would get killed. He reached his Tiya Idad's house before six o'clock in the morning. Thereat, he admitted that he was able to stab Miguel Ablay. He was told by his uncle to surrender but accused was so tired to go to the municipal hall. He also feared that Ablay's relatives might kill him. He asked his uncle to call the policemen as he was going to surrender.

Accused's uncle met the policemen on his way down the house and informed them that Aburque was there. He admitted to the policemen that he was able to kill. Afterwards, Aburque was brought to the Sibulan Police Station.

On cross examination, Aburque testified that right before he stabbed Ablay, the latter was seated facing him with [the latter's] back against the wall. Accused further testified that he was unsure if Ablay intentionally hit him in the forehead with the arnis stick or the latter was merely showing his arnis skills. After he was hit on his forehead, he took his bolo, plunged it over his shoulder and asked permission from the group that he would be leaving and intended to have his forehead treated the following morning. It was at this point that Ablay stepped on him and pinned him to the floor, uttering that he would finish him off. As Aklan and Banaybanay were not able to control Ablay, accused was forced to get his bolo and stabbed Ablay. He stated that … he was not able to pull the bolo out of the stomach of his victim. As the door of the house was closed, he could not run away. Aklan and Banaybanay started beating him with firewoods.

Dr. Merlina B. Papas, Health Officer of the Municipality of Sibluan (*sic*) testified that on 6 October 1998, she attended to the wounds suffered by the accused. The testimony of the accused was further corroborated by the testimonies given by Canuto Sarne, who testified that Aburque sent him to call the policemen for his surrender; SPO2 Felonilo Fortuito, the police officer who testified that since Aburque did not resist arrest, there is voluntary surrender to him and the other policemen in the early morning of 6 October 1998; and Jesusa Aburque, the mother of the accused, who testified that she knew that policemen came over to fetch her son, and gave the conclusion that had he not been hit, Aburque would not have stabbed somebody.

The prosecution on the other hand presented Primo Banaybanay, Dr. Clemente S. Hipe IV, Carmen Ablay, and SPO2 Felonilo Fortuito.

Primo Banaybanay testified that the accused Aburque arrived at the house of Ablay at around ten o'clock in the evening, whereupon he was asked by Ablay to partake of the food and drinks prepared for the ritual for the spirits. Aburque joined Banaybanay and the other guests. After eating and drinking tuba, Aburque announced that he was leaving as his purpose for coming over was not there. He then pulled out his "*pinuti*" (bolo) and stabbed Ablay hitting him in the stomach and it pierced through his back, at which point,

Banaybanay and Aklan started striking Aburque with firewoods so he would let go of his bolo. He, together with Aklan and Carmen Ablay helped in bringing the victim to the hospital. Banaybanay was likewise among the persons who reported the stabbing incident to the Sibulan Police Station in the early morning of 6 October 1998.

Dr. Clemente S. Hipe IV of the Provincial Hospital testified as to the medical attendance given by him to one Miguel Ablay in the early morning of 6 October 1998; that Ablay died after about six (6) minutes into the hospital due to hypovolomic shock or loss of blood, brought about by a five-centimeter incise wound in his epigastric area.

Ablay's widow, Carmen Ablay testified as to the suddenness of the stabbing of her husband; that she witnessed Aburque stabbed (*sic*) her husband with a bolo in the evening of 5 October 1998, in the occasion of a ritual for the spirits held in their home in Jagnaya, Tubigon, Sibulan, Negros Oriental; that prior to the stabbing, the accused would not let go of his bolo as he laughed and drank tuba with the other guests; she corroborated Banaybanay's testimony that the accused uttered his intention to go home before he stood up and suddenly stabbed Ablay who was seated in front of him; that after stabbing Ablay, the accused pulled the bolo out of Ablay's body, upon which Banaybanay and Aklan started to hit the hands and the head of the accused. The accused fell down the stairs and was followed by Banaybanay and Aklan, who smashed the accused with a big stone. The accused rolled towards the bamboo grove and upon hearing Ablay crying out for help, the two went back to the house to bring Ablay to the hospital. Carmen Ablay also went with them to the hospital. However, the victim did not survive the stabbing and died shortly after arriving at the hospital.

SPO2 Felonilo Fortuito testified that he received the report on the stabbing incident in the early morning of 6 October 1998; that the bolo was surrendered to him after the arrest of the accused; that he recorded the incident in the police blotter; that the police blotter stated that accused Aburque voluntarily surrendered to him. When asked to explain the inconsistency between the voluntary surrender as reflected in the blotter and his testimony on direct examination that the accused was arrested, witness stated that an arrest was actually effected on the person of the accused.[4]

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[4] *Rollo,* pp. 6-10.

After trial, the trial court rendered its Judgment dated October 17, 2001 finding the appellant guilty of murder as charged. The decretal portion of the decision reads:

> WHEREFORE, accused NEMESIO ABURQUE *y* TOLONIA, is hereby found guilty beyond reasonable doubt of the crime of MURDER, and the Court hereby imposes upon him the penalty of *RECLUSION PERPETUA*.
>
> Accused Nemesio Aburque is likewise adjudged to indemnify the heirs of deceased victim Miguel Ablay the sum of Fifty Thousand Pesos (₱50,000.00) due to his untimely death.
>
> In line with Section 5, Rule 114 of the 1985 Rules on Criminal Procedure, as amended, the Provincial Jail Warden of the Negros Oriental Detention and Rehabilitation Center, is hereby directed to immediately transmit the living body of accused Nemesio Aburque to the New Bilibid Prison at Muntinlupa City, Metro Manila, where he may remain to be detained. Said accused shall be given full credit for the period of his preventive detention, provided he has filed a written undertaking that he would follow all the legitimate rules and regulations imposed by the detention center.
>
> SO ORDERED.[5]

The case was appealed to the Court of Appeals. On November 15, 2006, the appellate court promulgated the herein assailed decision, affirming *in toto* the RTC decision. The *fallo* of the Court of Appeals decision reads:

> WHEREFORE, the appeal is **DENIED** and the assailed **Decision** of the court *a quo* finding accused-appellant **NEMESIO ABURQUE** guilty of murder is **AFFIRMED *in toto.***
>
> SO ORDERED.[6]

On December 22, 2006, appellant filed his Notice of Appeal[7] of the appellate court's decision.

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

[6] *Rollo*, p. 15.

[7] *Id.* at 17.

On March 26, 2008, this Court required the parties to file supplemental briefs[8] if they so desired. Both parties, however, manifested their willingness to submit the case on the basis of the records already submitted.[9]

In his appeal brief, appellant alleged that:

I.

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF MURDER DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

II.

THE TRIAL COURT ERRED IN NOT CONSIDERING THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE INTERPOSED BY ACCUSED-APPELLANT.[10]

In fine, the main issue for resolution is whether the lower court erred in rejecting appellant's plea of self-defense while giving full faith and credence to the prosecution's evidence, thereby holding appellant guilty of murder beyond reasonable doubt.

Appellant admits that he killed the victim, Miguel Ablay. However, he avers that he acted in legitimate self-defense. He insists that it was the victim who attacked him first and that he had no recourse but to stab Miguel. Further, appellant assails the trial court's assessment of the credibility of prosecution witnesses Primo Banaybanay and Carmen Ablay, claiming that their testimonies are full of inconsistencies or discrepancies.

The Office of the Solicitor General (OSG), on the other hand, counters that it is appellant's duty to establish self-defense by clear and convincing evidence; otherwise, his conviction is inevitable. Furthermore, it avers that a plea of self-defense, uncorroborated by any independent and credible witness, cannot be justifiably entertained.

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[8] *Id.* at 22.

[9] *Id.* at 23-25 and 26-29.

[10] CA *rollo*, p. 55.

Taking into serious consideration the circumstances in this case as proved by testimonies of witnesses for the prosecution as well as the arguments of the parties, we are in agreement to sustain appellant's conviction.

Where an accused charged with the killing of a person admits having caused that death but invokes self-defense to escape criminal liability, it becomes incumbent upon him to prove by clear and convincing evidence the positiveness of that justifying circumstance; otherwise, having admitted the killing, conviction is inescapable.[11] When appellant invoked self-defense he, in effect, assumed the *onus probandi* to substantiate the same. It became his inescapable burden to prove clearly and convincingly the elements of self-defense.

The requirements for the plea of self-defense to prosper are: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to repel the aggression; and (3) lack of sufficient provocation on the part of the accused.[12]

Although all three elements must concur, self-defense must rest on proof of unlawful aggression on the part of the victim.[13] The requisite of *unlawful aggression* is indispensable. There can be no self-defense unless it is proven that there had been unlawful aggression on the part of the person injured or killed

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[11] *People v. Aguilar*, G.R. Nos. 120622-23, July 10, 1998, 292 SCRA 349, 356.

[12] REVISED PENAL CODE, Art. 11, par. 1 provides:

ART. 11. *Justifying circumstances*. – The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur:

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

Third. Lack of sufficient provocation on the part of the person defending himself.

x x x x x x x x x

[13] *People v Aguilar*, *supra* at 356.

by the assailant.[14] If no unlawful aggression has been proved, no self-defense may be successfully pleaded, whether complete or incomplete.[15]

In this case, we agree that appellant failed to prove the existence of unlawful aggression. He maintains that it was the victim who, without provocation on his part, suddenly attacked him. However, his testimony was seriously flawed with inconsistencies and as a whole is undeserving of credence. The OSG correctly made the following observations:

> Notably, appellant testified during his direct examination that he stabbed Miguel Ablay with his "*pinuti*" because the latter struck him with an "arnis" stick. Then, Miguel Ablay allegedly pinned him down using his (Miguel Ablay) foot and took a bolo threatening to finish him off:
>
> Q: Why did you stab the victim, Miguel Ablay?
> A: Because he struck me, ma'am.
>
> Q: What did he use in striking you?
> A: Arnis cane, ma'am.
>
> Q: What was the particular reason why you stabbed Miguel Ablay at the abdomen?
> A: **Because he stepped on me forcefully. He pinned me [on] the floor using his foot and then I saw him take hold the handle of the bolo above the doorway.** I also saw that Primo Banaybanay and Baldo Aklan had not been able to restrain him so I stabbed him in order to save myself.
>
> However, during his cross examination, appellant testified that when he stabbed Miguel Ablay, the latter was simply sitting down with his back towards the wall facing him (appellant):
>
> Q: You agree with me Mr. Aburque that there was a stone, a grinding stone rather for grinding rice which was situated near the wall inside the house where Miguel Ablay and Primo Banaybanay were sitting side by side?
> A: Yes ma'am, there was.

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[14] *People v. Bausing*, G.R. No. 64965, July 18, 1991, 199 SCRA 355, 361.

[15] *People v. Antonio*, G.R. No. 118311, February 19, 1999, 303 SCRA 414, 429.

Q: This was the place where Miguel Ablay, the victim in this case, was sitting down beside Primo Banaybanay right before the incident happened, is that not correct?
A: I did not know anymore where the grinding stone was located or where he was seated at that point in time, ma'am.

Q: **You agree with me Mr. Aburque that the victim in this case, Miguel Ablay, right before the incident, was sitting with his back towards the wall facing you?**
A: **Yes, ma'am he was leaning against the wall.**[16]

Against the positive declarations of the prosecution witnesses who testified that appellant stabbed Miguel Ablay abruptly without any provocation on the part of the latter, appellant's self-serving and uncorroborated assertion deserves scant consideration. It is a well-settled rule that a plea of self-defense cannot be justifiably entertained where it is not only uncorroborated by any separate competent evidence but is also extremely doubtful in itself.[17] Absent any showing that the prosecution witnesses were moved by improper motive to testify against the appellant, their testimonies are entitled to full faith and credit.[18]

It is a well-settled rule that where the credibility of witnesses is in issue, the appellate courts will generally not disturb the findings of the trial court, which is in a better position to determine the issue, having the advantage of hearing and witnessing the deportment of the witnesses during trial. While this rule admits of exceptions, this Court finds no reason to apply any to the instant appeal.[19]

We likewise subscribe to the ruling of the trial court and the appellate court that treachery attended the commission of the crime. As held in *People v. Mara*,[20] the essence of treachery

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[16] CA *rollo*, pp. 66-68. Brief For Appellee.

[17] *Del Rosario v. People*, G.R. No. 141749, April 17, 2001, 356 SCRA 627, 634.

[18] *People v. Tabaco*, G.R. Nos. 100382-100385, March 19, 1997, 270 SCRA 32, 54.

[19] *People v. Dorado*, G.R. No. 122248, February 11, 1999, 303 SCRA 61, 70.

[20] G.R. No. 184050, May 8, 2009.

is the sudden and unexpected attack by the aggressors on unsuspecting victims, depriving the latter of any real chance to defend themselves, thereby ensuring its commission without risk to the aggressors, and without the slightest provocation on the part of the victims. What is decisive is that attack was executed in a manner that the victim was rendered defenseless and unable to retaliate.[21]

Here, the circumstances testified to by prosecution witnesses clearly show that appellant stabbed the victim without any provocation from the latter. The attack was so swift and unexpected that the victim, who was unarmed, could not have put up any resistance. As apparent from the prosecution witnesses' testimonies, the victim was merely sitting when appellant suddenly stood up, pulled out his bolo and stabbed the victim. Since treachery attended the killing of the victim, the crime is indisputably murder.

WHEREFORE, the Decision dated November 15, 2006 of the Court of Appeals in CA-G.R. CR HC No. 00112 finding appellant guilty of the crime of murder and sentencing him to *reclusion perpetua* is hereby *AFFIRMED*. Costs *de oficio*.

SO ORDERED.

Carpio,[*] *Carpio Morales, Bersamin,*[**] and *Abad, JJ.*, concur.

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[21] *People v. Glino*, G.R. No. 173793, December 4, 2007, 539 SCRA 432, 457.

[*] Additional member per Special Order No. 757.

[**] Additional member per Special Order No. 765.

SECOND DIVISION

[G.R. No. 181232. October 23, 2009]

JOSEPH TYPINGCO, *petitioner, vs.* **LINA WONG LIM, JERRY SYCHINGHO, JACKSON SYCHINGHO, JOHNSON SYCHINGHO, and FAR EAST BANK AND TRUST COMPANY,** *respondents.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; OBLIGATIONS; EXTINGUISHMENT OF OBLIGATIONS; PAYMENT OR PERFORMANCE; *DACION EN PAGO*; DEFINED.— *Dacion en pago* is the delivery and transmission of ownership of another thing by the debtor to the creditor as an accepted equivalent of performance of an obligation. It partakes of the nature of a contract of sale, where the thing offered by the debtor is the object of the contract, while the debt is the consideration or purchase price.

2. ID.; ID.; ID.; ID.; ID.; ID.; RIGHT TO SELL OR CONVEY TITLE TO THE SUBJECT PROPERTY AT THE TIME OF THE *DACION EN PAGO*; EXPLAINED.— The pivotal issue is thus whether respondent Sychinghos had the right to sell or convey title to the subject property at the time of the *dacion en pago.* The Court finds in the affirmative. There having been no previous foreclosure of the Real Estate Mortgage on the subject property, respondent Sychinghos' ownership thereof remained intact. Indeed, a mortgage does not affect the ownership of the property as it is nothing more than a lien thereon serving as security for a debt. The mortgagee does not acquire title to the mortgaged real estate unless he purchases it at a public auction, and it is not redeemed within the period provided for by the Rules of Court. This applies *a fortiori* to the present case where **only 1/3**, not the whole, **of the subject property was actually encumbered to FEBTC**. With respect to whatever amount Lina and her sons may still owe BPI (then FEBTC), the Court finds that this is not a concern of petitioner as he is not a party to the loan documents covering it. Since petitioner agreed to the full extinguishment of respondents

spouses' then outstanding obligation in view of the unconditional conveyance to him of the subject property, there is a perfected and enforceable *dacion en pago*. He should thus enjoy full entitlement to the subject property.

3. ID.; ID.; ID.; ID.; ID.; SURRENDER OF THE CERTIFICATE OF TITLE WILL NOT IMPAIR ANY EXISTING MORTGAGE ON THE SUBJECT PROPERTY.— The question of whether the subject property stands as a continuing security for any outstanding obligations of Lina and her sons to BPI (then FEBTC) should not detain the Court any further. Surrender of the certificate of title will not impair any existing mortgage on the subject property. It is an elementary principle in civil law that a real estate mortgage subsists notwithstanding changes in ownership, and all subsequent purchasers of the property must respect the mortgage.

4. ID.; LAND TITLES AND DEEDS; PRESIDENTIAL DECREE NO. 1529; REMEDY TO FILE PETITION IN COURT AS PROVIDED THEREIN IS NOT NECESSARY AS THE COURT DEEMS THE ACTION FOR SPECIFIC PERFORMANCE AND THE RECOVERY OF TITLE AS SUBSTANTIAL COMPLIANCE WITH THE PRESCRIBED PROCEDURE.— x x x [W]hile the remedy of petitioner is to file a petition in court, following Presidential Decree No. 1529, to compel then FEBTC (now BPI) to surrender the owner's duplicate copy of the title to the Register of Deeds of San Juan to facilitate the issuance of a new title in his name, the Court deems his action for specific performance and recovery of the title as substantial compliance with the prescribed procedure. To require him to institute a new action seeking essentially the same relief would be to encourage endless litigations and multiplicity of suits – an end abhorrent to the proper administration of justice.

APPEARANCES OF COUNSEL

Fajarito Flores Daguplo & Associates for petitioner.

Feria Feria La'O Tantoco for Lina Wong Lim Jerry Sychingho and Jackson Sychingho.

Benedicto Versoza Felipe & Burkley Law Offices for Far East Bank and Trust Company (FEBTC) now Bank ,of the Philippine Islands.

D E C I S I O N

CARPIO MORALES, *J.*:

Sometime between December 1996 and February 1997, respondents-spouses Lina Wong Lim (Lina) and Johnson Sychingho (Johnson) borrowed from petitioner Joseph Typingco (Typingco) the sum of US$600,000 which was later restructured, payable on or before December 31, 1997, under a promissory note executed by the spouses and co-signed by their children-co-respondents Jerry Sychingho (Jerry) and Jackson Sychingho (Jackson) as sureties.[1]

Following their default in payment, Lina, Jerry, and Jackson conveyed on January 29, 1998 to Typingco via *dacion en pago* their house and lot in Greenhills, San Juan (subject property), covered by Transfer Certificate of Title (TCT) No. 6259-R (the title) of the Register of Deeds of San Juan, in the name of Lina and her sons, after first paying respondent Far East Bank and Trust Company (FEBTC) the balance of a promissory note to clear the title of a Real Estate Mortgage annotated thereon in favor of FEBTC.[2]

Typingco's repeated demands for the delivery of the owner's duplicate copy of the title, the last of which was by letter of March 2, 1998,[3] having remained unheeded, he filed a complaint for specific performance and recovery of the title against respondents[4] Sychinghos and FEBTC before the Quezon City Regional Trial Court (RTC).

Respondents Sychinghos averred in the main that it was FEBTC that was unlawfully withholding delivery of the owner's duplicate copy of the title despite full payment of the mortgage loan[5] with it.

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[1] Records, p. 8.

[2] *Id.* at 3-4; 10-12.

[3] *Id.* at 14.

[4] *Id.* at 2-7.

[5] *Id.* at 27-31.

FEBTC, which was absorbed after a merger by Bank of the Philippine Islands (BPI), contended that spouses Lina and Johnson had unsettled obligations as sureties for JSY International Philippines, Inc. and J&J Brothers Corporation under Comprehensive Surety Agreements which they had executed authorizing FEBTC to retain and proceed against their properties in its possession; that the Real Estate Mortgage annotated on the title was a continuing security for their present and future obligations; and that Typingco was not a buyer in good faith, he having failed to conduct further inquiry on the status of the subject property given that the mortgage in its favor was annotated on the title.[6]

At the pre-trial, the parties clarified that the subject matter of the case was only **1/3 inchoate portion of the subject property**[7] or that pertaining to Lina as co-owner (as the 2/3 belongs to her sons Jerry and Jackson), she being a signatory to the Real Estate Mortgage, along with her sons, as well as to the Comprehensive Surety Agreements, along with her husband, both documents in favor of FEBTC.

By Decision of March 14, 2003,[8] Branch 82 of the Quezon City RTC dismissed the complaint, holding that Typingco was bound by the Real Estate Mortgage in favor of FEBTC not only because the same was duly annotated on the title, but also because he failed to verify the status of the subject property despite his awareness of the said mortgage.

Typingco's Motion for Reconsideration having been denied by Order dated May 23, 2003,[9] he appealed[10] to the Court of Appeals. The appellate court dismissed Typingco's appeal by

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[6] *Id.* at 41-50.

[7] *Id.* at 134.

[8] *Id.* at 311-321.

[9] *Id.* at 340.

[10] *Id.* at 341.

Decision of September 13, 2007,[11] it sustaining for the most part the position of BPI.

Typingco's Motion for Reconsideration having been denied by Resolution dated January 10, 2008,[12] he (hereafter petitioner) filed the present Petition for Review on *Certiorari*.

Petitioner argues that the copy of the Real Estate Mortgage submitted by BPI (Exhibit "10") is inadmissible, the witness who identified it having no personal knowledge of its existence and due execution, hence, should not be considered annotated on the title; and that there was no evidence that respondents Sychinghos had other unpaid obligations with FEBTC for which the title should continue to stand as security.[13]

By Manifestation of June 12, 2008, individual respondents informed the Court of Johnson's passing during the proceedings in the trial court and their waiving of the filing of a Comment to the present petition, given that their position before the trial and appellate courts[14] is now also petitioner's.

BPI, on the other hand, maintains its position before the trial court, adding that the due execution and authenticity of Exhibit "10", a notarized instrument, need not be proved unlike that of a private writing.[15]

The petition is impressed with merit.

Dacion en pago is the delivery and transmission of ownership of another thing by the debtor to the creditor as an accepted equivalent of performance of an obligation. It partakes of the nature of a contract of sale, where the thing offered by the

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[11] Penned by Associate Justice Ramon M. Bato, Jr., with the concurrence of Associate Justices Andres B. Reyes, Jr. and Jose C. Mendoza; CA *rollo*, pp. 72-81.

[12] *Id.* at 109-110.

[13] Vide Petition, *rollo*, pp. 22-50.

[14] *Id.* at 137-139.

[15] Vide Comment of BPI, *id.* at 143-151.

debtor is the object of the contract, while the debt is the consideration or purchase price.[16]

The pivotal issue is thus whether respondent Sychinghos had the right to sell or convey title to the subject property at the time of the *dacion en pago.* The Court finds in the affirmative.

There having been no previous foreclosure of the Real Estate Mortgage on the subject property, respondent Sychinghos' ownership thereof remained intact. Indeed, a mortgage does not affect the ownership of the property as it is nothing more than a lien thereon serving as security for a debt. The mortgagee does not acquire title to the mortgaged real estate unless he purchases it at a public auction, and it is not redeemed within the period provided for by the Rules of Court.[17] This applies *a fortiori* to the present case where **only 1/3**, not the whole, **of the subject property was actually encumbered to FEBTC**.

With respect to whatever amount Lina and her sons may still owe BPI (then FEBTC), the Court finds that this is not a concern of petitioner as he is not a party to the loan documents covering it. Since petitioner agreed to the full extinguishment of respondents spouses' then outstanding obligation in view of the unconditional conveyance to him of the subject property,[18] there is a perfected and enforceable *dacion en pago*. He should thus enjoy full entitlement to the subject property.

The question of whether the subject property stands as a continuing security for any outstanding obligations of Lina and her sons to BPI (then FEBTC) should not detain the Court any further. Surrender of the certificate of title will not impair any existing mortgage on the subject property. It is an elementary principle in civil law that a real estate mortgage subsists notwithstanding changes in ownership, and all subsequent purchasers of the property must respect the mortgage.[19]

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[16] *Vide Aquintey v. Tibong*, G.R. No. 166704, December 20, 2006, 511 SCRA 414, 438-439.

[17] *Lagrosa v. Court of Appeals*, 371 Phil. 225, 240 (1999).

[18] Records, pp. 11-12.

[19] *Asuncion v. Evangelista*, 375 Phil. 328, 357 (1999).

Finally, while the remedy of petitioner is to file a petition in court, following Presidential Decree No. 1529, to compel then FEBTC (now BPI) to surrender the owner's duplicate copy of the title to the Register of Deeds of San Juan to facilitate the issuance of a new title in his name,[20] the Court deems his action for specific performance and recovery of the title as substantial compliance with the prescribed procedure. To require him to institute a new action seeking essentially the same relief would be to encourage endless litigations and multiplicity of suits – an end abhorrent to the proper administration of justice.

WHEREFORE, the challenged Decision of the Court of Appeals is *REVERSED* and *SET ASIDE*. Bank of the Philippine Islands, to which Far East Bank and Trust Company was merged, is ordered to surrender the owner's duplicate copy of TCT No. 6259-R to the Register of Deeds of San Juan, Metro Manila in order to process the issuance of a new title over the subject property in the name of petitioner, Joseph Typingco.

SO ORDERED.

Quisumbing (Chairperson), Carpio,[*] *Brion,* and *Abad, JJ.*, concur.

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[20] Section 107 of Presidential Decree No. 1529 provides:

Section 107. Surrender of withheld duplicate certificates. — Where it is necessary to issue a new certificate of title pursuant to any involuntary instrument which divests the title of the registered owner against his consent or **where a voluntary instrument cannot be registered by reason of the refusal or failure of the holder to surrender the owner's duplicate certificate of title**, **the party in interest may file a petition in court to compel surrender of the same to the Register of Deeds**. **The court**, after hearing, **may order** the registered owner or **any person withholding the duplicate certificate to surrender the same**, **and direct the entry of a new certificate** or memorandum upon such surrender. If the person withholding the duplicate certificate is not amenable to the process of the court, or if for any reason the outstanding owner's duplicate certificate cannot be delivered, the court may order the annulment of the same as well as the issuance of a new certificate of title in lieu thereof. Such new certificate and all duplicates thereof shall contain a memorandum of the annulment of the outstanding duplicate. (Emphasis and underscoring supplied.)

[*] Additional member per Special Order No. 757 dated October 12, 2009.

EN BANC

[A.M. No. P-07-2385. October 26, 2009]
(Formerly OCA I.P.I. No. 07-2556-P)

JUDGE JACINTO C. GONZALES, *complainant, vs.* **CLERK OF COURT AND CITY SHERIFF ALEXANDER C. RIMANDO, CLERK III ANNALIZA O. FLORES, SHERIFF III PERLITA D. DUMLAO, and UTILITY WORKER I RAMON R. RAMONES,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; ACTS PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; A CASE OF.— The Court finds well taken the recommendation of the OCA to hold Rimando guilty of Acts Prejudicial to the Best Interest of the Service. *Francisco v. Gonzales* enlightens: While the trial court has the competence to identify and to secure properties and interest therein held by the judgment debtor for the satisfaction of a money judgment rendered against him, such exercise of its authority is premised on one important fact: that the properties levied upon, or sought to be levied upon, are properties **unquestionably owned by the judgment debtor** and are not exempt by law from execution. Also, a sheriff is *not* authorized to attach or levy on property *not* belonging to the judgment debtor, and even incurs liability if he wrongfully levies upon the property of a third person. A sheriff has no authority to attach the property of any person under execution except that of the judgment debtor. x x x As Judge Farrales noted in her Report, Rimando should have first demanded full payment of the amounts stated in the dispositive portion of the trial court's decision, which dispositive portion was, it bears reiteration, incorporated in the writ. But he did not. Without determining with certainty that the van belonged to the judgment debtor, and despite the information given to him at the time of seizure that it did not belong to the judgment debtor, he went ahead and seized the van. On top of this, Rimando falsely made it appear in the "Notice of *L[i]s Pendens*" addressed

to the district head of the Olongapo City LTO that the van was the "subject matter" in the civil case. Not only did Rimando thus make a false statement. His statement betrayed his ignorance. For under Section 14, Rule 13 of the Rules of Court and Section 76 of Presidential Decree (P.D.) No. 1529, a notice of *lis pendens* applies only in actions affecting the title or the right of possession of **real** property. Besides, the van was not the subject matter of the civil case. As if Rimando's *faux pas* were not enough, he even attempted to release the van on a non-working day and would have succeeded were it not for Judge Gonzales' order against it. His claim that his attempt was made after ascertaining that the van did not belong to the judgment debtor is an admission of his slip reflected above.

2. ID.; ID.; ID.; GROSS INSUBORDINATION; A CASE OF.— Rimando is, for refusal to comply with Judge Gonzales' order for him to explain his actions, also liable for Gross Insubordination, what *Necesario v. Dinglasa* describes as the indifference of a respondent to an administrative complaint and to resolutions requiring comment thereon. His claim that he was just exercising his right not to give an explanation to him about the incident because [Rimando had] a strong feeling, based on the prejudgment he already exhibited against [him], that he will be elevating just the same the matter to [the OCA] for which [Rimando] decided to just reserve [his] filing of a comment." does not impress. Every employee in the judiciary should be an example of integrity, uprightness, and honesty. Not only is he expected to be well-mannered, civil and considerate in his actuations, official or otherwise, but more than anybody else, he is also bound to manifest to his superiors, more particularly to the presiding Judge, utmost respect and obedience to the latter's orders and instructions issued pursuant to the duties of the office the Judge holds. Rimando also committed *another count* of Gross Insubordination for his refusal to file his comment on the present complaint despite the directive of the OCA in its 1st Indorsement of **August 23, 2006** and in its 1st Tracer, dated **March 5, 2007**. It was only after the Court issued a SHOW CAUSE Order on October 3, 2007 that he was constrained to file a Comment on **December 17, 2007** in the course of the investigation conducted by Judge

Farrales or more than one year from his receipt of the 1st Indorsement. x x x [Respondent's] **prolonged and repeated** refusal to comply constitutes **a clear and willful disrespect** for lawful orders of the OCA . . . through [which] the Supreme Court exercises supervision over all lower courts and personnel thereof. x x x

3. ID.; ID.; ID.; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; PENALTY.— A first offense of Conduct Prejudicial to the Best Interest of the Service is punishable under Rule IV, Section 52 (A) (20) of the Uniform Rules on Administrative Cases in the Civil Service with suspension from six months and one day to one year.

4. ID.; ID.; ID.; ID.; GROSS INSUBORDINATION; PENALTIES FOR THE FIRST OFFENSE AND SECOND OFFENSE.— A *first* offense of Gross Insubordination is penalized with suspension from six months and one day to one year, while a *second* offense of Gross Insubordination is penalized with dismissal. Section 55 of the same above-said Rule IV states that "If the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge or count and the rest shall be considered as aggravating circumstances." Rimando must thus be meted the penalty of dismissal, the penalty for the most serious charge – *second* count of **Gross Insubordination**.

D E C I S I O N

***PER CURIAM*:**

Branch Sheriff Rewel Cerenio (Cerenio) was relieved of his duties as Branch Sheriff of Branch 2 of the Municipal Trial Court in Cities (MTCC) in Olongapo City. Instead of turning over all unserved writs, orders and processes to the Branch Clerk of Court, Annabelle F. Garcia,[1] he turned them over to

[1] *Rollo,* Vol. 1, p. 341.

the MTCC Clerk of Court-City Sheriff Alexander Rimando (Rimando) including the writ of execution issued in Civil Case No. 4876 (the civil case), "*Shirley Gonzaga v. Felicitas de la Cruz*," for sum of money.

Rimando implemented the writ of execution issued in the civil case on July 11, 2006 by seizing a Starex van belonging to one Ramon Reyes (Reyes), who was not a party thereto. On July 16, 2006, a Sunday, Rimando attempted to release the van but was prevented by a Hall of Justice security guard on the order of MTCC Branch 2 Presiding Judge Jacinto C. Gonzales (Judge Gonzales).

The van owner, Reyes, thus complained of the seizure of his van to Judge Gonzales who, after investigation during which Rimando did not comply with his (the judge's) order for him to comment, filed a letter-complaint before this Court against herein respondents Rimando, Annaliza, Sheriff III Perlita Dumlao (Perlita) and Utility Worker I Ramon Ramones (Ramones), along with Enrique Deliguin and SPO1 Teofilo Fami, for grave misconduct, usurpation of authority or official functions, and conduct prejudicial to the best interest of the court or justice, the subject of this Court's present Decision.

Judge Gonzales detailed the complained acts of respondents as follows:

1. They willfully performed the function pertaining to the branch sheriff of this court without the consent of herein complainant].
2. They illegally took and carried away the personal property of a person not a party to the case putting the image of the court in bad light.
3. Irregularly performing a judicial function by seeking the release of the vehicle on a non-working day (Sunday).
4. Deliberate refusal to respond to the lawful order of the undersigned with respect to matters involving the performance of official functions.[2] (Underscoring supplied)

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[2] *Id.* at 9.

In his Comment[3] filed in compliance with the directive of the Office of the Court Administrator (OCA), Ramones denied having participated in the confiscation of the van and in the attempt to remove it from the Hall of Justice. He claimed that he was only following the order of Rimando, coursed thru Perlita, to ask for police assistance in the implementation of the writ.

In her Comment,[4] Perlita claimed that she and another sheriff were merely implementing a directive from Rimando to verify, among other things, whether Percival Sañarez, son-in-law of the judgment debtor Felicitas dela Cruz (Felicitas) and who was allegedly her co-maker of the promissory note presented in evidence at the civil case, "is the registered owner of a Starex [van] which he use[d] to drive";[5] that as the writ of execution appeared to be regular, she asked the judgment creditor Shirley Gonzaga (Shirley) for assistance in looking for property of the judgment debtor Felicitas; that Shirley informed Rimando that Felicitas owned a Starex van with plate number bearing the number of that seized, which van she (Perlita) herself saw parked at Felicitas' address; and that while Felicitas' son-in-law claimed that she (Felicitas) did not own the vehicle, Rimando advised him to avail himself of court proceedings where he could raise that claim.

Perlita denied having participated in the attempt to release the vehicle.

Rimando did not submit his comment to the present complaint as directed by the Office of the Court Administrator (OCA) by 1st Indorsement of August 23, 2006, **despite the grant to him, on his motion, of extension of time for the purpose**[6] ***and*** **the issuance by the OCA of its 1st Tracer** dated March 5, 2007.[7]

Annaliza, in the meantime, died on June 1, 2007.

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[3] *Id.* at 117-122.

[4] *Id.* at 123-127.

[5] *Id.* at 128.

[6] *Id.* at 113.

[7] *Id.* at 139.

On the recommendation of the OCA, the Court resolved, on October 3, 2007, to:

1. **NOTE** the sworn letter-complaint filed by Presiding Judge Jacinto C. Gonzales, and the comments of respondents Ramones and [Perlita] dated 27 March 2007 and 16 October 2006, respectively;
2. **RE-DOCKET** this matter as a regular administrative matter;
3. **REQUIRE** respondent Clerk of Court and City Sheriff Alexander C. Rimando to **SHOW CAUSE** why he should not be charged for contempt for his failure to submit his comment as directed by the Office of the Court Administrator and to submit his comment within five (5) days from receipt hereof;
4. **DISMISS** the complaint against respondent Clerk III Annaliza O. Flores in view of her death; and
5. **REFER** this matter to the Executive Judge of the RTC of Olongapo City for investigation, report and recommendation within sixty (60) days from receipt of records thereof.[8] (Emphasis in the original; underscoring supplied)

During the investigation conducted by Executive Judge Josefina D. Farrales (Judge Farrales), it surfaced that Reyes could not register the van at the Cavite Land Transportation Office (LTO) because Rimando filed a "Notice of *L[i]s Pendens*"[9] before the Olongapo City LTO requesting it to hold in abeyance any transaction regarding the transfer or disposition of the van, as "[it] is now the subject of litigation, wherein [Felicitas is] the defendant in Civil Case No. 4876 for Collection of Sum of Money . . ."[10]

Also during the investigation conducted by Judge Farrales or on **December 17, 2007**, Rimando, explaining his failure to comply with the OCA directive to submit his comment on the complaint, claimed that he was occupied assisting Annaliza's family during

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[8] *Id.* at 152-153.

[9] *Id.* at 386. Judge Farrales' finding is on the *rollo*, Vol. 1, p. 163.

[10] *Id.* at 386.

her illness. He also claimed that as Branch Sheriff Cerenio was merely his deputy, he (Rimando), being the MTCC Clerk of Court-City Sheriff, had the authority to implement the writ; and that while he tried to release the van on a non-working day,[11] it was out of his desire to "have an immediate solution on the matter after ascertaining that indeed the van does not belong to the defendant."[12]

On his refusal to heed Judge Gonzales' order for him to comment on the complaint of Reyes, Rimando explained that he had then "a strong feeling, basing on the prejudgment" of the Judge, that the latter would elevate the matter to this Court, hence, he "decided to just reserve [his] filing of a comment."[13]

In her Report submitted to the OCA on March 26, 2008, Judge Farrales detailed her findings, quoted *verbatim* below:

x x x x x x x x x

The charges against respondents [Perlita] and Ramones should be dismissed.

With respect to respondent Rimando, the charges against him relate to his acts of taking personal property (Hyundai Starex van with Plate No. WHZ 140) belonging to another in the guise of implementing a writ of execution issued in Civil Case No. 4876 and attempting to remove the said vehicle from the premises of the Hall of Justice Olongapo City without prior court order.

x x x [T]he acts of respondent Sheriff Rimando constitute **usurpation of authority**. The mere fact that he relied only on the information that [the judgment debtor] Dela Cruz owned a Hyundai Starex van with plate no. WHZ 140 without first verifying the true owner thereon and thereafter levied the van violated the procedure in the execution of judgments outlined in Section 9, Rule 39 of the Revised Rules of Court which reads:

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[11] Rimando claims the day was July 16, 2006 and not July 15, 2006 but Rimando nevertheless admits that it was a non-working day. *Rollo,* Vol. 2, p. 9.

[12] *Ibid.*

[13] *Id.* at 10.

"Sec. 9. Execution of judgments for money, how enforced – (a) Immediate payment on demand. – The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. The judgment obligor shall pay in cash, certified bank check payable to the judgment oblige, or any other form of payment acceptable to the latter, the amount of the judgment debt under proper receipt direct to the judgment oblige or his authorized representatives if present at the time of payment. The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount within the same day to the clerk of the court that issued the writ.

x x x x x x x x x

The records [are] **bereft of any showing that Sheriff Rimando first demanded for the judgment obligor Dela Cruz the full payment of the amount stated in the writ.** Worse, Sheriff Rimando levied on the Hyundai Starex van even after he was informed that it was not owned by Dela Cruz.

Sheriff Rimando likewise **abused his authority** when he made it appear that the Hyundai Starex van [with] plate no. WHX 140 was a subject of litigation in Civil Case No. 4876 in issuing a Notice of *Lis Pendens* dated 21 June 2006 addressed to district Head Engr. Reynaldo J. Cortez. The issuance of Notice of *Lis Pendens* is highly irregular. First, the Starex van with plate no. WHZ 140 was not the subject matter of Civil Case No. 4876. Second, the Notice of *Lis Pendens* is proper only in cases enumerated under Section 14, Rule 13 of the 1997 Rules of Civil Procedure and Section 76 of P.D. 1529 and lastly, the subject van [was] improperly levied on 11 July 2006. Sheriff Rimando attempted to show that he levied the subject Hyundai van after verification from the LTO by issuing the Notice of *Lis Pendens* on 21 June 2006 but adduced no evidence to prove it.

By making it appear in the Notice of *Lis Pendens* dated 21 June 2006 that the Starex van with Plate No. WHZ 140 was the subject of litigation in Civil Case No. 4876, respondent Rimando **knowingly made false entries thereon**. Undoubtedly, this act of respondent Rimando x x x violates the norms of public accountability and tends

to diminish the faith of the people in the judiciary, thereby prejudicing the best interest of the administration of justice.

Further, in an attempt to cover up the irregularities in the "implementation of the writ of execution", Sheriff Rimando tried to release the Hyundai Starex van with Plate No. WHZ 140 to Sañarez and dela Cruz on 15 July 2006 [*sic*] and remove the same from the premises of the Hall of Justice without prior court order. Significantly, x x x 15 July 2006 [*sic*] was a Sunday.

For failure of complainant to substantiate his charges against [Perlita] and Ramones, the [charges] against them must be dismissed. x x x [R]espondents [Perlita] and Ramones merely complied with the directive of their superior, City Sheriff Rimando, to seek assistance from the police concerning the "implementation of the writ of execution" issued in Civil Case No. 4876.[14]

x x x (Emphasis and underscoring supplied)

Judge Farrales thus recommended:

x x x x x x x x x

(1) that the complaint against Ramon Ramones, Utility Worker I, and Perlita D. Dumlao, Sheriff III, both of MTCC, OCC, Olongapo City be DISMISSED; and,

(2) that respondent Alexander C. Rimando, Clerk of Court and City Sheriff of MTCC, OCC, Olongapo City be administratively charged for conduct prejudicial to the best interest of the service and the penalty left to the sound discretion of the Honorable Court Administrator.[15] (Underscoring supplied)

The OCA, noting that the findings and recommendations of Judge Farrales were supported by substantial evidence,[16] concluded that Rimando exceeded the limits of his ministerial functions as City Sheriff and accordingly recommended that

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[14] *Rollo*, Vol. 1, pp. 167-169.

[15] *Id.* at 169.

[16] *Id.* at 411.

Rimando be suspended for six months and one day to one year for Acts Prejudicial to the Best Interest of the Service.[17]

As for respondents Ramones and Perlita, the OCA concurred in the recommendation to exonerate them as they merely heeded Rimando's instructions and in the absence of evidence of bad faith or other malevolent acts on their part.

The Court finds well taken the recommendation of the OCA to hold Rimando guilty of Acts Prejudicial to the Best Interest of the Service. *Francisco v. Gonzales*[18] enlightens:

> While the trial court has the competence to identify and to secure properties and interest therein held by the judgment debtor for the satisfaction of a money judgment rendered against him, such exercise of its authority is premised on one important fact: that the properties levied upon, or sought to be levied upon, are properties **unquestionably owned by the judgment debtor** and are not exempt by law from execution. Also, a sheriff is *not* authorized to attach or levy on property *not* belonging to the judgment debtor, and even incurs liability if he wrongfully levies upon the property of a third person. A sheriff has no authority to attach the property of any person under execution except that of the judgment debtor.[19] (Emphasis in the original; italics and underscoring supplied)

It bears noting that the dispositive portion of the judgment which was incorporated in the writ of execution reads:

> WHEREFORE, this court finds and so holds that the plaintiff had amply substantiated her cause of action against the defendant and therefore renders judgment in favor of the plaintiff and against the defendant ordering the defendant:
>
> 1. To pay the plaintiff the amount of Forty Five Thousand (₱45,000.00) Pesos plus 10% interest from demand until the whole amount of indebtedness has been fully paid;

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[17] *Id.* at 412.

[18] G.R. No. 177667, September 17, 2008, 565 SCRA 638.

[19] *Id.* at 646-647.

2. To reimburse the amount of Five Thousand (₱5,000.00) Pesos as Attorney's Fees, the amount of Four Thousand (₱4,000.00) Pesos as appearance fees and the amount of Two Thousand (₱2,000.00) Pesos as litigation expenses; and,

3. To pay the cost of suits.[20] (Underscoring supplied)

As Judge Farrales noted in her Report, Rimando should have first demanded full payment of the amounts stated in the dispositive portion of the trial court's decision, which dispositive portion was, it bears reiteration, incorporated in the writ. But he did not. Without determining with certainty that the van belonged to the judgment debtor, and despite the information given to him at the time of seizure that it did not belong to the judgment debtor, he went ahead and seized the van.

On top of this, Rimando falsely made it appear in the "Notice of *L[i]s Pendens*" addressed to the district head of the Olongapo City LTO[21] that the van was the "subject matter" in the civil case. Not only did Rimando thus make a false statement. His statement betrayed his ignorance. For under Section 14, Rule 13 of the Rules of Court and Section 76 of Presidential Decree (P.D.) No. 1529, a notice of *lis pendens* applies only in actions affecting the title or the right of possession of **real** property. Besides, the van was not the subject matter of the civil case.[22]

As if Rimando's *faux pas* were not enough, he even attempted to release the van on a non-working day and would have succeeded were it not for Judge Gonzales' order against it. His claim that his attempt was made after ascertaining that the van did not belong to the judgment debtor is an admission of his slip reflected above.

Rimando is, for refusal to comply with Judge Gonzales' order for him to explain his actions, also liable for Gross

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[20] *Rollo,* Vol. 1, p. 48.

[21] *Id.* at 386.

[22] *Vide id.* at 15.

Insubordination, what *Necesario v. Dinglasa*[23] describes as the indifference of a respondent to an administrative complaint and to resolutions requiring comment thereon.[24] His claim that he was

> "just exercising his right not to give an explanation to him about the incident because [Rimando had] a strong feeling, based on the prejudgment he already exhibited against [him], that he will be elevating just the same the matter to [the OCA] for which [Rimando] decided to just reserve [his] filing of a comment."[25]

does not impress.

> Every employee in the judiciary should be an example of integrity, uprightness, and honesty. Not only is he expected to be well-mannered, civil and considerate in his actuations, official or otherwise, but more than anybody else, he is also bound to manifest to his superiors, more particularly to the presiding Judge, utmost respect and obedience to the latter's orders and instructions issued pursuant to the duties of the office the Judge holds.[26] (Underscoring supplied)

Rimando also committed *another count* of Gross Insubordination for his refusal to file his comment on the present complaint despite the directive of the OCA in its 1st Indorsement of **August 23, 2006** and in its 1st Tracer, dated **March 5, 2007**. It was only after the Court issued a SHOW CAUSE Order on October 3, 2007 that he was constrained to file a Comment on **December 17, 2007**[27] in the course of the investigation conducted by Judge Farrales or more than one year from his receipt of the 1st Indorsement.

> x x x [Respondent's] **prolonged and repeated** refusal to comply constitutes **a clear and willful disrespect** for lawful orders of the

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[23] A.M. No. P-07-2294, August 7, 2007, 529 SCRA 194.

[24] *Vide id.* at 199.

[25] *Rollo,* Vol. 2, p. 10.

[26] *Mallare v. Ferry,* A.M. No. P-00-1381 and A.M. No. P-00-1382, July 31, 2001, 362 SCRA 19, 26.

[27] *Rollo,* Vol. 2, p. 1.

OCA . . . through [which] the Supreme Court exercises supervision over all lower courts and personnel thereof. x x x[28] (Emphasis and underscoring supplied)

A first offense of Conduct Prejudicial to the Best Interest of the Service is punishable under Rule IV, Section 52 (A) (20) of the Uniform Rules on Administrative Cases in the Civil Service with suspension from six months and one day to one year.

A *first* offense of Gross Insubordination is penalized with suspension from six months and one day to one year, while a *second* offense of Gross Insubordination is penalized with dismissal.[29]

Section 55 of the same above-said Rule IV states that "If the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge or count and the rest shall be considered as aggravating circumstances."

Rimando must thus be meted the penalty of dismissal, the penalty for the most serious charge – *second* count of **Gross Insubordination**.

As for the charges against Ramones, the recommendation to dismiss the same is in order as he was merely complying with Rimando's orders when he accompanied policeman Fami to the site where the van was confiscated. His participation in the confiscation of the van and the subsequent attempt to remove it from the Hall of Justice has not been substantiated.

Respecting Perlita, the recommendation to dismiss the charges against her is also in order as she merely heeded Rimando's instructions for her to seek assistance from the judgment creditor in identifying any property of the judgment debtor and in accompanying Rimando to the site of the "execution."

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[28] *Report on the Judicial Audit Conducted in the RTC-Br. 47, Urdaneta City*, A.M. No. RTJ-05-1968, January 31, 2006, 481 SCRA 76, 90.

[29] Uniform Rules on Administrative Cases in the Civil Service, Rule IV, Section 52 (A)(19).

As reflected in its earlier-quoted Resolution of October 3, 2007, the Court DISMISSED the complaint against Annaliza in view of her death in the interim.

WHEREFORE, respondent Clerk of Court-City Sheriff Alexander C. Rimando of the Olongapo Municipal Trial Court in Cities is found *GUILTY* of Conduct Prejudicial to the Best Interest of the Service and of two counts of Gross Insubordination. He is *DISMISSED* from the service effective immediately, with *FORFEITURE* of all retirement benefits and accrued leave credits and with prejudice to re-employment in any branch or instrumentality of government, including government-owned and controlled corporations.

The charges against respondents Sheriff III Perlita D. Dumlao and Utility Worker I Ramon R. Ramones are *DISMISSED*.

Let copies of this Decision be appended to respondents' respective 201 files.

SO ORDERED.

Puno, C.J., Quisumbing, Carpio, Carpio Morales, Chico-Nazario, Peralta, Bersamin, and *Abad, JJ.,* concur.

Corona, Velasco, Jr., Nachura, and *Leonardo-de Castro, JJ.,* on official leave.

Brion and *Del Castillo, JJ.,* on leave.

SECOND DIVISION

[A.M. No. RTJ-09-2204. October 26, 2009]
(Formerly A.M. OCA IPI No. 04-2137-RTJ)

JUAN PABLO P. BONDOC, *complainant, vs.* **Judge DIVINA LUZ P. AQUINO-SIMBULAN, Regional Trial Court, Branch 41, San Fernando City, Pampanga,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; VIOLATED IN CASE AT BAR.— Nothing is inherently wrong with the complainant's dependence on Attys. Stephen and Lanee David for the substance of the complaint. They were his lawyers and therefore had the duty to report to him on the proceedings in court and the progress of the cases they were handling. Nonetheless, as officers of the court, counsels are expected to be as truthful and as objective as possible in providing information to their client regarding developments in the courtroom. Needless to say, they owe candor, fairness and good faith to the court. In these regards, Attys. Stephen and Lanee David proved to be wanting. A close and careful reading of the case record shows that the two lawyers made it appear in their report to their client that the respondent unduly made it difficult for Attys. Stephen and Lanee David to prosecute the criminal cases and exhibited bias and partiality for the accused.

2. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; JUDGES; DISMISSAL OF THE ADMINISTRATIVE COMPLAINT AGAINST RESPONDENT JUDGE IS WARRANTED; ELUCIDATED.— x x x [W]e find no evidence supporting the administrative complaint against the respondent. The allegations in the complaint were unfounded and baseless and should be dismissed, as the Court did in the Resolution dated December 17, 2008. Other than the bare allegations of the complainant, no proof was presented to corroborate the charge that the respondent sought to have the criminal cases settled; neither was there a showing that the respondent fast tracked the cases to favor the

accused. As we already stated above, given that the complainant never appeared in court, it is reasonable to conclude that the two lawyers crafted the complaint and incorporated therein all the unfounded accusations against the respondent in order to conceal their inadequacies in the handling of their client's cases. To say the least, the complaint was most unfair to the respondent who, as the record shows, was simply keeping faith with her avowed objective of expediting the proceedings in her court by, among other measures, requiring lawyers to be prepared at all times and to be fair and candid in their dealings with the court.

3. LEGAL ETHICS; ATTORNEYS; AS ADMINISTRATORS OF JUSTICE, THEIR FIRST DUTY IS NOT TO THEIR CLIENTS BUT TO THE ADMINISTRATION OF JUSTICE; PENALTY IN CASE AT BAR.— The defense of Attys. Stephen and Lanee David that what they did "is just a consequence of their commitment to their client x x x" can hardly exculpate them. As the Court held in *Racines v. Judge Morallos, et al.*, "a client's cause does not permit an attorney to cross the line between liberty and license. Lawyers must always keep in perspective that since they are administrators of justice, oath-bound servants of society, their first duty is not to their clients, as many suppose, but to the administration of justice. As a lawyer, he is an officer of the court with the duty to uphold its dignity and authority and not promote distrust in the administration of justice." In *Alfonso L. Dela Victoria v. Maria Fe Orig-Maloloy-on*, we had occasion to state: "Lawyers are required to act with the highest standard of truthfulness, fair play and nobility in the conduct of their litigation and their relations with their clients, the opposing parties, the other counsel and the courts." Attys. Stephen and Lanee David miserably failed to come up to the standards of these rulings. Accordingly, they are liable under A.M. No. 03-10-01-SC and should be held in indirect contempt under Section 3, Rule 71 of the Rules of Court. Considering that they have no previous derogatory record, we deem a fine of ₱2,500.00 each to be the appropriate penalty for their infraction.

APPEARANCES OF COUNSEL

David Tamayo and Cui-David Law Offices for complainant.

D E C I S I O N

BRION, *J.*:

We rule on the complaint dated November 11, 2004[1] of former Representative Juan Pablo P. Bondoc (*complainant*) of Pampanga, charging Judge Divina Luz P. Aquino-Simbulan (*respondent*), of the Regional Trial Court, Branch 41, San Fernando City, Pampanga, with partiality, gross ignorance of the law and gross misconduct in the handling of Criminal Case Nos. 12726 to 12728 entitled "*People of the Philippines v. Salvador Totaan and Flordeliz Totaan* (for: Violation of R.A. 3019 and Falsification of Public Documents)."

The Complaint

The complainant alleged that during the initial pre-trial conference on June 16, 2003, the respondent asked the lawyers of the parties "to approach the bench and suggested that the cases be settled because she did not want the accused (the *spouses Totaan*) to be administratively suspended."[2] The respondent's action came after she had issued an order (dated June 9, 2003) administratively suspending the accused *pendente lite*. The complainant further alleged that the respondent strongly requested the complainant's counsel, Atty. Stephen David, to exert all efforts to convince the complainant and his family to settle the cases. At the continuation of the pre-trial, the respondent told the counsel for the accused, "I will give you the option to choose your date. Do you want a speedy trial of the cases because of the suspension? If you want it weekly, the court can accommodate you." At the same hearing, the "Court directed Atty. Cui-David to be prepared for the hearing of these cases considering that the accused have [*sic*] been suspended upon motion of the Private Prosecutor."[3] Atty. Lanee Cui-David (*Atty. Lanee David*), wife of Private Prosecutor Stephen David, was

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

[2] Complaint, p. 2, par. 2(a).

[3] *Id.,* pp. 7-8, par. 2(b).

co-counsel for complainant in the criminal cases. Their law firm, David Tamayo & Cui-David Law Offices, entered its appearance as counsel for the complainant on December 14, 2004.[4]

The complainant also alleged that the respondent had been taking the cudgels for the accused with her constant reminder about her desire to "fast track the cases," cautioning that the accused had been suspended at the private prosecutors' instance; she only ceased talking about the suspension of the accused when Atty. Lanee David called attention to the fact that the Order of June 9, 2003 suspending the accused had not been implemented as of the January 8, 2004 hearing; the respondent then answered that it was for the prosecution to check the record to see whether the suspension order had been served and implemented.[5]

The complainant bewailed the respondent's inaction on the suspension order despite the counsel's reminders, in contrast with her persistence in requiring Ma. Hazelina Militante (*Atty. Militante*), the Ombudsman Investigator (who recommended the filing of charges or information against the accused), to appear in court even after Atty. Militante had asked to be excused from testifying since the substance of her testimony could very well be covered by official documents. The respondent ignored Atty. Militante's explanation and instead directed Atty. Lanee David to furnish Atty. Militante a copy of her Order dated December 16, 2003 requiring Atty. Militante to explain why she should not be cited in contempt for failure to follow lawful orders of the court.

Also, the complainant claimed that aside from showing partiality, bias, concern, sympathy and inclination in favor of the accused, the respondent humiliated Atty. Lanee David in open court; specifically, on November 3, 2003, the respondent gave the parties' lawyers the option to choose the date; after Atty. Juanito Velasco, counsel for accused, gave his chosen date (December 16, 2003), the respondent told Atty. Lanee David to make herself available on this date despite any scheduled hearing in other cases.

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[4] *Rollo,* p. 197.

[5] TSN, January 8, 2004, p. 7; *rollo,* p. 77.

Finally, the complainant alleged that the bias, partiality, prejudice and inclination of the respondent for the accused culminated in her order on the demurrer to evidence dated September 10, 2004[6] dismissing the charges against the accused despite the fact that the prosecution was able to prove by testimonial and documentary evidence the irregularities committed by the accused, Municipal Agrarian Reform Officer Salvador Totaan and Senior Agrarian Reform Technologist Flordeliz Totaan; they processed and approved the applications of at least thirteen (13) persons who were not qualified to become farmer-beneficiaries as they were neither farmers nor residents of the *barangay* or the municipality where the subject property is located, in violation of Section 23 of Republic Act No. 6657 (the Comprehensive Agrarian Reform Law). The complainant submitted to the Court the order on the demurrer to evidence and pertinent records of the case as the *res* under the principle of *res ipsa loquitur* and asked the Court to discipline the respondent even without formal investigation, in line with the Court's ruling in *Consolidated Bank and Trust Company v. Capistrano.*[7]

The Respondent's Comment

The respondent submitted her comment on December 23, 2004[8] in compliance with the directive of the Office of the Court Administrator (*OCA*) dated November 30, 2004. The respondent pointed out that an examination of the complaint would readily show that it was prepared by the private prosecutors, Attys. Stephen David and Lanee David, who wove a tale of lies and distortions regarding the proceedings to cover up their own shortcomings as lawyers; had they performed their duty as officers of the court and members of the bar, they would have informed the complainant that they lost because of their blunders in the prosecution of the cases.

While she admitted having asked both private prosecutor Stephen David and defense counsel Juanito Velasco to approach

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[6] Complaint, Annex "L"; *rollo,* pp. 105-111.

[7] A.M. No. R-66-RTJ, March 18, 1988, 159 SCRA 47.

[8] *Rollo,* pp. 114-139.

the bench at the pre-trial of the cases, she claimed that the conference with both counsels was to save Atty. Stephen David from embarrassment, as he could not answer the court's queries on the civil aspects of the case. She denied brokering a settlement of the cases; had she done so, she would not have issued the suspension order. She also denied fast-tracking the hearing of the cases in favor of the accused; her only objective was to have a weekly hearing and for this purpose, she instructed Atty. Lanee David to be prepared; it was her habit to act fast on all cases before her sala.

The respondent likewise denied the charge of partiality for her failure to act on the suspension of the accused, contending that it was the duty of the private prosecutors to file a motion to cite the responsible heads of the government agencies for indirect contempt for their failure to implement lawful orders of the court. She claimed that in the absence of such motion, she assumed that the accused had already been preventively suspended.

In Atty. Militante's case, the respondent explained that there was a misunderstanding between the private prosecutors and the Ombudsman Investigator; she therefore sought Atty. Militante's appearance to find out the truth. She desisted from issuing another subpoena to Atty. Militante in view of the plea of Atty. Lanee David that Atty. Militante would no longer be called as a witness; she also wanted to avoid an open confrontation between the two lawyers. Lastly, and in reply to the charge of unfair treatment, the respondent maintained that if ever she called the attention of and might have slighted Atty. Lanee David, the reason for her action was the latter's appearance in court without preparation, to the prejudice of the accused and the government.

Related Incidents

In a supplemental complaint dated December 14, 2007,[9] the complainant charged the respondent with conduct unbecoming a judge for her denial of the private prosecutors' motion for her inhibition on the ground that the motion did not comply

[9] *Id.,* pp. 198-201.

with Sections 4, 5, and 6 (three-day notice rule, ten-day notice of hearing, and proof of service) of Rule 15 of the Rules of Court. The complainant claimed that the motion is non-litigable in nature and is an exception to the three-day notice rule.

Thereafter, the parties filed additional pleadings – the Opposition (dated January 10, 2005) to the Comment of the respondent dated December 21, 2004,[10] and a Rejoinder to the Complainant's Opposition dated January 21, 2005.[11] The complainant harped on the respondent's refusal to answer the serious charges of partiality, abuse of authority, and conduct unbecoming of a judge leveled against her. While the pleadings were essentially reiterative of previous allegations, they are significant because of the respondent's rejoinder where she requested that the complainant be made to show cause why he should not be held in contempt of court, and Attys. Stephen David and Lanee David be required to show cause why they should not be administratively sanctioned as members of the bar and as officers of the Court pursuant to A.M. No. 03-10-01-SC.[12]

In its Report dated June 2, 2005,[13] the OCA disclosed that the complainant had filed a special civil action for *certiorari* with the Court of Appeals (*CA*) raising the same issues in the complaint questioning the validity of the order granting the demurrer to evidence of the accused Totaans.[14] At the OCA's recommendation, the Court (Third Division) issued a Resolution on July 11, 2005[15] provisionally dismissing the complaint for being premature, without prejudice to the final outcome of the

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[10] *Id.*, pp. 281-291.

[11] *Id.*, pp. 225-242.

[12] Resolution Prescribing Measures to Protect Members of the Judiciary from Baseless and Unfounded Administrative Complaints dated October 10, 2003.

[13] *Rollo,* pp. 292-298.

[14] CA-G.R. SP No. 8911, entitled "*Margarita Puyat vda. De Bondoc, et al. v. Judge Division Luz Aquino-Simbulan, Salvador Totaan and Flordeliz Totaan.*"

[15] *Rollo,* p. 299.

case with the CA (CA-G.R. SP No. 8911), and deferring action on the complaint of the respondent against Attys. Stephen and Lanee David until a decision is rendered in the CA case. The Court denied the complainant's partial motion for reconsideration in a Resolution dated September 12, 2005.[16]

On July 5, 2007, the respondent filed a manifestation with the information that the CA had rendered a decision in CA-G.R. SP No. 8911 denying the complainant's petition.[17] On July 23, 2007, she received a copy of the CA resolution denying the complainant's motion for reconsideration. The respondent reiterated her prayer that Attys. Stephen and Lanee David be sanctioned as members of the bar.

In a Resolution dated June 2, 2008, the Court (Second Division) required Attys. Stephen and Lanee David to show cause why no disciplinary action should be taken against them for violation of A.M. No. 03-10-01-SC and the Code of Professional Responsibility.[18]

On June 27, 2008, the respondent filed a manifestation and motion stating that the Court, in a Resolution dated January 16, 2008, denied the complainant's petition for review on *certiorari* in G.R. No. 178703 assailing the CA decision in CA-G.R. SP No. 8911.[19] Accordingly, the respondent prayed for the permanent dismissal of the present administrative matter and requested that her complaint against Attys. Stephen and Lanee David be acted upon and given due course.

On July 17, 2008, Attys. Stephen and Lanee David submitted their explanation.[20] The two lawyers disputed the respondent's claim that they orchestrated the filing of the complaint. They stressed that it was the complainant's decision to file the case

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[16] *Id.,* p. 317.

[17] *Id.,* pp. 318-320.

[18] *Id.,* p. 370.

[19] *Id.,* pp. 373-374.

[20] *Id.,* pp. 405-433.

against the respondent, in the same manner that it was his decision to prosecute the accused despite the respondent's request that the complainant withdraw the cases against them. They contended that since the matter brought before the court involves conduct violating the Canons of Judicial Ethics, the final outcome on the merits of the case filed before the CA and this Court should not be determinative of the innocence or guilt of the respondent on the administrative charges against her.

Attys. Stephen and Lanee David insisted that the reason the complainant filed the administrative case against the respondent is the respondent's bias and favoritism towards the accused Totaans, shown by the respondent's request for Atty. Stephen David to ask his client (the complainant) to withdraw the case against the accused; after the respondent was informed of the decision of the complainant to proceed with the cases, the attitude of the respondent toward them changed and her actuations became harsh. Because of the respondent's bias and favoritism towards the accused, they were compelled to move for the respondent's inhibition from the case against the accused Totaans.

Attys. Stephen and Lanee David further explained that the respondent's complaint against them may be attributed to their zeal and enthusiasm in prosecuting their client's case; this notwithstanding, they endeavored to observe discipline and self-restraint, and to maintain their high respect for the court and for the orderly administration of justice.

On July 29, 2008, the respondent filed her comment to the explanation of Attys. Stephen and Lanee David.[21] She pointed out that the comment was a mere rehash of the allegations in the complaint against her, for which reason she was repleading all her statements in her previous submissions[22] controverting the two lawyers' baseless and malicious averments.

On December 17, 2008, the Court (Second Division) resolved to dismiss the administrative complaint against the respondent

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[21] *Id.,* pp. 435-448.

[22] Comment dated December 21, 2004 and Rejoinder dated January 21, 2005.

and to require Attys. Stephen and Lanee David to show cause why they should not be disciplined or held in contempt for violating A.M. No. 03-10-01-SC.[23]

In a Resolution dated June 22, 2009,[24] the Court took note of the following:

1. the manifestation filed by Attys. Stephen David and Lanee David that they were adopting the explanation they submitted pursuant to the Court's Resolution of June 2, 2008, as compliance with the Resolution dated December 17, 2008; and
2. the manifestation and motion of the respondent that her complaint against the lawyers David be deemed submitted for resolution.

On the same day, the Court referred the matter to the OCA for evaluation, report and recommendation.[25]

The OCA Report

On August 13, 2009, the OCA submitted its report with the recommendation that Attys. Stephen David and Lanee David be found guilty of indirect contempt for violating A.M. No. 03-10-01-SC and be fined ₱1,000.00 each.

The OCA found that the administrative complaint against the respondent could not have been filed without the active prodding and instigation of the two lawyers. The OCA noted that the complainant never personally appeared during the hearings of Criminal Case Nos. 12726 to 12728 where Attys. Stephen and Lanee David represented him. The OCA concluded that Attys. Stephen and Lanee David were the primary sources of the allegations in the complaint which involved intricate courtroom proceedings that the complainant did not personally witness. The OCA faulted the two lawyers for their continued emphasis in their July 17, 2008 explanation on the respondent's alleged

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[23] *Rollo*, p. 459.

[24] *Id.*, p. 528.

[25] *Id.*, p. 530.

"questionable behavior and conduct" despite the CA decision of May 31, 2007 in CA-G.R. SP No. 8911 affirming the respondent's findings in her order of September 10, 2004 in Criminal Case Nos. 12726 to 12728.

The Court's Ruling

In view of our dismissal of the administrative complaint filed by complainant against the respondent,[26] only the issue of the liability under A.M. No. 03-10-01-SC of Attys. Stephen and Lanee David remains to be resolved.

We find the recommendation of the OCA to be in order; Attys. Stephen and Lanee David crossed the line of accepted and protected conduct as members of the bar and as officers of the court in the filing of the administrative complaint against the respondent. As the OCA noted, while the complaint was filed in the name of former Representative Juan Pablo P. Bondoc, he never really appeared in court and could not have woven the tale of unfair treatment in the complaint which spoke of intricate courtroom proceedings. The complainant thus relied primarily on the information relayed to him by his lawyers for the particulars of the complaint. More to the point, the two lawyers can reasonably be considered to have authored the allegations in their client's complaint.

Nothing is inherently wrong with the complainant's dependence on Attys. Stephen and Lanee David for the substance of the complaint. They were his lawyers and therefore had the duty to report to him on the proceedings in court and the progress of the cases they were handling. Nonetheless, as officers of the court, counsels are expected to be as truthful and as objective as possible in providing information to their client regarding developments in the courtroom. Needless to say, they owe candor, fairness and good faith to the court.[27] In these regards, Attys. Stephen and Lanee David proved to be wanting.

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[26] Pursuant to the Resolution dated December 17, 2008 of the Court's Second Division.

[27] Rule 18.04, Canon 18, Code of Professional Responsibility.

A close and careful reading of the case record shows that the two lawyers made it appear in their report to their client that the respondent unduly made it difficult for Attys. Stephen and Lanee David to prosecute the criminal cases and exhibited bias and partiality for the accused.

The complainant bewailed: (1) the respondent's attempt to have the cases settled in an "off-the-record" huddle with the parties' lawyers because she did not want the accused to be administratively suspended,[28] and (2) the respondent's order to "fast track" the cases because the accused had been suspended upon motion of the private prosecutors. The complainant then narrated the instances when his lawyers were allegedly given a hard time and subjected to indignities by the respondent in her desire to fast track the criminal cases.

What we see from the records, however, is a different situation that belied the complainant's charges against the respondent. From the pre-trial records quoted below, we find sufficient justification for the conclusion that the information Attys. Stephen and Lanee David supplied their client was patently misleading and slanted "to cover up their gross shortcomings as lawyers," as the respondent aptly put it.[29] To quote from the records of the pre-trial of November 3, 2003:

COURT: No surprise in my court. You better tell the name, who will be your witness. Your cases are very serious in nature, there would be no surprise. Reveal your witnesses now.

ATTY. DAVID: Because I am only a collaborating counsel in these cases.

COURT: Are you not prepared?

ATTY. DAVID: We will present one more witness, your Honor, because I am going to ask the complainant witness if he is ready to testify.

COURT: Why did you not ask him before the pre-trial conference today?

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[28] *Rollo,* p. 2.

[29] *Id.,* p. 116.

ATTY. DAVID: Actually my collaborating counsel, Atty. David, who is my husband, was the one who talked with the complainant, your Honor.

COURT: So you are not prepared for the pre-trial conference today?

ATTY. DAVID: I am sorry for that, your Honor. May we just request for the continuation of the pre-trial next time.

x x x x x x x x x

COURT: Where is your husband?

ATTY. DAVID: He is not actually feeling well, your Honor, that is why I am here.

COURT: You are supposed to be prepared when you appear in my Court.

ATTY. DAVID: I am sorry for that, your Honor.

COURT: Upon your motion, these cases had been suspended. The delay is attributable to your non-preparation.

x x x x x x x x x

COURT: You know the Court gets peeved with this kind of manifestations from lawyers. I supposed you to be prepared, to be fair to all.

ATTY. DAVID: I'll promise I will be prepared next time, your Honor.

COURT: And tell your husband that he should be prepared. I will not tolerate postponements.[30]

The hearing on December 16, 2003 further disclosed:

COURT: I will warn the prosecution that if you fail to present your witness on January 8, 2004, I have no qualms in dismissing the cases with prejudice. I request that the subpoena be served personally to these people as an officer of the Court.

ATTY. DAVID: We will do that your Honor.

x x x x x x x x x

COURT: Atty. Velasco, do you have any manifestation?

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[30] *Id.,* pp. 51-57.

ATTY. VELASCO: Considering the confession of the prosecution that she is not ready to present any of her witnesses this afternoon, may we move to (____)[31] the cases invoking the right of the accused to a speedy trial.

COURT: I give the prosecution one last opportunity even without your motion x x x
I hope this will not happen again.[32]

Based on these proceedings, we find no evidence supporting the administrative complaint against the respondent. The allegations in the complaint were unfounded and baseless and should be dismissed, as the Court did in the Resolution dated December 17, 2008.[33] Other than the bare allegations of the complainant, no proof was presented to corroborate the charge that the respondent sought to have the criminal cases settled; neither was there a showing that the respondent fast tracked the cases to favor the accused.

As we already stated above, given that the complainant never appeared in court, it is reasonable to conclude that the two lawyers crafted the complaint and incorporated therein all the unfounded accusations against the respondent in order to conceal their inadequacies in the handling of their client's cases. To say the least, the complaint was most unfair to the respondent who, as the record shows, was simply keeping faith with her avowed objective of expediting the proceedings in her court by, among other measures, requiring lawyers to be prepared at all times and to be fair and candid in their dealings with the court.

The defense of Attys. Stephen and Lanee David that what they did "is just a consequence of their commitment to their client x x x" can hardly exculpate them.[34] As the Court held in

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[31] Printed word appeared to have been erased.

[32] *Rollo,* pp. 69-70; TSN, December 16, 2003, pp. 8-9.

[33] *Supra* note 23.

[34] *Rollo,* p. 425.

Racines v. Judge Morallos, et al.,[35] "a client's cause does not permit an attorney to cross the line between liberty and license. Lawyers must always keep in perspective that since they are administrators of justice, oath-bound servants of society, their first duty is not to their clients, as many suppose, but to the administration of justice. As a lawyer, he is an officer of the court with the duty to uphold its dignity and authority and not promote distrust in the administration of justice."

In *Alfonso L. Dela Victoria v. Maria Fe Orig-Maloloy-on*,[36] we had occasion to state: "Lawyers are required to act with the highest standard of truthfulness, fair play and nobility in the conduct of their litigation and their relations with their clients, the opposing parties, the other counsel and the courts."

Attys. Stephen and Lanee David miserably failed to come up to the standards of these rulings. Accordingly, they are liable under A.M. No. 03-10-01-SC and should be held in indirect contempt under Section 3, Rule 71 of the Rules of Court. Considering that they have no previous derogatory record, we deem a fine of ₱2,500.00 each to be the appropriate penalty for their infraction.

WHEREFORE, premises considered, we hereby declare Attys. Stephen L. David and Lanee S. Cui-David *GUILTY* of Indirect Contempt for violation of A.M. No. 03-10-01-SC, and accordingly impose on each of them the *FINE* of Two Thousand Five Hundred Pesos (₱2,500.00) with the *STERN WARNING* that a commission of a similar offense shall be dealt with more severely.

SO ORDERED.

Quisumbing (Chairperson), Carpio,[*] *Carpio Morales,* and *Abad, JJ.,* concur.

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[35] A.M. No. MTJ-08-1698, March 3, 2008, 547 SCRA 295.

[36] A.M. No. P-07-2343, August 14, 2007, 530 SCRA 1.

[*] Designated additional Member of the Second Division effective October 19 to 28, 2009 per Special Order No. 759 dated October 12, 2009.

SECOND DIVISION

[G.R. No. 155622. October 26, 2009]

DOTMATRIX TRADING as represented by its proprietors, namely ROMY YAP CHUA, RENATO ROLLAN and ROLANDO D. CADIZ, *petitioner, vs.* **ROMMEL B. LEGASPI under the name and style of BIG J FARMS and RBL FARM,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; MOTION TO DISMISS; *LITIS PENDENTIA*; DEFINED.— *Litis pendentia* is a Latin term, which literally means "a pending suit" and is variously referred to in some decisions as *lis pendens* and *auter action pendant*. As a ground for the dismissal of a civil action, it refers to the situation where two actions are pending between the same parties for the same cause of action, so that one of them becomes unnecessary and vexatious. It is based on the policy against multiplicity of suits.

2. ID.; ID.; ID.; ID.; ID.; REQUISITES; PRESENT IN CASE AT BAR.— To constitute *litis pendentia*, not only must the parties in the two actions be the same; there must as well be substantial identity in the causes of action and in the reliefs sought. Further, the identity should be such that any judgment that may be rendered in one case, regardless of which party is successful, would amount to *res judicata* in the other. From every conceivable angle, no dispute exists that all the requisites of *litis pendentia* are present in this case. The parties in Civil Case No. 9354 and Civil Case No. 489-M-2002 are the same. They are suing each other for sums of money which arose from their supply contract of day-old chicks. The reliefs prayed for are based on the same facts and identity exists on the rights asserted. Any judgment rendered in one case would necessarily amount to *res judicata* in the other.

3. ID.; ID.; ID.; ID.; ID.; RULE THEREON DOES NOT REQUIRE THAT THE CASE LATER IN TIME SHOULD YIELD TO

THE EARLIER CASE NOR THAT THE PARTY BE SERVED WITH SUMMONS BEFORE THE RULE CAN APPLY.— The rule on *litis pendentia* does not require that the case later in time should yield to the earlier case; what is required merely is that there be another pending action, **not a *prior* pending action**. Neither is it required that the party be served with summons before *lis pendens* can apply; it is the filing of the action, **not the receipt of summons**, which determines priority in date.

4. ID.; ID.; ID.; ID.; ID.; "MORE APPROPRIATE ACTION TEST"; EXPLAINED.— In the 1956 case of *Teodoro v. Mirasol*, we deviated from the "priority-in-time rule" and applied the "more appropriate action test" and the "anticipatory test." The "more appropriate action test" considers the real issue raised by the pleadings and the ultimate objective of the parties; the more appropriate action is the one where the real issues raised can be fully and completely settled. In *Teodoro*, the lessee filed an action for declaratory relief to fix the period of the lease, but the lessor moved for its dismissal because he had subsequently filed an action for ejectment against the lessee. We noted that the unlawful detainer suit was the more appropriate action to resolve the real issue between the parties – whether or not the lessee should be allowed to continue occupying the land under the terms of the lease contract; this was the subject matter of the second suit for unlawful detainer, and was also the main or principal purpose of the first suit for declaratory relief.

5. ID.; ID; ID.; ID.; ID.; "ANTICIPATORY TEST"; ELUCIDATED.— In the "anticipatory test," the *bona fides* or good faith of the parties is the critical element. If the first suit is filed merely to preempt the later action or to anticipate its filing and lay the basis for its dismissal, then the first suit should be dismissed. In *Teodoro*, we noted that the first action, declaratory relief, was filed by the lessee to anticipate the filing of the second action, unlawful detainer, considering the lessor's letter informing the lessee that the lease contract had expired.

6. ID.; ID.; ID.; ID.; ID.; CONSIDERATIONS IN DETERMINING WHICH ACTION SHOULD PREVAIL.— [The] established jurisprudence on *litis pendentia*, the following considerations

predominate in the ascending order of importance in determining which action should prevail: (1) the date of filing, with preference generally given to the first action filed to be retained; (2) whether the action sought to be dismissed was filed merely to preempt the later action or to anticipate its filing and lay the basis for its dismissal; and (3) whether the action is the appropriate vehicle for litigating the issues between the parties.

7. ID.; ID.; ID.; ID.; ID.; ID.; CIVIL CASE NO. 489-M-2002 IS THE APPROPRIATE CASE TO DETERMINE THE RIGHTS OF THE PARTIES; RATIONALE.— In the present case, the undisputed facts show that the respondent initiated the preparatory moves that led to the present litigation when he sent the petitioners – in May 2002, or about five (5) months after the end of their supply contract – a demand letter for the payment of delivered day-old chicks. The petitioners only reacted to this demand when they replied that there was in fact an overpayment that should be refunded. Under these facts, and given the law on sales that business is keenly aware of, we can safely conclude that the petitioners knew that a case for sum of money would be filed against them and thus filed Civil Case No. 9354 in anticipation of this coming case which became Civil Case No. 489-M-2002; the purpose, under this view, is purely preemptive, *i.e.*, to seek the dismissal of the coming action. The more compelling reason that strikes us, however, is that Civil Case No. 489-M-2002 is the more appropriate action to rule on the real issue between the parties – whether or not the correct payment had been made on the delivered day-old chicks; the petitioners' claim of overpayment in Civil Case No. 9354 is more in the nature of a defense to the respondent's action for collection in Civil Case No. 489-M-2002. From this perspective, the real issue is better asserted in Civil Case No. 489-M-2002 – the collection case – rather than in the action that merely serves as a defense to the collection case. Another and equally compelling reason why Civil Case No. 489-M-2002 should prevail is the reason we put forward in *Pampanga Bus Company, Inc. v. Ocfemia* – the stage of this case at this point. With the seven-year pendency of the present case (since the filing of Civil Case No. 9354 on June 11, 2002) and with no restraining order from this Court, there is no doubt that trial on the merits has already been conducted in Civil

Case No. 489-M-2002, with the petitioners given the full opportunity to present evidence on their defense. To dismiss Civil Case No. 489-M-2002 at this point would result in needless delay in the resolution of the parties' dispute and bring them back to square one. This consequence will defeat the public policy reasons behind *litis pendentia* which, like the rule on forum shopping, aims to prevent the unnecessary burdening of our courts and undue taxing of the manpower and financial resources of the judiciary; to avoid the situation where co-equal courts issue conflicting decisions over the same cause; and to preclude one party from harassing the other party through the filing of an unnecessary or vexatious suit.

APPEARANCES OF COUNSEL

Jose Valentino G. Dave for petitioner.
Rafael S. De La Cruz for respondent.

D E C I S I O N

BRION, *J.*:

On a pure question of law involving the issue of *litis pendentia*, Dotmatrix Trading – represented by its proprietors, Romy Yap Chua, Renato Rollan and Rolando D. Cadiz (*petitioners*) – came directly to this Court *via* a petition for review on *certiorari*[1] to challenge the Orders[2] dated September 2, 2002 and October 4, 2002 of the Regional Trial Court (*RTC*)[3] in the case in caption.

FACTUAL BACKGROUND

The facts of the case, as gathered from the parties' pleadings, are briefly summarized below:

The petitioners are engaged in the business of buying and selling of commodities, including day-old chicks. Rommel B. Legaspi (*respondent*), as the proprietor of Big J Farms and

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

[2] Penned by Judge Arsenio P. Adriano; *rollo*, pp. 8-10.

[3] Branch 63, Tarlac, Tarlac.

RBL Farm, was the petitioners' supplier of day-old chicks from September to December 2001.

Sometime in May 2002, the respondent sent a demand letter to the petitioners for the payment of delivered day-old chicks. The petitioners, thru petitioner Cadiz, replied that they have paid ₱1,360,000.00, but the respondent was able to deliver only ₱1,136,150.00 worth of day-old chicks, leaving a deficiency of ₱223,850.00 worth of day-old chicks. The petitioners demanded the delivery of the deficiency, or the return of the overpayment made. When the parties refused to comply with each other's demands, both went to court for judicial relief.

On June 11, 2002, the petitioners (**the buyers of the chicks**) filed before RTC-Tarlac a complaint for **sum of money and damages** against the respondent, docketed as Civil Case No. 9354. The petitioners sought the **return of the overpayment** made, plus moral and exemplary damages, and attorney's fees.

On June 19, 2002, the respondent (**the seller of the chicks**) filed before RTC-Malolos, Bulacan a complaint for sum of money and damages against the petitioners, docketed as Civil Case No. 489-M-2002. The respondent alleged that he delivered ₱1,368,100.00 worth of day-old chicks, but the petitioners only paid ₱1,150,000.00. Thus, the respondent prayed for the **payment of the balance** of ₱218,100.00.

Shortly upon receipt of the summons and complaint in Civil Case No. 9354, or on August 21, 2002, the respondent filed a motion to dismiss Civil Case No. 9354 before RTC-Tarlac. He argued that Civil Case No. 9354 should be dismissed on the ground of *litis pendentia* because it is merely anticipatory and defensive of the respondent's claim for collection in Civil Case No. 489-M-2002 before RTC-Malolos.

THE RTC RULING

On September 2, 2002, RTC-Tarlac issued an Order[4] in Civil Case No. 9354 granting the respondent's motion and dismissing

[4] *Rollo*, p. 8.

the complaint on the ground of *litis pendentia*. It noted that the petitioners filed Civil Case No. 9354 to preempt the respondent's collection case in Civil Case No. 489-M-2002 before RTC-Malolos. It found that the petitioners filed Civil Case No. 9354 only after they received a demand letter from the respondent.

The petitioners moved but failed to secure a reconsideration of the RTC order[5] and, from thence, came to us through the present petition on a pure question of law.

THE PETITION and THE PARTIES' SUBMISSIONS

The petitioners argue that Civil Case No. 9354 should not have been dismissed on the ground of *litis pendentia* because it was filed ahead of Civil Case No. 489-M-2002. They insist that Civil Case No. 9354 was filed to vindicate the wrong done to them by the respondent, and not to simply preempt the latter's case for collection of sum of money. They stress that it is their right to seek the assistance of the court to rectify the damage they sustained.

The respondent, on the other hand, submits that the issue raised by the petitioners is far from novel; the consistent judicial holding is that *litis pendentia* does not specifically require that the action that should yield to the other should be the prior pending action.

THE ISSUE

The core issue is whether Civil Case No. 9354 (the buyers' action for overpayment) – filed ahead of Civil Case No. 489-M-2002 (the seller's action for collection of balance) – should be dismissed on the ground of *litis pendentia.*

OUR RULING

We see no merit in the petition.

The elements of Litis Pendentia are present.

[5] *Id.*, pp. 9-10.

Litis pendentia is a Latin term, which literally means "a pending suit" and is variously referred to in some decisions as *lis pendens* and *auter action pendant*.[6] As a ground for the dismissal of a civil action, it refers to the situation where two actions are pending between the same parties for the same cause of action, so that one of them becomes unnecessary and vexatious.[7] It is based on the policy against multiplicity of suits.[8]

To constitute *litis pendentia*, not only must the parties in the two actions be the same; there must as well be substantial identity in the causes of action and in the reliefs sought. Further, the identity should be such that any judgment that may be rendered in one case, regardless of which party is successful, would amount to *res judicata* in the other.[9]

From every conceivable angle, no dispute exists that all the requisites of *litis pendentia* are present in this case. The parties in Civil Case No. 9354 and Civil Case No. 489-M-2002 are the same. They are suing each other for sums of money which arose from their supply contract of day-old chicks. The reliefs prayed for are based on the same facts and identity exists on the rights asserted. Any judgment rendered in one case would necessarily amount to *res judicata* in the other.

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[6] *City of Makati v. Municipality (now City) of Taguig, Metropolitan Manila*, G.R. No. 163175, June 27, 2008, 556 SCRA 218, 227; *Agilent Technologies Singapore (Pte.) Ltd. v. Integrated Silicon Technology Philippines Corporation*, G.R. No. 154618, April 14, 2004, 427 SCRA 593, 601; *Feliciano v. Court of Appeals*, G.R. No. 123293, March 5, 1998, 287 SCRA 61, 66.

[7] *Proton Pilipinas Corporation v. Republic*, G.R. No. 165027, October 16, 2006, 504 SCRA 528, 545; *Guaranteed Hotels, Inc. v. Baltao*, G.R. No. 164338, January 17, 2005, 448 SCRA 738, 744.

[8] *Cruz v. Court of Appeals*, G.R. No. 164797, February 13, 2006, 482 SCRA 379, 393; *Calo v. Tan*, G.R. No. 151266, November 29, 2005, 476 SCRA 426, 440.

[9] See *Coca-Cola Bottlers (Phils.), Inc. v. Social Security Commission*, G.R. No. 159323, July 31, 2008, 560 SCRA 719, 736; *Dayot v. Shell Chemical Company (Phils.), Inc.*, G.R. No. 156542, June 26, 2007, 525 SCRA 535, 545-546; *Abines v. Bank of the Philippine Islands*, G.R. No. 167900, February 13, 2006, 482 SCRA 421, 429.

Guidelines for the dismissal of a complaint on the ground of litis pendentia

We take this opportunity to revisit the cases we have decided on the issue of *litis pendentia* and the factors we considered in determining which case should prevail and which must yield to the other.

The rule on *litis pendentia* does not require that the case later in time should yield to the earlier case; what is required merely is that there be another pending action, **not a *prior* pending action**.[10] Neither is it required that the party be served with summons before *lis pendens* can apply; it is the filing of the action, **not the receipt of summons**, which determines priority in date.[11]

Early on, we applied the principle of *Qui prior est tempore, potior est jure*[12] (literally, *he who is before in time is better in right*) in dismissing a case on the ground of *litis pendentia*. This was exemplified in the relatively early case of *Del Rosario v. Jacinto*[13] where two complaints for reconveyance and/or recovery of the same parcel of land were filed by substantially the same parties, with the second case only impleading more party-plaintiffs. The Court held that "parties who base their contention upon the same rights as the litigants in a previous suit are bound by the judgment in the latter case." Without expressly saying so in *litis pendentia* terms, the Court gave priority to the suit filed earlier.

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[10] *Andresons Group, Inc. v. Court of Appeals*, G.R. No. 114928, January 21, 1997, 266 SCRA 423, 427; *Ramos v. Peralta*, G.R. No. L-45107, November 11, 1991, 203 SCRA 412, 419; *Teodoro v. Mirasol*, 99 Phil. 150 (1956).

[11] See *Pampanga Bus Co., Inc. v. Ocfemia*, G.R. No. L-21793, October 20, 1966, 18 SCRA 407, reiterated in *Salacup v. Maddela, Jr.*, G.R. No. 50471, June 29, 1979, 91 SCRA 275, 279 and *Andresons Group, Inc. v. Court of Appeals*, *supra* note 10.

[12] Priority in time gives preference in law, *Black's Law Dictionary* (Fifth ed.), 1125.

[13] G.R. No. L-20340, September 10, 1965, 15 SCRA 15.

In *Pampanga Bus Company, Inc. v. Ocfemia*,[14] complaints for damages arising from a collision of a cargo truck and a bus were separately filed by the owners of the colliding vehicles. The complaint of the owners of the cargo truck prevailed and the complaint of the owners of the bus had to yield, as the cargo truck owners first filed their complaint. Notably, the first and prevailing case was far advanced in development, with an answer with counterclaim and an answer to the counterclaim having been already filed, thus fully joining the issues.

In *Lamis Ents. v. Lagamon*,[15] the first case was a complaint for specific performance of obligations under a Memorandum of Agreement, while the second case was a complaint for sums of money arising from obligations under a promissory note and a chattel mortgage, and damages. We dismissed the second case because the claims for sums of money therein arose from the Memorandum of Agreement sued upon in the first case.

Ago Timber Corporation v. Ruiz[16] offered an insightful reason after both parties had each pleaded the pendency of another action between the same parties for the same cause. The Court ruled that the second action should be dismissed, "not only as a matter of comity with a coordinate and co-equal court (Laureta & Nolledo, Commentaries & Jurisprudence on Injunction, p. 79, citing *Harrison v. Littlefield*, 57 Tex. Div. A. 617, 619, 124 SW 212), but also to prevent confusion that might seriously hinder the administration of justice. (*Cabigao, et al. v. Del Rosario, et al.*, 44 Phil. 182)."

In all these cases, we gave preference to the first action filed to be retained. The "priority-in-time rule," however, is not absolute.

In the 1956 case of *Teodoro v. Mirasol*,[17] we deviated from the "priority-in-time rule" and applied the "more appropriate action test" and the "anticipatory test."

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[14] *Supra* note 11.

[15] G.R. No. 57250, October 30, 1981, 108 SCRA 740.

[16] G.R. No. L-23887, December 26, 1967, 21 SCRA 1381.

[17] 99 Phil. 150 (1956).

The "more appropriate action test" considers the real issue raised by the pleadings and the ultimate objective of the parties; the more appropriate action is the one where the real issues raised can be fully and completely settled. In *Teodoro*, the lessee filed an action for declaratory relief to fix the period of the lease, but the lessor moved for its dismissal because he had subsequently filed an action for ejectment against the lessee. We noted that the unlawful detainer suit was the more appropriate action to resolve the real issue between the parties – whether or not the lessee should be allowed to continue occupying the land under the terms of the lease contract; this was the subject matter of the second suit for unlawful detainer, and was also the main or principal purpose of the first suit for declaratory relief.

In the "anticipatory test," the *bona fides* or good faith of the parties is the critical element. If the first suit is filed merely to preempt the later action or to anticipate its filing and lay the basis for its dismissal, then the first suit should be dismissed. In *Teodoro*, we noted that the first action, declaratory relief, was filed by the lessee to anticipate the filing of the second action, unlawful detainer, considering the lessor's letter informing the lessee that the lease contract had expired.

We also applied the "more appropriate action test" in *Ramos v. Peralta.*[18] In this case, the lessee filed an action for consignation of lease rentals against the new owner of the property, but the new owner moved to dismiss the consignation case because of the quieting of title case he had also filed against the lessee. Finding that the real issue between the parties involved the right to occupy/possess the subject property, we ordered the dismissal of the consignation case, noting that the quieting of title case is the more appropriate vehicle for the ventilation of the issues between them; the consignation case raised the issue of the right to possession of the lessee under the lease contract, an issue that was effectively covered by the quieting of title case which raised the issue of the validity and effectivity of the same lease contract.

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[18] G.R. No. L-45107, November 11, 1991, 203 SCRA 412.

In *University Physician Services, Inc. v. Court of Appeals*,[19] we applied both the "more appropriate action test" and "anticipatory test." In this case, the new owner of an apartment sent a demand letter to the lessee to vacate the leased apartment unit. When the lessee filed an action for damages and injunction against the new owner, the new owner moved for the dismissal of the action for damages on account of the action for ejectment it had also filed. We noted that ejectment suit is the more appropriate action to resolve the issue of whether the lessee had the right to occupy the apartment unit, where the question of possession is likewise the primary issue for resolution. We also noted that the lessee, after her unjustified refusal to vacate the premises, was aware that an ejectment case against her was forthcoming; the lessee's filing of the complaint for damages and injunction was but a canny and preemptive maneuver intended to block the new owner's action for ejectment.

We also applied the "more appropriate action test" in the 2003 case *Panganiban v. Pilipinas Shell Petroleum Corp.*,[20] where the lessee filed a petition for declaratory relief on the issue of renewal of the lease of a gasoline service station, while the lessor filed an unlawful detainer case against the lessee. On the question of which action should be dismissed, we noted that the interpretation of a provision in the lease contract as to when the lease would expire is the key issue that would determine the lessee's right to possess the gasoline service station. The primary issue – the physical possession of the gasoline station – is best settled in the ejectment suit that directly confronted the physical possession issue, and not in any other case such as an action for declaratory relief.[21]

A more recent case – *Abines v. Bank of the Philippine Islands*[22] in 2006 – saw the application of both the "priority-in-time rule"

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[19] G.R. No. 100424, June 13, 1994, 233 SCRA 86.

[20] G.R. No. 131471, January 22, 2003, 395 SCRA 624.

[21] *Mid-Pasig Land Development v. Court of Appeals*, G.R. No. 153751, October 8, 2003, 413 SCRA 204.

[22] G.R. No. 167900, February 13, 2006, 482 SCRA 421.

and the "more appropriate action test." In this case, the respondent filed a complaint for collection of sum of money against the petitioners to enforce its rights under the promissory notes and real estate mortgages, while the petitioners subsequently filed a complaint for reformation of the promissory notes and real estate mortgages. We held that the first case, the collection case, should subsist because it is the first action filed and the more appropriate vehicle for litigating all the issues in the controversy. We noted that in the second case, the reformation case, the petitioners acknowledged their indebtedness to the respondent; they merely contested the amounts of the principal, interest and the remaining balance. We observed, too, that the petitioners' claims in the reformation case were in the nature of defenses to the collection case and should be asserted in this latter case.

Under this established jurisprudence on *litis pendentia*, the following considerations predominate in the ascending order of importance in determining which action should prevail: (1) the date of filing, with preference generally given to the first action filed to be retained; (2) whether the action sought to be dismissed was filed merely to preempt the later action or to anticipate its filing and lay the basis for its dismissal; and (3) whether the action is the appropriate vehicle for litigating the issues between the parties.[23]

Civil Case No. 489-M-2002 is the appropriate case to determine the rights of the parties

In the present case, the undisputed facts show that the respondent initiated the preparatory moves that led to the present litigation when he sent the petitioners – in May 2002, or about five (5) months after the end of their supply contract – a demand

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[23] *Mid-Pasig Land Development Corporation v. Court of Appeals*, *supra* note 21, p. 213*; Panganiban v. Pilipinas Shell Petroleum Corp.*, *supra* note 20, p. 634; *Compania General de Tabacos de Filipinas v. Court of Appeals*, G.R. Nos. 130326 & 137868, November 29, 2001, 371 SCRA 95, 114-115; *Allied Banking Corp. v. Court of Appeals*, G.R. No. 95223, July 26, 1996, 259 SCRA 371, 378.

letter for the payment of delivered day-old chicks. The petitioners only reacted to this demand when they replied that there was in fact an overpayment that should be refunded. Under these facts, and given the law on sales that business is keenly aware of, we can safely conclude that the petitioners knew that a case for sum of money would be filed against them and thus filed Civil Case No. 9354 in anticipation of this coming case which became Civil Case No. 489-M-2002; the purpose, under this view, is purely preemptive, *i.e.*, to seek the dismissal of the coming action.

The more compelling reason that strikes us, however, is that Civil Case No. 489-M-2002 is the more appropriate action to rule on the real issue between the parties – whether or not the correct payment had been made on the delivered day-old chicks; the petitioners' claim of overpayment in Civil Case No. 9354 is more in the nature of a defense to the respondent's action for collection in Civil Case No. 489-M-2002. From this perspective, the real issue is better asserted in Civil Case No. 489-M-2002 – the collection case – rather than in the action that merely serves as a defense to the collection case.

Another and equally compelling reason why Civil Case No. 489-M-2002 should prevail is the reason we put forward in *Pampanga Bus Company, Inc. v. Ocfemia*[24] – the stage of this case at this point. With the seven-year pendency of the present case (since the filing of Civil Case No. 9354 on June 11, 2002) and with no restraining order from this Court, there is no doubt that trial on the merits has already been conducted in Civil Case No. 489-M-2002, with the petitioners given the full opportunity to present evidence on their defense. To dismiss Civil Case No. 489-M-2002 at this point would result in needless delay in the resolution of the parties' dispute and bring them back to square one. This consequence will defeat the public policy reasons behind *litis pendentia* which, like the rule on forum shopping, aims to prevent the unnecessary burdening of our courts and undue taxing of the manpower and financial

[24] *Supra* note 14.

resources of the judiciary; to avoid the situation where co-equal courts issue conflicting decisions over the same cause; and to preclude one party from harassing the other party through the filing of an unnecessary or vexatious suit.[25]

WHEREFORE, premises considered, we hereby *DENY* the petition for its failure to show any reversible error in the assailed Orders dated September 2, 2002 and October 4, 2002 of the Regional Trial Court, Branch 63, Tarlac, Tarlac in Civil Case No. 9354.

SO ORDERED.

Quisumbing (Chairperson), Carpio,[*] *Carpio Morales,* and *Abad, JJ.,* concur.

SECOND DIVISION

[G.R. No. 170925. October 26, 2009]

RODOLFO A. ASPILLAGA, *petitioner, vs.* **AURORA A. ASPILLAGA,** *respondent.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; VOID MARRIAGES; PSYCHOLOGICAL INCAPACITY AS A GROUND; CASE AT BAR.— As early as 1995, in *Santos v. Court of Appeals,* we categorically said that: **Psychological incapacity required by Art. 36 must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability.** The

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[25] *Abines v. Bank of the Philippine Islands, supra* note 9, pp. 433-434.

[*] Designated additional Member of the Second Division effective October 19 to 28, 2009 per Special Order No. 757 dated October 12, 2009.

incapacity must be grave or serious such that the party would be incapable of carrying out the ordinary duties required in marriage; it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage; and it must be incurable or, even if it were otherwise, the cure would be beyond the means of the party involved. In the instant case, while the psychological examination conducted on respondent found her to be mistrustful, to possess low self-esteem, given to having shallow heterosexual relationships and immature, Dr. Maaba failed to reveal that these personality traits or psychological conditions were grave or serious enough to bring about an incapacity to assume the essential obligations of marriage. Indeed, Dr. Maaba was able to establish the parties' personality disorder; however, he failed to link the parties' psychological disorders to his conclusion that they are psychologically incapacitated to perform their obligations as husband and wife. We cannot see how their personality disorder would render them unaware of the essential marital obligations or to be incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to a marriage. The fact that these psychological conditions will hamper (as Dr. Maaba puts it) their performance of their marital obligations does not mean that they suffer from psychological incapacity as contemplated under Article 36 of the Family Code. Mere difficulty is not synonymous to incapacity. Moreover, there is no evidence to prove that each party's condition is so grave or is of such nature as to render said party incapable of carrying out the ordinary duties required in marriage. There is likewise no evidence that the claimed incapacity is incurable and permanent.

2. ID.; ID.; ID.; ID.; INTENTION OF THE LAW IS TO CONFINE THE MEANING THEREOF TO THE MOST SERIOUS CASES OF PERSONALITY DISORDERS CLEARLY DEMONSTRATIVE OF AN UTTER INSENSITIVITY OR INABILITY TO GIVE MEANING AND SIGNIFICANCE TO THE MARRIAGE; CASE AT BAR.— It must be stressed that psychological incapacity must be more than just a "difficulty," "refusal" or "neglect" in the performance of some marital obligations. The intention of the law is to confine the meaning of "psychological incapacity" to the most serious cases of

personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage. x x x In the present case, petitioner's disagreement with his wife's handling of the family's finances can hardly be considered as a manifestation of the kind of psychological incapacity contemplated under Article 36 of the Family Code. In fact, the Court takes judicial notice of the fact that disagreements regarding money matters is a common, and even normal, occurrence between husbands and wives. At this juncture while this Court is convinced that indeed both parties were both found to have psychological disorders, nevertheless, there is nothing in the records showing that these disorders are sufficient to declare the marriage void due to psychological incapacity. We must emphasize that said disorders do not manifest that both parties are truly incapacitated to perform the basic marital covenants. Moreover, there is nothing that shows incurability of these disorders. Even assuming their acts violate the covenants of marriage, such acts do not show an irreparably hopeless state of psychological incapacity which will prevent them from undertaking the basic obligations of marriage in the future. At the most, the psychiatric evaluation of the parties proved only incompatibility and irreconcilable differences, which cannot be equated with psychological incapacity as understood juristically.

3. ID.; ID.; SUPPORT; NO BASIS FOR THE AWARD THEREOF.— As regards respondent's claim for support, we find no basis to award the same as it was not passed upon by the trial court in view of the agreement of the parties on the issue presented for resolution, which agreement, however, was not put into writing.

APPEARANCES OF COUNSEL

Dollete Blanco Ejercito and Associates for petitioner.

D E C I S I O N

QUISUMBING, *J.*:

This petition for review on *certiorari* assails the Decision[1] dated September 9, 2005 and the Resolution[2] dated December 20, 2005 of the Court of Appeals in CA-G.R. CV No. 68179, entitled *"Rodolfo A. Aspillaga v. Aurora A. Aspillaga."*

The facts culled from the records are as follows:

Rodolfo Aspillaga met Aurora Apon sometime in 1977 while they were students at the Philippine Merchant Marine Academy and Lyceum of the Philippines, respectively. Rodolfo courted her and five months later, they became sweethearts. Thereafter, Aurora left for Japan to study Japanese culture, literature and language. Despite the distance, Rodolfo and Aurora maintained communication.

In 1980, after Aurora returned to the Philippines, she and Rodolfo got married. They begot two children, but Rodolfo claimed their marriage was "tumultuous." He described Aurora as domineering and frequently humiliated him even in front of his friends. He complained that Aurora was a spendthrift as she overspent the family budget and made crucial family decisions without consulting him. Rodolfo added that Aurora was tactless, suspicious, given to nagging and jealousy as evidenced by the latter's filing against him a criminal case (concubinage) and an administrative case. He left the conjugal home, and filed on March 7, 1995, a petition for annulment of marriage on the ground of psychological incapacity on the part of Aurora. He averred that Aurora failed to comply with the essential obligations of marriage.

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[1] *Rollo*, pp. 17-25. Penned by Associate Justice Estela M. Perlas-Bernabe, with Associate Justices Elvi John S. Asuncion and Lucas P. Bersamin (now a member of this Court) concurring.

[2] *Id.* at 27.

Aurora, for her part, alleged that sometime in 1991, Rodolfo gave her a plane ticket to Japan to enable her to assume her teaching position in a university for a period of three months. In August 1991, upon her return to Manila, she discovered that while she was in Japan, Rodolfo brought into their conjugal home her cousin, Lecita Rose A. Besina, as his concubine. Aurora alleged that Rodolfo's cohabitation with her cousin led to the disintegration of their marriage and their eventual separation. In May 1992, Rodolfo abandoned their conjugal home to live with Besina. Aurora claimed custody of the children.

During trial, expert witness Dr. Eduardo Maaba explained his psychiatric evaluation of the parties as well as his recommendation that the petition be granted. In this report, he stated,

"x x x x x x x x x

Psychiatric evaluation of petitioner, Rodolfo Aspillaga, showed that he is an intelligent adult male, who is egoistic and harbors an inner sense of inadequacy, helplessness and anxiety in losing agility. He, however, projects himself as dominant person, to cover his deep-seated insecurity and inadequacy. He tends to be suspicious and blames others for his mistakes. He claims for adulation, reassurance and attention from other people. These can be traced from an unhealthy familial relationship during the early maturational development specifically in the form of a domineering and protective maternal image.

Self-esteem was fragile.

Psychiatric evaluation of respondent, Aurora Apon Aspillaga, showed history of traumatic childhood experiences. Her parents separated when she was about one month old and was made to believe that she was the youngest daughter of her disciplinarian grandfather. Her surrogate sister maltreated her and imposed harsh corporal punishment for her slightest mistakes. She felt devastated when she accidentally discovered that she'd been an orphan adopted by her grandfather. Attempted incestuous desire by an uncle was reported.

Psychological test results collaborated the clinical findings of sensitivity to criticism. Tendency for self dramatization and attention

getting behavior. Lapses in judgment and shallow heterosexual relationship was projected. Sign of immaturity and desire to regress to a lower level of development were likewise projected. Self-esteem was also low. Deep-seated sense of dejection, loneliness and emptiness hamper her objectivity.

In summary, both petitioner and respondent harbor psychological handicaps which could be traced from unhealthy maturational development. Both had strict, domineering, disciplinarian role models. However, respondent's mistrust, shallow heterosexual relationships resulted in incapacitation in her ability to comply with the obligation of marriage.

It is recommended that the petition to annul their marriage be granted, on the grounds existing psychological incapacitation of both petitioner and respondent, which will hamper their capacity to comply with their marital obligations. Dissolution of the marital bond will offer both of them, peace of mind."[3]

On May 31, 2000,[4] the Regional Trial Court (RTC) found the parties psychologically incapacitated to enter into marriage.

On appeal, the Court of Appeals, in its Decision dated September 9, 2005, reversed and set aside the RTC decision and declared the marriage of Rodolfo and Aurora Aspillaga valid. Petitioner filed a motion for reconsideration, but the motion was also denied in a Resolution dated December 20, 2005.

Hence, this petition raising the sole issue:

[WHETHER THE APPELLATE COURT] CORRECTLY APPLIED THE DEFINITION OF "PSYCHOLOGICAL INCAPACITY" TO THE PSYCHOLOGICAL CONDITIONS OF THE PARTIES DURING THE CELEBRATION OF THEIR MARRIAGE.[5]

Simply stated, the issue before us is whether the marriage is void on the ground of the parties' psychological incapacity.

The petition must fail.

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[3] *Id.* at 19-20.

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

[5] *Id.* at 7.

As early as 1995, in *Santos v. Court of Appeals*,[6] we categorically said that:

> **Psychological incapacity required by Art. 36 must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability**. The incapacity must be grave or serious such that the party would be incapable of carrying out the ordinary duties required in marriage; it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage; and it must be incurable or, even if it were otherwise, the cure would be beyond the means of the party involved.[7] (Emphasis supplied.)

In the instant case, while the psychological examination conducted on respondent found her to be mistrustful, to possess low self-esteem, given to having shallow heterosexual relationships and immature, Dr. Maaba failed to reveal that these personality traits or psychological conditions were grave or serious enough to bring about an incapacity to assume the essential obligations of marriage. Indeed, Dr. Maaba was able to establish the parties' personality disorder; however, he failed to link the parties' psychological disorders to his conclusion that they are psychologically incapacitated to perform their obligations as husband and wife. We cannot see how their personality disorder would render them unaware of the essential marital obligations or to be incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to a marriage. The fact that these psychological conditions will hamper (as Dr. Maaba puts it) their performance of their marital obligations does not mean that they suffer from psychological incapacity as contemplated under Article 36 of the Family Code. Mere difficulty is not synonymous to incapacity. Moreover, there is no evidence to prove that each party's condition is so grave or is of such nature as to render said party incapable of carrying out the ordinary duties required in marriage. There is

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[6] G.R. No. 112019, January 4, 1995, 240 SCRA 20.

[7] *Id.* at 33-34. *Bier v. Bier*, G.R. No. 173294, February 27, 2008, 547 SCRA 123, 130.

likewise no evidence that the claimed incapacity is incurable and permanent.

Petitioner had the burden of proving the nullity of his marriage with respondent,[8] but failed to discharge it.

It must be stressed that psychological incapacity must be more than just a "difficulty," "refusal" or "neglect" in the performance of some marital obligations.[9] The intention of the law is to confine the meaning of "psychological incapacity" to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage.[10]

Noteworthy, as aptly pointed out by the appellate court, Rodolfo and Aurora initially had a blissful marital union for several years. They married in 1982, and later affirmed the ceremony in church rites in 1983, showing love and contentment with one another after a year of marriage. The letter of petitioner dated April 1, 1990 addressed to respondent revealed the harmonious relationship of the couple continued during their marriage for about eight years from the time they married each other. From this, it can be inferred that they were able to faithfully comply with their obligations to each other and to their children. Aurora was shown to have taken care of her children and remained faithful to her husband while he was away. She even joined sales activities to augment the family income. She appeared to be a very capable woman who traveled a lot and pursued studies here and abroad. It was only when Rodolfo's acts of infidelity were discovered that the marriage started to fail.

As to Rodolfo's allegation that Aurora was a spendthrift, the same likewise fails to convince. While disagreements on money

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[8] *Antonio v. Reyes*, G.R. No. 155800, March 10, 2006, 484 SCRA 353, 376, citing *Republic v. Court of Appeals*, G.R. No. 108763, February 13, 1997, 268 SCRA 198, 209.

[9] *Republic v. Court of Appeals*, *supra* at 207.

[10] *Tongol v. Tongol*, G.R. No. 157610, October 19, 2007, 537 SCRA 135, 142.

matters would, no doubt, affect the other aspects of one's marriage as to make the wedlock unsatisfactory, this is not a ground to declare a marriage null and void.[11] In the present case, petitioner's disagreement with his wife's handling of the family's finances can hardly be considered as a manifestation of the kind of psychological incapacity contemplated under Article 36 of the Family Code. In fact, the Court takes judicial notice of the fact that disagreements regarding money matters is a common, and even normal, occurrence between husbands and wives.[12]

At this juncture while this Court is convinced that indeed both parties were both found to have psychological disorders, nevertheless, there is nothing in the records showing that these disorders are sufficient to declare the marriage void due to psychological incapacity. We must emphasize that said disorders do not manifest that both parties are truly incapacitated to perform the basic marital covenants. Moreover, there is nothing that shows incurability of these disorders. Even assuming their acts violate the covenants of marriage, such acts do not show an irreparably hopeless state of psychological incapacity which will prevent them from undertaking the basic obligations of marriage in the future. At the most, the psychiatric evaluation of the parties proved only incompatibility and irreconcilable differences, which cannot be equated with psychological incapacity as understood juristically.

As this Court has repeatedly declared, Article 36 of the Family Code is not to be confused with a divorce law that cuts the marital bond at the time the causes thereof manifest themselves. Article 36 refers to a serious psychological illness afflicting a party even before the celebration of the marriage. The malady must be so grave and so permanent as to deprive one of awareness of the duties and responsibilities of the matrimonial bond one is about to assume.[13]

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[11] *Id.* at 151.

[12] *Id*.

[13] *Paras v. Paras*, G.R. No. 147824, August 2, 2007, 529 SCRA 81, 106-107.

As regards respondent's claim for support, we find no basis to award the same as it was not passed upon by the trial court in view of the agreement of the parties on the issue presented for resolution, which agreement, however, was not put into writing.

WHEREFORE, the instant petition is *DENIED* for lack of merit. The assailed Decision dated September 9, 2005 and Resolution dated December 20, 2005 of the Court of Appeals in CA-G.R. CV No. 68179 are *AFFIRMED*.

SO ORDERED.

Carpio,[*] *Carpio Morales, Brion,* and *Abad, JJ.,* concur.

SECOND DIVISION

[G.R. No. 179931. October 26, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **NIDA ADESER *y* RICO,** *appellant.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; RECRUITMENT AND PLACEMENT OF WORKERS; ILLEGAL RECRUITMENT; ELEMENTS.— Illegal recruitment is committed when these two elements concur: (1) the offenders have no valid license or authority required by law to enable them to lawfully engage in the recruitment and placement of workers, and (2) the offenders undertake any activity within the meaning of recruitment and placement defined in Article 13(b) or any prohibited practices enumerated in Article 34 of the Labor Code.

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[*] Additional member per Special Order No. 757.

2. ID.; ID.; ID.; DEFINED.— x x x Under Article 13(b), recruitment and placement refers to "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not." In the simplest terms, illegal recruitment is committed by persons who, without authority from the government, give the impression that they have the power to send workers abroad for employment purposes.

3. ID.; ID.; ID.; ILLEGAL RECRUITMENT BY A SYNDICATE; A CASE OF.— x x x The law imposes a higher penalty when the crime is committed by a syndicate as it is considered as an offense involving economic sabotage. Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring and/or confederating with one another in carrying out any unlawful or illegal transaction, enterprise or scheme defined under the first paragraph of Article 38 of the Labor Code. Undoubtedly, what transpired in the instant case is illegal recruitment by a syndicate. As categorically testified by Palo and Caraig, appellant, together with her co-accused, made representations to Palo that they could send her to Australia to work as an apple picker. There is no denying that they gave Palo the distinct impression that they had the power or ability to send her abroad for work such that the latter was convinced to part with a huge amount of money as placement fee in order to be employed. And this act was committed by appellant and her co-accused even if they did not have the required license to do so. Appellant herself admitted that Naples, the travel agency which she owned and managed, only offered visa assistance, ticketing, documentation, airport transfer and courier services. Clearly, neither she nor her agents had a license to recruit Palo to work abroad. It is the lack of the necessary license or authority that renders the recruitment unlawful or criminal.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; DENIALS CANNOT PREVAIL OVER POSITIVE AND CATEGORICAL TESTIMONIES.— x x x [A]s against the positive and categorical testimonies of Palo and Caraig, appellant's denials cannot prevail. Moreover, there is no reason

to overturn the trial and appellate courts' findings on the credibility of the prosecution witnesses as there is no showing that any of them had ill motives against appellant or her co-accused and especially since it appears they were motivated solely by the desire to bring appellant and her co-accused to justice for the crimes they have committed.

5. ID.; ID.; PRESENTATION OF EVIDENCE; PRESENTATION OF RECEIPTS IS NOT REQUIRED IN ORDER TO PROVE THE EXISTENCE OF A RECRUITMENT AGREEMENT AND THE PROCUREMENT OF FEES IN ILLEGAL RECRUITMENT CASES.— Neither can this Court sustain appellant's contention that her participation in the recruitment is negated by the fact that her signature does not even appear on the vouchers issued to Palo. Even if Palo did not present receipts signed by appellant, this would not rule out the fact that appellant did receive the money. This Court has consistently ruled that absence of receipts as to the amounts delivered to a recruiter does not mean that the recruiter did not accept or receive such payments. Neither in the Statute of Frauds nor in the rules of evidence is the presentation of receipts required in order to prove the existence of a recruitment agreement and the procurement of fees in illegal recruitment cases. Such proof may come from the credible testimonies of witnesses as in the case at bar.

6. CRIMINAL LAW; CRIMES AGAINST PROPERTY; ESTAFA; A PERSON CONVICTED OF ILLEGAL RECRUITMENT MAY ALSO BE CONVICTED OF ESTAFA PROVIDED THE ELEMENTS OF ESTAFA ARE PRESENT; CASE AT BAR.— We likewise uphold appellant's conviction for *estafa*. A person who is convicted of illegal recruitment may also be convicted of *estafa* under Article 315(2) (a) of the Revised Penal Code provided the elements of *estafa* are present. *Estafa* under Article 315, paragraph 2(a) of the Revised Penal Code is committed by any person who defrauds another by using a fictitious name, or falsely pretends to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of similar deceits executed prior to or simultaneously with the commission of the fraud. The offended party must have relied on the false pretense, fraudulent

act or fraudulent means of the accused and as a result thereof, the offended party suffered damage. Such is the case before us. Palo parted with her money upon the prodding and enticement of appellant and her co-accused on the false pretense that they had the capacity to deploy her for employment in Australia. Unfortunately, however, Palo was not able to work abroad nor get her Australian visa. Worse, she did not get her money back.

7. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; REPUBLIC ACT NO. 8042 (MIGRANT WORKERS' ACT OF 1995); ILLEGAL RECRUITMENT; PENALTIES.— As to the penalties, Section 7 of Republic Act No. 8042 or the Migrant Workers' Act of 1995 provides the penalties for illegal recruitment: SEC. 7. *Penalties*.— (a) Any person found guilty of illegal recruitment shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years and a fine not less than Two hundred thousand pesos (₱200,000.00) nor more than Five hundred thousand pesos (₱500,000.00). (b) **The penalty of life imprisonment and a fine of not less than Five hundred thousand pesos (₱500,000.00) nor more than One million pesos (₱1,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein.** x x x As appellant was found guilty of syndicated illegal recruitment constituting economic sabotage, she was aptly meted out the penalty of life imprisonment and to pay a fine of ₱500,000.

8. CRIMINAL LAW; CRIMES AGAINST PROPERTY; ESTAFA; PENALTIES; CASE AT BAR.— With respect to the *estafa* case, Article 315 of the Revised Penal Code reads: **ART. 315**. *Swindling (estafa).* — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by: *1st.* The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos; and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty

years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be; x x x Considering that the total amount paid by Palo is ₱73,500 or ₱51,500 in excess of the ₱22,000 limit, an additional sentence of five years should be imposed based on the above-quoted provision. Thus, appellant was correctly meted the maximum penalty of 13 years of *reclusion temporal*.

9. ID.; CIVIL LIABILITY; INDEMNIFICATION; PROPER INDEMNITY IN CASE AT BAR.— As to the amount to be indemnified to Palo, contrary to the findings of the trial and appellate courts, Palo's testimony and the vouchers she presented establish that the total amount she paid is only ₱73,500 and not the ₱80,000 quoted as placement fee. Thus, she should only be indemnified the said amount, plus legal interest of 12% per annum from the time of filing of the information.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

QUISUMBING, *J.*:

On appeal is the Decision[1] dated June 28, 2007, of the Court of Appeals in CA-G.R. CR-H.C. No. 01902, affirming the Decision[2] dated May 2, 2005, of the Regional Trial Court (RTC) of Pasay City, Branch 118 in Criminal Cases Nos. 03-2700 and 03-2701. The RTC convicted appellant of the crimes of syndicated illegal recruitment constituting economic sabotage and *estafa*.

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[1] *Rollo*, pp. 2-15. Penned by Associate Justice Romeo F. Barza, with Associate Justices Mariano C. Del Castillo (now a member of this Court) and Arcangelita M. Romilla-Lontok concurring.

[2] CA *rollo*, pp. 61-72. Penned by Judge Pedro B. Corales.

On November 12, 2003, the Office of the City Prosecutor of Pasay filed before the RTC two Informations[3] against appellant Nida Adeser *y* Rico, Lourdes Chang, and the spouses Roberto and Mel Tiongson. The Informations read as follows:

Criminal Case No. 03-2700

That on or about and sometime in the month of May, 2003, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, by means of false representation and fraudulent allegation to the effect that they could secure employment abroad for complainant JOSEPHINE R. PALO, did then and there wilfully, unlawfully and feloniously recruit for a fee aforesaid person without the corresponding license from the Philippine Overseas Employment Administration, a syndicated illegal recruitment involving economic sabotage.

Contrary to law.[4]

Criminal Case No. 03-2701

That on or about and sometime in the month of May, 2003, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, defrauded private complainant JOSEPHINE R. PALO, in the following manner to wit: that said accused, by means of false representations and fraudulent allegations that they could facilitate private complainant's working and travel papers, did then and there wilfully, unlawfully, and feloniously ask, demand and receive from the said complainant the amount of ₱80,000.00 as placement fee for the latter's supposed deployment to Australia as "Apple Picker/Office Worker"; and said private complainant carried away by said misrepresentations, in fact gave and delivered to said accused the amount of ₱80,000.00, which amount accused in turn misapplied, misappropriated and converted to their own personal use and benefit, failing, however, to deploy private complainant to Australia, and despite repeated demands accused failed and refused to do so, or account for the said amount, to the

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[3] Records, Vol. 1, pp. 1-2; Records, Vol. 2, pp. 1-2.

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

damage and prejudice of the said private complainant in the aforesaid amount of ₱80,000.00.

Contrary to law.[5]

Upon arraignment, appellant pleaded not guilty[6] to both charges while her co-accused remained at large. Trial on the merits thereafter ensued.

Private complainant Josephine R. Palo and her sister Teresa Caraig testified that sometime in November 2002, the spouses Roberto and Mel Tiongson, agents of Naples Travel and Tours, introduced Palo to appellant, owner and general manager of Naples, to discuss employment opportunities in Australia. During their meeting held at the Naples office in Villaruel Tower, Villaruel Street, Pasay City, appellant and the spouses Tiongson informed Palo that for a placement fee of ₱80,000, she can work as an apple picker in Australia with a monthly salary of $1,400.

Thus, on November 8, 2002, Palo and Caraig went to the Naples office and gave Roberto Tiongson and Lourdes Chang, operations manager of Naples, ₱15,000 as first installment for the placement fee. Palo was issued a voucher[7] signed by Roberto and Chang stating therein that the ₱15,000 was for Palo's visa application.

On November 11, 2002, Palo and Caraig returned to the Naples office and paid ₱58,500. She was again issued a voucher[8] signed by Roberto and Chang stating therein that the amount paid was for Palo's visa application. Palo insisted that the voucher should indicate that her payments were for "placement fees" but they were able to convince her that it is not necessary because they know her.

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[5] Records, Vol. 2, p. 1.

[6] Records, Vol. 1, p. 20; Records, Vol. 2, p. 23.

[7] Records, Vol. 1. p. 9.

[8] *Id.*

After making her payments, she was required to submit her resume and pictures and was promised that she would be employed within three months.

More than three months passed, however, but Palo was not deployed to Australia. Neither did she get her Australian visa.

In May 2003, she learned from the National Bureau of Investigation (NBI) that Naples had closed down. NBI likewise informed her that Naples had no license to operate and deploy workers abroad. Upon advice of the NBI, Palo filed a complaint[9] against appellant, the spouses Tiongson and Chang.

Appellant on the other hand denied the charges against her. She admitted that she was the owner and general manager of Naples which was a travel agency that offered visa assistance, ticketing, documentation, airport transfer and courier services, but denied having engaged in recruitment. She claimed that she cannot remember meeting Palo in her office and asserted that she met her for the first time only at the fiscal's office when Palo was already claiming for a refund. She testified that Roberto, to whom Palo claims to have given her payment, was neither her employee nor her agent but was only her driver's brother. Based on her records, Roberto endorsed to her office ₱30,000 from Palo for tourist visa assistance. Appellant also admitted that she and Roberto offered to settle the ₱30,000 but not the amount claimed by Palo per vouchers issued to her.

On May 2, 2005, the trial court rendered a Decision finding appellant guilty of both charges. The dispositive portion reads:

> WHEREFORE, all the foregoing considered NIDA ADESER is hereby found GUILTY beyond reasonable doubt of the crime of Syndicated Illegal Recruitment constituting Economic Sabotage in Criminal Case No. 03-2700 and *Estafa* in Criminal Case No. 03-2701. Accordingly, she is hereby sentenced to suffer the following penalties:
>
> 1. In Criminal Case No. 3-2700 – LIFE IMPRISONMENT and a FINE of Five Hundred Thousand Pesos (₱500,000.00), and

[9] Records, Vol. 2, p. 8.

2. In Criminal Case No. 03-2701 – Indeterminate imprisonment of six (6) years of *prision correccional*, as minimum, to 13 years of *reclusion temporal*, as maximum, and to indemnify Josephine R. Palo the sum of Eighty Thousand Pesos (₱80,000.00) with legal interest from the time of the filing of the information.

Cost against the accused.

SO ORDERED.[10]

Appellant appealed her conviction but the same was affirmed by the Court of Appeals in its Decision dated June 28, 2007. The appellate court did not give credence to appellant's denials and found that the prosecution evidence fully supports the finding that appellant and her co-accused engaged in recruitment and placement as defined under the Labor Code despite having no authority to do so. It likewise held that the same evidence proving the commission of the crime of illegal recruitment also established that appellant and her co-accused acted in unity in defrauding Palo and in misrepresenting to her that upon payment of the placement fee, they could obtain employment abroad for her. The appellant's act of deception and the resultant damage suffered by Palo render appellant guilty of *estafa*.

In this appeal, appellant raises the following lone assignment of error:

THE [APPELLATE] COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HER GUILT BEYOND REASONABLE DOUBT.[11]

Essentially, the issue is whether appellant's guilt for the crimes of syndicated illegal recruitment and *estafa* was proven beyond reasonable doubt.

Appellant argues that she was able to prove that she was not part of the group that defrauded Palo. She points out that as can be gleaned from the facts established and even from Palo's

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[10] CA *rollo*, pp. 71-72.

[11] *Id.* at 48.

testimony, she was not involved in the evil scheme orchestrated by Roberto and Chang as her signature did not even appear on the vouchers issued to Palo.

Appellant likewise contends that the elements of the crime of illegal recruitment were not established with moral certainty. Naples was never into recruitment as it was only engaged in the business of assisting clients procure passports and visas. She argues that it should be Roberto and Chang who should be convicted as she had no hand in recruiting Palo.

Appellant's arguments are bereft of merit.

Illegal recruitment is committed when these two elements concur: (1) the offenders have no valid license or authority required by law to enable them to lawfully engage in the recruitment and placement of workers, and (2) the offenders undertake any activity within the meaning of recruitment and placement defined in Article 13(b) or any prohibited practices enumerated in Article 34 of the Labor Code. Under Article 13(b), recruitment and placement refers to "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not." In the simplest terms, illegal recruitment is committed by persons who, without authority from the government, give the impression that they have the power to send workers abroad for employment purposes.[12] The law imposes a higher penalty when the crime is committed by a syndicate as it is considered as an offense involving economic sabotage. Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring and/or confederating with one another in carrying out any unlawful or illegal transaction, enterprise or scheme defined under the first paragraph of Article 38 of the Labor Code.[13]

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[12] *People v. Lapis*, G.R. Nos. 145734-35, October 15, 2002, 391 SCRA 131, 141-142.

[13] *People v. Hernandez*, G.R. Nos. 141221-36, March 7, 2002, 378 SCRA 593, 610.

Undoubtedly, what transpired in the instant case is illegal recruitment by a syndicate. As categorically testified by Palo and Caraig, appellant, together with her co-accused, made representations to Palo that they could send her to Australia to work as an apple picker. There is no denying that they gave Palo the distinct impression that they had the power or ability to send her abroad for work such that the latter was convinced to part with a huge amount of money as placement fee in order to be employed. And this act was committed by appellant and her co-accused even if they did not have the required license to do so. Appellant herself admitted that Naples, the travel agency which she owned and managed, only offered visa assistance, ticketing, documentation, airport transfer and courier services. Clearly, neither she nor her agents had a license to recruit Palo to work abroad. It is the lack of the necessary license or authority that renders the recruitment unlawful or criminal.[14]

Thus, as against the positive and categorical testimonies of Palo and Caraig, appellant's denials cannot prevail.[15] Moreover, there is no reason to overturn the trial and appellate courts' findings on the credibility of the prosecution witnesses as there is no showing that any of them had ill motives against appellant or her co-accused and especially since it appears they were motivated solely by the desire to bring appellant and her co-accused to justice for the crimes they have committed.[16]

Neither can this Court sustain appellant's contention that her participation in the recruitment is negated by the fact that her signature does not even appear on the vouchers issued to Palo. Even if Palo did not present receipts signed by appellant, this would not rule out the fact that appellant did receive the

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[14] *People v. Borromeo*, G.R. No. 117154, March 25, 1999, 305 SCRA 180, 202, citing *People v. Señoron*, G.R. No. 119160, January 30, 1997, 267 SCRA 278, 286.

[15] *People v. Mercado*, G.R. Nos. 108440-42, March 11, 1999, 304 SCRA 504, 527.

[16] *People v. Sagaydo*, G.R. Nos. 124671-75, September 29, 2000, 341 SCRA 329, 337.

money. This Court has consistently ruled that absence of receipts as to the amounts delivered to a recruiter does not mean that the recruiter did not accept or receive such payments. Neither in the Statute of Frauds nor in the rules of evidence is the presentation of receipts required in order to prove the existence of a recruitment agreement and the procurement of fees in illegal recruitment cases. Such proof may come from the credible testimonies of witnesses[17] as in the case at bar.

We likewise uphold appellant's conviction for *estafa*. A person who is convicted of illegal recruitment may also be convicted of *estafa* under Article 315(2) (a) of the Revised Penal Code provided the elements of *estafa* are present. *Estafa* under Article 315, paragraph 2(a) of the Revised Penal Code is committed by any person who defrauds another by using a fictitious name, or falsely pretends to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of similar deceits executed prior to or simultaneously with the commission of the fraud. The offended party must have relied on the false pretense, fraudulent act or fraudulent means of the accused and as a result thereof, the offended party suffered damage.[18]

Such is the case before us. Palo parted with her money upon the prodding and enticement of appellant and her co-accused on the false pretense that they had the capacity to deploy her for employment in Australia. Unfortunately, however, Palo was not able to work abroad nor get her Australian visa. Worse, she did not get her money back.

As to the penalties, Section 7 of Republic Act No. 8042[19] or the Migrant Workers' Act of 1995 provides the penalties for illegal recruitment:

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[17] *People v. Alvarez*, G.R. No. 142981, August 20, 2002, 387 SCRA 448, 464-465, citing *People v. Pabalan*, G.R. Nos. 115350 and 117819-21, September 30, 1996, 262 SCRA 574, 585.

[18] *People v. Hernandez*, *supra* note 13, at 611.

[19] AN ACT TO INSTITUTE THE POLICIES OF OVERSEAS EMPLOYMENT AND ESTABLISH A HIGHER STANDARD OF PROTECTION

SEC. 7. *Penalties*.—

(a) Any person found guilty of illegal recruitment shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years and a fine not less than Two hundred thousand pesos (₱200,000.00) nor more than Five hundred thousand pesos (₱500,000.00).

(b) **The penalty of life imprisonment and a fine of not less than Five hundred thousand pesos (₱500,000.00) nor more than One million pesos (₱1,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein.** (Emphasis supplied.)

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As appellant was found guilty of syndicated illegal recruitment constituting economic sabotage, she was aptly meted out the penalty of life imprisonment and to pay a fine of ₱500,000.

With respect to the *estafa* case, Article 315 of the Revised Penal Code reads:

ART. 315. *Swindling (estafa).* — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos; and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be;

x x x x x x x x x

AND PROMOTION OF THE WELFARE OF MIGRANT WORKERS, THEIR FAMILIES AND OVERSEAS FILIPINOS IN DISTRESS, AND FOR OTHER PURPOSES, approved on June 7, 1995.

Considering that the total amount paid by Palo is ₱73,500 or ₱51,500 in excess of the ₱22,000 limit, an additional sentence of five years should be imposed based on the above-quoted provision. Thus, appellant was correctly meted the maximum penalty of 13 years of *reclusion temporal*.

As to the amount to be indemnified to Palo, contrary to the findings of the trial and appellate courts, Palo's testimony and the vouchers she presented establish that the total amount she paid is only ₱73,500[20] and not the ₱80,000 quoted as placement fee. Thus, she should only be indemnified the said amount, plus legal interest of 12% per annum from the time of filing of the information.[21]

WHEREFORE, the appeal is *DENIED*. The Decision dated June 28, 2007 of the Court of Appeals in CA-G.R. CR-H.C. No. 01902 is hereby *AFFIRMED with MODIFICATION*. The amount to be indemnified to private complainant Josephine R. Palo is reduced to Seventy-Three Thousand Five Hundred Pesos (₱73,500) with legal interest of 12% per annum from the time of filing of the information until fully paid.

No pronouncement as to costs.

SO ORDERED.

Carpio,[*] *Carpio Morales, Brion,* and *Abad, JJ.,* concur.

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[20] Records, Vol. 1, p. 9.

[21] *People v. Billaber*, G.R. Nos. 114967-68, January 26, 2004, 421 SCRA 27, 43-44.

[*] Additional member per Special Order No. 757.

THIRD DIVISION

[G.R. No. 173990. October 27, 2009]

EDGARDO V. ESTARIJA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES, represented by the SOLICITOR GENERAL, and EDWARD RANADA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; THE COURT CAN CORRECT ANY ERROR IN THE APPEALED JUDGMENT WHETHER IT IS MADE THE SUBJECT OF AN ASSIGNMENT OR NOT.— Quite apart from the foregoing issue raised by Estarija, the question that comes to the fore, as made evident by the proceedings below, is whether or not Estarija correctly filed his appeal with the Court of Appeals; or put differently, whether the Court of Appeals had appellate jurisdiction over the RTC decision convicting Estarija of the charge. Although not assigned as an error, said issue can be entertained by the Court, since, in a criminal proceeding, an appeal throws the whole case open for review, and it becomes the duty of the Court to correct any error in the appealed judgment, whether it is made the subject of an assignment of error or not.

2. ID.; ID.; REPUBLIC ACT NO. 8249; SANDIGANBAYAN; JURISDICTION.— Republic Act No. 8249 entitled, "*An Act Further Defining the Jurisdiction of the Sandiganbayan, Amending for the Purpose Presidential Decree No. 1606, as Amended, Providing Funds Therefor, and for Other Purposes*," which further defined the jurisdiction of the Sandiganbayan, took effect on 23 February 1997. Paragraph 3, Section 4(c) of Republic Act No. 8249 reads: In cases where none of the accused are occupying positions corresponding to salary Grade '27' or higher, as prescribed in the said Republic Act No. 6758, or military and PNP officers mentioned above, exclusive original jurisdiction thereof shall be vested in the proper regional trial court, metropolitan trial court, municipal trial court, and municipal circuit trial court, as the case may

be, pursuant to their respective jurisdictions as provided in Batas Pambansa Blg. 129, as amended. The Sandiganbayan shall exercise **exclusive appellate jurisdiction** over final judgments, resolutions or orders of regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided. It is manifest from the above provision that the decisions of the Regional Trial Court — convicting an accused who occupies a position lower than that with salary grade 27 or those not otherwise covered by the enumeration of certain public officers in Section 4 of Presidential Decree No. 1606 as amended by Republic Act No. 8249 — are to be appealed exclusively to the Sandiganbayan.

3. ID.; ID.; APPEALS; RIGHT TO APPEAL IS MERELY A STATUTORY PRIVILEGE AND MAY BE EXERCISED ONLY IN THE MANNER AND IN ACCORDANCE WITH THE PROVISIONS OF THE LAW.— Time and again, it has been held that the right to appeal is not a natural right or a part of due process, but merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of the law. The party who seeks to avail himself of the same must comply with the requirements of the rules, failing in which the right to appeal is lost. Having failed to comply with the requirements set forth in the rules, Estarija's appeal should have been dismissed by the Court of Appeals. In the instant case, instead of appealing his conviction to the Sandiganbayan, Estarija erroneously filed an appeal with the Court of Appeals, in utter disregard of paragraph 3, Section 4(c) of Republic Act No. 8249. The Court of Appeals did not notice this conspicuous misstep, since it entertained the appeal. This fatal flaw committed by Estarija did not toll the running of the period for him to perfect his appeal to the Sandiganbayan. Because of Estarija's failure to perfect his appeal to the Sandiganbayan within the period granted therefor, the Decision of the RTC convicting him of violating Section 3(a) of Republic Act No. 3019 has thus become **final and executory**.

4. ID.; ID.; JUDGMENT; IMMUTABILITY OF JUDGMENT; RATIONALE.— Inasmuch as the decision of the RTC has long been final and executory, it can no longer be altered or

modified. Nothing is more settled in law than that when a judgment becomes final and executory, it becomes immutable and unalterable. The same may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and whether or not made by the highest court of the land. The reason is grounded on the fundamental considerations of public policy and sound practice that, at the risk of occasional error, the judgments or orders of courts must be final at some definite date fixed by law.

5. CRIMINAL LAW; REPUBLIC ACT NO. 3019; PENALTY; STRAIGHT PENALTY IMPOSED BY TRIAL COURT CANNOT BE MODIFIED BECAUSE OF FINALITY OF DECISION; EXPLAINED.— The RTC imposed upon Estarija the straight penalty of seven (7) years. This is erroneous. The penalty for violation of Section 3(b) of Republic Act No. 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 a special law, the Court shall sentence the accused to an indeterminate penalty, the maximum term of which shall not exceed the maximum fixed by said law, and the minimum term shall not be less than the minimum prescribed by the same. Thus, the correct penalty should have been imprisonment ranging from six (6) years and one (1) month, as minimum, to nine (9) years as maximum, with perpetual disqualification from public office. **However, since the decision of the RTC has long become final and executory, this Court cannot modify the same**.

APPEARANCES OF COUNSEL

Francis Arnold D. De Vera for petitioner.
Tolentino Law Office for private respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This Petition for Review under Rule 45 of the Rules of Court seeks to reverse and set aside the 25 November 2005 Decision[1] and the 11 July 2006 Resolution[2] of the Court of Appeals, which affirmed with modifications the Decision and Resolution of the Regional Trial Court (RTC) of Davao City, Branch 8, finding petitioner, Captain Edgardo V. Estarija (Estarija), then Harbor Master of the Philippine Ports Authority, Davao City, guilty beyond reasonable doubt of violating Section 3, paragraph b of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.

On 7 August 1998, an Information was filed before the RTC of Davao City against Estarija for violating Section 3, paragraph b of Republic Act No. 3019. The accusatory portion of the Information reads:

> That on or about August 6, 1998, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, EDGARDO ESTARIJA, a public officer, being then the Harbor Master of the Philippine Ports Authority at Sasa, Davao City, while in the performance of his official function as such, did then and there, willfully, unlawfully and feloniously request and consequently receive the amount of FIVE THOUSAND PESOS (₱5,000.00) from Davao Pilot Association in consideration of accused's issuance of berthing permits.[3]

Upon his arraignment on 26 August 1998, Estarija, assisted by a counsel *de parte*, pleaded not guilty to the charge.[4] Thereafter, trial on the merits ensued.

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[1] Penned by Associate Justice Rodrigo F. Lim, Jr. with Associate Justices Teresita Dy-Liacco Flores and Ramon R. Garcia, concurring. *Rollo*, pp. 41-52.

[2] *Rollo,* pp. 54-55.

[3] Records, p. 1.

[4] *Id*. at 34.

On 15 March 2000, the RTC rendered a decision convicting Estarija of the crime charged and imposing upon him a straight penalty of seven years. The decretal portion of the RTC decision reads:

> For the foregoing, this Court finds accused Capt. Edgardo Estarija GUILTY beyond reasonable doubt of violating Par. B, Sec. 3 of Republic Act 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.
>
> Accordingly, he is hereby sentenced to suffer a penalty of imprisonment of SEVEN (7) YEARS.[5]

Estarija filed a motion for reconsideration, which was denied by the RTC.

On 10 August 2000, Estarija filed a notice of appeal.

On appeal, the Court of Appeals affirmed the conviction of Estarija. The Court of Appeals, however, modified the penalty to an indeterminate sentence ranging from 6 years and 1 day to 9 years, with the accessory penalty of perpetual disqualification from public office, thus:

> WHEREFORE, this Court x x x hereby AFFIRMS the finding of guilt of the accused-appellant but ORDERS the modification of the sentence imposed upon the accused-appellant. Conformably, accused-appellant is hereby sentenced to an Indeterminate penalty of Six (6) Years and One (1) Month to Nine (9) Years of imprisonment, with the accessory penalty of perpetual disqualification from public office.[6]

Hence, the instant petition.

In the main, the issue for resolution is whether or not error attended the RTC's findings, as affirmed by the Court of Appeals, that Estarija is guilty beyond reasonable doubt of violating Section 3, paragraph b of Republic Act No. 3019.

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[5] *Id*. at 228-229.

[6] *Rollo,* p. 51.

Quite apart from the foregoing issue raised by Estarija, the question that comes to the fore, as made evident by the proceedings below, is whether or not Estarija correctly filed his appeal with the Court of Appeals; or put differently, whether the Court of Appeals had appellate jurisdiction over the RTC decision convicting Estarija of the charge. Although not assigned as an error, said issue can be entertained by the Court, since, in a criminal proceeding, an appeal throws the whole case open for review, and it becomes the duty of the Court to correct any error in the appealed judgment, whether it is made the subject of an assignment of error or not.[7]

Republic Act No. 8249 entitled, "*An Act Further Defining the Jurisdiction of the Sandiganbayan, Amending for the Purpose Presidential Decree No. 1606, as Amended, Providing Funds Therefor, and for Other Purposes*," which further defined the jurisdiction of the Sandiganbayan, took effect on 23 February 1997. Paragraph 3, Section 4(c) of Republic Act No. 8249 reads:

> In cases where none of the accused are occupying positions corresponding to salary Grade '27' or higher, as prescribed in the said Republic Act No. 6758, or military and PNP officers mentioned above, exclusive original jurisdiction thereof shall be vested in the proper regional trial court, metropolitan trial court, municipal trial court, and municipal circuit trial court, as the case may be, pursuant to their respective jurisdictions as provided in Batas Pambansa Blg. 129, as amended.
>
> The Sandiganbayan shall exercise **exclusive appellate jurisdiction** over final judgments, resolutions or orders of regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided. (Emphasis supplied.)

It is manifest from the above provision that the decisions of the Regional Trial Court — convicting an accused who occupies a position lower than that with salary grade 27 or those not otherwise covered by the enumeration of certain public officers

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[7] *Ungsod v. People*, G.R. No. 158904, 16 December 2005, 478 SCRA 282, 297.

in Section 4 of Presidential Decree No. 1606 as amended by Republic Act No. 8249 — are to be appealed exclusively to the Sandiganbayan.

Time and again, it has been held that the right to appeal is not a natural right or a part of due process, but merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of the law. The party who seeks to avail himself of the same must comply with the requirements of the rules, failing in which the right to appeal is lost.

Having failed to comply with the requirements set forth in the rules, Estarija's appeal should have been dismissed by the Court of Appeals.

In the instant case, instead of appealing his conviction to the Sandiganbayan, Estarija erroneously filed an appeal with the Court of Appeals, in utter disregard of paragraph 3, Section 4(c) of Republic Act No. 8249. The Court of Appeals did not notice this conspicuous misstep, since it entertained the appeal. This fatal flaw committed by Estarija did not toll the running of the period for him to perfect his appeal to the Sandiganbayan. Because of Estarija's failure to perfect his appeal to the Sandiganbayan within the period granted therefor, the Decision of the RTC convicting him of violating Section 3(a) of Republic Act No. 3019 has thus become **final and executory**.

Inasmuch as the decision of the RTC has long been final and executory, it can no longer be altered or modified.[8] Nothing is more settled in law than that when a judgment becomes final and executory, it becomes immutable and unalterable.[9] The same may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and whether or not made by the highest court of the land. The reason is grounded on the fundamental considerations of public policy and sound practice

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[8] *Eastland Construction and Development Corporation v. Mortel*, G.R. No. 165648, 23 March 2006, 485 SCRA 203, 216.

[9] *Id*.

that, at the risk of occasional error, the judgments or orders of courts must be final at some definite date fixed by law.

The RTC imposed upon Estarija the straight penalty of seven (7) years. This is erroneous. The penalty for violation of Section 3(b) of Republic Act No. 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 a special law, the Court shall sentence the accused to an indeterminate penalty, the maximum term of which shall not exceed the maximum fixed by said law, and the minimum term shall not be less than the minimum prescribed by the same. Thus, the correct penalty should have been imprisonment ranging from six (6) years and one (1) month, as minimum, to nine (9) years as maximum, with perpetual disqualification from public office. **However, since the decision of the RTC has long become final and executory, this Court cannot modify the same**.[10]

WHEREFORE, premises considered, the instant petition is *DENIED*. The Decision of the Regional Trial Court of Davao City, Branch 8, dated 15 March 2000, finding Edgardo V. Estarija *GUILTY* beyond reasonable doubt of violating Section 3(b) of Republic Act No. 3019 is declared *FINAL* and *EXECUTORY*.

SO ORDERED.

Quisumbing,[*] *Carpio (Chairperson), Peralta,* and *Abad,*[**] *JJ.,* concur.

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[10] *Id*.

[*] Per Special Order No. 764, dated 21 October 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Leonardo A. Quisumbing to replace Associate Justice Teresita J. Leonardo-De Castro, who is on official leave.

[**] Per Special Order No. 753, dated 12 October 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Roberto A. Abad to replace Associate Justice Presbitero J. Velasco, Jr., who is on official leave.

THIRD DIVISION

[G.R. No. 175399. October 27, 2009]

OPHELIA L. TUATIS, *petitioner, vs.* **SPOUSES ELISEO ESCOL and VISMINDA ESCOL; HONORABLE COURT OF APPEALS, 22ND DIVISION, CAGAYAN DE ORO CITY; REGIONAL TRIAL COURT, BRANCH 11, SINDANGAN, ZAMBOANGA DEL NORTE; and THE SHERIFF OF RTC, BRANCH 11, SINDANGAN, ZAMBOANGA DEL NORTE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PROCEDURE IN THE COURT OF APPEALS; ORIGINAL CASES; REQUIREMENTS; RATIONALE.— Section 3, Rule 46 of the Rules of Court lays down the requirements for original cases filed before the Court of Appeals and the effect of non-compliance therewith x x x The sound reason behind the policy of the Court in requiring the attachment to the petition for *certiorari*, prohibition, *mandamus*, or *quo warranto* of a clearly legible duplicate original or certified true copy of the assailed judgment or order, is to ensure that the said copy submitted for review is a faithful reproduction of the original, so that the reviewing court would have a definitive basis in its determination of whether the court, body, or tribunal which rendered the assailed judgment or order committed grave abuse of discretion. Also, the Court has consistently held that payment of docket fees within the prescribed period is jurisdictional and is necessary for the perfection of an appeal.

2. ID.; ID.; ID.; ID.; ID.; NON-COMPLIANCE THEREWITH SHALL CONSTITUTE SUFFICIENT GROUND FOR THE DISMISSAL OF THE PETITION; POWER OF DISMISSAL IS SUBJECT TO THE SOUND DISCRETION OF THE COURT.— Indeed, the last paragraph of Section 3, Rule 46 states that non-compliance with any of the requirements stated therein shall constitute sufficient ground for the dismissal of the petition. However, the Court, in several cases, also declared

that said provision must not be taken to mean that the petition shall be automatically dismissed in every instance of non-compliance. The power conferred upon the Court of Appeals to dismiss an appeal, or even an original action, as in this case, is discretionary and not merely ministerial. With that affirmation comes the caution that such discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case.

3. ID.; RULES OF PROCEDURE; PURPOSE; RESORT TO TECHNICALITIES MUST BE AVOIDED.— It must be borne in mind that the rules of procedure are intended to promote, rather than frustrate, the ends of justice, and while the swift unclogging of court dockets is a laudable objective, it, nevertheless, must not be met at the expense of substantial justice. Technical and procedural rules are intended to help secure, not suppress, the cause of justice; and a deviation from the rigid enforcement of the rules may be allowed to attain that prime objective for, after all, the dispensation of justice is the core reason for the existence of courts. Hence, technicalities must be avoided. The law abhors technicalities that impede the cause of justice. The court's primary duty is to render or dispense justice. A litigation is not a game of technicalities. Lawsuits, unlike duels, are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts. Litigations must be decided on their merits and not on technicality. Every party-litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the unacceptable plea of technicalities. Thus, dismissal of appeals purely on technical grounds is frowned upon where the policy of the court is to encourage hearings of appeals on their merits and the rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override, substantial justice. It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving

a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage, of justice.

4. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; COURT FOUND THE APPELLATE COURT GUILTY THEREOF IN CASE AT BAR.— In this case, the Court finds that the Court of Appeals committed grave abuse of discretion in focusing on the procedural deficiencies of Tuatis' Petition and completely turning a blind eye to the merits of the same. The peculiar circumstances of the present case and the interest of substantial justice justify the setting aside, *pro hac vice*, of the procedural defects of Tuatis' Petition in CA-G.R. No. 00737-MIN.

5. ID.; CIVIL PROCEDURE; JUDGMENT; IMMUTABILITY OF JUDGMENT; RATIONALE; EXCEPTIONS.— The Court has not lost sight of the fact that the RTC Decision dated 29 April 1999 in Civil Case No. S-618 already became final and executory in view of the dismissal by the appellate court of Tuatis' appeal in CA-G.R. CV No. 650307 and the entry of judgment made on 29 September 2000. Nothing is more settled in law than that when a final judgment is executory, it thereby becomes immutable and unalterable. The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest Court of the land. The doctrine is founded on considerations of public policy and sound practice that, at the risk of occasional errors, judgments must become final at some definite point in time. The only recognized exceptions are the corrections of clerical errors or the making of the so-called *nunc pro tunc* entries, in which case there is no prejudice to any party, and, of course, where the judgment is void.

6. ID.; ID.; ID.; PARTS OF A DECISION; *FALLO*; AS THE FINAL ORDER, THE *FALLO* CONTROLS WHERE THERE IS CONFLICT WITH THE BODY OF THE DECISION.— Equally well-settled is the rule that the operative part in every decision is the dispositive portion or the *fallo*, and where there is conflict between the *fallo* and the body of the decision, the *fallo* controls. This rule rests on the theory that the *fallo* is

the final order, while the opinion in the body is merely a statement, ordering nothing.

7. ID.; ID.; ID.; IMMUTABILITY OF JUDGMENT; DOCTRINE WAS NOT VIOLATED WHEN THE COURT MADE AN AMENDMENT TO CLARIFY AN AMBIGUITY IN THE *FALLO* OF THE DECISION EVEN AFTER FINALITY OF JUDGMENT; EXPLAINED.— Jurisprudence also provides, however, that where there is an ambiguity caused by an omission or a mistake in the dispositive portion of the decision, the Court may clarify such an ambiguity by an amendment **even after the judgment has become final**. In doing so, the Court may resort to the pleadings filed by the parties and the findings of fact and the conclusions of law expressed in the text or body of the decision. Therefore, even after the RTC Decision dated 29 April 1999 had already become final and executory, this Court cannot be precluded from making the necessary amendment thereof, so that the *fallo* will conform to the body of the said decision. If the Court does not act upon the instant Petition, Tuatis loses ownership over the building she constructed, and in which she has been residing, allegedly worth ₱502,073.00, without any recompense therefor whatsoever; while Visminda, by returning Tuatis' previous payments totaling ₱4,000.00, not just recovers the subject property, but gains the entire building without paying indemnity for the same. Hence, the decision of the Court to give due course to the Petition at bar, despite the finality of the RTC Decision dated 29 April 1999, should not be viewed as a denigration of the doctrine of immutability of final judgments, but a recognition of the equally sacrosanct doctrine that a person should not be allowed to profit or enrich himself inequitably at another's expense.

8. CIVIL LAW; PROPERTY; OWNERSHIP; RIGHT OF ACCESSION WITH RESPECT TO IMMOVABLE PROPERTY; RIGHTS OF THE LANDOWNER; RIGHTS OF THE BUILDER; RATIONALE.— The Court highlights that the options under Article 448 are **available to Visminda**, as the owner of the subject property. There is no basis for Tuatis' demand that, since the value of the building she constructed is considerably higher than the subject property,

she may choose between buying the subject property from Visminda and selling the building to Visminda for ₱502,073.00. Again, the choice of options is for Visminda, not Tuatis, to make. And, depending on Visminda's choice, Tuatis' rights as a builder under Article 448 are limited to the following: (a) under the first option, a right to retain the building and subject property until Visminda pays proper indemnity; and (b) under the second option, a right not to be obliged to pay for the price of the subject property, if it is considerably higher than the value of the building, in which case, she can only be obliged to pay reasonable rent for the same. The rule that the choice under Article 448 of the Civil Code belongs to the owner of the land is in accord with the principle of accession, *i.e.*, that the accessory follows the principal and not the other way around. Even as the option lies with the landowner, the grant to him, nevertheless, is preclusive. The landowner cannot refuse to exercise either option and compel instead the owner of the building to remove it from the land. The *raison d'etre* for this provision has been enunciated thus: Where the builder, planter or sower has acted in good faith, a conflict of rights arises between the owners, and it becomes necessary to protect the owner of the improvements without causing injustice to the owner of the land. In view of the impracticability of creating a state of forced co-ownership, the law has provided a just solution by giving the owner of the land the option to acquire the improvements after payment of the proper indemnity, or to oblige the builder or planter to pay for the land and the sower the proper rent. He cannot refuse to exercise either option. It is the owner of the land who is authorized to exercise the option, because his right is older, and because, by the principle of accession, he is entitled to the ownership of the accessory thing.

APPEARANCES OF COUNSEL

Mejorada Mejorada and Mejorada Law Firm for petitioner.
Public Attorney's Office for private respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This Petition for *Certiorari* and *Mandamus*[1] under Rule 65 of the Rules of Court seeks the annulment of the following Resolutions of the Court of Appeals in CA-G.R. SP No. 00737-MIN: (a) Resolution[2] dated 10 February 2006 dismissing the Petition for *Certiorari*, Prohibition and *Mandamus* with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction of herein petitioner Ophelia L. Tuatis (Tuatis); (b) Resolution[3] dated 25 July 2006 denying Tuatis' Motion for Reconsideration of the Resolution dated 10 February 2006; and (c) Resolution[4] dated 9 October 2006 denying Tuatis' Motion for Leave to File a Second Motion for Reconsideration. The instant Petition further prays for the annulment of the Order[5] dated 26 September 2005 of the Regional Trial Court (RTC) of Sindangan, Zamboanga del Norte, Branch 11, in Civil Case No. S-618, ordering the Sheriff to immediately serve the Writ of Execution issued on 7 March 2002.

The dispute arose from the following factual and procedural antecedents:

On 18 June 1996, Tuatis filed a Complaint for Specific Performance with Damages[6] against herein respondent Visminda Escol (Visminda) before the RTC, docketed as Civil Case No. S-618.

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[1] *Rollo*, pp. 4-22.

[2] Penned by Associate Justice Ricardo R. Rosario with Associate Justices Romulo V. Borja and Myrna Dimaranan-Vidal, concurring; *rollo*, pp. 38-39.

[3] *Rollo*, pp. 45-46.

[4] *Id.* at 58.

[5] *Id.* at 55.

[6] CA *rollo*, pp. 17-20.

Tuatis alleged in her Complaint that sometime in November 1989, Visminda, as seller, and Tuatis, as buyer, entered into a Deed of Sale of a Part of a Registered Land by Installment[7] (Deed of Sale by Installment). The subject matter of said Deed was a piece of real property situated in Poblacion, Sindangan, Zamboanga del Norte and more particularly described as "[a] part of a registered land being known as Lot No. 251, Pls-66 covered under OCT [Original Certificate of Title] No. P-5421; x x x with an area of THREE HUNDRED (300) square meters, more or less" (subject property).

The significant portions of the Deed of Sale by Installment stated:

> That for and in consideration of the sum of TEN THOUSAND PESOS (₱10,000.00), Philippine currency, the SELLER [Visminda[8]] hereby SELLS to the BUYER [Tuatis], the above-described parcel of land under the following terms and conditions:
>
> 1. That the BUYER [Tuatis] shall pay to the SELLER [Visminda] the amount of THREE THOUSAND PESOS (₱3,000.00), as downpayment;
> 2. That the BUYER [Tuatis] shall pay to the SELLER [Visminda] the amount of FOUR THOUSAND PESOS (₱4,000.00), on or before December 31, 1989;
> 3. That the remaining balance of THREE THOUSAND PESOS (₱3,000.00) shall be paid by the BUYER [Tuatis] to the SELLER [Visminda] on or before January 31, 1990;
> 4. That failure of the BUYER [Tuatis] to pay the remaining balance within the period of three months from the period stipulated above, then the BUYER [Tuatis] shall return the land subject of this contract to the SELLER [Visminda] and the SELLER [Visminda] [shall] likewise return all the amount paid by the BUYER [Tuatis].[9]

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[7] *Id.* at 21.

[8] In the Deed of Sale of a Part of a Registered Land by Installment, Visminda was referred to as "Visminda Crampatanta, x x x married to Eliseo Escol x x x."

[9] CA *rollo*, p. 21.

Tuatis claimed that of the entire purchase price of ₱10,000.00, she had paid Visminda ₱3,000.00 as downpayment. The exact date of said payment was not, however, specified. Subsequently, Tuatis paid ₱3,000.00 as installment on 19 December 1989, and another ₱1,000.00 installment on 17 February 1990. Tuatis averred that she paid Visminda the remaining ₱3,000.00 on 27 February 1990 in the presence of Eric Selda (Eric), a clerk in the law office of one Atty. Alanixon Selda. In support of this averment, Tuatis attached to her Complaint a certification[10] executed by Eric on 27 May 1996.

In the meantime, Tuatis already took possession of the subject property and constructed a residential building thereon.

In 1996, Tuatis requested Visminda to sign a prepared absolute deed of sale covering the subject property, but the latter refused, contending that the purchase price had not yet been fully paid. The parties tried to amicably settle the case before the *Lupon Barangay*, to no avail.[11]

Tuatis contended that Visminda failed and refused to sign the absolute deed of sale without any valid reason. Thus, Tuatis prayed that the RTC order Visminda to do all acts for the consummation of the contract sale, sign the absolute deed of sale and pay damages, as well as attorney's fees.

In her Answer,[12] Visminda countered that, except for the ₱3,000.00 downpayment and ₱1,000.00 installment paid by Tuatis on 19 December 1989 and 17 February 1990,[13] respectively, Tuatis made no other payment to Visminda. Despite repeated verbal demands, Tuatis failed to comply with the

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[10] *Id.* at 22A-23.

[11] *Id.* at 24.

[12] *Id.* at 25-29.

[13] The payments were each evidenced by a certification signed by Visminda that she received the aforesaid amounts from Tuatis, which were marked as **Exhibits B** and **C**, respectively, in the proceedings before the RTC; CA *rollo*, p. 22.

conditions that she and Visminda agreed upon in the Deed of Sale by Installment for the payment of the balance of the purchase price for the subject property. Visminda asked that the RTC dismiss Tuatis' Complaint, or in the alternative, order Tuatis to return the subject property to Visminda after Visminda's reimbursement of the ₱4,000.00 she had received from Tuatis.

After trial, the RTC rendered a Decision[14] on 29 April 1999 in Civil Case No. S-618 in Visminda's favor. The RTC concluded:

> Under the facts and circumstances, the evidence for [Tuatis] has not established by satisfactory proof as to (sic) her compliance with the terms and conditions setforth (sic) in [the Deed of Sale by Installment] x x x.
>
> x x x x x x x x x
>
> In contracts to sell, where ownership is retained by the seller and is not to pass until the full payment, such payment, as we said, is a positive suspensive condition, the failure of which is not a breach, casual or serious, but simply an event that prevented the obligation of the vendor to convey title from acquiring binding force x x x.
>
> x x x x x x x x x
>
> As the contract x x x is clear and unmistakable and the terms employed therein have not been shown to belie or otherwise fail to express the true intention of the parties, and that the deed has not been assailed on the ground of mutual mistake which would require its reformation, [the] same should be given its full force and effect.
>
> EVIDENCE (sic) at hand points of no full payment of the price, hence No. 4 of the stipulation applies[,] which provides:
>
> "That failure (sic) of the Buyer [Tuatis] to pay the remaining balance within the period of three months from the period stipulated above, then the Buyer [Tuatis] shall return the land subject of this Contract to the Seller [Visminda] and the Seller [Visminda] [shall] likewise return all the (sic) amount paid by the Buyer [Tuatis]."
>
> This stipulation is the law between the [Buyer] and [Seller], and should be complied with in good faith x x x.

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[14] Penned by Judge Wilfredo G. Ochotorena; CA *rollo*, pp. 30-54.

[Tuatis] constructed the building x x x in bad faith for, (sic) she had knowledge of the fact that the Seller [Visminda] is still the absolute owner of the subject land. There was bad faith also on the part of [Visminda] in accordance with the express provisions of Article 454 [of the New Civil Code][15] since [she] allowed [Tuatis] to construct the building x x x without any opposition on [her] part and so occupy it. The rights of the parties must, therefore, be determined as if they both had acted in bad faith. Their rights in such cases are governed by Article 448 of the New Civil Code of the Philippines.[16]

The RTC decreed the dismissal of Tuatis' Complaint for lack of merit, the return by Tuatis of physical possession of the subject property to Visminda, and the return by Visminda of the ₱4,000.00 she received from Tuatis.

Tuatis filed an appeal with the Court of Appeals, docketed as CA-G.R. CV No. 65037. In a Resolution[17] dated 29 August 2000, however, the appellate court dismissed the appeal for failure of Tuatis to serve and file her appellant's brief within the second extended period for the same. An Entry of Judgment[18] was made in CA-G.R. CV No. 65037 on 29 September 2000, as a result of which, the appealed RTC Decision dated 29 April 1999 in Civil Case No. S-618 became final and executory.

Visminda filed a Motion for Issuance of a Writ of Execution[19] before the RTC on 14 January 2002. The RTC granted

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[15] Although the Decision mentioned Article 454 of the New Civil Code, the same was apparently erroneous since the applicable provision was Article 453 of the said code, which provides:

ART. 453. If there was bad faith, not only on the part of the person who built, planted or sowed on the land of another, but also on the part of the owner of such land, the rights of one and the other shall be the same as though both had acted in good faith.

It is understood that there is bad faith on the part of the landowner whenever the act was done with his knowledge and without opposition on his part.

[16] CA *rollo*, pp. 49-54.

[17] Penned by Associate Justice B.A. Adefuin-De la Cruz with Associate Justices Cancio C. Garcia and Renato C. Dacudao, concurring. Records, p. 123.

[18] Records, p. 124.

[19] *Id.* at 125-126.

Visminda's Motion in a Resolution dated 21 February 2002, and issued the Writ of Execution[20] on 7 March 2002.

Tuatis thereafter filed before the RTC on 22 April 2002 a Motion to Exercise Right under Article 448 of the Civil Code of the Philippines.[21] Tuatis moved that the RTC issue an order allowing her to buy the subject property from Visminda. While Tuatis indeed had the obligation to pay the price of the subject property, she opined that such should not be imposed if the value of the said property was considerably more than the value of the building constructed thereon by Tuatis. Tuatis alleged that the building she constructed was valued at ₱502,073.00,[22] but the market value of the entire piece of land measuring 4.0144 hectares, of which the subject property measuring 300 square meters formed a part, was only about ₱27,000.00.[23] Tuatis maintained that she then had the right to choose between being indemnified for the value of her residential building or buying from Visminda the parcel of land subject of the case. Tuatis stated that she was opting to exercise the second option.

On 20 December 2004, Visminda deposited the amount of ₱4,000.00 to the office of the Clerk of Court of the RTC, pursuant to the Decision of the trial court dated 29 April 1999.[24]

In the intervening time, the Writ of Execution issued on 7 March 2002 was yet to be served or implemented by the Sheriff. This prompted Visminda to write a letter to the Office of the Court Administrator (OCA) to complain about the said delay. The OCA endorsed the letter to the RTC.

On 26 September 2005, the RTC issued an Order[25] directing the Sheriff to immediately serve or enforce the Writ of Execution

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[20] CA *rollo*, pp. 76-77.

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

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

[23] This amount was derived from Tax Declaration No. 12464, covering the subject property. (CA *rollo*, p. 62.)

[24] Records, p. 176.

[25] CA *rollo*, p. 66.

previously issued in Civil Case No. S-618, and to make a report and/or return on the action taken thereon within a period of fifteen (15) days from receipt of the order.

On 10 October 2005, Tuatis filed before the RTC a Motion for Reconsideration[26] of the Order dated 26 September 2005, praying that the same be set aside in view of the pendency of her previous Motion to Exercise Right under Article 448 of the Civil Code of the Philippines. However, before the RTC could rule upon Tuatis' Motion for Reconsideration, the Sheriff enforced the Writ of Execution on 27 October 2005 and submitted his Return to the RTC on 2 November 2005, reporting that the subject writ was fully satisfied.

Tuatis immediately filed with the Court of Appeals a Petition for *Certiorari*, Prohibition and *Mandamus* with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction,[27] which was docketed as CA-G.R. No. 00737-MIN. Tuatis sought in said Petition the annulment of the RTC Order dated 26 September 2005, as well as the issuance of an order commanding the RTC and the Sheriff to desist from undertaking any further proceedings in Civil Case No. S-618, and an order directing the RTC to determine the rights of the parties under Article 448 of the Civil Code.

In a Resolution[28] dated 10 February 2006, the Court of Appeals dismissed outright Tuatis' Petition for failure to completely pay the required docket fees, to attach a certified true or authenticated copy of the assailed RTC Order dated 26 September 2005, and to indicate the place of issue of her counsel's IBP and PTR Official Receipts.

Tuatis filed a Motion for Reconsideration[29] of the Resolution dated 10 February 2006, but said Motion was denied by the

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[26] *Id.* at 67-75.

[27] Impleaded therein were the spouses Eliseo and Visminda Escol, the RTC of Sindangan, Zamboanga del Norte, Branch 11 and the Sheriff of the said trial court. (CA *rollo*, pp. 1-16.)

[28] CA *rollo*, pp. 81-82.

[29] *Id.* at 85-89.

appellate court in another Resolution dated 25 July 2006 on the ground that Tuatis had not taken any action to rectify the infirmities of her Petition.

Tuatis subsequently filed a Motion for Leave to File a Second Motion for Reconsideration,[30] but it was similarly denied by the Court of Appeals in a Resolution dated 9 October 2006, as Section 2, Rule 52[31] of the Rules of Court proscribes the filing of a second motion for reconsideration.

Hence, Tuatis filed the instant Petition, principally arguing that Article 448 of the Civil Code must be applied to the situation between her and Visminda.

According to Tuatis, grave abuse of discretion, amounting to lack or excess of their jurisdiction, was committed by the RTC in issuing the Order dated 26 September 2005, and by the Sheriff in enforcing the Writ of Execution on 27 October 2005. Tuatis insists that the Motion for Reconsideration of the Order dated 26 September 2005 that she filed on 10 October 2005 legally prevented the execution of the RTC Decision dated 29 April 1999, since the rights of the parties to the case had yet to be determined pursuant to Article 448 of the Civil Code.[32] Tuatis reiterates that the building she constructed is valued at ₱502,073.00, per assessment of the Municipal Assessor of

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[30] *Id.* at 94-106.

[31] Section 2, Rule 52 of the Rules of Court provides:

SEC. 2. *Second motion for reconsideration*. – No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.

[32] ART. 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in Articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.

Sindangan, Zamboanga del Norte; while the entire piece of land, which includes the subject property, has a market value of only about ₱27,000.00, based on Tax Declaration No. 12464 issued in the year 2000.[33] Such being the case, Tuatis posits that she is entitled to buy the land at a price to be determined by the Court or, alternatively, she is willing to sell her house to Visminda in the amount of ₱502,073.00.

In addition, Tuatis attributes grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Court of Appeals for dismissing outright her Petition for *Certiorari*, Prohibition and *Mandamus* with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction, and subsequently denying her Motion for Reconsideration and Motion for Leave to File a Second Motion for Reconsideration.

The Court grants the present Petition but for reasons other than those proffered by Tuatis.

Procedural deficiencies of Tuatis' Petition before the Court of Appeals

It is true that Tuatis committed several procedural *faux pas* that would have, ordinarily, warranted the dismissal of her Petition in CA-G.R. No. 00737-MIN before the Court of Appeals.

In its Resolution dated 10 February 2006, the Court of Appeals dismissed outright the Petition for *Certiorari*, Prohibition and *Mandamus* with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction filed by Tuatis for failure to comply with the following requirements for such a petition: (a) to completely pay the required docket fees, (b) to attach a certified true or authenticated copy of the assailed RTC Order dated 26 September 2005, and (c) to indicate the place of issue of her counsel's IBP and PTR Official Receipts.

Section 3, Rule 46 of the Rules of Court lays down the requirements for original cases filed before the Court of Appeals and the effect of non-compliance therewith, relevant portions of which are reproduced below:

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[33] CA *rollo*, p. 62.

SEC. 3. *Contents and filing of petition; effect of non-compliance with requirements.* – x x x.

x x x x x x x x x

It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner, and **shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof**, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. The certification shall be accomplished by the proper clerk of court or by his duly authorized representative, or by the proper officer of the court, tribunal, agency or office involved or by his duly authorized representative. The other requisite number of copies of the petition shall be accompanied by clearly legible plain copies of all documents attached to the original.

x x x x x x x x x

The petitioner shall **pay the corresponding docket and other lawful fees** to the clerk of court and **deposit the amount of ₱500.00** for costs at the time of the filing of the petition.

The failure of the petitioner to comply with any of the foregoing requirements shall be **sufficient ground for the dismissal** of the petition. (Emphases ours.)

The sound reason behind the policy of the Court in requiring the attachment to the petition for *certiorari*, prohibition, *mandamus*, or *quo warranto* of a clearly legible duplicate original or certified true copy of the assailed judgment or order, is to ensure that the said copy submitted for review is a faithful reproduction of the original, so that the reviewing court would have a definitive basis in its determination of whether the court, body, or tribunal which rendered the assailed judgment or order committed grave abuse of discretion.[34] Also, the Court has

[34] *Durban Apartments Corporation v. Catacutan*, G.R. No. 167136, 14 December 2005, 477 SCRA 801, 808; *Quintano v. National Labor Relations Commission*, G.R. No. 144517, 13 December 2004, 446 SCRA 193, 202-203.

consistently held that payment of docket fees within the prescribed period is jurisdictional and is necessary for the perfection of an appeal.[35]

Indeed, the last paragraph of Section 3, Rule 46 states that non-compliance with any of the requirements stated therein shall constitute sufficient ground for the dismissal of the petition. However, the Court, in several cases,[36] also declared that said provision must not be taken to mean that the petition shall be automatically dismissed in every instance of non-compliance. The power conferred upon the Court of Appeals to dismiss an appeal, or even an original action, as in this case, is discretionary and not merely ministerial. With that affirmation comes the caution that such discretion must be a sound one, to be exercised

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[35] *Carlos v. Court of Appeals*, G.R. No. 134473, 30 March 2006, 485 SCRA 578, 583.

[36] In *Garcia v. Philippine Airlines, Inc.* (G.R. No. 160798, 8 June 2005, 459 SCRA 768, 780), the Court held that "if, upon its initial review of the petition, the Court of Appeals is of the view that additional pleadings, documents or order should have been submitted and appended to the petition, it has the following options: (a) dismiss the petition under the last paragraph of [Section 3,] Rule 46 of the Rules of Court; (b) order the petitioner to submit the required additional pleadings, documents, or order within a specific period of time; or (c) order the petitioner to file an amended petition appending thereto the required pleadings, documents or order within a fixed period." (See also *Lao v. Court of Appeals* [382 Phil. 583, 604 (2000)]; *Paras v. Judge Baldado* [406 Phil. 589, 596 (2001)]; *Hilario v. People* [G.R. No. 161070, 14 April 2008, 551 SCRA 191, 201].)

Similarly, in *La Salette College v. Pilotin* (463 Phil. 785, 794 [2003]), the Court recognized that, notwithstanding the mandatory nature of the requirement of payment of appellate docket fees, its strict application is qualified by the following: first, failure to pay those fees within the reglementary period allows only discretionary, not automatic, dismissal; second, such power should be used by the court in conjunction with its exercise of sound discretion in accordance with the tenets of justice and fair play, as well as with a great deal of circumspection in consideration of all attendant circumstances. (See also *Public Estates Authority v. Yujuico* [404 Phil. 91, 101 (2001)]; *Jose v. Court of Appeals* [447 Phil. 159, 165 (2003)]; *Villamor v. Court of Appeals* [478 Phil. 728, 735-736 (2004)], citing *Buenaflor v. Court of Appeals* [400 Phil. 395, 401-402 (2000)].)

in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case.[37]

It must be borne in mind that the rules of procedure are intended to promote, rather than frustrate, the ends of justice, and while the swift unclogging of court dockets is a laudable objective, it, nevertheless, must not be met at the expense of substantial justice. Technical and procedural rules are intended to help secure, not suppress, the cause of justice; and a deviation from the rigid enforcement of the rules may be allowed to attain that prime objective for, after all, the dispensation of justice is the core reason for the existence of courts.[38]

Hence, technicalities must be avoided. The law abhors technicalities that impede the cause of justice. The court's primary duty is to render or dispense justice. A litigation is not a game of technicalities. Lawsuits, unlike duels, are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts. Litigations must be decided on their merits and not on technicality. Every party-litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the unacceptable plea of technicalities. Thus, dismissal of appeals purely on technical grounds is frowned upon where the policy of the court is to encourage hearings of appeals on their merits and the rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override, substantial justice. It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a

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[37] *Philippine Merchant Marine School, Inc. v. Court of Appeals*, 432 Phil. 733, 741-742 (2002).

[38] *General Milling Corporation v. National Labor Relations Commission*, 442 Phil. 425, 428 (2002).

false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage, of justice.[39]

In this case, the Court finds that the Court of Appeals committed grave abuse of discretion in focusing on the procedural deficiencies of Tuatis' Petition and completely turning a blind eye to the merits of the same. The peculiar circumstances of the present case and the interest of substantial justice justify the setting aside, *pro hac vice*, of the procedural defects of Tuatis' Petition in CA-G.R. No. 00737-MIN.

Perusal of the RTC Decision dated 29 April 1999

The RTC, in the **body** of its Decision dated 29 April 1999 in Civil Case No. S-618, found that Tuatis breached the conditions stipulated in the Deed of Sale by Installment between her and Visminda; but since both Tuatis and Visminda were guilty of bad faith, "**[t]heir rights in such cases are governed by Article 448 of the New Civil Code of the Philippines.**"[40]

Article 448 of the Civil Code, referred to by the RTC, provides:

ART. 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have **the right to appropriate as his own the works, sowing or planting, after payment of the indemnity** provided for in Articles 546 and 548, or **to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent**. **However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees.** In such case, he shall pay reasonable rent, if the owner of the land does not choose to

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[39] *Aguam v. Court of Appeals*, 388 Phil. 587, 595 (2000).

[40] In accordance with Article 453 of the Civil Code which provides:

ART. 453. If there was bad faith, not only on the part of the person who built, planted or sowed on the land of another, but also on the part of the owner of such land, the rights of one and the other shall be the same **as though both had acted in good faith**.

It is understood that there is bad faith on the part of the landowner whenever the act was done with his knowledge and without opposition on his part. (Emphasis ours.)

appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof. (Emphases supplied.)

According to the aforequoted provision, the landowner can choose between appropriating the building by paying the proper indemnity for the same, as provided for in Articles 546[41] and 548[42] of the Civil Code; or obliging the builder to pay the price of the land, unless its value is considerably more than that of the structures, in which case the builder in good faith shall pay reasonable rent.[43]

The Court notes, however, that the RTC, in the **dispositive portion** of its 29 April 1999 Decision, which exactly reads –

WHEREFORE, premises studiedly considered, judgment is hereby rendered as follows:

(1) DISMISSING the Complaint for lack of merit;

(2) ORDERING [Tuatis] to return the physical possession of the land in question to [Visminda]; and,

(3) ORDERING [Visminda] to return the ₱4,000.00 she received as evidenced by Exhibit "B" and Exhibit "C" [44] to [Tuatis].[45]

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[41] ART. 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof.

[42] ART. 548. Expenses for pure luxury or mere pleasure shall not be refunded to the possessor in good faith; but he may remove the ornaments with which he has embellished the principal thing if it suffers no injury thereby, and if his successor in the possession does not prefer to refund the amount expended.

[43] *Macasaet v. Macasaet*, 482 Phil. 853, 874 (2004).

[44] Exhibits B and C are the certifications signed by Visminda, stating that she indeed received the amounts of ₱3,000.00 and ₱1,000.00 from Tuatis on 19 December 1989 and 17 February 1990, respectively.

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

utterly failed to make an adjudication on the rights of Tuatis and Visminda under Article 448 of the Civil Code. It would seem that the decretal part of said RTC judgment was limited to implementing the following paragraph in the Deed of Sale by Installment:

> 4. That failure of the BUYER [Tuatis] to pay the remaining balance within the period of three months from the period stipulated above, then the BUYER [Tuatis] shall return the land subject of this contract to the SELLER [Visminda] and the SELLER [Visminda] [shall] likewise return all the amount paid by the BUYER [Tuatis].[46]

without considering the effects of Article 448 of the Civil Code.

It was this apparent incompleteness of the *fallo* of the RTC Decision dated 29 April 1999 that resulted in the present controversy, and that this Court is compelled to address for a just and complete settlement of the rights of the parties herein.

Finality of the RTC Decision dated 19 April 1999

The Court has not lost sight of the fact that the RTC Decision dated 29 April 1999 in Civil Case No. S-618 already became final and executory in view of the dismissal by the appellate court of Tuatis' appeal in CA-G.R. CV No. 650307 and the entry of judgment made on 29 September 2000.

Nothing is more settled in law than that when a final judgment is executory, it thereby becomes immutable and unalterable. The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest Court of the land. The doctrine is founded on considerations of public policy and sound practice that, at the risk of occasional errors, judgments must become final at some definite point in time. The only recognized exceptions

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[46] *Id.* at 21.

are the corrections of clerical errors or the making of the so-called *nunc pro tunc* entries, in which case there is no prejudice to any party, and, of course, where the judgment is void.[47]

Equally well-settled is the rule that the operative part in every decision is the dispositive portion or the *fallo*, and where there is conflict between the *fallo* and the body of the decision, the *fallo* controls. This rule rests on the theory that the *fallo* is the final order, while the opinion in the body is merely a statement, ordering nothing.[48]

Jurisprudence also provides, however, that where there is an ambiguity caused by an omission or a mistake in the dispositive portion of the decision, the Court may clarify such an ambiguity by an amendment **even after the judgment has become final**. In doing so, the Court may resort to the pleadings filed by the parties and the findings of fact and the conclusions of law expressed in the text or body of the decision.[49] Therefore, even after the RTC Decision dated 29 April 1999 had already become final and executory, this Court cannot be precluded from making the necessary amendment thereof, so that the *fallo* will conform to the body of the said decision.

If the Court does not act upon the instant Petition, Tuatis loses ownership over the building she constructed, and in which she has been residing, allegedly worth ₱502,073.00, without any recompense therefor whatsoever; while Visminda, by returning Tuatis' previous payments totaling ₱4,000.00, not just recovers the subject property, but gains the entire building without paying indemnity for the same. Hence, the decision of the Court to give due course to the Petition at bar, despite the finality of the RTC Decision dated 29 April 1999, should not be viewed as a

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[47] *Mayon Estate Corporation v. Altura*, G.R. No. 134462, 18 October 2004, 440 SCRA 377, 386.

[48] *Mendoza, Jr. v. San Miguel Foods, Inc.*, G.R. No. 158684, May 16, 2005, 458 SCRA 664, 676-677, cited in *Florentino v. Rivera*, G.R. No. 167968, 23 January 2006, 479 SCRA 522, 528-529.

[49] *Partosa-Jo v. Court of Appeals*, G.R. No. 82606, 18 December 1992, 216 SCRA 692, 697.

denigration of the doctrine of immutability of final judgments, but a recognition of the equally sacrosanct doctrine that a person should not be allowed to profit or enrich himself inequitably at another's expense.

Furthermore, the Court emphasizes that it is not even changing or reversing any of the findings of fact and law of the RTC in its Decision dated 29 April 1999. This Court is still bound by said RTC judgment insofar as it found that Tuatis failed to fully pay for the price of the subject property; but since both Tuatis and Visminda were in bad faith, Article 448 of the Civil Code would govern their rights. The Court herein is simply clarifying or completing the obviously deficient decretal portion of the decision, so that said portion could effectively order the implementation of the actual ruling of the RTC, as clearly laid down in the rationale of the same decision.

Applying Article 448 and other related provisions of the Civil Code

Taking into consideration the provisions of the Deed of Sale by Installment **and** Article 448 of the Civil Code, Visminda has the following options:

Under the *first option*, Visminda may appropriate for herself the building on the subject property after indemnifying Tuatis for the necessary[50] and useful expenses[51] the latter incurred for said building, as provided in Article 546 of the Civil Code.

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[50] Necessary expenses have been variously described by the Spanish commentators as those made for the preservation of the thing (4 Manresa's *Comentarios al Codigo Civil*, p. 258); as those without which the thing would deteriorate or be lost (Scaevola's *Comentarios al Codigo Civil*, p. 408); as those that augment the income of the things upon which they are expanded (4 Manresa's *Comentarios al Codigo Civil*, p. 261; 8 Scaevola's *Comentarios al Codigo Civil*, p. 416). Among the necessary expenditures are those incurred for cultivation, production, upkeep, *etc.* (4 Manresa's *Comentarios al Codigo Civil*, p. 257). (*Mendoza v. De Guzman*, 52 Phil. 164, 171 [1928].)

[51] Useful expenses are incurred to give greater utility or productivity to the thing. (Tolentino, *Civil Code*, Vol. II (1992 ed.), p. 294.

It is worthy to mention that in *Pecson v. Court of Appeals,*[52] the Court pronounced that the amount to be refunded to the builder under Article 546 of the Civil Code should be the current market value of the improvement, thus:

> The objective of Article 546 of the Civil Code is to administer justice between the parties involved. In this regard, this Court had long ago stated in *Rivera vs. Roman Catholic Archbishop of Manila* [40 Phil. 717 (1920)] that the said provision was formulated in trying to adjust the rights of the owner and possessor in good faith of a piece of land, to administer complete justice to both of them in such a way as neither one nor the other may enrich himself of that which does not belong to him. **Guided by this precept, it is therefore the current market value of the improvements which should be made the basis of reimbursement.** A contrary ruling would unjustly enrich the private respondents who would otherwise be allowed to acquire a highly valued income-yielding four-unit apartment building for a measly amount. Consequently, the parties should therefore be allowed to adduce evidence on the present market value of the apartment building upon which the trial court should base its finding as to the amount of reimbursement to be paid by the landowner. (Emphasis ours.)

Until Visminda appropriately indemnifies Tuatis for the building constructed by the latter, Tuatis may retain possession of the building and the subject property.

Under the *second option*, Visminda may choose not to appropriate the building and, instead, oblige Tuatis to pay the **present or current fair value** of the land.[53] The ₱10,000.00 price of the subject property, as stated in the Deed of Sale on Installment executed in November 1989, shall no longer apply, since Visminda will be obliging Tuatis to pay for the price of the land in the exercise of Visminda's rights under Article 448 of the Civil Code, and not under the said Deed. Tuatis' obligation will then be statutory, and not contractual, arising only when Visminda has chosen her option under Article 448 of the Civil Code.

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[52] 314 Phil. 313, 324-325 (1995).

[53] See *Depra v. Dumlao*, G.R. No. 57348, 16 May 1985, 136 SCRA 475.

Still under the *second option*, if the present or current value of the land, the subject property herein, turns out to be considerably more than that of the building built thereon, Tuatis cannot be obliged to pay for the subject property, but she must pay Visminda reasonable rent for the same. Visminda and Tuatis must agree on the terms of the lease; otherwise, the court will fix the terms.

Necessarily, the RTC should conduct additional proceedings before ordering the execution of the judgment in Civil Case No. S-618. *Initially*, the RTC should determine which of the aforementioned options Visminda will choose. *Subsequently*, the RTC should ascertain: (a) under the first option, the amount of indemnification Visminda must pay Tuatis; or (b) under the second option, the value of the subject property *vis-à-vis* that of the building, and depending thereon, the price of, or the reasonable rent for, the subject property, which Tuatis must pay Visminda.

The Court highlights that the options under Article 448 are **available to Visminda**, as the owner of the subject property. There is no basis for Tuatis' demand that, since the value of the building she constructed is considerably higher than the subject property, she may choose between buying the subject property from Visminda and selling the building to Visminda for ₱502,073.00. Again, the choice of options is for Visminda, not Tuatis, to make. And, depending on Visminda's choice, Tuatis' rights as a builder under Article 448 are limited to the following: (a) under the first option, a right to retain the building and subject property until Visminda pays proper indemnity; and (b) under the second option, a right not to be obliged to pay for the price of the subject property, if it is considerably higher than the value of the building, in which case, she can only be obliged to pay reasonable rent for the same.

The rule that the choice under Article 448 of the Civil Code belongs to the owner of the land is in accord with the principle of accession, *i.e.*, that the accessory follows the principal and not the other way around. Even as the option lies with the

landowner, the grant to him, nevertheless, is preclusive.[54] The landowner cannot refuse to exercise either option and compel instead the owner of the building to remove it from the land.[55]

The *raison d'etre* for this provision has been enunciated thus: Where the builder, planter or sower has acted in good faith, a conflict of rights arises between the owners, and it becomes necessary to protect the owner of the improvements without causing injustice to the owner of the land. In view of the impracticability of creating a state of forced co-ownership, the law has provided a just solution by giving the owner of the land the option to acquire the improvements after payment of the proper indemnity, or to oblige the builder or planter to pay for the land and the sower the proper rent. He cannot refuse to exercise either option. It is the owner of the land who is authorized to exercise the option, because his right is older, and because, by the principle of accession, he is entitled to the ownership of the accessory thing.[56]

Visminda's Motion for Issuance of Writ of Execution cannot be deemed as an expression of her choice to recover possession of the subject property under the first option, since the options under Article 448 of the Civil Code and their respective consequences were also not clearly presented to her by the 19 April 1999 Decision of the RTC. She must then be given the opportunity to make a choice between the options available to her after being duly informed herein of her rights and obligations under both.

As a final note, the directives given by the Court to the trial court in *Depra v. Dumlao*[57] may prove useful as guidelines to

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[54] *Philippine National Bank v. De Jesus*, 458 Phil. 454, 459 (2003).

[55] *Technogas Philippines Manufacturing Corporation v. Court of Appeals*, 335 Phil. 471, 482 (1997).

[56] *Depra v. Dumlao*, *supra* note 53 at 483.

[57] The *fallo* in *Depra v. Dumlao* (*ibid.*) reads:

WHEREFORE, the judgment of the trial Court is hereby set aside, and this case is hereby ordered remanded to the Regional Trial Court of Iloilo for further proceedings consistent with Articles 448 and 546 of the Civil Code, as follows:

the RTC herein in ensuring that the additional proceedings for the final settlement of the rights of the parties under Article 448 of the Civil Code shall be conducted as thoroughly and promptly as possible.

WHEREFORE, premises considered, the Court:

(1) *GRANTS* the instant Petition;

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1. The trial Court shall determine
   a) the present fair price of DEPRA's 34 square-meter area of land;
   b) the amount of the expenses spent by DUMLAO for the building of the kitchen;
   c) the increase in value ("plus value") which the said area of 34 square meters may have acquired by reason thereof, and
   d) whether the value of said area of land is considerably more than that of the kitchen built thereon.
2. After said amounts shall have been determined by competent evidence, the Regional Trial Court shall render judgment, as follows:
   a) The trial Court shall grant DEPRA a period of fifteen (15) days within which to exercise his option under the law (Article 448, Civil Code), whether to appropriate the kitchen as his own by paying to DUMLAO either the amount of the expenses spent by DUMLAO for the building of the kitchen, or the increase in value ("plus value") which the said area of 34 square meters may have acquired by reason thereof, or to oblige DUMLAO to pay the price of said area. The amounts to be respectively paid by DUMLAO and DEPRA, in accordance with the option thus exercised by written notice of the other party and to the Court, shall be paid by the obligor within fifteen (15) days from such notice of the option by tendering the amount to the Court in favor of the party entitled to receive it;
   b) The trial Court shall further order that if DEPRA exercises the option to oblige DUMLAO to pay the price of the land but the latter rejects such purchase because, as found by the trial Court, the value of the land is considerably more than that of the kitchen, DUMLAO shall give written notice of such rejection to DEPRA and to the Court within fifteen (15) days from notice of DEPRA's option to sell the land. In that event, the parties shall be given a period of fifteen (15) days from such notice of rejection within which to agree upon the terms of the lease, and give the Court formal written notice of such agreement and its provisos. If no agreement is reached by the parties, the trial Court, within fifteen (15) days from and after the termination of the said period fixed for negotiation, shall then fix

(2) *ANNULS AND SETS ASIDE* (a) the Resolution dated 21 February 2002 of the Regional Trial Court of Sindangan, Zamboanga del Norte, Branch 11, ordering the issuance of a writ for the execution of the Decision dated 19 April 1999 of the said trial court in Civil Case No. S-618; (b) the Writ of Execution issued on 7 March 2002; and (c) the actions undertaken by the Sheriff to enforce the said Writ of Execution;

(3) *DIRECTS* the Regional Trial Court of Sindangan, Zamboanga del Norte, Branch 11, to conduct further proceedings to determine with deliberate dispatch: (a) the facts essential to the proper application of Article 448 of the Civil Code, and (b) respondent Visminda Escol's choice of option under the same provision; and

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the terms of the lease, provided that the monthly rental to be fixed by the Court shall not be less than Ten Pesos (₱10.00) per month, payable within the first five (5) days of each calendar month. The period for the forced lease shall not be more than two (2) years, counted from the finality of the judgment, considering the long period of time since 1952 that DUMLAO has occupied the subject area. The rental thus fixed shall be increased by ten percent (10%) for the second year of the forced lease. DUMLAO shall not make any further constructions or improvements on the kitchen. Upon expiration of the two-year period, or upon default by DUMLAO in the payment of rentals for two (2) consecutive months, DEPRA shall be entitled to terminate the forced lease, to recover his land, and to have the kitchen removed by DUMLAO or at the latter's expense. The rentals herein provided shall be tendered by DUMLAO to the Court for payment to DEPRA, and such tender shall constitute evidence of whether or not compliance was made within the period fixed by the Court.

c) In any event, DUMLAO shall pay DEPRA an amount computed at Ten Pesos (₱10.00) per month as reasonable compensation for the occupancy of DEPRA's land for the period counted from 1952, the year DUMLAO occupied the subject area, up to the commencement date of the forced lease referred to in the preceding paragraph;

d) The periods to be fixed by the trial Court in its Decision shall be inextendible, and upon failure of the party obliged to tender to the trial Court the amount due to the obligee, the party entitled to such payment shall be entitled to an order of execution for the enforcement of payment of the amount due and for compliance with such other acts as may be required by the prestation due the obligee.

No costs.

(4) Further *DIRECTS* the Regional Trial Court of Sindangan, Zamboanga del Norte, Branch 11, to undertake the implementation of respondent Visminda Escol's choice of option under Article 448 of the Civil Code, as soon as possible.

No costs.

SO ORDERED.

Quisumbing,[*] *Carpio (Chairperson), Peralta,* and *Abad,*[**] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 182065. October 27, 2009]

EVELYN ONGSUCO and ANTONIA SALAYA, *petitioners, vs.* **HON. MARIANO M. MALONES, both in his private and official capacity as Mayor of the Municipality of Maasin, Iloilo,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; ELUCIDATED.— After a close scrutiny of the circumstances that gave rise to this case, the Court determines that there is no need for petitioners to exhaust administrative remedies before resorting to the courts. x x x It is true that the general

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[*] Per Special Order No. 755, dated 12 October 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Leonardo A. Quisumbing to replace Associate Justice Antonio Eduardo B. Nachura, who is on official leave.

[**] Per Special Order No. 753, dated 12 October 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Roberto A. Abad to replace Associate Justice Presbitero J. Velasco, Jr., who is on official leave.

rule is that before a party is allowed to seek the intervention of the court, he or she should have availed himself or herself of all the means of administrative processes afforded him or her. Hence, if resort to a remedy within the administrative machinery can still be made by giving the administrative officer concerned every opportunity to decide on a matter that comes within his or her jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. The premature invocation of the intervention of the court is fatal to one's cause of action. The doctrine of exhaustion of administrative remedies is based on practical and legal reasons. The availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. Furthermore, 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 dispose of the case. However, there are several exceptions to this rule.

2. ID.; ID.; ID.; EXCEPTION; CASE AT BAR.— x x x [A] case where the issue raised is a purely legal question, well within the competence; and the jurisdiction of the court and not the administrative agency, would clearly constitute an exception. Resolving questions of law, which involve the interpretation and application of laws, constitutes essentially an exercise of judicial power that is exclusively allocated to the Supreme Court and such lower courts the Legislature may establish. In this case, the parties are not disputing any factual matter on which they still need to present evidence. The sole issue petitioners raised before the RTC in Civil Case No. 25843 was whether Municipal Ordinance No. 98-01 was valid and enforceable despite the absence, prior to its enactment, of a public hearing held in accordance with Article 276 of the Implementing Rules and Regulations of the Local Government Code. This is undoubtedly a pure question of law, within the competence and jurisdiction of the RTC to resolve.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PROHIBITION AND *MANDAMUS*, DISTINGUISHED.— In a petition for prohibition against any tribunal, corporation, board, or person – whether exercising judicial, quasi-judicial, or ministerial

functions – who has acted without or in excess of jurisdiction or with grave abuse of discretion, the petitioner prays that judgment be rendered, commanding the respondent **to desist** from further proceeding in the action or matter specified in the petition. On the other hand, the remedy of mandamus lies **to compel** performance of a ministerial duty. The petitioner for such a writ should have a well-defined, clear and certain legal right to the performance of the act, and it must be the clear and imperative duty of respondent to do the act required to be done. In this case, petitioners' primary intention is to prevent respondent from implementing Municipal Ordinance No. 98-01, *i.e.*, by collecting the goodwill fees from petitioners and barring them from occupying the stalls at the municipal public market. Obviously, the writ petitioners seek is more in the nature of prohibition (commanding desistance), rather than *mandamus* (compelling performance).

4. ID.; ID.; PROHIBITION; REQUISITES.— For a writ of prohibition, the requisites are: (1) the impugned act must be that of a "tribunal, corporation, board, officer, or person, whether exercising judicial, quasi-judicial or ministerial functions"; and (2) there is no plain, speedy, and adequate remedy in the ordinary course of law."

5. ID.; ID.; ID.; ID.; JUDICIAL FUNCTION AND QUASI-JUDICIAL FUNCTION, EXPLAINED.— The exercise of judicial function consists of the power to determine what the law is and what the legal rights of the parties are, and then to adjudicate upon the rights of the parties. The term quasi-judicial function applies to the action and discretion of public administrative officers or bodies that are required to investigate facts or ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action and to exercise discretion of a judicial nature. In implementing Municipal Ordinance No. 98-01, respondent is not called upon to adjudicate the rights of contending parties or to exercise, in any manner, discretion of a judicial nature.

6. ID.; ID.; ID.; ID.; MINISTERIAL FUNCTION; DEFINED; RESPONDENT IN CASE AT BAR HELD PERFORMING A MINISTERIAL FUNCTION.— A ministerial function is one that an officer or tribunal performs in the context of a

given set of facts, in a prescribed manner and without regard for the exercise of his or its own judgment, upon the propriety or impropriety of the act done. The Court holds that respondent herein is performing a ministerial function.

7. POLITICAL LAW; PUBLIC CORPORATIONS; LOCAL GOVERNMENT CODE; LOCAL GOVERNMENT TAXATION; CHARGES; DEFINED; CASE AT BAR.— Article 221(g) of the Local Government Code of 1991 defines "charges" as: Article 221. *Definition of Terms*. x x x (g) *Charges* refer to pecuniary liability, as **rents or fees** against persons or property. Evidently, the revenues of a local government unit do not consist of taxes alone, but also other fees and charges. And rentals and goodwill fees, imposed by Municipal Ordinance No. 98-01 for the occupancy of the stalls at the municipal public market, fall under the definition of charges.

8. ID.; ID.; ID.; ID.; ID.; IN ENACTING ORDINANCES WITH CHARGES, PRIOR HEARING IS NECESSARY; CASE AT BAR.— For the valid enactment of ordinances imposing charges, certain legal requisites must be met. x x x It is categorical, therefore, that a public hearing be held prior to the enactment of an ordinance levying taxes, fees, or charges; and that such public hearing be conducted as provided under Section 277 of the Implementing Rules and Regulations of the Local Government Code. There is no dispute herein that the notices sent to petitioners and other stall holders at the municipal public market were sent out on **6 August 1998**, informing them of the supposed "public hearing" to be held on **11 August 1998**. Even assuming that petitioners received their notice also on 6 August 1998, the "public hearing" was already scheduled, and actually conducted, only **five days** later, on 11 August 1998. This contravenes Article 277(b)(3) of the Implementing Rules and Regulations of the Local Government Code which requires that the public hearing be held no less than **ten days** from the time the notices were sent out, posted, or published. When the *Sangguniang Bayan* of Maasin sought to correct this procedural defect through Resolution No. 68, series of 1998, dated 18 September 1998, respondent vetoed the said resolution. The defect in the enactment of Municipal

Ordinance No. 98 was not cured when another public hearing was held on 22 January 1999, **after** the questioned ordinance was passed by the *Sangguniang Bayan* and approved by respondent on 17 August 1998. Section 186 of the Local Government Code prescribes that the public hearing be held **prior** to the enactment by a local government unit of an ordinance levying taxes, fees, and charges. Since no public hearing had been duly conducted prior to the enactment of Municipal Ordinance No. 98-01, said ordinance is void and cannot be given any effect. Consequently, a void and ineffective ordinance could not have conferred upon respondent the jurisdiction to order petitioners' stalls at the municipal public market vacant.

APPEARANCES OF COUNSEL

Rey M. Padilla for petitioners.
City Legal Officer (Iloilo) for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] dated 28 November 2006, rendered by the Court of Appeals in CA-G.R. SP No. 86182, which affirmed the Decision[2] dated 15 July 2003, of the Regional Trial Court (RTC), Branch 39, of Iloilo City, in Civil Case No. 25843, dismissing the special civil action for *Mandamus*/Prohibition with Prayer for Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction, filed by petitioners Evelyn Ongsuco and Antonia Salaya against respondent Mayor Mariano Malones of the Municipality of Maasin, Iloilo.

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[1] Penned by Associate Justice Romeo F. Barza with Associate Justices Isaias P. Dicdican and Priscilla Baltazar-Padilla, concurring. *Rollo*, pp. 33-46.

[2] Penned by Judge Roger B. Patricio. *Id.* at 27-32.

Petitioners are stall holders at the Maasin Public Market, which had just been newly renovated. In a letter[3] dated 6 August 1998, the Office of the Municipal Mayor informed petitioners of a meeting scheduled on 11 August 1998 concerning the municipal public market. Revenue measures were discussed during the said meeting, including the increase in the rentals for the market stalls and the imposition of "goodwill fees" in the amount of ₱20,000.00,[4] payable every month.

On 17 August 1998, the *Sangguniang Bayan* of Maasin approved Municipal Ordinance No. 98-01, entitled "The Municipal Revised Revenue Code." The Code contained a provision for increased rentals for the stalls and the imposition of goodwill fees in the amount of ₱20,000.00 and ₱15,000.00 for stalls located on the first and second floors of the municipal public market, respectively. The same Code authorized respondent to enter into lease contracts over the said market stalls,[5] and incorporated a standard contract of lease for the stall holders at the municipal public market.

Only a month later, on 18 September 1998, the *Sangguniang Bayan* of Maasin approved Resolution No. 68, series of 1998,[6] moving to have the meeting dated 11 August 1998 declared inoperative as a public hearing, because majority of the persons affected by the imposition of the goodwill fee failed to agree to the said measure. However, Resolution No. 68, series of 1998, of the *Sangguniang Bayan* of Maasin was vetoed by respondent on 30 September 1998.[7]

After Municipal Ordinance No. 98-01 was approved on 17 August 1998, another purported public hearing was held on 22 January 1999.[8]

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[3] Records, p. 9.

[4] *Rollo*, p. 34.

[5] *Id.* at 117.

[6] Records, pp. 10-11.

[7] *Rollo*, p. 35.

[8] *Id.*

On 9 June 1999, respondent wrote a letter to petitioners informing them that they were occupying stalls in the newly renovated municipal public market without any lease contract, as a consequence of which, the stalls were considered vacant and open for qualified and interested applicants.[9]

This prompted petitioners, together with other similarly situated stall holders at the municipal public market,[10] to file before the RTC on 25 June 1999 a Petition for Prohibition/*Mandamus*, with Prayer for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction,[11] against respondent. The Petition was docketed as Civil Case No. 25843.

Petitioners alleged that they were *bona fide* occupants of the stalls at the municipal public market, who had been religiously paying the monthly rentals for the stalls they occupied.

Petitioners argued that public hearing was mandatory in the imposition of goodwill fees. Section 186 of the Local Government Code of 1991 provides that an ordinance levying taxes, fees, or charges shall not be enacted without any prior hearing conducted for the purpose. Municipal Ordinance No. 98-01, imposing goodwill fees, is invalid on the ground that the conferences held on 11 August 1998 and 22 January 1999 could not be considered public hearings. According to Article 277(b)(3) of the Implementing Rules and Regulations of the Local Government Code:

> (3) The notice or notices shall specify the date or dates and venue of the public hearing or hearings. The initial public hearing shall be held **not earlier than ten (10) days** from the sending out of the notice or notices, or the last day of publication, or date of posting thereof, whichever is later. (Emphasis ours.)

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[9] Records, p. 444.

[10] The plaintiffs in Civil Case No. 25843 were Socorro Mondejar, Perla Velasco, Rodolfo Rosbero, Rosie Saladara, Editha Pame, and petitioners Evelyn Ongsuco and Antonia Salaya. However, only Socorro Mondejar, Rodolfo Rosbero and petitioners filed an appeal docketed as CA-G.R. SP No. 86162 with the Court of Appeals. Thereafter, only petitioners filed the present petition, docketed as G.R. No. 182065. Records, p. 2; CA *rollo*, p. 31 and *rollo*, p. 3.

[11] Records, pp. 2-7.

The letter from the Office of the Municipal Mayor was sent to stall holders on 6 August 1998, informing the latter of the meeting to be held, as was in fact held, on 11 August 1998, only **five days** after notice.[12]

Hence, petitioners prayed that respondent be enjoined from imposing the goodwill fees pending the determination of the reasonableness thereof, and from barring petitioners from occupying the stalls at the municipal public market and continuing with the operation of their businesses.

Respondent, in answer, maintained that Municipal Ordinance No. 98-01 is valid. He reasoned that Municipal Ordinance No. 98-01 imposed goodwill fees to raise income to pay for the loan obtained by the Municipality of Maasin for the renovation of its public market. Said ordinance is not *per se* a tax or revenue measure, but involves the operation and management of an economic enterprise of the Municipality of Maasin as a local government unit; thus, there was no mandatory requirement to hold a public hearing for the enactment thereof. And, even granting that a public hearing was required, respondent insisted that public hearings take place on 11 August 1998 and 22 January 1999.

Respondent further averred that petitioners were illegally occupying the market stalls, and the only way petitioners could legitimize their occupancy of said market stalls would be to execute lease contracts with the Municipality of Maasin. While respondent admitted that petitioners had been paying rentals for their market stalls in the amount of ₱45.00 per month prior to the renovation of the municipal public market, respondent asserted that no rentals were paid or collected from petitioners ever since the renovation began.

Respondent sought from the RTC an award for moral damages in the amount of not less than ₱500,000.00, for the social humiliation and hurt feelings he suffered by reason of the unjustified filing by petitioners of Civil Case No. 25843; and an order for petitioners to vacate the renovated market stalls and

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[12] *Id.* at 232-236.

pay reasonable rentals from the date they began to occupy said stalls until they vacate the same.[13]

The RTC subsequently rendered a Decision[14] on 15 July 2003 dismissing the Petition in Civil Case No. 25843.

The RTC found that petitioners could not avail themselves of the remedy of *mandamus* or prohibition. It reasoned that *mandamus* would not lie in this case where petitioners failed to show a clear legal right to the use of the market stalls without paying the goodwill fees imposed by the municipal government. Prohibition likewise would not apply to the present case where respondent's acts, sought to be enjoined, did not involve the exercise of judicial or quasi-judicial functions.

The RTC also dismissed the Petition in Civil Case No. 25843 on the ground of non-exhaustion of administrative remedies. Petitioners' failure to question the legality of Municipal Ordinance No. 98-01 before the Secretary of Justice, as provided under Section 187 of the Local Government Code,[15] rendered the Petition raising the very same issue before the RTC premature.

The dispositive part of the RTC Decision dated 15 July 2003 reads:

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[13] *Id.* at 24-29.

[14] *Rollo*, pp. 27-32.

[15] Section 187 of the Local Government Code provides that:

Section 187. *Procedure for Approval and Effectivity of Tax Ordinances and Revenue Measures; Mandatory Public Hearings.*—The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Code: *Provided,* That public hearings shall be conducted for the purpose prior to the enactment thereof: *Provided, further,* That any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal: *Provided, however,* That such appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax, fee, or charge levied therein: *Provided, finally,* That within thirty (30) days after receipt of the decision or the lapse of the sixty-day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction.

WHEREFORE, in view of all the foregoing, and finding the petition without merit, the same is, as it is hereby ordered, dismissed.[16]

On 12 August 2003, petitioners and their co-plaintiffs filed a Motion for Reconsideration.[17] The RTC denied petitioners' Motion for Reconsideration in a Resolution dated 18 June 2004.[18]

While Civil Case No. 25843 was pending, respondent filed before the 12th Municipal Circuit Trial Court (MCTC) of Cabatuan-Maasin, Iloilo City a case in behalf of the Municipality of Maasin against petitioner Evelyn Ongsuco, entitled *Municipality of Maasin v. Ongsuco*, a Complaint for Unlawful Detainer with Damages, docketed as MCTC Civil Case No. 257. On 18 June 2002, the MCTC decided in favor of the Municipality of Maasin and ordered petitioner Ongsuco to vacate the market stalls she occupied, Stall No. 1-03 and Stall No. 1-04, and to pay monthly rentals in the amount of ₱350.00 for each stall from October 2001 until she vacates the said market stalls.[19] On appeal, Branch 36 of the RTC of Maasin, Iloilo City, promulgated a Decision, dated 29 April 2003, in a case docketed as Civil Case No. 02-27229 affirming the decision of the MCTC. A Writ of Execution was issued by the MCTC on 8 December 2003.[20]

Petitioners, in their appeal before the Court of Appeals, docketed as CA-G.R. SP No. 86182, challenged the dismissal of their Petition for Prohibition/*Mandamus* docketed as Civil Case No. 25843 by the RTC. Petitioners explained that they did appeal the enactment of Municipal Ordinance No. 98-01 before the Department of Justice, but their appeal was not acted upon because of their failure to attach a copy of said municipal ordinance. Petitioners claimed that one of their fellow stall holders, Ritchelle Mondejar, wrote a letter to the Officer-in-

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[16] *Rollo*, p. 32.

[17] Records, pp. 406-422.

[18] CA *rollo*, 39-44.

[19] CA *rollo*, pp. 210-221.

[20] *Id.* at 222-223.

Charge (OIC), Municipal Treasurer of Maasin, requesting a copy of Municipal Ordinance No. 98-01, but received no reply.[21]

In its Decision dated 28 November 2006 in CA-G.R. SP No. 86182, the Court of Appeals again ruled in respondent's favor.

The Court of Appeals declared that the "goodwill fee" was a form of revenue measure, which the Municipality of Maasin was empowered to impose under Section 186 of the Local Government Code. Petitioners failed to establish any grave abuse of discretion committed by respondent in enforcing goodwill fees.

The Court of Appeals additionally held that even if respondent acted in grave abuse of discretion, petitioners' resort to a petition for prohibition was improper, since respondent's acts in question herein did not involve the exercise of judicial, quasi-judicial, or ministerial functions, as required under Section 2, Rule 65 of the Rules of Court. Also, the filing by petitioners of the Petition for Prohibition/*Mandamus* before the RTC was premature, as they failed to exhaust administrative remedies prior thereto. The appellate court did not give any weight to petitioners' assertion that they filed an appeal challenging the legality of Municipal Ordinance No. 98-01 before the Secretary of Justice, as no proof was presented to support the same.

In the end, the Court of Appeals decreed:

> WHEREFORE, in view of the foregoing, this Court finds the instant appeal bereft of merit. The assailed decision dated July 15, 2003 as well as the subsequent resolution dated 18 June 2004 are hereby **AFFIRMED** and the instant appeal is hereby **DISMISSED.**[22]

Petitioners filed a Motion for Reconsideration[23] of the foregoing Decision, but it was denied by the Court of Appeals in a Resolution[24] dated 8 February 2008.

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[21] *Id.* at 20.

[22] *Rollo*, p. 46.

[23] *Id.* at 48-53.

[24] *Id.* at 58.

Hence, the present Petition, where petitioners raise the following issues:

I

WHETHER OR NOT THE PETITIONERS HAVE EXHAUSTED ADMINISTRATIVE REMEDIES BEFORE FILING THE INSTANT CASE IN COURT;

II

WHETHER OR NOT EXHAUSTION OF ADMINISTRATIVE REMEDIES IS APPLICABLE IN THIS CASE; AND

III

WHETHER OR NOT THE APPELLEE MARIANO MALONES WHO WAS THEN THE MUNICIPAL MAYOR OF MAASIN, ILOILO HAS COMMITTED GRAVE ABUSE OF DISCRETION.[25]

After a close scrutiny of the circumstances that gave rise to this case, the Court determines that there is no need for petitioners to exhaust administrative remedies before resorting to the courts.

The findings of both the RTC and the Court of Appeals that petitioners' Petition for Prohibition/*Mandamus* in Civil Case No. 25843 was premature is anchored on Section 187 of the Local Government Code, which reads:

Section 187. *Procedure for Approval and Effectivity of Tax Ordinances and Revenue Measures; Mandatory Public Hearings.*— The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Code: *Provided*, That public hearings shall be conducted for the purpose prior to the enactment thereof: *Provided, further*, That **any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice** who shall render a decision within sixty (60) days from the date of receipt of the appeal: *Provided, however*, That such appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax, fee, or charge levied therein: *Provided, finally*, That within thirty (30) days after receipt of the decision or the lapse

[25] *Id.* at 18.

of the sixty-day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction. (Emphasis ours.)

It is true that the general rule is that before a party is allowed to seek the intervention of the court, he or she should have availed himself or herself of all the means of administrative processes afforded him or her. Hence, if resort to a remedy within the administrative machinery can still be made by giving the administrative officer concerned every opportunity to decide on a matter that comes within his or her jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. The premature invocation of the intervention of the court is fatal to one's cause of action. The doctrine of exhaustion of administrative remedies is based on practical and legal reasons. The availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. Furthermore, 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 dispose of the case. However, there are several exceptions to this rule.[26]

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[26] *National Irrigation Administration v. Enciso*, G.R. No. 142571, 5 May 2006, 489 SCRA 570, 577-578. The exceptions to the doctrine of exhaustion of administrative remedies are: (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; (11) when there are circumstances indicating the urgency of judicial intervention, and unreasonable delay would greatly prejudice the complainant; (12) where no administrative review is provided by law; (13) where the rule of qualified political agency applies; and (14) where the issue of non-exhaustion of administrative remedies has been rendered moot. (*Hongkong & Shanghai Banking Corporation, Ltd. v. G.G. Sportswear Manufacturing Corporation*, G.R. No. 146526, 5 May 2006, 489 SCRA 578, 585-586.)

The rule on the exhaustion of administrative remedies is intended to preclude a court from arrogating unto itself the authority to resolve a controversy, the jurisdiction over which is initially lodged with an administrative body of special competence. Thus, a case where the issue raised is a purely legal question, well within the competence; and the jurisdiction of the court and not the administrative agency, would clearly constitute an exception.[27] Resolving questions of law, which involve the interpretation and application of laws, constitutes essentially an exercise of judicial power that is exclusively allocated to the Supreme Court and such lower courts the Legislature may establish.[28]

In this case, the parties are not disputing any factual matter on which they still need to present evidence. The sole issue petitioners raised before the RTC in Civil Case No. 25843 was whether Municipal Ordinance No. 98-01 was valid and enforceable despite the absence, prior to its enactment, of a public hearing held in accordance with Article 276 of the Implementing Rules and Regulations of the Local Government Code. This is undoubtedly a pure question of law, within the competence and jurisdiction of the RTC to resolve.

Paragraph 2(a) of Section 5, Article VIII of the Constitution, expressly establishes the appellate jurisdiction of this Court, and impliedly recognizes the original jurisdiction of lower courts over cases involving the constitutionality or validity of an ordinance:

> Section 5. The Supreme Court shall have the following powers:
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> x x x x x x x x x
>
> (2) Review, revise, reverse, modify or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of **lower courts** in:

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[27] *Valdez v. National Electrification Administration*, G.R. No. 148938, 12 July 2007, 527 SCRA 427, 437; *Arimao v. Taher*, G.R. No. 152651, 7 August 2006, 498 SCRA 74, 87.

[28] *Joson III v. Court of Appeals*, G.R. No. 160652, 13 February 2006, 482 SCRA 360, 372.

(a) All cases in which the **constitutionality or validity** of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, **ordinance**, or regulation is in question. (Emphases ours.)

In *J.M. Tuason and Co., Inc. v. Court of Appeals*,[29] *Ynot v. Intermediate Appellate Court*,[30] and *Commissioner of Internal Revenue v. Santos*,[31] the Court has affirmed the jurisdiction of the RTC to resolve questions of constitutionality and validity of laws (deemed to include local ordinances) in the first instance, without deciding questions which pertain to legislative policy.

Although not raised in the Petition at bar, the Court is compelled to discuss another procedural issue, specifically, the declaration by the RTC, and affirmed by the Court of Appeals, that petitioners availed themselves of the wrong remedy in filing a Petition for Prohibition/*Mandamus* before the RTC.

Sections 2 and 3, Rule 65 of the Rules of the Rules of Court lay down under what circumstances petitions for prohibition and *mandamus* may be filed, to wit:

SEC. 2. *Petition for prohibition*. – When the proceedings of any tribunal, corporation, board, officer or person, whether exercising **judicial, quasi-judicial or ministerial functions**, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is **no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law**, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.

SEC. 3. *Petition for mandamus*. – When any tribunal, corporation, board, officer or person unlawfully neglects the performance of **an**

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[29] 113 Phil. 673, 681 (1961).

[30] 232 Phil. 615, 621 (1987).

[31] 343 Phil. 411, 427 (1997).

act which the law specifically enjoins as a duty resulting from an office, trust, or station, or **unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled**, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent. (Emphases ours.)

In a petition for prohibition against any tribunal, corporation, board, or person – whether exercising judicial, quasi-judicial, or ministerial functions – who has acted without or in excess of jurisdiction or with grave abuse of discretion, the petitioner prays that judgment be rendered, commanding the respondent **to desist** from further proceeding in the action or matter specified in the petition.[32] On the other hand, the remedy of mandamus lies **to compel** performance of a ministerial duty.[33] The petitioner for such a writ should have a well-defined, clear and certain legal right to the performance of the act, and it must be the clear and imperative duty of respondent to do the act required to be done.[34]

In this case, petitioners' primary intention is to prevent respondent from implementing Municipal Ordinance No. 98-01, *i.e.*, by collecting the goodwill fees from petitioners and barring them from occupying the stalls at the municipal public market. Obviously, the writ petitioners seek is more in the nature of prohibition (commanding desistance), rather than *mandamus* (compelling performance).

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[32] *Perez v. Court of Appeals*, G.R. No. 80838, 29 November 1988, 168 SCRA 236, 243.

[33] *Heirs of Sps. Luciano and Consolacion Venturillo v. Quitain*, G.R. No. 157972, 30 October 2006, 506 SCRA 102, 110; *Cariño v. Capulong*, G.R. No. 97203, 26 May 1993, 222 SCRA 593, 602.

[34] *Social Justice Society v. Atienza, Jr.*, G.R. No. 156052, 7 March 2007, 517 SCRA 657, 664.

For a writ of prohibition, the requisites are: (1) the impugned act must be that of a "tribunal, corporation, board, officer, or person, whether exercising judicial, quasi-judicial or ministerial functions"; and (2) there is no plain, speedy, and adequate remedy in the ordinary course of law."[35]

The exercise of judicial function consists of the power to determine what the law is and what the legal rights of the parties are, and then to adjudicate upon the rights of the parties. The term quasi-judicial function applies to the action and discretion of public administrative officers or bodies that are required to investigate facts or ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action and to exercise discretion of a judicial nature. In implementing Municipal Ordinance No. 98-01, respondent is not called upon to adjudicate the rights of contending parties or to exercise, in any manner, discretion of a judicial nature.

A ministerial function is one that an officer or tribunal performs in the context of a given set of facts, in a prescribed manner and without regard for the exercise of his or its own judgment, upon the propriety or impropriety of the act done.[36]

The Court holds that respondent herein is performing a ministerial function.

It bears to emphasize that Municipal Ordinance No. 98-01 enjoys the presumption of validity, unless declared otherwise. Respondent has the duty to carry out the provisions of the ordinance under Section 444 of the Local Government Code:

Section 444. *The Chief Executive: Powers, Duties, Functions and Compensation.* – (a) The Municipal mayor, as the chief executive of the municipal government, shall exercise such powers and perform such duties and functions as provided by this Code and other laws.

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[35] *Rivera v. Espiritu,* 425 Phil. 169, 180 (2002).

[36] *Destileria Limtuaco & Co. Inc. v. Advertising Board of the Philippines,* G.R. No. 164242, 28 November 2008, 572 SCRA 455, 460; and *Metropolitan Bank and Trust Co. Inc. v. National Wages and Productivity Commission,* G.R. No. 144322, 6 February 2007, 514 SCRA 346, 357.

(b) For efficient, effective and economical governance the purpose of which is the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code, the Municipal mayor shall:

x x x x x x x x x

(2) **Enforce** all laws and **ordinances** relative to the governance of the municipality and the exercise of its corporate powers provided for under Section 22 of this Code, implement all approved policies, programs, projects, services and activities of the municipality x x x.

x x x x x x x x x

(3) Initiate and maximize the generation of resources and revenues, and apply the same to the implementation of development plans, program objectives and priorities as provided for under Section 18 of this Code, particularly those resources and revenues programmed for agro-industrial development and country-wide growth and progress, and relative thereto, shall:

x x x x x x x x x

(iii) **Ensure that all taxes and other revenues of the municipality are collected**, and that municipal funds are applied in accordance with law or ordinance to the payment of expenses and settlement of obligations of the municipality; x x x. (Emphasis ours.)

Municipal Ordinance No. 98-01 imposes increased rentals and goodwill fees on stall holders at the renovated municipal public market, leaving respondent, or the municipal treasurer acting as his *alter ego*, no discretion on whether or not to collect the said rentals and fees from the stall holders, or whether or not to collect the same in the amounts fixed by the ordinance.

The Court further notes that respondent already deemed petitioners' stalls at the municipal public market vacated. Without such stalls, petitioners would be unable to conduct their businesses, thus, depriving them of their means of livelihood. It is imperative on petitioners' part to have the implementation of Municipal Ordinance No. 98-01 by respondent stopped the soonest. As this Court has established in its previous discussion, there is no more need for petitioners to exhaust administrative remedies,

considering that the fundamental issue between them and respondent is one of law, over which the courts have competence and jurisdiction. There is no other plain, speedy, and adequate remedy for petitioners in the ordinary course of law, except to seek from the courts the issuance of a writ of prohibition commanding respondent to desist from continuing to implement what is allegedly an invalid ordinance.

This brings the Court to the substantive issue in this Petition on the validity of Municipal Ordinance No. 98-01.

Respondent maintains that the imposition of goodwill fees upon stall holders at the municipal public market is not a revenue measure that requires a prior public hearing. Rentals and other consideration for occupancy of the stalls at the municipal public market are not matters of taxation.

Respondent's argument is specious.

Article 219 of the Local Government Code provides that a local government unit exercising its power to impose taxes, fees and charges should comply with the requirements set in Rule XXX, entitled "Local Government Taxation":

> Article 219. *Power to Create Sources of Revenue.*—Consistent with the basic policy of local autonomy, each LGU shall exercise its **power to create its own sources of revenue** and to levy taxes, fees, or **charges**, subject to the provisions of this Rule. Such taxes, fees, or charges shall accrue exclusively to the LGU. (Emphasis ours.)

Article 221(g) of the Local Government Code of 1991 defines "charges" as:

> Article 221. *Definition of Terms.*
>
> x x x x x x x x x
>
> (g) *Charges* refer to pecuniary liability, as **rents or fees** against persons or property. (Emphasis ours.)

Evidently, the revenues of a local government unit do not consist of taxes alone, but also other fees and charges. And rentals and goodwill fees, imposed by Municipal Ordinance

No. 98-01 for the occupancy of the stalls at the municipal public market, fall under the definition of charges.

For the valid enactment of ordinances imposing charges, certain legal requisites must be met. Section 186 of the Local Government Code identifies such requisites as follows:

Section 186. *Power to Levy Other Taxes, Fees or Charges*.— Local government units may exercise the power to levy taxes, fees or charges on any base or subject not otherwise specifically enumerated herein or taxed under the provisions of the National Internal Revenue Code, as amended, or other applicable laws: *Provided*, That the taxes, fees or charges shall not be unjust, excessive, oppressive, confiscatory or contrary to declared national policy: *Provided, further,* **That the ordinance levying such taxes, fees or charges shall not be enacted without any prior public hearing conducted for the purpose**. (Emphasis ours.)

Section 277 of the Implementing Rules and Regulations of the Local Government Code establishes in detail the procedure for the enactment of such an ordinance, relevant provisions of which are reproduced below:

Section 277. *Publication of Tax Ordinance and Revenue Measures*.—x x x.

x x x x x x x x x

(b) The conduct of public hearings shall be governed by the following procedure:

x x x x x x x x x

(2) In addition to the requirement for publication or posting, the *sanggunian* concerned shall cause the sending of **written notices** of the proposed ordinance, enclosing a copy thereof, to the interested or affected parties operating or doing business within the territorial jurisdiction of the LGU concerned.

(3) The notice or notices shall specify the date or dates and venue of the public hearing or hearings. The **initial public hearing** shall be held **not earlier than ten (10) days** from the sending out of the notice or notices, or the last day of publication, or date of posting thereof, whichever is later;

x x x x x x x x x

(c) **No tax ordinance or revenue measure shall be enacted or approved in the absence of a public hearing duly conducted in the manner provided under this Article.** (Emphases ours.)

It is categorical, therefore, that a public hearing be held prior to the enactment of an ordinance levying taxes, fees, or charges; and that such public hearing be conducted as provided under Section 277 of the Implementing Rules and Regulations of the Local Government Code.

There is no dispute herein that the notices sent to petitioners and other stall holders at the municipal public market were sent out on **6 August 1998**, informing them of the supposed "public hearing" to be held on **11 August 1998**. Even assuming that petitioners received their notice also on 6 August 1998, the "public hearing" was already scheduled, and actually conducted, only **five days** later, on 11 August 1998. This contravenes Article 277(b)(3) of the Implementing Rules and Regulations of the Local Government Code which requires that the public hearing be held no less than **ten days** from the time the notices were sent out, posted, or published.

When the *Sangguniang Bayan* of Maasin sought to correct this procedural defect through Resolution No. 68, series of 1998, dated 18 September 1998, respondent vetoed the said resolution. Although the *Sangguniang Bayan* may have had the power to override respondent's veto,[37] it no longer did so.

The defect in the enactment of Municipal Ordinance No. 98 was not cured when another public hearing was held on 22 January 1999, **after** the questioned ordinance was passed by the *Sangguniang Bayan* and approved by respondent on 17 August 1998. Section 186 of the Local Government Code prescribes that the public hearing be held **prior** to the enactment by a local government unit of an ordinance levying taxes, fees, and charges.

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[37] Section 55(c) of the Local Government Code provides that "(t)he local chief executive may veto an ordinance or resolution only once. The *sanggunian* may override the veto of the local chief executive concerned by two-thirds (2/3) vote of all its members, thereby making the ordinance effective even without the approval of the local chief executive concerned.

Since no public hearing had been duly conducted prior to the enactment of Municipal Ordinance No. 98-01, said ordinance is void and cannot be given any effect. Consequently, a void and ineffective ordinance could not have conferred upon respondent the jurisdiction to order petitioners' stalls at the municipal public market vacant.

IN VIEW OF THE FOREGOING, the instant Petition is *GRANTED*. The assailed Decision dated 28 November 2006 of the Court of Appeals in CA-G.R. SP No. 86182 is *REVERSED* and *SET ASIDE*. Municipal Ordinance No. 98-01 is *DECLARED* void and ineffective, and a writ of prohibition is *ISSUED* commanding the Mayor of the Municipality of Maasin, Iloilo, to permanently desist from enforcing the said ordinance. Petitioners are also *DECLARED* as lawful occupants of the market stalls they occupied at the time they filed the Petition for *Mandamus*/Prohibition docketed as Civil Case No. 25843. In the event that they were deprived of possession of the said market stalls, petitioners are entitled to recover possession of these stalls.

SO ORDERED.

Quisumbing,[*] *Carpio (Chairperson), Peralta,* and *Abad,*[**] *JJ.,* concur.

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[*] Per Special Order No. 755, dated 12 October 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Leonardo A. Quisumbing to replace Associate Justice Antonio Eduardo B. Nachura, who is on official leave.

[**] Per Special Order No. 753, dated 12 October 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Roberto A. Abad to replace Associate Justice Presbitero J. Velasco, Jr., who is on official leave.

THIRD DIVISION

[G.R. No. 183606. October 27, 2009]

CHARLIE T. LEE, *petitioner, vs.* **ROSITA DELA PAZ,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY; ELUCIDATED.— Primarily, this case stemmed from a forcible entry case filed by respondent against petitioner. A forcible entry case is an ejectment suit. In ejectment suits or ejectment proceedings, the only issue involved is: who is entitled to **physical or material possession** of the premises, that is, to **possession *de facto***, not possession *de jure*? Issues as to the right of possession or ownership are not involved in the action; evidence thereon is not admissible, except only for the purpose of determining the issue of possession. The main thing to be proven in an action for forcible entry is prior possession and that the same was lost through force, intimidation, threat, strategy and stealth, so that it behooves the court to restore possession **regardless of title or ownership**. The character of the property involved, as to whether it is still public land or not, is also of no moment. Even public lands can be the subject of forcible entry cases. The Court, in *David v. Cordova*, categorically declared that the land spoken of in Section 1, Rule 70 of the Rules of Court includes **all kinds of land**. The Court applied the well-known maxim in statutory construction that where the law does not distinguish, we should not distinguish. The Court also stressed that ejectment proceedings are summary proceedings only intended to provide an expeditious means of protecting **actual possession or right to possession** of property. Title is not involved. To repeat, the sole issue to be resolved is the question as to who is entitled to the physical or material possession of the premises or possession *de facto*. Hence, it does not matter that the land in dispute belongs to the government, and the government did not authorize either the plaintiff or defendant to occupy said land. The issue of possession may still be litigated between the plaintiff and the defendant.

2. ID.; ID.; ID.; ALLEGATIONS OF THE COMPLAINT.— In actions for forcible entry, two allegations are mandatory for the municipal court to acquire jurisdiction: *First*, the plaintiff must allege his **prior physical possession** of the property. *Second*, he must also allege that he was **deprived** of his possession by any of the means provided for in Section 1, Rule 70 of the Rules of Court, namely: **force, intimidation, threats, strategy, and stealth**.

3. ID.; ID.; ID.; MERE ALLEGATION OR CLAIM IS NOT PROOF; PRIOR PHYSICAL POSSESSION, NOT PROVEN.— Indeed, respondent's allegations in her Complaint were enough for the MTCC to acquire jurisdiction over respondent's forcible entry case against petitioner and his co-defendants. However, mere allegation or claim is not proof. Respondent still needs to prove, by preponderance of evidence, the allegations in her Complaint before she could be entitled to the ejectment of petitioner from the property. Hence, the Court must now ask whether respondent was able to discharge the quantum of proof required of her in this case. It is a basic rule in civil cases, including an action for forcible entry, that the party having the burden of proof must establish his case by a preponderance of evidence, which simply means "evidence which is of greater weight, or more convincing than that which is offered in opposition to it." Hence, parties who have the burden of proof must produce such quantum of evidence, with plaintiffs having to rely on the strength of their own evidence, not on the weakness of the defendant's. After an exhaustive review of the evidence on record, the Court finds that respondent was not able to satisfactorily prove her prior physical possession, nor her being deprived thereof by petitioner through force, intimidation, threat, strategy, and stealth. It is noteworthy that absence alone of prior physical possession by the plaintiff in a forcible entry case already warrants the dismissal of the complaint.

4. ID.; ID.; ID.; NOTARIZED TRANSFER OF RIGHTS IS GOOD EVIDENCE OF RESPONDENT'S *DE JURE*, NOT *DE FACTO*, POSSESSION OF THE PROPERTY.— The notarized Transfer of Rights dated 29 October 1990 executed by Danga in respondent's favor, covering the 143,417-square-meter property, likewise failed to satisfactorily establish

respondent's prior physical possession of the entire property, specifically, the two parcels of land also being claimed by petitioner. Said document is a good evidence of respondent's *de jure*, but not *de facto*, possession of the property. It may show that respondent acquired rights to the property by 29 October 1990, but it does not evidence that respondent also actually or physically took over possession of the property by said date.

5. ID.; ID.; ID.; TAX DECLARATION AND REAL PROPERTY TAX CLEARANCE DO NOT CONSTITUTE SUFFICIENT EVIDENCE OF PRIOR PHYSICAL POSSESSION.— The Tax Declaration and real property tax clearance for the entire 143,417-square-meter property in the name of respondent do not constitute sufficient evidence of prior physical possession either. These pieces of documentary evidence covered only tax year 2001. More importantly, the tax declaration and real property tax payment may constitute proof of a claim of title over, but not necessarily of actual possession of, the property so declared or for which the realty tax was paid.

6. ID.; EVIDENCE; PRESUMPTIONS; DISPUTABLE PRESUMPTIONS; GRANT OF FREE PATENTS PERFORMED IN THE COURSE OF THE OFFICIAL FUNCTIONS OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR) OFFICERS, ENJOYS THE PRESUMPTION OF REGULARITY.— In contrast, petitioner submitted as evidence Free Patents No. 045802-91-204 and No. 045802-91-203 granted in his favor over the two parcels of land he had been occupying, by virtue of which, OCTs No. P-619 and No. P-620 were issued in his name on **3 June 1991**. While the Court has repeatedly stated herein that titles to the subject property are immaterial to an action for forcible entry, it can reasonably infer from the grant of free patents to petitioner that he had complied with the requirements for the same, including the 30-year possession of the property subject of the patents. At the very least, petitioner has been in possession of the two parcels of land, for which he was granted free patents, **as early as 1960**. Necessarily then, petitioner possessed the two parcels of land before respondent, who admittedly acquired the 143,147-square-meter property from Danga only on **29**

October 1990. The grant of the free patents to petitioner, having been performed in the course of the official functions of the DENR officers, enjoys the presumption of regularity. This means that, absent evidence to the contrary, the Court may presume that the DENR officers issued the free patents to petitioner only after a determination that he had duly complied with all the requirements for the same.

7. CIVIL LAW; LAND TITLES AND DEEDS; LAND REGISTRATION; ONCE THE PATENT IS REGISTERED AND THE CORRESPONDING CERTIFICATE OF TITLE IS ISSUED, THE LAND CEASES TO BE PART OF THE PUBLIC DOMAIN.— The subsequent issuance on **10 December 2003** of Free Patent No. 045802-03-4722 and OCT No. P-46 in respondent's name and of Free Patent No. 045802-03-4723 and OCT No. P-47 in Remedios' name, covering their respective subdivided portions of the 143,417-square-meter property, is of no moment. Noticeably, the free patents and titles of respondent and her assignee only came 12 years after those of petitioner. Faced with the two sets of free patents and OCTs, one in the names of petitioner and the other in the names of respondent and her assignee, covering the same two parcels of land, the Court is more inclined to uphold the validity of the former. The Court can no longer extend the presumption of regularity to respondent's free patents and OCTs since these were preceded by petitioner's free patents and OCTs. Well settled is the rule that once the patent is registered and the corresponding certificate of title is issued, the land ceases to be part of the public domain and becomes private property, and the State can no longer award the same to another.

8. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY; JUDGMENT RENDERED THEREIN SHALL BE EFFECTIVE WITH RESPECT TO POSSESSION ONLY.— x x x The pronouncement of this Court in this case, however, on the validity of the free patents and OCTs of petitioner, on one hand, and those of respondent and her assignee, on the other, is made only in the course of the appreciation by the Court of the evidence submitted by the parties as regards prior possession of the parcels of land in dispute; and is to be regarded merely as provisional, hence, does not bar or prejudice an action between the same parties involving title to the land. Further,

Section 7, Rule 70 of the Rules of Court expressly provides that the judgment rendered in an action for forcible entry or unlawful detainer shall be effective with respect to the possession only and in no wise binds the title or affects the ownership of the land or building.

9. ID.; EVIDENCE; PRESENTATION OF EVIDENCE; OFFER OF EVIDENCE; APPELLATE COURT CANNOT CONSIDER DOCUMENTARY EVIDENCE PRESENTED FOR THE FIRST TIME ON APPEAL EVEN FOR THE PURPOSE OF DETERMINING THE ISSUE OF PRIOR POSSESSION.— x x x [T]he free patents and OCTs were issued to respondent and her assignee on **10 December 2003**. The MTCC promulgated its Decision in Civil Case No. 68-00 only on **3 May 2004**. Respondent still had the opportunity to present the said free patents and OCTs before the MTCC, but failed to do so without any explanation. Therefore, said pieces of documentary evidence cannot be considered by the appellate court even for the purpose of determining the issue of prior possession. With the reality that those documents were never presented and formally offered during the trial in the court *a quo*, their belated admission for purposes of having them duly considered in the resolution of the case on appeal would certainly be in conflict with Section 34, Rule 132 of the Rules of Court, which reads: SECTION 34. *Offer of Evidence*. – The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

APPEARANCES OF COUNSEL

Cesar M. Cariño for petitioner.
Marietta S. Rivera-Gesta for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure filed by petitioner Charlie T. Lee seeking the reversal and setting aside of the

Decision[1] dated 25 January 2008 and Resolution[2] dated 1 July 2008 of the Court of Appeals in CA-G.R. SP No. 97334. In its assailed Decision, the Court of Appeals dismissed petitioner's Petition for Review under Rule 42 of the 1997 Revised Rules of Civil Procedure because of petitioner's failure to establish his claim of ownership and right of possession over portions of respondent Rosita dela Paz's[3] property. Thus, the Court of Appeals affirmed the Decision[4] dated 4 April 2005 of the Regional Trial Court (RTC) of Antipolo City, Branch 71, in Civil Case No. 04-361, reversing the Decision[5] dated 3 May 2004 of the Municipal Trial Court in Cities (MTCC), Branch 1, Antipolo City, in Civil Case No. 68-00, and ordering petitioner to vacate portions of respondent's property that petitioner occupied. In its questioned Resolution, the Court of Appeals refused to reconsider its earlier Decision.

The undisputed facts of the case are as follows:

On 29 October 1990, Gabriel Danga (Danga) executed a notarized Transfer of Rights[6] transferring to respondent, for the consideration of ₱150,000.00, all his rights, interest, and title over a parcel of agricultural land located in Barrio Pinagbarilan (later known as Barangay San Isidro and now Barangay San Juan), Antipolo City,[7] covered by Homestead Application No. V-38136 (E-V-33129) in Danga's name,[8]

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[1] Penned by Associate Justice Rodrigo V. Cosico with Associate Justices Hakim S. Abdulwahid and Arturo G. Tayag, concurring; *rollo*, pp. 67-84.

[2] *Id.* at 86.

[3] Now deceased and substituted by her surviving sister, Remedios dela Paz-Mendoza, and the latter represented by Eduardo dela Paz; CA *rollo*, pp. 470-472.

[4] Penned by Judge Bayani Y. Ilano; *rollo*, pp. 224-226.

[5] Penned by Presiding Judge Antonio M. Olivete; *rollo*, pp. 197-199.

[6] *Rollo*, p. 91.

[7] Formerly Antipolo, Rizal.

[8] *Rollo*, p. 103.

approved on 12 July 1948. According to the actual survey of the said property, it measured 143,417 square meters.[9]

However, Danga, previous to the transfer of his rights over the property to respondent, transferred the very same rights to Josefina delos Reyes (Delos Reyes). Delos Reyes was able to secure the issuance, on 1 December 1989, of an Order of Transfer of Homestead Rights in her favor, from then Director of Lands Abelardo Palad. Respondent instituted before Department of Environment and Natural Resources (DENR) Region IV an administrative case for the cancellation of the Order of Transfer of Homestead Rights in Delos Reyes' favor, docketed as DENR 4 Case No. 5723.

During an ocular inspection conducted pursuant to DENR 4 Case No. 5723, DENR Region IV observed that certain portions of the 143,417-square-meter property were occupied by petitioner and several other persons.

Thus, on 13 September 2000, respondent filed before the MTCC a Complaint for Forcible Entry with Prayer for Issuance of Preliminary Mandatory Injunction against petitioner, docketed as Civil Case No. 68-00. Respondent later amended her Complaint to implead other defendants, namely: Jesus E. Viola (Viola), Juanito Magsino (Magsino), Evelyn Pestano (Pestano), and Victorio Datu (Datu).

Respondent alleged in her Complaint that she became the owner of the 143,417-square-meter property by virtue of the Transfer of Rights dated 19 October 1990 executed in her favor by the former owner, Danga. Since the transfer, respondent possessed the property peacefully, publicly, and adversely. She introduced valuable improvements thereon. She planted trees, and repaired Danga's old hut where she would occasionally stay to rest.

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[9] As evidenced by Technical Description of Lot No. 10008, Mcad-585, Lungsod Silangan Cadastre, Barangay San Juan, Antipolo City, which was approved on 31 January 1989, and verified to be correct by Isidro R. Gellez, Chief of the Technical Standards and Services Section on 25 September 1992, *rollo*, p. 105.

Respondent avowed that sometime in June 2000, petitioner and the other defendants in Civil Case No. 68-00 deprived her of possession of certain portions of her property. Taking advantage of respondent's absence due to her lingering sickness, petitioner and his co-defendants unlawfully entered said portions by means of stealth and strategy, and without respondent's knowledge and consent. Up to the present time, petitioner and his co-defendants remain in illegal possession of portions of respondent's property, despite respondent's repeated demands that possession of said portions be restored to her. Petitioner even went as far as assigning security men to the portions of the property he occupied to prevent respondent from recovering possession thereof.

In his Answer to respondent's Complaint, petitioner claimed to be the owner and occupant of the two parcels of land, which respondent averred to be part of her property. In fact, petitioner was already granted Free Patent Nos. 045802-91-204 and 045802-91-203 for these two parcels of land, and pursuant to which, he was issued Original Certificate of Title (OCT) Nos. P-619[10] and P-620[11] in his name on 3 June 1991. Additionally, the 143,417-square-meter property, which respondent was claiming, was still under the administration of the DENR, and had not yet been declared alienable and disposable; hence, the property was still public land.[12]

Petitioner further maintained that he never saw respondent occupy her alleged property. Respondent herself failed to introduce evidence of her prior physical possession of the property. Petitioner also did not receive from respondent any demand to vacate prior to the latter's filing of the Complaint for Forcible Entry before the MTCC.

Lastly, petitioner argued that respondent was guilty of forum shopping, because DENR 4 Case No. 5723 was still pending before DENR Region IV.

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[10] CA *rollo*, p. 162.

[11] *Id.* at 163.

[12] It has not been established that petitioner's two parcels of land are indeed part of respondent's property.

The three other defendants in Civil Case No. 68-00, namely, Viola, Magsino, and Pestano, asserted in their Answer that respondent had no cause of action against them, as respondent filed her Complaint for Forcible Entry before the MTCC more than two years after the afore-named defendants' occupation of their respective parcels of land. Respondent not only failed to allege prior physical possession of the parcels of land now occupied by the defendants, respondent also did not establish with certainty that said parcels were really within her property. The three defendants presented object evidence such as trees and other growing plants to prove their long possession of their respective parcels of land.

Datu, the other defendant in Civil Case No. 68-00, alleged in his Answer that he was the *bonafide* and lawful possessor and occupant of two parcels of land in Barrio San Isidro (formerly known as Barrio Pinagbarilan and now known as Barangay San Juan), Antipolo City. He had been in peaceful, continuous, and adverse possession of said parcels of land for a period of 15 years. He denied that these parcels of land were within respondent's property. Also, the Complaint for Forcible Entry was filed by respondent beyond the one year period set by law.

Before the MTCC could render judgment in Civil Case No. 68-00, DENR Region IV issued on 30 October 2000 its Resolution[13] in DENR 4 Case No. 5723, finding that:

> In the case of the first transfer of right in favor of [Delos Reyes], we are of the considered opinion that the same is bereft of validity. **Firstly**, the transfer of right was done sans the consent of the Secretary of Environment and Natural Resources; **secondly**, then Director of Lands, Abelardo Palad is no longer allowed under Executive Order No. 192 to issue an Order for the transfer of rights involving public land applications; and **thirdly**, [Delos Reyes] is not qualified nor an eligible homesteader about to succeed transferor, [Danga], as contemplated for (sic) under Section 20 of the Public Land Act.
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> x x x x x x x x x

[13] *Rollo,* pp. 167-173.

It is evident from the records of the case that the transfer of right executed by [Danga] in favor of Josefina delos Reyes was never sanctioned nor had the prior consent or approval of the Secretary of Environment and Natural Resources.

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On the other side of the fence, this Office is impressed by the fact that [herein respondent] laid her claims over the land in dispute. Although, the adverted transfer of rights may have been executed in a much later date, we believe, however, that this fact will not militate against her claims thereon. **The findings in the ocular inspection that she was ascertained an occupant of the contested area is a clear act of an exercise of dominion to the exclusion of others**. x x x. **We opine that [respondent's] overt act in occupying controverted land and filing instant protest for the cancellation of the transfer of rights in favor of [Delos Reyes], speaks well of a claimant who is in a better position to fit in the shoes of grantee, Gabriel Danga**.

x x x While some appear to have occupied and cultivated portions thereof in the persons of Messrs. [herein petitioner], Juanito Magsino, Jesus Viola and Mrs. Evelyn Pestano, these undertaking, however, will not merit any scant consideration. As we have herein clarified, and to reiterate with, well settled is the doctrine that "the approval of the application for the homestead has the effect of segregating the land from the public domain and divesting the Bureau of Lands of the control and possession of the same." Applying the same rule in this particular instance, we hold that the property in question is no longer considered a public land where the actual possession and cultivation are condition *sine qua non*. (Emphases supplied.)

The DENR Region IV finally adjudged:

WHEREFORE, In Light of All Foregoing Considerations, it is hereby resolved, as it is resolved, that the claim of [herein respondent] Rosita dela Paz over Lot 10008, Mcad 585, situated in Brgy. San Juan, Antipolo City, **BE GIVEN DUE COURSE.** Consequently, the Order of Transfer of [Homestead] Rights issued on [1 December 1989] by then Director, Abelardo Palad, and the subsequent Homestead Application of Josefina delos Reyes, is hereby declared **CANCELLED** and without force and effect.

[Respondent] Rosita dela Paz, is hereby **ORDERED** to file her Homestead Application over said Lot 10008, within sixty (60) days upon approval of the Order of Transfer of Rights by the Secretary of Environment and Natural Resources.[14] (Emphases supplied.)

Since no appeal or motion for reconsideration of the foregoing DENR Region IV Resolution had been filed, it became final and executory per Order[15] of DENR Region IV dated 22 June 2001. Following the directive of the DENR Region IV in the said Resolution, respondent, after being issued a Transfer of Homestead Rights[16] on 20 March 2002, filed her homestead application,[17] still under Danga's original Homestead Application No. V-38136 (E-V-33129). The Community Environment and Natural Resources Office (CENRO) of DENR Region IV, however, issued on 15 July 2003 an Order[18] rejecting and/or canceling from the records respondent's homestead application because respondent assigned a portion of the property covered thereby in favor of Remedios dela Paz (Remedios) and Emiliana M. Camino.

Respondent then filed a Free Patent Application covering the 143,417-square-meter property. However, considering respondent's assignment of a portion of her property to Remedios, respondent submitted a request for the subdivision of said property, together with the proposed Subdivision Plan. On 23 September 2003, the DENR Regional Technical Director approved respondent's Subdivision Plan. Subsequently, on 10 December 2003, Free Patent No. 045802-03-4722 and the corresponding OCT No. P-46[19] were issued in respondent's name, while Free Patent No. 045802-03-4723 and the resulting OCT No. P-47[20]

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[14] *Id.* at 173.

[15] *Id.* at 177-178.

[16] *Id.* at 308.

[17] *Id.* at 309.

[18] *Id.* at 238.

[19] Records, pp. 517-518.

[20] *Id.* at 519-520.

were issued in Remedios' name, covering their respective subdivided portions of the property.

On 3 May 2004, the MTCC rendered its Decision in favor of petitioner and other defendants in Civil Case No. 68-00. The MTCC dismissed respondent's Complaint for Forcible Entry on the ground that respondent failed to prove prior physical possession of the parcels of land in question. Prior physical possession of the property by the plaintiff is an indispensable requirement in the successful prosecution of a forcible entry case.

Respondent's appeal of the aforesaid MTCC Decision before the RTC was docketed as Civil Case No. 04-361. Respondent presented before the RTC the free patent and certificate of title issued in her name for the property. The RTC, in its Decision dated 4 April 2005, favored respondent and, in effect, reversed and set aside the appealed MTCC Decision. The RTC gave great weight and consideration to the DENR Region IV Resolution dated 30 October 2000 in DENR 4 Case No. 5723. The RTC ordered petitioner and his co-defendants in Civil Case No. 68-00 to vacate the portions of respondent's property that they were occupying.

Petitioner and his co-defendants in Civil Case No. 04-361 separately moved for the reconsideration of the aforesaid RTC judgment, but they were all denied in the RTC Order[21] dated 10 November 2006.

Petitioner, by himself, filed a Petition for Review of the RTC Decision dated 4 April 2005 before the Court of Appeals, docketed as CA-G.R. SP No. 97334. In its Decision dated 25 January 2008, the Court of Appeals dismissed petitioner's Petition and, thus, affirmed the RTC Decision dated 4 April 2005. Petitioner's Motion for Reconsideration was denied by the appellate court in its Resolution dated 1 July 2008.

Petitioner now comes before this Court raising the following issues:

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[21] *Rollo,* p. 324.

I

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE REVERSIBLE ERROR WHEN IT SUSTAINED THE CLAIM OF THE RESPONDENT THAT SHE WAS ABLE TO FULLY ESTABLISH EXCLUSIVE OWNERSHIP AND PHYSICAL POSSESSION OVER THE [143,417-SQUARE METER PROPERTY], HEAVILY RELYING ON THE DENR RESOLUTION DATED 30 OCTOBER 2000, DESPITE THE ABSENCE OF CLEAR, CONVINCING AND COMPETENT EVIDENCE TO PROVE [HER] CLAIM AND DESPITE THE FACT THAT IT WAS PETITIONER LEE WHO HAD BEEN FOR A LONG TIME IN PRIOR, PHYSICAL, ADVERSE, UNINTERRUPTED AND CONTINUOUS POSSESSION OF [PORTIONS OF THE SAID 143,417-SQUARE METER PROPERTY].

II

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE REVERSIBLE ERROR IN HOLDING THAT THE [143,417-SQUARE-METER PROPERTY] IS NO LONGER CONSIDERED A PUBLIC LAND, AS POSSESSION AND OWNERSHIP OF THE SAID PROPERTY WERE LODGED WITH THE RESPONDENT, DESPITE THE FACT THAT IT IS PETITIONER LEE WHO HAS THE LEGAL RIGHT TO POSSESSION AND OWNERSHIP OF THE [PORTIONS OF THE SAID PROPERTY].

III

THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE REVERSIBLE ERROR IN HOLDING THAT RESPONDENT VALIDLY ACQUIRED HER TITLE OVER THE [143,417-SQUARE METER PROPERTY] FROM THE PREVIOUS HOMESTEAD GRANTEE, GABRIEL DANGA, DESPITE THE FACT THAT BY VIRTUE OF THE ADVERSE, PUBLIC, CONTINUOUS AND UNINTERRUPTED POSSESSION OF [PORTIONS OF THE SAID PROPERTY] BY PETITIONER, HE IS ACTUALLY THE ONE LEGALLY ENTITLED TO CLAIM POSSESSION AND OWNERSHIP OVER [SUCH PORTIONS].

IV

THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS REVERSIBLE ERROR IN NOT HOLDING THAT THE REJECTION OF RESPONDENT'S HOMESTEAD APPLICATION

PERMANENTLY BARS HER FROM FILING ANOTHER APPLICATION, THIS TIME FOR FREE PATENT, AND FROM BEING GRANTED SUCH FREE PATENT OVER THE [ENTIRE 143,417-SQUARE METER PROPERTY].

V

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS REVERSIBLE ERROR AND VIOLATED THE RULES WHEN IT ALLOWED THE INTRODUCTION OF EVIDENCE OF TITLES AND PATENTS BEFORE THE [RTC] EVEN FOR THE FIRST TIME ON APPEAL, DESPITE MISERABLE FAILURE OF RESPONDENT TO PRESENT THE SAME BEFORE THE [MTCC].

Primarily, this case stemmed from a forcible entry case filed by respondent against petitioner. A forcible entry case is an ejectment suit. In ejectment suits or ejectment proceedings, the only issue involved is: who is entitled to **physical or material possession** of the premises, that is, to **possession *de facto***, not possession *de jure*? Issues as to the right of possession or ownership are not involved in the action; evidence thereon is not admissible, except only for the purpose of determining the issue of possession.[22] The main thing to be proven in an action for forcible entry is prior possession and that the same was lost through force, intimidation, threat, strategy and stealth, so that it behooves the court to restore possession **regardless of title or ownership**.[23]

The character of the property involved, as to whether it is still public land or not, is also of no moment. Even public lands can be the subject of forcible entry cases. The Court, in *David v. Cordova*,[24] categorically declared that the land spoken

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[22] *Habagat Grill v. DMC-Urban Property Developer, Inc.*, 494 Phil. 603, 618-619 (2005).

[23] *Domalsin v. Valenciano*, G.R. No. 158687, 25 January 2006, 480 SCRA 114, 132.

[24] G.R. No. 152992, 27 July 2005, 464 SCRA 384, 402, citing *Robles v. Zambales Chromite Mining Co., et al.*, 104 Phil. 688, 690 (1958).

of in Section 1, Rule 70[25] of the Rules of Court includes **all kinds of land**. The Court applied the well-known maxim in statutory construction that where the law does not distinguish, we should not distinguish. The Court also stressed that ejectment proceedings are summary proceedings only intended to provide an expeditious means of protecting **actual possession or right to possession** of property. Title is not involved. To repeat, the sole issue to be resolved is the question as to who is entitled to the physical or material possession of the premises or possession *de facto*.[26] Hence, it does not matter that the land in dispute belongs to the government, and the government did not authorize either the plaintiff or defendant to occupy said land.[27] The issue of possession may still be litigated between the plaintiff and the defendant.

This brings the Court to the fundamental issue in the case at bar: who, between respondent and petitioner, has the right to possess the two parcels of land presently occupied by the latter, but which the former insists to be part of her bigger property?

In actions for forcible entry, two allegations are mandatory for the municipal court to acquire jurisdiction: *First*, the plaintiff must allege his **prior physical possession** of the property. *Second*, he must also allege that he was **deprived** of his possession by any of the means provided for in Section 1, Rule 70 of the

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[25] **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, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year, after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs.

[26] *David v. Cordova*, *supra* note 24.

[27] *Id.*, citing *Pitargue v. Sevilla*, 92 Phil. 5 (1952).

Rules of Court, namely: **force, intimidation, threats, strategy, and stealth**.[28]

There is no issue that respondent was able to sufficiently allege in her Complaint before the MTCC the material facts constituting forcible entry and, as a result, the MTCC duly acquired jurisdiction over her Complaint. Respondent alleged prior possession in her Complaint, claiming that she had acquired possession of the 143,417-square meter property since 19 October 1990, when Danga executed the Transfer of Rights over said property in her favor; that she introduced improvements on the property by planting trees; and that she also repaired the *nipa* hut Danga built on said property, where she would stay for rest "off and on." Respondent further narrated in her Complaint that petitioner and the other named defendants, taking advantage of respondent's absence because of lingering illness, entered into portions of the 143,417-square meter property "unlawfully," "without respondent's knowledge and consent," and "by means of stealth and strategy." Respondent additionally claimed that petitioner assigned security men to prevent the former from recovering possession of the portion of her property being occupied by the latter.

Indeed, respondent's allegations in her Complaint were enough for the MTCC to acquire jurisdiction over respondent's forcible entry case against petitioner and his co-defendants. However, mere allegation or claim is not proof.[29] Respondent still needs to prove, by preponderance of evidence, the allegations in her Complaint before she could be entitled to the ejectment of petitioner from the property.

Hence, the Court must now ask whether respondent was able to discharge the quantum of proof required of her in this case.

Obviously, the foregoing question is shrouded by a conflict in factual perception, a conflict that is ordinarily not subject to a petition for review under Rule 45 of the Rules of Court. But

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[28] *Spouses Tirona v. Alejo*, 419 Phil. 285, 299 (2001).

[29] *Sadhwani v. Court of Appeals*, 346 Phil. 54, 67 (1997).

the Court is constrained to resolve it, because the factual findings of the RTC and the Court of Appeals are contrary to those of the MTCC. Thus, the Court will rule herein on factual issues as an exception to the general rule.[30]

It is a basic rule in civil cases, including an action for forcible entry, that the party having the burden of proof must establish his case by a preponderance of evidence, which simply means "evidence which is of greater weight, or more convincing than that which is offered in opposition to it." Hence, parties who have the burden of proof must produce such quantum of evidence, with plaintiffs having to rely on the strength of their own evidence, not on the weakness of the defendant's.[31]

After an exhaustive review of the evidence on record, the Court finds that respondent was not able to satisfactorily prove her prior physical possession, nor her being deprived thereof by petitioner through force, intimidation, threat, strategy, and stealth. It is noteworthy that absence alone of prior physical possession by the plaintiff in a forcible entry case already warrants the dismissal of the complaint.[32]

In the present case, respondent, to establish her supposed prior physical possession of the 143,417-square meter property, which included the two parcels of land now being occupied by petitioner, relied on (1) the DENR Region IV Resolution dated 30 October 2000 in DENR 4 Case No. 5723; (2) the notarized Transfer of Rights dated 29 October 1990 executed by Danga in respondent's favor; and (3) the Tax Declaration in respondent's name, covering the 143,417-square-meter property, on file with the Antipolo City Assessor's Office, together with the real property tax clearance for the year 2001 from the Antipolo City Treasurer's Office.

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[30] *Montanez v. Mendoza*, 441 Phil. 47, 56-57 (2002).

[31] *Buduhan v. Pakurao*, G.R. No. 168237, 22 February 2006, 483 SCRA 116, 122.

[32] *Sampayan v. Court of Appeals*, 489 Phil. 200, 208 (2005).

The Court stresses that DENR 4 Case No. 5723 before DENR Region IV involved respondent's Formal Protest against Delos Reyes' homestead patent application covering the same 143,417-square meter property. The central issue in said administrative case was who between respondent and Delos Reyes had a better right to file a homestead application for the property. The Resolution dated 30 October 2000 of DENR Region IV in DENR 4 Case No. 5723 – canceling Delos Reyes' application for homestead patent and ordering respondent to file her application for homestead application – was not determinative at all of the issue of who between respondent and petitioner had prior physical possession of the two parcels of land, which both are now claiming to be their own.

The very general statements of DENR Region IV in a Resolution dated 30 October 2000 – that the occupation and cultivation by petitioner and his co-defendants in Civil Case No. 68-00 of portions of the 143,417-square-meter property merited "scant consideration," because Danga's approved homestead application already removed the entire property from public domain – themselves deserve little weight in the case before us. Again, in an action for forcible entry, as the one at bar, it does not matter whether the land is public or private. What are essentials are that the plaintiff had prior physical possession of the land; and that he was unlawfully deprived thereof by force, intimidation, threat, strategy, and stealth.

Moreover, in an ocular inspection conducted in relation to DENR 4 Case No. 5723, DENR Region IV even acknowledged that the southern portion of the 143,417-square-meter property was then already being **occupied by petitioner**, allegedly since 1980, and that said portion was **fully enclosed with steel post and barbwire, planted to mangoes, mahogany tress, and assorted fruit-bearing trees**.[33]

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[33] *Rollo*, p. 168; Investigation Report of the DENR Region IV, Manila-CENRO, Antipolo City, dated 25 August 2000, *rollo*, pp. 295-298.

Finally, on this matter, the Resolution dated 30 October 2000 of DENR Region IV in DENR 4 Case No. 5723 cannot be the source of respondent's absolute right over the entire 143,417-square-meter property, to the exclusion of all others, including petitioner, when said resolution merely decreed in the end that she had **filed her application for homestead patent**. To recall, when respondent did file such an application, it was **rejected** by DENR Region IV, prompting respondent to then file an application for a free patent, which was subsequently granted.

Given the foregoing, there is nothing in the DENR Region IV Resolution dated 30 October 2000 in DENR 4 Case No. 5723 to prove that respondent was in actual possession of the two parcels of land in dispute prior to petitioner.

The notarized Transfer of Rights dated 29 October 1990 executed by Danga in respondent's favor, covering the 143,417-square-meter property, likewise failed to satisfactorily establish respondent's prior physical possession of the entire property, specifically, the two parcels of land also being claimed by petitioner. Said document is a good evidence of respondent's *de jure*, but not *de facto*, possession of the property. It may show that respondent acquired rights to the property by 29 October 1990, but it does not evidence that respondent also actually or physically took over possession of the property by said date.

The Tax Declaration and real property tax clearance for the entire 143,417-square-meter property in the name of respondent do not constitute sufficient evidence of prior physical possession either. These pieces of documentary evidence covered only tax year 2001. More importantly, the tax declaration and real property tax payment may constitute proof of a claim of title over,[34] but not necessarily of actual possession of, the property so declared or for which the realty tax was paid.

In contrast, petitioner submitted as evidence Free Patents No. 045802-91-204 and No. 045802-91-203 granted in his favor over the two parcels of land he had been occupying, by virtue

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[34] See *Republic v. Court of Appeals*, 328 Phil. 238, 248 (1996).

of which, OCTs No. P-619 and No. P-620 were issued in his name on **3 June 1991**. While the Court has repeatedly stated herein that titles to the subject property are immaterial to an action for forcible entry, it can reasonably infer from the grant of free patents to petitioner that he had complied with the requirements for the same, including the 30-year possession of the property subject of the patents.[35] At the very least, petitioner has been in possession of the two parcels of land, for which he was granted free patents, **as early as 1960**. Necessarily then, petitioner possessed the two parcels of land before respondent, who admittedly acquired the 143,147-square-meter property from Danga only on **29 October 1990**. The grant of the free patents to petitioner, having been performed in the course of the official functions of the DENR officers, enjoys the presumption of regularity. This means that, absent evidence to the contrary, the Court may presume that the DENR officers issued the free patents to petitioner only after a determination that he had duly complied with all the requirements for the same.

The subsequent issuance on **10 December 2003** of Free Patent No. 045802-03-4722 and OCT No. P-46 in respondent's name and of Free Patent No. 045802-03-4723 and OCT No. P-47 in Remedios' name, covering their respective subdivided portions of the 143,417-square-meter property, is of no moment. Noticeably, the free patents and titles of respondent and her assignee only came 12 years after those of petitioner. Faced with the two sets of free patents and OCTs, one in the names

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[35] Section 44 of Commonwealth Act No. 141, as amended by Republic Act No. 6940 (which took effect on 28 March 1990), provides the following requirements for a grant of free patent over public agricultural land:

Sec. 44. Any natural-born citizen of the Philippines who is not the owner of more than twelve (12) hectares and who, for **at least thirty (30) years prior to the effectivity of this amendatory Act**, has continuously occupied and cultivated, either by himself or through his predecessors-in-interest a tract or tracts of agricultural public lands subject to disposition, who shall have paid the real estate tax thereon while the same has not been occupied by any person shall be entitled, under the provisions of this Chapter, to have a free patent issued to him for such tract or tracts of such land not to exceed twelve (12) hectares.

of petitioner and the other in the names of respondent and her assignee, covering the same two parcels of land, the Court is more inclined to uphold the validity of the former. The Court can no longer extend the presumption of regularity to respondent's free patents and OCTs since these were preceded by petitioner's free patents and OCTs. Well settled is the rule that once the patent is registered and the corresponding certificate of title is issued, the land ceases to be part of the public domain and becomes private property,[36] and the State can no longer award the same to another. The pronouncement of this Court in this case, however, on the validity of the free patents and OCTs of petitioner, on one hand, and those of respondent and her assignee, on the other, is made only in the course of the appreciation by the Court of the evidence submitted by the parties as regards prior possession of the parcels of land in dispute; and is to be regarded merely as provisional, hence, does not bar or prejudice an action between the same parties involving title to the land. Further, Section 7, Rule 70 of the Rules of Court expressly provides that the judgment rendered in an action for forcible entry or unlawful detainer shall be effective with respect to the possession only and in no wise binds the title or affects the ownership of the land or building.[37]

In addition, the free patents and OCTs were issued to respondent and her assignee on **10 December 2003**. The MTCC promulgated its Decision in Civil Case No. 68-00 only on **3 May 2004**. Respondent still had the opportunity to present the said free patents and OCTs before the MTCC, but failed to do so without any explanation. Therefore, said pieces of documentary evidence cannot be considered by the appellate court even for the purpose of determining the issue of prior possession. With the reality that those documents were never presented and formally offered during the trial in the court *a quo*, their belated admission for purposes of having them duly considered in the resolution of the case on appeal would certainly

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[36] *Director of Lands v. De Luna*, 110 Phil. 28, 31 (1960).

[37] *Refugia v. Court of Appeals*, 327 Phil. 982, 1004 (1996).

be in conflict with Section 34, Rule 132 of the Rules of Court,[38] which reads:

> SECTION 34. *Offer of Evidence*. – The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

In view of the fact that respondent failed to substantiate with preponderance of evidence her prior possession of the two disputed parcels of land, she cannot consequently claim, and this Court cannot make a finding, that she has been subsequently ousted from said property or dispossessed of the same by petitioner.

The Court finds no reason to disturb petitioner's possession of the two parcels of land. The Court has consistently held that regardless of the actual condition of the title to the property, the party in peaceable, quiet possession shall not be thrown out by a strong hand, violence, or terror. Courts will always uphold respect for prior possession.[39] Whatever may be the character of his possession, if he has in his favor prior possession in time, he has the security that entitles him to remain on the property until a person with a better right lawfully ejects him.[40]

WHEREFORE, premises considered, the instant Petition for Review, is hereby *GRANTED*. The Decision dated 25 January 2008 and Resolution dated 1 July 2008 of the Court of Appeals in CA-G.R. SP No. 97334, affirming the Decision dated 4 April 2005 of the Regional Trial Court of Antipolo City, Branch 71, in Civil Case No. 04-361, are hereby *REVERSED AND SET ASIDE*. The Decision dated 3 May 2004 of the Municipal Trial Court in Cities, Branch 1, Antipolo City, in Civil Case No. 68-00, dismissing respondent's

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[38] *Roman Catholic Bishop of Kalibo, Aklan v. Municipality of Buruanga, Aklan*, G.R. No. 149145, 31 March 2006, 486 SCRA 229.

[39] *Pajuyo v. Court of Appeals*, G.R. No. 146364, 3 June 2004, 430 SCRA 492, 510.

[40] *Id.* at 510-511.

Complaint for Forcible Entry is hereby *REINSTATED*. Costs against the respondent.

SO ORDERED.

Quisumbing,[*] *Carpio (Chairperson), Peralta,* and *Abad,*[**] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 184957. October 27, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GRACE VENTURA *y* NATIVIDAD,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165; ILLEGAL SALE OF DRUGS; ELEMENTS.— In prosecutions involving the illegal sale of drugs, what is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited or regulated drug as evidence. For conviction of the crime of illegal sale of prohibited or regulated drugs, the following elements must concur: (1) the identities of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment for it. The testimonial and documentary pieces of evidence adduced by the prosecution in support of its case against accused-appellant establish the presence of these elements.

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[*] Per Special Order No. 755, dated 12 October 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Leonardo A. Quisumbing to replace Associate Justice Antonio Eduardo B. Nachura, who is on official leave.

[**] Per Special Order No. 753, dated 12 October 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Roberto A. Abad to replace Associate Justice Presbitero J. Velasco, Jr., who is on official leave.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NON-PRESENTATION OF THE INFORMER, WHERE HIS TESTIMONY WOULD BE MERELY CORROBORATIVE OR CUMULATIVE, IS NOT FATAL TO THE PROSECUTION'S CASE.— There was no need to present the poseur-buyer, since PO2 Sarmiento and PO3 Magsakay witnessed the whole transaction, where the marked money was exchanged for one sachet of *shabu*. The poseur-buyer was clearly visible from where PO2 Sarmiento and PO3 Magsakay were standing. In fact, the testimony of a lone prosecution witness, as long as it is positive and clear and not arising from an improper motive to impute a serious offense to the accused, deserves full credit. Non-presentation of the informer, where his testimony would be merely corroborative or cumulative, is not fatal to the prosecution's case.

3. ID.; ID.; ID.; MERE DENIAL AND ALLEGATIONS OF FRAME-UP HAVE BEEN INVARIABLY VIEWED BY THE COURTS WITH DISFAVOR, FOR THESE DEFENSES ARE EASILY CONCOCTED.— Accused-appellant's twin defenses of denial and frame-up must fail. Mere denial and allegations of frame-up have been invariably viewed by the courts with disfavor, for these defenses are easily concocted. These are common and standard defenses in prosecutions involving violation of the Dangerous Drugs Law.

4. ID.; ID.; ID.; TESTIMONIES OF POLICE OFFICERS INVOLVED IN A BUY-BUST OPERATION DESERVE FULL FAITH AND CREDIT GIVEN THE PRESUMPTION THAT THEY HAVE PERFORMED THEIR DUTIES REGULARLY; EXPLAINED.— x x x In a long line of cases, we have ruled that the testimonies of police officers involved in a buy-bust operation deserve full faith and credit, given the presumption that they have performed their duties regularly. This presumption can be overturned if clear and convincing evidence is presented to prove either of two things: (1) that they were not properly performing their duty, or (2) that they were inspired by an improper motive. Otherwise, the police officers' testimonies on the operation deserve full faith and credit. Accused-appellant failed to adduce evidence to substantiate her claim of irregularity in the performance of duty on the part of the police officers. This bare allegation of

irregularity in the performance of duty remained self-serving and bereft of any supporting evidence. Neither was any ill motive imputed on the part of the police officers, thus failing to buttress the defense's claim of frame-up. Against the positive testimonies of the prosecution witnesses, accused-appellant's plain denial of the offenses charged, unsubstantiated by any credible and convincing evidence, must simply fail. This Court realizes the disastrous consequences on the enforcement of law and order, not to mention the well being of society, if the courts accept in every instance this form of defense, which can be so easily fabricated. It is precisely for this reason that the legal presumption that official duty has been regularly performed exists. If she were truly aggrieved, it is quite surprising why accused-appellant did not even attempt to file a criminal or an administrative complaint, *e.g.*, for planting drugs, against the arresting officers. Such inaction runs counter to the normal human conduct and behavior of one who feels truly aggrieved by the act complained of. The totality of the evidence points to the fact of the sale of the prohibited drug, with the prosecution witnesses clearly identifying accused-appellant as the offender.

5. CRIMINAL LAW; REPUBLIC ACT NO. 9165; ILLEGAL SALE OF DRUGS; NO BROKEN CHAIN IN THE CUSTODY OF THE SEIZED ITEM IN CASE AT BAR.— Contrary to accused-appellant's claim, there is no broken chain in the custody of the seized item, found to be *shabu*, from the time the police asset turned it over to PO3 Magsakay, to the time it was turned over to the investigating officer, and up to the time it was brought to the forensic chemist at the PNP Crime Laboratory for laboratory examination. x x x [T]he purpose of the procedure outlined in the implementing rules is centered on the *preservation* of the *integrity* and *evidentiary value* of the seized items. The testimony of PO2 Sarmiento outlines the chain of custody of the confiscated item, *i.e.*, sachet of *shabu*: x x x All documentary, testimonial, and object pieces of evidence, including the markings on the plastic sachet containing the *shabu*, prove that the substance tested by the forensic chemist, whose laboratory tests were well-documented, was the same as that taken from accused-appellant. The foregoing evidence established and preserved the identity of the confiscated *shabu*. Moreover, 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. Accused-appellant, in this case, bears the burden to make some showing that the evidence was tampered or meddled with, to overcome a presumption of regularity in the handling of exhibits by public officers and a presumption that they properly discharged their duties.

6. ID.; ID.; ID.; IMPOSABLE PENALTY; CASE AT BAR.— Following the provisions of Section 5 in relation to Section 26 of Article II, Republic Act No. 9165, the illegal sale of prohibited or regulated drugs is penalized with *life imprisonment* to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00. The statute, in prescribing the range of penalties imposable, does not concern itself with the amount of dangerous drug sold by an accused. x x x Applying the x x x provisions of Republic Act No. 9165, the penalty imposed by the RTC, as affirmed by the Court of Appeals, is proper. There being no mitigating or aggravating circumstances attending accused-appellant's violation of the law, the penalty to be imposed is life imprisonment. Considering that the weight of the *shabu* confiscated from accused-appellant is 0.124 gram, the amount of ₱500,000.00 imposed by the court *a quo,* being in accordance with law and upheld by the appellate court, is similarly sustained by this Court.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

CHICO-NAZARIO, *J.*:

For Review under Rule 45 of the Revised Rules of Court is the Decision[1] dated 30 June 2008 of the Court of Appeals in CA-G.R. CR-HC No. 02127, entitled *People of the Philippines*

[1] Penned by Associate Justice Rosmari D. Carandang with Associate Justices Portia Aliño-Hormachuelos and Estela M. Perlas-Bernabe, concurring; *rollo*, pp. 2-17.

v. Grace Ventura y Natividad affirming the Decision[2] rendered by the Regional Trial Court (RTC), Branch 78, Malolos, Bulacan, dated 20 January 2006 in Criminal Case No. 3244-M-2003, convicting Grace Ventura *y* Natividad (accused-appellant) of violation of Section 5, in relation to Section 26, Article II of Republic Act No. 9165.[3] Accused-appellant was meted the penalty of life imprisonment and a fine of ₱500,000.00.

In an Information dated 12 August 2003, accused-appellant Grace Ventura *y* Natividad and Danilo Ventura *y* Laloza were charged before the RTC of Malolos, Bulacan with illegal sale of *shabu* in violation of Section 5, in relation to Section 26, Article II of Republic Act No. 9165. The case was docketed as Criminal Case No. 3244-M-2003 and raffled to Branch 78 of the RTC of Malolos, Bulacan. The Information contained the following allegations:

> The undersigned Asst. Provincial Prosecutor accuses Grace Ventura *y* Natividad and Danilo Ventura *y* Laloza @ Danny of Violation of Sec. 5, in relation to Sec. 26, Art. II of R.A. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," committed as follows:
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> That on or about the 10th day of August 2003, in the City of Malolos, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, in conspiracy with each other, did then and there willfully, unlawfully and feloniously sell, trade, deliver, give away, dispatch in transit and transport dangerous drug consisting of one (1) heat-sealed transparent plastic sachet of Methylamphetamine hydrochloride weighing 0.124 gram.[4]

During arraignment, both accused entered "NOT GUILTY" pleas. Trial on the merits ensued.

The prosecution presented as witnesses Police Officer (PO) 2 Lorenzo Sarmiento (Sarmiento) and PO3 Leonardo Magsakay

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[2] Penned by Judge Gregorio S. Sampaga; records, pp. 236-245.

[3] Comprehensive Dangerous Drugs Act of 2002.

[4] Records, p. 2.

(Magsakay). Accused-appellant Grace Ventura and Bernard Ventura were witnesses for the defense.

PO2 Sarmiento, 37 years old, married, police officer and a resident of Sagrada Familia, Hagonoy, Bulacan, and PO3 Magsakay, 40 years old, married, police officer, and a resident of Sikatuna St., San Gabriel, Malolos, Bulacan, testified to receiving information from concerned citizens of Sto. Rosario, Malolos, Bulacan, and reports received by Department of Interior and Local Government (DILG) Secretary Joey Lina on the alleged involvement of Danilo *alias* "Danny" (father of accused-appellant) and accused-appellant in illegal drugs trade. On the strength of this confidential information, a surveillance operation was conducted by operatives of the Malolos Police Station in Malolos, Bulacan, two days before the buy-bust operation. Results of the surveillance operation were relayed to the chief of police, who thereafter instructed them to conduct a buy-bust operation against accused-appellant and Danilo. The team was composed of PO2 Sarmiento, PO1 Michael Silla, PO3 Magsakay, and a police asset.

On 10 August 2003, a briefing was conducted among the members of the buy-bust team. During said briefing, PO2 Sarmiento placed the markings "LCS," which correspond to his initials, on the buy-bust money. The marked money consisted of three ₱100.00 bills and one ₱50.00 bill. A police asset was also designated as poseur-buyer. Both the buy-bust operation and serial numbers of the bills to be used as buy-bust money were recorded in the police blotter. Prior to proceeding with the operation, the buy-bust team coordinated with the Philippine Drug Enforcement Agency (PDEA) and was assigned a control number for the operation, with its pre-operational sheet signed by Hashim Maung of PDEA.

After being briefed on the operation, the buy-bust team proceeded to the target site. While the members of the team positioned themselves at the alley leading towards the house of accused-appellant, the police asset went directly to the gate of Danilo and accused-appellant. The gate was approximately ten meters away from them.

From where they were standing, the police officers saw the police asset knocking at the gate. Thereupon, Danilo stepped out. The police asset handed the marked money to Danilo. Danilo closed the gate and went inside the house. Moments later, Grace (accused-appellant) went out and handed something to the police asset. Indicating the sale was consummated, the police asset then executed his pre-arranged signal by touching his hair with his right hand. The police officers rushed towards the gate but accused-appellant noticed them and closed the gate. PO2 Sarmiento pushed open the gate. As PO2 Sarmiento was entering the compound, he saw a man holding a "*gulok*." It turned out that the man holding the "*gulok*" or bolo was one of Danilo's sons, Vergel Ventura, who attempted to hack PO2 Sarmiento. PO2 Sarmiento informed him that he was a police officer, but Vergel still tried to hack him with the bolo causing him to seek cover outside the gate while parrying the attack. PO3 Magsakay drew his gun and poked it at Vergel, who ran inside the house. PO2 Sarmiento entered the gate and arrested Danilo, while PO2 Magsakay arrested accused-appellant. PO1 Silla arrested Vergel. After frisking Danilo, PO2 Sarmiento recovered from him the marked money used for the buy-bust operation. The police asset handed to PO2 Sarmiento the *shabu* he bought from accused-appellant. The Venturas were apprised of their rights and informed of the offense committed. Thereafter, the suspects were brought to the police station for further investigation.

The testimony of forensic chemist Nellson Cruz Sta. Maria was dispensed with due to the admission of the defense as to the existence and due execution of the Request for Laboratory Examination, Chemistry Report No. D-606-2003, and the specimens subject of the examination.

The laboratory examination conducted by Police Inspector (P/Insp.) and Forensic Chemical Officer Nellson Cruz Sta. Maria on the confiscated specimen yielded the following results:

SPECIMEN SUBMITTED:

A- One (1) heat-sealed transparent plastic sachet with markings "LCS BB" containing 0.124 gram of white crystalline substance.

PURPOSE OF THE LABORATORY EXAMINATION:

To determine the presence of dangerous drug. x x x.

FINDINGS:

Qualitative examination conducted on the above-stated specimen gave POSITIVE result to the test for the presence of Methylamphetamine hydrochloride, a dangerous drug. x x x.

CONCLUSION:

Specimen A contains Methylamphetamine hydrochloride, a dangerous drug.[5]

The defense denied all material allegations of the prosecution. Grace Ventura, 28 years old, single and a resident of Sabitan, Sto. Rosario, Malolos, Bulacan testified that she was at her house along Sabitan on 10 August 2003 when she saw her brother Bernard Ventura, *alias* "Bening," having an argument with "Badong," a tricycle driver. As Badong was leaving, accused-appellant heard him threatening his brother, saying he would exact vengeance on him. Thereafter, at about 3 to 4 o'clock in the afternoon of the same day, a group of policemen in civilian clothes barged into their house by kicking the door. The group was apparently looking for his brother *alias* "Bening." The group searched the house. Not satisfied, the policemen took their money and told her to point to them her brother's house. She informed them that his house was at the crossing. The policemen took her. As she was being taken by the police, she managed to tell her father, who was at the other house, to follow her because the policemen were taking her. The policemen took her to the municipal hall, where she was followed by one of her brothers an hour later and by her father half an hour later. She then saw her father talking to the policemen. Later on, both she and her father were placed inside the detention cell.

On cross-examination, accused-appellant testified that she was with her father at their house in Sabitan at the time of arrest. She denied that her brother Vergel was at their house at the time, but admitted there was a pending direct assault

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[5] *Id.* at 28.

case against him, for interfering in her and her father's arrest. Accused-appellant admitted that it was only at the time of their arrest that she came to know of the police officers who arrested them, and that she and her father had no personal quarrel with the policemen. Accused-appellant maintained that the drugs allegedly taken from her possession were only planted by the police officers. She admitted to not filing any charges against them for the planting of evidence.

On redirect, accused-appellant reiterated her testimony on direct examination that she was merely taken by the police authorities so she could show them her brother's house. She again stated that it was Bening, her brother, who had a misunderstanding with a certain Badong for the latter's failure to remit the boundary for the tricycle he was driving.

Bernard Ventura, *alias* "Bening," 31 years old, married, a tricycle driver, and a resident of Sumapang Matanda, Malolos, Bulacan, testified that he was the brother of accused-appellant. On 10 August 2003, he was at his house along Sumapang Matanda watching television, when a group of police officers went inside his house asking if he had *shabu*. They were accompanied by Badong, the same man he had an argument with earlier that day. The policemen informed him that his father Danilo and sister, accused-appellant, had been arrested for selling prohibited drugs. He was taken to the Malolos municipal hall and charged with violation of Section 5, Article II of Republic Act No. 9165. The case was dismissed by Branch 20 of the RTC of Malolos, Bulacan. He denied all the allegations against him, his father, and his sister, contending that the only reason for their arrest was the quarrel he had with Badong, who was a police asset.

On 9 February 2005, an order was issued by the trial court dismissing the charge against accused Danilo Ventura *y* Laloza pursuant to Article 89 of the Revised Penal Code, after Ariel B. Santiago, warden of the Bulacan Provincial Jail, informed said court of the untimely demise of said accused in his custody.

According full faith and credence to the testimonies of the prosecution witnesses, the trial court found accused-appellant guilty beyond reasonable doubt in Criminal Case No. 3244-M-

2003 for violation of Section 5 in relation to Section 26, Article II of Republic Act No. 9165, and sentencing her with the penalty of life imprisonment and a fine of ₱500,000.00.[6]

Via a Notice of Appeal,[7] accused-appellant sought to appeal the RTC ruling with the Court of Appeals. The case was docketed by the appellate court as CA-G.R. CR-H.C. No. 02127.

The Court of Appeals gave more weight to the prosecution's claim that the entrapment operation in fact took place and denied the appeal. Concurring in the factual findings of the trial court, the appellate court resolved the appeal in this wise:

> WHEREFORE, premises considered, the instant appeal is DISMISSED. The assailed Decision of the Regional Trial Court, Branch 78 of Malolos, Bulacan dated January 20, 2006 finding the accused-appellant Grace Ventura *y* Natividad guilty beyond reasonable doubt of the crime of Violation of Section 5 in relation to Section 26, Article II of R.A. No. 9165 and sentencing her to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00 is hereby AFFIRMED.[8]

Electing to seek a final recourse before this Court, accused-appellant filed her Notice of Appeal[9] on 28 July 2008.

Accused-appellant filed a supplemental brief while the prosecution adopted its appellee's brief earlier submitted to the Court of Appeals.

Accused-appellant seeks her acquittal, praying for the reversal of the judgment of conviction in the illegal drugs case. The defense claims that the appellate court committed serious error in (a) finding the existence of an unbroken chain in the custody of the *shabu* subject of the buy-bust operation as well as its evidentiary value; and (b) ruling that non-compliance with Section 21 of Republic Act No. 9165 is not fatal.

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[6] *Id.* at 245.

[7] *Id.* at 248.

[8] *Rollo*, pp. 16-17.

[9] *Id.* at 18.

At the heart of the defense argument is that the defense failed to account for the chain of custody of the evidence.

The petition lacks merit.

The presumption of innocence[10] of an accused in criminal cases is a most fundamental constitutional right that must be upheld at all times. Applying the foregoing principle, it has been established that the burden of proof is a duty borne by the prosecution.[11] *Ei incumbit probatio qui dicit, non qui negat, i.e.*, "He who asserts, not he who denies, must prove." With this in mind, conviction of an accused must stand on the weight and strength of the evidence of the prosecution and cannot rest on the weakness of the defense.[12]

The straightforward testimonies of the principal witnesses for the prosecution established that at around 3 o'clock in the afternoon of 10 August 2003, a group of police officers composed of PO2 Sarmiento, PO3 Magsakay, Silla, and an asset, acting as poseur-buyer, went to the house of Danilo and accused-appellant Grace Ventura. The team was to conduct a buy-bust operation on instruction of the chief of police. Upon reaching the area, PO2 Sarmiento and PO3 Magsakay positioned themselves near the gate of accused-appellant. While they were stationed in their respective places, the police asset went to accused-appellant's gate. He knocked thereon. They then saw Danilo opening the gate and stepping out. The asset handed the marked money to Danilo, who then went inside and closed the gate. A few minutes later, accused-appellant opened the gate and handed a plastic sachet containing *shabu* to the police asset.

They then saw the police asset execute the pre-arranged signal by scratching his head, indicating that the sale had been consummated. The police officers then ran towards them, but accused-appellant managed to close the gate. PO2 Sarmiento

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[10] 1987 Philippine Constitution, Article III, Section 14(2).

[11] *People v. Villanueva*, G.R. No. 172116, 30 October 2006, 506 SCRA 280, 286.

[12] *People v. Corpuz*, 459 Phil. 100, 112 (2003).

pushed open the gate, but he was met by Vergel, the brother of accused-appellant, who was armed with a bolo and about to hack him. Attempting to parry the attacks on him, PO2 Sarmiento went out of the gate and closed it. PO3 Magsakay drew his firearm and pointed it at accused-appellant's brother, who ran towards the direction of the house, but was accosted by PO1 Silla. PO3 Magsakay arrested accused-appellant inside the house, while PO2 Sarmiento arrested Danilo.

Danilo was frisked upon being arrested at his house and the marked money, consisting of three ₱100.00 bills and one ₱50.00 bill, was recovered from him.[13] Immediately after the buy-bust operation, the police asset turned over the plastic sachet containing a white crystalline substance to PO3 Magsakay at the crime scene.[14]

PO3 Magsakay and PO2 Sarmiento thereafter took accused-appellant Grace, Danilo, Vergel, and the recovered evidence, *i.e.*, marked money[15] and one plastic sachet[16] containing white crystalline substance, to the police station for further investigation. At the police station, PO2 Sarmiento marked the confiscated plastic sachet with "LCS BB," corresponding to the initials of his name, Lorenzo Cruz Sarmiento, and the word "buy-bust."[17] After the sachet was marked with "LCS BB," a request for laboratory examination was prepared by Chief of Police and Police Superintendent Salvador I. Santos.[18] The sachet and request for laboratory examination were thereafter brought to the Bulacan Provincial Crime Laboratory Office of the Philippine National Police by PO3 Magsakay. The sachet was turned over by PO3 Magsakay to PO1 Boluran of the Bulacan Provincial

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[13] TSN, 6 August 2004, p. 10.

[14] TSN, 19 March 2004, p. 7.

[15] Exhibits A-D; Records, p. 37.

[16] TSN, 6 August 2004, p. 162.

[17] TSN, 19 March 2004, p. 131.

[18] Records, p. 25.

Crime Laboratory Office.[19] At the crime laboratory, Forensic Chemical Officer and Police Inspector Nellson Cruz Sta. Maria conducted laboratory examination on the 0.124 grams of white crystalline substance found inside the plastic sachet. Per Chemistry Report No. D-506-2003, the tests performed on the specimen yielded positive results for methylamphetamine hydrochloride.[20]

It is clear from the foregoing that the identity of the seized item was duly preserved and established by the prosecution. There is no doubt that the sachet with the markings "LCS BB" and submitted for laboratory examination, found to be positive for *shabu*, was the same one sold to the poseur-buyer during the buy-bust operation.

In prosecutions involving the illegal sale of drugs, what is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited or regulated drug as evidence.[21] For conviction of the crime of illegal sale of prohibited or regulated drugs, the following elements must concur: (1) the identities of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment for it.[22] The testimonial and documentary pieces of evidence adduced by the prosecution in support of its case against accused-appellant establish the presence of these elements.

The two police officers, PO2 Sarmiento and PO3 Magsakay, positively identified Danilo and Grace Ventura as the same persons from whom their asset purchased the plastic sachet of *shabu*. As correctly found by the trial court, the testimonies of the prosecution witnesses narrated the events leading towards the conclusion that accused-appellant conspired with deceased Danilo in selling the methamphetamine hydrochloride or *shabu*, thus:

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[19] *Id.*

[20] *Id.* at 28.

[21] *Ching v. People*, G.R. No. 177237, 17 October 2008, 569 SCRA 711, 724; *People v. Dilao*, G.R. No. 170359, 27 July 2007, 528 SCRA 427, 442.

[22] *People v. Capalad*, G.R. No. 184174, 7 April 2009, citing *People v. Naquita*, G.R. No. 180511, 28 July 2008, 560 SCRA 430, 451.

The act of accused Danilo in taking the marked money from the asset and the act of Grace in handing the plastic sachet of *shabu* to the asset unmistakably shows that they were in concert and both share a common interest in selling the illegal substance. x x x.[23]

There was no need to present the poseur-buyer, since PO2 Sarmiento and PO3 Magsakay witnessed the whole transaction, where the marked money was exchanged for one sachet of *shabu*. The poseur-buyer was clearly visible from where PO2 Sarmiento and PO3 Magsakay were standing. In fact, the testimony of a lone prosecution witness, as long as it is positive and clear and not arising from an improper motive to impute a serious offense to the accused, deserves full credit. Non-presentation of the informer, where his testimony would be merely corroborative or cumulative, is not fatal to the prosecution's case.[24]

Moreover, the testimonies of the two police operatives are aptly supported by the documentary evidence presented by the prosecution, to wit: (a) Request for Laboratory Examination;[25] (b) Chemistry Report No. D-606-2003;[26] (c) photocopy of the marked money consisting of three ₱100.00 bills and one ₱50.00 bill;[27] (d) the confiscated sachet containing *shabu*, with markings "LCS BB"; and (e) the pre-operation report.[28]

Accused-appellant's twin defenses of denial and frame-up must fail.

Mere denial and allegations of frame-up have been invariably viewed by the courts with disfavor, for these defenses are easily concocted.[29] These are common and standard defenses in

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[23] Records, p. 244.

[24] *People v. Abelita*, G.R. No. 96318, 26 June 1992, 210 SCRA 497, 503.

[25] Records, p. 25.

[26] *Id.* at 28.

[27] *Id.* at 37.

[28] *Id.* at 22.

[29] *People v. Santiago*, 465 Phil. 151, 163 (2004).

prosecutions involving violation of the Dangerous Drugs Law. In a long line of cases, we have ruled that the testimonies of police officers involved in a buy-bust operation deserve full faith and credit, given the presumption that they have performed their duties regularly.[30] This presumption can be overturned if clear and convincing evidence is presented to prove either of two things: (1) that they were not properly performing their duty, or (2) that they were inspired by an improper motive.[31] Otherwise, the police officers' testimonies on the operation deserve full faith and credit.[32]

Accused-appellant failed to adduce evidence to substantiate her claim of irregularity in the performance of duty on the part of the police officers. This bare allegation of irregularity in the performance of duty remained self-serving and bereft of any supporting evidence.[33] Neither was any ill motive imputed on the part of the police officers, thus failing to buttress the defense's claim of frame-up. Against the positive testimonies of the prosecution witnesses, accused-appellant's plain denial of the offenses charged, unsubstantiated by any credible and convincing evidence, must simply fail.[34] This Court realizes the disastrous consequences on the enforcement of law and order, not to mention the well being of society, if the courts accept in every instance this form of defense, which can be so easily fabricated. It is precisely for this reason that the legal presumption that official duty has been regularly performed exists. If she were truly aggrieved, it is quite surprising why accused-appellant did not even attempt to file a criminal or an administrative complaint, *e.g.*, for planting drugs, against the arresting officers. Such inaction runs counter to the normal human conduct and behavior

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[30] *People v. Mateo*, G.R. No. 179478, 28 July 2008, 560 SCRA 397, 416-417.

[31] *People v. Valencia*, 439 Phil. 561, 568 (2002), citing *People v. Medenilla*, 407 Phil. 461, 474 (2001); *People v. Lee*, 407 Phil. 251, 260 (2001); *People v. Mustappa*, 404 Phil. 888, 898 (2001).

[33] *People v. Dumlao*, G.R. No. 181599, 20 August 2008, 562 SCRA 762, 770.

[34] *People v. Capalad*, G.R. No. 184174, 7 April 2009.

of one who feels truly aggrieved by the act complained of.[35] The totality of the evidence points to the fact of the sale of the prohibited drug, with the prosecution witnesses clearly identifying accused-appellant as the offender.

Accused-appellant asserts that the police officers failed to account for the chain of custody of the seized item alleged to be *shabu*.

Contrary to accused-appellant's claim, there is no broken chain in the custody of the seized item, found to be *shabu*, from the time the police asset turned it over to PO3 Magsakay, to the time it was turned over to the investigating officer, and up to the time it was brought to the forensic chemist at the PNP Crime Laboratory for laboratory examination.

The procedure for the custody and disposition of confiscated, seized and/or surrendered dangerous drugs, among others, is provided under Section 21, paragraph 1 of Article II of Republic Act No. 9165, as follows:

(1) 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.

Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, which implements said provision, stipulates:

(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

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[35] *People v. Ahmad*, 464 Phil. 848, 870 (2004).

> (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: x x x Provided, further that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

Under the same proviso, *non-compliance with the stipulated procedure, under justifiable grounds, shall not render void and invalid such seizures of and custody over said items, for as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers.*

Clearly, the purpose of the procedure outlined in the implementing rules is centered on the *preservation* of the *integrity* and *evidentiary value* of the seized items. The testimony of PO2 Sarmiento outlines the chain of custody of the confiscated item, *i.e.*, sachet of *shabu*:

Q. And you said that the *shabu*, plastic sachet was recovered from whom?

A. The police asset immediately handed to me.

Q. What did you do with the plastic sachet that was handed by your police asset to you?

A. At the station, I placed markings, prepared the request for laboratory examination.

Q. What marking did you place on the plastic sachet?

A. BB with initial LCS.

Q. What do you mean by BB?

A. Buybust.

Q. LCS?

A. My initial.

Q. If this plastic sachet will be shown to you, will you be able to identify the same?

A. Yes, sir. This is the *shabu* we bought from them.

Q. We move that the plastic sachet identified by the witness be marked as Exh. B.

COURT

Mark it.

FISCAL

You said you requested for an examination of the plastic sachet of *shabu*, can you tell us what was the result of the examination?

A. I have read from the result it was positive for methylamphetamine hydrochloride.

Q. I am showing you the request and the result, tell us if these are the same documents you are referring to?

A. This is the request for laboratory examination.

Q. We move that the request for laboratory examination be marked as Exh. F and the findings or result as Exh. G.

COURT

Mark them.[36]

Corroborating the statements of PO2 Sarmiento, PO3 Magsakay testified to what was done to the recovered sachet alleged to be containing *shabu*:

Q. What about Grace Ventura and Danilo Ventura, what happened to them?

A. I arrested Grace Ventura and PO2 Sarmiento arrested Danilo Ventura.

Q. What happened when they were arrested?

A. PO2 Sarmiento recovered the marked money from Danilo Ventura.

Q. Was that all that were recovered from these 2 subjects?

A. The police asset gave the specimen and the bolo.

Q. What else?

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[36] TSN, 19 March 2004, pp. 7-8.

A. No more.

Q. When the persons of the accused were restrained and all the evidences were gathered, what finally did you do?

A. We informed them that they violated Sec. 5 of R.A. 9165 for selling of illegal drugs and we also informed them of their constitutional rights.

Q. After that what did you do with them?

A. Grace Ventura, Danilo Ventura and Vergel Ventura were brought to the police station for further investigation.

Q. What did you do with the specimen?

A. We prepared a request for laboratory examination and the request for drug test.

Q. Before you prepared those requests, what did you do with those documents in order to distinguish it to the other *shabu* that were recovered from the operation?

A. We placed the marking.

Q. And the marking that you placed?

A. The initial of PO2 Sarmiento.

Q. Which happened to be in what letters?

A. LCS.

Q. And later did you come to know the findings of the forensic chemist of the crime laboratory?

A. Positive for *shabu* and positive for drug test.

x x x x x x x x x

Q. You claimed also that you recovered one sachet of *shabu* as a result of the operation. Attached to the record is a plastic sachet containing of (sic) what appears to be white crystalline substance, what relation has this to the one that you claimed as the *shabu* sold to your group?

A. This is the same.

PROS. MEDRANO:

It was already marked as Exh. "E". We pray that the marking placed therein be submarked as "E-1".

COURT:

Mark them.

PROS. MEDRANO:

Q. You made mention of a request made by your unit to the PNP Crime Laboratory. I'm showing to you such document please confirm to us if this is the same document that you made mention of?

A. Yes, sir. This is the one. It was previously marked as Exh. "F". We pray that the stamp mark RECEIVED of the PNP Crime Laboratory be submarked as "F-1".[37]

All documentary, testimonial, and object pieces of evidence, including the markings on the plastic sachet containing the *shabu*, prove that the substance tested by the forensic chemist, whose laboratory tests were well-documented, was the same as that taken from accused-appellant. The foregoing evidence established and preserved the identity of the confiscated *shabu*. Moreover, 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.[38] Accused-appellant, in this case, bears the burden to make some showing that the evidence was tampered or meddled with, to overcome a presumption of regularity in the handling of exhibits by public officers and a presumption that they properly discharged their duties.

In the case at bar, the evidence clearly shows that accused-appellant was involved in the buy-bust operation. Having been caught *in flagrante delicto*, accused-appellant's participation cannot be doubted.

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[37] TSN, 6 August 2004, pp. 8-11.

[38] *People v. Agulay*, G.R. No. 181747, 26 September 2008, 566 SCRA 571, 595.

Following the provisions of Section 5 in relation to Section 26 of Article II, Republic Act No. 9165, the illegal sale of prohibited or regulated drugs is penalized with *life imprisonment* to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00. The statute, in prescribing the range of penalties imposable, does not concern itself with the amount of dangerous drug sold by an accused.

Section 5 of Republic Act No. 9165 stipulates:

SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals*. – The penalty of life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (₱500,000.00) to Ten Million Pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

Section 26 of the same Act provides:

Section 26. *Attempt or Conspiracy*. – Any attempt or conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same as provided under this Act:

(a) Importation of any dangerous drug and/or controlled precursor and essential chemical;

(b) Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical;

(c) Maintenance of a den, dive or resort where any dangerous drug is used in any form;

(d) Manufacture of any dangerous drug and/or controlled precursor and essential chemical; and

(e) Cultivation or culture of plants which are sources of dangerous drugs.

Applying the foregoing provisions of Republic Act No. 9165, the penalty imposed by the RTC, as affirmed by the Court of Appeals, is proper. There being no mitigating or aggravating circumstances attending accused-appellant's violation of the law, the penalty to be imposed is life imprisonment. Considering that the weight of the *shabu* confiscated from accused-appellant is 0.124 gram, the amount of ₱500,000.00 imposed by the court *a quo*, being in accordance with law and upheld by the appellate court, is similarly sustained by this Court.

WHEREFORE, premises considered, the Court of Appeals Decision dated 30 June 2008 in CA-G.R. CR-HC No. 02127, affirming the Decision promulgated by the Regional Trial Court of Malolos, Bulacan, Branch 78, in Criminal Case No. 3244-M-2003, finding accused-appellant Grace Ventura *y* Natividad guilty beyond reasonable doubt of selling 0.124 gram of methamphetamine hydrochloride or *shabu*, a prohibited drug, in violation of Section 5 in relation to Section 26, Article II of Republic Act No. 9165, and imposing upon her the penalty of life imprisonment and a fine of Five Hundred Thousand Pesos (₱500,000.00), is hereby *AFFIRMED*.

In the service of her sentence, accused-appellant Grace Ventura *y* Natividad, who is a detention prisoner, shall be credited with the entire period during which she has undergone preventive imprisonment.

SO ORDERED.

Quisumbing,[*] *Carpio (Chairperson), Peralta*, and *Abad*,[**] *JJ.*, concur.

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[*] Per Special Order No. 755, dated 12 October 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Leonardo A. Quisumbing to replace Associate Justice Antonio Eduardo B. Nachura, who is on official leave.

[**] Per Special Order No. 753, dated 12 October 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Roberto A. Abad to replace Associate Justice Presbitero J. Velasco, Jr., who is on official leave.

THIRD DIVISION

[G.R. No. 186119. October 27, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PABLO LUSABIO, JR.** ***y*** **VERGARA,** *accused-appellant,* **TOMASITO DE LOS SANTOS and JOHN DOE**, *accused.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; MERE RELATIONSHIP OF A WITNESS TO THE VICTIM DOES NOT IMPAIR THE WITNESS' CREDIBILITY; EXPLAINED.— Accused-appellant brands Doris Labini as a biased witness, thus unreliable, because she was the wife of Edwin Labini. The fact that she was the wife of the victim did not necessarily make her a partial witness. It is well-settled that mere relationship of a witness to the victim does not impair the witness' credibility. On the contrary, a witness' relationship to a victim of a crime would even make his or her testimony more credible, as it would be unnatural for a relative who is interested in vindicating the crime, to accuse somebody other than the real culprit. A witness is said to be biased when his relation to the cause or to the parties is such that he has an incentive to exaggerate or give false color to his statements, or to suppress or to pervert the truth, or to state what is false. To warrant rejection of the testimony of a relative or friend, it must be clearly shown that, independently of the relationship, the testimony was inherently improbable or defective, or that improper or evil motives had moved the witness to incriminate the accused falsely. The relationship of Doris Labini to the victim, per se, does not impair her credibility. We, like both lower courts, are convinced that she is telling the truth. Moreover, the defense failed to show any evidence that Doris Labini had improper or evil motives to testify falsely against accused-appellant. This being the case, her testimony is entitled to full faith and credit.

2. ID.; ID.; ID.; 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.— x x x This Court has ruled that 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. Such minor flaws may even enhance the worth of a testimony, for they guard against memorized falsities. Trivial inconsistencies do not rock the pedestal upon which the credibility of the witness rests, but enhance credibility, as they manifest spontaneity and lack of scheming. It is not to be expected that the witness will be able to remember every single detail of an incident with perfect or total recall.

3. ID.; ID.; DENIAL; CANNOT PREVAIL OVER THE POSITIVE TESTIMONIES OF PROSECUTION WITNESSES WHO WERE NOT SHOWN TO HAVE ANY ILL MOTIVE TO TESTIFY AGAINST THE ACCUSED; CASE AT BAR.— To be believed, denial must be buttressed by strong evidence of non-culpability. Otherwise, it is purely self-serving and without merit. A denial unsubstantiated by clear and convincing evidence is negative, self-serving, merits no weight in law, and cannot therefore be given greater evidentiary value than the testimonies of credible witnesses who testify on affirmative matters. Greater weight is given to the categorical identification of the accused by the prosecution witnesses than to the accused's plain denial of participation in the commission of the crime. Indeed, denial cannot prevail over the positive testimonies of prosecution witnesses who were not shown to have any ill motive to testify against accused-appellant. Absence of improper motives makes a testimony worthy of full faith and credence. In this case, there being no strong and credible evidence adduced to overcome the testimonies of Doris Labini and Tomasito de los Santos pointing to accused-appellant as the culprit, no weight can be given to his denial.

4. ID.; ID.; CREDIBILITY OF WITNESSES; WHEN THE TRIAL COURT'S FINDINGS HAVE BEEN AFFIRMED BY THE APPELLATE COURT, SAID FINDINGS ARE GENERALLY CONCLUSIVE AND BINDING UPON THE SUPREME COURT.— All in all, we find the evidence of the prosecution

to be more credible than that adduced by accused-appellant. When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate testimonial evidence properly. The Court of Appeals further affirmed the findings of the RTC. In this regard, it is 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. We find no compelling reason to deviate from their findings.

5. CRIMINAL LAW; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; AGGRAVATING CIRCUMSTANCES; TREACHERY; ELEMENTS; ESSENCE; CASE AT BAR.— The lower court was correct in appreciating treachery in the commission of the crime. There is treachery when the following essential elements are present, *viz*: (a) at the time of the attack, the victim was not in a position to defend himself; and (b) the accused consciously and deliberately adopted the particular means, methods or forms of attack employed by him. The essence of treachery is the sudden and unexpected attack by the aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victim. It was clearly established that Edwin Labini, while talking to Pablo Lusabio, Jr. face to face, was suddenly stabbed by the latter with a ten-inch bladed weapon for no reason at all. The suddenness of the stabbing and the fact that Edwin Labini was unarmed gave him no opportunity to defend himself. It is likewise apparent that accused-appellant consciously and deliberately adopted his mode of attack, making sure that the victim would have no chance to defend himself by reason of the surprise attack. In *People v. Villonez*, we ruled that treachery may still be appreciated even when the victim was forewarned of danger to his person. What was decisive was that the execution of the attack made it impossible for the victim to defend himself or to retaliate. In the case on appeal, Edwin Labini

was completely unaware that he was going to be attacked. He was not forewarned of any danger to himself, as there was no altercation or disagreement between the accused and him. He was merely conversing with accused-appellant. If treachery may be appreciated when the victim was forewarned, more so should it be appreciated when the victim was not, as in the case at bar.

6. ID.; CRIMES AGAINST PERSONS; MURDER; IMPOSABLE PENALTY.— Under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, murder is punishable by *reclusion perpetua* to death. In the instant case, treachery, which was alleged and proved, qualified the offense to murder. There being no other mitigating or aggravating circumstance in the commission of the felony, accused-appellant was correctly sentenced to *reclusion perpetua*, conformably to Article 63(2) of the Revised Penal Code.

7. CIVIL LAW; DAMAGES; DAMAGES THAT MAY BE AWARDED WHEN DEATH OCCURS DUE TO A CRIME.— x x x When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.

8. ID.; ID.; ID.; CIVIL INDEMNITY; MANDATORY AND GRANTED TO THE HEIRS OF THE VICTIM WITHOUT NEED OF PROOF OTHER THAN THE COMMISSION OF THE CRIME.— Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime. The trial court and the Court of Appeals properly awarded the amount of ₱50,000.00 to the heirs of the victim as civil indemnity. The amount of ₱75,000.00 as civil indemnity is awarded only if the crime is qualified by circumstances that warrant the imposition of the death penalty.

9. ID.; ID.; ID.; TEMPERATE DAMAGES; AWARDED TO THE HEIRS OF THE VICTIM IN LIEU OF ACTUAL DAMAGES; EXPLAINED.— As to actual damages, both the trial court and the Court of Appeals awarded only the amount of ₱20,000.00, since the prosecution was only able to prove this amount via an official receipt. The award of ₱25,000.00 for temperate damages in homicide or murder cases is proper when

no evidence of burial and funeral expenses is presented in the trial court. Under Article 2224 of the Civil Code, temperate damages may be recovered, as it cannot be denied that the heirs of the victim suffered pecuniary loss, although the exact amount was not proved. In *People v. Magdaraog*, we pronounced that when actual damages proven by receipts during the trial amount to less than ₱25,000.00, the award of temperate damages for ₱25,000.00 is justified in lieu of actual damages of a lesser amount. Conversely, if the amount of actual damages proven exceeds ₱25,000.00, then temperate damages may no longer be awarded; actual damages based on the receipts presented during trial should instead be granted. Thus, in lieu of actual damages, temperate damages in the amount of ₱25,000.00 are awarded to the heirs of the victim.

10. ID.; ID.; ID.; MORAL DAMAGES; MANDATORY IN CASE OF MURDER AND HOMICIDE WITHOUT NEED OF ALLEGATION AND PROOF OTHER THAN DEATH OF THE VICTIM.— Anent moral damages, the same are mandatory in case of murder and homicide, without need of allegation and proof other than the death of the victim. The award of ₱50,000.00 by both lower courts is proper.

11. ID.; ID.; ID.; EXEMPLARY DAMAGES; AWARD THEREOF IS PROPER WHEN THE QUALIFYING CIRCUMSTANCE OF TREACHERY IS ESTABLISHED; CASE AT BAR.— Both lower courts did not award exemplary damages. The heirs of the victim are entitled to exemplary damages, since the qualifying circumstance of treachery was firmly established. Under Article 2230 of the Civil Code, exemplary damages as part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. The term aggravating circumstances as used therein is to be understood in its broad or generic sense, since the law did not specify otherwise. Consistent with prevailing jurisprudence, we award the amount of ₱30,000.00 as exemplary damages to the heirs of the victim.

ABAD, *J.*, dissenting opinion:

REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE WIDOW IS NOT A DISINTERESTED WITNESS; WIDOW'S TESTIMONY IN CASE AT BAR FOUND TO BE

OF DOUBTFUL CREDIBILITY.— In a 2008 decision, this Court pointed out that the assumption that a widow's testimony is credible since she has no motive other than to see that justice is done is not equal to the statement that a witness' testimony is credible because the defense failed to show any motive to falsely testify. The edge given to a disinterested testimony applies only to those who are not related to the incident or to the victim. The widow is not a disinterested witness. She is someone who has a personal interest in the incident and who may have been traumatized because of it. Aggrieved parties have different reactions to these kinds of occurrences in their lives, x x x I find Doris' testimony of doubtful credibility for the following reasons: 1. According to Doris, her husband, Edwin, just casually walked away with Tomasito after the latter arrived and talked to him, evidently to go to a neighbor's house. But this seemed unlikely because, as Doris said, Edwin was at that time doing some cooking. Normally, a husband would have first asked his wife to mind the kitchen. He would not just walk casually away as Doris would have it. 2. Doris said that she followed her husband out of the house and onto the house of Tomasito's brother. But it is also not likely that a wife would just leave her house with no one to mind it after her husband left, especially since there was cooking going on in the kitchen. 3. Doris said that, after Tomasito left her husband in front of his brother's house, she just stood there for two minutes watching her husband eight meters away while he waited for Tomasito to return. If she were apprehensive for his safety, it is incredible that she did not approach him and ask him what he was doing standing there. 4. Doris testified in great detail that she saw Lusabio attack her husband with a 10-inch bladed weapon. Yet, she was unable to perceive how Lusabio sustained so many incise and stab wounds himself. 5. More, a wife who had shown great concern for the safety of her husband would surely, rather than ran away as she testified, either shout for help for her husband or implore his assailant to stop the attack.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

CHICO-NAZARIO, *J.*:

On appeal before Us is the Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 01462 dated 9 November 2007, which affirmed the decision dated 24 September 2004[2] of the Regional Trial Court (RTC) of Bulan, Sorsogon, Branch 65, in Criminal Cases No. 01-459 and No. 01-464.

The antecedents are as follows:

For the death of Edwin Labini on 12 June 2001, an information was filed on 14 September 2001 before Branch 65 of the RTC of Bulan, Sorsogon, charging accused-appellant Pablo Lusabio, Jr., Tomasito de los Santos and one John Doe with Murder. The case was docketed as Criminal Case No. 01-459. The Information reads:

> That on or about 9:00 o'clock in the evening of June 12, 2001, at Barangay Biton, municipality of Magallanes, province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another with intent to kill, treachery, evident premeditation, and abuse of superior strength, did then and there, willfully, unlawfully and feloniously attack, assault and stabbed one Edwin Labini, who sustained mortal/fatal injuries that caused his instantaneous death, to the damage and prejudice of his legal heirs.[3]

On 24 September 2001, based on a complaint of accused-appellant Pablo Lusabio, Jr., an information was filed before the same court charging Tomasito de los Santos, *alias* Guapo, and Ronnie Dig, *alias* Tabong, with Attempted Murder. The case was docketed as Criminal Case No. 01-464. The felony was allegedly committed as follows:

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[1] Penned by Associate Vicente Q. Roxas with Associate Justices Josefina Guevara-Salonga and Ramon R. Garcia, concurring. CA *rollo*, pp. 183-199.

[2] Records (Crim. Case No. 01-464), pp. 182-225.

[3] Records (Crim. Case No. 01-459), p. 1.

That on or about June 12, 2001, at more or less 9:00 o'clock in the evening, at Sitio Talisay, Barangay Biton, Municipality of Magallanes, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused while both armed with bolos, conspiring, confederating and mutually helping one another by means of treachery and evident premeditation and abuse of superior strength, did then and there willfully, unlawfully and feloniously commence the commission of the crime of murder directly by overt acts by then and there hacking and stabbing one Pablo Lusabio, Jr., who sustained the following injuries, to wit:

- incised wound 2nd and 4th finger posterior 1 ½ cm. each;
- incised wound forearm left anterior, m 1/3 #2 4-5 cm. each;
- stab wound right thigh proximal 1/3 post. 0/0 middle 1/3 medial 4-5 cm. each;
- incised wound left arm middle 1/3 lateral 3-4 cm. involving muscle;
- stab wound chest over 5th and 8th ICS post axillary line 1 cm. each non-penetrating;
- incised wound lumb[a]r area left, 1 cm.

but said accused did not perform all the acts of execution which should have produced the crime of murder as a consequence, by reason of causes other than their spontaneous desistance, that is, the injuries sustained by said Pablo Lusabio, Jr., are only slight and not mortal.[4]

In Criminal Case No. 01-459 for murder, when arraigned on 8 October 2001, accused-appellant and Tomasito de los Santos, both assisted by *counsel de oficio*, pleaded not guilty to the crime charged. During the pre-trial conference of said case, only the fact of death of Edwin Labini was admitted by the parties.

In the case for attempted murder (Criminal Case No. 01-464), Tomasito de los Santos was arraigned on 12 November 2001. With the assistance of counsel, he pleaded not guilty. Ronnie Dig remained at large.

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[4] Records (Crim. Case No. 01-464), p. 1.

Upon agreement of the parties, the criminal cases were consolidated and heard simultaneously, inasmuch as they happened on the date involving the same persons and under similar circumstances.

In **Criminal Case No. 01-459 (Murder)**, the prosecution presented four witnesses, namely: Doris Labini,[5] Dr. Irene V. Ella,[6] Jose Labini[7] and Elsie Gocoyo.[8]

Doris Labini, wife of the victim – Edwin Labini – testified that at around 9:00 p.m. of 12 June 2001, she was in their living room cleaning their house, while Edwin was busy cooking in the kitchen in preparation for the barrio *fiesta* the following day. Thereafter, Tomasito de los Santos arrived and conversed with Edwin. Tomasito and Edwin left and casually walked away. Nervous and apprehensive because her husband was fetched and she did not know where he was going, Doris followed the two. When Edwin and Tomasito arrived at the weighing post near the gate of the house of Romeo de los Santos, the brother of Tomasito, the latter left Edwin for about two minutes. Doris stopped at a distance of about eight meters away from the two. She explained that she had the habit of following her husband but not asking him where he was going. When Tomasito returned to Edwin, accused-appellant Pablo Lusabio, Jr. appeared. The latter talked to Edwin and, all of a sudden, stabbed him with a ten-inch bladed weapon. Doris ran away, and so did Tomasito. Upon seeing her husband being stabbed by accused-appellant, her first reaction was to seek the assistance of her husband's brother, Jose Labini. After seeking assistance, she returned to the place where her husband was stabbed and learned that he was already dead.

Dr. Irene V. Ella, Municipal Health Officer of Magallanes, Sorsogon, conducted a post-mortem examination on the cadaver

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[5] TSN, 14 January 2002, 16 January 2002.

[6] TSN, 15 April 2002.

[7] TSN, 20 May 2002.

[8] TSN, 10 June 2002.

of Edwin Labini at 8:30 a.m. of 13 June 2001. Her findings[9] were as follows: (1) body in a state of *rigor mortis*; (2) stab wound, right anterior thorax at the level of the 10th rib, 3 x 2 inches with no penetration to the thoracic cavity; (3) fatal stab wound, right lateral thorax at the level of the 12th rib with penetration to the thoracic cavity, with injury to the lungs. She concluded that the cause of death was irreversible shock secondary to massive bleeding due to fatal stab wound at the right lateral thorax. If timely medical attention was given, she said the victim would have possibly survived.

Jose Labini, brother of the victim, testified that at 9:00 p.m. of 12 June 2001, he was at the house of his late brother, Edwin Labini, asking for some viand from the latter. Edwin was busy preparing food at the kitchen when Tomasito de los Santos arrived. Jose was three meters away from his brother at that time. De los Santos was fetching Edwin, because they would be having a drinking spree. At first, Edwin was hesitant to go with De los Santos, but eventually agreed. Later, Jose heard Doris Labini shout that Edwin had been stabbed. He immediately ran outside to know what was happening. On his way to where his brother was, he met Tomasito, who told him that accused-appellant stabbed Edwin. Jose tried to resuscitate his brother, but the latter was already dead. Jose said he did not see the stabbing of Edwin, because the former was not present when it happened.

Elsie Gocoyo, sister of the victim, testified that at around 9:00 p.m. of 12 June 2001, she was in her house when she was informed that something happened to her brother Edwin Labini. She rushed to her brother's house, where she found him already dead. Upon learning that her sister-in-law Doris Labini and Tomasito de los Santos knew of the incident, she immediately went to Pon-od, Bulan, Sorsogon to follow Tomasito at the house of his sister, Rosa de los Santos. Elsie and Tomasito had a conversation wherein the latter asked for forgiveness, for it was he who had fetched Edwin at his house per instruction of Pablo Lusabio, Jr. She said Tomasito demonstrated to her how Pablo had stabbed Edwin.

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[9] Exh. A; Records (Crim. Case No. 01-459), p. 12.

Elsie testified they spent around ₱46,635.00, which included ₱2,500.00 for the cemetery and ₱20,000.00 for funeral services.

For the defense, Dr. Antonio L. Lopez,[10] Medical Specialist II at the Sorsogon Provincial Hospital, testified that on 25 June 2001, he conducted a medical examination on the person of Pablo Lusabio, Jr. He issued a Medical Certificate[11] embodying the six wounds he found on accused-appellant. The wounds were as follows: (1) incised wound, 2nd & 4th finger posterior, 1½ cm. each; (2) incised wound, forearm, left anterior, M 1/3 #2, 4-5 cm. each; (3) stab wound, right thigh, proximal, 1/3 post. & middle, 1/3 medial, 4-5 cm. each; (4) incised wound, left arm, middle, 1/3 lateral, 3-4 cm.; involving muscle; (5) stab wound, chest, over 5th and 8th ICS post. axillary line, 1 cm. each, non-penetrating; and (6) incised wound, lumbar area, left, 1 cm. He explained that a sharp instrument could have caused the wounds, and that the relative position of the assailant to the victim was at the back or at the side. He added that Lusabio was hospitalized for ten days. He disclosed that even if no medical attention was given, Lusabio would not die. He also said that the wounds could also have been self-inflicted.[12]

Accused-appellant Pablo Lusabio, Jr.[13] took the witness stand. His version of the incident is as follows: On 12 June 2001, he was in his house at Sitio Talisay, Barangay Biton, Magallanes, Sorsogon. He decided to go to the house of Bugoy Gelilio to inform the latter that the former could not stand as the godfather of Bugoy's son, because accused-appellant could not attend the baptism, for it coincided with the *fiesta* of their place. As Bugoy was not in his house, Lusabio told one of Bugoy's visitors that he (Lusabio) could not attend the baptism of his son the following day, because it was their *barangay fiesta*, and to just

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[10] TSN, 23 September 2002.

[11] Exh. 4; Records (Crim. Case No. 01-464), p. 12.

[12] 23 September 2002, pp. 8-11, 14-16. In his testimony on 15 April 2002 (p. 10), he said the injuries at the back could not have been self-inflicted.

[13] TSN, 28 January 2003, 17 March 2003, 16 September 2003.

get someone else to stand in his place. Lusabio proceeded home. Along the way, Tomasito de los Santos suddenly appeared and, using a *machete*, hacked him, hitting him on the left arm. This was followed by a stabbing blow from Ronnie Dig who used a *ginunting*. Lusabio tried to run, but he fell down. When he tried to stand, he was again stabbed by Ronnie Dig, hitting him on the right thigh. As Ronnie Dig was about to stab him again, Edwin Labini yelled at him and De los Santos to stop. The two then turned their attention to Edwin. Lusabio took this opportunity to escape by crawling through a fence made of split bamboo. He crawled to a grassy place, where he fainted. He regained consciousness at around 4:00 a.m. the next day and went home, but he fainted again upon reaching the yard of his house. He regained consciousness after his siblings and parents attended to him. He was later brought to the Sorsogon Provincial Hospital, where he learned that Edwin Labini died in the same incident at around 9:00 p.m. of 12 June 2001.

Accused-appellant denied the statement of Doris Labini that he was the one who stabbed Edwin. He claimed that if it were true that Doris was present during the stabbing incident, she would have also seen him being stabbed and hacked by Tomasito de los Santos and Ronnie Dig. Accused-appellant added that the only motive he could think of why Tomasito and Ronnie attacked him was that the latter two were friends of Larry de Luna, who had filed a case against him for frustrated homicide, which case had been terminated after he (Lusabio) had pleaded guilty to the charge, and that he had already applied for probation. He said he did not know who killed Edwin Labini.

In **Criminal Case No. 01-464 (Attempted Murder)**, private complainant Pablo Lusabio, Jr.,[14] Dr. Antonio Lopez[15] and Ricardo Cabrera[16] took the witness stand.

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[14] TSN, 10 June 2002, 23 September 2002, 17 March 2003, 16 September 2003.

[15] TSN, 15 April 2002.

[16] TSN, 20 May 2002.

Dr. Antonio Lopez testified anew that he issued a Medical Certificate to Pablo Lusabio, Jr., whom he treated from 13 to 23 June 2001. The six wounds of Lusabio were not fatal, and even if no timely medical attention was given to him, the worst that he would have suffered was infection. Dr. Lopez theorized that the assailant was in front of Lusabio, and that the instrument used was a bladed instrument, probably a knife or a machete. He added that since the wounds were incised and stab wounds, it was possible that they were inflicted by two assailants. However, he did not discount the possibility that these wounds may have been caused by one bladed instrument and by one perpetrator. As to whether the wounds were self-inflicted, he said the injuries at the back could not have been self-inflicted.[17]

Ricardo Cabrera testified to corroborate the statement of Lusabio that Tomasito de los Santos and Ronnie Dig attacked Lusabio, and that Edwin Labini was assaulted when the latter came to Lusabio's aid. Cabrera said at around 9:00 p.m. of 12 June 2001, he was on his way to the dance hall when he accidentally saw Pablo Lusabio, Jr. being hacked by Tomasito de los Santos and Ronnie Dig. The place was lighted. When he saw Lusabio being hacked by Tomasito de los Santos, the victim was lying prostrate on the ground, and Ronnie Dig was also stabbing him. Cabrera said that Edwin Labini was also present, but was sitting on a fence still alive. He heard Edwin utter something, which the former did not understand, because he had run away very fast. He did not notice if Edwin was injured. Overcome by fear after having witnessed the hacking of Lusabio, Cabrera ran toward the direction of the dance hall. He did not report the hacking incident to the authorities because he was still afraid. Though familiar with the Lusabios, he did not inform any of the family members that Pablo had been injured that night by Tomasito de los Santos and Ronnie Dig. Bothered by his conscience, Cabrera volunteered to be a witness in this case.

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[17] TSN, 15 April 2002, p. 10.

As private complainant, Pablo Lusabio testified, reiterating the statements he made in Criminal Case No. 01-459. He said he knew Edwin and Doris Labini, because they came from the same *barangay*. He claimed that Edwin Labini and Tomasito de los Santos were not close friends, but only acquaintances. He had never seen them drink liquor together.

For the defense, the witnesses were Tomasito de los Santos,[18] Edgar Apuya[19] and Jose Labini.[20]

Accused Tomasito de los Santos testified that he personally knew Edwin Labini, who died on 12 June 2001, because they were neighbors. Before the stabbing incident, he and Edwin wanted to have a drinking session in the house of Tomasito's brother in Sitio Talisay, Biton, Magallanes, Sorsogon. Edwin told him to go ahead and prepare the pitcher, glasses and other things they would need for their drinking session. While in his brother's house, Tomasito heard Doris Labini shout "Enough of that." He went out of the house to see what was happening. At four meters away, he saw Pablo Lusabio, Jr. stab Edwin Labini. Lusabio then ran away, while Edwin fell to the ground. Instead of going to the house of the *Barangay* Captain, which was nearer, Tomasito immediately proceeded to the house of Edwin's brother, Jose Labini, to inform him that Pablo Lusabio, Jr. had stabbed the victim. Tomasito, however, met Jose along the way, when the latter was coming out of his mother's house. Tomasito informed Jose that Edwin had been stabbed by Pablo Lusabio, Jr. Tomasito then went to the house of *Barangay* Captain Edgar Apuya and informed him that Pablo Lusabio, Jr. had stabbed Edwin Labini. Thereafter, Tomasito met a man armed with a bladed weapon, who allegedly told him, "You're one of them" and then chased him up to the dance hall. Tomasito thought of going back to his brother's house at Sitio Talisay, where the stabbing of Edwin Labini had occurred, but decided

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[18] TSN, 1 July 2003, 5 August 2003.

[19] TSN, 19 May 2003.

[20] *Id*.

to go to the house of his other sibling (Rose de los Santos) at Barangay Pon-od, J. P. Laurel, Bulan, Sorsogon. There, he met Elsie Gocoyo, sister of Edwin Labini, who allegedly asked Tomasito why he escaped. He explained he just wanted to be safe from the person who chased him.

Tomasito could not figure out why he was impleaded in the murder case, when he even volunteered to be a prosecution witness in favor of the Labinis, considering that he was a witness to the killing of Edwin Labini by Pablo Lusabio, Jr. He explained that he did not come to the aid of Edwin Labini when the latter was stabbed by Lusabio, because he was unarmed while Lusabio was armed with a bladed weapon.

Tomasito disclosed that on the fateful night, he was about to buy liquor when Edwin, who was inside his house, saw him and asked where he was going. When he informed Edwin that he was going to buy liquor, Edwin told him not to buy anymore, because he (Edwin) had liquor in his house. Edwin gave Tomasito liquor, and they proceeded to the house of Romeo de los Santos, Tomasito's brother. Before they could reach Romeo's house, Edwin Labini felt the call of nature and urinated in a vacant lot and told Tomasito to go ahead and prepare the things for their drinking session. While preparing those things in his brother's house, Tomasito heard Doris Labini shouting. When he went outside, he saw Pablo Lusabio, Jr. stab Edwin Labini.

On the early morning of 13 June 2001, Tomasito, together with his sister Rose, Elsie Gocoyo, Erwin Labini and two other companions, went to the house of a *Barangay Kagawad* at Biton, Magallanes, Sorsogon to give his statement before going to the Magallanes Police Station. Thereafter, the *Barangay* Captain whom they met at the seashore accompanied them to the police station. Tomasito said he went with them because he did not do anything wrong.

Edgar Apuya, *Barangay* Captain of Biton, Magallanes, Sorsogon, testified that on the evening of 12 June 2001, while he was in his house watching a VCD movie, he heard Tomasito de los Santos shouting that Edwin Labini had been stabbed by

Pablo Lusabio, Jr. Upon being informed by Tomasito of the stabbing incident, Edgar left. Apuya, together with two of his *barangay tanods*, went to the place of the incident, which was near his house, and found Edwin Labini already injured.

Apuya disclosed that Lusabio surrendered to him the following day and the former immediately turned him over to the police. Edgar observed that Lusabio had injuries when the latter surrendered to him.

Jose Labini, brother of Edwin Labini, testified he came to know about the death of his brother from Tomasito de los Santos. The latter ran to him and told him that his brother was stabbed by Pablo Lusabio, Jr. and that he was already dead. He said he did not notice Tomasito de los Santos carrying anything when he met him.

Pablo Lusabio, Jr.[21] took the witness stand anew as a rebuttal witness. He denied stabbing Edwin Labini and said that if it were not for the latter, he would have been killed. Lusabio said Edwin Labini tried to pacify and stop Tomasito de los Santos and Ronnie Dig from hacking him. He did not see the actual stabbing of Edwin Labini. He denied having any bladed weapon at the time of the incident; otherwise, he would have injured Tomasito de los Santos when the latter was hacking him. He also denied inflicting the wounds that he sustained.

Lusabio bared that a certain Melda, sister of Tomasito de los Santos, visited him in jail and offered him money so he would drop this case against Tomasito. Pablo told Melda that he would not drop the case, because Tomasito had hacked him. Pablo then informed his sister about the offer and instructed her to relay the same to his counsel. It was only now that he divulged the matter, because he did not know the process of revealing the same, and he had no opportunity to do so.

The next rebuttal witness was Emily Tan,[22] *Barangay* Secretary of *Barangay* Biton, Magallanes, Sorsogon, who revealed that a

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[21] TSN, 16 September 2003.

[22] TSN, 16 March 2004.

case had been blottered in the *barangay* against Edwin Labini. The complainant therein was the *Barangay* Captain who had been verbally maligned by Edwin Labini. Said case, which was referred to the police, was settled amicably when Edwin Labini apologized to the *Barangay* Captain and promised not to commit the same wrong again.

As sur-rebuttal witness, Imelda Trongcoso,[23] sister-in-law of Tomasito de los Santos, denied she went to see Pablo Lusabio, Jr. in jail to offer him money so he would drop the case against Tomasito de los Santos. She said she did not know Lusabio, and the first time she saw him was in court.

In its decision dated 24 September 2004, the trial court, in Criminal Case No. 01-459, found accused-appellant guilty beyond reasonable doubt of murder, while Tomasito de los Santos was acquitted of the charge. As to Criminal Case No. 01-464, Tomasito de los Santos was likewise acquitted of attempted murder. The decretal portion of the decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered finding accused PABLO LUSABIO, JR. GUILTY beyond reasonable doubt of –
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> a) MURDER in Criminal Case No. 01-459, and hereby sentences him to suffer the indivisible penalty of *RECLUSION PERPETUA*, regardless of the presence of mitigating circumstance of voluntary surrender (Art. 63, R.P.C.); to indemnify the heirs of Edwin Labini in the amounts of Php20,000.00 as actual or compensatory damages; Php50,000.00 as civil indemnity for his death; and another Php50,000.00 as moral damages, and to pay the costs.
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> b) As regards the other accused TOMASITO DE LOS SANTOS, for failure of the prosecution's evidence to establish his guilt beyond reasonable doubt in Crim. Case No. 01-459 and Crim. Case No. 01-464, he is hereby ordered ACQUITTED of the two charges filed against him in both cases. Without pronouncement as to costs.

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[23] TSN, 1 June 2004.

The period of preventive imprisonment already served by accused PABLO LUSABIO, JR. shall be credited in the service of his sentence pursuant to the provisions of Art. 29 of the Revised Penal Code, as amended.

The case against the other accused Ronnie Dig is hereby ordered temporarily archived pending his arrest.[24]

In convicting Pablo Lusabio, Jr. of murder, the trial court found prosecution witness Doris Labini, wife of the victim Edwin Labini, to be credible. Her testimony relative to the stabbing of her husband was candid, straightforward and consistent with the substance of her Sworn Statement and declaration during the preliminary investigation. The trial court ruled that her credibility was not impaired by her relationship with the victim. No ill motive was ascribed to her in testifying against Pablo Lusabio, Jr. and Tomasito de los Santos, who were both known to her, being her barrio mates. Her positive identification of Pablo Lusabio, Jr. as her husband's assailant was not doubted, as she was around eight meters away from her husband during the attack, and the place was lighted. Doris Labini's running away to seek the help of her brother-in-law instead of shouting for help from neighboring houses near the crime scene did not affect her credibility, since such action was not unusual for someone faced with a startling occurrence.

As to accused-appellant Pablo Lusabio's defenses of denial and alibi, the trial court did not find them convincing to exonerate him from the murder charge, in light of the positive identification made by the victim's wife that Pablo was the one who had assaulted the late Edwin Labini. His identification as the attacker was made not only by the victim's wife, but also by Tomasito de los Santos. Furthermore, the trial court did not give much weight to the testimony of Ricardo Cabrera corroborating the testimony of Lusabio that the latter was attacked by Tomasito de los Santos and Ronnie Dig. The trial court found their testimonies to be specially tailored to suit each other.

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[24] Records (Crim. Case No. 01-464), pp. 224-225.

As to Tomasito de los Santos, the trial court ruled that he had no participation whatsoever in the stabbing of Edwin Labini. The trial court declared that the prosecution failed to establish beyond reasonable doubt that the killing of Edwin Labini was part of a concerted plan or agreement between Pablo Lusabio, Jr. and Tomasito de los Santos. Although Tomasito de los Santos was the one who fetched Edwin Labini, it was not shown that unity of purpose and coordinated acts on the part of the two were exhibited. Never was it shown that Tomasito de los Santos was armed at any time before, during and after the attack on Edwin Labini. His mere presence in the crime scene cannot show conspiracy with Pablo Luabio, Jr. or the basis of liability as an accomplice.

The trial court declared that treachery attended the killing of Edwin Labini explaining that although the attack was frontal, same was so sudden and unexpected giving the victim no opportunity to defend himself. It did not appreciate the presence of the aggravating circumstance of evident premeditation and superior strength. However, it appreciated in favor of Lusabio the mitigating circumstance of voluntary surrender.

As regards the case for attempted murder, the trial court found the case filed by Pablo Lusabio, Jr. against Tomasito de los Santos and Ronnie Dig to be "a product of an afterthought" – a ploy to divert Lusabio's criminal responsibility for the killing of Edwin Labini. The trial court found dubious Lusabio's failure to give his statement before the Barangay Captain when he surrendered the following morning denying his participation in the killing of Edwin Labini and pointing to Tomasito de los Santos and Ronnie Dig as the real killers. The trial court also found questionable his failure to immediately give said statement to the police investigators when he was turned over to them, and the lapse of one month before the case for attempted murder was filed.

The trial court found the corroborating testimony of alleged eyewitness Ricardo Cabrera absurd. It said that Cabrera who was afraid to tell the *barangay* authorities what he saw that fateful night would now suddenly volunteer to testify in behalf of Pablo Lusabio, Jr. It likewise found incredible his testimony

that Lusabio, despite lying prostrate on the ground while Tomasito de los Santos and Ronnie Dig, who were armed with a machete and a *ginunting*, were ganging up on him, suffered only slight wounds that would not cause death even without immediate medical attention.

Despite finding that Pablo Lusabio, Jr. suffered minor injuries on the night of 12 June 2001, the trial court found the prosecution's evidence insufficient to show that Tomasito de los Santos had anything to do with the infliction of said wounds. However, it said that it was not discounting entirely the probability that Ronnie Dig, the other accused who had remained at large, could be the real culprit who inflicted the wounds on Pablo Lusabio, Jr.

On 21 October 2004, accused-appellant filed a motion for reconsideration, praying that the decision be reconsidered and/or modified by acquitting him of Murder in Crim. Case No. 01-459 and finding Tomasito de los Santos guilty in Crim. Case No. 01-464.[25]

In its Order dated 27 January 2005, the trial court denied the motion for reconsideration.[26] Thus, on 3 February 2005, accused-appellant filed a Notice of Appeal.[27]

The trial court, per Order dated 23 February 2005, gave due course to the notice of appeal and ordered the Clerk of Court to elevate the records of the case to the Court of Appeals.[28]

The appeal of accused-appellant was docketed as CA-G.R. CR. HC No. 01462. Appellant's brief contained the following assignment of errors:

1. THAT THE HONORABLE COURT *A QUO* ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF MURDER DESPITE THE INSUFFICIENCY OF THE EVIDENCE OF THE PROSECUTION.

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[25] Records (Crim. Case No. 01-464), pp. 228-231.

[26] *Id.* at 233-235.

[27] *Id.* at 236.

[28] *Id.* at 238.

2. THAT THE HONORABLE COURT *A QUO* ERRED IN GIVING FULL FAITH AND CREDENCE TO THE TESTIMONY OF PROSECUTION WITNESS DORIS LABINI, WHO IS THE VICTIM'S WIFE, THE VICTIM'S SIBLINGS, AND OF THE ACCUSED TOMASITO DE LOS SANTOS WHO HIMSELF ADMITTED HAVING FETCHED THE VICTIM AND IMMEDIATELY FLED THE CRIME SCENE AFTER THE INCIDENT.

3. THAT THE HONORABLE COURT *A QUO* ERRED IN NOT CONSIDERING THE TESTIMONY OF ACCUSED-APPELLANT AND THE LATTER'S WITNESSES WHICH ARE MORE IN ACCORD WITH TRUTH, HUMAN EXPERIENCE, LOGIC AND COMMON KNOWLEDGE.

On 9 November 2007, the Court of Appeals rendered its decision affirming the decision of the trial court.

Aggrieved, accused-appellant appeals to this Court *via* a Notice of Appeal.[29] Said notice of appeal having been filed within the reglementary period, the same was given due course and the records of the case elevated to us.[30]

In a resolution dated 15 April 2009, the parties were notified to file their respective supplemental briefs, if they so desired, within 30 days from notice.[31] Appellee manifested that it was no longer filing a supplemental brief and was adopting its appellee's brief, the same having adequately discussed appellant's guilt of the crime charged, and there being no new issues material to the case, which were not elaborated therein.[32] Accused-appellant filed his Supplemental Brief on 30 July 2009.[33]

It is the contention of accused-appellant that the testimonies of the prosecution witnesses, three of whom were related to the victim, should not have been given full credence by the

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[29] CA *rollo*, p. 222.

[30] *Id.* at 225.

[31] *Rollo*, p. 26.

[32] *Id.* at 27-29.

[33] *Id.* at 35-45.

lower courts. He further tries to discredit one of them, Doris Labini, the wife of the victim, who allegedly witnessed the stabbing of Edwin Labini, arguing that her testimony was inconsistent with that of Tomasito de los Santos, who supposedly was another witness to the murder. In support of his defense of denial, accused-appellant claims that testimonies of Ricardo Cabrera, who corroborated his claim that Tomasito de los Santos and Ronnie Dig attacked him, and that Edwin Labini was assaulted when the latter came to his aid, and that of Dr. Antonio Lopez, who said that the wounds accused-appellant sustained on his back were not self-inflicted, should not have been disregarded.

Accused-appellant brands Doris Labini as a biased witness, thus unreliable, because she was the wife of Edwin Labini. The fact that she was the wife of the victim did not necessarily make her a partial witness. It is well-settled that mere relationship of a witness to the victim does not impair the witness' credibility. On the contrary, a witness' relationship to a victim of a crime would even make his or her testimony more credible, as it would be unnatural for a relative who is interested in vindicating the crime, to accuse somebody other than the real culprit.[34] A witness is said to be biased when his relation to the cause or to the parties is such that he has an incentive to exaggerate or give false color to his statements, or to suppress or to pervert the truth, or to state what is false.[35] To warrant rejection of the testimony of a relative or friend, it must be clearly shown that, independently of the relationship, the testimony was inherently improbable or defective, or that improper or evil motives had moved the witness to incriminate the accused falsely.[36]

The relationship of Doris Labini to the victim, per se, does not impair her credibility. We, like both lower courts, are convinced that she is telling the truth. Moreover, the defense failed to show any evidence that Doris Labini had improper or

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[34] *People v. Romero*, 459 Phil. 484, 499 (2003).

[35] *People v. Ulgasan*, 390 Phil. 763, 778 (2000).

[36] *People v. Daen, Jr.*, 314 Phil. 280, 291 (1995).

evil motives to testify falsely against accused-appellant. This being the case, her testimony is entitled to full faith and credit.

The defense tries to further destroy the credibility of Doris Labini by arguing that her testimony is not consistent with that of Tomasito de los Santos. According to accused-appellant, Doris Labini said Tomasito de los Santos was already present when she saw her husband being stabbed. This declaration, according to accused-appellant, did not conform to the testimony of Tomasito de los Santos that the latter went out of his brother's house after hearing Doris Labini shout "Enough of that," after which Tomasito saw Pablo Lusabio, Jr. stab Edwin Labini, causing the latter to fall to the ground.

Such inconsistency, which we consider to be minor or trivial, will not impair Doris Labini's credibility. This Court has ruled that 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. Such minor flaws may even enhance the worth of a testimony, for they guard against memorized falsities.[37] Trivial inconsistencies do not rock the pedestal upon which the credibility of the witness rests, but enhance credibility, as they manifest spontaneity and lack of scheming.[38] It is not to be expected that the witness will be able to remember every single detail of an incident with perfect or total recall.[39] Furthermore, it is to be noted that Tomasito de los Santos is one of the accused in the murder case, while Doris Labini is a prosecution witness. We, therefore, cannot simply discredit Doris Labini because of a statement coming from the mouth of an accused.

In the case at bar, Doris Labini positively identified Pablo Lusabio, Jr. as the one who stabbed her husband. Such declaration was corroborated by the testimony of Tomasito de los Santos that it was, indeed, Lusabio who inflicted the stab wounds on

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[37] *People v. Mariano*, G.R. No. 168693, 19 June 2009.

[38] *People v. Malate*, G.R. No. 185724, 5 June 2009.

[39] *Sayoc v. People*, G.R. No. 157723, 30 April 2009.

Edwin Labini. Doris Labini was eight meters away from her husband when the latter was stabbed by Lusabio. Aside from this, the crime scene was well-lighted, making it easy for her to identify Lusabio as the perpetrator.

Accused-appellant interposes the defense of denial. He denies participation in the crime, claiming that it was Tomasito de los Santos and Ronnie Dig who attacked him, and that Edwin Labini was assaulted when the latter came to accused-appellant's aid. In support of such claim, Ricardo Cabrera took the witness stand.

Both lower courts found Cabrera's testimony incredible. So do we. The trial court aptly explained why it did not give credence to Cabrera's testimony.

> Indeed, we find it absurd, that an alleged eyewitnesses such as Ricardo Cabrera, who was even afraid to tell the *barangay* authorities of Brgy. Biton, Magallanes, Sorsogon, of what he saw on that evening of June 12, 2001 at around 9:00 o'clock, despite the fact that the alleged incident happened just near the house of the *barangay* captain, would suddenly come out into the open as bold as a lion and volunteer to testify for and in behalf of accused Pablo Lusabio, Jr. It must [be] emphasized that said witness instead of reporting the incident to the *barangay* captain of Biton, ran towards the dance hall and spent the whole night there dancing and enjoying himself as if nothing unusual happened. He did not even bother to tell the family of Pablo Lusabio, Jr. with whom he is accordingly familiar about what happened to Pablo in the hands of a certain Tomasito de los Santos and Ronnie Dig. He kept the incident that he saw to himself for more than a month, and it was only after his conscience bothered him that he volunteered himself to the counsel of the accused who did not even seek his services. How he came to know the counsel of the accused Pablo Lusabio, Jr. has remained a mystery. The court is likewise in a quandary why only a highlander such as Ricardo Cabrera volunteered to testify for accused Pablo Lusabio, Jr., when there are supposed many people around at the time of the alleged incident. It being the eve of the *barangay* fiesta. Specially, so, that the alleged incident happened just near the place of the *barangay* captain of Biton.
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> Moreover, a comparison of the substance of the testimonies of accused Pablo Lusabio, Jr. and that of Ricardo Cabrera would lead one to the inevitable conclusion – THAT THEY WERE SPECIALLY TAILORED TO SUIT ONE ANOTHER.

Pablo Lusabio, Jr. testified – that on his way home, he was waylaid by the duo of Tomasito de los Santos and Ronnie Dig. Tomasito de los Santos suddenly appeared and hacked him hitting him on the left arm. This was followed by a stabbing blow from Ronnie Dig. He tried to run, but he fell down. When he tried to get up, he was again stabbed by Ronnie Dig hitting him on the right thigh. Just when Ronnie Dig was about to stab the witness again, Edwin Labini shouted at Ronnie dig to stop. Tomasito turned his attention this time to Edwin Labini. The witness took this opportunity to crawl through a fence made of bamboo splits and escaped.

The version of Ricardo Cabrera is this – he was on his way to the dance hall from their house, when he accidentally saw Pablo Lusabio, Jr. being hacked by Tomasito de los Santos and Ronnie Dig using a machete. Edwin Labini was also present, but he was seated on the fence and still very much alive. Pablo Lusabio, Jr. was lying prostrate on the ground while being hacked by Tomasito de los Santos and being stabbed likewise by Ronnie Dig. He heard Edwin Labini seated on the fence uttered something, but he failed to understand what he was saying because he ran very fast. He did not notice if Edwin Labini was injured.

From the two versions it can readily be deduced, that it was only after the deceased Edwin Labini shouted at Ronnie Dig to stop and Tomasito turned his attention to Edwin Labini, that accused Pablo Lusabio, Jr. was able to crawl through a bamboo fence and escaped. Almost of the same substance was the tenor of the testimony of Ricardo Cabrera, when he stated that he heard the deceased Edwin Labini who was seated on the fence uttered something. He failed to understand it, however, because he ran very fast. Both versions were tailored to show, that deceased Edwin Labini was still alive when the two of them left the scene of the incident, thus, implying that the persons responsible for this death were no other than the accused Tomasito de los Santos and Ronnie Dig.

If that were really true, why would the duo of Tomasito de los Satnos and Ronnie Dig suddenly turn their ire on the deceased just because he shouted at them to stop, if their real intention was to kill the accused Pablo Lusabio, Jr. It must be borne in mind that the late Edwin Labini was already there present seated on the fence and watching the duo ganging up on Pablo Lusabio, Jr. as per version of Ricardo Cabrera, even before the latter chanced upon the incident. Thus, implying that the three were in the company of one another and not against each other. Furthermore, considering that accused

Pablo Lusabio, Jr. was lying prostrate on the ground, while the duo of Tomasito and Ronnie who were armed with a "machete" and a "*ginunting*" type of bolo were ganging up on him, it was surprising to note, that the former only suffered slight injuries. Which injuries as described by the doctor were not serious and could not cause the death of the patient even without immediate medical attention. Finally, why did Pablo Lusabio, Jr. not give a statement before the *barangay* captain during his surrender the following morning, denying his participation in the killing of Edwin Labini, and pointed to Tomasito de los Santos and Ronnie Dig as his attackers and the real killers of Edwin Labini? Why did he not give such a statement to the police investigators, immediately after his person was turned over by the *barangay* captain into their custody to show his innocence? Why did it took him more than a month to file such a criminal complaint against Tomasito de los Santos and Ronnie dig? All these nagging questions and the questionable circumstances that lead to the filing of Criminal Case No. 01-464 (For: Attempted Murder), have inevitably raised a reasonable doubt in the mind of the court. Particularly, so that they were not satisfactorily explained by prosecution's evidence.[40]

To be believed, denial must be buttressed by strong evidence of non-culpability. Otherwise, it is purely self-serving and without merit.[41] A denial unsubstantiated by clear and convincing evidence is negative, self-serving, merits no weight in law, and cannot therefore be given greater evidentiary value than the testimonies of credible witnesses who testify on affirmative matters.[42] Greater weight is given to the categorical identification of the accused by the prosecution witnesses than to the accused's plain denial of participation in the commission of the crime.[43] Indeed, denial cannot prevail over the positive testimonies of prosecution witnesses who were not shown to have any ill motive to testify against accused-appellant. Absence of improper motives makes a testimony worthy of full faith and credence.[44] In this case,

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[40] Records (Crim. Case No. 01-464), pp. 219-221.

[41] *Belonghilot v. Hon. Angeles*, 450 Phil. 265, 293 (2003).

[42] *People v. Alviz*, G.R. Nos. 144551-55, 29 June 2004, 433 SCRA 164, 172.

[43] *People v. Baccay*, 348 Phil. 322, 327-328 (1998).

[44] *People v. Brecinio*, G.R. No. 138534, 17 March 2004, 425 SCRA 616, 625.

there being no strong and credible evidence adduced to overcome the testimonies of Doris Labini and Tomasito de los Santos pointing to accused-appellant as the culprit, no weight can be given to his denial.

In another attempt at exoneration, accused-appellant argues that the testimony of Dr. Antonio Lopez, the doctor who treated his wounds, should not have been disregarded, because it substantiates his (accused-appellant's) claim that it was he who was attacked by Tomasito de los Santos and Ronnie Dig; and that when Edwin Labini tried to pacify De los Santos and Dig, the two turned their ire on him. The physician's testimony, he said, showed that the wounds he sustained were not self-inflicted.

We fully agree with the trial court that this declaration of Dr. Lopez will not free accused-appellant from criminal liability. The trial court never denied that accused-appellant suffered minor injuries on the night Edwin Labini was killed. However, it ruled that the infliction of the wounds on him can be interpreted to pertain to another incident different from that which led to the death of Edwin Labini. It stressed that said incident would not exonerate accused-appellant completely from criminal liability, as he had been positively identified as the attacker of Edwin Labini. In fact, the trial court did not discount entirely the possibility that the other accused Ronnie Dig, who has remained at large, could have been the real culprit who had inflicted the wounds on the person of accused-appellant.

All in all, we find the evidence of the prosecution to be more credible than that adduced by accused-appellant. When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate testimonial evidence properly.[45]

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[45] *People v. Escultor*, 473 Phil. 717, 730 (2004).

The Court of Appeals further affirmed the findings of the RTC. In this regard, it is 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. We find no compelling reason to deviate from their findings.

Finally, accused-appellant submits that if ever he committed a crime, he merely committed homicide. He maintains that the prosecution failed to prove that he deliberately and consciously adopted a particular mode of attack in order to eliminate the risk to his person from any defense that Edwin Labini might offer.

The lower court was correct in appreciating treachery in the commission of the crime. There is treachery when the following essential elements are present, *viz*: (a) at the time of the attack, the victim was not in a position to defend himself; and (b) the accused consciously and deliberately adopted the particular means, methods or forms of attack employed by him.[46] The essence of treachery is the sudden and unexpected attack by the aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victim.[47] It was clearly established that Edwin Labini, while talking to Pablo Lusabio, Jr. face to face, was suddenly stabbed by the latter with a ten-inch bladed weapon for no reason at all. The suddenness of the stabbing and the fact that Edwin Labini was unarmed gave him no opportunity to defend himself. It is likewise apparent that accused-appellant consciously and deliberately adopted his mode of attack, making sure that the victim would have no chance to defend himself by reason of the surprise attack.

In *People v. Villonez*,[48] we ruled that treachery may still be appreciated even when the victim was forewarned of danger to

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[46] *People v. Escote, Jr.*, 448 Phil. 749, 786 (2003).

[47] *People v. Botona*, G.R. No. 161291, 27 September 2004, 439 SCRA 294, 301.

[48] 359 Phil. 95, 112 (1998).

his person. What was decisive was that the execution of the attack made it impossible for the victim to defend himself or to retaliate.

In the case on appeal, Edwin Labini was completely unaware that he was going to be attacked. He was not forewarned of any danger to himself, as there was no altercation or disagreement between the accused and him. He was merely conversing with accused-appellant. If treachery may be appreciated when the victim was forewarned, more so should it be appreciated when the victim was not, as in the case at bar.

Under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659,[49] murder is punishable by *reclusion perpetua* to death. In the instant case, treachery, which was alleged and proved, qualified the offense to murder. There being no other mitigating or aggravating circumstance in the commission of the felony, accused-appellant was correctly sentenced to *reclusion perpetua,* conformably to Article 63(2)[50] of the Revised Penal Code.

We now go to the award of damages. When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.[51]

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[49] An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, as amended, other Special Laws, and for other Purposes. Took Effect on 31 December 1993.

[50] Art. 63. *Rules for the application of indivisible penalties*. x x x.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

x x x x x x x x x

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

[51] *People v. Beltran, Jr.*, G. R. No. 168051, 27 September 2006, 503 SCRA 715, 740.

Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime.[52] The trial court and the Court of Appeals properly awarded the amount of ₱50,000.00 to the heirs of the victim as civil indemnity. The amount of ₱75,000.00 as civil indemnity is awarded only if the crime is qualified by circumstances that warrant the imposition of the death penalty.[53]

As to actual damages, both the trial court and the Court of Appeals awarded only the amount of ₱20,000.00, since the prosecution was only able to prove this amount via an official receipt. The award of ₱25,000.00 for temperate damages in homicide or murder cases is proper when no evidence of burial and funeral expenses is presented in the trial court.[54] Under Article 2224 of the Civil Code, temperate damages may be recovered, as it cannot be denied that the heirs of the victim suffered pecuniary loss, although the exact amount was not proved.[55] In *People v. Magdaraog*,[56] we pronounced that when actual damages proven by receipts during the trial amount to less than ₱25,000.00, the award of temperate damages for ₱25,000.00 is justified in lieu of actual damages of a lesser amount. Conversely, if the amount of actual damages proven exceeds ₱25,000.00, then temperate damages may no longer be awarded; actual damages based on the receipts presented during trial should instead be granted. Thus, in lieu of actual damages, temperate damages in the amount of ₱25,000.00 are awarded to the heirs of the victim.

Anent moral damages, the same are mandatory in case of murder and homicide, without need of allegation and proof other

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[52] *People v. Tubongbanua*, G.R. No. 171271, 31 August 2006, 500 SCRA 727, 742.

[53] *People v. Barcena*, G.R. No. 168737, 16 February 2006, 482 SCRA 543, 561.

[54] *People v. Dacillo*, 471 Phil. 497, 510 (2004).

[55] *People v. Surongon*, G.R. No. 173478, 12 July 2007, 527 SCRA 577, 588.

[56] G.R. No. 151251, 19 May 2004, 428 SCRA 529, 543.

than the death of the victim.[57] The award of ₱50,000.00 by both lower courts is proper.

Both lower courts did not award exemplary damages. The heirs of the victim are entitled to exemplary damages, since the qualifying circumstance of treachery was firmly established.[58] Under Article 2230 of the Civil Code, exemplary damages as part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. The term aggravating circumstances as used therein is to be understood in its broad or generic sense, since the law did not specify otherwise.[59] Consistent with prevailing jurisprudence, we award the amount of ₱30,000.00 as exemplary damages to the heirs of the victim.[60]

WHEREFORE, premises considered, the decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01462 dated 9 November 2007 is hereby *AFFIRMED* with the *MODIFICATION* that (1) temperate damages in the amount of ₱25,000.00 are awarded in lieu of actual damages; and (2) exemplary damages in the amount of ₱30,000.00 are awarded to the heirs of Edwin Labini. Costs against the accused-appellant.

SO ORDERED.

Carpio (Chairperson), Peralta, and *Bersamin,*[*] *JJ.,* concur.

Abad,[**] *J.,* see dissenting opinion.

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[57] *People v. Bajar*, 460 Phil. 683, 700 (2003).

[58] *People v. Beltran, Jr., supra* note 51.

[59] *People v. Abolidor*, 467 Phil. 709, 722 (2004).

[60] *People v. Anguac*, G.R. No. 176744, 5 June 2009; *People v. Layco, Sr.*, G.R. No. 182191, 8 May 2009; *People v. Gidoc*, G.R. No. 185162, 24 April 2009.

[*] Per Special Order No. 763, dated 19 October 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Lucas P. Bersamin to replace Associate Justice Teresita J. Leonardo-De Castro, who is on official leave.

[**] Per Special Order No. 753, dated 12 October 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Roberto A. Abad to replace Associate Justice Presbitero J. Velasco, Jr., who is on official leave.

DISSENTING OPINION

ABAD, *J.*:

The *ponencia* found accused-appellant Pablo Lusabio Jr., guilty beyond reasonable doubt of murdering Edwin Labini. It affirmed the findings of the Court of Appeals which reiterated the points raised by the trial court.

The trial court convicted Lusabio mainly based on the testimony of the victim's wife, Doris Labini. It found her credible, consistent, and free of ill motive to testify against Lusabio whom she knew. Further, the trial court gave more weight to Doris' positive identification of Lusabio as her husband's killer than Lusabio's denial. Lastly, co-accused Tomasito de los Santos corroborated Doris' testimony that Lusabio attacked the victim, though their stories did not match at certain points.

On appeal, Lusabio tried to convince the Court of Appeals that Doris was a biased witness and that, as the victim's wife, she has an impaired credibility. The latter court said, however, that it could not consider Doris biased because her relationship to the victim did not give her any incentive to falsely testify against an innocent man. Further, the inconsistencies between the testimonies of Tomasito and Doris were too trivial to discredit her statements.

Thus, Lusabio elevated the case to this Court.

The core issue in this case is whether or not Doris' testimony is sufficiently credible to support a finding of guilt beyond reasonable doubt.

In a 2008 decision,[1] this Court pointed out that the assumption that a widow's testimony is credible since she has no motive other than to see that justice is done is not equal to the statement that a witness' testimony is credible because the defense failed to show any motive to falsely testify. The edge given to a disinterested testimony applies only to those who are not related

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[1] *People v. Rodrigo*, G.R. No. 176159, September 11, 2008, 564 SCRA 584.

to the incident or to the victim. The widow is not a disinterested witness. She is someone who has a personal interest in the incident and who may have been traumatized because of it. Aggrieved parties have different reactions to these kinds of occurrences in their lives, thus:

"x x x Indeed, for some of them, the interest of seeing that justice is done may be paramount so that they will act strictly according to legal parameters despite their loss and their grief. At the opposite extreme are those who may not so act; they may want to settle and avenge their loss irrespective of what the law and evidence may indicate. In between these extremes are those who may not be outwardly or consciously affected, but whose judgment with respect to the case and its detail may be impaired by their loss and grief. All these are realities that we must be sensitive to."[2]

The Court concluded that the testimony of a widow, whose loss may have devastated her emotionally, cannot be assumed credible simply because the defense could not identify ill motive on her part.

In this case, except for the fact that De los Santos' testimony corroborated that of Doris', the Court did not put much emphasis on his statements. Being a co-accused himself, De los Santos had all the reasons to point the finger somewhere else, particularly in the direction of Lusabio. In other words, Lusabio can be considered as having been convicted solely based on the testimony of the victim's widow.

But consider the *ponencia's* summary of Doris' testimony:

"...Around 9:00 p.m. of 12 June 2001, she was in their living room cleaning their house, while Edwin was busy cooking in the kitchen in preparation for the barrio fiesta the following day. Thereafter, Tomasito de los Santos arrived and conversed with Edwin. Tomasito and Edwin left and casually walked away. Nervous and apprehensive because her husband was fetched and she did not know where he was going, Doris followed the two. When Edwin and Tomasito arrived at the weighing post near the gate of the house of Romeo de los Santos, the brother of Tomasito, the latter left Edwin for about two

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[2] *Id*.

minutes. Doris stopped at a distance of about eight meters away from the two. She explained that she had the habit of following her husband but not asking her husband where he was going. When Tomasito returned to Edwin, accused-appellant Pablo Lusabio, Jr. appeared. The latter talked to Edwin and all of a sudden, accused-appellant stabbed Edwin with a ten-inch bladed weapon. Doris ran away and so did Tomasito. Upon seeing her husband being stabbed by accused-appellant, her first reaction was to seek the assistance from her husband's brother, Jose Labini. After seeking assistance, she returned to the place where her husband was stabbed and learned that her husband was already dead."

I find Doris' testimony of doubtful credibility for the following reasons:

1. According to Doris, her husband, Edwin, just casually walked away with Tomasito after the latter arrived and talked to him, evidently to go to a neighbor's house. But this seemed unlikely because, as Doris said, Edwin was at that time doing some cooking. Normally, a husband would have first asked his wife to mind the kitchen. He would not just walk casually away as Doris would have it.

2. Doris said that she followed her husband out of the house and onto the house of Tomasito's brother. But it is also not likely that a wife would just leave her house with no one to mind it after her husband left, especially since there was cooking going on in the kitchen.

3. Doris said that, after Tomasito left her husband in front of his brother's house, she just stood there for two minutes watching her husband eight meters away while he waited for Tomasito to return. If she were apprehensive for his safety, it is incredible that she did not approach him and ask him what he was doing standing there.

4. Doris testified in great detail that she saw Lusabio attack her husband with a 10-inch bladed weapon. Yet, she was unable to perceive how Lusabio sustained so many incise and stab wounds himself.

5. More, a wife who had shown great concern for the safety of her husband would surely, rather than ran away as she testified, either shout for help for her husband or implore his assailant to stop the attack.

It could happen that, although the victim's relatives were convinced that the accused committed the crime, no witness is available to testify on it. A loved one, like the wife, would always be willing to testify, even falsely, to obtain justice for her slain husband. Consequently, it is important to scrutinize the widow's testimony and check it against the criteria of common experiences.

Conviction based on a set of circumstances contrary to human experience is what this Court should veer from. A man should not be put away simply because the defense could not raise ill motive against a witness that this Court should not treat as partial and unbiased, in the first place, because she has emotional ties to the case which could have clouded her judgment.

THIRD DIVISION

[G.R. No. 152319. October 28, 2009]

HEIRS OF THE LATE JOAQUIN LIMENSE, namely: CONCESA LIMENSE, Surviving Spouse; and DANILO and JOSELITO, both surnamed Limense, children, *petitioners, vs.* **RITA *VDA. DE* RAMOS, RESTITUTO RAMOS, VIRGILIO DIAZ, IRENEO RAMOS, BENJAMIN RAMOS, WALDYTRUDES RAMOS-BASILIO, TRINIDAD RAMOS-BRAVO, PAZ RAMOS-PASCUA, FELICISIMA RAMOS-REYES, and JACINTA RAMOS,** *respondents.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; PRESIDENTIAL DECREE NO. 1529; VALIDITY OF A TORRENS TITLE CANNOT BE SUBJECTED TO A COLLATERAL ATTACK; RATIONALE.— Apparently, respondents are questioning the legality of TCT No. 96886, an issue that this Court cannot pass upon in the present case. It is a rule that the validity of a torrens title cannot be assailed collaterally. Section 48 of Presidential Decree (PD) No. 1529 provides that: [a] certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law. In the case at bar, the action filed before the RTC against respondents was an action for removal of obstruction and damages. Respondents raised the defense that Joaquin Limense's title could have been obtained through fraud and misrepresentation in the trial proceedings before the RTC. Such defense is in the nature of a collateral attack, which is not allowed by law. Further, it has been held that a certificate of title, once registered, should not thereafter be impugned, altered, changed, modified, enlarged or diminished, except in a direct proceeding permitted by law. Otherwise, the reliance on registered titles would be lost. The title became indefeasible and incontrovertible after the lapse of one year from the time of its registration and issuance. Section 32 of PD 1529 provides that "upon the expiration of said period of one year, the decree of registration and the certificate of title shall become incontrovertible. Any person aggrieved by such decree of registration in any case may pursue his remedy by action for damages against the applicant or other persons responsible for the fraud." It has, therefore, become an ancient rule that the issue on the validity of title, *i.e.*, whether or not it was fraudulently issued, can only be raised in an action expressly instituted for that purpose. In the present case, TCT No. 96886 was registered in 1969 and respondents never instituted any direct proceeding or action to assail Joaquin Limense's title.

2. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF THE COURT OF APPEALS, ALTHOUGH GENERALLY DEEMED CONCLUSIVE, MAY BE REVIEWED BY THE SUPREME COURT; CASE AT BAR.— Findings of fact of

the CA, although generally deemed conclusive, may admit review by this Court if the CA failed to notice certain relevant facts that, if properly considered, would justify a different conclusion, and if the judgment of the CA is premised on a misapprehension of facts. As with the present case, the CA's observation that TCT No. 96886 is of dubious origin, as TCT No. 40043 does not appear to have been disposed of by Catalina, Isabel and Salud Lozada, is improper and constitutes an indirect attack on TCT No. 96886. As we see it, TCT No. 96886, at present, is the best proof of Joaquin Limense's ownership over Lot No. 12-C. Thus, the CA erred in ruling that respondents and petitioners co-owned Lot No. 12-C, as said lot is now registered exclusively in the name of Joaquin Limense.

3. CIVIL LAW; PROPERTY; OWNERSHIP; OWNER OF THE PROPERTY HAS THE RIGHT TO ENCLOSE OR FENCE HIS PROPERTY BUT MUST RESPECT THE SERVITUDES CONSTITUTED THEREON.— x x x Joaquin Limense, as the registered owner of Lot 12-C, and his successors-in-interest, may enclose or fence his land or tenements by means of walls, ditches, live or dead hedges, or by any other means without detriment to servitudes constituted thereon. However, although the owner of the property has the right to enclose or fence his property, he must respect servitudes constituted thereon. The question now is whether respondents are entitled to an easement of right of way.

4. ID.; ID.; EASEMENTS OR SERVITUDES; KINDS OF EASEMENT; DEFINED.— As defined, an easement is a real right on another's property, corporeal and immovable, whereby the owner of the latter must refrain from doing or allowing somebody else to do or something to be done on his property, for the benefit of another person or tenement. Easements may be continuous or discontinuous, apparent or non-apparent. Continuous easements are those the use of which is or may be incessant, without the intervention of any act of man. Discontinuous easements are those which are used at intervals and depend upon the acts of man. Apparent easements are those which are made known and are continually kept in view by external signs that reveal the use and enjoyment of the same. Non-apparent easements are those which show no external indication of their existence.

5. ID.; ID; ID.; ID.; A DISCONTINUOUS AND APPARENT EASEMENT CAN BE ACQUIRED ONLY BY VIRTUE OF A TITLE; CASE AT BAR.— In the present case, the easement of right of way is discontinuous and apparent. It is discontinuous, as the use depends upon the acts of respondents and other persons passing through the property. Being an alley that shows a permanent path going to and from Beata Street, the same is apparent. Being a discontinuous and apparent easement, the same can be acquired only by virtue of a title.

6. ID.; ID.; ID.; ID.; ID.; WHERE THE PARTY HAS KNOWLEDGE OF A PRIOR EXISTING INTEREST THAT WAS UNREGISTERED AT THE TIME HE ACQUIRED A RIGHT TO THE SAME LAND, KNOWLEDGE OF THAT PRIOR UNREGISTERED INTEREST HAS THE EFFECT OF REGISTRATION AS TO HIM; CASE AT BAR.— Every buyer of a registered land who takes a certificate of title for value and in good faith shall hold the same free of all encumbrances except those noted on said certificate. It has been held, however, that "where the party has knowledge of a prior existing interest that was unregistered at the time he acquired a right to the same land, his knowledge of that prior unregistered interest has the effect of registration as to him." In the case at bar, Lot No. 12-C has been used as an alley ever since it was donated by Dalmacio Lozada to his heirs. It is undisputed that prior to and after the registration of TCT No. 96886, Lot No. 12-C has served as a right of way in favor of respondents and the public in general. x x x Thus, petitioners are bound by the easement of right of way over Lot No. 12-C, even though no registration of the servitude has been made on TCT No. 96886.

7. ID.; ID.; ID.; RIGHT OF ACCESSION; BUILDER IN GOOD FAITH; GOOD FAITH, ELUCIDATED.— Good faith is an intangible and abstract quality with no technical meaning or statutory definition; and it encompasses, among other things, an honest belief, the absence of malice and the absence of a design to defraud or to seek an unconscionable advantage. An individual's personal good faith is a concept of his own mind and, therefore, may not conclusively be determined by his protestations alone. It implies honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry. The essence of good faith lies in an honest belief

in the validity of one's right, ignorance of a superior claim, and absence of intention to overreach another. Applied to possession, one is considered in good faith if he is not aware that there exists in his title or mode of acquisition any flaw which invalidates it.

8. ID.; ID.; ID.; ID.; ID.; ID.; GOOD FAITH, ESTABLISHED IN CASE AT BAR.— Good faith is always presumed, and upon him who alleges bad faith on the part of the possessor rests the burden of proof. It is a matter of record that respondents' predecessor-in-interest constructed their residential building on Lot No. 12-D, adjacent to Lot No. 12-C, in 1932. Respondents' predecessor-in-interest owned the 1/3 portion of Lot No. 12-C at the time the property was donated to them by Dalmacio Lozada in 1932. The Deed of Donation executed by the late Dalmacio Lozada, dated March 9, 1932, specifically provides that: I hereby grant, cede and donate in favor of Catalina Lozada married to Sotero Natividad, Isabel Lozada married to Isaac Simense and Salud Lozada married to Francisco Ramos, all Filipinos, of legal age, the parcel of land known as Lot No. 12-C, ***in equal parts***. The portions of Lot No. 12-D, particularly the overhang, covering 1 meter in width and 17 meters in length; the stairs; and the concrete structures are all within the 1/3 share alloted to them by their donor Dalmacio Lozada and, hence, there was absence of a showing that respondents acted in bad faith when they built portions of their house on Lot No. 12-C. Using the above parameters, we are convinced that respondents' predecessors-in-interest acted in good faith when they built portions of their house on Lot 12-C.

9. ID.; ID.; RIGHT OF ACCESSION; APPLICABILITY OF ARTICLE 448 OF THE CIVIL CODE TO CASE AT BAR.— In other words, when the co-ownership is terminated by a partition, and it appears that the house of an erstwhile co-owner has encroached upon a portion pertaining to another co-owner, but the encroachment was in good faith, then the provisions of Article 448 should apply to determine the respective rights of the parties. In this case, the co-ownership was terminated due to the transfer of the title of the whole property in favor of Joaquin Limense.

10. ID.; ID.; ID.; ID.; OPTIONS AVAILABLE TO THE LANDOWNER; RATIONALE.— Under the foregoing provision, petitioners have the right to appropriate said portion of the house of respondents upon payment of indemnity to respondents, as provided for in Article 546 of the Civil Code. Otherwise, petitioners may oblige respondents to pay the price of the land occupied by their house. However, if the price asked for is considerably much more than the value of the portion of the house of respondents built thereon, then the latter cannot be obliged to buy the land. Respondents shall then pay the reasonable rent to petitioners upon such terms and conditions that they may agree. In case of disagreement, the trial court shall fix the terms thereof. Of course, respondents may demolish or remove the said portion of their house, at their own expense, if they so decide. The choice belongs to the owner of the land, a rule that accords with the principle of accession that the accessory follows the principal and not the other way around. Even as the option lies with the landowner, the grant to him, nevertheless, is preclusive. He must choose one. He cannot, for instance, compel the owner of the building to instead remove it from the land. The obvious benefit to the builder under this article is that, instead of being outrightly ejected from the land, he can compel the landowner to make a choice between two options: (1) to appropriate the building by paying the indemnity required by law, or (2) to sell the land to the builder. The *raison d'etre* for this provision has been enunciated, thus: Where the builder, planter or sower has acted in good faith, a conflict of rights arises between the owners, and it becomes necessary to protect the owner of the improvements without causing injustice to the owner of the land. In view of the impracticability of creating a state of forced co-ownership, the law has provided a just solution by giving the owner of the land the option to acquire the improvements after payment of the proper indemnity, or to oblige the builder or planter to pay for the land and the sower the proper rent. He cannot refuse to exercise either option. It is the owner of the land who is authorized to exercise the option, because his right is older, and because, by the principle of accession, he is entitled to the ownership of the accessory thing.

11. ID.; ID.; ID.; ID.; ID.; SUBJECT ENCROACHMENT WAS BUILT IN GOOD FAITH, HENCE CANNOT BE REMOVED AT RESPONDENT'S EXPENSE.— x x x [A]lthough it may seem that the portions encroaching upon respondents' house can be considered a nuisance, because it hinders petitioners' use of their property, it cannot simply be removed at respondents' expense, as prayed for by petitioner. This is because respondents built the subject encroachment in good faith, and the law affords them certain rights as discussed above.

APPEARANCES OF COUNSEL

M.B. Tomacruz Law Office for petitioners.
M.S. Meneses for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[1] of the Court of Appeals dated December 20, 2001 in CA-G.R. CV No. 33589 affirming *in toto* the Decision[2] of the Regional Trial Court of Manila, Branch 15, dated September 21, 1990 in Civil Case No. 83-16128.

The antecedent facts are as follows:

Dalmacio Lozada was the registered owner of a parcel of land identified as Lot No. 12, Block No. 1074 of the cadastral survey of the City of Manila covered by Original Certificate of Title (OCT) No. 7036 issued at the City of Manila on June 14, 1927,[3] containing an area of 873.80 square meters, more or less, located in Beata Street, Pandacan, Manila.

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[1] Penned by Associate Justice Rebecca de Guia-Salvador, with Associate Justices Eugenio S. Labitoria and Teodoro P. Regino, concurring; *rollo*, pp. 29-35.

[2] *Id.* at 52-55.

[3] Records, p. 231.

Dalmacio Lozada subdivided his property into five (5) lots, namely: Lot Nos. 12-A, 12-B, 12-C, 12-D and 12-E. Through a Deed of Donation dated March 9, 1932,[4] he donated the subdivided lots to his daughters, namely: Isabel, Salud, Catalina, and Felicidad, all surnamed Lozada. The Deed of Donation was registered with the office of the Register of Deeds of Manila on March 15, 1932.

Under the said Deed of Donation, the lots were adjudicated to Dalmacio's daughters in the following manner:

a. Lot No. 12-A in favor of Isabel Lozada, married to Isaac Limense;

b. Lot No. 12-B in favor of Catalina Lozada, married to Sotero Natividad;

c. Lot No. 12-C in favor of Catalina Lozada, married to Sotero Natividad; Isabel Lozada, married to Isaac Limense; and Salud Lozada, married to Francisco Ramos, in equal parts;

d. Lot No. 12-D in favor of Salud Lozada, married to Francisco Ramos; and

e. Lot No. 12-E in favor of Isabel Lozada, married to Isaac Limense, and Felicidad Lozada, married to Galicano Centeno.

By virtue of the Deed of Donation executed by Dalmacio Lozada, OCT No. 7036, which was registered in his name, was cancelled and, in lieu thereof, Transfer Certificates of Title (TCTs) bearing Nos. 40041, 40042, 40043, 40044, and 40045 were issued in favor of the donees, except TCT No. 40044, which remained in his name. These new TCTs were annotated at the back of OCT No. 7036.[5]

TCT No. 40043, which covered Lot No. 12-C, was issued in the name of its co-owners Catalina Lozada, married to Sotero Natividad; Isabel Lozada, married to Isaac Limense; and Salud Lozada, married to Francisco Ramos. It covered an area of

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[4] *Id.* at 14-19.

[5] *Id.* at 231.

68.60 square meters, more or less, was bounded on the northeast by Lot No. 12-A, on the southwest by Calle Beata, and on the northwest by Lot No. 12-D of the subdivision plan. In 1932, respondents' predecessor-in-interest constructed their residential building on Lot No. 12-D, adjacent to Lot No. 12-C.

On May 16, 1969, TCT No. 96886[6] was issued in the name of Joaquin Limense covering the very same area of Lot No. 12-C.

On October 1, 1981, Joaquin Limense secured a building permit for the construction of a hollow block fence on the boundary line between his aforesaid property and the adjacent parcel of land located at 2759 Beata Street, Pandacan, Manila, designated as Lot No. 12-D, which was being occupied by respondents. The fence, however, could not be constructed because a substantial portion of respondents' residential building in Lot No. 12-D encroached upon portions of Joaquin Limense's property in Lot No. 12-C.

Joaquin Limense demanded the removal of the encroached area; however, respondent ignored both oral and written demands. The parties failed to amicably settle the differences between them despite referral to the *barangay*. Thus, on March 9, 1983, Joaquin Limense, duly represented by his Attorney-in-Fact, Teofista L. Reyes, instituted a Complaint[7] against respondents before the Regional Trial Court (RTC) of Manila, Branch 15, for removal of obstruction and damages.

Joaquin Limense prayed that the RTC issue an order directing respondents, jointly and severally, to remove the portion which illegally encroached upon his property on Lot No. 12-C and, likewise, prayed for the payment of damages, attorney's fees and costs of suit.

Respondents, on the other hand, averred in their Answer[8] that they were the surviving heirs of Francisco Ramos,[9] who,

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[6] *Id.* at 183.

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

[8] *Id.* at 10-13.

[9] In their answer, respondents referred to Francisco Ramos as "Francisco Ramos, Sr."

during his lifetime, was married to Salud Lozada, one of the daughters of Dalmacio Lozada, the original owner of Lot No. 12. After subdividing the said lot, Dalmacio Lozada donated Lot No. 12-C in favor of his daughters Catalina, married to Sotero Natividad; Isabel, married to Isaac Limense; and Salud, married to Francisco Ramos. Being the surviving heirs of Francisco Ramos, respondents later became co-owners of Lot No. 12-C. Lot No. 12-C has served as right of way or common alley of all the heirs of Dalmacio Lozada since 1932 up to the present. As a common alley, it could not be closed or fenced by Joaquin Limense without causing damage and prejudice to respondents.

After trial on the merits, the RTC rendered a Decision[10] dated September 21, 1990 dismissing the complaint of Joaquin Limense. It ruled that an apparent easement of right of way existed in favor of respondents. Pertinent portions of the decision read as follows:

> The Court finds that an apparent easement of right of way exists in favor of the defendants under Article 624 of the Civil Code. It cannot be denied that there is an alley which shows its existence. It is admitted that this alley was established by the original owner of Lot 12 and that in dividing his property, the alley established by him continued to be used actively and passively as such. Even when the division of the property occurred, the non-existence of the easement was not expressed in the corresponding titles nor were the apparent sign of the alley made to disappear before the issuance of said titles.
>
> The Court also finds that when plaintiff acquired the lot (12-C) which forms the alley, he knew that said lot could serve no other purpose than as an alley. That is why even after he acquired it in 1969, the lot continued to be used by defendants and occupants of the other adjoining lots as an alley. The existence of the easement of right of way was therefore known to plaintiff who must respect the same in spite of the fact that his transfer certificate of title does not mention the lot of defendants as among those listed therein as entitled to such right of way. It is an established principle that actual notice or knowledge is as binding as registration.[11]

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[10] Records, pp. 311-314.

[11] *Id.* at 314.

Aggrieved by said decision, Joaquin Limense filed a notice of appeal. The records of the case were transmitted to the Court of Appeals (CA). During the pendency of the appeal with the CA, Joaquin Limense died in 1999.[12]

The CA, Seventh Division, in CA-G.R. CV No. 33589, in its Decision[13] dated December 20, 2001 dismissed the appeal and affirmed *in toto* the decision of the RTC.

Frustrated by this turn of events, petitioners, as surviving heirs of Joaquin Limense, elevated the case to this Court via a Petition for Review on *Certiorari*[14] raising the following issues:

1. DID THE HONORABLE COURT OF APPEALS COMMIT A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION, IN HOLDING, LIKE THE TRIAL COURT DID, THAT RESPONDENTS' LOT 12-D HAS AN EASEMENT OF RIGHT OF WAY OVER JOAQUIN LIMENSE'S LOT 12-C?
2. DID THE HONORABLE COURT OF APPEALS COMMIT A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION, IN FAILING TO HOLD, LIKE THE TRIAL COURT DID, THAT THE PROTRUDING PORTIONS OF RESPONDENTS' HOUSE ON LOT 12-D EXTENDING INTO JOAQUIN LIMENSE'S LOT 12-C CONSTITUTE A NUISANCE AND, AS SUCH, SHOULD BE REMOVED?

Petitioners aver that the CA erred in ruling that since Lot No. 12-C was covered by two TCT's, *i.e.*, TCT Nos. 40043 and 96886, and there was no evidence on record to show how Joaquin Limense was able to secure another title over an already titled property, then one of these titles must be of dubious origin. According to the CA, TCT No. 96886, issued in the name of Joaquin Limense, was spurious because the Lozada sisters never disposed of the said property covered by TCT No. 40043. The CA further ruled that a co-ownership existed over Lot No. 12-C between petitioners and respondents. Petitioners countered that

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[12] *Rollo*, p. 27.

[13] *Id.* at 29-35.

[14] *Id.* at 9-25.

TCT No. 96886, being the only and best legitimate proof of ownership over Lot No. 12-C, must prevail over TCT No. 40043.

Respondents allege that it was possible that TCT No. 96886, in the name of Joaquin Limense, was obtained thru fraud, misrepresentation or falsification of documents because the donees of said property could not possibly execute any valid transfer of title to Joaquin Limense, as they were already dead prior to the issuance of TCT No. 96886 in 1969. Respondents further allege that petitioners failed to produce proof substantiating the issuance of TCT No. 96886 in the name of Joaquin Limense.

Apparently, respondents are questioning the legality of TCT No. 96886, an issue that this Court cannot pass upon in the present case. It is a rule that the validity of a torrens title cannot be assailed collaterally.[15] Section 48 of Presidential Decree (PD) No. 1529 provides that:

> [a] certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law.

In the case at bar, the action filed before the RTC against respondents was an action for removal of obstruction and damages. Respondents raised the defense that Joaquin Limense's title could have been obtained through fraud and misrepresentation in the trial proceedings before the RTC. Such defense is in the nature of a collateral attack, which is not allowed by law.

Further, it has been held that a certificate of title, once registered, should not thereafter be impugned, altered, changed, modified, enlarged or diminished, except in a direct proceeding permitted by law. Otherwise, the reliance on registered titles would be lost. The title became indefeasible and incontrovertible after the lapse of one year from the time of its registration and issuance. Section 32 of PD 1529 provides that "upon the expiration of said period of one year, the decree of registration and the certificate of title shall become incontrovertible. Any person

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[15] *Vda. de Gualberto v. Go*, G.R. No. 139843, July 21, 2005, 463 SCRA 671, 677.

aggrieved by such decree of registration in any case may pursue his remedy by action for damages against the applicant or other persons responsible for the fraud."[16] It has, therefore, become an ancient rule that the issue on the validity of title, *i.e.*, whether or not it was fraudulently issued, can only be raised in an action expressly instituted for that purpose.[17] In the present case, TCT No. 96886 was registered in 1969 and respondents never instituted any direct proceeding or action to assail Joaquin Limense's title.

Additionally, an examination of TCT No. 40043 would readily show that there is an annotation that it has been *"CANCELLED."*[18] A reading of TCT No. 96886 would also reveal that said title is a transfer from TCT No. 48866[19] and not TCT 40043. Thus, it is possible that there was a series of transfers effected from TCT No. 40043 prior to the issuance of TCT No. 96886. Hence, respondents' position that the issuance of TCT No. 96886 in the name of Joaquin Limense is impossible, because the registered owners of TCT No. 40043 were already dead prior to 1969 and could not have transferred the property to Joaquin Limense, cannot be taken as proof that TCT No. 96886 was obtained through fraud, misrepresentation or falsification of documents.

Findings of fact of the CA, although generally deemed conclusive, may admit review by this Court if the CA failed to notice certain relevant facts that, if properly considered, would justify a different conclusion, and if the judgment of the CA is premised on a misapprehension of facts.[20] As with the present case, the CA's observation that TCT No. 96886 is of dubious origin, as TCT No. 40043 does not appear to have been disposed of by Catalina, Isabel and Salud Lozada, is improper and constitutes an indirect attack on TCT No. 96886. As we see it,

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[16] *Seville v. National Development Company*, 403 Phil. 843, 859 (2001).

[17] *Tanenglian v. Lorenzo*, G.R. No. 173415, March 28, 2008, 550 SCRA 348, 380.

[18] Records, p. 239.

[19] *Id.* at 183.

[20] *Fuentes v. Court of Appeals*, 335 Phil. 1163, 1168 (1997).

TCT No. 96886, at present, is the best proof of Joaquin Limense's ownership over Lot No. 12-C. Thus, the CA erred in ruling that respondents and petitioners co-owned Lot No. 12-C, as said lot is now registered exclusively in the name of Joaquin Limense.

Due to the foregoing, Joaquin Limense, as the registered owner of Lot 12-C, and his successors-in-interest, may enclose or fence his land or tenements by means of walls, ditches, live or dead hedges, or by any other means without detriment to servitudes constituted thereon.[21]

However, although the owner of the property has the right to enclose or fence his property, he must respect servitudes constituted thereon. The question now is whether respondents are entitled to an easement of right of way.

Petitioners contend that respondents are not entitled to an easement of right of way over Lot No. 12-C, because their Lot No. 12-D is not duly annotated at the back of TCT No. 96886 which would entitle them to enjoy the easement, unlike Lot Nos. 12-A-1, 12-A-2, 12-A-3, 12-A-4, 12-A-5, and 12-A-6. Respondents, on the other hand, allege that they are entitled to an easement of right of way over Lot No. 12-C, which has been continuously used as an alley by the heirs of Dalmacio Lozada, the residents in the area and the public in general from 1932 up to the present. Since petitioners are fully aware of the long existence of the said alley or easement of right of way, they are bound to respect the same.

As defined, an easement is a real right on another's property, corporeal and immovable, whereby the owner of the latter must refrain from doing or allowing somebody else to do or something to be done on his property, for the benefit of another person or tenement.[22]

Easements may be continuous or discontinuous, apparent or non-apparent.

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[21] New Civil Code, Art. 430.

[22] *Quimen v. Court of Appeals*, 326 Phil. 969, 976 (1996), citing 3 Sanchez Roman 472.

Continuous easements are those the use of which is or may be incessant, without the intervention of any act of man. Discontinuous easements are those which are used at intervals and depend upon the acts of man. Apparent easements are those which are made known and are continually kept in view by external signs that reveal the use and enjoyment of the same. Non-apparent easements are those which show no external indication of their existence.[23]

In the present case, the easement of right of way is discontinuous and apparent. It is discontinuous, as the use depends upon the acts of respondents and other persons passing through the property. Being an alley that shows a permanent path going to and from Beata Street, the same is apparent.

Being a discontinuous and apparent easement, the same can be acquired only by virtue of a title.[24]

In the case at bar, TCT No. 96886, issued in the name of Joaquin Limense, does not contain any annotation that Lot No. 12-D was given an easement of right of way over Lot No. 12-C. However, Joaquin Limense and his successors-in-interests are fully aware that Lot No. 12-C has been continuously used and utilized as an alley by respondents and residents in the area for a long period of time.

Joaquin Limense's Attorney-in-Fact, Teofista L. Reyes, testified that respondents and several other residents in the area have been using the alley to reach Beata Street since 1932. Thus:

Atty. Manuel B. Tomacruz:

Q: Mrs. Witness, by virtue of that Deed of Donation you claim that titles were issued to the children of Dalmacio Lozada namely Salud Lozada, Catalina Lozada and Isabel Lozada, is that right?

A: Yes, sir.

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[23] New Civil Code, Art. 615.

[24] New Civil Code, Art. 622.

Q: And after the said property was adjudicated to his said children the latter constructed their houses on their lots.
A: Yes, sir.

Q: As a matter of fact, the herein defendants have constructed their houses on the premises alloted to them since the year 1932?
A: Yes, sir, they were able to construct their house fronting Beata Street.

Q: And that house they have constructed on their lot in 1932 is still existing today?
A: Yes, sir and they still used the alley in question and they are supposed to use Beata Street but they are not using Beata Street.

Q: They are using the alley?
A: Yes, sir, they are using the alley and they do not pass through Beata Street.

Q: And they have been using the alley since 1932 up to the present?
A: Yes, sir they have been using the alley since that time. That was their mistake and they should be using Beata Street because they are fronting Beata Strret.

Q: As a matter of fact, it is not only herein defendants who have been using that alley since 1932 up to the present?
A: Yes, sir they are using the alley up to now.

Q: As a matter of fact, in this picture marked as Exh. "C-1" the alley is very apparent. This is the alley?
A: Yes, sir.

Q: And there are houses on either side of this alley?
A: Yes, sir.

Q: As a matter of fact, all the residents on either side of the alley are passing through this alley?
A: Yes, sir, because the others have permit to use this alley and they are now allowed to use the alley but the Ramos's family are now [not] allowed to use this alley.[25]

In *Mendoza v. Rosel*,[26] this Court held that:

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[25] TSN, May 9, 1990, pp. 13-15.

[26] 74 Phil. 84 (1943). (Emphasis supplied).

Petitioners claim that inasmuch as their transfer certificates of title do not mention any lien or encumbrance on their lots, they are purchasers in good faith and for value, and as such have a right to demand from respondents some payment for the use of the alley. However, the Court of Appeals found, as a fact, that when respondents acquired the two lots which form the alley, they knew that said lots could serve no other purpose than as an alley. ***The existence of the easement of right of way was therefore known to petitioners who must respect the same, in spite of the fact that their transfer certificates of title do not mention any burden or easement. It is an established principle that actual notice or knowledge is as binding as registration***.

Every buyer of a registered land who takes a certificate of title for value and in good faith shall hold the same free of all encumbrances except those noted on said certificate. It has been held, however, that "where the party has knowledge of a prior existing interest that was unregistered at the time he acquired a right to the same land, his knowledge of that prior unregistered interest has the effect of registration as to him."[27]

In the case at bar, Lot No. 12-C has been used as an alley ever since it was donated by Dalmacio Lozada to his heirs. It is undisputed that prior to and after the registration of TCT No. 96886, Lot No. 12-C has served as a right of way in favor of respondents and the public in general. We quote from the RTC's decision:

x x x It cannot be denied that there is an alley which shows its existence. It is admitted that this alley was established by the original owner of Lot 12 and that in dividing his property the alley established by him continued to be used actively and passively as such. Even when the division of the property occurred, the non-existence of the easement was not expressed in the corresponding titles nor were the apparent sign of the alley made to disappear before the issuance of said titles.

The Court also finds that when plaintiff acquired the lot (12-C) which forms the alley, he knew that said lot could serve no other

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[27] *Private Development Corporation of the Philippines v. Court of Appeals*, G.R. No. 136897, November 22, 2005, 475 SCRA 591, 607.

purpose than as an alley. That is why even after he acquired it in 1969 the lot continued to be used by defendants and occupants of the other adjoining lots as an alley. x x x[28]

Thus, petitioners are bound by the easement of right of way over Lot No. 12-C, even though no registration of the servitude has been made on TCT No. 96886.

However, respondents' right to have access to the property of petitioners does not include the right to continually encroach upon the latter's property. It is not disputed that portions of respondents' house on Lot No. 12-D encroach upon Lot No. 12-C. Geodetic Engineer Jose Agres, Jr. testified on the encroachment of respondents' house on Lot No. 12-C, which he surveyed.[29] In order to settle the rights of the parties relative to the encroachment, We should determine whether respondents were builders in good faith.

Good faith is an intangible and abstract quality with no technical meaning or statutory definition; and it encompasses, among other things, an honest belief, the absence of malice and the absence of a design to defraud or to seek an unconscionable advantage. An individual's personal good faith is a concept of his own mind and, therefore, may not conclusively be determined by his protestations alone. It implies honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry. The essence of good faith lies in an honest belief in the validity of one's right, ignorance of a superior claim, and absence of intention to overreach another. Applied to possession, one is considered in good faith if he is not aware that there exists in his title or mode of acquisition any flaw which invalidates it.[30]

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[28] *Rollo*, p. 55.

[29] TSN, May 21, 1986.

[30] *Elvira T. Arangote v. Spouses Martin and Lourdes S. Maglunob, and Romeo Salido*, G.R No. 178906, February 18, 2009; *Heirs of Marcelino Cabal v. Cabal*, G.R. No. 153625, July 31, 2006, 497 SCRA 301, 315-316.

Good faith is always presumed, and upon him who alleges bad faith on the part of the possessor rests the burden of proof.[31] It is a matter of record that respondents' predecessor-in-interest constructed their residential building on Lot No. 12-D, adjacent to Lot No. 12-C, in 1932.[32] Respondents' predecessor-in-interest owned the 1/3 portion of Lot No. 12-C at the time the property was donated to them by Dalmacio Lozada in 1932. The Deed of Donation executed by the late Dalmacio Lozada, dated March 9, 1932, specifically provides that:

> I hereby grant, cede and donate in favor of Catalina Lozada married to Sotero Natividad, Isabel Lozada married to Isaac Simense (sic) and Salud Lozada married to Francisco Ramos, all Filipinos, of legal age, the parcel of land known as Lot No. 12-C, ***in equal parts***.[33]

The portions of Lot No. 12-D, particularly the overhang, covering 1 meter in width and 17 meters in length; the stairs; and the concrete structures are all within the 1/3 share alloted to them by their donor Dalmacio Lozada and, hence, there was absence of a showing that respondents acted in bad faith when they built portions of their house on Lot No. 12-C.

Using the above parameters, we are convinced that respondents' predecessors-in-interest acted in good faith when they built portions of their house on Lot 12-C. Respondents being builders in good faith, we shall now discuss the respective rights of the parties relative to the portions encroaching upon respondents' house.

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[31] New Civil Code, Art. 527; *Ballatan v. Court of Appeals*, 363 Phil. 408, 419 (1999).

[32] Direct Examination of Ms. Rita *Vda. de* Ramos by Atty. Meneses, TSN, October 12, 1987, p. 11.

Q: How about the land which was donated to the defendants therein, namely Lot No. 12-D, what happened to this land?
A: That is where our house is located.
Q: When did you construct your house on that land?
A: Sometime in 1932.
Q: And that house is still existing today?
A: Yes, sir.

[33] Records, p. 228. (Emphasis supplied.)

Articles 448 and 546 of the New Civil Code provide:

Art. 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in Articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and, in case of disagreement, the court shall fix the terms thereof.

Art. 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof.

In *Spouses Del Campo v. Abesia*,[34] this provision was applied to one whose house, despite having been built at the time he was still co-owner, overlapped with the land of another. In that case, this Court ruled:

The court *a quo* correctly held that Article 448 of the Civil Code cannot apply where a co-owner builds, plants or sows on the land owned in common for then he did not build, plant or sow upon the land that exclusively belongs to another but of which he is a co-owner. The co-owner is not a third person under the circumstances, and the situation is governed by the rules of co-ownership.

However, when, as in this case, the ownership is terminated by the partition and it appears that the house of defendants overlaps or occupies a portion of 5 square meters of the land pertaining to plaintiffs which the defendants obviously built in good faith,

[34] No. L-49219, April 15, 1988, 160 SCRA 379.

then the provisions of Article 448 of the new Civil Code should apply. x x x[35]

In other words, when the co-ownership is terminated by a partition, and it appears that the house of an erstwhile co-owner has encroached upon a portion pertaining to another co-owner, but the encroachment was in good faith, then the provisions of Article 448 should apply to determine the respective rights of the parties. In this case, the co-ownership was terminated due to the transfer of the title of the whole property in favor of Joaquin Limense.

Under the foregoing provision, petitioners have the right to appropriate said portion of the house of respondents upon payment of indemnity to respondents, as provided for in Article 546 of the Civil Code. Otherwise, petitioners may oblige respondents to pay the price of the land occupied by their house. However, if the price asked for is considerably much more than the value of the portion of the house of respondents built thereon, then the latter cannot be obliged to buy the land. Respondents shall then pay the reasonable rent to petitioners upon such terms and conditions that they may agree. In case of disagreement, the trial court shall fix the terms thereof. Of course, respondents may demolish or remove the said portion of their house, at their own expense, if they so decide.[36]

The choice belongs to the owner of the land, a rule that accords with the principle of accession that the accessory follows the principal and not the other way around.[37] Even as the option lies with the landowner, the grant to him, nevertheless, is preclusive. He must choose one. He cannot, for instance, compel the owner of the building to instead remove it from the land.[38]

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[35] *Spouses Del Campo v. Abesia, supra,* at 382-383.

[36] *Id.* at 383.

[37] *Ochoa v. Apeta*, G.R. No. 146259, September 13, 2007, 533 SCRA 235, 241.

[38] *Philippine National Bank v. De Jesus*, 458 Phil. 454, 459 (2003).

The obvious benefit to the builder under this article is that, instead of being outrightly ejected from the land, he can compel the landowner to make a choice between two options: (1) to appropriate the building by paying the indemnity required by law, or (2) to sell the land to the builder.[39]

The *raison d'etre* for this provision has been enunciated, thus:

> Where the builder, planter or sower has acted in good faith, a conflict of rights arises between the owners, and it becomes necessary to protect the owner of the improvements without causing injustice to the owner of the land. In view of the impracticability of creating a state of forced co-ownership, the law has provided a just solution by giving the owner of the land the option to acquire the improvements after payment of the proper indemnity, or to oblige the builder or planter to pay for the land and the sower the proper rent. He cannot refuse to exercise either option. It is the owner of the land who is authorized to exercise the option, because his right is older, and because, by the principle of accession, he is entitled to the ownership of the accessory thing.[40]

In accordance with *Depra v. Dumlao*,[41] this case must be remanded to the trial court to determine matters necessary for the proper application of Article 448 in relation to Article 546. Such matters include the option that petitioners would take and the amount of indemnity that they would pay, should they decide to appropriate the improvements on the lots.

Anent the second issue, although it may seem that the portions encroaching upon respondents' house can be considered a nuisance, because it hinders petitioners' use of their property, it cannot simply be removed at respondents' expense, as prayed for by petitioner. This is because respondents built the subject encroachment in good faith, and the law affords them certain rights as discussed above.

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[39] *Tecnogas Philippines Manufacturing Corp. v. Court of Appeals*, 335 Phil. 471, 482 (1997).

[40] *Rosales v. Castelltort*, G.R No. 157044, October 5, 2005, 472 SCRA 144, 161.

[41] 221 Phil. 168 (1985), cited in *Macasaet v. Macasaet*, G.R. Nos. 154391-92, September 30, 2004, 439 SCRA 625.

WHEREFORE, the petition is *DENIED*, the Decision of the Court of Appeals dated December 20, 2001 in CA-G.R. CV No. 33589 is *AFFIRMED* with the following *MODIFICATIONS*:

1. No co-ownership exists over Lot No. 12-C, covered by TCT No. 96886, between petitioners and respondents.

2. The case is *REMANDED* to the Regional Trial Court, Branch 15, Manila, for further proceedings without further delay to determine the facts essential to the proper application of Articles 448 and 546 of the Civil Code.

SO ORDERED.

Quisumbing,[*] *Carpio (Chairperson), Chico-Nazario,* and *Abad,*[**] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 169554. October 28, 2009]

NIEVA M. MANEBO, *petitioner, vs.* **SPO1 ROEL D. ACOSTA and NUMERIANO SAPIANDANTE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; DETERMINATION OF PROBABLE CAUSE; ORDINARILY NOT LODGED WITH THE SURPEME COURT; EXCEPTION; APPLICATION THEREOF WARRANTED IN CASE AT BAR.— Ordinarily, the determination of probable cause is not lodged with this

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[*] Designated to sit as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura per Special Order No. 755 dated October 12, 2009.

[**] Designated to sit as an additional member in lieu of Associate Justice Presbitero J. Velasco, Jr. per Special Order No. 753 dated October 12, 2009.

Court. Its duty in an appropriate case is confined to the issue of whether the executive or judicial determination, as the case may be, of probable cause was done without or in excess of jurisdiction or with abuse of discretion amounting to want of jurisdiction. However, this Court may ultimately resolve the existence or non-existence of probable cause by examining the records of the preliminary investigation when necessary for the orderly administration of justice. We find that the present case warrants the application of the exception.

2. ID.; ID.; ID.; PROBABLE CAUSE; DEFINED.— Probable cause has been defined as the existence of such facts and circumstances as would lead a person of ordinary caution and prudence to entertain an honest and strong suspicion that the person charged is guilty of the crime subject of the investigation. Being based merely on opinion and reasonable belief, it does not import absolute certainty. Probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon reasonable belief. Probable cause implies probability of guilt and requires more than bare suspicion but less than evidence to justify a conviction.

3. ID.; ID.; ID.; PURPOSE.— To determine the existence of probable cause, there is a need to conduct a preliminary investigation. A preliminary investigation constitutes a realistic judicial appraisal of the merits of a case. Its purpose is to determine whether (a) a crime has been committed; and (b) there is probable cause to believe that the accused is guilty thereof. It is a means of discovering which person or persons may be reasonably charged with a crime.

4. ID.; ID.; ID.; CONDUCT THEREOF IS EXECUTIVE IN NATURE; THE COURT MAY NOT BE COMPELLED TO PASS UPON THE CORRECTNESS OF THE EXERCISE OF THE PUBLIC PROSECUTOR'S FUNCTION UNLESS THERE IS A SHOWING OF GRAVE ABUSE OF DISCRETION OR MANIFEST ERROR IN HIS FINDINGS; GRAVE ABUSE OF DISCRETION, DEFINED.— The conduct of a preliminary investigation is executive in nature. As we have said, the Court may not be compelled to pass upon the correctness of the exercise of the public prosecutor's function, unless there is a showing of grave abuse of discretion or manifest error in his findings. Grave abuse of discretion

implies a capricious and whimsical exercise of judgment tantamount to lack or excess of jurisdiction. The exercise of power must have been done in an arbitrary or a despotic manner by reason of passion or personal hostility. It must have been so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.

5. ID.; ID; ID.; ID.; DEPARTMENT OF JUSTICE COMMITTED A MANIFEST ERROR IN FINDING NO PROBABLE CAUSE TO CHARGE RESPONDENTS WITH THE CRIME OF MURDER; EXPLAINED.— In this case, we find that the DOJ committed a manifest error in finding no probable cause to charge respondents with the crime of murder. x x x While the initial police report stated that the name of the person who was seated beside the victim when the latter was shot was Liza Gragasan, such report would not conclusively establish that Liza Gragasan could not have been Flordeliza Bagasan, the witness who executed an affidavit four months after the incident. Notably, Flordeliza's nickname is Liza, and her surname Bagasan sounds similar to Gragasan. Under the rule of *idem sonans*, two names are said to be *"idem sonantes"* if the attentive ear finds difficulty in distinguishing them when pronounced. The question whether a name sounds the same as another is not one of spelling but of pronunciation. While the surname Bagasan was incorrectly written as Gragasan, when read, it has a sound similar to the surname Bagasan. Thus, the presence of Bagasan at the crime scene was established, contrary to the conclusion arrived at by the DOJ Secretary. The execution of Bagasan's affidavit four months after the incident should not be taken against her, as such reaction is within the bounds of expected human behavior. Notably, the police report stated that during the conduct of the investigation, Bagasan was shocked after the incident and could not possibly be interviewed. Initial reluctance to volunteer information regarding a crime due to fear of reprisal is common enough that it has been judicially declared as not affecting a witness' credibility. Bagasan's action revealed a spontaneous and natural reaction of a person who had yet to fully comprehend a shocking and traumatic event. Besides, the workings of the human mind are unpredictable. People react differently to emotional stress. There is simply no standard form of behavioral response that can be expected

from anyone when confronted with a strange, startling or frightful occurrence. Moreover, a witness' delay in reporting what she knows about a crime does not render her testimony false or incredible, for the delay may be explained by the natural reticence of most people to get involved in a criminal case. The DOJ Secretary's finding that the description given by Bagasan did not fit the physical attributes of respondent Acosta is not persuasive, since Bagasan was able to positively identify respondent Acosta. She did so when a cartographic sketch of respondent Acosta was shown to her and later when she was asked to identify him from among the three pictures of men shown to her during the investigation at the NBI. Notably, there was nothing in the records that showed that Bagasan was impelled by any improper motive in pointing to respondent Acosta. The identification made by Bagasan, with respect to respondent Acosta was corroborated by another witness, Sardia, who saw Acosta with another unidentified male companion rushing out of the chapel where the killing incident took place. Sardia was familiar with the face of respondent Acosta, since the latter was a witness in a case of frustrated murder against Sapiandante. Although Sapiandante denied in his counter-affidavit that respondent Acosta ever became such witness, this allegation should be proven during the trial of the case. Sardia was also able to positively identify Sapiandante as the driver of the get-away vehicle.

6. ID.; EVIDENCE; ENTRIES IN A POLICE BLOTTER ARE NOT CONCLUSIVE PROOF OF THE TRUTH OF SUCH ENTRIES.— The failure of the police report to mention Sardia's name as a witness would not detract from the fact that he saw respondent Acosta with an unidentified man running away from the chapel and riding the waiting get- away vehicle driven by Sapiandante. Entries in a police blotter, though regularly done in the course of the performance of official duty, are not conclusive proof of the truth of such entries and should not be given undue significance or probative value for they are usually incomplete and inaccurate.

7. ID.; ID.; CREDIBILITY OF WITNESSES; MATTER OF ASSIGNING VALUE TO THE DECLARATION OF A WITNESS IS BEST DONE BY THE TRIAL COURT.— The matter of assigning value to the declaration of a witness is

best done by the trial court, which can assess such testimony in the light of the demeanor, conduct and attitude of the witness at the trial stage.

8. ID.; ID.; ID.; BELATEDLY EXECUTED AFFIDAVIT IS NOT NECESSARILY INCREDIBLE; ELUCIDATED.— x x x [W]e also do not agree with the DOJ Secretary's finding that since Sardia's affidavit was also belatedly executed, the same is not credible. As we have said, witnesses are usually reluctant to volunteer information about a criminal case or are unwilling to be involved in or dragged into criminal investigations due to a variety of valid reasons. Fear of reprisal and the natural reluctance of a witness to get involved in a criminal case are sufficient explanations for a witness' delay in reporting a crime to authorities The DOJ ruling — that fear could not have been the reason, because as early as 1998 Sardia had already filed a complaint for attempted murder against Sapiandante, which was already dismissed — is merely speculative.

APPEARANCES OF COUNSEL

Braulio RG Tansinsin for petitioner.
N.A. Aranzaso & Associates for respondents.

D E C I S I O N

PERALTA, *J.*:

Assailed in this petition for review on *certiorari* under Rule 45 of the Rules of Court is the Decision[1] dated August 31, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 83300.

The antecedents of this case are as follows:

On May 4, 2000, at 6:30 p.m. at *Barangay* San Mariano, Sta. Rosa, Nueva Ecija, Bernadette M. Dimatulac, the victim, and Flordeliza V. Bagasan (Bagasan)[2] were seated beside each

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[1] Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Elvi John S. Asuncion and Estela M Perlas-Bernabe, concurring; *rollo*, pp. 163-169.

[2] "Liza Gragasan" was the name stated in the police report.

other on a *papag* watching television inside the church of the Kaibigan Foundation, Inc. Suddenly, a man later identified as SPO1 Roel Acosta (respondent Acosta), with an unidentified male companion, both with short firearms, entered the church premises. Respondent Acosta approached the victim and Bagasan and, at an arm's length distance, respondent Acosta shot the victim several times on the head and body causing her instantaneous death.

Severino Sardia (Sardia), who was standing in front of his house at *Barangay* San Mariano, Sta. Rosa, Nueva Ecija, heard several gunshots and saw two men with short firearms run out of the Kaibigan Foundation, Inc. Chapel. The two men immediately boarded an owner-type jeep without a plate number parked along Maharlika Highway and proceeded to the direction going to San Leonardo town. While the driver of the jeep was in the process of backing up his vehicle, Sardia recognized the driver as Numeriano Sapiandante (respondent Sapiandante), the *Barangay* Captain of *Barangay* Tagumpay, San Leonardo, Nueva Ecija.

A complaint for murder was filed by Nieva Manebo (Manebo), sister of the victim, against respondents Acosta and Sapiandante before the Special Action Unit (SAU) of the National Bureau of Investigation (NBI).

The findings of the SAU recommending the filing of a murder case against respondents and a certain John Doe was referred to the Office of the Chief State Prosecutor (OCSP), Department of Justice (DOJ), for preliminary investigation.[3] Respondents, in turn, filed directly with the DOJ a counter-charge of perjury, offering false witness and violation of Presidential Decree (PD) No. 1829 against Manebo, Bagasan, and Sardia.[4]

Respondents denied the accusations against them. Respondent Acosta claimed that on May 4, 2000, he was on a special

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[3] Docketed as I.S. No. 2000-1709, *rollo*, pp. 39-40.

[4] Docketed as I.S. No. 2000-1930 per Joint Resolution dated January 22, 2001.

assignment in San Leonardo, Nueva Ecija, pursuant to a directive issued by Police Chief Inspector Fernando Galang; that there was no reason for him to kill the victim, as he had no grudge against her; that Bagasan's description of him did not fit his physical attributes; that there was a substitution of witness, considering that the person beside the victim when she was shot was identified in the police report as Liza Gragasan and not Flordeliza Bagasan. Respondent Acosta also presented the affidavits of his witnesses corroborating his claim that he was in San Leonardo, Nueva Ecija at the time of the shooting incident.

Respondent Sapiandante denied that he was the driver of the get-away vehicle, as he did not know how to drive nor was he a holder of a driver's license; that Sardia had a grudge against him because of the dismissal of the case filed by the former against him; and that respondent Acosta never testified for him in a case, contrary to Sardia's claim.

On January 22, 2001, State Prosecutor Melvin J. Abad issued a Joint Resolution,[5] approved by the Chief State Prosecutor, the dispositive portion of which reads:

> WHEREFORE, it is respectfully recommended that the foregoing Joint Resolution be approved and the attached information for murder against respondents SPO1 Roel D. Acosta, Bgy. Captain Numeriano R. Sapiandante, and a certain John Doe be filed before the proper court and that the counter-charge for perjury, offering false witness, and violation for P.D. 1829 against Severino S. Sardia, Flordeliza Bagasan and Nieva M. Manebo be dismissed for lack of merit.[6]

On the same day, an Information[7] for murder was filed with the Regional Trial Court (RTC), Branch 27, Cabanatuan City against respondents and a certain John Doe, committed as follows:

> That on or about May 4, 2000, at around 6:30 p.m. in the Municipality of Sta. Rosa, Nueva Ecija, and within the jurisdiction of this Honorable

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[5] *Rollo*, pp. 92-100.

[6] *Id.* at 99.

[7] *Id.* at 103-104.

Court, the said three (3) accused, two (2) being armed, conspiring, confederating and acting together, and mutually helping each other, did then and there willfully, unlawfully and feloniously, with malice, intent to kill and treachery, attack, assault and use personal violence upon one BERNADETTE M. DIMATULAC, with accused SPO1 Roel D. Acosta suddenly and unexpectedly firing several shots at her with the use of his firearm and accused John Doe and Numeriano Sapiandante, acting as back-up and driver, respectively, thereby inflicting upon the said BERNADETTE M. DIMATULAC mortal wounds which were the direct and immediate cause of her death.

CONTRARY TO LAW.

Respondents filed their motion for reconsideration, which was denied in a Resolution[8] dated March 2, 2001.

On March 23, 2001, respondents filed their appeal with the DOJ Secretary.

In the meantime, the herein murder case filed in the RTC of Cabanatuan City, Branch 27, was transferred to the RTC of Manila, Branch 18, and docketed as Criminal Case No. 01-196354. Alias warrants of arrest[9] for respondents were issued on February 28, 2003.

On June 27, 2003, the DOJ Secretary issued his Resolution[10] reversing the appealed resolution, the dispositive portion of which reads:

WHEREFORE, the appealed resolution is hereby REVERSED. The Chief State Prosecutor is directed to move for the withdrawal of the information filed against respondents and to report the action taken hereon within ten (10) days from receipt hereof.[11]

In so ruling, the DOJ said:

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[8] *Id.* at 112-113.

[9] *Id.* at 116. Per Judge Edelwina Catubig Pastoral.

[10] *Id.* at 35-37.

[11] *Id.* at 37.

Undoubtedly, denial and alibi are inherently weak for they can easily be fabricated and is invariably received with caution. Truly, alibi cannot prevail over the positive identification of an accused. Nevertheless, this judicial dictum presupposes the absence of any doubt as to the positive identification of the accused. In other words, the prosecution is not relieved of the required quantum of proof simply because the defense invoked is alibi. Where questionable, alibi assumes strength and significance which is the situation in the present case.

Immediately after receiving a call from a certain Marlon de Guzman regarding the incident, Police Chief Inspector (PCI) Peter Guibong led the investigation of the case and prepared a report. In the course thereof, it was gathered that the victim was shot while watching television in the company of one Liza Gragasan. Still in a state of shock, Gragasan was then not available to provide any information as regards the incident. Nonetheless, PCI Guibong sent a formal letter to Gragasan to provide information on the shooting incident. Gragasan never responded to the invitation.

Comes now, instead, a certain Flordeliza Bagasan who executed an affidavit after more than four (4) months alleging that she was seated beside the victim and witnessed the actual shooting. In turn, Bagasan gave a description of the assailant which, admittedly, does not fit the physical attributes of respondent Acosta. Complainant Manebo could only ascribe the variance to the insinuation that respondent Acosta, short of undergoing plastic surgery, altered his image to avoid being recognized. This is rather too strenuous to be believed.

Under the circumstances, Bagasan's presence at the crime scene when the crime was being committed is highly suspect. Bagasan's delayed testimony coupled with an erroneous description, casts a thick cloud of doubt on her credibility. Such testimony deserves no consideration at all.

The same is true with the testimony of witness Sardia as regards the alleged participation of respondent Sapiandante. Sardia was not among those mentioned in the police report. Surprisingly, his testimony was likewise belatedly executed. Granting that he was already a resident of the *barangay* where the incident occurred, no reason was given as to why it took him a long period of time to give a statement about the killing. Fear could not have been the reason because as early as June 1998, he filed a complaint for attempted murder against Sapiandante which was later dismissed. As it were,

the victim, involved in several criminal incidents, likewise filed a number of cases rooted from the complaint of one Alicia Yambot against Sardia as reported by PCI Guibong. Sardia's testimony may also not be given credence with respect to respondent Acosta since he did not witness the actual shooting of the victim.

All told, the evidence against respondents Acosta and Sapiandante lack the required quantum of proof sufficient to indict them for the offense charged.[12]

Pursuant to the resolution of the DOJ Secretary, the prosecutor filed a Motion to Withdraw the Information.

Petitioner filed an appeal[13] with the Office of the President (OP) which, on January 27, 2004 rendered its Decision[14] dismissing the appeal and affirming *in toto* the resolution of the DOJ Secretary. The OP found the findings of fact and conclusions of law of the DOJ Secretary to be amply supported by substantial evidence.

Petitioner's motion for reconsideration was denied by the OP in an Order[15] dated March 5, 2004.

Aggrieved, petitioner filed a petition for *certiorari* under Rule 43 with the CA.

Meanwhile, the RTC of Manila, Branch 18, issued an Order[16] dated June 22, 2004, which resolved to suspend the resolution on the motion to withdraw information filed by the prosecutor, considering that respondents were still at-large and had not been prejudiced by the petition for review filed with the CA and also in deference to the appellate court. The RTC likewise ruled

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[12] *Id.* at 36-37.

[13] OP Case No. 03-G-460. *Pursuant to Memorandum Circular No. 58, which provides that the DOJ Secretary's resolution is appealable administratively to the Office of the President (OP) for offenses punishable by reclusion perpetua.*

[14] *Rollo,* pp. 134-135.

[15] *Id.* at 138-139.

[16] *Id.* at 250.

for the suspension of the implementation of the warrants of arrest for respondents as moved by the respondents' counsel until after the resolution of the petition filed before the CA.

On August 31, 2005, the CA rendered the assailed Decision dismissing the petition for lack of merit.

The CA said that the OP committed no error in affirming the resolution of the DOJ Secretary; that courts will not interfere in the conduct of preliminary investigations and leave to the investigating prosecutor a sufficient latitude of discretion in the determination of what constitutes sufficient evidence as will establish probable cause for the filing of information against the offender. The CA found that all was not lost for petitioner, since the denial of her petition did not mean an automatic dismissal of the information following the resolution of the DOJ Secretary, as the RTC was mandated to independently evaluate the merits of the case; and it may agree or disagree with the recommendation of the DOJ Secretary, since reliance on the latter alone would be an abdication of the RTC's duty and jurisdiction to determine a *prima facie* case.

Hence, this petition, which raises the following issues:

Whether or not the Honorable Court of Appeals, the Office of the President and the Secretary of Justice committed grave errors in the appreciation of facts and of laws in recommending the dismissal of the complaint based solely on the matters, which are best, determined during a full-blown trial.

Whether or not the Secretary of Justice may disregard the provisions of Department Circular No. 70 dated July 3, 2000, which became effective on September 1, 2000, particularly Sections 5 and 6.

Whether or not there is probable cause to charge the respondents for the crime of murder.[17]

We shall first resolve the second issue, where petitioner claims that the appeal filed by respondents with the Secretary of Justice should have been denied for their failure to comply with Sections 5

[17] *Id.* at 21-22.

and 6 of Department Circular No. 70[18] issued by the Department of Justice on September 1, 2000.

Section 5. *Contents of the Petition*.

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If an information has been filed in court pursuant to the appealed resolution, a copy of the motion to defer proceedings filed in court must also accompany the petition.

x x x x x x x x x

Section 6. *Effect of failure to comply with requirements*. — The failure of the petitioner to comply with any of the foregoing requirements shall constitute sufficient ground for the dismissal of the petition.

Respondents filed their petition for review with the DOJ Secretary on March 23, 2001. On August 20, 2001, they filed with the RTC of Cabanatuan City, Branch 27, a Motion to Suspend Proceedings[19] pending a final determination of the merits of their petition by the DOJ Secretary. On August 27, 2001, respondents filed with the DOJ a document captioned as Compliance[20] where they submitted the motion to suspend proceedings filed in the RTC. Notably, the motion to suspend proceedings was only filed with the RTC after respondents had already filed their petition for review with the DOJ which explains why the petition was not accompanied by a motion to suspend proceedings. Notably, immediately after the motion to suspend proceeding was filed with the RTC, respondents submitted a copy of such motion with the DOJ. Under the circumstances, we hold that there was substantial compliance with the requirements under Section 5 of Department Circular No.70.

The first and third issues refer to the question of whether the CA erred in affirming the ruling of the Office of the President,

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[18] 2000 NPS Rule on Appeal.

[19] *Rollo*, pp. 122-124.

[20] *Id.* at 125.

which adopted the finding of the DOJ Secretary that there was no probable cause to indict respondents for murder.

Ordinarily, the determination of probable cause is not lodged with this Court. Its duty in an appropriate case is confined to the issue of whether the executive or judicial determination, as the case may be, of probable cause was done without or in excess of jurisdiction or with abuse of discretion amounting to want of jurisdiction.[21] However, this Court may ultimately resolve the existence or non-existence of probable cause by examining the records of the preliminary investigation when necessary for the orderly administration of justice.[22] We find that the present case warrants the application of the exception.

Probable cause has been defined as the existence of such facts and circumstances as would lead a person of ordinary caution and prudence to entertain an honest and strong suspicion that the person charged is guilty of the crime subject of the investigation.[23] Being based merely on opinion and reasonable belief, it does not import absolute certainty.[24] Probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon reasonable belief. Probable cause implies probability of guilt and requires more than bare suspicion but less than evidence to justify a conviction.[25]

To determine the existence of probable cause, there is a need to conduct a preliminary investigation.[26] A preliminary investigation

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[21] See *Maca-angcos Alawiya v. Court of Appeals*, G.R. No. 164170, April 6, 2009.

[22] *Id.*

[23] *Chan v. Secretary of Justice*, G.R. No. 147065, March 14, 2008, 548 SCRA 337, 352.

[24] *Id.*, citing *Ilusorio v. Ilusorio*, 540 SCRA 182 (2007).

[25] *Id.*, citing *Ching v. The Secretary of Justice*, 481 SCRA 609, 629 (2006).

[26] *Metropolitan Bank and Trust Company v. Hon. Secretary of Justice Raul M. Gonzales, Oliver T. Yao and Diana T. Yao*, G.R. No. 180165, April 7, 2009.

constitutes a realistic judicial appraisal of the merits of a case.[27] Its purpose is to determine whether (a) a crime has been committed; and (b) there is probable cause to believe that the accused is guilty thereof.[28] It is a means of discovering which person or persons may be reasonably charged with a crime.

The conduct of a preliminary investigation is executive in nature.[29] As we have said, the Court may not be compelled to pass upon the correctness of the exercise of the public prosecutor's function, unless there is a showing of grave abuse of discretion or manifest error in his findings.[30] Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack or excess of jurisdiction. The exercise of power must have been done in an arbitrary or a despotic manner by reason of passion or personal hostility.[31] It must have been so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.

In this case, we find that the DOJ committed a manifest error in finding no probable cause to charge respondents with the crime of murder.

In reversing the findings of the prosecutor, the DOJ Secretary found that the police report prepared after the killing incident stated that the person seated beside the victim, who was watching television when shot, was Liza Gragasan. However, the DOJ Secretary continued that more than four months after the incident, a witness appeared in the person of Flordeliza Bagasan who claimed to be seated beside, and witnessed the actual shooting of, the victim. The DOJ Secretary found Flordeliza's description of respondent Acosta different from the latter's physical attributes.

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[27] *Id.*, citing *Villanueva v. Ople*, 475 SCRA 539, 553 (2005).

[28] *Id.*, citing *Gonzalez v. Hongkong & Shanghai Banking Corporation*, 537 SCRA 255, 269 (2007).

[29] *Id.*

[30] *Id.*, citing *Ang v. Lucero*, 449 SCRA 157, 168 (2005).

[31] *Id.*, citing *Soria v. Desierto*, 450 SCRA 339, 345 (2005).

He then ruled that Flordeliza's delayed testimony, coupled with her erroneous description of respondent Acosta, cast a cloud of doubt on her credibility.

The DOJ Secretary also did not give credence to witness Sardia's testimony on respondent Sapiandante's participation in the incident. He found that Sardia was not among those mentioned in the police report, and that his testimony was likewise belatedly executed without any reason given for such delay; that fear could not have been Sardia's reason, since in June 1998, he had already filed a complaint for attempted murder against respondent Sapiandante, which was later dismissed; and that Sardia did not witness the actual shooting of the victim.

We are not persuaded.

While the initial police report stated that the name of the person who was seated beside the victim when the latter was shot was Liza Gragasan, such report would not conclusively establish that Liza Gragasan could not have been Flordeliza Bagasan, the witness who executed an affidavit four months after the incident. Notably, Flordeliza's nickname is Liza, and her surname Bagasan sounds similar to Gragasan. Under the rule of *idem sonans*, two names are said to be *"idem sonantes"* if the attentive ear finds difficulty in distinguishing them when pronounced.[32] The question whether a name sounds the same as another is not one of spelling but of pronunciation.[33] While the surname Bagasan was incorrectly written as Gragasan, when read, it has a sound similar to the surname Bagasan. Thus, the presence of Bagasan at the crime scene was established, contrary to the conclusion arrived at by the DOJ Secretary.

The execution of Bagasan's affidavit four months after the incident should not be taken against her, as such reaction is within the bounds of expected human behavior. Notably, the

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[32] *People v. Salas*, G.R. No. 115192, March 7, 2000, 327 SCRA 319, 333, citing *Martin v. State*, 541 S.W. 2d 605, 606.

[33] See *Dojillo v. Commission on Elections*, G.R. No. 166542, July 25, 2006, 496 SCRA 484, 499, citing *Cecilio v. Tomacruz*, 62 Phil. 689 (1935).

police report stated that during the conduct of the investigation, Bagasan was shocked after the incident and could not possibly be interviewed. Initial reluctance to volunteer information regarding a crime due to fear of reprisal is common enough that it has been judicially declared as not affecting a witness' credibility.[34] Bagasan's action revealed a spontaneous and natural reaction of a person who had yet to fully comprehend a shocking and traumatic event.[35] Besides, the workings of the human mind are unpredictable. People react differently to emotional stress. There is simply no standard form of behavioral response that can be expected from anyone when confronted with a strange, startling or frightful occurrence.[36]

Moreover, a witness' delay in reporting what she knows about a crime does not render her testimony false or incredible, for the delay may be explained by the natural reticence of most people to get involved in a criminal case.[37]

The DOJ Secretary's finding that the description given by Bagasan did not fit the physical attributes of respondent Acosta is not persuasive, since Bagasan was able to positively identify respondent Acosta. She did so when a cartographic sketch of respondent Acosta was shown to her and later when she was asked to identify him from among the three pictures of men shown to her during the investigation at the NBI. Notably, there was nothing in the records that showed that Bagasan was impelled by any improper motive in pointing to respondent Acosta.

The identification made by Bagasan, with respect to respondent Acosta was corroborated by another witness, Sardia, who saw Acosta with another unidentified male companion rushing out of the chapel where the killing incident took place. Sardia was familiar with the face of respondent Acosta, since the latter

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[34] *Ingal v. People*, G.R. No. 173282, March 4, 2008, 547 SCRA 632, 650, citing *People v. Roma*, 471 SCRA 413, 429 (2005).

[35] *Id.*

[36] *Id.*, citing *People v. Dulanas*, 489 SCRA 58, 74 (2006).

[37] *People v. Ubaldo*, 419 Phil. 718, 729 (2001).

was a witness in a case of frustrated murder against Sapiandante. Although Sapiandante denied in his counter-affidavit that respondent Acosta ever became such witness, this allegation should be proven during the trial of the case. Sardia was also able to positively identify Sapiandante as the driver of the get-away vehicle.

The DOJ Secretary did not also find the statements given by Sardia as credible, as the latter was not among those mentioned as a witness in the police report.

We do not agree.

The failure of the police report to mention Sardia's name as a witness would not detract from the fact that he saw respondent Acosta with an unidentified man running away from the chapel and riding the waiting get- away vehicle driven by Sapiandante. Entries in a police blotter, though regularly done in the course of the performance of official duty, are not conclusive proof of the truth of such entries and should not be given undue significance or probative value for they are usually incomplete and inaccurate.[38]

The matter of assigning value to the declaration of a witness is best done by the trial court, which can assess such testimony in the light of the demeanor, conduct and attitude of the witness at the trial stage.[39]

Finally, we also do not agree with the DOJ Secretary's finding that since Sardia's affidavit was also belatedly executed, the same is not credible. As we have said, witnesses are usually reluctant to volunteer information about a criminal case or are unwilling to be involved in or dragged into criminal investigations due to a variety of valid reasons.[40] Fear of reprisal and the natural reluctance of a witness to get involved in a criminal case are sufficient explanations for a witness' delay in reporting

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[38] *People v. Paragua*, 326 Phil. 923, 929 (1996).

[39] See *People v. Mangahas*, 370 Phil. 411, 425 (1999).

[40] *People v. Aguila*, G.R. No. 171017, December 6, 2006, 510 SCRA 642, 657.

a crime to authorities.[41] The DOJ ruling — that fear could not have been the reason, because as early as 1998 Sardia had already filed a complaint for attempted murder against Sapiandante, which was already dismissed — is merely speculative.

We need not over-emphasize that in a preliminary investigation, the public prosecutor merely determines whether there is probable cause or sufficient ground to engender a well-founded belief that a crime has been committed, and that the respondent is probably guilty thereof and should be held for trial.[42] Considering the foregoing, we find that the CA erred in affirming the DOJ's finding of the absence of probable cause to indict respondents for murder.

WHEREFORE, premises considered, the instant Petition is *GRANTED*. The Decision dated August 31, 2005 of the Court of Appeals in CA-G.R. SP No. 83300 is *REVERSED* and *SET ASIDE*. The Secretary of Justice is hereby *ORDERED* to direct the Office of the City Prosecutor of Manila to withdraw the Motion to Withdraw the Information for Murder already filed in the trial court.

SO ORDERED.

Quisumbing,[*] *Carpio (Chairperson), Chico-Nazario,* and *Abad,*[**] *JJ.,* concur.

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[41] *Id.*

[42] *Metropolitan Bank and Trust Company v. Hon. Secretary of Justice Raul M. Gonzales, Oliver T. Yao and Diana T. Yao, supra* note 26.

[*] Designated to sit as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order No. 755 dated October 12, 2009.

[**] Designated to sit as an additional member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 753 dated October 12, 2009.

THIRD DIVISION

[G.R. No. 170540. October 28, 2009]

EUFEMIA BALATICO *VDA. DE* AGATEP, *petitioner, vs.* **ROBERTA[*] L. RODRIGUEZ and NATALIA AGUINALDO *VDA. DE* LIM,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PRE-TRIAL; PRE-TRIAL BRIEF; PURPOSE.— The pre-trial brief serves as a guide during the pre-trial conference so as to simplify, abbreviate and expedite the trial if not to dispense with it. It is a devise essential to the speedy disposition of disputes, and parties cannot brush it aside as a mere technicality.

2. ID.; ID.; ID.; PRE-TRIAL RULES; OBSERVANCE THEREOF IS MANDATED; EXCEPTION.— x x x [P]re-trial rules are not to be belittled or dismissed, because their non-observance may result in prejudice to a party's substantive rights. Like all rules, they should be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thought[less]ness in not complying with the procedure.

3. ID.; ID.; ID.; WHEN COMPLAINT IS AMENDED TO IMPLEAD ANOTHER DEFENDANT, A SEPARATE CAUSE OF ACTION ACCRUES THAT NECESSITATES ANOTHER PRE-TRIAL BRIEF; CASE AT BAR.— It must be pointed out, however, that in the cases cited by petitioner to support her argument, the Court found no need for a second pre-trial precisely because there are no additional cause of action alleged and the impleaded defendants merely adopted and repleaded all the pleadings of the original defendants. Petitioner's reliance on the above-cited cases is misplaced because, in the present case, the RTC correctly found that petitioner had a separate cause of action against PNB. A separate cause of action necessarily means additional cause of action. Moreover, the defenses adopted by PNB are completely different from the

[*] Referred to as Norberta in some parts of the *rollo* and records.

defenses of Lim and Rodriguez, necessitating a separate determination of the matters enumerated under Section 6, Rule 18 of the Rules of Court insofar as PNB and petitioner are concerned. On these bases, we find no error in the ruling of the CA which sustained the trial court's dismissal of the amended complaint against PNB for failure of petitioner to file her pre-trial brief.

4. ID.; ID.; ID.; ID.; FAILURE OF PETITIONER TO APPEAR DURING THE PRE-TRIAL CONFERENCE WITH RESPECT TO THE AMENDED COMPLAINT IS A GROUND FOR DISMISSAL OF THE ACTION AGAINST THE IMPLEADED DEFENDANT; CASE AT BAR.— In the present case, the Court observes that in the Order of the RTC dated June 6, 2000, the trial court noted the absence of both the petitioner and her counsel during the scheduled pre-trial conference with respect to the amended complaint impleading PNB. Under the above-quoted Rules, such absence is an additional ground to dismiss the action against PNB. Whether an order of dismissal should be maintained under the circumstances of a particular case or whether it should be aside depends on the sound discretion of the trial court. Considering the circumstances established on record in the instant case, the Court finds no cogent reason to set aside the order of the RTC dismissing the complaint of petitioner against PNB.

5. ID.; ID.; JUDGMENTS; COURTS ARE NOT PRECLUDED FROM MAKING FINDINGS WHICH ARE NECESSARY FOR A JUST, COMPLETE AND PROPER RESOLUTION OF THE ISSUES.— It is true that the judgment of the trial and appellate courts in the present case could not bind the PNB for the latter is not a party to the case. However, this does not mean that the trial and appellate courts are precluded from making findings which are necessary for a just, complete and proper resolution of the issues raised in the present case. The Court finds no error in the determination by the trial and appellate courts of the question of whether or not PNB was a mortgagee, buyer and, later on, seller in good faith as this would bear upon the ultimate issue of whether petitioner is entitled to reconveyance.

6. CIVIL LAW; LAND REGISTRATION; INDEFEASIBILITY OF CERTIFICATE OF TITLE; UPHELD IN CASE AT BAR.— x x x [T]he Court finds no error in the findings of both the RTC and the CA that PNB is indeed an innocent mortgagee for value. When the lots were mortgaged to PNB by Lim, the titles thereto were in the latter's name, and they showed neither vice nor infirmity. In accepting the mortgage, PNB was not required to make any further investigation of the titles to the properties being given as security, and could rely entirely on what was stated in the aforesaid title. The public interest in upholding the indefeasibility of a certificate of title, as evidence of the lawful ownership of the land or of any encumbrance thereon, protects a buyer or mortgagee who, in good faith, relies upon what appears on the face of the certificate of title.

7. ID.; SPECIAL CONTRACTS; SALES; OBLIGATIONS OF THE VENDOR; DELIVERY OF THE THING SOLD; EXECUTION OF THE DEED OF SALE IS DEEMED EQUIVALENT TO DELIVERY.— The Court's ruling in *Manuel R. Dulay Enterprises, Inc. v. Court of Appeals* is instructive, to wit: x x x Paragraph 1, Article 1498 of the New Civil Code provides: When the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred. Under the aforementioned article, the mere execution of the deed of sale in a public document is equivalent to the delivery of the property. Likewise, this Court had held that: It is settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of the sale. As such, he is entitled to the possession of the said property and can demand it at any time following the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title. The buyer can, in fact, demand possession of the land even during the redemption period except that he has to post a bond in accordance with Section 7 of Act No. 3133, as amended. No such bond is required after the redemption period if the property is not redeemed. Possession of the land then becomes an absolute right of the purchaser as confirmed owner. Therefore, prior physical delivery

or possession is not legally required since the execution of the Deed of Sale is deemed equivalent to delivery. x x x Thus, the execution of the Deed of Sale in favor of PNB, after the expiration of the redemption period, is deemed equivalent to delivery.

8. ID.; MORTGAGE; AN ACCESSORY CONTRACT INTENDED TO SECURE THE PERFORMANCE OF THE PRINCIPAL OBLIGATION; ALL SUBSEQUENT PURCHASERS MUST RESPECT THE MORTGAGE WHETHER THE TRANSFER TO THEM BE WITH OR WITHOUT THE CONSENT OF THE MORTGAGEE.— As to petitioner's contention that the execution of a public document in favor of PNB did not constitute sufficient delivery to it because the property involved is in the actual and adverse possession of petitioner and her husband, it must be noted that petitioner and her husband's possession of the disputed lot is derived from their right as buyers of the subject parcel of land. As buyers or transferees, petitioner and her husband simply stepped into the shoes of Lim, who, prior to selling the subject property to them, mortgaged the same to PNB. As Lim's successors-in-interest, their possession could not be said to be adverse to that of Lim. Thus, they are also bound to recognize and respect the mortgage entered into by the latter. Their possession of the disputed lot could not, therefore, be considered as a legal impediment which could prevent PNB from acquiring ownership and possession thereof. It bears to reiterate the undisputed fact, in the instant case, that Lim mortgaged the subject property to PNB prior to selling the same to petitioner's husband. Settled is the rule that a mortgage is an accessory contract intended to secure the performance of the principal obligation. One of its characteristics is that it is inseparable from the property. It adheres to the property regardless of who its owner may subsequently be. This is true even in the case of a real estate mortgage because, pursuant to Article 2126 of the Civil Code, the mortgage directly and immediately subjects the property upon which it is imposed, whoever the possessor may be, to the fulfillment of the obligation for whose security it was constituted. It is inseparable from the property mortgaged as it is a right *in rem* – a lien on the property whoever its owner may be. It subsists notwithstanding a change in ownership; in

short, the personality of the owner is disregarded. Thus, all subsequent purchasers must respect the mortgage whether the transfer to them be with or without the consent of the mortgagee, for such mortgage until discharged follows the property.

9. ID.; LAND REGISTRATION; RULE OF NOTICE; PRESUMPTION THAT THE PURCHASER HAS EXAMINED EVERY INSTRUMENT OF RECORD AFFECTING THE TITLE CANNOT BE OVERCOME BY ANY CLAIM OF INNOCENCE OR GOOD FAITH; CASE AT BAR.— Petitioner avers that she and her husband were not aware of the mortgage contract which was executed between PNB and Lim prior to the sale of the subject property by the latter to her husband. The fact remains, however, that the mortgage was registered and annotated on the certificate of title covering the subject property. It is settled that registration in the public registry is notice to the whole world. Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered in the Office of the Register of Deeds of the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering. Under the rule of notice, it is presumed that the purchaser has examined every instrument of record affecting the title. Such presumption may not be rebutted. He is charged with notice of every fact shown by the record and is presumed to know every fact shown by the record and to know every fact which an examination of the record would have disclosed. This presumption cannot be overcome by any claim of innocence or good faith. Otherwise, the very purpose and object of the law requiring a record would be destroyed. Such presumption cannot be defeated by proof of want of knowledge of what the record contains any more than one may be permitted to show that he was ignorant of the provisions of the law. The rule that all persons must take notice of the facts which the public record contains is a rule of law. The rule must be absolute; any variation would lead to endless confusion and useless litigation. In the present case, since the mortgage contract was registered, petitioner may not claim lack of knowledge thereof as a valid defense. The subsequent sale of the property to petitioner's husband cannot defeat the rights of PNB as the mortgagee and, subsequently, the purchaser

at the auction sale whose rights were derived from a prior mortgage validly registered.

10. REMEDIAL LAW; CIVIL PROCEDURE; PRE-TRIAL; PRE-TRIAL ORDER; ISSUES THAT ARE IMPLIEDLY INCLUDED THEREIN OR MAY BE INFERABLE THEREFROM BY NECESSARY IMPLICATION ARE AS MUCH INTEGRAL PARTS OF THE PRE-TRIAL ORDER AS THOSE AS EXPRESSLY STIPULATED; CASE AT BAR.— x x x Settled is the rule that a pre-trial order is not meant to be a detailed catalogue of each and every issue that is to be or may be taken up during the trial. Issues that are impliedly included therein or may be inferable therefrom by necessary implication are as much integral parts of the pre-trial order as those that are expressly stipulated. In the case before us, a cursory reading of the issues enumerated in the Pre-Trial Order of the RTC would readily show that the complete and proper resolution of these issues would necessarily include all other matters pertinent to determining whether herein petitioner is the lawful owner of the subject property and is, therefore, entitled to reconveyance. It would be illogical not to touch on the question of whether the mortgage contract between Lim and PNB is binding on petitioner and her husband or whether PNB lawfully foreclosed and acquired ownership of the subject property because a resolution of these issues is determinative of whether there are no impediments in petitioner and her husband's acquisition of ownership of the disputed lot.

11. CIVIL LAW; LAND REGISTRATION; ACTION FOR RECONVEYANCE; DISMISSAL THEREOF IS PROPER; EXPLAINED.— x x x [T]he Court agrees with the disquisition of the CA that an action for reconveyance is one that seeks to transfer property, wrongfully registered by another, to its rightful and legal owner. From the foregoing discussions, the Court finds no sufficient reason to depart from the findings of the RTC and the CA that, based on the evidence on record, there was no wrongful registration of the property, first in the name of PNB as the purchaser when the property was auctioned and, subsequently, in the name of respondent Rodriguez who bought the subject property when the same was offered for sale by PNB. Hence, the CA did not commit error in affirming

the RTC's dismissal of herein petitioner's complaint for reconveyance.

APPEARANCES OF COUNSEL

Perez and Calagui Law Office for petitioner.
Urbano Palamos and Perdigon for respondents.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking the reversal and setting aside of the Decision[1] of the Court of Appeals (CA) dated September 9, 2005 in CA-G.R. CV No. 83163 which affirmed the May 12, 2004 Decision of the Regional Trial Court (RTC) of Aparri, Cagayan, Branch 8, in Civil Case No. 08-298. Petitioner also assails the CA Resolution[2] dated November 16, 2005 denying her motion for reconsideration.

The factual and procedural antecedents of the case are as follows:

The present case arose from a dispute involving a parcel of land located at Zinundungan, Lasam, Cagayan with an area of 1,377 square meters and covered by Transfer Certificate of Title (TCT) No. T-10759 of the Register of Deeds of the Province of Cagayan.[3]

The subject property was previously owned by herein respondent Natalia Aguinaldo *Vda. de* Lim. On July 18, 1975, Lim mortgaged the lot to the Philippine National Bank (PNB), Tuguegarao Branch, to secure a loan of ₱30,000.00 which she obtained from the said bank. The mortgage contract was duly annotated on TCT No. T-10759. Lim was not able to pay her

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[1] Penned by Associate Justice Martin S. Villarama, Jr., with Associate Justices Regalado E. Maambong and Lucenito N. Tagle, concurring; *rollo*, pp. 39-50.

[2] *Id.* at 52.

[3] Exhibit "C", records, p. 384.

loan prompting PNB to foreclose the property. On April 13, 1983, the subject parcel of land was sold at public auction to PNB as the highest bidder.[4] Lim failed to redeem the property. After the expiration of the one-year redemption period allowed by law, PNB consolidated its ownership over the disputed land.[5] As a consequence, TCT No. T-10759 in the name of Lim was canceled and a new certificate of title (TCT No. T-65894) was issued in the name of PNB on November 8, 1985.[6]

Meanwhile, on August 18, 1976, while the mortgage was still in effect, Lim sold the subject property to herein petitioner's husband, Isaac Agatep (Agatep), for a sum of ₱18,000.00.[7] However, the sale was not registered. Neither did Lim deliver the title to petitioner or her husband. Nonetheless, Agatep took possession of the same, fenced it with barbed wire and introduced improvements thereon. Subsequently, Agatep died in 1978. Despite his death, his heirs, including herein petitioner, continued to possess the property.

In July 1992, the subject lot was included among PNB's acquired assets for sale. Later on, an invitation to bid was duly published. On April 20, 1993, the disputed parcel of land was sold to herein respondent Roberta L. Rodriguez (Rodriguez), who is the daughter of respondent Lim.[8] Subsequently, TCT No. T-65894, in the name of PNB, was canceled and a new title (TCT No. T-89400) was issued in the name of Rodriguez.[9]

On January 27, 1995, herein petitioner filed a Complaint[10] for "reconveyance and/or damages" with the RTC of Aparri, Cagayan against herein respondents.

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[4] See Certificate of Sheriff's Sale, Exhibit "F", *id.* at 388.

[5] See Deed of Sale, Exhibit "D", *id.* at 386.

[6] Exhibit "1", *id.* at 46.

[7] See Deed of Absolute Sale of a Parcel of Land, Exhibit "A", *id.* at 382.

[8] See Deed of Absolute Sale, Exhibit "H", *id.* at 390-392.

[9] Exhibit "I", *id.* at 393.

[10] Records, pp. 1-6.

Later, the complaint was amended to implead PNB as a party-defendant.[11]

On January 20, 2000, the RTC dismissed the amended complaint for failure of herein petitioner (then plaintiff) to file her Pre-Trial Brief.[12] Petitioner filed a motion for reconsideration but the RTC denied it. Thereafter, trial ensued.

On May 12, 2004, the RTC rendered judgment in favor of herein respondents.[13] The dispositive portion of the Decision reads as follows:

> WHEREFORE, the Court hereby renders judgment to wit:
>
> 1. Dismiss the instant complaint for reconveyance for lack of merit;
>
> 2. Sustain the legality of TCT No. 10559[14] in the name of defendant Roberta Rodriguez; and
>
> 3. Award actual damages in favor of plaintiff Eufemia Balatico *Vda. de* Agatep against defendant Natalia Aguinaldo *Vda. de* Lim in the amount of Php18,000.00 with legal interest to be computed from the filing of the instant case up to the full completion of its payment.
>
> SO DECIDED.[15]

In awarding damages in favor of herein petitioner, the RTC ruled that Lim enriched herself at the expense of petitioner and her husband by benefiting from the proceeds of the sale but failing to deliver the object of such sale. Hence, on grounds of justice and equity, petitioner should be awarded an adequate compensation for the value of the loss suffered.

Herein petitioner filed an appeal with the CA contending that the RTC erred in not considering the merit of the evidence and

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[11] *Id.* at 212-217.

[12] *Id.* at 258-260.

[13] *Id.* at 603-630.

[14] Per records, this should be TCT No. T-89400.

[15] Records, p. 630.

arguments proven and submitted by petitioner on the issues defined and agreed upon by the parties. Petitioner also averred that the RTC erred in deciding the case on issues different from those defined and agreed upon by the parties during the pre-trial conference and that the trial court further erred in dismissing the amended complaint.

On September 9, 2005, the CA rendered its Decision dismissing herein petitioner's appeal for lack of merit and affirming the assailed Decision of the RTC.

Petitioner filed a motion for reconsideration, but the CA denied it in its Resolution dated November 16, 2005.

Hence, the present petition with the following assignment of errors:

IV.1. IN AFFIRMING THE DECISION OF THE TRIAL COURT IN DISMISSING THE AMENDED COMPLAINT AGAINST THE PNB, THE APPELLATE COURT COMMITTED A REVERSIBLE ERROR;

IV.2. IN HOLDING THAT "NOTWITHSTANDING THE DISMISSAL OF THE AMENDED COMPLAINT AS AGAINST PNB, THE TRIAL COURT IN ITS DECISION NONETHELESS FULLY PASSED UPON THE MERITS OF APPELLANT'S CAUSE OF ACTION AGAINST THE SAID MORTGAGEE BANK," THE APPELLATE COURT COMMITTED A REVERSIBLE ERROR;

IV.3. AS A NECESSARY CONSEQUENCE OF THE ERROR IV.2, THE RULING OF THE APPELLATE COURT THAT PNB IS A MORTGAGEE, BUYER AND LATER SELLER IN GOOD FAITH, IS A REVERSIBLE ERROR;

IV.4. THE DECISION, ANNEX A, ERRED IN REJECTING PETITIONER'S ARGUMENTS THAT PNB DID NOT ACQUIRE OWNERSHIP OVER THE PROPERTY IN QUESTION;

IV.5. THE DECISION, ANNEX A, ERRED IN RULING THAT PETITIONER'S CONTENTION THAT THE TRIAL COURT DECIDED THE CASE UPON SUCH ISSUES DIFFERENT FROM THOSE AGREED UPON DURING THE PRE-TRIAL CONFERENCE DESERVES SCANT CONSIDERATION; AND

IV.6. THE DECISION, ANNEX A, ERRED IN RULING THAT PETITIONER IS NOT ENTITLED TO HER CAUSE OF ACTION OF RECONVEYANCE.[16]

In her first assigned error, petitioner contends that Section 6, Rule 18 of the Rules of Court does not require another pre-trial, as well as the filing of another pre-trial brief, when the complaint is amended to implead another defendant.

The Court does not agree.

In *Tiu v. Middleton*,[17] the Court, giving emphasis on the importance of a pre-trial, held that:

> Pre-trial is an answer to the clarion call for the speedy disposition of cases. Although it was discretionary under the 1940 Rules of Court, it was made mandatory under the 1964 Rules and the subsequent amendments in 1997. Hailed as "the most important procedural innovation in Anglo-Saxon justice in the nineteenth century, pre-trial seeks to achieve the following:
>
> (a) The possibility of an amicable settlement or of a submission to alternative modes of dispute resolution;
>
> (b) The simplification of the issues;
>
> (c) The necessity or desirability of amendments to the pleadings;
>
> (d) The possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof;
>
> (e) The limitation of the number of witnesses;
>
> (f) The advisability of a preliminary reference of issues to a commissioner;
>
> (g) The propriety of rendering judgment on the pleadings, or summary judgment, or of dismissing the action should a valid ground therefor be found to exist;
>
> (h) The advisability or necessity of suspending the proceedings; and

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[16] *Rollo*, pp. 16-28.

[17] 369 Phil. 829 (1999).

(i) Such other matters as may aid in the prompt disposition of the action.[18]

In consonance with these objectives, Section 6, Rule 18 of the Rules of Court, as amended, provides:

SEC. 6. *Pre-trial brief.* – The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their receipt thereof at least three (3) days before the date of the pre-trial, their respective pre-trial briefs which shall contain, among others:

(a) A statement of their willingness to enter into amicable settlement or alternative modes of dispute resolution, indicating the desired terms thereof;

(b) A summary of admitted facts and proposed stipulation of facts;

(c) The issues to be tried or resolved;

(d) The documents or exhibits to be presented, stating the purpose thereof;

(e) A manifestation of their having availed, or their intention to avail, themselves of discovery procedures or referral to commissioners; and

(f) The number and names of the witnesses, and the substance of their respective testimonies.

Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial.

The pre-trial brief serves as a guide during the pre-trial conference so as to simplify, abbreviate and expedite the trial if not to dispense with it. It is a devise essential to the speedy disposition of disputes, and parties cannot brush it aside as a mere technicality.[19] In addition, pre-trial rules are not to be belittled or dismissed, because their non-observance may result in prejudice to a party's substantive rights. Like all rules, they should be followed except only for the most persuasive of reasons

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[18] *Tiu v. Middleton, supra,* at 835.

[19] *Id.* at 837.

when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thought[less]ness in not complying with the procedure.[20]

Petitioner posits that even if an amended complaint is filed for the purpose of impleading another party as defendant, where no additional cause of action was alleged and the amount of prayer for damages in the original complaint was the same, another pre-trial is not required and a second pre-trial brief need not be filed.

It must be pointed out, however, that in the cases[21] cited by petitioner to support her argument, the Court found no need for a second pre-trial precisely because there are no additional causes of action alleged and the impleaded defendants merely adopted and repleaded all the pleadings of the original defendants. Petitioner's reliance on the above-cited cases is misplaced because, in the present case, the RTC correctly found that petitioner had a separate cause of action against PNB. A separate cause of action necessarily means additional cause of action. Moreover, the defenses adopted by PNB are completely different from the defenses of Lim and Rodriguez, necessitating a separate determination of the matters enumerated under Section 6, Rule 18 of the Rules of Court insofar as PNB and petitioner are concerned. On these bases, we find no error in the ruling of the CA which sustained the trial court's dismissal of the amended complaint against PNB for failure of petitioner to file her pre-trial brief.

Corollarily, Sections 4 and 5 of the same Rule state:

Sec. 4. *Appearance of parties*. – It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing

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[20] *Manigo K. Ramos v. Spouses Purita G. Alvendia and Oscar Alvendia, et al.*, G.R. No. 176706, October 8, 2008, citing *Saguid v. Court of Appeals*, 403 SCRA 678, 684 (2003).

[21] *Pioneer Insurance & Surety Corporation v. Hontanosas*, 168 Phil. 608 (1977); *Insurance Company of North America v. Republic*, No. L-26794, November 15, 1967, 21 SCRA 887.

to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents.

Sec. 5. *Effect of failure to appear*. – The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. x x x

In the present case, the Court observes that in the Order of the RTC dated June 6, 2000,[22] the trial court noted the absence of both the petitioner and her counsel during the scheduled pre-trial conference with respect to the amended complaint impleading PNB. Under the above-quoted Rules, such absence is an additional ground to dismiss the action against PNB.

Whether an order of dismissal should be maintained under the circumstances of a particular case or whether it should be set aside depends on the sound discretion of the trial court.[23] Considering the circumstances established on record in the instant case, the Court finds no cogent reason to set aside the order of the RTC dismissing the complaint of petitioner against PNB.

With respect to the second and third assignment of errors, petitioner argues that the CA erred in sustaining the RTC when it passed upon the merits of petitioner's cause of action against PNB notwithstanding the fact that the complaint against the latter was already dismissed. Petitioner contends that a person who was not impleaded in a case could not be bound by the decision rendered therein. Petitioner then proceeds to conclude that the CA erred in sustaining the trial court's finding that PNB was a mortgagee, buyer and seller in good faith.

The Court is not persuaded.

It is true that the judgment of the trial and appellate courts in the present case could not bind the PNB for the latter is not a party to the case. However, this does not mean that the trial

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[22] Records, p. 286.

[23] *Republic v. Oleta*, G.R. No. 156606, August 17, 2007, 530 SCRA 534, 540.

and appellate courts are precluded from making findings which are necessary for a just, complete and proper resolution of the issues raised in the present case. The Court finds no error in the determination by the trial and appellate courts of the question of whether or not PNB was a mortgagee, buyer and, later on, seller in good faith as this would bear upon the ultimate issue of whether petitioner is entitled to reconveyance.

Petitioner insists that PNB is not a mortgagee in good faith asserting that, if it only exercised due diligence, it would have found out that petitioner and her husband were already in adverse possession of the subject property as early as two years before the same was sold to them. This claim, however, is contradicted by no less than petitioner's averments in her Brief filed with the CA wherein she stated that "[i]mmediately after the sale, the land was delivered to Isaac Agatep x x x Since that time up to the present, Isaac Agatep and after his death, the Appellant have been in continuous, uninterrupted, adverse and public possession of the said parcel of land."[24] The foregoing assertion only shows that petitioner's husband took possession of the subject lot only after the same was sold to him.

In any case, the Court finds no error in the findings of both the RTC and the CA that PNB is indeed an innocent mortgagee for value. When the lots were mortgaged to PNB by Lim, the titles thereto were in the latter's name, and they showed neither vice nor infirmity. In accepting the mortgage, PNB was not required to make any further investigation of the titles to the properties being given as security, and could rely entirely on what was stated in the aforesaid title. The public interest in upholding the indefeasibility of a certificate of title, as evidence of the lawful ownership of the land or of any encumbrance thereon, protects a buyer or mortgagee who, in good faith, relies upon what appears on the face of the certificate of title.[25]

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[24] CA *rollo*, pp. 97-98.

[25] *Bank of Commerce v. San Pablo, Jr.*, G.R. No. 167848, April 27, 2007, 522 SCRA 713, 726, citing *Cavite Development Bank v. Spouses Lim*, 381 Phil. 355, 368 (2000).

In her fourth assigned error, petitioner contends that PNB did not acquire ownership over the disputed lot because the said property was not delivered to it. Petitioner asserts that the execution of a public document does not constitute sufficient delivery to PNB, considering that the subject property is in the adverse possession, under claim of ownership, of petitioner and her predecessor-in-interest. Petitioner further assails the ruling of the CA that PNB, who was the buyer in the foreclosure sale, became the absolute owner of the property purchased when it consolidated its ownership thereof for failure of the mortgagor Lim to redeem the subject property during the period of one year after the registration of the sale.

The Court finds petitioner's arguments untenable.

The Court's ruling in *Manuel R. Dulay Enterprises, Inc. v. Court of Appeals*[26] is instructive, to wit:

> Petitioner's contention that private respondent Torres never acquired ownership over the subject property since the latter was never in actual possession of the subject property nor was the property delivered to him is also without merit.
>
> Paragraph 1, Article 1498 of the New Civil Code provides:
>
> > When the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred.
>
> Under the aforementioned article, the mere execution of the deed of sale in a public document is equivalent to the delivery of the property. Likewise, this Court had held that:
>
> > It is settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of the sale. As such, he is entitled to the possession of the said property and can demand it at any time following the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title. The buyer can, in

[26] G.R. No. 91889, August 27, 1993, 225 SCRA 678.

> fact, demand possession of the land even during the redemption period except that he has to post a bond in accordance with Section 7 of Act No. 3133, as amended. No such bond is required after the redemption period if the property is not redeemed. Possession of the land then becomes an absolute right of the purchaser as confirmed owner.

Therefore, prior physical delivery or possession is not legally required since the execution of the Deed of Sale is deemed equivalent to delivery.[27]

This ruling was reiterated in *Spouses Sabio v. The International Corporate Bank, Inc.*[28] wherein it was held that:

> Notwithstanding the presence of illegal occupants on the subject property, transfer of ownership by symbolic delivery under Article 1498 can still be effected through the execution of the deed of conveyance. As we held in *Power Commercial and Industrial Corp. v. Court of Appeals* [274 SCRA 597, 610], the key word is control, not possession, of the subject property. Considering that the deed of conveyance proposed by respondents did not stipulate or infer that petitioners could not exercise control over said property, delivery can be effected through the mere execution of said deed.
>
> x x x It is sufficient that there are no legal impediments to prevent petitioners from gaining physical possession of the subject property. As stated above, prior physical delivery or possession is not legally required and the execution of the deed of sale or conveyance is deemed equivalent to delivery. This deed operates as a formal or symbolic delivery of the property sold and authorizes the buyer or transferee to use the document as proof of ownership. Nothing more is required.[29]

Thus, the execution of the Deed of Sale in favor of PNB, after the expiration of the redemption period, is deemed equivalent to delivery.

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[27] *Id.* at 686-687.

[28] 416 Phil. 785 (2001).

[29] *Id.* at 820-821.

As to petitioner's contention that the execution of a public document in favor of PNB did not constitute sufficient delivery to it because the property involved is in the actual and adverse possession of petitioner and her husband, it must be noted that petitioner and her husband's possession of the disputed lot is derived from their right as buyers of the subject parcel of land. As buyers or transferees, petitioner and her husband simply stepped into the shoes of Lim, who, prior to selling the subject property to them, mortgaged the same to PNB. As Lim's successors-in-interest, their possession could not be said to be adverse to that of Lim. Thus, they are also bound to recognize and respect the mortgage entered into by the latter. Their possession of the disputed lot could not, therefore, be considered as a legal impediment which could prevent PNB from acquiring ownership and possession thereof.

It bears to reiterate the undisputed fact, in the instant case, that Lim mortgaged the subject property to PNB prior to selling the same to petitioner's husband. Settled is the rule that a mortgage is an accessory contract intended to secure the performance of the principal obligation. One of its characteristics is that it is inseparable from the property. It adheres to the property regardless of who its owner may subsequently be.[30]

This is true even in the case of a real estate mortgage because, pursuant to Article 2126 of the Civil Code, the mortgage directly and immediately subjects the property upon which it is imposed, whoever the possessor may be, to the fulfillment of the obligation for whose security it was constituted. It is inseparable from the property mortgaged as it is a right *in rem* – a lien on the property whoever its owner may be. It subsists notwithstanding a change in ownership; in short, the personality of the owner is disregarded. Thus, all subsequent purchasers must respect the mortgage whether the transfer to them be with or without the consent of the mortgagee, for such mortgage until discharged follows the property.[31]

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[30] *Republic v. Lim*, G.R. No. 161656, June 29, 2005, 462 SCRA 265, 287-288.

[31] *Ligon v. Court of Appeals*, G.R. No. 107751, June 1, 1995, 244 SCRA 693, 700-701.

Petitioner avers that she and her husband were not aware of the mortgage contract which was executed between PNB and Lim prior to the sale of the subject property by the latter to her husband. The fact remains, however, that the mortgage was registered and annotated on the certificate of title covering the subject property.

It is settled that registration in the public registry is notice to the whole world.[32] Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered in the Office of the Register of Deeds of the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering.[33] Under the rule of notice, it is presumed that the purchaser has examined every instrument of record affecting the title. Such presumption may not be rebutted. He is charged with notice of every fact shown by the record and is presumed to know every fact shown by the record and to know every fact which an examination of the record would have disclosed. This presumption cannot be overcome by any claim of innocence or good faith. Otherwise, the very purpose and object of the law requiring a record would be destroyed. Such presumption cannot be defeated by proof of want of knowledge of what the record contains any more than one may be permitted to show that he was ignorant of the provisions of the law. The rule that all persons must take notice of the facts which the public record contains is a rule of law. The rule must be absolute; any variation would lead to endless confusion and useless litigation.[34] In the present case, since the mortgage contract was registered, petitioner may not claim lack of knowledge thereof as a valid defense. The subsequent sale

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[32] *Olizon v. Court of Appeals*, G.R. No. 107075, September 1, 1994, 236 SCRA 148, 159.

[33] Presidential Decree No. 1529, Sec. 52; *Guaranteed Homes, Inc. v. Heirs of Maria P. Valdez, et al.*, G.R. No. 171531, January 30, 2009.

[34] *Armed Forces and Police Mutual Benefit Association, Inc. v. Santiago*, G.R. No. 147559, June 27, 2008, 556 SCRA 46, 56-57; *Binan Steel Corporation v. Court of Appeals*, 439 Phil. 688, 702 (2002).

of the property to petitioner's husband cannot defeat the rights of PNB as the mortgagee and, subsequently, the purchaser at the auction sale whose rights were derived from a prior mortgage validly registered.

In her fifth assignment of error, petitioner contends that the trial court deviated from the issues identified in the Pre-Trial Order and that the case was decided on issues different from those agreed upon during the pre-trial. Settled is the rule that a pre-trial order is not meant to be a detailed catalogue of each and every issue that is to be or may be taken up during the trial. Issues that are impliedly included therein or may be inferable therefrom by necessary implication are as much integral parts of the pre-trial order as those that are expressly stipulated.[35] In the case before us, a cursory reading of the issues enumerated in the Pre-Trial Order of the RTC would readily show that the complete and proper resolution of these issues would necessarily include all other matters pertinent to determining whether herein petitioner is the lawful owner of the subject property and is, therefore, entitled to reconveyance. It would be illogical not to touch on the question of whether the mortgage contract between Lim and PNB is binding on petitioner and her husband or whether PNB lawfully foreclosed and acquired ownership of the subject property because a resolution of these issues is determinative of whether there are no impediments in petitioner and her husband's acquisition of ownership of the disputed lot.

Coming to the last assigned error, the Court agrees with the disquisition of the CA that an action for reconveyance is one that seeks to transfer property, wrongfully registered by another, to its rightful and legal owner.[36] From the foregoing discussions, the Court finds no sufficient reason to depart from the findings of the RTC and the CA that, based on the evidence on record,

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[35] *LCK Industries Inc. v. Planters Development Bank*, G.R. No. 170606, November 23, 2007, 538 SCRA 634, 649, citing *Velasco v. Apostol*, 173 SCRA 228, 232-233 (1989).

[36] *New Regent Sources, Inc. v. Teofilo Victor Tanjuatco, Jr., et al.*, G.R. No. 168800, April 16, 2009; *Heirs of Maximo Sanjorjo v. Heirs of Manuel Y. Quijano*, G.R. No. 140457, January 19, 2005, 449 SCRA 15, 27.

there was no wrongful registration of the property, first in the name of PNB as the purchaser when the property was auctioned and, subsequently, in the name of respondent Rodriguez who bought the subject property when the same was offered for sale by PNB. Hence, the CA did not commit error in affirming the RTC's dismissal of herein petitioner's complaint for reconveyance.

WHEREFORE, the petition is *DENIED*. The assailed Decision and Resolution of the Court of Appeals, dated September 9, 2005 and November 16, 2005, respectively, in CA-G.R. CV No. 83163 are *AFFIRMED*.

SO ORDERED.

Quisumbing,[**] *Carpio (Chairperson), Chico-Nazario,* and *Abad,*[***] *JJ.,* concur.

THIRD DIVISION

[A.M. No. 07-2-93-RTC. October 29, 2009]

RE: ORDER DATED 21 DECEMBER 2006 ISSUED BY JUDGE BONIFACIO SANZ MACEDA, REGIONAL TRIAL COURT, LAS PIÑAS CITY, BRANCH 275, SUSPENDING LOIDA M. GENABE, LEGAL RESEARCHER, SAME COURT.

[**] Designated to sit as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura per Special Order No. 755 dated October 12, 2009.

[***] Designated to sit as an additional member in lieu of Associate Justice Presbitero J. Velasco, Jr. per Special Order No. 753 dated October 12, 2009.

Re: Order dated 21 December 2006 issued by Judge Maceda, RTC Las Piñas City, Branch 275, etc.

[A.M. No. P-07-2320. October 29, 2009]

JUDGE BONIFACIO SANZ MACEDA, REGIONAL TRIAL COURT, LAS PIÑAS CITY, BRANCH 275, *complainant, vs.* **LOIDA M. GENABE, LEGAL RESEARCHER, SAME COURT,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; SIMPLE NEGLECT OF DUTY, A CASE OF; DEFINED; PENALTY.— In A.M. No. P-07-2320, we find Genabe guilty for simple neglect of duty. Simple neglect of duty has been defined as the failure of an employee to give attention to a task expected of him and signifies a disregard of a duty resulting from carelessness or indifference. Genabe had been permitted to attend a two-day seminar in Baguio City on the premise that no work would be left pending. She was assigned to summarize the testimonies of three defense witnesses for a criminal case set for promulgation. The records reveal that Genabe was only able to summarize the TSN of one witness consisting of 46 pages and failed to finish the TSN of the other two witnesses consisting of 67 pages. Before leaving for Baguio, Genabe had three working days to complete the task. However, the assignment remained unfinished. When such task was assigned to another court employee, it only took the other employee two and a half hours to complete the TSN of the two witnesses. Further, Judge Maceda stated that this was not the only time Genabe had been remiss in her duties. In Criminal Case No. 98-926 entitled "*People of the Philippines v. Russel Javier, et al.*," Genabe failed to include in the statement of facts the detail on the prosecutor's waiver of the cross examination and more importantly, neglected to include the testimony of the accused Russel Javier upon completing his testimony. Also, in Criminal Case Nos. 02-0713 and 02-0714, entitled "*People of the Philippines v. Alberto Ylanan*," Genabe included the testimony of an alleged poseur when his testimony, upon motion, had been stricken off the record per Order dated 29 July 2003. From these instances, we find that Genabe's

actuations constitute simple neglect of duty. As a first offense under civil service law, we impose the penalty of suspension without pay for a period of one month and one day. The suspension imposed upon Genabe under the Order dated 21 December 2006 shall be considered as the penalty imposed. The remaining balance of one day suspension must be served upon finality of this decision.

2. ID.; ID.; ADMINISTRATIVE PROCEEDINGS; BURDEN OF PROOF RESTS ON THE COMPLAINANT; SUBSTANTIAL EVIDENCE, DEFINED; NOT ESTABLISHED IN CASE AT BAR.— With regard to the other charges of contempt, conduct unbecoming and misconduct, we find no sufficient basis to hold Genabe accountable for these offenses based on her alleged unruly conduct at the staff meeting held on 29 November 2006. In administrative proceedings, the burden is on the complainant to prove by substantial evidence the allegations in his complaint. Substantial evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. The standard was not met in this case. The Order dated 21 December 2006 and Investigation Report dated 18 January 2007 submitted by Judge Maceda centered mainly on Genabe's neglect of duty in not completing her assigned task on time. The other charges had been touched on in a sporadic manner. While the law does not tolerate misconduct by a civil servant, suspension, replacement or dismissal must not be resorted to unless there is substantial evidence to merit such penalties. In the absence of substantial evidence to the contrary, Genabe cannot be held accountable for the other charges against her.

3. ID.; ID.; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; GUIDELINES FOR ADMINISTRATIVE DISCIPLINE OF COURT EMPLOYEES OVER LIGHT OFFENSES; AUTHORITY OF JUDGES IS LIMITED TO CONDUCTING AN INQUIRY ONLY; CASE AT BAR.— Section 1, Chapter VIII of A.M. No. 03-8-02-SC x x x provides the guidelines for administrative discipline of court employees over light offenses. x x x The guidelines clearly provide that the authority of judges to discipline erring court personnel, under their supervision and charged with light offenses, is limited to conducting an inquiry only. After such inquiry, the

executive judge is required to submit to the OCA the results of the investigation and give a recommendation as to what action should be taken. An executive judge does not have the authority to act upon the results of the inquiry and thereafter, if the court employee is found guilty, unilaterally impose a penalty, as in this case. It is only the Supreme Court which has the power to find the court personnel guilty or not for the offense charged and then impose a penalty. In the present case, Judge Maceda suspended Genabe for the offense of neglect of duty. Under Section 52(B), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, simple neglect of duty is a less grave offense which carries a penalty of one month and one day to six months suspension for the first offense. Under A.M. No. 03-8-02-SC, an executive judge may only conduct an investigation for all offenses. After the investigation, the executive judge is mandated to refer the necessary disciplinary action to this Court for appropriate action. Even under Circular No. 30-91, Judge Maceda should have referred to Section A(2)(b) of Circular No. 30-91 which provides: b. Grave or Less Grave Offenses. All administrative complaints for grave or less grave offenses as defined in the Codes hereinbefore referred to shall be immediately referred to the Court *En Banc* for appropriate action within 15 days from receipt by the Court Administrator if filed directly with him, otherwise, within 15 days likewise from receipt by him from the appropriate supervisory officials concerned. Thus, under Circular No. 30-91, a court employee charged with a less grave offense could not be directly penalized by an executive judge. Judge Maceda had no authority to suspend Genabe outright for a less grave offense of simple neglect of duty even under Circular No. 30-91. Clearly, Judge Maceda exceeded his authority when he issued the 21 December 2006 suspension order against Genabe.

4. LEGAL ETHICS; DISCIPLINE OF JUDGES OF REGULAR COURTS; LESS SERIOUS CHARGES; VIOLATION OF SUPREME COURT RULES, DIRECTIVES AND CIRCULARS; SANCTIONS; CASE AT BAR.— Section 9, Rule 140 of the Rules of Court provides that a violation of Supreme Court rules, directives, and circulars constitutes a less serious charge in the discipline of judges of regular courts: Sec. 9. Less Serious Charges. – x x x 4. Violation of Supreme

> Court rules, directives, and circulars; x x x Accordingly, Section 11, Rule 140 of the Rules of Court provides the sanctions to be imposed if one is found to be guilty of a less serious charge: Sec. 11. Sanctions. – x x x B. If the respondent is guilty of a less serious charge, any of the following sanctions may be imposed: 1. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or 2. A fine of more than ₱10,000.00 but not exceeding ₱20,000.00. x x x We hold that the penalty of fine in the amount of ₱12,000 is commensurate to Judge Maceda's violation of A.M. No. 03-8-02-SC. We sternly warn him that a repetition of the same or similar acts will be dealt with more severely.

D E C I S I O N

CARPIO, *J.*:

This administrative matter against Loida M. Genabe (Genabe), Legal Researcher II of the Regional Trial Court (trial court), Branch 275, Las Piñas City, stemmed from a Letter dated 22 December 2006 addressed to the Office of the Court Administrator (OCA) filed by Judge Bonifacio Sanz Maceda (Judge Maceda) of the same trial court. Judge Maceda attached his Order dated 21 December 2006 suspending Genabe for 30 days by reason of neglect of duty for attending a two-day seminar despite a pending assignment. In the letter, Judge Maceda requested that the salary of Genabe be withheld for the period 21 December 2006 to 20 January 2007 since the suspension was immediately executory.

The Facts

On 20 November 2006, Atty. Jonna M. Escabarte (Atty. Escabarte), Branch Clerk of Court of the same trial court, issued an Inter-Office Memorandum to Genabe referring to her neglect, in leaving for Baguio City on 16 to17 November 2006 to attend a seminar for legal researchers, without finishing her assigned task. The assigned task required Genabe to summarize the statement of facts in Criminal Case Nos. 03-0059 to 03-0063 entitled "*People of the Philippines v. Marvilla, et al.*," set for promulgation on 21 November 2006. Atty. Escabarte reminded

Genabe that such act could not be tolerated and that similar acts in the future would be meted an appropriate sanction.

On 22 November 2006, Genabe submitted her explanation regarding the unfinished assigned case. She stated that she was not able to complete the summary due to lack of transcript of stenographic notes (TSN). Genabe added that she be absolved for humane considerations.

On 29 November 2006, Judge Maceda called a staff meeting to discuss several matters in the agenda, including the inter-office memorandum. Allegedly, even before the staff meeting, Genabe resented the issuance of the memorandum and became disrespectful to the court staff, including the clerk of court. At the meeting, Genabe allegedly continued her combative behavior in total disregard of the presence of Judge Maceda.

On 30 November 2006, Judge Maceda ordered Genabe to show cause why she should not be cited in contempt by the court and why she should not be administratively sanctioned for conduct unbecoming, neglect of duty and misconduct.

In her Answer dated 11 December 2006, Genabe denied that she neglected her duty and explained with counter-charges. Genabe stated that Atty. Escabarte did not give her the opportunity to be heard and that she was not given sufficient lead time to finish the five consolidated informations of the criminal case assigned to her. Genabe attributed the lack of stenographers, which was beyond her control, as the cause of the delay in the transcriptions of the minutes of the meeting. As a counter-charge, Genabe claimed that Judge Maceda disciplines his staff on a selective basis.

On the same day, Judge Maceda conducted a fact-finding investigation inside his chambers. The agenda of the investigation focused on the charges of contempt, conduct unbecoming, neglect of duty, and misconduct against Genabe. Judge Maceda directed all members of the staff, including Genabe, to attend. However, Genabe did not appear despite notice. Later, she appeared to say that she was waiving her right to be present in the investigation.

On 21 December 2006, Judge Maceda issued the Suspension Order against Genabe for neglect of duty.

In a Letter dated 22 December 2006, Judge Maceda furnished the Office of the Court of Administrator (OCA) with a copy of the Order dated 21 December 2006. Judge Maceda suspended Genabe for a period of 30 days, using as authority the power given to appropriate supervisory officials in disciplining personnel of their respective courts as provided in Article II, Section A(2)(a) of Circular No. 30-91 dated 30 September 1991. Judge Maceda declared that the suspension was to take effect immediately and would not be stayed even if appealed to the Supreme Court. Judge Maceda then requested that following the suspension order, Genabe's salary be withheld for the period 21 December 2006 to 20 January 2007.

The OCA received a letter dated 12 January 2007 sent by Atty. Zandro T. Bato, Clerk of Court VI of the same trial court, returning the salary check of Genabe following the suspension order issued against her. On 22 January 2007, Genabe reported back to work after serving the 30-day suspension order of Judge Maceda.

On 18 January 2007, Judge Maceda endorsed his Investigation Report and Recommendation to the OCA, even without any directive from the latter. The report mainly focused on the alleged unruly conduct of Genabe during the staff meeting of Branch 275 on 29 November 2006. Judge Maceda submitted the following recommendations:

1. Pending determination of the instant matter by the Honorable Supreme Court, Ms. Loida M. Genabe, Legal Researcher, RTC, Branch 275, Las Piñas City, be immediately placed under preventive suspension, and thereafter dismiss her from the service; and

2. Allow the undersigned to recommend a replacement to enable RTC Branch 275 to function normally soonest.[1]

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[1] *Rollo* (A.M. No. 07-2-93-RTC), p. 73.

In a Letter dated 18 April 2007, several staff members of the same trial court, headed by the Branch Clerk of Court, assailed the alleged inaction of the OCA on the Investigation Report and Recommendation dated 18 January 2007 submitted by Judge Maceda as well as the request for the detail of Genabe to another post.

In a Resolution dated 23 May 2007, this Court resolved to:

1. NOTE the letter dated 22 December 2006 of Presiding Judge Bonifacio Sanz Maceda x x x;

2. TREAT the Order dated 21 December 2006 issued by Judge Bonifacio [Sanz] Maceda as an administrative complaint against Loida M. Genabe under a separate docket number, A.M. No. P-07-2320 x x x;

3. DIRECT Ms. Loida M. Genabe to REPORT BACK TO WORK pending resolution of the administrative complaint against her, unless another administrative case directs otherwise; and

4. REQUIRE Judge Bonifacio [Sanz] Maceda to EXPLAIN, within ten (10) days from notice, why no disciplinary sanction should be imposed against him for having violated A.M. No. 03-8-02-SC entitled "Guidelines on the Selection and Appointment of Executive Judges and Defining their Powers, Prerogatives and Duties" approved on 27 January 2004 and became effective on 15 February 2004.[2]

Judge Maceda submitted his Explanation dated 29 June 2007, in compliance with the Court's Resolution dated 23 May 2007. Judge Maceda reasoned that there were other charges against Genabe, such as "conduct unbecoming and grave misconduct," which called for the imposition of a higher penalty. Thus, he endorsed the determination of such other charges to the OCA, including whether the heavier penalty of dismissal or replacement might be warranted. Judge Maceda prayed that his explanation be considered as sufficient compliance and that he be absolved of any disciplinary sanction.

On 22 August 2007, the Court resolved to refer to the OCA for evaluation, report and recommendation the (1) Order dated 21 December 2006 and (2) Explanation dated 29 June 2007, both made by Judge Maceda.

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[2] *Id.* at 373.

On 29 August 2007, the Court resolved to inform the staff members of the same trial court, in consideration of the Letter dated 18 April 2007, that until Genabe has been formally charged with "contempt, conduct unbecoming and misconduct," which are not light offenses, the propriety of suspending Genabe pending investigation of the charges against her cannot be properly evaluated, and to await the outcome of A.M. No. P-07-2320.

On 19 November 2007, the staff members of the same trial court, headed by the Branch Clerk of Court, filed their Manifestation dated 15 October 2007, that Genabe had been formally charged with "contempt, conduct unbecoming and misconduct" as contained in the Investigation Report and Recommendation dated 18 January 2007 submitted by Judge Maceda to this Court.

In a Resolution dated 16 January 2008, the Court resolved to require the parties to manifest their willingness to submit the matter for decision on the basis of the pleadings filed. Judge Maceda and Genabe respectively filed their compliance on separate dates.

In a Resolution dated 4 June 2008, the Court resolved to:

1. APPROVE the previous recommendation of the Office of the Court Administrator, as contained in its Agenda Report dated 24 January 2007 particularly items no. 5 and 6. Accordingly, (a) the Financial Management Office is DIRECTED to pay the salary of Ms. Loida M. Genabe pending resolution of the administrative case against her by the Court; and (b) the Office of the Administrative Services-Leave Division is DIRECTED not to deduct the number of absences incurred by Ms. Genabe from her leave credits since the order of suspension is unauthorized; and

2. GRANT the application of Ms. Loida M. Genabe for leave for a period of five (5) months starting 1 May to 30 September 2008 for purposes of taking the bar examination, this, however, is without prejudice to the action that the Committee of the Education Support Program may take on her application.[3]

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[3] *Id.* at 569.

The OCA's Report and Recommendation

In its Report dated 23 October 2007, the OCA found Judge Maceda's explanation unsatisfactory. The OCA stated that Circular No. 30-91 had been impliedly amended by the Guidelines on the Selection and Appointment of Executive Judges and Defining their Powers, Prerogatives and Duties as contained in A.M. No. 03-8-02-SC, which became effective on 15 February 2004. The OCA added that it was clear from the Guidelines that Judge Maceda had no authority to directly penalize a court employee. As an Executive Judge, he only had the right to act upon and investigate administrative complaints involving light offenses. The power to decide and impose a penalty, even for light offenses, rests with the Supreme Court. Thus, the OCA recommended that Judge Maceda be fined ₱12,000 payable immediately and be sternly warned that a repetition of the same or similar act in the future would merit a severe penalty.

The Court's Ruling

After a careful review of the records of the case, we find reasonable grounds to hold both Genabe and Judge Maceda administratively liable.

In A.M. No. P-07-2320, we find Genabe guilty for simple neglect of duty. Simple neglect of duty has been defined as the failure of an employee to give attention to a task expected of him and signifies a disregard of a duty resulting from carelessness or indifference.[4]

Genabe had been permitted to attend a two-day seminar in Baguio City on the premise that no work would be left pending. She was assigned to summarize the testimonies of three defense witnesses for a criminal case set for promulgation. The records reveal that Genabe was only able to summarize the TSN of one witness consisting of 46 pages and failed to finish the TSN of the other two witnesses consisting of 67 pages. Before leaving for Baguio, Genabe had three working days to complete the

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[4] *OCA v. Montalla*, A.M. No. P-06-2269, 20 December 2006, 511 SCRA 328, citing *Inting v. Borja*, A.M. No. P-03-1707, 27 July 2004, 435 SCRA 269.

task. However, the assignment remained unfinished. When such task was assigned to another court employee, it only took the other employee two and a half hours to complete the TSN of the two witnesses.

Further, Judge Maceda stated that this was not the only time Genabe had been remiss in her duties. In Criminal Case No. 98-926 entitled "*People of the Philippines v. Russel Javier, et al.,*" Genabe failed to include in the statement of facts the detail on the prosecutor's waiver of the cross examination and more importantly, neglected to include the testimony of the accused Russel Javier upon completing his testimony. Also, in Criminal Case Nos. 02-0713 and 02-0714, entitled "*People of the Philippines v. Alberto Ylanan,*" Genabe included the testimony of an alleged poseur when his testimony, upon motion, had been stricken off the record per Order dated 29 July 2003.

From these instances, we find that Genabe's actuations constitute simple neglect of duty. As a first offense under civil service law, we impose the penalty of suspension without pay for a period of one month and one day.[5] The suspension imposed upon Genabe under the Order dated 21 December 2006 shall be considered as the penalty imposed. The remaining balance of one day suspension must be served upon finality of this decision.

With regard to the other charges of contempt, conduct unbecoming and misconduct, we find no sufficient basis to hold Genabe accountable for these offenses based on her alleged unruly conduct at the staff meeting held on 29 November 2006. In administrative proceedings, the burden is on the complainant to prove by substantial evidence the allegations in his complaint.[6] Substantial evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

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[5] Under Rule IV, Section 52(B) of CSC Memorandum Circular No. 19, series of 1999, or the Revised Uniform Rules on Administrative Cases in the Civil Service, simple neglect of duty is a less grave offense which carries a penalty of one month and one day to six months suspension for the first offense.

[6] *Civil Service Commission v. Ledesma*, G.R. No. 154521, 30 September 2005, 471 SCRA 589.

The standard was not met in this case. The Order dated 21 December 2006 and Investigation Report dated 18 January 2007 submitted by Judge Maceda centered mainly on Genabe's neglect of duty in not completing her assigned task on time. The other charges had been touched on in a sporadic manner. While the law does not tolerate misconduct by a civil servant, suspension, replacement or dismissal must not be resorted to unless there is substantial evidence to merit such penalties. In the absence of substantial evidence to the contrary, Genabe cannot be held accountable for the other charges against her.

In A.M. No. 07-2-93-RTC, we find that Judge Maceda failed to observe due process in ordering the suspension of Genabe and withholding her salary from 21 December 2006 to 20 January 2007.

Judge Maceda suspended a court personnel directly under his supervision by relying on the authority laid down in Article II, Section A(2)(a) of Circular No. 30-91 which provides:

2. Lower Court Personnel

a. Light Offenses –

(1) Disciplinary matters involving light offenses as defined under the Civil Service law (Administrative Code of 1987 and the Code of Conduct and Ethical Standards for Public Officials and Employees (Rep. Act. 6713) where the penalty is reprimand, suspension for not more than thirty days, or a fine not exceeding thirty days' salary, and as classified in Civil Service Resolution No. 30, Series of 1989, shall be acted upon by the appropriate supervisory official of the lower court concerned.

(2) The appropriate supervisory officials are the Presiding Justices/ Presiding Judge of the lower collegiate courts and the Executive Judges of the trial courts with respect to the personnel of their respective courts, except those directly under the individual Justices and Judges, in which case, the latter shall be their appropriate supervisory officials.

(3) The complaint for light offenses whether filed with the Court, the Office of the Court Administrator, or the lower court shall be heard and decided by the appropriate supervisory official concerned. x x x

The reliance of Judge Maceda on the provisions of this circular is misplaced. Judge Maceda found Genabe to have neglected her duty in November 2006. The guidelines in effect at that time were already those found in A.M. No. 03-8-02-SC, which took effect in 2004 or two years before the administrative charge of neglect of duty was made against Genabe. Judge Maceda should have applied these new guidelines and not Circular No. 30-91.

Section 1, Chapter VIII of A.M. No. 03-8-02-SC, which provides the guidelines for administrative discipline of court employees over light offenses, states:

SECTION. 1. *Disciplinary jurisdiction over light offenses.*–

The Executive Judge shall have authority to act upon and investigate administrative complaints involving light offenses as defined under the Civil Service Law and Rules (Administrative Code of 1987), and the Code of Conduct and Ethical Standards for Public Officials and Employees (Republic Act No. 6713), where the penalty is reprimand, suspension for not more than thirty (30) days, or a fine not exceeding thirty (30) days' salary, and as classified in pertinent Civil Service resolutions or issuances, filed by (a) a judge against a court employee, except lawyers, who both work in the same station within the Executive Judge's area of administrative supervision; or (b) a court employee against another court employee, except lawyers, who both work in the same station within the Executive Judge's area of administrative supervision.

In the preceding instances, the Executive Judge shall conduct the necessary inquiry and submit to the Office of the Court Administrator the results thereof with a recommendation as to the action to be taken thereon, including the penalty to be imposed, if any, within thirty (30) days from termination of said inquiry. At his/her discretion, the Executive Judge may delegate the investigation of complaints involving light offenses to any of the Presiding Judges or court officials within his/her area of administrative supervision.

In the case of a complaint (a) filed against court employees who are lawyers, or (b) filed by private complainants against court employees, lawyers and non-lawyers alike, the same shall be forwarded by the Executive Judge to the Office of the Court Administrator for appropriate action and disposition. x x x (Emphasis supplied)

The guidelines clearly provide that the authority of judges to discipline erring court personnel, under their supervision and charged with light offenses, is limited to conducting an inquiry only. After such inquiry, the executive judge is required to submit to the OCA the results of the investigation and give a recommendation as to what action should be taken. An executive judge does not have the authority to act upon the results of the inquiry and thereafter, if the court employee is found guilty, unilaterally impose a penalty, as in this case. It is only the Supreme Court which has the power to find the court personnel guilty or not for the offense charged and then impose a penalty.

In the present case, Judge Maceda suspended Genabe for the offense of neglect of duty. Under Section 52(B), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service,[7] simple neglect of duty is a less grave offense which carries a penalty of one month and one day to six months suspension for the first offense.[8] Under A.M. No. 03-8-02-SC, an executive judge may only conduct an investigation for all offenses. After the investigation, the executive judge is mandated to refer the necessary disciplinary action to this Court for appropriate action.[9]

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[7] CSC Memorandum Circular No. 19, series of 1999, made effective on 14 September 1999.

Section 52. *Classification of Offenses.* – Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

x x x x x x x x x

B. The following are less grave offenses with the corresponding penalties:

1. Simple Neglect of Duty
   1st Offense – Suspension 1 mo. 1 day to 6 mos.
   2nd Offense – Dismissal

x x x x x x x x x

[8] *Rosales v. Buenaventura,* A.M. No. 2004-15-SC, 16 November 2006, 507 SCRA 14.

[9] *Aguirre v. Baltazar*, A.M. No. P-05-1957, 7 February 2005, 450 SCRA 518; *Exec. Judge Ulat-Marrero v. Torio, Jr.*, 461 Phil. 654 (2003).

Even under Circular No. 30-91, Judge Maceda should have referred to Section A(2)(b) of Circular No. 30-91 which provides:

b. Grave or Less Grave Offenses

All administrative complaints for grave or less grave offenses as defined in the Codes hereinbefore referred to shall be immediately referred to the Court *En Banc* for appropriate action within 15 days from receipt by the Court Administrator if filed directly with him, otherwise, within 15 days likewise from receipt by him from the appropriate supervisory officials concerned.

Thus, under Circular No. 30-91, a court employee charged with a less grave offense could not be directly penalized by an executive judge. Judge Maceda had no authority to suspend Genabe outright for a less grave offense of simple neglect of duty even under Circular No. 30-91. Clearly, Judge Maceda exceeded his authority when he issued the 21 December 2006 suspension order against Genabe.

Section 9, Rule 140 of the Rules of Court provides that a violation of Supreme Court rules, directives, and circulars constitutes a less serious charge in the discipline of judges of regular courts:

Sec. 9. Less Serious Charges. –

x x x x x x x x x

4. Violation of Supreme Court rules, directives, and circulars;

x x x x x x x x x

Accordingly, Section 11, Rule 140 of the Rules of Court provides the sanctions to be imposed if one is found to be guilty of a less serious charge:

Sec. 11. Sanctions. –

x x x x x x x x x

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

1. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or

2. A fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

x x x x x x x x x

We hold that the penalty of fine in the amount of ₱12,000 is commensurate to Judge Maceda's violation of A.M. No. 03-8-02-SC. We sternly warn him that a repetition of the same or similar acts will be dealt with more severely.

WHEREFORE, in A.M. No. P-07-2320, we find Loida M. Genabe, Legal Researcher II of the Regional Trial Court of Las Piñas City, Branch 275, *GUILTY* of simple neglect of duty. We *SUSPEND* her for one month and one day without pay. The 30-day suspension imposed upon Loida M. Genabe under the Order dated 21 December 2006 issued by Judge Bonifacio Sanz Maceda shall be considered as a partial service of the penalty imposed. The remaining balance of the penalty of one day suspension shall be immediately served upon finality of this decision. Respondent Loida M. Genabe is sternly warned that commission of similar acts in the future will be dealt with more severely.

In A.M No. 07-2-93-RTC, we find Judge Bonifacio Sanz Maceda of the Regional Trial Court of Las Piñas City, Branch 275, *GUILTY* of violation of A.M. No. 03-8-02-SC. Accordingly, we *FINE* him ₱12,000, with a stern warning that commission of similar acts in the future will be dealt with more severely.

SO ORDERED.

Quisumbing,[*] *Chico-Nazario, Peralta,* and *Abad,*[**] *JJ.,* concur.

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[*] Designated additional member per Special Order No. 755.

[**] Designated additional member per Special Order No. 753.

THIRD DIVISION

[A.M. No. P-08-2567. October 30, 2009]
(Formerly OCA I.P.I. No. 99-670-P)

JOANA GILDA L. LEYRIT, ASUNCION ESPINOSA, MARY ANN LASPIÑAS, NATIVIDAD SULLIVAN, ELENA MOLARTE SOLAS, JULIE FELARCA and RENE F. GANZON, *complainants, vs.* **NICOLASITO S. SOLAS, CLERK OF COURT IV, MUNICIPAL TRIAL COURT IN CITIES (MTCC), ILOILO CITY,** *respondent.*

[A.M. No. P-08-2568. October 30, 2009]
(Formerly OCA I.P.I. No. 99-753-P)

MA. THERESA ZERRUDO, MARY ANN F. LASPIÑAS, ELENA MOLARTE SOLAS, MA. NATIVIDAD A. SULLIVAN, RENE F. GANZON, JOANNA GILDA J. LEYRIT, SALVACION D. SERMONIA, JULIE L. FELARCA, MARICAR A. LARROZA, ASUNCION O. ESPINOSA, EMMA DELA CRUZ, SALVACION VILLANUEVA and NOENA DAQUERO, *complainants, vs.* **NICOLASITO S. SOLAS, CLERK OF COURT IV, MUNICIPAL TRIAL COURT IN CITIES (MTCC), ILOILO CITY,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987, AS AMENDED; OFFICERS AUTHORIZED TO ADMINISTER OATH; CLERK OF COURT; REGARDLESS OF WHETHER THEY ARE CLERKS OF COURT OF THE METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS OR MUNICIPAL CIRCUIT TRIAL COURTS BUT ONLY WHEN THE MATTER IS RELATED TO THE EXERCISE OF THEIR OFFICIAL FUNCTIONS.— Under Section 21 of the Administrative Code of 1917, only the Clerk of Court of the Supreme Court and Clerks of Court of the First Instance (now RTC) were granted the general authority to administer oaths.

Section 41 of the Administrative Code of 1987, as amended by Republic Act No. 6733, now provides: Sec. 41. *Officers Authorized to Administer Oath.* – The following officers have general authority to administer oaths: President; Vice-President; Members and Secretaries of both Houses of the Congress; Members of the Judiciary; Secretaries of Departments; Provincial governors and lieutenant-governors; city mayors; municipal mayors; bureau directors; regional directors; **clerk of court**; registrars of deeds; other civilian officers in public service of the government of the Philippines whose appointments are vested in the President and are subject to confirmation by the Commission on Appointments; all other constitutional officers; and notaries public. From the abovequoted provision, the term "clerk of court" is used as a general term. No specification was made as to the court to which said clerks of court belonged. The intention of the law is clear — to remove the limitation, and hence, to **authorize all clerks of court regardless of whether they are clerks of court of the Metropolitan Trial Courts, Municipal Trial Courts or Municipal Circuit Trial Courts, to administer oaths on matters involving official business.** Clerks of court are notaries public *ex officio* and, thus, may notarize documents or administer oaths, but **only when the matter is related to the exercise of their official functions.** Clerks of court should not in their *ex officio* capacity take part in the execution of private documents bearing no relation at all to their official functions. The Court takes judicial notice of the fact that Iloilo City is a highly urbanized city and obviously not a far-flung municipality, which has neither lawyers nor notaries public to possibly warrant herein an exception to the general rule.

2. ID.; ID.; ID.; ID.; ID.; ID.; NOTARY OF PRIVATE OR COMMERCIAL DOCUMENTS IS NOT RELATED TO THE OFFICE OF THE MTCC CLERK OF COURT.— It is clear from the law that respondent had no authority to notarize sworn applications for Mayor's and business permits, affidavits, and other private or commercial documents, which had no relation to his office as MTCC Clerk of Court, and to accept fees for such services. Respondent himself asserts that he is a law graduate; hence, he cannot feign ignorance of the law and the limits of his authority as notary public *ex officio*. Even respondent's defense that he had subscribed to oaths, mistaking

them as *jurats*, deserves scant credit. x x x A notarized document includes one that is **subscribed and sworn to under oath, or one that contains a *jurat***. It does not matter whether respondent thought he was subscribing to an oath or a *jurat*, because in either case, he was deemed to have notarized a document and rendered notarial services.

3. ID.; ID.; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; IMPOSITION OF ANOTHER PENALTY UPON RESPONDENT FOR EXACTLY THE SAME CHARGE IS NOT PROPER; EXPLAINED.— Respondent was guilty of abuse of authority, as well as of having violated Section 41 of the Administrative Code of 1987, as amended by Republic Act No. 6733. It must be noted that then MTCC Executive Judge Jose R. Astroga had also filed on 5 July 1996 an administrative complaint against respondent for various irregularities in the latter's performance of his duties as Clerk of Court of the MTCC, Iloilo City, including notarizing private documents not related to his official functions. Executive Judge Astroga's administrative complaint was docketed as A.M. No. P-01-1484. On 17 July 2001, the Court rendered its Decision in A.M. No. P-01-1484 finding respondent guilty of abuse of authority and imposing upon him a fine of Five Thousand Pesos (₱5,000.00) with a warning that a repetition of the same or a similar act in the future will be dealt with more severely. Since the documents that respondent notarized in abused of his authority as a notary public *ex officio* in A.M. No. P-01-1484 and the present administrative complaints appear to be the same, and respondent has already been penalized for such notarial services rendered in excess of his authority, the imposition of another penalty upon him for exactly the same charge is inappropriate, as it will constitute double penalty.

4. ID.; ID.; ID.; ID.; SIMPLE MISCONDUCT; A CASE OF; PENALTY.— Respondent's acts are absolutely unbecoming a court employee who is expected to display proper decorum. In *Villaros v. Orpiano*, the Court stressed that "the behavior of all employees and officials involved in the administration of justice, from judges to the most junior clerks, is circumscribed with a heavy responsibility. Their conduct must be guided by strict propriety and decorum at all times in order to merit and maintain the public's respect for and trust in the judiciary.

x x x Respondent ought to be reminded that a clerk of court, as the administrative assistant of the presiding judge, is an important functionary of the judiciary. The administrative functions of a clerk of court are vital to the prompt and sound administration of justice. The clerk of court should be a role model for other court employees to emulate in the performance of duties, as well as in the conduct and behavior, of a public servant. A clerk of court cannot err without affecting the integrity of the court or the efficient administration of justice. A clerk of court should set the example for other court personnel in the observance of the standards of morality and decency both in official and personal conduct. As part of the administrative function of a clerk of court, he/she is expected to foster harmony and cooperation in the office so as to ensure effective and efficient service to the public. Clearly, with his acts, respondent utterly failed to live up to the norms of conduct demanded of his position as MTCC Clerk of Court, for which he should be held liable for simple misconduct. In *Office of the Court Administrator v. Judge Fernandez*, the Court defined misconduct, on the part of a person concerned with the administration of justice, as any unlawful conduct prejudicial to the rights of parties or to the right determination of the cause. It generally means wrongful, improper, unlawful conduct motivated by a premeditated, obstinate or intentional purpose. Under Section 52, B(2), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, simple misconduct is punishable by suspension for one (1) month and one (1) day to six (6) months for the first offense, and dismissal for the second offense. Considering that respondent has compulsorily retired from the service last 10 September 2007, the penalty of suspension is no longer feasible. Thus, a fine equivalent to his three (3) months' salary is imposed, to be deducted from his retirement benefits.

5. ID.; ID.; ADMINISTRATIVE PROCEEDINGS; BURDEN OF PROVING BY SUBSTANTIAL EVIDENCE THE ALLEGATIONS IN THE COMPLAINT RESTS ON THE COMPLAINANT.— The Court finds complainants' other charges against respondent unsubstantiated by the evidence on record. In administrative proceedings, the complainants have the burden of proving by substantial evidence the allegations in their complaint. Since complainants failed to discharge such

burden as to their charges of dishonesty, willful violations of office regulations, violations of the Anti-Graft and Corrupt Practices Act, and nepotism, against respondent, said charges are dismissed.

R E S O L U T I O N

CHICO-NAZARIO, *J.*:

Before the Court are administrative matters that arose from two administrative complaints filed by several employees of the Office of the Clerk of Court (OCC), Municipal Trial Court in Cities (MTCC), Iloilo City, against Nicolasito S. Solas, Clerk of Court of the said trial court.

The Complaint, docketed as A.M. No. P-08-2567 (OCA IPI No. 99-670-P),[1] was filed by complainants Joanna Gilda Leyrit (Leyrit), Asuncion Espinosa (Espinosa), Mary Ann Laspiñas (Laspiñas), Natividad Sullivan (Sullivan), Elena Molarte Solas (Molarte Solas), Julie Felarca (Felarca), and Rene F. Ganzon (Ganzon) seeking to have respondent held administratively liable for Dishonesty, Discourtesy in the Course of Official Duties, Willful Violation of Office Regulations, and Violation of Anti-Graft and Corrupt Practices Act.

The Complaint, docketed as A.M. P-08-2568 (OCA IPI No. 99-753-P) was filed by the same complainants in A.M. No. P-08-2567 and was further joined by Mrs. Ma. Theresa G. Zerrudo (Mrs. Zerrudo), Salvacion Sermonia (Sermonia), Maricar A. Larroza (Larroza), Emma de la Cruz (De la Cruz), Salvacion Villanueva (Villanueva), and Noena Daquero (Daquero), charging respondent with harassment, abuse of authority, grave misconduct, conduct unbecoming a public official, graft and corruption, oppression, and nepotism.[2]

Complainants made the following allegations against respondent in their two Complaints:

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[1] *Rollo*, pp. 1-5.

[2] *Id.* at 2-11.

1. Respondent had notarized documents and administrative oaths not related to his official functions, and charged notarial fees for the same.

2. Respondent pretended to be a lawyer even though he was not, and never corrected persons addressing him as "attorney."

3. Respondent acted arrogantly as Clerk of Court, Chief of Office, and *Ex-Officio* Sheriff, requiring the OCC-MTCC personnel to obey him (respondent) even if he was wrong. He humiliated and shouted vindictive words at complainants in the presence of other people. At one instance, respondent insulted complainant Leyrit in the presence of many people inside the office by uttering the following words: "*Daw si bilat-bilat ka guid, maisog, daw ilupot mo ako sa bulsa mo.*" (As if you are already somebody. You are brave as if you will insert me into your pocket.) Respondent likewise embarrassed complainant Mrs. Zerrudo by posting a notice in the MTCC premises enjoining the public not to transact official business with the latter because of her detail to another court.

4. Respondent controlled the local and national funds for office supplies, and disposed of them without consulting the MTCC judges. In fact, respondent acquired a computer worth ₱70,000.00 using local funds without the approval of the Executive Judge. The said computer was being used exclusively by respondent's five favored locally funded employees, detailed to the OCC-MTCC, who brought their small children to play with it. In addition, respondent did not share office supplies with complainants. Hence, complainants were forced to provide their own office supplies or borrow from other courts.

Whenever respondent was out of the office, requests for office supplies had to be coursed through the five favored local employees, who were not assigned specific office functions, but were being utilized by respondent for his personal needs. These five favored local employees loitered during office hours and did not declare their tardiness and absences in their daily time records. In contrast, respondent immediately made reports to the Executive Judge about, and/or issued memoranda to, the

regular OCC-MTCC employees who went out of the office during office hours.

5. Respondent allowed his personal lawyer, Atty. Virgilia Carmen Dioquino (Atty. Dioquino), to hold office at the OCC-MTCC and to utilize office computers and supplies, as well as the services of local employees as typing clerks. Atty. Dioquino prepared baseless administrative complaints, which respondent filed against judges and employees of the MTCC, thus, demoralizing those concerned.

6. Respondent established connections with lending institutions and banks and acted as the collector whenever such lending institutions and banks filed cases in court. He further attended the weekly raffle of cases, so he could get a list of raffled cases, which he distributed to banks and lending institutions in exchange for monthly honoraria. When complainants confronted respondent regarding this matter, respondent filed administrative cases against them.

7. Respondent ordered security guards Valentino Alonsagay and Ricardo Besen to monitor and report complainants' activities.

8. Lastly, respondent exposed to the public, through radio and newsprint, all misunderstandings and differences between the local employees detailed to the OCC-MTCC and the regular OCC-MTCC employees.

In his separate Comments[3] on the aforementioned Complaints, respondent proffered the following defenses:

1. Although he did notarize documents that were not related to his official functions, respondent maintained that he had erroneously thought that some subscriptions or oaths were *jurats*. Anyway, he had already talked to the Integrated Bar of the Philippines (IBP) and Executive Judge Severino C. Aguilar of the Regional Trial Court (RTC), Branch 35, Iloilo City, about the matter.

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[3] *Id.* at 212-220, 221-240.

2. There were some people who addressed respondent as "attorney," assuming that he was one because of his position as Clerk of Court. Respondent contended that although he was not a bar passer, he was a graduate of law and, thus, there was no necessity to correct people who addressed him as "attorney," especially in communications addressed to his position.

3. According to respondent, there was peace, harmony, and respect among the OCC-MTCC employees until Mrs. Ma. Theresa G. Zerrudo (Mrs. Zerrudo), Clerk of Court III, was transferred to the said office. Soon after, complainant Mrs. Zerrudo instigated misunderstandings and intrigues among the employees, particularly between the local employees detailed at the OCC-MTCC and the regular OCC-MTCC employees.

Since complainant Mrs. Zerrudo was instrumental in the employment of complainants Leyrit, Espinosa, Laspiñas, Sullivan, and Felarca at the OCC-MTCC, the said five complainants owed their loyalty to her. Meanwhile, respondent's own daughter-in-law, complainant Molarte Solas, began to dislike and disrespect him because, for ethical reasons, he refused to recommend her for promotion.

Complainants defied, disobeyed, and refused to recognize respondent as the head of office and, instead, followed orders from complainant Mrs. Zerrudo's husband, Judge Zerrudo. Whenever respondent corrected errors committed by complainants in the performance of their duties, complainants would fight back and show their disrespect for and defiance of him, even in public. Complainants Leyrit and Molarte Solas, criminal and civil clerks-in-charge, respectively, went as far as depriving respondent access to the docket books by keeping and locking the said books inside Mrs. Zerrudo's office cubicle.

Respondent also narrated that on 7 June 1999, then Chief Justice Hilario G. Davide detailed complainant Mrs. Zerrudo to the OCC of the RTC, Iloilo City, but despite said detail order, she continued to report for work and stay in her cubicle at the OCC-MTCC. This prompted Jose Bryan Hilary P. Davide, Staff Head of the Chief Justice, to issue an order directing her

to strictly comply with the detail order. Suspecting that respondent was behind the moves against her, complainant Mrs. Zerrudo gathered the other complainants and filed the instant Complaints against respondent to get even with him.

4. Respondent was not controlling the office supplies. He had to keep his office closed, because it was where he kept the daily collections, receipts, and confidential documents of the court. Also, complainants should not have made a big deal about his computer from the city government. The city government gave a computer not only to respondent, but also to complainant Mrs. Zerrudo.

5. Atty. Dioquino was not holding office in the OCC-MTCC and using office computers and supplies, as she had her own office at her residence. Atty. Dioquino only dropped by the OCC-MTCC occasionally to greet respondent. The latter did admit that Atty. Dioquino was his counsel of record in the criminal and administrative cases he filed against Mrs. Zerrudo and Salvacion Sermonia, but averred that he prepared his own complaints and submitted them to Atty. Dioquino for correction and finalization.

6. Complainants' allegations on respondent's purported connections with lending institutions and banks were baseless and unsupported by evidence. Respondent attended the raffle of cases to ensure that complainant Leyrit, a member of the Raffle Committee, who had multiple cases of Violation of Batas Pambansa Blg. 22, would not be able to manipulate the conduct of raffle.

7. Lastly, respondent commissioned security guards to his office because of the incident that transpired sometime in January 1996. A court employee, Salvacion Sermonia of MTCC Iloilo City, loyal to complainant Mrs. Zerrudo, physically attacked and assaulted respondent with a knife inside his office during office hours. The incident resulted in the filing of cases, two criminal and one administrative, which were eventually settled.

Respondent maintained that the Complaints were merely counter-charges against him because of the administrative cases

he filed against complainants Leyrit and Mrs. Zerrudo, and the latter's husband, Judge Alexis A. Zerrudo (Judge Zerrudo).

After consolidation of A.M. No. P-08-2567 (OCA IPI No. 99-670-P) and OCA IPI No. 99-753-P (A.M. P-08-2568), the cases were assigned to Executive Judge Roger B. Patricio (Investigating Judge) of the RTC, Branch 36, Iloilo City, for investigation.

The parties opted not to be assisted by their counsel during the investigation.

While the investigation of the administrative cases against him was pending, respondent opted to avail himself of early retirement on 10 September 2007.

After hearing the testimonies of the parties and their witnesses, the Investigating Judge, in his Report[4] dated 7 April 2008, came to the conclusion that of all the allegations made against respondent, the latter actually committed only the following acts:

1. Failing to conduct himself with propriety, moral righteousness and decorum by scolding, embarrassing, and for being abrasive to his subordinates, particularly the complainants all of which should not have been done as the Clerk of Court and the Chief of Office of the Clerk of Court of MTCC, Iloilo City; and

2. As testified by Mercedes D. Nava, respondent ratified documents without being authorized by law to do so, for which he was paid of (sic) notarial fees which he appropriated for his own personal use without accounting them for the government.[5]

The Investigating Judge recommended that as penalty, respondent's salaries equivalent to six months be forfeited in favor of the government and deducted from respondent's retirement benefits, thus:

Finding sufficient evidence against respondent Nicolasito S. Solas, Clerk of Court, MTCC, Iloilo City in OCA I.P.I. No. 99-670-P entitled

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[4] *Id.* at 281-300.

[5] *Id.* at 298.

"*Joana Gilda L. Leyrit, et al. vs. Nicolasito S. Solas* and OCA I.P.I. No. 99-753-P entitled "*Ma. Theresa G. Zerrudo, et al. vs. Nicolasito S. Solas*, it is respectfully recommended that his salaries equivalent to six (6) months be forfeited in favor of the government and deducted from his retirement benefits as Clerk of Court, MTCC, Ilolilo.[6]

The Court referred the Investigating Judge's Report to the Office of the Court Administrator (OCA) for evaluation, report, and recommendation.

On 8 September 2008, the OCA submitted its Report[7] with the following recommendations:

PREMISES CONSIDERED, it is respectfully recommended to the Honorable Court that:

a. That the instant complaints be REDOCKETED as a regular administrative complaint against respondent Nicolasito S. Solas, Clerk of Court, MTCC, Iloilo City; and

b. Respondent be held GUILTY of simple misconduct for his failure to conduct himself with propriety, moral righteousness and decorum in his dealings with his subordinates and a FINE equivalent to Three (3) months salary be forfeited in favor of the government and deducted from his retirement benefits.

The Court then required the parties to manifest within ten days from notice if they were willing to submit the matter for resolution based on the pleadings filed.[8] Complainants and respondent failed to file their manifestations despite notice sent to and received by them. Resultantly, the cases were submitted for decision based on the pleadings filed.

The Court agrees in the findings of the OCA.

Unauthorized notarization of documents

There is no doubt that respondent notarized and administered oaths in documents that had no relation to his official function.

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[6] *Id.* at 299.

[7] *Id.* at 305-312.

[8] *Id.* at 313.

Documentary evidence submitted by complainants show that respondent notarized sworn applications for Mayor's and business permits, affidavits, and other documents, in his capacity as MTCC Clerk of Court. He charged fees for his notarial services, but did not render an accounting of said fees as part of the collection of the MTCC.

Under Section 21 of the Administrative Code of 1917, only the Clerk of Court of the Supreme Court and Clerks of Court of the First Instance (now RTC) were granted the general authority to administer oaths. Section 41 of the Administrative Code of 1987, as amended by Republic Act No. 6733,[9] now provides:

> Sec. 41. *Officers Authorized to Administer Oath.* - The following officers have general authority to administer oaths: President; Vice-President; Members and Secretaries of both Houses of the Congress; Members of the Judiciary; Secretaries of Departments; Provincial governors and lieutenant-governors; city mayors; municipal mayors; bureau directors; regional directors; **clerks of court**; registrars of deeds; other civilian officers in public service of the government of the Philippines whose appointments are vested in the President and are subject to confirmation by the Commission on Appointments; all other constitutional officers; and notaries public.

From the abovequoted provision, the term "clerks of court" is used as a general term. No specification was made as to the court to which said clerks of court belonged. The intention of the law is clear — to remove the limitation, and hence, to **authorize all clerks of court regardless of whether they are clerks of court of the Metropolitan Trial Courts, Municipal Trial Courts or Municipal Circuit Trial Courts, to administer oaths on matters involving official business**.[10]

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[9] Approved on 25 July 1989.

[10] *Astorga v. Solas*, 413 Phil. 558, 562 (2001), citing the Resolution, dated 18 December 1990, of the Court *En Banc* on Administrative Matter No. 90-10-1498-MTC (Letter-query of Clerk of Court II Bonifacio D. Paguirigan, MTC, Aparri, Cagayan).

Clerks of court are notaries public *ex officio* and, thus, may notarize documents or administer oaths, but **only when the matter is related to the exercise of their official functions**. Clerks of court should not in their *ex-officio* capacity take part in the execution of private documents bearing no relation at all to their official functions. The Court takes judicial notice of the fact that Iloilo City is a highly urbanized city and obviously not a far-flung municipality, which has neither lawyers nor notaries public to possibly warrant herein an exception to the general rule.[11]

It is clear from the above law that respondent had no authority to notarize sworn applications for Mayor's and business permits, affidavits, and other private or commercial documents, which had no relation to his office as MTCC Clerk of Court, and to accept fees for such services. Respondent himself asserts that he is a law graduate; hence, he cannot feign ignorance of the law and the limits of his authority as notary public *ex officio*.

Even respondent's defense that he had subscribed to oaths, mistaking them as *jurats*, deserves scant credit. Rule II of the Rules on Notarial Practice describes both acts as follows:

SEC. 2. *Affirmation or Oath.* - The term "Affirmation" or "Oath" refers to an act in which an individual on a single occasion:

(a) appears in person before the notary public;

(b) is personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules; and

(c) avows under penalty of law to the whole truth of the contents of the instrument or document.

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[11] *Id.* The Court, taking judicial notice of the fact that there are still municipalities that have neither lawyers nor notaries public, has allowed notaries public *ex officio* (such as Municipal Trial Court or Municipal Circuit Trial Court judges) in said municipalities to perform any act within the competency of a regular notary public, provided that: (1) all notarial fees charged be for the account of the Government and turned over to the municipal treasurer (*Lapena, Jr. v. Marcos*, 200 Phil. 69, 77 (1982); and (2) a certification be made in the notarized documents attesting to the lack of any lawyer or notary public in such municipality or circuit.

SEC. 6. *Jurat.* – "Jurat" refers to an act in which an individual on a single occasion:

(a) appears in person before the notary public and presents an instrument or document;

(b) is personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules;

(c) signs the instrument or document in the presence of the notary; and

(d) takes an oath or affirmation before the notary public as to such instrument or document.

A notarized document includes one that is **subscribed and sworn to under oath, or one that contains a *jurat*.**[12] It does not matter whether respondent thought he was subscribing to an oath or a *jurat*, because in either case, he was deemed to have notarized a document and rendered notarial services.

Respondent was guilty of abuse of authority, as well as of having violated Section 41 of the Administrative Code of 1987, as amended by Republic Act No. 6733.

It must be noted that then MTCC Executive Judge Jose R. Astorga had also filed on 5 July 1996 an administrative complaint against respondent for various irregularities in the latter's performance of his duties as Clerk of Court of the MTCC, Iloilo City, including notarizing private documents not related to his official functions. Executive Judge Astorga's administrative complaint was docketed as A.M. No. P-01-1484. On 17 July 2001, the Court rendered its Decision in A.M. No. P-01-1484 finding respondent guilty of abuse of authority and imposing upon him a fine of Five Thousand Pesos (₱5,000.00) with a warning that a repetition of the same or a similar act in the future will be dealt with more severely.

Since the documents that respondent notarized in abuse of his authority as a notary public *ex officio* in A.M. No. P-01-

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[12] *Testate Estate of the Late Alipio Abada v. Abaja*, 490 Phil. 671, 678 (2005).

1484 and the present administrative complaints appear to be the same, and respondent has already been penalized for such notarial services rendered in excess of his authority, the imposition of another penalty upon him for exactly the same charge is inappropriate, as it will constitute double penalty.

Acts unbecoming a court employee

It appears that respondent had no close personal relations with complainants, and that he had been suspicious and irritable when dealing with them professionally, thus, affecting the smooth and efficient discharge of functions in the OCC-MTCC.

Complainants testified, and respondent was unable to rebut, that he had shouted at and uttered vindictive words against them, and even humiliated them while they were doing their job and attending to the needs of the public. In his desperate attempt to exonerate himself, respondent could only impute malicious motive to complainants, averring that they merely had an axe to grind against him; and that they had defied, disobeyed, and refused to recognize him as head of the OCC-MTCC. Unfortunately for him, his explanations do not excuse his actions.

Respondent's acts are absolutely unbecoming a court employee who is expected to display proper decorum. In *Villaros v. Orpiano,*[13] the Court stressed that "the behavior of all employees and officials involved in the administration of justice, from judges to the most junior clerks, is circumscribed with a heavy responsibility. Their conduct must be guided by strict propriety and decorum at all times in order to merit and maintain the public's respect for and trust in the judiciary."

High-strung and belligerent behavior has no place in government service, where the personnel are enjoined to act with self-restraint and civility at all times even when confronted with rudeness and insolence.[14] More so is such conduct exacted from court

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[13] 459 Phil. 1, 6-7 (2003).

[14] *Policarpio v. Fortus*, A.M. No. P-95-1114, 18 September 1995, 248 SCRA 272, 275; *Flores v. Ganaden*, 158 Phil. 864, 866 (1974).

employees, since they have to earn and keep the public's respect for and confidence in the judicial service.[15] This standard of conduct must apply to the court employees' dealings not only with the public, but also with their co-workers. How can court employees be expected to treat members of the public, who are mostly complete strangers to them, with respect, restraint, and civility, when they cannot accord the same treatment to one another, whom they closely work with on a daily basis?

Agents of the law should refrain from the use of language that is abusive, offensive, scandalous, menacing, or otherwise improper. Judicial employees are expected to accord every due respect, not only to their superiors, but also to others and to their rights at all times. Their every act and word should be characterized by prudence, restraint, courtesy and dignity.[16]

Failure to observe such standards of conduct would erode the dignity and honor of the courts or lay open to suspicion the official conduct of court personnel. It bears stressing that the image of a court of justice is mirrored by the conduct, official and otherwise, of its personnel who are all bound to adhere to the exacting standards of morality and decency in both their professional and private actuations. These norms, it should be kept in mind, are ever so essential in preserving the good name and integrity of the judiciary.[17]

Respondent ought to be reminded that a clerk of court, as the administrative assistant of the presiding judge, is an important functionary of the judiciary. The administrative functions of a clerk of court are vital to the prompt and sound administration of justice.[18] The clerk of court should be a role model for other court employees to emulate in the performance of duties, as well as in the conduct and behavior, of a public servant. A

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[15] *Tablate v. Tanjutco-Seechung*, A.M. No. 92-10-425-OMB, 15 July 1994, 234 SCRA 161, 167.

[16] *Judge Caguioa v. Flora*, 412 Phil. 426, 433 (2001).

[17] *Lauro v. Lauro*, 411 Phil. 12, 17 (2001).

[18] *Escanan v. Monterola II*, 404 Phil. 32, 39 (2001).

clerk of court cannot err without affecting the integrity of the court or the efficient administration of justice.[19] A clerk of court should set the example for other court personnel in the observance of the standards of morality and decency, both in official and personal conduct.[20] As part of the administrative functions of a clerk of court, he/she is expected to foster harmony and cooperation in the office so as to ensure effective and efficient service to the public.

Evidently, respondent failed to observe proper decorum in his dealings with his subordinates and to serve as a model for the other court employees in his conduct and actuations. Instead, he fomented discord, and led those under him to division by unequally and unfairly treating some of his subordinates, particularly the complainants, while favoring others. As expected, respondent's irritable and haughty behavior towards complainants affected the latter's performance of their duties, which, in turn, harmed the integrity of the entire OCC-MTCC.

While complainants may have indeed defied and disobeyed respondent, the latter should have taken the higher ground and resisted the urge to retaliate with similarly disrespectful behavior. Respondent would not gain the respect and obedience of his subordinates by merely demanding the same and wielding an iron hand in the office. There is no showing that respondent made any attempt to have a dialogue with complainants to address the dispute between them.

Clearly, with his acts, respondent utterly failed to live up to the norms of conduct demanded of his position as MTCC Clerk of Court, for which he should be held liable for simple misconduct. In *Office of the Court Administrator v. Judge Fernandez*,[21] the Court defined misconduct, on the part of a person concerned with the administration of justice, as any unlawful conduct

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[19] *Becina v. Vivero*, A.M. No. P-04-1797, 25 March 2004, 426 SCRA 261, 265.

[20] *Uy v. Edilo*, 458 Phil. 296, 302-303 (2003).

[21] 480 Phil. 495, 500 (2004), citing *Yap v. Inopiquez, Jr.*, 451 Phil. 182, 194 (2003).

prejudicial to the rights of parties or to the right determination of the cause. It generally means wrongful, improper, unlawful conduct motivated by a premeditated, obstinate or intentional purpose.

Under Section 52, B(2), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, simple misconduct is punishable by suspension for one (1) month and one (1) day to six (6) months for the first offense, and dismissal for the second offense. Considering that respondent has compulsorily retired from the service last 10 September 2007, the penalty of suspension is no longer feasible. Thus, a fine equivalent to his three (3) months' salary is imposed, to be deducted from his retirement benefits.

The Court finds complainants' other charges against respondent unsubstantiated by the evidence on record. In administrative proceedings, the complainants have the burden of proving by substantial evidence the allegations in their complaint. Since complainants failed to discharge such burden as to their charges of dishonesty, willful violation of office regulations, violation of the Anti-Graft and Corrupt Practices Act, and nepotism, against respondent, said charges are dismissed.

WHEREFORE, respondent Nicolasito S. Solas is hereby found *LIABLE* for simple misconduct while serving as Clerk of Court of the Municipal Trial Court in Cities, Iloilo City, and is hereby ordered to pay a *FINE* equivalent to his *THREE (3) MONTHS' SALARY* to be deducted from his retirement benefits.

SO ORDERED.

Puno C.J.,[*] *Quisumbing,*[**] *Carpio,* and *Peralta, JJ.*, concur.

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[*] Chief Justice Reynato S. Puno was designated to sit as additional member replacing Associate Justice Presbitero J. Velasco, Jr. per Raffle dated 22 July 2009.

[**] Per Special Order No. 755, dated 12 October 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Leonardo A. Quisumbing to replace Associate Justice Antonio Eduardo B. Nachura, who is on official leave.

THIRD DIVISION

[A.M. No. P-08-2569. October 30, 2009]
(Formerly OCA IPI No. 08-2789-P)

JUDGE RENE B. BACULI, *complainant, vs.* **CLEMENTE U. UGALE, Interpreter II, Municipal Trial Court in Cities, Branch 1, Tuguegarao City, Cagayan,** *respondent.*

SYLLABUS

1. POLITICAL LAW; SUPREME COURT; ADMINISTRATIVE SUPERVISION OVER COURT PERSONNEL; THOSE WHO WORK IN THE JUDICIARY MUST ADHERE TO HIGH ETHICAL STANDARDS TO PRESERVE THE COURT'S GOOD NAME AND STANDING.— Time and again, this Court has pointed out the heavy burden and responsibility which court personnel are saddled with, in view of their exalted positions as keepers of the public faith. They should, therefore, be constantly reminded that any impression of impropriety, misdeed or negligence in the performance of official functions must be avoided. Those who work in the judiciary must adhere to high ethical standard to preserve the court's good name and standing. They should be examples of responsibility, competence and efficiency, and they must discharge their duties with due care and utmost diligence, since they are officers of the court and agents of the law, Indeed, any conduct, act or omission on the part of those who would violate the norms of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary shall not be countenanced.

2. ID.; ID.; COURT INTERPRETER; RESPONDENT'S FAILURE TO PERFORM HIS DUTIES, UNAUTHORIZED DISAPPEARANCES AND HABITUAL DRUNKENNESS HAMPERED HIS EFFICIENCY; CASE AT BAR.— It is our view that if respondent was really concerned in dissipating his leg pains, he should have consulted a doctor instead of resorting to drinking alcohol. His theory that the alcohol had a therapeutic effect on his ailment fails to convince. Even assuming that it

was true, respondent should be aware that drinking liquors during office hours is strictly prohibited. Furthermore, as court interpreter, he ought to know as well that he performs an important role in running the machinery of our trial court system necessary for the proper and speedy disposition of cases. Thus, if indeed his ailment made it difficult for him to comply with his duties, he should have at least informed complainant Judge and/or his branch clerk of court of his health condition. Significantly, we also take note that no medical certificate was submitted in support of respondent's alleged health condition. Clearly, respondent has shown his utter lack of dedication to the function of his office. Undeniably, respondent's failure to perform his duties, his unauthorized disappearances and habitual drunkenness during office hours, hamper his efficiency as a court interpreter. Consequently, respondent's reprehensible conduct should not go unheeded for his actuations are clearly inimical to the service and prejudicial to the interest of litigants and the general public. He, therefore, deserves to be sanctioned.

3. ID.; ADMINISTRATIVE LAW; PUBLIC OFFICERS; AND EMPLOYEES; VIOLATIONS OF CIVIL SERVICE LAW; PENALTIES; WHERE THERE ARE TWO OR MORE CHARGES, THE PENALTY TO BE IMPOSED SHALL BE THAT CORRESPONDING TO THE MOST SERIOUS CHARGE.— Respondent Clemente U. Ugale, Interpreter 11 of Municipal Trial Court in Cities, Branch 1, Tuguegarao City, was charged with Incompetence, Habitual Tardiness and Loafing. x x x Section 53 of the Revised Uniform Rules on Administrative Cases in the Civil Service, provides that in the determination of the penalties to be imposed, the exonerating, mitigating, aggravating or alternative circumstances may be considered. Moreover, pursuant to Section 55, if the respondent is found guilty of two (2) or more charges, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances. In this case, we consider incompetence as the most serious charge.

4. ID.; ID.; ID.; ID.; HABITUAL DRUNKENNESS, LOAFING AND INCOMPETENCE; PENALTIES.— Under Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, habitual drunkenness is classified as a less grave

offense and is punishable by suspension for one (1) month and one (1) day to six (6) months for the first offense; loafing is classified as a grave offense punishable by suspension for six (6) months and one (1) day to one (1) year for the first offense; and incompetence is classified as a grave offense and is punishable by suspension for six (6) months and one (1) day to one (1) year for the first offense.

5. ID.; ID.; ID.; ID.; ID.; COURT HAS THE DISCRETION TO TEMPER THE HARSHNESS OF ITS JUDGMENT WITH MERCY; PROPER PENALTY IN CASE AT BAR.— However, while this Court is duty-bound to sternly wield a corrective hand to discipline its errant employees and to weed out those who are undesirable, this Court also has discretion to temper the harshness of its judgment with mercy. Thus, as recommended by the OCA and pursuant to Section 54 of the Revised Uniform Rules on Administrative Cases, considering that Ugale is a first-time offender and having committed the aggravating circumstances of habitual drunkenness and loafing, the penalty of suspension for eight (8) months and one (1) day without pay should be imposed against him. However, upon verification with the COA–Legal Office for study and recommendation. Consequently, instead o imposing the penalty of suspension, the more appropriate sanction is to impose on him a fine in the amount equivalent to his eight (8) months salary, deduction from his retirement benefits.

6. ID.; ID.; ID.; ID.; EFFECTS OF APPLICATION FOR RETIREMENT IN THE ADMINISTRATIVE CASE.— The Court emphasizes that respondent's application for retirement does not render the present administrative case moot and academic; neither does it free from liability. Since complainant filed the case when respondent was still in service, the Court retains the authority to investigate and resolve the administrative case against him.

D E C I S I O N

PERALTA, *J.*:

In a Letter-Complaint dated February 11, 2008, complainant Judge Rene B. Baculi, presiding judge of the Municipal Trial Court in Cities, Branch 1, Tuguegarao City, charged respondent Clemente U. Ugale, Interpreter II, of the same court, with Incompetence, Habitual Drunkenness and Loafing.

Prior to the instant complaint, Judge Baculi had already issued several memoranda to respondent concerning the same charges, to wit:

First, on October 9, 2007, reminding respondent of his propensity to be always out of office resulting in his failure to perform his duty as court interpreter;

Second, on February 4, 2008, informing respondent of the manifestation made by a certain Atty. Antonio Laggui that respondent is incapable of performing his function as court interpreter, specifically in his interpretation of the vernacular dialect into English during court trials; and

Third, on February 4, 2008, reminding respondent of his habitual drunkenness even during office hours.

In all memoranda, complainant Judge ordered respondent to explain all the charges against him and explain altogether why no sanctions should be imposed on him. However, in all three (3) instances, respondent ignored the same. Thus, prompting Judge Baculi to file the instant administrative complaint against Ugale.

In his Comment dated May 12, 2008, respondent explained:

Your Honor, may I inform your good Office that I met a vehicular accident sometime in February 2003 and sustained broken legs and due to the cold weather in the past months (January and February 2008), ***the pains of my injuries recurred and because I could no longer bear the severe pains, I resorted to occasional drinking liquor just to ease myself from such extreme pains,*** your Honor. That the Honorable Judge was unaware of my present ailment and

he might have misunderstood my acts as a sign of disrespect to him and to the Court and negligence on my job. My apologies, therefore, to the Honorable Judge and to your Honor.

That due to the consistent recurrence of the pains on the injuries I sustained and with the medicines I took, it affected my sense of hearing so much so that I could not give the correct interpretation, especially during court hearings, the reason for which I went on leave starting February 2008. In fact, I voluntarily applied for an early retirement for I could no longer efficiently perform my duties in Court due to unbearable pains. Sad to note that I was not able to inform personally the Honorable Judge that I already filed my application for retirement. Again, my greatest apology to the Honorable Judge and to your Honor for my shortcomings.[1]

Unconvinced, the Office of the Court Administrator (OCA) recommended that respondent Ugale be held liable for Incompetence, Habitual Drunkenness and Loafing, and be suspended for eight (8) months.

We adopt the recommendation of the OCA.

Time and again, this Court has pointed out the heavy burden and responsibility which court personnel are saddled with, in view of their exalted positions as keepers of the public faith. They should, therefore, be constantly reminded that any impression of impropriety, misdeed or negligence in the performance of official functions must be avoided. Those who work in the judiciary must adhere to high ethical standards to preserve the court's good name and standing. They should be examples of responsibility, competence and efficiency, and they must discharge their duties with due care and utmost diligence, since they are officers of the court and agents of the law. Indeed, any conduct, act or omission on the part of those who would violate the norms of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary shall not be countenanced.[2]

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[1] Emphasis supplied.

[2] *Gutierrez v. Quitalig*, 448 Phil. 469, 478-479 (2003).

In the instant case, respondent cannot take refuge behind his alleged ailment to justify his infractions. In fact, respondent made no categorical denial of the accusations against him. He merely sidestepped the same by explaining that he had been drinking in order to ease the pains brought about by his leg injury. He shifted the blame on the medications he took for his failure to perform his duties as court interpreter. He had been constantly reminded of his unfavorable behavior but he remained unrepentant. The only time he took an effort to make excuses for himself was when an administrative complaint was already filed against him. However, the fact remains that, even by his own admission, respondent had been remiss in the performance of his duties.

Moreover, it is also our view that if respondent was really concerned in dissipating his leg pains, he should have consulted a doctor instead of resorting to drinking alcohol. His theory that the alcohol had a therapeutic effect on his ailment fails to convince. Even assuming that it was true, respondent should be aware that drinking liquors during office hours is strictly prohibited. Furthermore, as court interpreter, he ought to know as well that he performs an important role in running the machinery of our trial court system necessary for the proper and speedy disposition of cases. Thus, if indeed his ailment made it difficult for him to comply with his duties, he should have at least informed complainant Judge and/or his branch clerk of court of his health condition. Significantly, we also take note that no medical certificate was submitted in support of respondent's alleged health condition.

Clearly, respondent has shown his utter lack of dedication to the function of his office. Undeniably, respondent's failure to perform his duties, his unauthorized disappearances and habitual drunkenness during office hours, hamper his efficiency as a court interpreter. Consequently, respondent's reprehensible conduct should not go unheeded for his actuations are clearly inimical to the service and prejudicial to the interest of litigants and the general public. He, therefore, deserves to be sanctioned.

We come to the matter of penalties. Section 53 of the Revised Uniform Rules on Administrative Cases in the Civil Service,[3] provides that in the determination of the penalties to be imposed, the exonerating, mitigating, aggravating or alternative circumstances may be considered. Moreover, pursuant to Section 55,[4] if the respondent is found guilty of two (2) or more charges, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances. In this case, we consider incompetence as the most serious charge.

Under Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service,[5] habitual drunkenness[6] is classified as a less grave offense and is punishable by suspension for one (1) month and one (1) day to six (6) months for the first offense; loafing[7] is classified as a grave offense punishable by suspension for six (6) months and one (1) day to one (1) year for the first offense; and incompetence[8] is classified as a grave offense and is punishable by suspension for six (6) months and one (1) day to one (1) year for the first offense.

However, while this Court is duty-bound to sternly wield a corrective hand to discipline its errant employees and to weed out those who are undesirable, this Court also has the discretion to temper the harshness of its judgment with mercy.[9] Thus, as recommended by the OCA and pursuant to Section 54[10] of the Revised Uniform Rules on Administrative Cases, considering

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[3] Executive Order No. 292.

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Saula De Leon-Dela Cruz v. Fernando P. Recacho,* A.M. No. P-06-2122, July 17, 2007, 527 SCRA 622.

[10] *Supra* note 3.

that Ugale is a first-time offender and having committed the aggravating circumstances of habitual drunkenness and loafing, the penalty of suspension for eight (8) months and one (1) day without pay should be imposed against him.

However, upon verification with the OCA-Retirement Division, respondent had indeed filed an application for early retirement and is now pending before the OCA-Legal Office for study and recommendation. Consequently, instead of imposing the penalty of suspension, the more appropriate sanction is to impose on him a fine in the amount equivalent to his eight (8) months salary, deductible from his retirement benefits.[11] The Court emphasizes that respondent's application for retirement does not render the present administrative case moot and academic; neither does it free him from liability. Since complainant filed the case when respondent was still in service, the Court retains the authority to investigate and resolve the administrative case against him.[12]

Section 54. ***Manner of Imposition***. - When applicable, the imposition of the penalty may be made in accordance with the manner provided hereinbelow:

a. The *minimum* of the penalty shall be imposed where only mitigating and no aggravating circumstances are present.

b. The *medium* of the penalty shall be imposed where no mitigating and aggravating circumstances are present.

c. The *maximum* of the penalty shall be imposed where only aggravating and no mitigating circumstances are present.

d. Where aggravating and mitigating circumstances are present, paragraph [a] shall be applied where there are more mitigating circumstances present; paragraph [b] shall be applied when the circumstances equally offset each other; and paragraph [c] shall be applied when there are more aggravating circumstances.

[11] See *Re: Complaint Filed by Atty. Francis Allan A. Rubio on the Alleged Falsification of Public Documents and Malversation of Public Funds*, 482 Phil. 318, 330 (2004).

[12] See *City of Cebu v. Judge Ireneo Lee Gako, Jr.*, A.M. No. RTJ-08-2111, May 7, 2008, 554 SCRA 15, 27.

WHEREFORE, the Court finds Clemente U. Ugale, Interpreter II of the Municipal Trial Court in Cities, Branch 1, Tuguegarao City, Cagayan, *GUILTY of INCOMPETENCE, HABITUAL DRUNKENNESS and LOAFING,* and is *ORDERED* to pay a *FINE* equivalent to his eight (8) months salary to be deducted from his retirement benefits.

SO ORDERED.

Quisumbing,[*] *Carpio (Chairperson), Chico-Nazario,* and *Abad,*[**] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 163209. October 30, 2009]

SPOUSES PRUDENCIO and FILOMENA LIM, *petitioners, vs.* **MA. CHERYL S. LIM, for herself and on behalf of her minor children LESTER EDWARD S. LIM, CANDICE GRACE S. LIM, and MARIANO S. LIM, III,** *respondents.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; SUPPORT; SCOPE OF OBLIGATION TO GIVE SUPPORT UNDER TITLE VIII OF THE CIVIL CODE AS AMENDED ON SUPPORT DISTINGUISHED FROM TITLE IX ON PARENTAL AUTHORITY.—While both areas share a common ground in that parental authority encompasses the obligation to provide legal support, they differ in other concerns including the

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[*] Designated to sit as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura per Special Order No. 755 dated October 12, 2009.

[**] Designated to sit as an additional member in lieu of Associate Justice Presbitero J. Velasco, Jr. per Special Order No. 753 dated October 12, 2009.

duration of the obligation and its *concurrence* among relatives of differing degrees. Thus, although the obligation to provide support arising from parental authority ends upon the emancipation of the child, the same obligation arising from spousal and general familial ties ideally lasts during the obligee's lifetime. Also, while parental authority under Title IX (and the correlative parental rights) pertains to parents, passing to ascendants only upon its termination or suspension, the obligation to provide legal support passes on to ascendants not only upon default of the parents but also for the latter's inability to provide sufficient support.

2. ID.; ID;, ID;, OBLIGATION OF ASCENDANTS EXTENDS TO DESCENDANTS ONLY; CASE AT BAR.— However, petitioners' partial concurrent obligation extends only to their *descendants* as this word is commonly understood to refer to relatives, by blood of lower degree. As petitioners' grandchildren by blood, only respondents Lester Edward, Candice Grace and Mariano III belong to this category. Indeed, Cheryl's right to receive support from the Lim family extends only to her husband Edward, arising from their marital bond.

3. ID.; ID.; ID.; ID.; ALTERNATIVE GIVEN IN ARTICLE 204 OF THE CIVIL CODE CAN NOT BE AVAILED OF WHERE A MORAL OR LEGAL OBSTACLE EXISTS; CASE AT BAR.— The application of Article 204 which provides that — The person obliged to give support shall have the option to fulfill the obligation either by paying the allowance fixed, or by receiving and maintaining in the family dwelling the person who has a right to receive support. **The latter alternative cannot be availed of in case there is a *moral* or *legal* obstacle thereto**. x x x is subject to its exception clause. Here, the persons entitled to receive support are petitioners' grandchildren and daughter-in-law. Granting petitioners the option in Article 204 will secure to the grandchildren a well-provided future; however, it will also force Cheryl to return to the house which, for her, is the scene of her husband's infidelity. While not rising to the level of a *legal* obstacle, as indeed, Cheryl's charge against Edward for concubinage did not prosper for insufficient evidence, her steadfast insistence on its occurrence amounts to a *moral* impediment bringing the case within the ambit of the exception clause of Article 204, precluding its application.

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar for petitioners.
Bonete Law Office for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

For review[1] is the Decision[2] of the Court of Appeals, dated 28 April 2003, ordering petitioners Prudencio and Filomena Lim (petitioners) to provide legal support to respondents Cheryl, Lester Edward, Candice Grace and Mariano III, all surnamed Lim (respondents).

The Facts

In 1979, respondent Cheryl S. Lim (Cheryl) married Edward Lim (Edward), son of petitioners. Cheryl bore Edward three children, respondents Lester Edward, Candice Grace and Mariano III. Cheryl, Edward and their children resided at the house of petitioners in Forbes Park, Makati City, together with Edward's ailing grandmother, Chua Giak and her husband Mariano Lim (Mariano). Edward's family business, which provided him with a monthly salary of ₱6,000, shouldered the family expenses. Cheryl had no steady source of income.

On 14 October 1990, Cheryl abandoned the Forbes Park residence, bringing the children with her (then all minors), after a violent confrontation with Edward whom she caught with the in-house midwife of Chua Giak in what the trial court described "a very compromising situation."[3]

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

[2] Penned by Associate Justice Elvi John S. Asuncion with Associate Justices Ruben T. Reyes and Lucas P. Bersamin (now a member of this Court), concurring.

[3] CA *rollo*, p. 99. Cheryl filed criminal charges against Edward (for concubinage, physical injuries, and grave threats) which, however, the investigating

Cheryl, for herself and her children, sued petitioners, Edward, Chua Giak and Mariano (defendants) in the Regional Trial Court of Makati City, Branch 140 (trial court) for support. The trial court ordered Edward to provide monthly support of ₱6,000 *pendente lite*.[4]

The Ruling of the Trial Court

On 31 January 1996, the trial court rendered judgment ordering Edward and petitioners to "jointly" provide ₱40,000 monthly support to respondents, with Edward shouldering ₱6,000 and petitioners the balance of ₱34,000 subject to Chua Giak's subsidiary liability.[5]

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prosecutor dismissed. It appears that Edward, in turn, sued Cheryl for the declaration of nullity of their marriage (Civil Case No. 99-1852) which the Regional Trial Court of Makati City, Branch 140, granted. Cheryl's appeal of the ruling awaits resolution.

[4] In an Order dated 28 June 1991.

[5] The dispositive portion of the ruling provides (Records, pp. 1021-1022):

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. Defendant/s EDWARD N. LIM and Spouses PRUDENCIO and FILOMENA NG LIM are ordered to jointly provide monthly support for the plaintiff, Ma. Cheryl S. Lim and the three (3) minor children, in the total amount of FORTY THOUSAND (₱40,000.00) Pesos to be adjusted as may be needed, and to be given in the following manner:

a) Six Thousand (₱6,000.00) Pesos to be paid by defendant EDWARD N. LIM;

b) The remaining balance of Thirty Four Thousand (₱34,000.00) Pesos shall be shouldered by defendant/spouses PRUDENCIO and FILOMENA NG LIM, they, being in the remoter line pursuant to Article 199 of the Family Code. However, in the event that spouses Prudencio and Filomena Ng Lim fail to provide plaintiffs the amount they are entitled to receive, the obligation shall be borne by CHUA GIAK, being the grandmother of defendant Edward Lim;

c) The payment of the aforesaid monthly support should be made within the first five (5) days of each month;

2. The custody of the three (3) minor children, namely, Lester Edward, Candice Grace and Mariano III shall be awarded to the parent with whom each one shall choose to live with, they, being over seven (7) years of age;

3. Defendants are directed to pay the plaintiffs' attorney's fees in the amount of FIFTY THOUSAND (₱50,000.00) PESOS, plus FIVE HUNDRED (₱500.00) PESOS for each Court appearance, and the cost of the suit.

The defendants sought reconsideration, questioning their liability. The trial court, while denying reconsideration, clarified that petitioners and Chua Giak were held jointly liable with Edward because of the latter's "inability x x x to give sufficient support x x x."[6]

Petitioners appealed to the Court of Appeals assailing, among others, their liability to support respondents. Petitioners argued that while Edward's income is insufficient, the law itself sanctions its effects by providing that legal support should be "in keeping with the financial capacity of the family" under Article 194 of the Civil Code, as amended by Executive Order No. 209 (The Family Code of the Philippines).[7]

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[6] The dispositive portion of the Order provides (*Id.* at 1058):

In the light of the foregoing, item No. 1 in the dispositive part of the Decision of this Court dated January 31, 1996, is hereby amended to read as follows:

"(1.a) Defendant Edward N. Lim is ordered to continue providing the amount of SIX THOUSAND (₱6,000.00) PESOS as his monthly support for the plaintiffs;

(b) Considering the inability of defendant Edward N. Lim to give sufficient support, defendants/spouses Prudencio and Filomena Ng Lim being in the remoter line (Art. 199, Family Code), are ordered to give the amount of THIRTY-FOUR THOUSAND (₱34,000.00) PESOS as their monthly support for the three (3) minor children. In case of default, the obligation shall be borne by defendant Chua Giak;

(c) The payment of the aforesaid monthly support shall be made within the first five (5) days of each month."

[7] This provision reads: "Support comprises everything indispensable for sustenance, dwelling, clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family.

The education of the person entitled to be supported referred to in the preceding paragraph shall include his schooling or training for some profession, trade or vocation, even beyond the age of majority. Transportation shall include expenses in going to and from school, or to and from place of work."

The Ruling of the Court of Appeals

In its Decision dated 28 April 2003, the Court of Appeals affirmed the trial court. On the issue material to this appeal, that is, whether there is basis to hold petitioners, as Edward's parents, liable with him to support respondents, the Court of Appeals held:

> The law on support under Article 195 of the Family Code is clear on this matter. Parents and their legitimate children are obliged to mutually support one another and this obligation extends down to the legitimate grandchildren and great grandchildren.
>
> In connection with this provision, Article 200 paragraph (3) of the Family Code clearly provides that should the person obliged to give support does not have sufficient means to satisfy all claims, the other persons enumerated in Article 199 in its order shall provide the necessary support. This is because the closer the relationship of the relatives, the stronger the tie that binds them. Thus, the obligation to support is imposed first upon the shoulders of the closer relatives and only in their default is the obligation moved to the next nearer relatives and so on.[8]

Petitioners sought reconsideration but the Court of Appeals denied their motion in the Resolution dated 12 April 2004.

Hence, this petition.

The Issue

The issue is whether petitioners are concurrently liable with Edward to provide support to respondents.

The Ruling of the Court

We rule in the affirmative. However, we modify the appealed judgment by limiting petitioners' liability to the amount of monthly support needed by respondents Lester Edward, Candice Grace and Mariano III only.

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[8] *Rollo*, pp. 27-28.

Petitioners Liable to Provide Support but only to their Grandchildren

By statutory[9] and jurisprudential mandate,[10] the liability of ascendants to provide legal support to their descendants is beyond cavil. Petitioners themselves admit as much – they limit their petition to the narrow question of *when* their liability is triggered, not *if* they are liable. Relying on provisions[11] found in Title IX of the Civil Code, as amended, on Parental Authority, petitioners theorize that their liability is activated only upon *default* of parental authority, conceivably either by its termination[12] or suspension[13] during the children's minority. Because at the time respondents sued for support, Cheryl and Edward exercised parental authority over their children,[14] petitioners submit that the obligation to support the latter's offspring ends with them.

Neither the text of the law nor the teaching of jurisprudence supports this severe constriction of the scope of familial obligation to give support. In the first place, the governing text are the relevant provisions in Title VIII of the Civil Code, as amended, on Support, not the provisions in Title IX on Parental Authority. While both areas share a common ground in that parental authority

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[9] Article 199, Civil Code, as amended, provides:

Whenever two or more persons are obliged to give support, the liability shall devolve upon the following persons in the order herein provided:

(1) The spouse;

(2) The descendants in the nearest degree;

(3) The ascendants in the nearest degree; and

(4) The brothers and sisters

[10] *Patricio v. Dario III*, G.R. No. 170829, 20 November 2006, 507 SCRA 438.

[11] Articles 214 and 216, Civil Code, as amended.

[12] See Articles 228(1), 229(4) and (5), and 232, Civil Code, as amended.

[13] See Articles 230 and 231, Civil Code, as amended.

[14] Respondents Lester Edward (born on 11 June 1981), Candice Grace (born on 23 October 1985) and Mariano III (born on 31 August 1986) have since reached the age of majority, thus emancipating them from their parents' authority (see Article 228(3), Civil Code, as amended).

encompasses the obligation to provide legal support,[15] they differ in other concerns including the *duration* of the obligation and its *concurrence* among relatives of differing degrees.[16] Thus, although the obligation to provide support arising from parental authority ends upon the emancipation of the child,[17] the same obligation arising from spousal and general familial ties ideally lasts during the obligee's lifetime. Also, while parental authority under Title IX (and the correlative parental rights) pertains to parents, passing to ascendants only upon its termination or suspension, the obligation to provide legal support passes on to ascendants not only upon default of the parents but also for the latter's inability to provide sufficient support. As we observed in another case raising the ancillary issue of an ascendant's obligation to give support in light of the father's sufficient means:

> Professor Pineda is of the view that grandchildren cannot demand support directly from their grandparents if they have parents (ascendants of nearest degree) **who are capable of supporting them**. This is so because we have to follow the order of support under Art. 199. We agree with this view.
>
> x x x x x x x x x
>
> There is no showing that private respondent is **without means to support his son**; neither is there any evidence to prove that petitioner, as the paternal grandmother, was willing to voluntarily provide for her grandson's legal support. x x x[18] (Emphasis supplied; internal citations omitted)

Here, there is no question that Cheryl is unable to discharge her obligation to provide sufficient legal support to her children, then all school-bound. It is also undisputed that the amount of

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[15] Article 209 in relation to Article 220(4), Civil Code, as amended.

[16] The ordering of persons obliged to *provide* support in Article 199 is different from the preference of right to *receive* it under Article 200, par. 3. Thus, the Court of Appeals, while correctly affirming the trial court's ruling, as we do, misapplied the latter provision as basis for its ruling sustaining petitioners' concurrent *obligation* to provide support.

[17] Article 228(3), Civil Code, as amended.

[18] *Supra* note 10 at 448-449.

support Edward is able to give to respondents, ₱6,000 a month, is insufficient to meet respondents' basic needs. This inability of Edward and Cheryl to sufficiently provide for their children shifts a portion of their obligation to the ascendants in the nearest degree, both in the paternal (petitioners) and maternal[19] lines, following the ordering in Article 199. To hold otherwise, and thus subscribe to petitioners' theory, is to sanction the anomalous scenario of tolerating extreme material deprivation of children because of parental inability to give adequate support even if ascendants one degree removed are more than able to fill the void.

However, petitioners' partial concurrent obligation extends only to their *descendants* as this word is commonly understood to refer to relatives, by blood of lower degree. As petitioners' grandchildren by blood, only respondents Lester Edward, Candice Grace and Mariano III belong to this category. Indeed, Cheryl's right to receive support from the Lim family extends only to her husband Edward, arising from their marital bond.[20] Unfortunately, Cheryl's share from the amount of monthly support the trial court awarded cannot be determined from the records. Thus, we are constrained to remand the case to the trial court for this limited purpose.[21]

Petitioners Precluded from Availing of the Alternative Option Under Article 204 of the Civil Code, as Amended

As an alternative proposition, petitioners wish to avail of the option in Article 204 of the Civil Code, as amended, and pray

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[19] Respondents no longer sought support from the children's maternal ascendants because at the time respondents filed their complaint, they were living with, and received support from, Cheryl's mother.

[20] Thus, should the ruling of the trial court in Civil Case No. 99-1852 (declaring the nullity of Cheryl and Edward's marriage) be affirmed on appeal, the mutual obligation to provide support between them ceases. See *Pelayo v. Lauron*, 12 Phil. 453, 457 (1908) (holding that in-laws "are strangers with respect to the obligation that revolves upon the husband to provide support" to his wife).

[21] After the trial court's determination, the Edward and petitioners' liability should be reckoned from the time the trial court rendered its judgment on 31 January 1996.

that they be allowed to fulfill their obligation by maintaining respondents at petitioners' Makati residence. The option is unavailable to petitioners.

The application of Article 204 which provides that —

> The person obliged to give support shall have the option to fulfill the obligation either by paying the allowance fixed, or by receiving and maintaining in the family dwelling the person who has a right to receive support. **The latter alternative cannot be availed of in case there is a *moral* or *legal* obstacle thereto**. (Emphasis supplied)

is subject to its exception clause. Here, the persons entitled to receive support are petitioners' grandchildren and daughter-in-law. Granting petitioners the option in Article 204 will secure to the grandchildren a well-provided future; however, it will also force Cheryl to return to the house which, for her, is the scene of her husband's infidelity. While not rising to the level of a *legal* obstacle, as indeed, Cheryl's charge against Edward for concubinage did not prosper for insufficient evidence, her steadfast insistence on its occurrence amounts to a *moral* impediment bringing the case within the ambit of the exception clause of Article 204, precluding its application.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Decision of the Court of Appeals, dated 28 April 2003, and its Resolution dated 12 April 2004 with the *MODIFICATION* that petitioners Prudencio and Filomena Lim are liable to provide support only to respondents Lester Edward, Candice Grace and Mariano III, all surnamed Lim. We *REMAND* the case to the Regional Trial Court of Makati City, Branch 140, for further proceedings consistent with this ruling.

SO ORDERED.

Quisumbing,[*] *Chico-Nazario, Peralta,* and *Abad,*[**] *JJ.,* concur.

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[*] Designated additional member per Special Order No. 755.

[**] Designated additional member per Special Order No. 753.

THIRD DIVISION

[G.R. Nos. 164669-70. October 30, 2009]

LIEZL CO, *petitioner, vs.* **HAROLD LIM *y* GO and AVELINO UY GO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION FILED IN COURT; RESOLUTION OF SECRETARY OF JUSTICE ORDERING WITHDRAWAL OF INFORMATION; TRIAL COURT IS MANDATED TO INDEPENDENTLY EVALUATE OR ASSESS THE MERITS OF THAT CASE.— Once a case is filed with the court, any disposition of it rests on the sound discretion of the court. The trial court is not bound to adopt the resolution of the Secretary of Justice. Since it is mandated to independently evaluate or assess the merits of the case. Reliance on the resolution of the Secretary of Justice alone would be an abdication of its duty and jurisdiction to determine a *prima facie* case. The trial court may make an independent assessment of the merits of the case based on the affidavits and counter-affidavits, documents, or evidence appended to the Information; the records of the public prosecutor, which the court may order the latter to produce before the court; or any evidence already adduced before the court by the accused at the time the motion is filed by the public prosecutor.

2. ID.; ID.; ID.; ID.; FAILURE OF TRIAL COURT JUDGE TO INDEPENDENTLY EVALUATE AND ASSESS THE MERITS OF THE CASE VIOLATES THE COMPLAINANT'S RIGHT TO DUE PROCESS.— The failure of the trial court judge to independently evaluate and assess the merits of the case against the accused violates the complainant's right to due process and constitutes grave abuse of discretion amounting to excess of jurisdiction.

3. ID.; ID.; DOUBLE JEOPARDY; REQUISITES.— Section 21, Article III of the Constitution prescribes the rule against double jeopardy: No person shall be twice put in jeopardy of

punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act. The following requisites must be complied with for double jeopardy to set in: (1) there is a valid complaint of information; (2) the complaint should be filed before a court of competent jurisdiction; (3) the accused has pleaded to the charge; and (4) the accused has been convicted or acquitted, or the case has been dismissed or terminated without the express consent of the accused.

4. ID.; ID.; ID.; ID.; IT IS CONVICTION OR ACQUITTAL OF THE ACCUSED OR TERMINATION OF THE CASE WITHOUT THE APPROVAL OF THE ACCUSED THAT BARS FURTHER PROSECUTION FOR THE SAME OFFENSE.— It is the conviction or the acquittal of the accused, or dismissal or termination of the case without the approval of the accused that bars further prosecution for the same offense or any attempt to commit the same or the frustration thereof. At the heart of the policy is the concern that permitting the sovereign freely to subject the citizen to a second judgment for the same offense would arm the government with a potent instrument of oppression. The constitutional provision, therefore, guarantees that the State shall not be permitted to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense, and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty. Nevertheless, the prosecution is entitled to one opportunity to require the accused to stand trial. Should the prosecution waive this right to a full-blown trial, the defendant has the right to have his or her trial completed by a particular tribunal. If the trial is terminated before it is completed, and it is dismissed with the consent of the defendant, then double jeopardy will not attach.

5. ID.; CIVIL PROCEDURE; FORUM SHOPPING; DISALLOWED.— Section 5, Rule 7 of the 1997 Rules of Court, which disallows the deplorable practice of forum shopping, provides that: SEC. 5. *Certification against forum shopping.*—The plaintiff or principal party shall certify under

oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filled therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed. Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

6. ID.; ID.; ID.; TESTS FOR DETERMINATION.— Forum shopping exists when a party repetitively avails himself of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances and all raising substantially the same issues either pending in or already resolved adversely by some other court. The test for determining forum shopping is whether in the two (or more) cases pending, there is an identity of parties, rights or causes of action, and relief sought.

7. LEGAL ETHICS; COURT PROCEEDINGS; COURT DEEMS IT PROPER TO ISSUE A REMINDER TO OFFICERS OF THE COURT TO AVOID ALL APPEARANCES OF SUSPICIOUS OR QUESTIONABLE BEHAVIOR SO AS NOT TO UNDULY STRAIN PUBLIC TRUST; CASE AT

BAR.— Finally, this Court finds the proceedings conducted on 11 February 2004 highly unusual in that the RTC judge had arraigned the respondents before granting the respondent's oral motion to dismiss solely based on the Resolution of the Acting Secretary of Justice dated 16 January 2004, a copy of which was attached to the *Motion to Withdraw Informations* filed by the public prosecutor on 27 January 2004. The irregularity is even more pronounced when we consider the fact that the public prosecutor, whose office had filed a *Motion to Withdraw Informations* on 27 January 2004, agreed to have respondents arraigned on 11 February 2004. Added to the fact that the defense was allowed to move for the dismissal of the case even without a written motion, such irregularity arouses suspicions that the arraignment of the respondents after the public prosecutor was already ordered to withdraw the Informations was intended to aid respondents in raising the defense of double jeopardy should another case based on the same incidents be filed against them. While this Court does not make any conclusive findings of bad faith on the part of the RTC judge and the public prosecutor, it deems it proper to issue a reminder to officers of the court to avoid all appearances of suspicious or questionable behavior so as not to unduly strain public trust.

APPEARANCES OF COUNSEL

Rodolfo D. Mapile for petitioner.
Marbibi & Associates Law Office for respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Order,[1] dated 11 February 2004, later upheld in a subsequent Order[2] dated 29 June 2004, both rendered by Branch 45 of the Regional Trial Court (RTC)

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[1] Penned by Judge Marcelino Sayo. *Rollo*, pp. 12-16.

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

of Manila, dismissing Criminal Cases No. 01-197839 and No. 03-213403 against respondents Harold Lim *y* Go (Lim) and Avelino Uy Go (Go), respectively, for violation of Presidential Decree No. 1612, otherwise known as the Anti-Fencing Law.[3]

On 6 December 2001, agents from the National Bureau of Investigation (NBI) raided a commercial establishment named A-K Video Store, located at 1214 Masangkay Street, Manila. They had acted upon the information relayed by complainant Liezl Co (Co) that cell cards that were stolen from her on 26 November 2001 were being sold at A-K Video Store. The store was owned by Go. Lim, who was found administering the store at the time of the raid, was arrested. In all, a total of thirty (30) boxes containing cell cards worth ₱332,605.00 were seized from the store.[4]

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[3] The Anti Fencing Law reads:

WHEREAS, reports from law enforcement agencies reveal that there is rampant robbery and thievery of government and private properties;

WHEREAS, such robbery and thievery have become profitable on the part of the lawless elements because of the existence of ready buyers, commonly known as fence, of stolen properties;

WHEREAS, under existing law, a fence can be prosecuted only as an accessory after the fact and punished lightly;

WHEREAS, it is imperative to impose heavy penalties on persons who profit by the effects of the crimes of robbery and theft.

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and decree as part of the law of the land, the following:

SECTION 1. *Title*. – This Decree shall be known as the Anti-Fencing Law.

SEC. 2. *Definition of Terms*. – The following terms shall mean as follows:

a. "Fencing" is the act of any person who, with intent to gain for himself or for another, shall buy, receive, possess, keep, acquire, conceal, sell or dispose of, or shall buy and sell, or in any other manner deal in any article, item, object or anything of value which he knows, or should be known to him, to have been derived from the proceeds of the crime of robbery or theft.

x x x x x x x x x

SEC. 5. *Presumption of Fencing*. – Mere possession of any good, article, item, object, or anything of value which has been the subject of robbery or thievery shall be *prima facie* evidence of fencing.

[4] Records, p. 110.

After Inquest proceedings were conducted, the City Prosecutor's Office of Manila issued a Resolution dated 7 December 2001 recommending the prosecution of Lim for violation of Presidential Decree No. 1612.[5] On 7 March 2003, an Information[6] was filed before the RTC of Manila charging Lim with violation of Presidential Decree No. 1612, to wit:

> That on or about December 6, 2001, in the City of Manila, Philippines, the said accused, with intent to gain for himself or for another, did then and there willfully and feloniously possess, keep, conceal, receive, acquire, sell, or dispose or buy and sell thirty (30) boxes of ₱250.00 Globe cell card valued at ₱332,605.00 and five (5) pcs. Globe cell card valued at ₱1,105.00, all in the total amount of ₱333,710.00 belonging to LIEZL CO *y* CO, which said cell cards, said accused knew or should have known to have been the subject/proceeds of the crime of Theft or Robbery.

Lim moved for a reinvestigation of his case before the Office of the City Prosecutor of Manila, which was granted by the RTC on 25 April 2002.[7] The arraignment that was initially scheduled on 21 November 2002 was rescheduled on 22 January 2003,[8] and further rescheduled thereafter pending the reinvestigation proceedings. Pending the reinvestigation of Lim's case, petitioner filed a complaint against Go before the Office of the City Prosecutor of Manila for the violation of Presidential Decree No. 1612.[9] The reinvestigation of the case against Lim was conducted together with the preliminary investigation of Go.[10] In a Review Resolution,[11] dated 9 April 2003, the Office of the City Prosecutor of Manila reaffirmed its findings of probable cause against Lim and recommended the prosecution of Go. The dispositive part of the Review Resolution reads:

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[5] *Rollo*, p. 356.

[6] Records, p. 1.

[7] *Id.* at 22-23 and 38.

[8] *Id.* at 41.

[9] *Rollo*, p. 356.

[10] *Id.*

[11] *Id.* at 44-45.

WHEREFORE, it is recommended that Criminal Case No. 01-197839 be remanded back to court for further proceedings. It is likewise recommended that the attached information for Violation of P.D. 1612 against respondent Avelino Uy Go be approved.[12]

Accordingly, the Information[13] against Go was filed on 25 April 2003. It reads:

That on or about December 6, 2001, in the City of Manila, Philippines, the said accused, with intent to gain for himself or for another, conspiring and confederating with Harold Lim who was already charged in Court of the same offense docketed under Criminal Case No. 01-197839 and mutually helping each other, did then and there willfully and feloniously possess, keep, conceal, receive and acquire, sell, or dispose or buy and sell thirty (30) boxes of ₱250.00 Globe cell card valued at ₱332,605.00 and five (5) pcs. ₱250.00 Globe cell card valued at ₱1,105.00, all in the total amount of ₱333,710.00 belonging to LIEZL CO CO, which said cell cards, said accused knew or should have known to have been the subject/proceeds of the crime of Theft or Robbery.

Respondents filed a Petition for Review with the Department of Justice assailing the Review Resolution, dated 9 April 2003.

On 15 July 2003, respondents moved for the consolidation of Criminal Cases No. 01-197839 and No. 03-213403 on the ground that these cases arose from the same series of incidents.[14] During the hearing held on 16 July 2003, the RTC granted the motion and consolidated the criminal cases against respondents.[15]

On 16 January 2004, the Acting Secretary of the Department of Justice, Ma. Merceditas N. Gutierrez, issued a Resolution[16] reversing the Review Resolution dated 9 April 2003 of the Office of the City Prosecutor of Manila. The dispositive part of the Resolution reads:

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[12] *Id.* at 45.

[13] *Id.* at 46.

[14] Records, 87-89.

[15] *Id.* at 92.

[16] *Id.* at 110-112.

ACCORDINGLY, the resolution appealed from is hereby **REVERSED** and **SET ASIDE.** The City Prosecutor of Manila is directed to withdraw forthwith the informations for violation of PD No. 1612 filed in the court against respondents Harold G. Lim and Avelino Uy Go and to report the action taken hereon within ten days from receipt hereof.[17]

On 27 January 2004, Assistant Prosecutor Yvonne G. Corpuz filed a *Motion to Withdraw Informations*[18] seeking the dismissal of the cases filed against respondents pursuant to the Resolution of the Acting Secretary of the Department of Justice dated 16 January 2004 directing the prosecutor to move for the withdrawal of the Informations filed against respondents.

On 11 February 2004, the date set by the RTC for the arraignment of the respondents and for pre-trial, the respondents were arraigned, and the prosecution and the defense marked their evidence and submitted their stipulations of facts. Thereafter, the defense counsel orally moved for the dismissal of the case on the ground that the Office of the City Prosecutor of Manila, through Assistant Prosecutor Corpuz, had already filed a *Motion to Withdraw Informations* on 27 January 2004. Private prosecutor Lodelberto Parungao opposed the motion to dismiss on the ground that the Resolution of the Acting Secretary of Justice dated 16 January 2004 was not binding upon the Court. Nevertheless, in an Order[19] dated 11 February 2004, the RTC ordered the dismissal of Criminal Cases No. 01-197839 and No. 03-213403 on the ground that the Office of the City Prosecutor of Manila and the Department of Justice would not prosecute these cases, to wit:

> After considering the respective stands of the prosecution and the defense as well as the records of this case, this Court is of the considered view that the Motion To Dismiss by the accused is meritorious and should be granted. **If this Court will proceed with these criminal cases, the prosecution thereof will naturally be under the direct control and supervision of Public Prosecutor**

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[17] *Id.* at 112,

[18] *Id.* at 121.

[19] *Id.* at 146-150.

Antionio B. Valencia, Jr. However, the said Public Prosecutor will be placed in an awkward, if not precarious situation, since he will be going against the very Orders of his own Office and the Department of Justice which want the Informations withdrawn. If the City Prosecutor's Office of Manila and the Department of Justice will not prosecute these cases for the plaintiff Republic of the Philippines, then the same should be dismissed. As correctly pointed out by counsel for the accused, what remains is only the civil aspect of these cases.[20] (Emphasis ours.)

The dispositive part of the said Order reads:

WHEREFORE, premises considered, and finding the Motion To Dismiss by the accused through counsel to be meritorious, the same is hereby GRANTED and let the herein Criminal Cases Nos. 01-197839 and 03-213403 be DISMISSED.

As moved by the private prosecutor, he is given the period allowed by the Rules of Court to file the necessary pleading with respect to this Order of the Court from receipt hereof.

As further moved by the private prosecutor, Atty Lodelberto S. Parungao, that the complainant be allowed to present evidence on the civil aspect of these cases on the ground that the civil actions in these cases were deemed instituted with the criminal actions and that there was no reservation made to file a separate civil action and therefore the civil cases remain pending with this court since extinction of the penal action does not carry with it extinction of the civil action, and over the vigorous objection by counsel for the accused Atty. Teresita C. Marbibi who insisted that the dismissal of the herein criminal cases carried with it the dismissal also of the civil aspect thereof, the said motion by the private prosecutor is hereby GRANTED and he may present evidence on the civil aspect of these cases on March 18 and March 25, 2004 both at 8:30 a.m. Considering the manifestation by Atty. Marbibi that she will not participate in said hearings, let the presentation of evidence for the complainant be made *ex-parte* without objection from the defense counsel.[21]

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[20] *Id.* at 149.

[21] *Id.* at 150.

Petitioner filed a Motion for Reconsideration[22] dated 12 March 2004, which the RTC denied in an Order[23] dated 29 June 2004. The dispositive part of the Order reads:

> WHEREFORE, premises considered, the private complainants' subject Motion for Reconsideration is hereby DENIED for lack of merit.[24]

On 2 July 2004, petitioner filed a Petition for *Certiorari* before the Court of Appeals, docketed as CA-G.R. SP No. 84703, which sought the reversal of the Resolution dated 16 January 2006 of the Acting Secretary of the Department of Justice directing the Office of the City Prosecutor of Manila to withdraw the informations filed against the respondents.[25] This petition was still pending with the Court of Appeals when the petitioner filed the present petition with the Supreme Court assailing the Orders dated 11 February 2004 and 29 June 2004 of the RTC dismissing the criminal complaints against respondents. The present Petition, filed under Rule 45 of the Rules of Court, raises the following questions of law:[26]

I

BY THE PRESENT APPEAL BY *CERTIORARI*, ARE THE RIGHTS OF THE TWO (2) ACCUSED AGAINST DOUBLE JEOPARDY VIOLATED, CONSIDERING THAT THEY EXPRESSLY MOVED FOR THE DISMISSAL OF THE CRIMINAL CASES AGAINST THEM?

II

WAS THE ORDER OF THE PRESIDING JUDGE OF RTC45-MANILA DISMISSING CRIMINAL CASES NO. 01-197839 AND 03-213403 FOR THE SOLE REASON THAT THE DEPARTMENT OF JUSTICE ORDERED THE WITHDRAWAL OF THE CORRESPONDING

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[22] *Id.* at 181-189.

[23] *Id.* at 239-240.

[24] *Id.* at 240.

[25] *Id.* at 247.

[26] *Rollo*, pp. 30-31.

INFORMATIONS, AND WITHOUT MAKING AN INDEPENDENT ASSESSMENT AND FINDING OF EVIDENCE, VALID?

The petition is meritorious.

Once a case is filed with the court, any disposition of it rests on the sound discretion of the court. The trial court is not bound to adopt the resolution of the Secretary of Justice, since it is mandated to independently evaluate or assess the merits of the case. Reliance on the resolution of the Secretary of Justice alone would be an abdication of its duty and jurisdiction to determine a *prima facie* case. The trial court may make an independent assessment of the merits of the case based on the affidavits and counter-affidavits, documents, or evidence appended to the Information; the records of the public prosecutor, which the court may order the latter to produce before the court; or any evidence already adduced before the court by the accused at the time the motion is filed by the public prosecutor.[27]

The failure of the trial court judge to independently evaluate and assess the merits of the case against the accused violates the complainant's right to due process and constitutes grave abuse of discretion amounting to excess of jurisdiction. This Court must therefore remand the case to the RTC, so that the latter can rule on the merits of the case to determine if a *prima facie* case exists and consequently resolve the *Motion to Withdraw Informations* anew.[28]

In dismissing the criminal cases against the respondents, the RTC in this case relied on the unwillingness of the Department of Justice to prosecute these cases and the awkward situation in which the public prosecutor would find himself. The assailed Order dated 11 February 2004 reads:

After considering the respective stands of the prosecution and the defense as well as the records of this case, this Court is of the considered view that the Motion To Dismiss by the accused is

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[27] *Santos v. Orda, Jr.*, 481 Phil. 93, 105-106 (2004).

[28] *Summerville General Merchandising & Co. Inc. v. Eugenio, Jr.*, G.R. No. 163741, 7 August 2007, 529 SCRA 274, 281-282.

meritorious and should be granted. **If this Court will proceed with these criminal cases, the prosecution thereof will naturally be under the direct control and supervision of Public Prosecutor Antonio B. Valencia, Jr. However, the said Public Prosecutor will be placed in an awkward, if not precarious situation, since he will be going against the very Orders of his own Office and the Department of Justice which want the Informations withdrawn. If the City Prosecutor's Office of Manila and the Department of Justice will not prosecute these cases for the plaintiff Republic of the Philippines, then the same should be dismissed.** As correctly pointed out by counsel for the accused, what remains is only the civil aspect of these cases.[29] (Emphasis ours.)

Moreover, the trial judge did not positively state that the evidence presented against the respondents was insufficient for a *prima facie* case, nor did the aforequoted Order include a discussion of the merits of the case based on an evaluation or assessment of the evidence on record. In other words, the dismissal of the case was based upon considerations other than the judge's own personal individual conviction that there was no case against the respondents. Thus, the trial judge improperly relinquished the discretion that he was bound to exercise, and the Orders dated 11 February 2004 and 29 June 2004 are invalid for having been issued in grave abuse of discretion.[30]

Section 21, Article III of the Constitution prescribes the rule against double jeopardy:

> No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

The following requisites must be complied with for double jeopardy to set in: (1) there is a valid complaint of information; (2) the complaint should be filed before a court of competent jurisdiction; (3) the accused has pleaded to the charge; and

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[29] Records, p. 149.

[30] *Martinez v. Court of Appeals*, G.R. No. 112387, 13 October 1994, 237 SCRA 575, 585-586.

(4) the accused has been convicted or acquitted, or the case has been dismissed or terminated without the express consent of the accused.[31]

The Order dated 11 February 2004 of the RTC categorically stated that the defense counsel moved for the dismissal of the cases against the respondents. Verily, respondents, through counsel, had given their express consent to the termination of the case on 11 February 2004. Therefore, the fourth requisite, which necessitates the conviction or acquittal of the accused or the dismissal of the case without his or her approval, was not met. Undoubtedly, the rule on double jeopardy is inapplicable to this case.

It is the conviction or the acquittal of the accused, or dismissal or termination of the case without the approval of the accused that bars further prosecution for the same offense or any attempt to commit the same or the frustration thereof.[32] At the heart of the policy is the concern that permitting the sovereign freely to subject the citizen to a second judgment for the same offense would arm the government with a potent instrument of oppression. The constitutional provision, therefore, guarantees that the State shall not be permitted to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense, and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty. Nevertheless, the prosecution is entitled to one opportunity to require the accused to stand trial. Should the prosecution waive this right to a full-blown trial, the defendant has the right to have his or her trial completed by a particular tribunal.[33] If the trial is terminated before it is completed, and it is dismissed with the consent of the defendant, then double jeopardy will not attach.

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[31] *Summerville General Merchandising & Co. Inc. v. Eugenio, Jr.*, *supra* note 28 at 283.

[32] *Pacoy v. Cajigal*, G.R. No. 157472, 28 September 2007, 534 SCRA 338, 352.

[33] *People v. Sandiganbayan*, G.R. Nos. 168188-89, 16 June 2006, 491 SCRA 185, 207.

Respondents alleged that petitioner is guilty of forum shopping since she filed the present petition assailing the Orders dated 11 February 2004 and 29 June 2004 of the RTC after she filed a Petition for *Certiorari* before the Court of Appeals docketed as CA-G.R. SP No. 84703 questioning the Resolution of the Acting Secretary of Justice dated 16 January 2004. This argument is specious.

Section 5, Rule 7 of the 1997 Rules of Court, which disallows the deplorable practice of forum shopping, provides that:

> SEC. 5. *Certification against forum shopping.*—The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filled therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.
>
> Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

Forum shopping exists when a party repetitively avails himself of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances and all raising substantially the same issues either pending in or already resolved

adversely by some other court.[34] The test for determining forum shopping is whether in the two (or more) cases pending, there is an identity of parties, rights or causes of action, and relief sought.[35]

Petitioner in this case is not guilty of forum shopping since there is no identity of relief and cause of action in the present petition and in CA-G.R. SP No. 84703. The Petition for *Certiorari* filed by petitioners before the Court of Appeals questions the propriety of the Resolution of the Acting Secretary of Justice. The present petition docketed as G.R. Nos. 164669-70 seeks the reversal of the Orders dated 11 February 2004 and 29 June 2004 of the RTC. The determination made by the Acting Secretary of Justice that no *prima facie* case exists for the prosecution of the case is distinct from the judicial determination of the RTC that there is no probable cause for the continued hearing of the criminal case. These are two very different actions which should be separately assailed. The former is pursuant to the powers and functions of the Department of Justice as provided under Section 2, Chapter 1, Title III of the Revised Administrative Code:

> Section 3. *Powers and Functions*. To accomplish its mandate, the Department shall have the following powers and functions:
>
> x x x x x x x x x
>
> (2) Investigate the commission of crimes, prosecute offenders and administer the probation and correction system.

On the other hand, the determination made by the RTC, which is being questioned in the present case, is pursuant to the judicial powers conferred by Section 1, Article VIII of the Constitution:

> Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

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[34] *Feliciano v. Villasin,* G.R. No. 174929, 27 June 2008, 556 SCRA 348, 370; *Cruz v. Caraos*, G.R. No. 138208, 23 April 2007, 521 SCRA 510, 521; *SK Realty Inc. v. Uy*, G.R. No. 144282, 8 June 2004, 431 SCRA 239, 246.

[35] *Citibank, N.A. v. Sabeniano*, G.R. No. 156132, 16 October 2006, 504 SCRA 378, 406.

> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.

Consequently, a determination by the Court of Appeals that the prosecution of the criminal case must proceed will not affect whether or not this Court may or may not adjudge that the RTC should continue to hear the same criminal case.

Finally, this Court finds the proceedings conducted on 11 February 2004 highly unusual in that the RTC judge had arraigned the respondents before granting the respondent's oral motion to dismiss solely based on the Resolution of the Acting Secretary of Justice dated 16 January 2004, a copy of which was attached to the *Motion to Withdraw Informations* filed by the public prosecutor on 27 January 2004. The irregularity is even more pronounced when we consider the fact that the public prosecutor, whose office had filed a *Motion to Withdraw Informations* on 27 January 2004, agreed to have respondents arraigned on 11 February 2004. Added to the fact that the defense was allowed to move for the dismissal of the case even without a written motion, such irregularity arouses suspicions that the arraignment of the respondents after the public prosecutor was already ordered to withdraw the Informations was intended to aid respondents in raising the defense of double jeopardy should another case based on the same incidents be filed against them. While this Court does not make any conclusive findings of bad faith on the part of the RTC judge and the public prosecutor, it deems it proper to issue a reminder to officers of the court to avoid all appearances of suspicious or questionable behavior so as not to unduly strain public trust.

IN VIEW OF THE FOREGOING, the instant Petition is *GRANTED*. The Orders dated 11 February 2004 and 29 June 2004 of Branch 45 of the Regional Trial Court of the City of Manila dismissing Criminal Cases No. 01-197839 and No. 03-213403, are *REVERSED* and *SET ASIDE*. The records of this

case shall be remanded to the trial court in order that it may resolve the *Motion to Withdraw Informations* filed by the public prosecutor based on an independent assessment of the evidence in this case.

SO ORDERED.

Quisumbing,[*] *Carpio (Chairperson), Peralta,* and *Abad,*[**] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 170738. October 30, 2009]

RIZAL COMMERCIAL BANKING CORPORATION, *petitioner, vs.* **MARCOPPER MINING CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; JUDICIAL ADMISSIONS; CONCLUSIVE AS TO PERSON MAKING THE ADMISSION.— An admission made in the pleading cannot be controverted by the party making such admission and is conclusive as to him, and all proofs submitted by him contrary thereto or inconsistent therewith should be ignored.

2. ID.; ID.; ISSUES NOT RAISED IN THE TRIAL COURT WILL NOT BE CONSIDERED BY A REVIEWING COURT.— Moreover, issues and arguments which are not adequately brought to the attention of the trial court ordinarily will not

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[*] Per Special Order No. 755, dated 12 October 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Leonardo A. Quisumbing to replace Associate Justice Antonio Eduardo B. Nachura, who is on official leave.

[**] Per Special Order No. 753, dated 12 October 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Roberto A. Abad to replace Associate Justice Presbitero J. Velasco, Jr., who is on official leave.

be considered by a reviewing court as they cannot be raised for the first time on appeal. If an issue is raised only in the motion for reconsideration of the appellate court's decision, it is as if it was never raised in that court at all. x x x Issues not raised in the court *a quo* cannot be raised for the first time on appeal because to do so would be offensive to the basic rules of justice and fair play. Matters, theories or arguments not brought out in the proceedings below will not ordinarily be considered by a reviewing court as they cannot be raised for the first time on appeal.

3. ID.; CIVIL PROCEDURE; APPEALS; PARTY IS NOT ALLOWED TO CHANGE THE THEORY OF ITS CASE ON APPEAL.— Well-settled is the rule that a party is not allowed to change the theory of the case or the cause of action on appeal. We have consistently rejected the pernicious practice of shifting to a new theory on appeal in the hope of a favorable result.

4. CIVIL LAW; CONTRACTS; PROPOSAL; COUNTER PROPOSAL; WHERE NO FINAL ARRANGEMENT IS MADE, THERE IS NO MEETING OF THE MINDS.— For an offer to be binding, the acceptance must be absolute, and if qualified, the acceptance would merely constitute a counter-offer. Where there is only proposal and a counter-proposal that did not add up to a final arrangement, there is no meeting of the minds between the parties.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala and Cruz for petitioner.
Quasha Ancheta Peña and Nolasco for respondent.

R E S O L U T I O N

QUISUMBING, *J.*:

For resolution is the Motion for Reconsideration[1] filed by respondent Marcopper Mining Corporation (Marcopper) seeking to set aside the Court's Decision[2] dated September 12, 2008 in

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[1] *Rollo*, pp. 321-389.

[2] *Id.* at 304-320.

favor of petitioner Rizal Commercial Banking Corporation (RCBC). The dispositive portion of the Decision reads:

> WHEREFORE, the petition is **GRANTED.** The assailed Decision dated June 6, 2005 and the Resolution dated December 8, 2005 of the Court of Appeals in CA-G.R. CV No. 77594 are **REVERSED** and **SET ASIDE.** Marcopper is directed to pay RCBC the following amounts expressly stipulated in the Non-Negotiable Promissory Note Nos. 21-3697 and 21-3797:
>
> 1. US$5,425,485.00 as the total principal amount due under Non-Negotiable Promissory Note Nos. 21-3697 and 21-3797, including the interest due on US$2,698,845.00 under Non-Negotiable Promissory Note No. 21-3697 at the rate of 9% per annum until fully paid;
>
> 2. Penalty equivalent to 36% per annum of the amount due and unpaid under Non-Negotiable Promissory Note Nos. 21-3697 and 21-3797 until fully paid; and
>
> 3. Attorney's fees equivalent to 20% of the total amount due.
>
> RCBC's claims for moral and exemplary damages are denied. It may, however, exercise its rights, in accordance with law, to foreclose on the properties covered. No pronouncement as to costs.
>
> SO ORDERED.[3]

The antecedent facts as summarized in the decision sought to be reconsidered, are as follows:

> To finance its acquisition of 12 Rig Haul Trucks and one Demag Hydraulic Excavator Shovel, Marcopper obtained a loan from RCBC in the amount of US$13.7 Million. As security for the loan, Marcopper executed in favor of RCBC a Deed of Chattel Mortgage dated April 23, 1996 of the 12 Rig Haul Trucks and one Demag Hydraulic Excavator Shovel and a Deed of Pledge dated August 29, 1996 covering shares of stock of the Baguio Country Club, Canlubang Golf and Country Club, Philippine Columbian Association, and Puerto Azul Beach and Country Club. Later, Marcopper likewise delivered to RCBC an additional Deed of Pledge dated September 9, 1997, covering one share of stock in the Philippine Columbian Association.

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[3] *Id.* at 319.

Sometime in 1996, a restructuring of the loan was agreed upon by RCBC and Marcopper. In view of its inability to pay the loan, Marcopper, in a letter dated July 1, 1997 proposed two options to RCBC: (1) to initiate foreclosure of the mortgaged assets and treat the deficiency as an unsecured creditor's claim against Marcopper's remaining assets; or (2) to accept the assignment of a Forbes Park property owned by Marcopper comprising 2,437 square meters and covered by TCT No. 321269 (Forbes Park property) as partial payment of the loan and restructure the payment of the balance over a period of two years. x x x.[4]

On July 3, 1997, representatives from both parties met to discuss Marcopper's proposal.

In a letter[5] dated July 8, 1997 Marcopper laid down its repayment scheme under Option 2, as follows:

x x x x x x x x x

1.) The principal amount was to be revised, from the original principal of $13.7 million to $14.327 million, which includes interest that has been capitalized;

2.) Implementation of the assignment of the Forbes Park property for the agreed amount of ₱235 million, equivalent to about $8,901,515;

3.) Payment of the amount of $2,698,485 over a period of one (1) year payable quarterly plus interest; and

4.) Payment of the balance of $2,727,000 over a period of two (2) years, payable quarterly, without interest.

x x x x x x x x x

RCBC Director/Senior Vice-President Susanne Y. Santos and Senior Vice President Filadelfo S. Rojas, Jr. signed their conformity to the above repayment plan.

On July 31, 1997 Marcopper transmitted several documents to be signed by RCBC, among which, were the Deed of Assignment

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[4] *Id.* at 305.

[5] Records, pp. 76-77.

of its Forbes Park property and the Deed of Release from Mortgage of six (6) units Rig Trucks and one (1) unit Demag Shovel. RCBC signed the Deed of Assignment of the Forbes Park property but returned the Deed of Release from Mortgage, unsigned.

On August 22, 1997, Marcopper sent RCBC another letter transmitting two Promissory Notes for US$2,698,485 and US$2,727,000 which amounts correspond to the restructured balance of its outstanding loan with RCBC after the partial payment through the assignment of the Forbes Park property. In addition, Marcopper also sent the Surety Agreements duly executed by Mr. Teodoro G. Bernardino. Marcopper also delivered to RCBC an additional Deed of Pledge dated September 9, 1997 over one share of the Philippine Columbian Association.

On September 12, 1997, Ma. Felisa R. Banzon, RCBC Vice President wrote a letter to Marcopper saying:

September 12, 1997

MARCOPPER MINING CORP.
6th Floor, V. Madrigal Bldg.
6793 Ayala Avenue
Makati City

Attention: **MR. NICANOR L. ESCALANTE**
Treasurer

Gentlemen:

As you are aware, we have effected the transfer of ownership of the Forbes property which you used to partially settle your past due obligations with the bank. You have previously requested the release of six (6) Units Rig trucks and one (1) Demag Shovel. However, as I have previously informed you, we first need to work on some details in relation to the dacion. We still need to get approval for your request thus no commitment can be made at this time.

Very truly yours,

(Sgd.)
MA. FELISA R. BANZON
Vice-President[6]

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[6] *Id.* at 83.

On November 24, 1997, Marcopper's Chairman of the Board, Joost Pekelharing, wrote RCBC saying that MR Holdings, Ltd. agreed to release its lien on the Forbes Park property upon Marcopper's assurance that RCBC will release from mortgage the six Rig Haul Trucks and one Demag Hydraulic Excavator Shovel. Likewise, Marcopper had committed to MR Holdings that it will mortgage some club shares, which have been pledged to RCBC and are expected to be released, after the restructuring of the loan obligation.

On December 15, 1997, RCBC informed Marcopper that its Executive Committee had approved the release of the five Rig Haul Trucks subject to the condition that Marcopper pays the first amortization which fell due on November 24, 1997. In a subsequent letter dated December 17, 1997, RCBC informed Marcopper that it has approved the release from mortgage of the six Rig Haul Trucks and one Demag Hydraulic Excavator Shovel as well as the release from pledge of the club shares, also subject to the same condition. When Marcopper failed to settle its obligations, RCBC sent a letter to Marcopper and Mr. Bernardino declaring the whole obligation under the non-negotiable promissory notes due and payable. However, Marcopper and its surety refused to pay.

On July 16, 1998, Marcopper filed a complaint[7] before the RTC of Makati for Specific Performance with Damages and with Prayer for the Issuance of a Writ of Preliminary Injunction against RCBC. Marcopper alleged that it agreed to assign the Forbes Park property to RCBC to be credited to Marcopper's account in the amount of US$8,909,515 on the condition that RCBC will execute a Deed of Release from Mortgage of the six Rig Haul Trucks, one Demag Hydraulic Excavator Shovel and the club shares of the Baguio Country Club, Canlubang Golf and Country Club, Puerto Azul Beach and Country Club and Philippine Columbian Association, but RCBC failed to do so. Marcopper prayed that RCBC be ordered to execute a deed of partial release of mortgage and pledge, desist from declaring Marcopper's promissory notes as due and demandable, and pay damages.

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[7] *Id.* at 1-9.

The Regional Trial Court (RTC) rendered a decision in favor of Marcopper. On appeal, the Court of Appeals affirmed with modification the decision of the RTC. From the decision of the Court of Appeals, petitioner RCBC filed a petition for review on *certiorari*. This Court found the petition to be impressed with merit, and reversed the decision of the appellate court. We ruled in this wise:

A review of the written exchanges between the parties shows no written agreement was ever executed by RCBC and Marcopper for RCBC to execute a partial release of mortgage and pledge upon assignment to it of the Forbes Park property. The July 1, 1997 letter from Marcopper Treasurer Nicanor L. Escalante to RCBC merely listed two options of payment of Marcopper's loan to RCBC while the July 8, 1997 letter from Marcopper to RCBC modified the terms of payment as to the second option listed in the July 1, 1997 letter. The next written communication between the parties was the July 31, 1997 where Marcopper forwarded the Deed of Release of Mortgage which it requested RCBC to sign.

Even the letter dated November 24, 1997 from Marcopper Chairperson of the Board Joost Pekelharing to RCBC makes no allusion to a written contract. The letter merely stated MR Holdings agreed to release the Forbes Park property **upon Marcopper's assurance** that RCBC will release from mortgage six units Rig Haul Trucks and one unit Demag Hydraulic Excavator Shovel.

The existence of the alleged condition asserted by Marcopper was therefore to be gleaned primarily from the testimonies of its witnesses who asserted that Marcopper and RCBC had agreed on July 3, 1997 to the release of the mortgage and pledge as a condition to the assignment of the Forbes Park property and ultimately the payment of the promissory notes. However, we note that the first time that Marcopper ever mentioned the release of the pledges of club shares was in its letter dated November 24, 1997. Before that, Marcopper requested the release of the mortgage on the Rig Haul Trucks and one unit Demag Hydraulic Excavator Shovel only. Marcopper's letter to RCBC dated July 8, 1997, which confirmed the agreements between the parties during their July 3, 1997 meeting, did not state that RCBC committed to release the mortgage and pledge, a condition which Marcopper alleged to be a material condition and which would ordinarily be included in the written confirmation had it been agreed upon. Also, on September 9, 1997, Marcopper

executed a deed of pledge of one additional share of stock of the Philippine Columbian Association.[8] x x x

Unfazed, Marcopper filed the instant motion for reconsideration alleging that:

I.

THE DECISION REVERSED AND SET ASIDE THE FACTUAL FINDINGS OF THE TRIAL COURT AND APPELLATE [COURT] PRIMARILY ON THE BASIS OF A DEED OF PLEDGE ALLEGEDLY EXECUTED ON 9 SEPTEMBER 1997;[9]

II.

THE DEED OF CHATTEL MORTGAGE EXECUTED ON THE MINING TRUCKS AND DEMAG SHOVEL WAS FOR ANOTHER TRANSACTION, THE OPENING BY RCBC OF A FOREIGN STANDBY LETTER OF CREDIT IN FAVOR OF THE U.S. EXIMBANK TO GUARANTEE A LOAN THAT DID NOT PUSH THROUGH;[10]

III.

THE 1 JULY 1997 LETTER AND 8 JULY 1997 AGREEMENT INVOLVED THE RESTRUCTURING OF THE ORIGINAL BRIDGE LOAN, WHICH LED TO THE TENDER OF MMC'S NORTH FORBES PARK PROPERTY IN THE AMOUNT OF $8.9 MILLION.[11]

Respondent Marcopper's grounds for reconsideration lack merit. Noticeably, the issues raised by Marcopper in its motion for reconsideration are new matters which have not been raised in the proceedings below and are not proper to be raised for the first time in a motion for reconsideration.

In the main, Marcopper contends that the Court reversed and set aside the factual findings of the trial court and the Court of Appeals primarily on the basis of a falsified Deed of Pledge

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[8] *Rollo*, pp. 316-317.

[9] *Id.* at 322.

[10] *Id.* at 324.

[11] *Id.* at 326.

dated September 9, 1997. A perusal of the Decision sought to be reconsidered would readily show that it was not based mainly on the deed of pledge executed on September 9, 1997, as Marcopper alleged in its motion. The Decision was reached after careful review of the written exchanges between RCBC and Marcopper, as well as other documentary and testimonial evidence presented by the parties. We found that no explicit written agreement was reached for RCBC to execute a partial release of mortgage and pledge upon assignment to it by Marcopper of the Forbes Park property.

Marcopper harps on that portion of the decision which states:

> x x x Also, on September 9, 1997, Marcopper executed a deed of pledge on one additional share of stock of the Philippine Columbian Association. If it were true, as asserted by Marcopper's witnesses, that RCBC had committed to release the mortgage and pledge during the July 3, 1997 meeting, Marcopper would not have delivered the additional pledge after the Forbes Park property had been assigned to RCBC. That it did so proves that the assignment of the Forbes Park property was not made on the condition Marcopper claims.[12]

Marcopper assails the authenticity of the deed of pledge[13] claiming that the signatory to the deed, Mr. Jose E. Reyes, was no longer connected with and cannot sign on behalf of Marcopper as he had resigned in September 1996, a year before the deed was executed. In support thereof, Marcopper filed a Supplement to the Motion for Reconsideration[14] attaching the certification of Mr. Reyes that he resigned from Marcopper effective sometime in September 1996. Additionally, Marcopper averred that the September 7, 1997 deed of pledge for one (1) Philippine Columbian Association share was for an Export Loan Line which had already been "shelved."

Marcopper, however, raised the issue of the alleged falsity of the deed of pledge only in its motion for reconsideration of

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[12] *Id.* at 317.

[13] Records, pp. 336-337.

[14] *Rollo*, pp. 397-400.

the Court's Decision. But in its Memorandum filed before the Court, it clearly admitted as undisputed the following facts:

x x x x x x x x x

2. Marcopper Mining Corp. through its President and Chief Executive Officer John E. Loney and [T]reasurer Jose E. Reyes obtained a bridge loan from petitioner Rizal Commercial Banking Corporation in the amount of US$13.7 Million to finance the acquisition of twelve (12) Unit Rig trucks.

x x x x x x x x x

5. Apprehensive of the unsecured bridge loan extended to MMC, RCBC's First Senior Vice President, Mr. Filadelfo Rojas approached Mr. Teodoro Bernardino, a member of the Board of Directors of MMC, for the possible settlement of MMC's bridge loan.

6. Through the assistance of Mr. Bernardino, RCBC was able to acquire collateral for the bridge loan it extended to MMC. A Deed of Chattel Mortgage dated April 23, 1996 was executed between the parties, with the following properties as collateral:

a. 12 units – Unit Rig Haul Trucks Model ET-3700 with Detroit Diesel 16V149TIB, 2000 HP Engine, GTA 22 Alternators and GE 88 Wheel Motors; SN #121-126 Truck No. 8-41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52 complete with accessories and front headboard and Lip Extension;

x x x x x x x x x

Another Deed of Pledge was executed covering One (1) Philippine Columbian Association Share with Cert. No. 1486 on September 9, 1997.[15] (Emphasis supplied.)

In fact, we note that respondent has offered as evidence, Exh. "B", the same deed of pledge, as a further security to the loan agreement obtained by Marcopper from RCBC. With respondent's own admission in its pleading of the execution of the subject Deed of Pledge, it cannot now be allowed to contradict its statement and claim that the same document had been falsified without violating the rules on fair play and due process. An

[15] *Id.* at 251-253.

admission made in the pleading cannot be controverted by the party making such admission and is conclusive as to him, and all proofs submitted by him contrary thereto or inconsistent therewith should be ignored.[16] Moreover, issues and arguments which are not adequately brought to the attention of the trial court ordinarily will not be considered by a reviewing court as they cannot be raised for the first time on appeal. If an issue is raised only in the motion for reconsideration of the appellate court's decision, it is as if it was never raised in that court at all.[17] Respondent by its own previous admission is bound as to the due execution of the deed of pledge.

Furthermore, Marcopper, in a last ditch effort to reverse the Court's Decision averred that the deed of chattel mortgage executed on the mining trucks and Demag shovel was for another transaction, the opening by RCBC of a foreign standby letter of credit in favor of the U.S. Eximbank to guarantee a loan that did not push through. Marcopper further claims that a restructured loan or a new loan is being agreed upon for the balance of the original bridge loan after payment of about $8.9 million through a Forbes Park property.

As aptly pointed out by petitioner RCBC in its Comment, not once did Marcopper question the validity of the chattel mortgage on the Rig Haul Trucks and the Demag Shovel. But now, Marcopper is asserting that the deed of chattel mortgage on these equipment was executed for a consideration that did not materialize and RCBC should have released the mortgage. It is now too late for respondent to contradict its previous judicial admissions in the prior proceedings of the case. It would appear that in Marcopper's attempt to seek reversal of the Court's Decision, it is in effect changing its theory of the case. Well-settled is the rule that a party is not allowed to change the theory of the case or the cause of action on appeal.[18] We have

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[16] *Tan v. Rodil Enterprises*, G.R. No. 168071, December 18, 2006, 511 SCRA 162, 183.

[17] *Pascual v. Ramos*, G.R. No. 144712, July 4, 2002, 384 SCRA 105, 113.

[18] *Tokuda v. Gonzales*, G.R. No. 139628, May 5, 2006, 489 SCRA 549, 554-555.

consistently rejected the pernicious practice of shifting to a new theory on appeal in the hope of a favorable result.[19] Issues not raised in the court *a quo* cannot be raised for the first time on appeal because to do so would be offensive to the basic rules of justice and fair play.[20] Matters, theories or arguments not brought out in the proceedings below will not ordinarily be considered by a reviewing court as they cannot be raised for the first time on appeal.[21]

We have thoroughly reviewed the records of the case and we find no reason to change our previous ruling that there was no agreement for RCBC to execute a partial release of mortgage and pledge. It bears stressing that even the Court of Appeals observed that "details as to the partial release of the collaterals were not indicated in the letters exchanged between the parties." Nevertheless, the appellate court gave credence to the testimony of Marcopper's President, Atty. Teodulo Gabor, to show that RCBC agreed to such release through Mr. Jun Rojas. Our own review of the testimonies of the officers of Marcopper does not convince us that the RCBC acceded to the partial release of mortgage and pledge. Thus, we quote the portion of Atty. Gabor's testimony on cross-examination:

x x x x x x x x x

Q Now, you made mention in your testimony of an agreement on the part of the defendant to release an alleged agreement to release the pledge on the shares?

A Yes, sir.

Q When was this agreement made?

x x x x x x x x x

A: More or less around July 1997.

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[19] *Big AA Manufacturer v. Antonio*, G.R. No. 160854, March 3, 2006, 484 SCRA 33, 43.

[20] *Silva v. Mationg*, G.R. No. 160174, August 28, 2006, 499 SCRA 724, 737.

[21] *City of Baguio v. Niño*, G.R. No. 161811, April 12, 2006, 487 SCRA 216, 226-227.

Q: Who made this commitment to release the mortgage and the pledge on the part of RCBC?
A: ***It was RCBC according to our chairman of the board.***

Q: And in other words you don't know who in RCBC made this supposed commitment?
A: A certain Filadelfo Rojas something like that. A Senior Vice President of RCBC.

Q: Were you present when this supposed commitment was made?
A: No, sir.

x x x x x x x x x

Q: [And you] confirm that you were not present when this supposed commitment was made?
A: Yes, sir.

Q: And you will admit that this supposed commitment is not in writing?
A: Yes, sir.

x x x x x x x x x

Q: And you described this letter as the letter [(referring to the letter dated July 1, 1997)] confirming the agreement between the plaintiff and the defendant regarding the restructuring of the loan?
A: No. It was a proposal presented by Marcopper to RCBC on how our obligation with the bank will be paid.

Q: Yes and you will agree that this Exh. "E" does not contain the supposed commitment to release the mortgage and the pledge?
A: Yes, sir. This letter *ha*.

x x x x x x x x x

Q: And you will agree with me that again there is no mention of the supposed commitment to release the deed of mortgage and the pledge?
A: In this particular letter, Exh. "F" yes.

Q: There is none?
A: None.

Q: In fact, there is no, as you said there is no written document confirming your testimony that there was a commitment on the part of RCBC to release the securities?

A: In the subsequent letters sent by RCBC to Marcopper they actually agreed to release the trucks, demag shovel, the club shares but now with new conditions.[22] (Emphasis supplied.)

The foregoing fail to convince us that RCBC made a commitment to release Marcopper's mortgage on the six Rig Trucks, the Excavator Shovel, and the pledge on the club shares. On cross-examination, Atty. Gabor admitted that he was not present when the alleged commitment from RCBC on the release of the mortgage was made and he learned of said agreement only from the report of Marcopper Treasurer Nicanor Escalante. We also note that the July 8, 1997 letter bearing the conformity of RCBC officials refers to the repayment scheme proposed by Marcopper; that is, the assignment to RCBC of the Forbes Park property and the execution of two Promissory Notes. However, no mention was made of the partial release of the mortgage. There is nothing to indicate with certainty that the assignment of the Forbes Park property was conditioned upon the *partial* release of the mortgage. On the contrary, when RCBC signed the deed of assignment, it expressly agreed to release the mortgage and pledge on the express condition that Marcopper would pay the Promissory Notes which have become due. Needless to say, Marcopper can legally compel RCBC to execute a partial release of the mortgage only if it can present any evidence that RCBC had, indeed, acceded to a partial release of the mortgage and pledge upon Marcopper's assignment of the Forbes Park property in its favor.

Yet, Joost Pekelharing, the Chairman of Marcopper, cannot identify exactly who, among the representatives of RCBC, made the alleged commitment to release the mortgage and pledge. He testified in this manner:

Q: Who from RCBC made a commitment to release the equipment?

x x x x x x x x x

A: I think, 3 or 4 people from RCBC present there. I'm not sure who it was, but I think, the lawyer. But, I am not sure.

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[22] TSN, January 18, 2000, pp. 794-798.

Q: The lawyer?
A: I am not sure.

Q: It wasn't Mr. Roxas who made a commitment?
A: I believe he was definitely one who was very active during that time.

Q: Yes, but it was him who made the commitment from RCBC?
A: I really don't recall. I only know for sure that June Roxas was very active in the discussion. So most likely it was June Roxas.

x x x x x x x x x

Q: …[A]lright, yes. Now, as Chairman, you sign the Deed of Assignment over the Forbes Park property, [right]?
A: Yes.

Q: Do you recall the, more or less, …no. In this Deed of Assignment, does it contain the supposed condition to release the equipment?
A: No.

Q: In fact, this alleged agreement to release is not in writing?
A: Right.[23]

Notwithstanding, another witness for Marcopper, Mr. Bernardino, also claims that RCBC preferred to acquire the Forbes Park property in exchange for the release of the mortgage on the six Rig Trucks and the Demag Shovel.

The testimonies of Marcopper's officers do not suffice to support respondent's claim that RCBC agreed to partially release the mortgage on the subject properties. While the records show that Marcopper offered to assign its property in favor of RCBC by way of *dacion,* there appears to be no arrangement for the partial release of mortgage on the six (6) Rig Haul Trucks as a consequence of such *dacion*. In this case, RCBC accepted the assignment of the Forbes Park property as partial payment of Marcopper's loan but RCBC also made it clear that the subject mortgage shall be released only after Marcopper pays the non-negotiable promissory notes which have become due. For an

[23] TSN, June 20, 2000, pp. 838-841.

offer to be binding, the acceptance must be absolute, and if qualified, the acceptance would merely constitute a counter-offer. Where there is only a proposal and a counter-proposal that did not add up to a final arrangement, there is no meeting of the minds between the parties. Thus, absent any clear right on the part of Marcopper to compel RCBC to execute the partial release of mortgage and pledge, its action must fail.

WHEREFORE, respondent's Motion for Reconsideration of the Court's Decision dated September 12, 2008 is *DENIED* for lack of merit.

SO ORDERED.

Carpio,[*] *Chico-Nazario,*[**] *Brion,* and *Abad, JJ.,* concur.

THIRD DIVISION

[G.R. No. 172925. October 30, 2009]

GOVERNMENT SERVICE INSURANCE SYSTEM, *petitioner, vs.* **JAIME K. IBARRA,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT SERVICE INSURANCE SYSTEM; PERMANENT PARTIAL DISABILITY BENEFITS; COMPUTATION OF "AVERAGE MONTHLY COMPENSATION" ON THE BASIS OF R.A. No. 8291, OTHERWISE KNOWN AS "THE GOVERNMENT SERVICE INSURANCE SYSTEM ACT OF 1997", WHICH AMENDED P.D. No. 1146; SUPERSEDES THE ₱3,000.00

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[*] Additional member per Special Order No. 757.

[**] Additional member per Special Order No. 759.

CEILING UNDER THE OLD PROVISION; CASE AT BAR.— Petitioner's reliance on the said erstwhile provisions of Presidential Decree No. 1146 is erroneous, if not made in utter bad faith. Petitioner could not have possibly been unaware of Republic Act No. 8291, otherwise known as "The Government Service Insurance System Act of 1997," which amended Presidential Decree No. 1146, Section 2 of which provides for a definition of the Average Monthly Compensation which does not carry with it the ₱3,000.00 ceiling under the old provision x x x Accordingly, this Court reiterates its order for petitioner to pay respondent permanent partial disability benefits for the maximum period of twenty-five (25) months, computed on the basis of Section 2 of Republic Act No. 8291.

APPEARANCES OF COUNSEL

Chief Legal Counsel (GSIS) for petitioner.

R E S O L U T I O N

CHICO-NAZARIO, *J.*:

This is to address further incidents in the instant case proceeding from the Resolution of this Court dated 18 June 2009 ordering petitioner Government Service Insurance System (GSIS) (1) to pay respondent Jaime K. Ibarra permanent partial disability benefits for the **maximum period of twenty-five (25) months**, subject only to the deduction of previous partial payments of said benefits and the set-off of Ibarra's outstanding and unpaid loans with the GSIS; and (2) to submit to this Court, within ninety (90) days from its receipt of this Resolution, proof of compliance with the above directive.

On 24 July 2009, petitioner filed its Manifestation claiming that it had already complied with the directive to pay respondent permanent partial disability benefits for the **maximum period of twenty-five (25) months** when it remitted to respondent the amount of ₱77,274.50. According to petitioner, this amount is

the equivalent of 25 multiplied by the monthly income benefit of ₱3,090.98 to which respondent is entitled. This amount was computed on the basis of Rule VI of the Amended Rules on Employees' Compensation, as follows:

> **SECTION 9.** ***Monthly income benefit.***
>
> (a) x x x
>
> (b) In the case of the GSIS, the monthly income benefit shall be the **basic monthly pension as defined in PD 1146 plus twenty percent thereof**, but shall not be less than ₱250, nor more than the actual salary at the time of contingency. (ECC Resolution No. 2799, July 25, 1984). (Emphasis supplied.)

Under Presidential Decree No. 1146, the basic monthly pension is computed as follows:

> **Section 9.** *Computation of Basic Monthly Pension.*
>
> (a) The basic monthly pension is equal to:
>
> (1) thirty-seven and one-half percent of the **revalued average monthly compensation**; plus
>
> (2) two and one-half percent of said **revalued average monthly compensation** for each year of service in excess of fifteen years: *Provided*, That, the basic monthly pension shall not exceed ninety percent of the average monthly compensation.
>
> (b) The basic monthly pension may be adjusted upon the recommendation of the President and General Manager of the System and approved by the President of the Philippines accordance with the rules and regulations prescribed by the System. (Emphases supplied.)

In computing the **revalued average monthly compensation** referred to above, petitioner relied on the definition in Section 2 of Presidential Decree No. 1146, which **previously** provided:

> **Section 2.** *Definition of Terms.* - Unless the context otherwise indicates, the following terms shall mean:
>
> x x x x x x x x x

> (k) *Average monthly compensation* – the quotient after dividing the aggregate compensations received by the member for the last three years immediately preceding his death/ separation/disability/ retirement, by the number of months he received said compensation, **or three thousand pesos, which ever is smaller**;
>
> (l) *Revalued average monthly compensation* – an amount equal to one hundred seventy percent of the first two hundred pesos of the average monthly compensation plus one hundred percent of the average monthly compensation in excess of two hundred pesos. (Emphasis supplied.)

Applying the above provisions, particularly the ceiling of ₱3,000.00 stated in Section 2(k) of Presidential Decree No. 1146, respondent's revalued average monthly compensation was computed to be only ₱3,140.00, despite the fact that his basic salary according to the records was already ₱33,773.36.

Petitioner's reliance on the said erstwhile provisions of Presidential Decree No. 1146 is erroneous, if not made in utter bad faith. Petitioner could not have possibly been unaware of Republic Act No. 8291, otherwise known as "The Government Service Insurance System Act of 1997," which amended Presidential Decree No. 1146, Section 2 of which provides for a definition of the Average Monthly Compensation which does not carry with it the ₱3,000.00 ceiling under the old provision:

> (l) *Average Monthly Compensation (AMC)* — The quotient arrived at after dividing the aggregate compensation received by the member during his last thirty-six (36) months of service preceding his separation/retirement/disability/death by thirty-six (36), or by the number of months he received such compensation if he has less than thirty-six (36) months of service: *Provided*, That the average monthly compensation shall in no case exceed the amount and rate as may be respectively set by the Board under the rules and regulations implementing this Act as determined by the actuary of the GSIS: *Provided, further*, That initially the average monthly compensation shall not exceed Ten thousand pesos (₱10,000.00), and premium shall be nine percent (9%) and twelve percent (12%) for employee and employer covering the AMC limit and below and two percent

(2%) and twelve percent (12%) for employee and employer covering the compensation above the AMC limit;

(m) *Revalued average monthly compensation* — An amount equal to one hundred seventy percent (170%) of the first One thousand pesos (₱1,000.00) of the average monthly compensation plus one hundred percent (100%) of the average monthly compensation in excess of One thousand pesos (₱1,000.00).

Accordingly, this Court reiterates its order for petitioner to pay respondent permanent partial disability benefits for the maximum period of twenty-five (25) months, computed on the basis of Section 2 of Republic Act No. 8291.

IN VIEW OF THE FOREGOING, the Court hereby resolves to: (1) *ORDER* the GSIS to *PAY* Ibarra permanent partial disability benefits for the maximum period of twenty-five (25) months, computed on the basis of Section 2 of Republic Act No. 8291, subject to deductions of amounts already paid; and (2) further *ORDER* the GSIS to *SUBMIT* to this Court, within ninety (90) days from its receipt of this Resolution, proof of compliance with the directives herein.

SO ORDERED.

Quisumbing,[*] *Carpio (Chairperson), Peralta,* and *Abad,*[**] *JJ.,* concur.

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[*] Per Special Order No. 755, dated 12 October 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Leonardo A. Quisumbing to replace Associate Justice Antonio Eduardo B. Nachura, who is on official leave.

[**] Per Special Order No. 753, dated 12 October 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Roberto A. Abad to replace Associate Justice Presbitero J. Velasco, Jr., who is on official leave.

SECOND DIVISION

[G.R. No. 174642. October 30, 2009]

DOMINADOR C. VILLA, *petitioner, vs.* **GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS), represented herein by ANGELINA A. PATINO, in her capacity as Field Office Manager, GSIS, Dinalupihan, Bataan Branch, and/or WINSTON F. GARCIA, President and General Manager, GSIS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; COURTS; CONTEMPT OF COURT, DEFINED.— Contempt of court is defiance of court authority that tends to degrade the dignity of the court and bring the administration of the law into disrespect, or an act that interferes with or prejudices parties-litigants or their witnesses during litigation thereby impeding the administration of justice. It is also defined as the disobedience to the Court by acting in opposition to its authority, justice, and dignity, and signifies a willful disregard or disobedience of the court's orders; it is conduct that tends to bring the authority of the court and the administration of law into disrepute or otherwise impedes the administration of justice.

2. ID.; ID.; ID.; POWER OF CONTEMPT TO BE USED SPARINGLY AND ONLY IN DEFENSIVE SPIRIT.— The power of contempt is a very powerful weapon, as the court determines for itself whether its authority, dignity and effectiveness in the administration of justice have been prejudicially affected. Thus, the rule is to use this power sparingly and only in the defensive and preservative spirit. Yet, the Court will not hesitate and has never hesitated to wield its power where the contumacious conduct exhibited by a person or entity is patently and clearly derogatory to the authority of the courts in their sworn duties.

3. ID.; ID.; JUDGMENTS; CONTEMPT OF COURT; DOCTRINE OF IMMUTABILITY OF JUDGMENT APPLIED TO FINAL DECISION.— Under the doctrine of immutability of judgment,

a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land. Any act which violates this principle must immediately be struck down.

4. ID.; ID.; ID.; ID.; ID.; EXCEPTIONS.— The only exceptions to this rule are: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.

5. ID.; ID.; ID.; ID.; ID.; ACTS CONSTITUTING INDIRECT CONTEMPT; EFFORTS SUPERFICIAL IN CHARACTER TO GIVE APPEARANCE OF COMPLIANCE; CASE AT BAR.— The GSIS exerted "efforts" on three occasions to pay the petitioner's claim, namely: The first attempt was made on February 8, 2007 when the GSIS sent the petitioner a check in the amount of ₱292,165.38, computed from December 28, 1996 (the date of the petitioner's retirement), less deductions in the amount of ₱20,759.85. The petitioner returned the check because of the wrong computation of his awarded benefits; these should have been computed on the basis of RA 8291, not on the basis of PD 1146 and its amendments. A reading of the CA decision we affirmed shows the application of RA 8291 as the basis in granting the petitioner permanent total disability benefits. Hence, the petitioner is correct that his disability benefit should be computed under the terms of RA 8291.The second GSIS attempt to settle the claim was made on February 23, 2007 through a letter written by Field Office Manager Angelina A. Patino addressed to the petitioner informing him that his disability retirement proceeds under RA 8291 as of November 3, 2006 arrived at zero-net proceeds. The last attempt was made on July 30, 2007, when the GSIS sent the petitioner a check in the amount of ₱49,722.58 representing his permanent total disability retirement benefit. x x x [The court finds] these GSIS efforts superficial in character; they were mere gestures, done without sincerity and good faith

and simply to give the appearance of compliance with our Resolutions of March 31, 2004 and June 23, 2004 in G.R. No. 161807.

6. ID.; ID.; ID.; ID.; ID.; DILATORY TACTICS CONSTITUTING INDIRECT CONTEMPT; CASE AT BAR.— To trace back the GSIS efforts at compliance, the records show that we referred the case to the ECC for implementation and action through Resolution of June 20, 2005 which we issued based on a motion duly made. ECC Executive Director Elmor D. Juridico in turn referred the matter on July 20, 2005 to the GSIS, the institution bound to pay the petitioner's disability benefits. x x x GSIS received Juridico's referral letter on July 27, 2005. Thus, on that day, GSIS was already on notice of the directive to pay the petitioner's permanent total disability benefit as provided in the CA decision. x x x It is not lost on us that more than a year has passed since the issuance of the ECC letter and the order directing the issuance of a *writ* of execution before GSIS acted on our directive to pay considering it was only on February 8, 2007 that a check representing payment of the petitioner's disability retirement benefit was issued and given to him. It is not also lost on us that even up to this time, or after the lapse of more than two (2) years since GSIS made the tender of the third check, the petitioner is still waiting for the execution of our rulings in G.R. No. 161807. Otherwise stated, more than four (4) years have passed since the finality of our decision in G.R. No. 161807 and the petitioner is still waiting for its implementation. To further view this case from the perspective of time, it has been 12 long years since the GSIS first acted on the petitioner's claim for disability

7. ID.; ID.; ID.; ID.; ID.; LACK OF SINCERITY AND GOOD FAITH OF GSIS IN CASE AT BAR.— We cannot see any sincerity or good faith in GSIS' handling of the implementation of our final resolutions and the CA decision. We note that by way of reply to the contempt charges against it, the GSIS could only submit measly pleadings simply stating that it had tried to pay the petitioner his permanent total disability retirement benefits. Notably, these GSIS pleadings did not even disclose all its moves and the developments in executing our rulings. The *Manifestation* and *Reply to Comment on*

Manifestation that GSIS submitted only referred to the first instance that it tried to settle its obligation to the petitioner. GSIS never formally disclosed its two other attempts to send "payments" to the petitioner. The pleadings also show that GSIS did not provide the petitioner any computation showing compliance with the Resolutions of this Court and the CA decision. x x x A very disturbing aspect of this case, once more affecting GSIS' sincerity and good faith, is the allegation relating to the actions of GSIS Field Office Manager Patino that GSIS completely failed to rebut. It is disturbing because it reveals a devious scheme GSIS employed to minimize – and even totally deprive – the petitioner of benefits rightfully due him. x x x We observe, too, that Section 16 of RA 8291 clearly states that a GSIS member under permanent and total disability shall receive benefits **from the date of disability**, subject only to exceptions that GSIS never claimed in this case. Respondent Patino's apparent manipulation of this provision to negate the petitioner's claim and the silence of GSIS when faced with the petitioner's allegations are further indications to us of its lack of sincerity and good faith in complying with our Resolutions and the CA decision.

8. ID.; ID.; ID.; ID.; ID.; ID.; ERRONEOUS COMPUTATIONS SHOWING LACK OF SINCERITY; CASE AT BAR.— We are also at a loss how GSIS could have made repeated errors in the computation of the petitioner's benefits when all the data necessary for computation are in its possession and, hence, readily available to it. Even some degree of error should not have resulted in the long delay in the payment of the petitioner's claim. To be sure, great strides in achieving clarity would have been attained if GSIS had only exhibited transparency and good faith by duly informing the petitioner, in its second and third attempts at payment, of the basis and itemization of its computations of the benefits due him.

9. ID.; ID.; ID.; ID.; ID.; ID.; ID.; FINDINGS OF INDIRECT CONTEMPT; CASE AT BAR.— Based on all these considerations, we cannot avoid the conclusion that the GSIS never had the genuine intention to implement in good faith the final rulings of this Court in G.R. No. 161807. Its dilatory and superficial acts in complying with the clear and unequivocal terms of the Court's Resolutions and the CA decision and in

dealing with the petitioner cannot but be defiance of the authority of this Court impeding the prompt and orderly resolution and termination of this case; for these reasons, they are contumacious acts constitutive of indirect contempt of court.

10. ID.; ID.; INDIRECT CONTEMPT OF COURT; PROPER PENALTY; CASE AT BAR.— Section 7 of Rule 71 of the Rules of Court provides that if the respondent is adjudged guilty of indirect contempt committed against a Regional Trial Court or a court of equivalent or *higher rank*, he may be punished by a fine not exceeding ₱30,000.00 or imprisonment not exceeding six months, or both. Under the circumstances, we find the imposition of the maximum fine of ₱30,000.00 to be justified. We find it fitting, too, to warn the GSIS and its respondent officials that we shall not allow any further equivocation and delay in the implementation of our final and executory Resolutions, the final decision of the CA, and of this Decision, and any further act of indirect contempt in the execution of this Decision shall merit very serious consequences that will not exclude the penalty of imprisonment for the officials or parties engaging in contumacious acts.

11. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT SERVICE INSURANCE SYSTEM; CONCERN OF GOVERNMENT FOR WELFARE OF GOVERNMENT WORKERS.— We close these discussions by stressing the abiding concern that the government and its institutions should have for the welfare of the government workers, especially the humble rank-and-file, whose patience, industry and dedication to duty have often gone unheralded, but who plod on dutifully with very little recognition in performing their appointed tasks. This concern justifies the sympathy of the law toward social security beneficiaries and an interpretation of utmost liberality in their favor. This sympathy extends to court judgments awarding social security benefits to government workers. Considerations of fairness and justice, too, require that these awards be immediately executed according to their terms upon finality. In the present case, the petitioner has long been entitled to secure the benefits that would assist him in his disability; he should not be made to wait any longer.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Chief Legal Counsel (GSIS) for respondents.

D E C I S I O N

BRION, *J.*:

This is a petition for contempt under Rule 71 of the Revised Rules of Civil Procedure filed by Dominador C. Villa (*petitioner*) to cite the Government Service Insurance System (*GSIS*) for indirect contempt for its failure to implement the Resolutions dated March 31, 2004 and June 23, 2004 of the Supreme Court issued in G.R. No. 161807, entitled *Government Service Insurance System v. Dominador C. Villa.* The Court ordered the GSIS in this case to pay the petitioner his permanent total disability benefit under Republic Act No. 8291 (*RA 8291*, or the Government Insurance Act of 1997). The petitioner also seeks the issuance of a new *writ* of execution to enforce the above-stated Resolutions of the Court.

The Factual Antecedents

The petitioner was a Municipal Agrarian Reform Officer of Hermosa, Bataan who filed a claim for compensation benefits under Presidential Decree (*PD*) No. 626, as amended (the Employees Compensation Act), after suffering from a succession of illnesses. On December 28, 1996, he was admitted to the Philippine Heart Center for fever and headache, associated with productive cough and changes in sensorium. On January 11, 1997, he was diagnosed to be suffering from TB meningitis, lichen simplez chronicus, and sensori-neural hearing loss. On April 24, 1997, the petitioner was again confined in the hospital due to mastoiditis with otegenic meningitis.

The GSIS initially denied the petitioner's claim; on reconsideration however, it granted the petitioner his temporary total disability benefits within a period of ninety (90) days counted from December 28, 1996, and another sixty (60) days counted from April 24, 1997.

Not satisfied with the action taken by the GSIS and believing that his condition constituted permanent total disability, the petitioner asked for the conversion of his disability status to permanent total disability. The GSIS denied his request for two reasons: *first*, the petitioner's condition did not satisfy the criteria for permanent total disability; and *second*, his ailment, sensori-neural hearing loss, is not a work-connected disease, being merely secondary to meningitis.

The petitioner appealed the GSIS' denial to the Employees Compensation Commission (*ECC*) which fully supported the GSIS' ruling. The ECC ruled that the petitioner's ailment of TB meningitis did not meet the criteria for permanent total disability.

From the ECC, the petitioner sought recourse with the Court of Appeals (*CA*) *via* a petition for review under Rule 43. The CA reversed the rulings of the GSIS and the ECC and held that the petitioner is entitled to the conversion of his disability status to permanent total disability, thus entitling him to permanent total disability benefits.[1] The CA ruled:

> As certified by Dr. J. Carlos P. Reyes, petitioner Villa has developed bilateral profound sensori-neural hearing loss as a complication of TB Meningitis. Despite appropriate medications, no significant improvement in his hearing capabilities was observed… From this information, we could deduce that his recovery from such condition is medically remote. Being totally derpived of his sense of hearing, petitioner was rendered incapable of performing his usual duties and responsibilities as a MARO, which duties included conducting ocular inspections in far-flung areas, and of course, interacting with people in connection with his job.

The CA reasoned out that the definition of temporary total disability under Section 2(t) of RA 8291 is one that "accrues or arises when the impaired physical and/or mental faculties can be rehabilitated or restored to their normal functions." The CA

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[1] Penned by Associate Justice Eloy Bello, Jr. (retired) with Associate Justice Cancio C. Garcia (retired Member of this Court) and Associate Justice Mariano del Castillo (now a Member of this Court), concurring.

observed that the petitioner's physical impairment continued to persist despite the medical attention given, thus negating the temporary nature of his total disability.

The CA also relied on Section 2, Rule 7 of the Amended Rules on Employees Compensation, which defined permanent total disability as the condition when the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days as a result of the injury or sickness. In this regard, the CA noted that the petitioner was awarded a total number of 150 days of temporary total disability benefits.

The GSIS elevated the CA decision to this Court for review (docketed as G.R. No. 161807) *via* a petition for review on *certiorari* under Rule 45. By Resolution dated March 31, 2004, the Court denied the petition considering the issues raised were factual; at the same time, the GSIS also failed to show any reversible error committed by the CA. The Court subsequently denied GSIS' motion for reconsideration in its Resolution of June 23, 2004. **These Resolutions became final and executory per Entry of Judgment of the Resolution dated March 31, 2004 on August 12, 2004.**

On April 21, 2005, the petitioner filed, in G.R. No. 161807, a *Motion to Remand Case Folder with Motion for Issuance of a Writ of Execution* of the Resolution dated March 31, 2004. The Court resolved to refer to the *court of origin for appropriate action the* [petitioner's] *motion … praying that a writ of execution be issued in this case*.[2] On September 1, 2005, the Judgment Division of the Court wrote the Executive Director of ECC referring the above motion of the petitioner.[3] ECC, in turn, indorsed the said motion and the entire original records of the case to the GSIS and requested compliance with the final decision in the case within fifteen (15) days from receipt.[4] The GSIS indorsed this request to the Vice-President, Area I of GSIS for

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[2] Resolution dated June 20, 2005.

[3] *Rollo* of G.R. No. 161807, p. 82.

[4] *Rollo*, p. 86.

his appropriate action and enclosing therewith the entire records of the case, the decision of the CA (in CA-G.R. SP No. 60517), the entry of judgment in G.R. No. 161807, and the order dated July 20, 2005 directing the issuance of a *writ* of execution to pay the petitioner.[5]

On May 15, 2006, the petitioner wrote the Court Administrator a letter complaining of the failure of GSIS to execute the Resolutions of March 31, 2004 and June 23, 2004. In a 1st Indorsement dated May 30, 2006, the Office of the Court Administrator indorsed the petitioner's letter to the Public Attorney's Office (*PAO*) for appropriate action. In compliance therewith, the PAO filed the present petition for indirect contempt under Rule 71 of the Rules of Court.[6]

The Petition

The petitioner claims in this petition that the GSIS refused to comply with the decision of the Court in G.R. No. 161807 on the view that the decision is wrong. The petitioner also accuses the GSIS of resorting to schemes to delay, if not avoid, in paying him the permanent total disability benefits due him. The petitioner posits that this refusal on the part of GSIS constitutes disobedience or resistance to a lawful judgment of the Court that is contumacious conduct under Section 3 (b) and (d) of Rule 71. The petitioner likewise posits that GSIS' conduct obstructs and degrades the administration of justice.

GSIS denies the petitioner's allegations and asserts that it had undertaken efforts to pay the claim. GSIS also asserts that it issued a check payable to the petitioner on February 8, 2007, which the petitioner returned for some "unfathomable reasons." GSIS also argues that the return of the check should be deemed compliance with its legal obligation to pay the petitioner's claim in accordance with applicable laws.

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[5] *Id.*, p. 87.

[6] *Id.*, p. 10.

The Issue

The petition presents to us the issue of whether the acts of the GSIS in executing the final and executory judgment of the Court in G.R. No. 161807 constituted contumacious conduct punishable as indirect contempt.

The Court's Ruling

We find the petition meritorious.

Contempt of court is defiance of court authority that tends to degrade the dignity of the court and bring the administration of the law into disrespect, or an act that interferes with or prejudices parties-litigants or their witnesses during litigation thereby impeding the administration of justice.[7] It is also defined as the disobedience to the Court by acting in opposition to its authority, justice, and dignity, and signifies a willful disregard or disobedience of the court's orders; it is conduct that tends to bring the authority of the court and the administration of law into disrepute or otherwise impedes the administration of justice.[8]

The power of contempt is a very powerful weapon, as the court determines for itself whether its authority, dignity and effectiveness in the administration of justice have been prejudicially affected. Thus, the rule is to use this power sparingly and only in the defensive and preservative spirit. Yet, the Court will not hesitate and has never hesitated to wield its power where the contumacious conduct exhibited by a person or entity is patently and clearly derogatory to the authority of the courts in their sworn duties. It is with these thoughts that we decide the issue before us.

We start our consideration of the case by examining the premise that should underlie the execution of every court judgment – *i.e.*, the finality of the judgment under execution.

The records clearly show that the Resolutions of March 31, 2004 and June 23, 2004 of this Court in G.R. No. 161807,

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[7] See: *Regalado v. Go*, G.R. No. 167988, February 6, 2007**,** 514 SCRA 616.

[8] *Id.*, p. 627.

affirming the CA decision granting the petitioner permanent total disability benefits, have long become final and executory. Entry of judgment has in fact been made.

At this point, the doctrine of immutability of judgment became fully operational. Under this doctrine, a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land.[9] Any act which violates this principle must immediately be struck down. The only exceptions to this rule are: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.[10] In the absence of any effective invocation of these exceptions – and none has so been made in this case – the judgment of the court must be implemented according to its terms.

Thus, at this point, it is not for any party, certainly not for GSIS, to say that it will implement the judgment in a manner *it deems correct* under its reading of the applicable law.

The records show that GSIS tried to pay the petitioner his permanent total disability retirement benefit on three separate occasions, all in the year 2007.[11]

The first attempt was made on February 8, 2007 when the GSIS sent the petitioner a check in the amount of ₱292,165.38, computed from December 28, 1996 (the date of the petitioner's retirement), less deductions in the amount of ₱20,759.85. The petitioner returned the check because of the wrong computation of his awarded benefits; these should have been computed on

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

[10] *Heirs of Tuballa v. Cabrera*, G.R. No. 179104, February 29, 2008, 547 SCRA 289.

[11] *Rollo*, pp. 98-99, 112-113 and 117.

the basis of RA 8291, not on the basis of PD 1146 and its amendments.[12] A reading of the CA decision we affirmed shows the application of RA 8291 as the basis in granting the petitioner permanent total disability benefits. Hence, the petitioner is correct that his disability benefit should be computed under the terms of RA 8291.

The second GSIS attempt to settle the claim was made on February 23, 2007 through a letter written by Field Office Manager Angelina A. Patino[13] addressed to the petitioner informing him that his disability retirement proceeds under RA 8291 as of November 3, 2006 arrived at zero-net proceeds.

The last attempt was made on July 30, 2007, when the GSIS sent the petitioner a check in the amount of ₱49,722.58 representing his permanent total disability retirement benefit.

To trace back the GSIS efforts at compliance, the records show that we referred the case to the ECC for implementation and action through Resolution of June 20, 2005 which we issued based on a motion duly made. ECC Executive Director Elmor D. Juridico in turn referred the matter on July 20, 2005 to the GSIS, the institution bound to pay the petitioner's disability benefits. The ECC letter of July 20, 2005 states:

> We are remanding to you the entire original records of the case of ***MR. DOMINADOR C. VILLA*** *versus* ***GOVERNMENT SERVICE INSURANCE SYSTEM***, together with the copy of the Decision of Court of Appeals… Entry of Judgment issued by the Supreme Court … dated August 12, 2004 and the order dated July 20, 2005 directing issuance of *writ* of execution to pay the petitioner.[14]

GSIS received Juridico's referral letter on July 27, 2005. Thus, on that day, GSIS was already on notice of the directive to pay the petitioner's permanent total disability benefit as provided in the CA decision.

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[12] Government Service Insurance Act of 1977.

[13] Also referred to as "Patiño" in the records.

[14] *Rollo*, p. 86.

While GSIS exerted "efforts" on three occasions to pay the petitioner's claim, we find these GSIS efforts superficial in character; they were mere gestures, done without sincerity and good faith and simply to give the appearance of compliance with our Resolutions of March 31, 2004 and June 23, 2004 in G.R. No. 161807.

1. The Time Element. It is not lost on us that more than a year has passed since the issuance of the ECC letter and the order directing the issuance of a *writ* of execution before GSIS acted on our directive to pay considering it was only on February 8, 2007 that a check representing payment of the petitioner's disability retirement benefit was issued and given to him. It is not also lost on us that even up to this time, or after the lapse of more than two (2) years since GSIS made the tender of the third check, the petitioner is still waiting for the execution of our rulings in G.R. No. 161807. Otherwise stated, more than four (4) years have passed since the finality of our decision in G.R. No. 161807 and the petitioner is still waiting for its implementation. To further view this case from the perspective of time, it has been 12 long years since the GSIS first acted on the petitioner's claim for disability.

2. Sincerity and Good Faith. We cannot see any sincerity or good faith in GSIS' handling of the implementation of our final resolutions and the CA decision.

We note that by way of reply to the contempt charges against it, the GSIS could only submit measly pleadings simply stating that it had tried to pay the petitioner his permanent total disability retirement benefits. Notably, these GSIS pleadings did not even disclose all its moves and the developments in executing our rulings.

The *Manifestation*[15] and *Reply to Comment on Manifestation*[16] that GSIS submitted only referred to the first instance that it tried to settle its obligation to the petitioner. GSIS never formally

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[15] *Id.*, pp. 94-95.

[16] *Id.*, pp. 125-126.

disclosed its two other attempts to send "payments" to the petitioner. The pleadings also show that GSIS did not provide the petitioner any computation showing compliance with the Resolutions of this Court and the CA decision. Given these non-disclosures, we can only surmise that GSIS did not want this Court to know of its arbitrary actions in satisfying the petitioner's permanent total disability retirement benefits. They indicate to us, too, GSIS's lack of sincerity and good faith in settling the judgment against it and in dealing with this Court.

A very disturbing aspect of this case, once more affecting GSIS' sincerity and good faith, is the allegation relating to the actions of GSIS Field Office Manager Patino that GSIS completely failed to rebut. It is disturbing because it reveals a devious scheme GSIS employed to minimize – and even totally deprive – the petitioner of benefits rightfully due him. The records show that in a letter dated May 9, 2007 sent by the petitioner to Patino, the petitioner claimed:

> In our meeting in your office sometime on October 2006 … it was you who even advised me to give the date November 3, 2006. Before you gave this date, Mrs. Carmelita Pelaez asked you to give the date that will be beneficial to me so that my claim for retirement benefits may already be processed. Now, you are using this date, November 3, 2006 that you supplied, to decide that I am entitled to nothing since I retired only on this date?
>
> You know very well that I have filed a claim for **total temporary disability on January 7, 1998 and later permanent total disability on November 25, 1999** which mean that I have not been capacitated to work since these dates, and these facts were adjudicated and passed upon by the **Honorable Supreme Court with finality**… now you have found your way **to circumvent the decision of the Honorable Supreme Court by simply leading me to say that I retired on November 3, 2006?**[17] [Emphasis his]

thus, directly alleging that a GSIS officer herself led the petitioner to submit data that would have effectively resulted in negating the disability benefits that the courts have confirmed to be due

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[17] *Id.*, p. 120.

him. We observe, too, that Section 16 of RA 8291 clearly states that a GSIS member under permanent and total disability shall receive benefits **from the date of disability**, subject only to exceptions that GSIS never claimed in this case. Respondent Patino's apparent manipulation of this provision to negate the petitioner's claim and the silence of GSIS when faced with the petitioner's allegations are further indications to us of its lack of sincerity and good faith in complying with our Resolutions and the CA decision.

3. Erroneous Computations. We are also at a loss how GSIS could have made repeated errors in the computation of the petitioner's benefits when all the data necessary for computation are in its possession and, hence, readily available to it. Even some degree of error should not have resulted in the long delay in the payment of the petitioner's claim. To be sure, great strides in achieving clarity would have been attained if GSIS had only exhibited transparency and good faith by duly informing the petitioner, in its second and third attempts at payment, of the basis and itemization of its computations of the benefits due him.

CONCLUSION

Based on all these considerations, we cannot avoid the conclusion that the GSIS never had the genuine intention to implement in good faith the final rulings of this Court in G.R. No. 161807. Its dilatory and superficial acts in complying with the clear and unequivocal terms of the Court's Resolutions and the CA decision and in dealing with the petitioner cannot but be defiance of the authority of this Court impeding the prompt and orderly resolution and termination of this case;[18] for these reasons, they are contumacious acts constitutive of indirect contempt of court.

Section 7 of Rule 71 of the Rules of Court provides that if the respondent is adjudged guilty of indirect contempt committed

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[18] *Limbona v. Judge Lee*, G.R. No. 173290, November 20, 2006, 507 SCRA 452.

against a Regional Trial Court or a court of equivalent or *higher rank*, he may be punished by a fine not exceeding ₱30,000.00 or imprisonment not exceeding six months, or both.

Under the circumstances, we find the imposition of the maximum fine of ₱30,000.00 to be justified. We find it fitting, too, to warn the GSIS and its respondent officials that we shall not allow any further equivocation and delay in the implementation of our final and executory Resolutions, the final decision of the CA, and of this Decision, and any further act of indirect contempt in the execution of this Decision shall merit very serious consequences that will not exclude the penalty of imprisonment for the officials or parties engaging in contumacious acts.

We close these discussions by stressing the abiding concern that the government and its institutions should have for the welfare of the government workers, especially the humble rank-and-file, whose patience, industry and dedication to duty have often gone unheralded, but who plod on dutifully with very little recognition in performing their appointed tasks.[19] This concern justifies the sympathy of the law toward social security beneficiaries and an interpretation of utmost liberality in their favor.[20] This sympathy extends to court judgments awarding social security benefits to government workers. Considerations of fairness and justice, too, require that these awards be immediately executed according to their terms upon finality. In the present case, the petitioner has long been entitled to secure the benefits that would assist him in his disability; he should not be made to wait any longer.

WHEREFORE, premises considered, the petition for indirect contempt is *GRANTED*. The Government Service Insurance System is found guilty of *INDIRECT CONTEMPT* and is hereby *ORDERED* to pay a *FINE* in the amount of Thirty Thousand Pesos (₱30,000.00).

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[19] *Government Service Insurance System v. Court of Appeals*, G.R. No. 132648, March 4, 1999, 304 SCRA 243.

[20] *Id.*, p. 251.

The Government Service Insurance System is further *ORDERED* to pay **DOMINADOR C. VILLA** the permanent total disability benefits he is entitled to under this Court's Resolutions of March 31, 2004 and June 23, 2004 issued in G.R. No. 161807 in relation with CA-G.R. SP No. 60517, and to provide him the corresponding computations on how the amount of these benefits was arrived at.

The Government Service Insurance System is further *DIRECTED* to *SUBMIT* a **REPORT** to this Court of its compliance with the above directives within a non-extendible period of sixty (60) days from receipt of this Decision. The Government Service Insurance System and the respondent officials are further *WARNED* that the failure to strictly comply with the terms of this Decision shall be regarded as continuing indirect contempt of this Court that shall merit additional and more serious penalties.

SO ORDERED.

Quisumbing (Chairperson), Carpio,[*] *Chico-Nazario,*[**] and *Abad, JJ.,* concur.

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[*] Designated additional Member of the Second Division effective October 19 to 28, 2009, per Special Order No. 757 dated October 12, 2009.

[**] Designated additional Member of the Second Division effective October 26 to 30, 2009, per Special Order No. 759 dated October 12, 2009.

SECOND DIVISION

[G.R. No. 174859. October 30, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOFER TABLANG,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; WHEN COMMITTED.— Rape is defined and penalized under Article 335 of the Revised Penal Code, as amended. x x x For the charge of rape to prosper, the prosecution must prove that (1) the offender had **carnal knowledge of a woman**, (2) through force or intimidation, or when she was **deprived of reason** or otherwise unconscious, or when she was under 12 years of age or was demented.

2. ID.; ID.; CARNAL KNOWLEDGE OF A WOMAN WHO IS A MENTAL RETARDATE IS RAPE; CASE AT BAR.— Carnal knowledge of a woman who is a mental retardate is rape; as she is in the same class as a woman deprived of reason or otherwise unconscious. Proof of force or intimidation is not necessary when the victim is a mental retardate, as she is not capable of giving consent to a sexual act. What needs to be proven are the facts of sexual congress between the accused and the victim, and the latter's mental retardation. x x x In the case at bar, a judicious consideration of the evidence will show that the mental condition of the victim was sufficiently established. Dr. Labay testified that he conducted a mental status examination on AAA and found her to be suffering from "mild mental retardation, with mental age between 9-12 years of age." Dr. Labay's diagnosis was corroborated by the Psychological Report of Dr. Belen which showed that AAA's mental age was between 9-12 years old, and that AAA's mental capacity belongs to the Mild Mental Retardation range. The sum total of these testimonial and documentary pieces of evidence proves beyond doubt that the victim was mental retardate at the time she was raped by the appellant. We note that even the defense did not dispute her mental retardation. Thus, we agree with the lower court's findings that AAA was suffering from a mild retardation.

In *People v. Orbita*, we held that carnal knowledge of a woman who is so weak in intellect to the extent that she is incapable of giving consent constitutes rape.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; MENTAL RETARDATE'S RAPE CHARGE AGAINST ACCUSED DESERVES UTMOST CREDIT; CASE AT BAR.— Given the victim's mental condition, we find it highly improbable that she had simply concocted or fabricated the rape charge against the accused. Nor do we find it likely that she was coached into testifying against appellant considering her limited intellect. In her mental state, only a very startling event would leave a lasting impression on her so that she would be able to recall it later when asked.

4. ID.; ID.; ID.; TRIAL JUDGE'S ASSESSMENT ACCORDED GREAT RESPECT BY COURT, ESPECIALLY WHEN IT HAS BEEN SUSTAINED BY THE COURT OF APPEALS.— As we have repeatedly ruled, we accord the trial judge's assessment of the credibility of witnesses great respect in the absence of any attendant grave abuse of discretion; the trial court had the advantage of actually examining both real and testimonial pieces of evidence, including the demeanor of the witnesses, and is in the best position to rule on the matter. The rule finds an even greater application when the trial court's findings are sustained by the CA. In the present case, we see no reason to depart from the trial court's assessment of AAA's testimony.

5. ID.; ID.; ID.; MENTAL RETARDATE OR FEEBLE-MINDED PERSON MAY QUALIFY AS A COMPETENT WITNESS IF SHE CAN PERCEIVE AND, PERCEIVING, CAN MAKE KNOWN HER PERCEPTION TO OTHERS.— Even a mental retardate or feeble-minded person qualifies as a competent witness if she can perceive and, perceiving, can make known her perception to others.

6. CRIMINAL LAW; RAPE; RUPTURE OF THE HYMEN IS NOT AN ESSENTIAL ELEMENT OF RAPE; CASE AT BAR.— The absence of fresh lacerations does not negate sexual intercourse. In fact, rupture of the hymen is not essential as the mere introduction of the male organ in the *labia majora* of the victim's genitalia consummates the

crime. In the present case, AAA might have had difficulty in describing the particular part of her vagina that was actually touched. What is required for a consummated crime of rape, however, is the mere touching of the *labia* by the penis; AAA even went beyond this minimum requirement as she testified that the appellant's penis was *inserted* into her vagina.

7. ID.; ID.; PROPER PENALTY; CASE AT BAR.— The applicable provision of the Revised Penal Code covering the crime of Rape is Article 335, as amended, which provides that when the woman is under twelve years of age or is demented, the crime of rape shall be punished by *reclusion perpetua*. Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death. The information specifically alleged the use of a bladed weapon in the commission of the rape. The prosecution duly proved this allegation from the testimonies of AAA and Francisco. Under Article 335 quoted above, the use of a deadly weapon qualifies the rape so that the imposable penalty is *reclusion perpetua* to death. Since *reclusion perpetua* and death are two indivisible penalties, Article 63 of the Revised Penal Code applies; when there are neither mitigating nor aggravating circumstances in the commission of a deed, as in this case, the lesser penalty shall be applied. The lower courts were therefore correct in imposing the penalty of *reclusion perpetua* on the appellant.

8. ID.; ID.; ID.; PROPER CIVIL INDEMNITY; CASE AT BAR.— The award of civil indemnity to the rape victim is mandatory upon the finding that rape took place. Thus, we affirm the award of ₱50,000.00 as civil indemnity to the victim. The victim is likewise entitled to moral damages without need of proof; from the nature of the crime we can assume that she has suffered moral injuries entitling her to such award. Pursuant to current jurisprudence, we affirm as correct the award of ₱50,000.00 as moral damages.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Hugo B. Sansano, Jr. for accused-appellant.

D E C I S I O N

BRION, *J.*:

We review in this appeal the July 19, 2006 decision[1] of the Court of Appeals (*CA*) in CA G.R. CR-HC No. 00428, affirming *in toto* the April 21, 2004 decision[2] of the Regional Trial Court (*RTC*), Branch 33, Guimba, Nueva Ecija. The RTC decision found appellant Jofer Tablang (*appellant*) guilty beyond reasonable doubt of the crime of rape, and sentenced him to suffer the penalty of *reclusion perpetua*.

ANTECEDENT FACTS

The prosecution charged the appellant before the RTC with the crime of rape under an Information that reads:

x x x x x x x x x

That on or about the 21st day of March 1997 in the evening, at *Barangay* Matindeg, Cuyapo, Nueva Ecija and within the jurisdiction of this Honorable Court, the said accused with lewd design armed with a bladed weapon, and with violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with one [*AAA*][3] against her will who is a mentally retarded girl.

CONTRARY TO LAW.[4]

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[1] Penned by Associate Justice Rosmari D. Carandang, and concurred in by Associate Justice Renato C. Dacudao and Associate Justice Monina Arevalo-Zenarosa; *rollo*, pp. 2-26.

[2] Penned by Judge Ismael P. Casabar.

[3] The Court shall withhold the real name of the victim-survivor and shall use fictitious initials instead to represent her. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed. (*People v. Cabalquinto,* G.R. No. 167693, September 19, 2006, 502 SCRA 419, 425-426, citing Sec. 40, Rule on Violence Against Women and their Children; Sec. 63, Rule XI, Rules and Regulations Implementing Republic Act No. 9262, Otherwise Known as the "Anti-Violence Against Women and their Children Act of 2004.")

[4] Records, p. 18.

The appellant pleaded not guilty to the charge.[5] The prosecution presented the following witnesses in the trial on the merits that followed: Dr. Cristina D. Peñanueva (*Dr. Peñanueva*); Francisco Umipig (*Francisco*); Dr. Danilo L. Labay (*Dr. Labay*); and AAA. The appellant himself testified and presented his defense.

Dr. Peñanueva, an OB/GYN physician at the Paulino J. Garcia Memorial Research and Medical Center, testified that she examined AAA on March 22, 1997,[6] and had the following findings:

x x x x x x x x x

INTERNAL EXAMINATION: hymen had healed laceration at 1, 4, 7, 9 and 11 o'clock position with superimposed abrasions superficial at 3 o'clock positions;

Vagina admits one and two fingers with ease; cervix is firm, uterus is small.

Adnexae, negative.

Preg. Test negative[7]

On cross examination, Dr. Peñanueva stated that she found no abrasions on AAA's body; and maintained that the healed lacerations could have been caused by a penis.[8]

Francisco testified that he has been a resident of *Barangay* Matindeg, Cuyapo, Nueva Ecija for 10 years. He recalled that at around 11:00 p.m. of March 21, 1997, he was in bed in his house when his dog started barking. He went out to pacify his dog, as well as to check if someone had entered his hut located 50 meters from his house.[9] He approached his hut and called out if anyone was inside. The appellant came out, holding a knife. Francisco asked the appellant if someone else was in the

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[5] *Id.*, pp. 37-40.

[6] TSN, July 3, 2000, p. 3.

[7] *Id.*, p. 4.

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

[9] TSN, August 7, 2000, p. 2.

hut and the latter answered in the negative.[10] Francisco then told the appellant to go home. Suddenly, AAA emerged from the hut, ran to and crawled under the fence.[11]

On cross examination, Francisco maintained that the appellant was armed with a knife when he came out of the hut.[12] AAA ran away while he and appellant were talking.[13] He advised the appellant – after the latter pleaded to him not to report the incident – to go home and to meet him the next day.[14] Francisco also confirmed that he executed a sworn statement before the police on March 27, 1997.[15]

On further cross examination, Francisco admitted that AAA is his relative. He also recalled that AAA was putting on her panty as she came out of the hut.[16]

Dr. Labay, Medical Officer III at the National Center for Mental Health (NCMH), narrated that he conducted a psychological examination on AAA on June 23, 2000 and found that she suffered from moderate level of mental retardation, with a mental age of a person between 9-12 years old.[17] Dr. Labay recalled that AAA could identify her rapist, but could not elaborate on the incident.[18]

On cross examination, Dr. Labay stated that he examined AAA upon the orders of the RTC. He explained that he continued the examination started by the hospital's Chief Forensic Psychiatrist, Dr. Isagani Gonzales (*Dr. Gonzales*); Dr. Rowena

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[10] *Id.*, p. 3.

[11] *Id.*, pp. 4-5.

[12] TSN, September 11, 2000, p. 4.

[13] *Id.*, pp. 4-5.

[14] *Id.*, pp. 7-8.

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

[16] TSN, December 11, 2000, pp. 3-4.

[17] TSN, February 26, 2001, p. 5.

[18] *Id.*, p. 8.

R. Belen (*Dr. Belen*) likewise conducted a separate psychiatric evaluation on the victim.[19] Dr. Labay also recalled that AAA became teary-eyed while being asked about the rape.[20]

AAA declared on the witness stand that the appellant had raped her. When asked to elaborate, she explained that the appellant removed her clothes and shorts and poked a knife at her. The appellant removed her panty, held her hands, and then inserted his penis into her vagina. She cried but did not shout because she was afraid.[21] She maintained that she did not give her consent to the appellant's act of inserting his penis into her private part.[22]

AAA further stated that she resides in Curpa, Cuyapo, Nueva Ecija together with her mother Juanita and three cousins.[23] She slipped out of their house in the evening of March 21, 1997 to attend a wake in *Barangay* Matindeg. She was accompanied by Raymundo Fernando and a girl whose name she could not recall. After attending the wake, they met Francisco's daughter, Gene, at a store in *Barangay* Matindeg. Gene invited them to go to her father's hut.[24] On their way there, they met the appellant whose house was located near the store; the appellant went with them to the hut.[25] When they arrived, AAA and the appellant went inside the hut while their companions left. She did not disclose to Francisco what happened when the latter came because she was afraid; instead, she ran away.[26]

The appellant was the sole defense witness and gave a different version of the events. He narrated that at around 9 p.m. of

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[19] *Id.*, pp. 9-10.

[20] *Id.*, p. 12.

[21] TSN, April 23, 2001, pp. 3-5; TSN, January 23, 2002, pp. 2-3.

[22] TSN, January 23, 2002, p. 3.

[23] *Id.*, p. 4.

[24] TSN, February 6, 2002, pp. 4-6.

[25] *Id.*, pp. 6-7.

[26] *Id.*, p. 8.

March 21, 1997, he asked permission from his grandmother to attend the wake of Luis Macabontoc, a barriomate in *Barangay* Matindeg. He watched a card game while at the wake.[27] Afterwards, Mary Jane Umipig (*Mary Jane*) invited him to her father's hut to eat *arrozcaldo*. The appellant, Mary Jane, and three others – Jupit Castillo, Junior Castillo, and a certain Ollie – all went to the hut. AAA and Francisco were already there when they arrived.[28] As he entered the hut, Francisco – who was holding a bolo – shouted at him and accused him of raping AAA. Mary Jane ran away.[29] The appellant maintained that he was just in the hut to eat *arrozcaldo*, but Francisco cornered him.[30] The appellant pleaded with Francisco to allow him to leave; Francisco acceded but ordered him to go to the *barangay* the next day. The appellant did not go to the *barangay* because no invitation had been given for his appearance there. He learned after seven days that he had been charged of rape.[31]

On cross examination, the appellant explained that he was in *Barangay* Matindeg because he was vacationing in the house of his grandparents. In the evening of March 21, 1997, he was at the wake of Luis Macabontoc when Mary Jane invited him to go to the hut. They went to the hut together with Jupit, Junior, and Ollie. When they entered the hut, Francisco and AAA were already there.[32] Francisco ran amuck ("*nagwala*") and accused him of raping AAA. Francisco told him that he should answer for what he did to AAA.[33]

The RTC convicted the appellant of the crime of rape in its decision dated April 21, 2004 whose dispositive portion provides:

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[27] TSN, February 5, 2003, p. 3.

[28] *Id.*, pp. 3-4.

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

[30] *Id.*, p. 7.

[31] *Id.*, pp. 8-9.

[32] TSN, March 3, 2004, pp. 1-2.

[33] *Id.*, p. 3.

WHEREFORE, finding the accused guilty beyond reasonable doubt of the offense charged, this Court hereby sentences him to *reclusion perpetua* and to pay [AAA]:

1. ₱50,000.00 civil indemnity; and

2. ₱50,000.00 in moral damages.

SO ORDERED.[34]

The records of the case were originally transmitted to this Court on appeal. Pursuant to our ruling in *People v. Mateo*,[35] we endorsed the case and the records to the CA for appropriate action.

The CA, in its decision of July 19, 2006, affirmed the RTC decision *in toto*. The CA held that AAA testified in a spontaneous and categorical manner; her testimony likewise survived the defense's grueling cross examination. The appellate court also found no ill-motive on the part of AAA to testify falsely, and held that it was improbable for a young woman (with a mental age of 9-12 years old) to fabricate a story of rape that would subject her and her family to humiliation had she not truly been subjected to sexual abuse.

The CA added that the inconsistencies in AAA's statements were not unusual because of her mild mental retardation. These inconsistencies, too, referred only to minor or trivial matters whose presence gave AAA's statements added credibility, as it showed that she had not been coached nor had her testimony been rehearsed.

The CA further held that the presence of deep healed (instead of fresh) lacerations does not negate the fact of rape as the slightest penetration of the male organ is sufficient to consummate the crime of rape. It added that the absence of signs of struggle does not also negate rape, and explained that physical resistance does not need to be established when force and intimidation were brought to bear on the victim who submitted herself to the rapist's bestial desire out of fear for her life.

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[34] CA *rollo*, p. 17.

[35] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 656.

In his brief,[36] the appellant argues that the lower courts erred in convicting him despite the prosecution's failure to prove his guilt beyond reasonable doubt. He contends that the trial court erred in giving credence to AAA's incredible testimony.

THE COURT'S RULING

We ***deny*** the appeal for lack of merit.

Sufficiency of the Prosecution Evidence

Rape is defined and penalized under Article 335[37] of the Revised Penal Code, as amended,[38] which provides:

> ARTICLE 335. *When and how rape is committed*. – Rape is committed by having carnal knowledge of a woman under any of the following circumstances.
>
> 1. By using force or intimidation;
> 2. When the woman is deprived of reason or otherwise unconscious; and
> 3. When the woman is under twelve years of age or is demented.
>
> x x x x x x x x x

Thus, for the charge of rape to prosper, the prosecution must prove that (1) the offender had **carnal knowledge of a woman**, (2) through force or intimidation, or when she was **deprived of reason** or otherwise unconscious, or when she was under 12 years of age or was demented. Carnal knowledge of a woman who is a mental retardate is rape;[39] as she is in the same class

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[36] CA *rollo*, pp. 22-40; *rollo*, pp. 22-24.

[37] The crime subject of Criminal Case No. 1492-G was committed in March 1997, or before Article 335 of the Revised Penal Code, as amended, was repealed by Republic Act No. 8353, or the Anti-Rape Law of 1997, which took effect on October 22, 1997.

[38] Amended by Republic Act No. 7659, entitled An Act to Impose the Death Penalty on Heinous Crimes Amending for that Purpose the Revised Penal Code, as Amended, Other Special Laws, and for Other Purposes, which took effect on December 31, 1993.

[39] *People v. Dela Paz*, G.R. No. 177294, February 19, 2008, 546 SCRA 363.

as a woman deprived of reason or otherwise unconscious.[40] Proof of force or intimidation is not necessary when the victim is a mental retardate, as she is not capable of giving consent to a sexual act. What needs to be proven are the facts of sexual congress between the accused and the victim, and the latter's mental retardation.[41]

In the present case, the prosecution established the elements of rape under Article 335 of the Revised Penal Code, as amended. *First*, AAA positively identified the appellant as her rapist; she was certain and never wavered in her identification. To directly quote from the records:

FISCAL FLORO FLORENDO

Q: Do you know a person by the name of Jofer Tablang?

[*AAA*]

A: Yes, sir.

Q: Can you identify him?

A: Yes, sir.

Q: Would you like to get out [*sic*] of this room and see if he is present?

(**Witness pointed to a man seated on the left side of the Court wearing yellow t-shirt and maong pants when asked his name answered Jofer Tablang**).

Q: Do you still remember what Jofer Tablang did to you?

A: Yes, sir.

Q: Will you please tell this Honorable Court what did he do to you?

A: ***"Ni-rape nya ako."***

x x x x x x x x x

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[40] See *People v. Pagsanjan*, G.R. No. 139694, December 27, 2002, 394 SCRA 414.

[41] See *People v. Dela Paz, supra*.

Q: **By the term *"ni-rape nya ako"* what do you mean?**

A: ***Ginalaw nya ako.*** He removed my clothes.

Q: Who removed your clothes?

A: He was the one, sir.

Q: What is the name of the person who removed your clothes?

A: Jofer Tablang, sir.

Q: After Jofer Tablang removed your clothes, what did he do next?

A: He removed my shorts, sir.

x x x x x x x x x

Q: After Jofer Tablang removed your shorts, what did he do next if there was any?

A: He poked me a knife, sir. [*sic*]

x x x x x x x x x

Q: Now, when he pointed a knife at you, did he do anything else?

A: I shouted, sir.

Q: Why did you shout?

A: I was afraid, sir.

x x x x x x x x x[42]

Q: **You said that you were raped by Jofer Tablang when I asked you what you mean by being raped and you said *ginalaw nya ako,* were you raped at that same incident when Jofer removed you shorts?**

A: Yes, sir.

Q: How did he do that or how were you abused?

A: He laid me down sir, and he removed my panty.

Q: After removing your panty, what did he do next?

A: He held my hands, sir.

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[42] TSN, April 23, 2001, pp. 3-5.

Q: And then?

A: I cried, sir.

x x x x x x x x x

Q: Do you have a private organ?

A: There is, sir. [*sic*]

Q: Do you know where is that? Will you please point to your private organ?

(Witness is glancing and slightly pointing to the place where her private organ is located).

Q: **Will you please tell this Honorable Court what did the accused Jofer Tablang do with your private organ?**

x x x x x x x x x

A: **He inserted (*ipinasok*), sir.**

Q: **What did Jofer Tablang insert into your private organ?**

A: **His penis, sir.**

Q: **What did you do when he inserted his penis into your private organ?**

A: None, sir.

Q: You did not cry?

A: I cried, sir.

Q: You did not shout?

A: No, sir.

Q: Why did you not shout?

A: I was afraid, sir.

Q: Why were you afraid?

A: I was afraid because he was holding a knife, sir.

x x x x x x x x x

Q: **When Jofer Tablang inserted his penis into your private organ, did you give your consent?**

x x x x x x x x x

A: **No, sir.**[43] [*Emphasis ours*]

In asserting that the appellant raped her by inserting his penis into her private part, we note the trial court's observation that the victim broke down and cried on the witness stand while recalling her ordeal. These, to our mind, are stirring signs of the truth of her allegations. We additionally do not see from the records any indication that AAA's testimony should be seen in a suspicious light. Given the victim's mental condition, we find it highly improbable that she had simply concocted or fabricated the rape charge against the accused. Nor do we find it likely that she was coached into testifying against appellant considering her limited intellect. In her mental state, only a very startling event would leave a lasting impression on her so that she would be able to recall it later when asked.[44] As we explained in the similar case of *People v. Balatazo*:[45]

> Given the low I.Q. of the victim, it is impossible to believe that she could have fabricated her charges against appellant. She definitely lacked the gift of articulation and inventiveness. Even with intense coaching, assuming this happened as appellant insists that the victim's mother merely coached her on what to say in court, on the witness stand where she was alone, it would eventually show with her testimony falling into irretrievable pieces. But this did not happen. During her testimony, she proceeded, though with much difficulty, to describe the sexual assault in such a detailed manner. Certainly, the victim's testimony deserves utmost credit.

Second, a judicious consideration of the evidence will show that the mental condition of the victim was sufficiently established. Dr. Labay testified that he conducted a mental status examination on AAA and found her to be suffering from "mild mental

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[43] TSN, January 23, 2002, pp. 2-3.

[44] See *People v. Diunsay-Jalandoni*, G.R. No. 174277, February 8, 2007, 515 SCRA 227.

[45] G.R. No. 118027, January 29, 2004, 421 SCRA 298, citing *People v. Rosare*, 264 SCRA 398 (1996).

retardation, with mental age between 9-12 years of age." Dr. Labay's diagnosis was corroborated by the Psychological Report of Dr. Belen which showed that AAA's mental age was between 9-12 years old, and that AAA's mental capacity belongs to the Mild Mental Retardation range.

The sum total of these testimonial and documentary pieces of evidence proves beyond doubt that the victim was a mental retardate at the time she was raped by the appellant. We note that even the defense did not dispute her mental retardation. Thus, we agree with the lower court's findings that AAA was suffering from a mild mental retardation. In *People v. Orbita*,[46] we held that carnal knowledge of a woman who is so weak in intellect to the extent that she is incapable of giving consent constitutes rape.

The Appellant's Defenses

The appellant denied raping AAA and argues that the courts *a quo* erred in giving credence to the victim's vague testimony.

We do not find this defense meritorious.

As we have repeatedly ruled, we accord the trial judge's assessment of the credibility of witnesses great respect in the absence of any attendant grave abuse of discretion; the trial court had the advantage of actually examining both real and testimonial pieces of evidence, including the demeanor of the witnesses, and is in the best position to rule on the matter. The rule finds an even greater application when the trial court's findings are sustained by the CA. In the present case, we see no reason to depart from the trial court's assessment of AAA's testimony.[47]

As a mental retardate, the victim's testimony could not be expected to be flawless and precise as her quoted testimony shows. What is important, however, is that she was able to make known her perception and communicate her ordeal, albeit

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[46] G.R. No. 136591, July 11, 2002, 384 SCRA 393.

[47] *People v. Dela Paz, supra*.

with some difficulty, and positively identify her rapist. We see no basic contradiction in what the victim can and cannot do as a mental retardate. Dr. Labay categorically testified that AAA was capable of identifying her rapist, although she had difficulty elaborating the details of the rape.

Even a mental retardate or feeble-minded person qualifies as a competent witness if she can perceive and, perceiving, can make known her perception to others. In *People v. Maceda*,[48] we held that the mental unsoundness of the witness at the time of the event testified to affects only her credibility. As long as the witness can convey ideas by words or signs and gives sufficiently intelligent answers to the questions propounded, she is a competent witness even if she is a mental retardate. In *People v. Salomon*,[49] this Court held that "[a] mental retardate is not for this reason alone disqualified from being a witness. As in the case of other witnesses, acceptance of one's testimony depends on its nature and credibility." In *People v. Gerones*,[50] the Court allowed the victim to testify, even if she had the mental age of a 9 or 10-year old. Likewise, in *People v. Antonio*,[51] the Court allowed the testimony of a 24-year old woman who had the mental age of a seven-year old child, because the Court was convinced that "she was capable of perceiving and making her perception known."

The appellant also contends that Dr. Peñanueva's findings showing that AAA had healed, instead of fresh lacerations belie her claim of rape.

We do not find this argument persuasive.

The absence of fresh lacerations does not negate sexual intercourse. In fact, rupture of the hymen is not essential as the mere introduction of the male organ in the *labia majora* of the

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[48] G.R. No. 138805, February 28, 2001, 353 SCRA 228.

[49] G.R. No. 96848, January 21, 1994, 229 SCRA 403.

[50] G.R. No. 91116, January 24, 1991, 193 SCRA 263.

[51] G.R. No. 107950, June 17, 1994, 233 SCRA 283.

victim's genitalia consummates the crime.[52] In the present case, AAA might have had difficulty in describing the particular part of her vagina that was actually touched. What is required for a consummated crime of rape, however, is the mere touching of the *labia* by the penis; AAA even went beyond this minimum requirement as she testified that the appellant's penis was *inserted* into her vagina. Our ruling in *People v. Ortoa*[53] on this point is particularly instructive:

> **A freshly broken hymen is not an essential element of rape. Even the fact that the hymen of the victim was still intact does not rule out the possibility of rape. Research in medicine even points out that negative findings are of no significance, since the hymen may not be torn despite repeated coitus**. In any case, for rape to be consummated, full penetration is not necessary. Penile invasion necessarily entails contact with the *labia*. It suffices that there is proof of the entrance of the male organ into the *labia* of the *pudendum* of the female organ. Penetration of the penis by entry into the lips of the vagina, even without rupture or laceration of the hymen, is enough to justify a conviction for rape. [*Emphasis supplied*]

In sum, we find no merit in the appellant's denial. It is settled that denial is an inherently weak defense. It cannot prevail over positive identification, unless supported by evidence of lack of guilt. In this case, the appellant's mere denial cannot overcome the victim's positive declaration that she had been raped and the appellant was her rapist.

The Proper Penalty

The applicable provision of the Revised Penal Code covering the crime of Rape is Article 335, as amended, which provides that when the woman is under twelve years of age or is demented, the crime of rape shall be punished by *reclusion perpetua*. Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

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[52] See *People v. Almacin*, G.R. No. 113253, February 19, 1999, 303 SCRA 399.

[53] G.R. No. 174484, February 23, 2009.

The Information specifically alleged the use of a bladed weapon in the commission of the rape. The prosecution duly proved this allegation from the testimonies of AAA and Francisco. Under Article 335 quoted above, the use of a deadly weapon qualifies the rape so that the imposable penalty is *reclusion perpetua* to death. Since *reclusion perpetua* and death are two indivisible penalties, Article 63 of the Revised Penal Code applies; when there are neither mitigating nor aggravating circumstances in the commission of a deed, as in this case, the lesser penalty shall be applied. The lower courts were therefore correct in imposing the penalty of *reclusion perpetua* on the appellant.

Proper Indemnity

The award of civil indemnity to the rape victim is mandatory upon the finding that rape took place. Thus, we affirm the award of ₱50,000.00 as civil indemnity to the victim.[54]

The victim is likewise entitled to moral damages without need of proof; from the nature of the crime we can assume that she has suffered moral injuries entitling her to such award. Pursuant to current jurisprudence, we affirm as correct the award of ₱50,000.00 as moral damages.[55]

WHEREFORE, premises considered, we *AFFIRM* the July 19, 2006 decision of the Court of Appeals in CA G.R. CR-HC No. 00428 *in toto*.

Costs against appellant Jofer Tablang.

SO ORDERED.

Quisumbing (Chairperson), Carpio,[*] *Chico-Nazario,*[**] and *Abad, JJ.,* concur.

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[54] See *People v. Jumawid*, G.R. No. 184756, June 5, 2009.

[55] See *People v. Baldo*, G.R. No. 175238, February 24, 2009.

[*] Designated additional Member of the Second Division in lieu of Associate Justice Mariano C. Del Castillo, per Special Order No. 757 dated October 12, 2009.

[**] Designated additional Member of the Second Division in lieu of Associate Justice Conchita Carpio Morales, per Special Order No. 759 dated October 12, 2009.

SECOND DIVISION

[G.R. No. 176863. October 30, 2009]

GREGORIO DESTREZA, *petitioner, vs.* **ATTY. MA. GRACIA RIÑOZA-PLAZO and MA. FE ALARAS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PUBLIC DOCUMENTS; NOTARIZATION; SUBMISSION OF NOTARIAL REPORT, NOT MATERIAL; ACT OF SWEARING BY AFFIANT BEFORE THE NOTARY PUBLIC AND THE NOTARY PUBLIC'S ACT OF SIGNING AND AFFIXING HIS SEAL ON THE DEED ARE MATERIAL.— It is the swearing of a person before the Notary Public and the latter's act of signing and affixing his seal on the deed that is material and not the submission of the notarial report. Parties who appear before a notary public to have their documents notarized should not be expected to follow up on the submission of the notarial reports. They should not be made to suffer the consequences of the negligence of the Notary Public in following the procedures prescribed by the Notarial Law.

2. ID.; ID.; ID.; ID.; ID.; ID.; PRESUMPTION OF DUE EXECUTION OF DEED.— No rule requires a party, who relies on a notarized deed of sale for establishing his ownership, to present further evidence of such deed's genuineness lest the presumption of its due execution be for naught. Under the rules of evidence, "Every instrument duly acknowledged or proved and certified as provided by law, may be presented in evidence without further proof, the certificate of acknowledgment being *prima facie* evidence of the execution of the instrument or document involved."

3. ID.; ID.; ID.; ID.; ID.; ID.; ID.; CLEAR AND CONVINCING EVIDENCE MUST BE PRESENTED TO OVERCOME PRESUMPTION.— An allegation of fraud with regard to the execution of a notarized deed of absolute sale is a grave allegation. It cannot be declared on mere speculations. In fact, to overcome the presumption of regularity and due execution

of a notarized deed, there must be clear and convincing evidence showing otherwise. The burden of proof to overcome the presumption lies on the one contesting the same. Without such evidence, the presumption remains undiminished.

4. CIVIL LAW; LAND REGISTRATION; PROPERTY REGISTRATION DECREE; PROCEDURE FOR CONVEYANCE OF REGISTERED LAND.— Section 57 of Presidential Decree No. 1529, the Property Registration Decree, provides that an owner who wants to convey his registered land shall execute and register a deed of conveyance in a form sufficient in law. The Register of Deeds shall then make out in the registration book a new certificate of title to the new owner and shall prepare and deliver to him an owner's duplicate certificate. The Register of Deeds shall note upon the original and duplicate certificate the date of transfer, the volume and page of the registration book in which the new certificate is registered and a reference by number to the last preceding certificate. The original and the owner's duplicate of the grantor's certificate shall be stamped "canceled."

5. ID.; ID.; ID.; ID.; REGISTRATION; OPERATIVE ACT TO CONVEY LAND INSOFAR AS THIRD PERSONS ARE CONCERNED.— Registration only serves as the operative act to convey or affect the land insofar as third persons are concerned. It does not add anything to the efficacy of the contract of sale between the buyer and the seller. In fact, if a deed is not registered, the deed will continue to operate as a contract between the parties.

APPEARANCES OF COUNSEL

Pedro N. Belmi for petitioner.
Ma. Gracia Riñoza-Plazo for respondents.

D E C I S I O N

ABAD, *J.*:

This is a petition for review under Rule 45 of the decision[1] and resolution[2] of the Court of Appeals that affirmed with modification the judgment of the Regional Trial Court (RTC)[3] of Nasugbu, Batangas, in the action for nullification of deed of absolute sale and the corresponding transfer certificate of title that respondents filed against petitioner.

The Facts and the Case

The evidence on record shows that on November 16, 1989 Pedro L. Riñoza (Riñoza) died,[4] leaving several heirs, which included respondents Ma. Gracia R. Plazo (Plazo)[5] and Ma. Fe R. Alaras (Alaras).[6]

In the course of settling Riñoza's estate, respondent Plazo wrote a letter[7] dated April 30, 1991 to the Registry of Deeds of Nasugbu, Batangas requesting for certified true copies of all titles in Riñoza's name, including a sugarland located at Barangay Utod, Nasugbu, Batangas covered by Transfer Certificate of Title (TCT) 40353. When she delivered the letter, Plazo also asked that she be shown the originals of the titles but they were not available. To inquire on the matter, she talked to the Register of Deeds, Atty. Alexander Bonuan. According to Bonuan, he had the titles in his personal files and there were no transactions involving them.[8]

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[1] *Rollo*, pp. 28-45; penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Aurora Santiago-Lagman.

[2] *Id.* at 46-49.

[3] Branch 14.

[4] Records, p. 566.

[5] Folder of Exhibits, p. F-41.

[6] *Id.* at F-46.

[7] *Id.* at F-9 to F-10.

[8] TSN, November 6, 1996, pp. 9-11.

On June 5, 1991 respondent Plazo wrote a letter to Bonuan, reiterating her request for copies of the titles. Since the latter was abroad, it was the acting Register of Deeds who granted her request and furnished her with certified true copies of the titles, except that of TCT 40353 which was missing.[9]

On the same day, in an effort to find TCT 40353, respondent Plazo found another title, TCT 55396, at the Assessor's Office covering the same Utod sugarland and canceling the missing TCT 40353. The new title, entered on July 18, 1989, was in the name of petitioner Gregorio M. Destreza and his wife Bernarda Butiong.

Respondent Plazo also went to the Bureau of Internal Revenue (BIR) of Batangas City to inquire on any record involving the sale of the Utod sugarland. But on August 15, 1991 the Revenue District Officer certified that the BIR's office did not have any record of sale of the sugarland covered by TCT 40353.[10]

Finally, respondent Alaras testified that on August 1, 1989, her late father, Riñoza, gave her the title of a land that he wanted to mortgage to her uncle. Riñoza told her that the land was about five hectares and was located at Barangay Utod, Nasugbu, Batangas. She did not, however, look at the number of the title. A week later, unable to secure a mortgage from her uncle, she returned the title to her father and never saw it again.[11]

Their discovery prodded respondents Plazo and Alaras to file a complaint[12] against the Destreza spouses and the Register of Deeds before the RTC of Nasugbu on December 26, 1991 and an amended complaint[13] on September 20, 1993. They claim serious irregularities in the issuance of TCT 55396 to petitioner Destreza. They asked, among others, that TCT 55396

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[9] *Id.* at 19-20.

[10] Folder of Exhibits, p. F-10.

[11] TSN, May 15, 1997, pp. 5-8.

[12] Records, pp. 1-26.

[13] *Id.* at 172-196.

be nullified, that TCT 40353 be restored, and that the Destrezas be ordered to reconvey the land to the Riñoza estate.

In his answer,[14] Register of Deeds Bonuan denied that TCT 40353 was missing since he had the title safe in his office and no transaction affecting it had been recorded. With regard to TCT 55396, he explained that the new title had not yet been released to the Destreza spouses because they were yet to submit certain required documents. Bonuan claimed that during his lifetime, the late Riñoza, asked him for a photocopy of TCT 55396. As a courtesy to the ex-mayor, Bonuan gave him a copy.

In compliance with the RTC's order, Bonuan gave the court certified copies of TCTs 40353[15] and 55396[16] as well as the duplicate original of the deed of absolute sale[17] dated June 15, 1989 between Riñoza and the Destreza spouses.

On the part of the Destreza spouses, petitioner Destreza testified that on June 16, 1989 he bought the Utod sugarland from Riñoza through Toribio Ogerio, a common *kumpadre*. He paid him ₱100,000.00.[18] Destreza did not get a copy of the deed of sale nor a receipt for the payment but Riñoza accompanied him to the Register of Deeds. After about a month, but not later than July 15, 1989, Destreza returned to the Register of Deeds and got a copy of TCT 55396 in his name.[19]

After the sale, petitioner Destreza immediately took possession of the land, plowing and planting on it even until the case was filed. No communication or demand letter from respondents Plazo and Alaras disturbed his occupation until he received the summons for suit.[20]

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[14] *Id.* at 546-548.

[15] *Id.* at 560-561.

[16] *Id.* at 559.

[17] *Id.* at 564.

[18] TSN, May 4, 1999, pp. 4-5.

[19] TSN, October 15, 1999, pp. 3-8.

[20] TSN, May 4, 1999, pp. 9-10.

The RTC found after hearing that TCT 55396 was yet inexistent on July 15, 1989 when petitioner Destreza claims he already received a copy from the Register of Deeds. It declared that the deed of sale between Riñoza and Destreza is not a public document for the failure of the notary public to submit his report to the RTC notarial section. Thus, the RTC found no basis for the cancellation of TCT 40353 and the issuance of TCT 55396 in the name of the Destreza spouses.[21]

The RTC nullified the Deed of Sale and TCT 55396 and ordered the Register of Deeds of Nasugbu, Batangas to restore TCT 40353 in the name of the late Riñoza. The trial court, however, ordered the estate of Riñoza to pay the Destreza spouses ₱60,000.00. And it ordered the latter to vacate and deliver possession of the Utod sugarland to respondents Plazo and Alaras, acting for Riñoza's estate, within five days from receipt of the payment mentioned.[22]

The Destreza spouses appealed[23] to the Court of Appeals (CA) in CA-G.R. CV 73031, contending that the notary public's failure to submit a copy of the instrument to the notarial section is not sufficient to nullify the deed of sale and TCT 55396. On October 31, 2006 the CA rendered a decision,[24] affirming with modification the October 1, 2001 Judgment[25] of the RTC. Although the CA found that the deed of sale may be presumed regularly executed despite the notary's failure to report the transaction to the RTC Notarial Section, Destrezas themselves destroyed such presumption when they failed to prove its authenticity and genuineness. Further, the Destrezas' claim that they paid Riñoza ₱100,000.00 when the price stated in the deed of sale was only ₱60,000.00 placed the veracity of the

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

[22] *Id.* at 83.

[23] *Id.* at 86-90.

[24] *Id.* at 28-45; penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Aurora Santiago-Lagman.

[25] *Id.* at 50-85; penned by Judge Antonio A. De Sagun.

deed in doubt.[26] Thus, the CA affirmed the RTC decision with the modification that Riñoza's estate did not have to pay any amount to the Destrezas.[27] The CA denied the latter's motion for reconsideration.[28]

Destreza seeks this Court's review of the decision and resolution of the CA. Destreza insists that (1) the presumption of due execution and authenticity of the notarized deed is not destroyed by their failure to present further witnesses and documents; (2) respondents Plazo and Alaras had the burden to prove the invalidity of the deed of sale; and (3) respondents' evidence failed to overcome the presumption of authenticity and due execution of the notarized deed of absolute sale executed by Riñoza.[29]

Issues

The core issue in this case is whether or not sufficient evidence warranted the nullification of the deed of sale that the late Riñoza executed in favor of the Destrezas.

Ruling

The CA held that the Destrezas could not just rely on the deed of sale in their favor or on the TCT issued in their names. They needed to present further evidence to prove the authenticity and genuineness of that deed. Having failed to do so, the CA theorized that it was justified in annulling that deed of sale and the corresponding TCT. Said the CA:

> Verily, the **sugarland deed** should have been admitted as evidence since, being a public document, it has in its favor the presumption of authenticity. Nevertheless, even though the same is presumed authentic still, the presumption may be rebutted by convincing evidence. The **Destreza Spouses**, on their own, destroyed this presumption. *We explain.*

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[26] *Id.* at 44.

[27] *Id.* at 45.

[28] *Id.* at 46-49.

[29] *Id.* at 13-14.

To strengthen their case, the **Destreza Spouses** could have presented as witnesses the notary public, the eyewitnesses to the signing of the sugarland deed, or an expert to prove the authenticity and genuineness of all the signatures appearing on the said instrument; they did not. Worse, in claiming that what they paid for the sugarland is one million pesos, and not six hundred thousand pesos (PhP600,000.00) as indicated in the deed, they, themselves, placed in doubt the veracity of the deed.[30]

Moreover, the **sugarland deed** was supposed to be executed in 1989. Yet, the **Destreza Spouses** failed to present any tax receipts or tax declarations in their names. As held by the Supreme Court, *tax receipts and declarations are prima facie proofs of ownership or possession of the property for which such taxes have been paid.* Not only did the **Destreza Spouses** fail to present any evidence to bolster their claim that they really paid the purchase price for the sugarland, but they even failed to explain what documents are lacking resulting to the non-release of TCT No. T-55396.

The above circumstances, coupled with the fact that the **Destreza Spouses** failed to present any proof showing payment of the purchase price, does not sit well with this Court. As previously stated, We find it hard to believe that one would not ask for, or keep, receipts for considerable amounts given. x x x.[31]

At the outset, the ruling of the CA was correct. Indeed, the notarized deed of sale should be admitted as evidence despite the failure of the Notary Public in submitting his notarial report to the notarial section of the RTC Manila. It is the swearing of a person before the Notary Public and the latter's act of signing and affixing his seal on the deed that is material and not the submission of the notarial report.

Parties who appear before a notary public to have their documents notarized should not be expected to follow up on

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[30] The Court of Appeals erroneously stated in its Decision that the values involved are one million pesos (PhP1,000,000.00) and six hundred thousand pesos (PhP600,000.00) when the actual value as verified from the records is one hundred thousand pesos (PhP 100,000.00) and sixty thousand pesos (PhP60,000.00), respectively.

[31] *Rollo,* pp. 43-44.

the submission of the notarial reports. They should not be made to suffer the consequences of the negligence of the Notary Public in following the procedures prescribed by the Notarial Law. Thus, the notarized deed of sale executed by Riñoza is admissible as evidence of the sale of the Utod sugarland to the Destrezas. Furthermore, it will be shown later that the Destrezas did not fabricate the sale of the Utod sugarland as may be suggested by the failure of the Notary Public to submit his notarial report because there are evidence which show that Riñoza really consented to the sale.

The CA, however, made a mistake with regard to the assignment of the burden of proof. No rule requires a party, who relies on a notarized deed of sale for establishing his ownership, to present further evidence of such deed's genuineness lest the presumption of its due execution be for naught. Under the rules of evidence, "Every instrument duly acknowledged or proved and certified as provided by law, may be presented in evidence without further proof, the certificate of acknowledgment being *prima facie* evidence of the execution of the instrument or document involved."[32]

Here, Atty. Crispulo Ducusin notarized the deed of sale that Riñoza acknowledged as his free act and deed on June 17, 1989. By signing and affixing his notarial seal on the deed, Atty. Ducusin converted it from a private document to a public document.[33] As such, the deed of sale is entitled to full faith and credit upon its face. And since Riñoza, the executor of the deed, is already dead, the notarized deed of absolute sale is the best evidence of his consent to the sale of the Utod sugarland to the Destreza spouses. Parenthetically, it is not disputed that the Destrezas immediately and openly occupied the land right after the sale and continuously cultivated it from then on.

The burden of proof is the duty of a party to present such amount of evidence on the facts in issue as the law deems

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[32] RULES OF COURT, Rule 132, Sec. 30.

[33] *Gonzales v. Ramos*, 499 Phil. 345, 350 (2005).

necessary for the establishment of his claim.[34] Here, since respondents Plazo and Alaras claim, despite the Destrezas' evidence of title over the property and open possession of it, that grave and serious doubts plague TCT 55396, the burden is on them to prove such claim. Only when they are successful in doing so will the court be justified in nullifying the notarized deed of sale that their father Riñoza executed in favor of the Destrezas.

But more than plausible evidence was required of Plazo and Alaras. An allegation of fraud with regard to the execution of a notarized deed of absolute sale is a grave allegation. It cannot be declared on mere speculations. In fact, to overcome the presumption of regularity and due execution of a notarized deed, there must be clear and convincing evidence showing otherwise. The burden of proof to overcome the presumption lies on the one contesting the same.[35] Without such evidence, the presumption remains undiminished.[36]

The Court's present task, therefore, is to determine if respondents Plazo and Alaras' evidence that their father did not sell the subject land to the Destrezas is clear and convincing.

1. Plazo and Alaras point out that Destreza's acquisition of a copy of TCT 55396 is questionable. Destreza said that he got a copy of the TCT on July 15, 1989 but such TCT was entered into the registry of title only on July 18, 1989. Moreover, Bonuan, the Register of Deeds, testified that he had not yet issued that TCT to the Destrezas because of some lacking documents. He did, however, say that he released a copy of it to ex-mayor Riñoza upon the latter's request.

These circumstances may appear perplexing but the problem is that they did not touch the validity of the deed of sale. And

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[34] RULES OF COURT, Rule 131, Sec. 1.

[35] *Dela Cruz v. Spouses Sison*, 492 Phil. 139, 146 (2005).

[36] *Ceballos v. Intestate Estate of the Late Emigdio Mercado*, G.R. No. 155856, May 28, 2004, 430 SCRA 323, 335.

it does not help that the trial did not really address them. Plazo and Alaras did not confront petitioner Gregorio Destreza regarding these circumstances when he took the witness stand. It would be pure speculation to declare that the Destrezas defrauded Riñoza based solely on them.

At any rate, Section 57 of Presidential Decree No. 1529, the Property Registration Decree, provides that an owner who wants to convey his registered land shall execute and register a deed of conveyance in a form sufficient in law. The Register of Deeds shall then make out in the registration book a new certificate of title to the new owner and shall prepare and deliver to him an owner's duplicate certificate. The Register of Deeds shall note upon the original and duplicate certificate the date of transfer, the volume and page of the registration book in which the new certificate is registered and a reference by number to the last preceding certificate. The original and the owner's duplicate of the grantor's certificate shall be stamped "canceled."

Here, the supposed irregularity lies in the release of a copy of the title to the Destrezas even before it had been entered into the books of the Register of Deeds. Furthermore, the Destrezas were able to acquire a copy of it when they still needed to submit some registration requirements. But the premature release of a copy of the registered title cannot affect the validity of the contract of sale between Riñoza and the Destrezas. Registration only serves as the operative act to convey or affect the land insofar as third persons are concerned. It does not add anything to the efficacy of the contract of sale between the buyer and the seller. In fact, if a deed is not registered, the deed will continue to operate as a contract between the parties.[37]

Furthermore, the declaration of Bonuan that he furnished ex-mayor Riñoza with a copy of TCT 55396 strengthens the case of the Destrezas. It shows that Riñoza knew of and gave consent to the sale of his Utod sugarland to them considering that he even helped facilitate the registration of the deed of

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[37] Presidential Decree No. 1529 (1978), Sec. 51.

sale. This negates any possible suggestion that the Destrezas merely fabricated the sale of the Utod sugarland on the evidence that the Notary Public failed to submit his notarial report. Whatever irregularity in registration may have been incurred, it did not affect the validity of the sale.

2. Alaras claims that on August 1, 1989, months after the sale of the Utod sugarland to the Destrezas, her father Riñoza asked her to mortgage some land. He gave Alaras the title to it, impressing on her that such title covered a land in Barangay Utod. But this does not prove that the sale of the Utod sugarland to the Destrezas is void. Alaras admitted that she did not see the number of the title handed to her. Nor did she identify in court any specific title as the one she got. To be of value to her cause, Alaras needed to testify that TCT 40353 remained uncancelled in her father's hands even after the supposed entry of TCT 55396 in the Registry of Deeds.[38] But she did not so testify.

3. Plazo and Alaras also question the testimony of Gregorio Destreza that he paid ₱100,000.00 to Riñoza when the figure appearing on the deed of sale was only ₱60,000.00. Again, this is not sufficient ground to nullify such deed. The fact remains that Riñoza sold his land to the Destrezas under that document and they paid for it. The explanation for the difference in the prices can be explained only by Riñoza and Gregorio Destreza. Unfortunately, Riñoza had died. On the other hand, Plazo and Alaras chose not to confront Destreza regarding that difference when the latter took the witness stand.

In sum, the Court finds the notarized deed of sale that the late Pedro Riñoza executed in favor of the Destrezas valid and binding upon them and their successors-in-interest. It served as authority to the Register of Deeds to register the conveyance of the property and issue a new title in favor of the Destrezas. That the Destrezas occupied and cultivated the land openly for seven years before and after Riñoza's death negates any scheme to steal the land.

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[38] TSN, May 15, 1997, pp. 5-8.

WHEREFORE, the appealed decision of the Court of Appeals in CA-G.R. CV 73031 is *REVERSED* and *SET ASIDE*. We declare the Deed of Sale valid and order the Registry of Deeds to register TCT 55396 in the name of spouses Gregorio M. Destreza and Bernarda E. Butiong and issue the same upon their compliance with the requirements of registration.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 177024. October 30, 2009]

THE HERITAGE HOTEL MANILA (OWNED AND OPERATED BY GRAND PLAZA HOTEL CORPORATION), *petitioner, vs.* **PINAG-ISANG GALING AT LAKAS NG MGA MANGGAGAWA SA HERITAGE MANILA (PIGLAS-HERITAGE),** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; COURT OF APPEALS; PETITIONS FILED WITH THE CA; ANNEXES ARE INSUFFICIENT; COURSES OF ACTION AVAILABLE.— As a general rule, petitions for *certiorari* that lack copies of essential pleadings and portions of the record may be dismissed but this rule has not been regarded as absolute. The omission may be cured. The Court of Appeals has three courses of action when the annexes to the petition

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[*] Designated as additional member in lieu of Associate Justice Mariano C. Del Castillo, per Special Order No. 757 dated October 12, 2009.

[**] Designated as additional member in lieu of Associate Justice Conchita Carpio Morales, per Special Order No. 759 dated October 12, 2009.

are insufficient. It may dismiss the petition, require the submission of the relevant documents, or order the filing of an amended petition with the required pleadings or documents. A petition lacking in essential pleadings or portions of the record may still be given due course, or reinstated if earlier dismissed, upon subsequent submission of the necessary documents or to serve the higher interest of justice.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; UNIONS; REGISTRATION; FRAUD IN REGISTRATION; ONCE PROVED, UNION ACQUIRES NONE OF THE RIGHTS ACCORDED TO REGISTERED ORGANIZATIONS. — The charge that a labor organization committed fraud and misrepresentation in securing its registration is a serious charge and deserves close scrutiny. It is serious because once such charge is proved, the labor union acquires none of the rights accorded to registered organizations. Consequently, charges of this nature should be clearly established by evidence and the surrounding circumstances.

3. ID.; ID.; ID.; ID.; WHEN REGISTRATION REQUIREMENTS DEEMED COMPLIED WITH.— For as long as the documents and signatures are shown to be genuine and regular and the constitution and by-laws democratically ratified, the union is deemed to have complied with registration requirements.

4. POLITICAL LAW; CONSTITUTIONAL LAW; RIGHT OF LABOR TO ORGANIZE; CASE AT BAR.— Notably, the bargaining unit that respondent PIGLAS union sought to represent consisted of 250 employees. Only 20 percent of this number or 50 employees were required to unionize. Here, the union more than complied with such requirement. Labor laws are liberally construed in favor of labor especially if doing so would affirm its constitutionally guaranteed right to self-organization. Here, the PIGLAS union's supporting documents reveal the unmistakable yearning of petitioner company's rank and file employees to organize. This yearning should not be frustrated by inconsequential technicalities.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez and Gatmaitan for petitioner.

Sentro ng Alternatibong Lingap Panligal (SALIGAN) for respondent.

D E C I S I O N

ABAD, *J.*:

This case is about a company's objections to the registration of its rank and file union for non-compliance with the requirements of its registration.

The Facts and the Case

Sometime in 2000, certain rank and file employees of petitioner Heritage Hotel Manila (petitioner company) formed the "Heritage Hotel Employees Union" (the HHE union). The Department of Labor and Employment-National Capital Region (DOLE-NCR) later issued a certificate of registration[1] to this union.

Subsequently, the HHE union filed a petition for certification election[2] that petitioner company opposed. The company alleged that the HHE union misrepresented itself to be an independent union, when it was, in truth, a local chapter of the National Union of Workers in Hotel and Restaurant and Allied Industries (NUWHRAIN). The company claimed that the HHE union intentionally omitted disclosure of its affiliation with NUWHRAIN because the company's supervisors union was already affiliated with it.[3] Thus, the company also filed a petition for the cancellation of the HHE union's registration certificate.[4]

Meanwhile, the Med-Arbiter granted the HHE union's petition for certification election.[5] Petitioner company appealed the decision to the Secretary of Labor but the latter denied the appeal.[6] The Secretary also denied petitioner's motion for

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[1] *Rollo*, p. 58.

[2] *Id.* at 59-70.

[3] *Id.* at 100.

[4] *Id.* at 109-120.

[5] *Id.* at 99-103.

[6] *Id.* at 218.

reconsideration, prompting the company to file a petition for *certiorari*[7] with the Court of Appeals.

On October 12, 2001 the Court of Appeals issued a writ of injunction against the holding of the HHE union's certification election, effective until the petition for cancellation of that union's registration shall have been resolved with finality.[8] The decision of the Court of Appeals became final when the HHE union withdrew the petition for review that it filed with this Court.[9]

On December 10, 2003 certain rank and file employees of petitioner company held a meeting and formed another union, the respondent Pinag-Isang Galing at Lakas ng mga Manggagawa sa Heritage Manila (the PIGLAS union). This union applied for registration with the DOLE-NCR[10] and got its registration certificate on February 9, 2004. Two months later, the members of the first union, the HHE union, adopted a resolution for its dissolution. The HHE union then filed a petition for cancellation of its union registration.[11]

On September 4, 2004 respondent PIGLAS union filed a petition for certification election[12] that petitioner company also opposed, alleging that the new union's officers and members were also those who comprised the old union. According to the company, the employees involved formed the PIGLAS union to circumvent the Court of Appeals' injunction against the holding of the certification election sought by the former union. Despite the company's opposition, however, the Med-Arbiter granted the petition for certification election.[13]

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[7] Docketed as CA-G.R. SP No. 65033.

[8] *Rollo*, pp. 137-147.

[9] *Id.* at 293-296.

[10] *Id.* at 192.

[11] *Id.* at 182-190.

[12] *Id.* at 233-241.

[13] *Id.* at 272-274.

On December 6, 2004 petitioner company filed a petition to cancel the union registration of respondent PIGLAS union.[14] The company claimed that the documents submitted with the union's application for registration bore the following false information:

(a) The List of Members showed that the PIGLAS union had 100 union members;[15]
(b) The Organizational Minutes said that 90 employees attended the meeting on December 10, 2003;[16]
(c) The Attendance Sheet of the meeting of December 10, 2003 bore the signature of 127 members who ratified the union's Constitution and By-Laws;[17] and
(d) The Signature Sheet bore 128 signatures of those who attended that meeting.[18]

Petitioner company alleged that the misrepresentation was evidenced by the discrepancy in the number of union members appearing in the application and the list as well as in the number of signatories to the attendance and signature sheets. The minutes reported that only 90 employees attended the meeting. The company further alleged that 33 members of respondent PIGLAS union were members of the defunct HHE union. This, according to the company, violated the policy against dual unionism and showed that the new union was merely an alter ego of the old.

On February 22, 2005 the DOLE-NCR denied the company's petition to cancel respondent PIGLAS union's registration for the reason that the discrepancies in the number of members stated in the application's supporting documents were not material and did not constitute misrepresentation. As for the charge of dual unionism, the same is not a ground for canceling registration. It merely exposed a union member to a possible charge of

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[14] *Id.* at 44-55.

[15] *Id.* at 161-162.

[16] *Id.* at 157-158.

[17] *Id.* at 148-154.

[18] *Id.* at 164-171.

disloyalty, an internal matter. Here, the members of the former union simply exercised their right to self-organization and to the freedom of association when they subsequently joined the PIGLAS union.[19]

On appeal, the Bureau of Labor Relation (BLR) affirmed the ruling of the DOLE-NCR. It reasoned that respondent PIGLAS union's organization meeting lasted for 12 hours. It was possible for the number of attendees to have increased from 90 to 128 as the meeting progressed. Besides, with a total of 250 employees in the bargaining unit, the union needed only 50 members to comply with the 20 percent membership requirement. Thus, the union could not be accused of misrepresentation since it did not pad its membership to secure registration.

As for the issue of dual unionism, it has become moot and academic, said the BLR, because of the dissolution of the old union and the cancellation of its certificate of registration.[20]

Petitioner company filed a petition for *certiorari* with the Court of Appeals,[21] assailing the order of the BLR. But the latter court dismissed the petition, not being accompanied by material documents and portions of the record.[22] The company filed a motion for reconsideration, attaching parts of the record that were deemed indispensable but the court denied it for lack of merit.[23] Hence, the company filed this petition for review under Rule 45.

Issues Presented

The petition presents the following issues:

1. Whether or not the Court of Appeals erred in dismissing the petition for *certiorari* before it for failure of petitioner company to attach certain material portions of the record;

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[19] *Id.* at 375-377.

[20] *Id.* at 333-338.

[21] Docketed as CA-G.R. SP No. 97237.

[22] *Rollo*, pp. 33-34.

[23] *Id.* at 289.

2. Whether or not the union made fatal misrepresentation in its application for union registration; and

3. Whether or not "dual unionism" is a ground for canceling a union's registration.

The Rulings of the Court

First. While the Court of Appeals correctly dismissed the company's petition initially for failure to attach material portions of the record, the court should have bended back a little when petitioner company subsequently attached those missing materials to its motion for reconsideration. As a general rule, petitions for *certiorari* that lack copies of essential pleadings and portions of the record may be dismissed but this rule has not been regarded as absolute. The omission may be cured.[24]

The Court of Appeals has three courses of action when the annexes to the petition are insufficient. It may dismiss the petition,[25] require the submission of the relevant documents, or order the filing of an amended petition with the required pleadings or documents. A petition lacking in essential pleadings or portions of the record may still be given due course, or reinstated if earlier dismissed, upon subsequent submission of the necessary documents or to serve the higher interest of justice.[26]

Second. Since a remand of the case to the Court of Appeals for a determination of the substantive issues will only result in more delays and since these issues have been amply argued by the opposing sides in the various pleadings and documents they submitted to this Court, the case may now be resolved on the merits.

Did respondent PIGLAS union commit fraud and misrepresentation in its application for union registration? We

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[24] *Air Philippines Corporation v. Zamora*, G.R. No. 148247, August 7, 2006, 498 SCRA 59, 69.

[25] Last paragraph of Rule 46 of the Rules of Court.

[26] *Suan v. Court of Appeals*, G.R. No. 150819, July 27, 2006, 496 SCRA 760, 767-768.

agree with the DOLE-NCR and the BLR that it did not. Except for the evident discrepancies as to the number of union members involved as these appeared on the documents that supported the union's application for registration, petitioner company has no other evidence of the alleged misrepresentation. But those discrepancies alone cannot be taken as an indication that respondent misrepresented the information contained in these documents.

The charge that a labor organization committed fraud and misrepresentation in securing its registration is a serious charge and deserves close scrutiny. It is serious because once such charge is proved, the labor union acquires none of the rights accorded to registered organizations. Consequently, charges of this nature should be clearly established by evidence and the surrounding circumstances.[27]

Here, the discrepancies in the number of union members or employees stated in the various supporting documents that respondent PIGLAS union submitted to labor authorities can be explained. While it appears in the minutes of the December 10, 2003 organizational meeting that only 90 employees responded to the roll call at the beginning, it cannot be assumed that such number could not grow to 128 as reflected on the signature sheet for attendance. The meeting lasted 12 hours from 11:00 a.m. to 11:00 p.m. There is no evidence that the meeting hall was locked up to exclude late attendees.

There is also nothing essentially mysterious or irregular about the fact that only 127 members ratified the union's constitution and by-laws when 128 signed the attendance sheet. It cannot be assumed that all those who attended approved of the constitution and by-laws. Any member had the right to hold out and refrain from ratifying those documents or to simply ignore the process.

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[27] *San Miguel Corporation Employees Union-Philippine Transport and General Workers Organization v. San Miguel Packaging Products Employees Union-Pambansang Diwa ng Manggagawang Pilipino*, G.R. No. 171153, September 12, 2007, 533 SCRA 125, 144.

At any rate, the Labor Code[28] and its implementing rules[29] do not require that the number of members appearing on the

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[28] The pertinent Labor Code provision states:

ART. 234. REQUIREMENTS FOR REGISTRATION

Any applicant labor organization, association or group of unions or workers shall acquire legal personality and shall be entitled to the rights and privileges granted by law to legitimate labor organizations upon issuance of the certificate of registration based on the following requirements:

(a) Fifty (₱50.00) registration fee;
(b) The names of its officers, their addresses, the principal address of the labor organization, the minutes of the organizational meetings and the list of the workers who participated in such meetings;
(c) The names of all its members comprising at least twenty percent (20%) of all the employees in the bargaining unit where it seeks to operate;
(d) If the union has been in existence for one or more years, copies of its annual financial reports; and
(e) Four (4) copies of the constitution and by-laws of the applicant union, minutes of its adoption or ratification and the list of the members who participated in it.

[29] Rule 3, Section 2.A of Department Order No. 40-03, Series of 2003 states that an application for registration of an independent labor union must be accompanied by the following:

1) the name of the applicant labor union, its principal address, the name of its officers and their respective addresses, approximate number of employees in the bargaining unit where it seeks to operate, with a statement that it is not reported as a chartered local of any federation or national union;
2) the minutes of the organizational meeting(s) and the list of employees who participated in the said meeting(s);
3) the name of all its members comprising at least 20% of the employees in the bargaining unit;
4) the annual financial reports if the applicant has been in existence for one or more years, unless it has not collected any amount from the members, in which case a statement to this effect shall be included in the application;
5) the applicant's constitution and by-laws, minutes of its adoption and ratification and the list of the members who participated in it. The list of ratifying members shall be dispensed with where the constitution and by-laws was ratified or adopted during the organizational meeting. In such a case, the factual circumstances of the ratification shall be recorded in the minutes of the organizational meeting(s).

documents in question should completely dovetail. For as long as the documents and signatures are shown to be genuine and regular and the constitution and by-laws democratically ratified, the union is deemed to have complied with registration requirements.

Petitioner company claims that respondent PIGLAS union was required to submit the names of **all** its members comprising at least 20 percent of the employees in the bargaining unit. Yet the list it submitted named only 100 members notwithstanding that the signature and attendance sheets reflected a membership of 127 or 128 employees. This omission, said the company, amounted to material misrepresentation that warranted the cancellation of the union's registration.

But, as the labor authorities held, this discrepancy is immaterial. A comparison of the documents shows that, except for six members, the names found in the subject list are also in the attendance and signature sheets. Notably, the bargaining unit that respondent PIGLAS union sought to represent consisted of 250 employees. Only 20 percent of this number or 50 employees were required to unionize. Here, the union more than complied with such requirement.

Labor laws are liberally construed in favor of labor especially if doing so would affirm its constitutionally guaranteed right to self-organization.[30] Here, the PIGLAS union's supporting documents reveal the unmistakable yearning of petitioner company's rank and file employees to organize. This yearning should not be frustrated by inconsequential technicalities.

Third. The fact that some of respondent PIGLAS union's members were also members of the old rank and file union, the HHE union, is not a ground for canceling the new union's registration. The right of any person to join an organization

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[30] *San Miguel Corporation (Mandaue Packaging Products Plants) v. Mandaue Packing Products Plants-San Miguel Packaging Products-San Miguel Corporation Monthlies Rank-and-File Union-FFW*, G.R. No. 152356, August 16, 2005, 467 SCRA 107, 127.

also includes the right to leave that organization and join another one. Besides, HHE union is dead. It had ceased to exist and its certificate of registration had already been cancelled. Thus, petitioner's arguments on this point may also be now regarded as moot and academic.

WHEREFORE, the Court *DENIES* the petition and *AFFIRMS* the decision of the Bureau of Labor Relations in BLR-A-26-3-05 dated May 26, 2006.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 180421. October 30, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **DOMINGO ALPAPARA, PEDRO ALPAPARA, ALDEN PAYA and MARIO BICUNA,** *appellants.*

SYLLABUS

1. CRIMINAL LAW; MURDER; TREACHERY, DEFINED.— Article 248 of the Revised Penal Code defines and penalizes the offense of murder as qualified by treachery. There is treachery when in killing the victim, the malefactors deliberately and consciously adopted means, methods, or manner of execution to ensure their safety from any defensive or retaliatory

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[*] Designated as additional member in lieu of Associate Justice Mariano C. Del Castillo, per Special Order No. 757 dated October 12, 2009.

[**] Designated as additional member in lieu of Associate Justice Conchita Carpio Morales, per Special Order No. 759 dated October 12, 2009.

action on the part of the victim. True, on numerous occasions, we have held that where a killing was preceded by an argument or quarrel, then the qualifying circumstance of treachery can no longer be appreciated since the victim could be said to have been forewarned and could anticipate aggression from the assailants. What is decisive in treachery, however, is that the execution of the attack made it impossible for the victim to defend himself or retaliate.

2. ID.; CONSPIRACY; WHEN PRESENT.— There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. To establish the existence of conspiracy, direct proof is not essential. Conspiracy may be inferred from the acts of the accused before, during and after the commission of the crime which indubitably point to and are indicative of a joint purpose, concert of action and community of interest.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ASSESSMENT BEST UNDERTAKEN BY THE TRIAL COURT, ITS FINDINGS BINDING ON THE COURT WHEN AFFIRMED BY THE APPELLATE COURT.— At the risk of sounding trite, we reiterate that the assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude under cross examination. The trial court's findings on such matters, when affirmed by the appellate court, are binding and conclusive on this Court, unless it is shown that the court *a quo* has plainly overlooked substantial facts which, if considered, might affect the result of the case.

4. ID.; ID.; ID.; STRENGTHENED BY LAPSES IN TESTIMONIES.— Even so, we have held time and again that witnesses cannot be expected to give a flawless testimony all the time. Indeed, even the most candid witness often makes mistakes and falls into confused statements, at times. Far from eroding the effectiveness of their testimonial evidence, such lapses could instead constitute signs of veracity.

5. CRIMINAL LAW; MURDER; CIVIL LIABILITY; AWARD OF ACTUAL DAMAGES *IN LIEU* OF TEMPERATE

DAMAGES AND *VICE VERSA*; CASE AT BAR.— Also, instead of actual damages proven in the amount of ₱20,000, the court shall award temperate damages of ₱25,000 in accord with *People v. Villanueva* where the Court held: When the actual damages proven by receipts during the trial amounts to less than ₱25,000, as in this case, the award of temperate damages for ₱25,000 is justified in lieu of the actual damages of a lesser amount. Conversely, if the amount of actual damages proven exceeds ₱25,000, then temperate damages may no longer be awarded; actual damages based on the receipts presented during trial should instead be granted.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for Alden Paya and Mario Bicuna.

D E C I S I O N

QUISUMBING, *J.*:

This is an appeal from the Decision[1] of the Court of Appeals in CA-G.R. CR-HC No. 00294, dated February 15, 2007, which affirmed *in toto* the decision[2] of the Regional Trial Court (RTC) of Quezon City, Branch 81, dated March 15, 2004 in Criminal Case No. Q-99-86307. The RTC had found appellants Domingo Alpapara, Pedro Alpapara, Alden Paya and Mario Bicuna guilty of murder beyond reasonable doubt.

On June 29, 1998, Domingo Alpapara, Pedro Alpapara, Alden Paya, Mario Bicuna and Nelson Guzman were charged with murder in an Information, the accusatory portion of which reads:

That on or about the 13th day of January 1998 at more or less 7:00 o'clock in the evening at Barangay Talin-Talin, Municipality

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[1] *Rollo*, pp. 2-13. Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Remedios A. Salazar-Fernando and Jose C. Mendoza concurring.

[2] CA *rollo*, pp. 90-104. Penned by Judge Ma. Theresa L. Dela Torre - Yadao.

of Libon, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating and mutually aiding one another [to] achieve a common goal, that is to kill GOMEZ RELORCASA, did then and there, with malice aforethought and with deliberate intent to take the life of the latter, willfully, unlawfully and feloniously, with the qualifying circumstances of treachery (alevosia), evident premeditation and with the aid of armed men, attacked, assaulted and fired upon Gomez Relorcasa with firearms, hitting and inflicting gunshot wounds upon the latter on the different and vital parts of his body, as evidenced by the Medico-Legal Report of Dr. Ma. Cristina U. Orbesom, mortally and fatally wounding him and thereby causing the direct and immediate death of Gomez Relorcasa, to the damage and prejudice of his legal heirs.

That the commission of this felony was attended with the aggravating circumstance of dwelling, the victim not having given any provocation.

ACTS CONTRARY TO LAW.[3]

The present case originated from Branch 13 of the Ligao, Albay RTC and was docketed as Criminal Case No. 3703. On arraignment, all the accused, except Nelson Guzman who was at large, pleaded not guilty.

On October 7, 1998, Atty. Manuel C. Relorcasa, the private prosecutor in this case, filed a Motion[4] with the Supreme Court to change the venue of trial from the RTC in Ligao, Albay to an RTC in Pasig City, Quezon City or Metro Manila. The witnesses were allegedly receiving death threats from the accused, who were known hatchet men of politicians in Albay. On July 27, 1999, we issued a Resolution[5] granting the said motion and transferring the venue of trial to Quezon City. The case was eventually raffled to Branch 81 of the RTC of Quezon City and docketed as Criminal Case No. Q-99-86307. Trial on the merits thereafter ensued.

The prosecution's account of the incident is as follows:

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[3] Records, p. 104.

[4] *Id.* at 145-146.

[5] *Id.* at 210.

On January 13, 1998, at around 7:00 p.m., while Joey Bobis and Gomez Relorcasa were having a chat at the latter's home, the two heard thuds from stones being thrown at the roof. This was followed by a derisive call for Gomez to come out of the house in these words: "*Gomez, kung matapang ka[,] lumabas ka*."[6] Shortly thereafter, three men armed with revolvers, and who were later identified by witnesses as the appellants Domingo Alpapara, Pedro Alpapara and Alden Paya, stormed into Gomez's house. Pedro grabbed Gomez by the right shoulder while Alden pinned down his left hand. Then, Domingo shot Gomez at the back followed by Pedro who shot Gomez at the right temple. As Gomez collapsed to the floor, Alden fired upward and warned those present not to testify to what happened. Present at the scene were Gomez's sister, Gavina Mata; his children, Mary Rose and Julius; and his friend, Romeo Buitizon.

Domingo, Pedro and Alden dashed outside to join their companions who threatened to hack the witnesses with *bolos*. The three took off in a passenger jeep driven by appellant Mario Bicuna. Thereafter, Gomez's companions brought him to the hospital where he was pronounced dead on arrival. The Medico-Legal Report[7] dated January 14, 1998, disclosed the cause of his death as hemorrhagic shock secondary to organ damage secondary to gunshot wound. On even date, Joey Bobis and *Barangay* Chairman Sofronio Mata filed an entry in the blotter with the police.

For their part, the appellants allege the following facts:

In the evening of January 13, 1998, the Alpapara brothers spotted Alden scuttling for cover in Domingo's yard as Joey hurled a stone and a bottle of gin at him. Before long, Gomez, who was drunk at the time started shouting invectives at the three. This led to a heated argument between Domingo and Gomez, but Pedro appealed for Gomez to just come back and talk the next day when he would already be sober.

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[6] TSN, March 21, 2000, p. 4.

[7] Records, p. 13.

Afterward, three gunshots echoed from Gomez's house. Upon hearing this, Domingo immediately closed his store while Pedro and Alden made their way home.

From his house, Alden heard Mary Rose crying for help from her aunt Gavina Mata, exclaiming "*Tulungan ninyo si papa, nabaril siya ng sarili niyang baril*." But Alden ignored her call for help and stayed home for the night.

Concurrently, defense witness Marilou Mata came upon Mary Rose and Julius who were screaming for help, saying "*Si papa may tama, si Joy kasi.*" Marilou also saw Gomez being carried away on a chair by their neighbors.

About that time, Pedro reached his house and roused Mario from sleep. The two left in a passenger jeep driven by Mario. As they passed by Domingo's house, the latter flagged them and hitched a ride along with his wife Zenaida. They dropped off Zenaida at the house of Cesario Alpapara, Pedro and Domingo's brother, in Polangui, Albay before reporting the shooting incident to the Libon Police.

Following trial, the Quezon City RTC, Branch 81, found Domingo Alpapara, Pedro Alpapara, Alden Paya and Mario Bicuna guilty beyond reasonable doubt of murder for the death of Gomez Relorcasa. In a Decision dated March 15, 2004, the court *a quo* held that the killing of Gomez was attended by the qualifying circumstance of treachery and was carried out by appellants in conspiracy with one another. Hence, it disposed of the case in this wise:

> WHEREFORE, premises considered, the Court finds accused DOMINGO ALPAPARA, PEDRO ALPAPARA, ALD[E]N PAYA and [MARIO] BICUNA guilty beyond reasonable doubt of the crime of Murder, qualified by treachery, defined and penalized under Article 248 of the Revised Penal Code as amended, and applying the provisions of the said Code, hereby sentences them to *Reclusion Perpetua*, with all the accessory penalties by law and pay the heirs of the late Gomez Relorcasa jointly and severally the amounts of Fifty Thousand Pesos (₱50,000.00) as indemnity for the death of the victim, Twenty Thousand Pesos (₱20,000.00) as actual damages and Fifty Thousand Pesos (₱50,000.00) as moral damages.

x x x x x x x x x

SO ORDERED.[8]

On appeal, the Court of Appeals affirmed *in toto* the RTC ruling. It gave credence to the positive identification by the witnesses of the appellants as the assailants of Gomez. It also ruled that treachery was sufficiently shown in the swift manner by which the appellants attacked the victim.

Before this Court, the appellants pose the following issues for our resolution:

I.

WHETHER OR NOT THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER;

II.

WHETHER OR NOT THE TRIAL COURT ERRED IN GIVING FAVORABLE CONSIDERATION [TO THE] ALLEGED EYEWITNESS TESTIMONIES OF PROSECUTION WITNESSES;

III.

WHETHER OR NOT THE TRIAL COURT ERRED IN NOT CONSIDERING THE DISCREPANCY BETWEEN THE PHYSICAL EVIDENCE PRESENTED BY THE DEFENSE AND THE ALLEGED EYEWITNESS TESTIMONIES PRESENTED BY THE PROSECUTION;

IV.

WHETHER OR NOT THE TRIAL COURT ERRED IN FINDING THAT THERE WAS TREACHERY;

V.

WHETHER OR NOT THE TRIAL COURT ERRED IN NOT APPRECIATING THE TESTIMONIAL EVIDENCE OF THE ACCUSED AND DEFENSE WITNESSES, INCLUDING THE TESTIMONY OF ROMEO BUITIZON.[9]

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[8] CA *rollo*, p. 104.

[9] *Id.* at 67.

Essentially, the issues for resolution are: (1) Did the Court of Appeals err in convicting the appellants of the offense charged? and (2) Did treachery attend the killing?

On March 26, 2008, the Court issued a Resolution[10] which required the parties to file their respective supplementary briefs, within 30 days from notice, if they so desire. The parties, however, filed separate manifestations adopting the arguments raised in their appellate briefs.

Primarily, appellants assail the credibility of the prosecution witnesses Joey Bobis, Gavina Mata and Mary Rose Relorcasa. They contend that their testimonies were rehearsed since the witnesses were able to accurately recount the details of the shooting, specifically, which part of Gomez's body the appellants held; the order in which he was shot; and the number and names of appellants' companions. In contrast, appellants highlight the same witnesses' failure to recall certain facts on cross-examination. Mary Rose could not remember the color of the guns the appellants used on the victim and what her companions did right after the shooting. Gavina, for her part, gave conflicting versions of what she did immediately after the appellants left. Appellants further question the integrity of Gavina's testimony in view of the political rivalry between her husband, *Barangay* Captain Sofronio Mata, and the Alpaparas. Appellants likewise contend it is unworthy of belief that they would kill the victim in the presence of his relatives and friends as claimed by the witnesses for the prosecution.

In addition, the appellants fault the appellate court for disregarding the testimonies of the defense witnesses. They draw attention to the disparity between the physical evidence and the prosecution's account of the shooting incident. Police Investigator SPO4 Vicente Ricafranca found four 9 mm. cartridge cases in Gomez's backyard. Prosecution witnesses testified, however, that only three shots were fired, all inside the victim's house. Notably, witness Joey Bobis specifically identified appellants' guns as .38 caliber pistols.

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

Lastly, the appellants contest the Court of Appeals' finding of treachery. They reason that the altercation between Domingo and Gomez provided the latter with sufficient warning of the impending danger.

The Office of the Solicitor General (OSG), for the State, rebuts the appellants' attempt to discredit the prosecution witnesses. It argues that the inconsistencies in the witnesses' testimonies were insignificant and did not undermine the identification of the appellants as the killers of Gomez. The OSG maintains that it was not at all unlikely for Gavina and Joey to recognize the appellants' companions since the place was illuminated by a kerosene lamp.

Taking into consideration the evidence in this case, both for the prosecution as well as the defense, we are convinced beyond any shadow of doubt that appellants are guilty of murder as charged.

Article 248[11] of the Revised Penal Code defines and penalizes the offense of murder as qualified by treachery. There is treachery when in killing the victim, the malefactors deliberately and consciously adopted means, methods, or manner of execution to ensure their safety from any defensive or retaliatory action on the part of the victim.[12]

The factual finding of the Court of Appeals shows that appellants Domingo, Pedro and Alden barged into Gomez's house and restrained his arms before Domingo shot him at the back. As the victim was falling over, Pedro fired a bullet through his right temple. This finding is supported by the Medico-Legal

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[11] ART. 248. *Murder.* — Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

x x x x x x x x x

[12] *People v. Aviles*, G.R. No. 172967, December 19, 2007, 541 SCRA 265, 276.

Report prepared by Dr. Ma. Cristina U. Orbesom, the Municipal Health Officer-Rural Health Unit of Libon, Albay, as follows:

External Examination:
= cadaver in rigor mortis state
= **skin tattoing**, brownish in color, 4 x 1 cm., forehead, 1 cm. above the eyebrow, R.
= gunshot wound of entrance, **circular**, 1 x 1 cm. lumbar area, R

Internal Examination:
= foul-smelling visceral organs, with 4 cupsful of blood in the abdominal cavity
= bullet found lodged in the epigastric area, in-between the skin and the adipose tissues, 6.5 cm[.] below the xiphoid process
= hemorrhagic mesentery
= perforated large mesocolon, kidney, R

Cause of Death: Hemorrhagic Shock [Secondary] to Organ Damage [Secondary] to Gunshot Wound
(Emphasis supplied.)

The large circular entrance wound at the back sustained by Gomez is consistent with the prosecution witnesses' account that he was shot at close range.[13] The skin tattoing above his right eyebrow, which is dense and of limited dimension and spread,[14] likewise, confirms that he was fired at from short range[15] as he was falling to the ground. This finding belies the testimony of defense witness Romeo Buitizon that after Gomez let off two shots upward, he heard "another shot coming from a dark place"[16] which eventually hit Gomez. The nature and position of Gomez's wound are also incongruent with appellant Alden Paya's claim that he heard the victim's daughter call for help as her father was shot by his own gun.[17]

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[13] P. SOLIS, *LEGAL MEDICINE,* 357 (1987).

[14] Records, Exhibits "J", and "J-1", p. 380.

[15] P. SOLIS, *LEGAL MEDICINE, supra*.

[16] TSN, July 12, 2001, p. 6.

[17] TSN, December 4, 2001, p. 6.

Despite these findings, appellants deny that the killing was attended by treachery inasmuch as the shooting was preceded by an argument between Domingo and Gomez. Hence, they contend that Gomez was forewarned of the forthcoming peril.

This argument fails to persuade us.

True, on numerous occasions, we have held that where a killing was preceded by an argument or quarrel, then the qualifying circumstance of treachery can no longer be appreciated since the victim could be said to have been forewarned and could anticipate aggression from the assailants.[18] What is decisive in treachery, however, is that the execution of the attack made it impossible for the victim to defend himself or retaliate.[19]

Here, the unarmed Gomez was pinioned by appellants Pedro and Alden before Domingo dealt him a fatal blow at the back. Clearly, the victim had no opportunity to parry the attack. Further, there was a lapse of time between the argument and the shooting since Domingo went back inside his store after the confrontation between him and the victim. At this point, the prior hostility had ceased and the latter had no more reason to anticipate further aggression from Domingo.

Apart from treachery, in our view, the manner by which the appellants killed Gomez clearly demonstrates a conspiracy, thereby making each of them equally liable for the offense.[20] There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[21] To establish the existence of conspiracy, direct proof is

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[18] *People v. Buluran*, G.R. No. 113940, February 15, 2000, 325 SCRA 476, 487.

[19] *People v. Almedilla*, G.R. No. 150590, August 21, 2003, 409 SCRA 428, 432.

[20] *People v. Listerio*, G.R. No. 122099, July 5, 2000, 335 SCRA 40, 60.

[21] REVISED PENAL CODE,

ART. 8. *Conspiracy and proposal to commit felony*. — Conspiracy and proposal to commit felony are punishable only in the cases in which the law specially provides a penalty therefor.

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.

not essential.[22] Conspiracy may be inferred from the acts of the accused before, during and after the commission of the crime which indubitably point to and are indicative of a joint purpose, concert of action and community of interest.[23]

In this case, each of the accused performed acts which contributed to the execution of the crime.[24] Domingo, Pedro and Alden armed themselves with guns and forcibly entered the victim's home. Pedro held Gomez by the shoulder while Alden pinned down his left hand. Then, Domingo shot him at the back. The sum of all the circumstances in this case points to no other conclusion than that these three appellants (Pedro, Alden and Domingo) were moved by a single objective – to kill Gomez Relorcasa.

However, the same conclusion cannot include appellant Mario Bicuna. Although the latter does not deny having driven the three cited appellants to Polangui and Libon in Albay, the prosecution has not shown beyond peradventure of doubt that he knew of his co-appellants' design to kill Gomez. Neither can we hold him liable as an accessory for helping the escape of the appellants under Paragraph 3,[25] Article 19 of the Revised Penal

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There is proposal when the person who has decided to commit a felony proposes its execution to some other person or persons.

[22] *People v. Listerio, supra* at 58 citing *People v. Canoy*, G.R. Nos. 122510-11, March 17, 2000, 328 SCRA 385, 399; *People v. Geguira*, G.R. No. 130769, March 13, 2000, 328 SCRA 11, 32-33.

[23] *People v. Listerio, supra* at 57-58.

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

[25] ART. 19. *Accessories.* – Accessories are those who, having knowledge of the commission of the crime, and without having participated therein, either as principals or accomplices, take part subsequent to its commission in any of the following manners:

x x x x x x x x x

3. By harboring, concealing, or assisting in the escape of the principal of the crime, provided the accessory acts with abuse of his public functions or whenever the author of the crime is guilty of treason, parricide, murder, or an attempt to take the life of the Chief Executive, or is known to be habitually guilty of some other crime.

Code. Said provision punishes an accessory who harbors, conceals or assists in the escape of a principal of the crime of murder. For one, appellant Domingo Alpapara reported the shooting incident to the Libon Police.[26] Moreover, the Return[27] of the warrant for the arrest of the appellants indicates that they voluntarily surrendered to the authorities. These circumstances rule out any inference that appellants intended to escape when they boarded the jeep driven by Bicuna after the shooting.

The rest of the issues raised by the appellants delve on the appreciation of evidence by the appellate court. At the risk of sounding trite, we reiterate that the assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude under cross examination. The trial court's findings on such matters, when affirmed by the appellate court, are binding and conclusive on this Court, unless it is shown that the court *a quo* has plainly overlooked substantial facts which, if considered, might affect the result of the case.[28]

In this case, both the RTC and the Court of Appeals gave weight to the candid and forthright identification by the prosecution witnesses of the appellants as the authors of the murder. Rightly so, since the place was adequately lighted by a kerosene lamp and the witnesses were sufficiently familiar with the appellants who were their neighbors. Appellants' contention that the victim's daughter and sister attributed the murder to them because of political rivalry and pending lawsuits between Domingo Alpapara and the victim cannot stand scrutiny. The Court has consistently held that relatives of a victim would not avenge the death of their kin by blaming it on persons whom they know to be innocent.[29] This is because the relatives, more than anybody

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[26] Records, Exhibit "4", p. 546.

[27] Records, Exhibit "E", p. 34.

[28] *People v. Segobre*, G.R. No. 169877, February 14, 2008, 545 SCRA 341, 347-348.

[29] *People v. Barreta*, G.R. No. 120367, October 16, 2000, 343 SCRA 199, 209.

else, would be concerned with obtaining justice for the victim by the felons being brought to face the law.[30]

In an attempt to impugn the credibility of the prosecution witnesses, the appellants magnify certain discrepancies in their testimonies. They stress that Gavina at first stated that she immediately went to Gomez's aid after the appellants left. But later, when asked how she was able to recognize the latter's companions at the gate, she said that she peeped through the window before rushing to help Gomez. Also, they stress that Joey testified that the appellants used caliber .38 guns but the empty shells retrieved by the police outside the victim's house were for a 9 mm. pistol. Additionally, Mary Rose could not remember the color of the guns used by the appellants.

Even so, we have held time and again that witnesses cannot be expected to give a flawless testimony all the time. Indeed, even the most candid witness often makes mistakes and falls into confused statements, at times. Far from eroding the effectiveness of their testimonial evidence, such lapses could instead constitute signs of veracity.[31] The victim's house is a *nipa* hut of modest size. In all likelihood, Gavina was able to catch a glimpse of the appellants' companions through the open window or door as she was approaching the victim's body. Also, it is worth noting that while the 9 mm. cartridges were found at Gomez's yard, the shooting took place inside his home. Besides, the Firearms Identification Report[32] did not conclusively establish the caliber of the gun used to shoot the victim because the bullet extracted from his body was deformed. More importantly, witness Joey Bobis cannot be expected to identify with certainty the caliber of the guns used absent any proof that he is a gun expert.

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[30] *People v. Listerio, supra* note 20, at 56-57.

[31] *People v. Ranin, Jr.*, G.R. No. 173023, June 25, 2008, 555 SCRA 297, 305-306.

[32] Records, Exhibit "6", p. 548.

Prescinding from the foregoing facts and circumstances, we affirm the penalty imposed by the Court of Appeals upon the appellants except as regards Mario Bicuna who must be acquitted. With the advent of Republic Act No. 9346,[33] the penalty for murder is now *reclusion perpetua*, without possibility of parole under the Indeterminate Sentence Law.[34]

Likewise, we sustain the award of moral damages to the heirs of Gomez Relorcasa in the amount of ₱50,000. However, the award of civil indemnity must be modified in accordance with prevailing jurisprudence[35] which fixes the amount of indemnity at ₱75,000. Also, instead of actual damages proven[36] in the amount of ₱20,000, the court shall award temperate damages of ₱25,000 in accord with *People v. Villanueva* where the Court held:

> When the actual damages proven by receipts during the trial amounts to less than ₱25,000, as in this case, the award of temperate damages for ₱25,000 is justified in lieu of the actual damages of a lesser amount. Conversely, if the amount of actual damages proven exceeds ₱25,000, then temperate damages may no longer be awarded; actual damages based on the receipts presented during trial should instead be granted.[37]

WHEREFORE, the instant appeal is *PARTLY GRANTED*. Appellant Mario Bicuna is *ACQUITTED* because of insufficient evidence concerning the charge against him. The Decision dated

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[33] AN ACT PROHIBITING THE IMPOSITION OF THE DEATH PENALTY IN THE PHILIPPINES, approved on June 24, 2006.

[34] AN ACT TO PROVIDE AN INDETERMINATE SENTENCE AND PAROLE FOR ALL PERSONS CONVICTED OF CERTAIN CRIMES BY THE COURTS OF THE PHILIPPINE ISLANDS; TO CREATE A BOARD OF INDETERMINATE SENTENCE AND TO PROVIDE FUNDS THEREFOR; AND FOR OTHER PURPOSES (Act No. 4103, AS AMENDED), approved and effective on December 5, 1933.

[35] *People v. Ranin, Jr.*, *supra* at 312.

[36] Records, Exhibit "C", p. 371.

[37] *People v. Villanueva*, G.R. No. 139177, August 11, 2003, 408 SCRA 571, 581-582.

February 15, 2007 of the Court of Appeals in CA-G.R. CR-HC No. 00294 is *AFFIRMED* insofar as it convicted Domingo Alpapara, Pedro Alpapara and Alden Paya of murder beyond reasonable doubt. The award of moral damages at ₱50,000 to the heirs of Gomez Relorcasa is also *SUSTAINED*. The amount of civil indemnity, however, is *MODIFIED* to ₱75,000 in accordance with prevailing jurisprudence, and temperate damages of ₱25,000 is awarded in lieu of actual damages.

SO ORDERED.

Carpio,[*] *Chico-Nazario,*[**] *Brion,* and *Abad, JJ.,* concur.

EN BANC

[G.R. No. 183322. October 30, 2009]

GOV. ANTONIO P. CALINGIN, *petitioner, vs.* **CIVIL SERVICE COMMISSION and GRACE L. ANAYRON,** *respondents.*

SYLLABUS

CIVIL LAW; COMPROMISE AGREEMENT; CONSTRUED.— A compromise agreement is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced. It contemplates mutual concessions and mutual gains to avoid the expenses of litigations; or when litigation has already begun, to end it because of the uncertainty of the result. The validity of a compromise agreement is dependent upon its fulfillment of the requisites and principles of contracts dictated by law; and its terms and conditions must be contrary to law, morals, good customs, public policy and public order.

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[*] Additional member per Special Order No. 757.

[**] Additional member per Special Order No. 759.

APPEARANCES OF COUNSEL

Provincial Legal Office (Misamis Oriental) for petitioner.
The Solicitor General for public respondent.
Pablo P. Magtajas for private respondent.

R E S O L U T I O N

CHICO-NAZARIO, *J.*:

For consideration is a *Joint Submission of Compromise Agreement with Manifestation*[1] filed by the parties in this case, informing the Court that they have entered into a Compromise Agreement on 6 October 2008. Particularly, they aver:

> That parties have already executed a Compromise Agreement on 6 October 2008, which agreement was entered in the Notarial Register of Atty. Kathlene Gonzales as Doc. No. 210; Page No. 42; Book No. III; Series of 2008; copy of which is hereto attached as Annex "A";
>
> That this Compromise Agreement entered into by the parties is not contrary to law, morals, good custom and public policy.[2]

The parties pray that we consider the Compromise Agreement in the disposition of the present Petition and/or approve the same, and judgment be rendered in accordance with the terms thereof.

The Compromise Agreement is reproduced in full below:

> COMPROMISE AGREEMENT
>
> KNOW ALL MEN BY THESE PRESENTS:
>
> This Compromise Agreement entered into this x x x October 06, 2008, at Cagayan de Oro City, Philippines, by and between:
>
> PROVINCE OF MISAMIS ORIENTAL, a local government unit (LGU) created and existing under the laws of the Republic of the

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[1] *Rollo*, pp. 107-111.

[2] *Id.* at 107.

Philippines, with official address at the Provincial Capitol, Cagayan de Oro City, herein represented by the Provincial Governor, HON. OSCAR S. MORENO, and therein (sic) after referred to as the PROVINCE;

-and-

GRACE L. ANAYRON, an Agriculturist II of the Provincial Government of Misamis Oriental, hereinafter referred to as the EMPLOYEE;

WITNESSETH:

WHEREAS, the PROVINCE, through then Gov. Antonio P. Calingin, is the Petitioner in a case entitled *Gov. Antonio P. Calingin vs. Civil Service Commission and Grace L. Anayron,* docketed as CA-G.R. SP No. 77210 before the Court of Appeals, Mindanao Station, while the EMPLOYEE is the Private Respondent therein;

WHEREAS, the subject of the said petition before the Court of Appeals are the Civil Service Commission Resolutions Nos. 02-1530 and 03-0431, dated December 3, 2002 and March 31, 2003, respectively, ordering the reinstatement and payment of back salaries and other benefits to EMPLOYEE covering the period from July 12, 1999 to December 31, 2006;

WHEREAS, on April 17, 2006 the EMPLOYEE was reinstated back to work at the Provincial Agriculture Office (PANRO), Province of Misamis Oriental with the position [of] Agriculturist II, Salary Grade 15;

WHEREAS, on June 19, 2008 said petition of the PROVINCE was elevated to the Supreme Court on a Petition for Review and docketed as G.R. No. 183322 (*Gov. Antonio P. Calingin vs. Civil Service Commission and Grace L. Anayron*);

WHEREAS, after due consideration and for the best interest of the parties, the PROVINCE and EMPLOYEE agreed to settle the case and that the former shall pay the latter a full and final settlement amount in PESOS: ONE MILLION (PhP 1,000,000.00) representing Employee's back salaries and other benefits covering the period stated in the preceding paragraph;

WHEREAS, the PROVINCE shall pay the GSIS, PAG-IBIG, PHILHEALTH and SCC premiums of the EMPLOYEE, which amounts to PhP 100,000.00 based and/or computed on the settlement amount

which is PhP 1,000,000.00, should there be any excess to the amount of PhP 100,000.00, the excess shall be borne/paid by the employees (sic);

WHEREAS, EMPLOYEE unequivocally agreed that the payment of ONE MILLION PESOS (PhP 1,000,000.00) shall be on October 10, 2008;

NOW, THEREFORE, for and in consideration of the foregoing and of the mutual covenant thereinafter set forth, the parties have agreed as they thereby agrees as follows:

1. That EMPLOYEE shall receive from PROVINCE the payment of the settlement amount in PESOS: ONE MILLION PESOS (PhP1,000,000.00), on October 10, 2008;

2. That the PROVINCE shall pay the GSIS. PAG-IBIG, premiums/contributions of the EMPLOYEE in the amount of PhP100,000.00 covering the period July 12, 1999 to December 31, 2006 and any excess to the amount of PhP100,000.00 shall be borne/paid by the EMPLOYEE;

3. That this settlement is with prejudice, and the payment by the PROVINCE to EMPLOYEE of the settlement amount in PESOS: ONE MILLION (PhP1,000,000.00) shall be the full and final settlement representing EMPLOYEE'S back salaries and other benefits pursuant to above-mentioned Civil Service Commission Resolution Nos. 02-1530 and 03-0431 dated December 3, 2002 and March 31, 2003, respectively;

4. That in consideration for (sic) the settlement amount due to EMPLOYEE in PESOS: ONE MILLION (PhP1,000,000.00), the latter, her successors, and assigns hereby waive, renounce, quitclaim, release and discharge PROVINCE and all its officers forever and irrevocably from any and all claims, rights and interests which EMPLOYEE may have, arising from the above-mentioned cases;

5. That the parties shall undertake a joint manifestation to be filed with the Civil Service Commission and the Supreme Court, informing said Honorable Office and Honorable Court, respectively, of this Joint (sic) Compromise Agreement, with a copy of the same attached thereto;

6. That this Compromise Agreement shall be effective upon the approval by the Sangguniang Panlalawigan of Misamis Oriental.

IN WITNESS WHEREOF, the parties have thereunto set their hands this October 06, 2008 in Cagayan de Oro City.

(Sgd.) (Sgd.)

OSCAR S. MORENO
Representing PROVINCE

GRACE L. ANAYRON
EMPLOYEE

Signed In The Presence Of:

(Sgd.) (Sgd.)

PABLO P. MAGTAJAS and REV. FR. FREDBERTO RANAN[3]

In a *Resolution*[4] dated 9 December 2008, this Court required the Office of the Solicitor General (OSG), for respondent Civil Service Commission (CSC), to comment on the aforequoted Compromise Agreement.

By way of compliance, the OSG filed on 1 April 2009 the required *Comment*[5] on the Compromise Agreement. In its *Comment*, the OSG stated that the provisions of said agreement warranted clarification as to (1) whether or not the subject Compromise Agreement had been approved by the *Sangguniang Panlalawigan* of the Province of Misamis Oriental; (2) whether or not the *Sangguniang Panlalawigan* of the Province of Misamis Oriental had already approved and appropriated the necessary public funds for the payment of the backwages and other benefits of private respondent Anayron; and (3) the actual date of reinstatement of the latter.

On 4 June 2009, the Province of Misamis Oriental, through its incumbent Governor, Oscar S. Moreno (Gov. Moreno), filed

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[3] *Id.* at 112-114.

[4] *Id.* at 116.

[5] *Id.* at 134-140.

a *Manifestation*,[6] addressing the aforementioned concerns of the OSG. Attached to Gov. Moreno's *Manifestation* were certified true copies of the following documents intended to clarify the legal soundness of the Compromise Agreement:

(1) *ORDINANCE NO. 1075-2008*,[7] approved on 13 October 2008, entitled "APPROPRIATING THE AMOUNT OF ONE MILLION ONE HUNDRED THOUSAND PESOS (₱1,100,000.00) FOR THE BACKWAGES AND OTHER BENEFITS OF MS. GRACE L. ANAYRON, AGRICULTURIST II OF THE PROVINCIAL AGRICULTURE OFFICE TO BE TAKEN FROM RESERVE FOR PERSONNEL BENEFITS." – This issuance by the *Sangguniang Panlalawigan* of Misamis Oriental approved and appropriated the amount of ₱1,100,000.00 for the payment of private respondent Anayron's backwages and other benefits per the Compromise Agreement signed by the latter and Gov. Moreno, for and in behalf of the Province of Misamis Oriental.

(2) *RESOLUTION NO. 144-2009*,[8] approved on 4 May 2009, entitled "A RESOLUTION CONFIRMING THE COMPROMISE AGREEMENT ENTERED INTO BY THE PROVINCIAL GOVERNMENT OF MISAMIS ORIENTAL, REPRESENTED BY THE PROVINCIAL GOVERNOR HON. OSCAR S. MORENO WITH GRACE L. ANAYRON, AGRICULTURIST II OF THE PROVINCIAL GOVERNMENT OF MISAMIS ORIENTAL RELATIVE TO THE LATTER'S CLAIM FOR BACKWAGES AND OTHER BENEFITS." – In the preceding resolution, the *Sangguniang Panlalawigan* of Misamis Oriental resolved to confirm the Compromise Agreement entered into by and between private respondent Anayron and Gov. Moreno, for the Province.

(3) A *Certification*[9] dated 6 May 2009, issued by the Office of the Provincial Accountant, to the effect that the payment for

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[6] *Id.* at 143-146.

[7] *Id.* at 150-151.

[8] *Id.* at 152-153.

[9] *Id.* at 154.

private respondent Anayron's back salaries and other benefits commenced from 13 July 1999 up to 16 April 2006 only. From 17 April 2006, when private respondent Anayron was officially reinstated to her old position, until 31 December 2006, she was paid her salaries and other benefits based on actual services rendered.

The OSG filed on 11 August 2009 a *Comment*[10] on Gov. Moreno's *Manifestation*. On the basis of the certified true copies of the documents attached to the said Manifestation, the OSG submitted that it no longer had any reservation to the approval of the subject Compromise Agreement.

A compromise agreement is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced.[11] It contemplates mutual concessions and mutual gains to avoid the expenses of litigation; or when litigation has already begun, to end it because of the uncertainty of the result.

The validity of a compromise agreement is dependent upon its fulfillment of the requisites and principles of contracts dictated by law; and its terms and conditions must not be contrary to law, morals, good customs, public policy and public order.[12]

After a review of the terms of the Compromise Agreement between the parties herein, we find that it has been validly executed in accordance with the foregoing requirements.

WHEREFORE, it appearing that the Compromise Agreement in this case is not contrary to law, morals, good customs, public morals and public policy, the same is hereby *APPROVED* and *ADOPTED* as the decision of this Court.

The parties are hereby ordered to faithfully comply with the terms and conditions of said agreement.

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[10] *Id.* at 165-167.

[11] Civil Code, Art. 2028.

[12] *Rivero v. Court of Appeals*, G.R. No. 141273, 17 May 2005, 458 SCRA 714, 735.

This case is considered *CLOSED* and *TERMINATED*. No costs.

SO ORDERED.

Puno, C.J., Quisumbing, Carpio, Brion, Peralta, Bersamin, and *Abad, JJ.,* concur.

Corona, Carpio Morales, Velasco, Jr., Nachura, Leonardo-de Castro, and *Del Castillo, JJ.,* on official leave.

THIRD DIVISION

[G.R. No. 184645. October 30, 2009]

JOSE T. BARBIETO, *petitioner, vs.* **THE HONORABLE COURT OF APPEALS; MARY RAWNSLE V. LOPEZ, GRAFT INVESTIGATION AND PROSECUTION OFFICER II; EULOGIO S. CECILIO, DIRECTOR; EMILIO A. GONZALES III, DEPUTY OMBUDSMAN FOR THE MILITARY AND OTHER LAW ENFORCEMENT OFFICES; OMBUDSMAN MERCEDITAS GUTIERREZ; and LIEUTENANT GENERAL ALEXANDER B. YANO, COMMANDING GENERAL, PHILIPPINE ARMY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; COMPLAINTS; ISSUES HAVE BECOME MOOT AND ACADEMIC; COURTS REFRAIN FROM EXPRESSING OPINION.— Time and again, courts have refrained from even expressing an opinion in a case where the issues have become moot and academic, there being no more justiciable controversy to speak of, so that a determination thereof would be of no practical use or value.

2. ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; EXERCISE OF JUDICIAL DISCRETION BY A COURT IN INJUNCTIVE MATTERS; NOT INTERFERED WITH, EXCEPT WHEN THERE IS GRAVE ABUSE OF DISCRETION.— *Sine dubio*, the grant or denial of a writ of preliminary injunction in a pending case rests on the sound discretion of the court taking cognizance of the case, since the assessment and evaluation of evidence towards that end involves findings of facts left to the said court for its conclusive determination. Hence, the exercise of judicial discretion by a court in injunctive matters must not be interfered with, except when there is grave abuse of discretion.

3. ID.; ID.; ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION.— Grave abuse of discretion means such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave abuse of discretion, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.

4. ID.; ID.; ID.; ID.; SC ADMINISTRATIVE CIRCULAR NO. 20 – 95 PERTAINS TO APPLICATIONS FOR TROS FILED BEFORE TRIAL COURTS; CASE AT BAR.— Maj. Gen. Barbieto overlooked that Supreme Court Administrative Circular No. 20-95 pertains to applications for TROs and/or writs of preliminary injunctions filed before trial courts, whether multi-*sala* or single-*sala*. The whole text of said Administrative Circular is reproduced below: 1. Where an application for temporary restraining order (TRO) or writ of preliminary injunction is included **in a complaint or any initiatory pleading filed with the trial court**, such compliant or initiatory pleading shall be raffled only after notice to the adverse party and in the presence of such party or counsel. 2. The application for a TRO shall be acted upon only after all parties are heard in a summary hearing conducted within twenty-four (24) hours after the records are **transmitted to the branch selected by raffle**. The records shall be transmitted immediately after raffle. 3. If the matter is of extreme urgency, such that unless a TRO is issued, grave injustice and irreparable injury

will arise, the **Executive Judge** shall issue the TRO effective only for seventy-two (72) hours from issuance but shall immediately summon the parties for conference and immediately raffle the case in their presence. Thereafter, before the expiry of the seventy-two (72) hours, the **Presiding Judge** to whom the case is assigned shall conduct a summary hearing to determine whether the TRO can be extended for another period until a hearing in the pending application for preliminary injunction can be conducted. In no case shall the total period of the TRO exceed twenty (20) days, including the original seventy-two (72) hours, for the TRO issued by the Executive Judge. 4. With the exception of the provisions which necessarily involve **multiple-*sala* stations**, these rules shall apply to **single-*sala* stations** especially with regard to immediate notice to all parties of all applications for TRO.

5. ID.; ID.; ID.; SECTION 2, RULE IV OF THE 2002 INTERNAL RULES OF THE COURT OF APPEALS APPLIES TO APPLICATIONS FOR TRO FILED WITH THE APPELLATE COURT.— The Court of Appeals has its own Internal Rules. Section 2, Rule IV of the 2002 Internal Rules of the Court of Appeals provides the following procedure in the case of a petition involving an urgent matter, such as an application for a TRO: Sec. 2. *Action by the Presiding Justice*.— When a petition involves an urgent matter, such as an application for writ of *habeas corpus* or temporary restraining order, and there is no way of convening the Raffle Committee or calling any of its members. the Presiding Justice may conduct the raffle **or act on the petition**. subject to raffle on the next working day in accordance with Rule III hereof. Noticeably, under the aforementioned circumstances, the Presiding Justice of the Court of Appeals may even, by himself, act on an urgent application for a TRO. There is no mention at all of the requirement that the Presiding Justice must hold a summary hearing prior to granting or denying such an application.

6. ID.; ID.; ID.; SECTION 4, RULE IV OF THE 2002 INTERNAL RULES OF THE COURT OF APPEALS APPLIES TO THE HEARING FOR THE ISSUANCE OF THE WRIT OF PRELIMINARY INJUNCTION BEFORE THE COURT OF APPEALS.— As for a preliminary injunction, Section 4, Rule VI of the 2002 Internal Rules of the Court of Appeals

lays down the following procedure: *Sec. 4. Hearing on Preliminary Injunction.*- **The requirement of a hearing on an application for preliminary injunction is satisfied with the issuance by the Court of a resolution served upon the party sought to be enjoined requiring him to comment on said application** within a period of not more than ten (10) days from notice. Said party may attach to his comment documents which may show why the application for preliminary injunction should be denied. The court may require the party seeking the injunctive relief to file his reply to the comment within five (5) days from receipt of the latter. If the party sought to be enjoined fails to file his comment as provided for in the preceding paragraph, the Court may resolve the application on the basis of the petition and its annexes. The preceding paragraphs, notwithstanding, **the Court may, in its sound discretion, set the application for a preliminary injunction for hearing** during which the parties may present their respective positions or submit evidence in support thereof.

7. ID.; ID.; ID.; GENERAL PRINCIPLES IN ISSUANCE OF WRIT. — The Court, in *Philippine Ports Authority v. Cipres Stevedoring & Arrastre, Inc.*, provided the following elucidation on the general principles in issuing a writ of preliminary injunction: A preliminary injunction is an order granted at any stage of an action prior to judgment of final order, requiring a party, court, agency, or person to refrain from a particular act or acts. It is a preservative remedy to ensure the protection of a party's substantive rights or interests pending the final judgment in the principal action. A plea for an injunctive writ lies upon the existence of a claimed emergency or extraordinary situation which should be avoided for otherwise, the outcome of a litigation would be useless as far as the party applying for the writ is concerned. At times referred to as the "Strong Arm of Equity," we have consistently ruled that there is no power the exercise of which is more delicate and which calls for greater circumspection than the issuance of an injunction. It should only be extended in cases of great injury where courts of law cannot afford an adequate or commensurate remedy in damages; "in cases of extreme urgency; where the right is very clear; where considerations of relative inconvenience bear strongly in complainant's favor; where there is a willful and unlawful invasion of plaintiff's right against his protest

and remonstrance, the injury being a continuing one, and where the effect of the mandatory injunction is rather to reestablish and maintain a preexisting continuing relation between the parties, recently and arbitrarily interrupted by the defendant, than to establish a new relation." For the writ issue, two requisites must be present, namely, the existence of the right to be protected, and that the facts against which the injunction is to be directed are violative of said right. x x x A writ of preliminary injunction may be granted only upon showing by the applicant of a clear and unmistakable right that is a right in *esse*.

8. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO LIBERTY.— Indeed, Section I, Article III of the 1987 Constitution, guarantees that no person may be deprived of life, liberty, or property without due process of law. Also, the Republic of the Philippines, as a signatory to the Universal Declaration of Human Rights (UDHR), recognizes that everyone has the right to liberty and security of one's person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

9. ID.; ID.; ID.; ID.; NOT ABSOLUTE.— Nevertheless, the right to liberty is not absolute. It bears to point out that while both the 1987 Constitution and the UDHR affirm the right of every person to liberty, they do concede that there are instances when a person must be deprived thereof for as long as **due process of law** has been observed

10. ID.; ID.; ID.; ID.; ID.; CASE AT BAR.— Since Maj. Gen. Barbieto is being charged with serious offenses, Lt. Gen. Yano issued the Order of Arrest for the former under Article 70 of the Articles of War: Art. 70. *Arrest or Confinement.* – **Any person subject to military law charged with crime or with a serious offense under these articles shall be placed in confinement or in arrest, as circumstances require**; but when charged with a minor offense only, such person shall not ordinarily be placed in confinement. Any person placed in arrest under the provisions of this Article, shall thereby be **restricted to his barracks, quarters or tent,** unless such limits shall be enlarged by proper authority. Any officer or cadet who breaks his arrest or who escapes from confinement, whether before or after trial or sentence and before he is set

at liberty by proper authority, shall be dismissed from the service or suffer such other punishment as a court-martial may direct, and any other person subject to military law who escapes from confinement or who breaks his arrest, whether before or after trial or sentence and before he is set at liberty by proper authority, shall be punished as a court martial may direct.

11. REMEDIAL LAW; CIVIL PROCEDURE; PRELIMINARY INJUNCTION; WRIT NOT ISSUED WHERE IT WOULD IN EFFECT DISPOSE OF THE MAIN CASE WITHOUT TRIAL.— The prevailing rule is that the courts should avoid issuing a writ of preliminary injunction that would in effect dispose of the main case without trial.

APPEARANCES OF COUNSEL

Jurado Law Office for petitioner.
The Solicitor General for respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This Petition for *Certiorari* under Rule 65 of the Revised Rules of Court assails the Resolutions dated 6 August 2008[1] and 22 September 2008[2] of the Court of Appeals in CA-G.R. SP. No. 102874, denying the prayer of petitioner Major General Jose T. Barbieto (Maj. Gen. Barbieto) for a temporary restraining order (TRO) and/or writ of preliminary injunction to enjoin his arrest and confinement, and/or lift the preventive suspension order issued by the Office of the Deputy Ombudsman for the Military and other Law Enforcement Offices (ODO-MOLEO) and the warrant of arrest and confinement issued by Lieutenant General Alexander B. Yano (Lt. Gen. Yano), Commanding General (CG) of the Philippine Army (PA).

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[1] Penned by Associate Justice Japar B. Dimaampao with Associate Justices Amelita G. Tolentino and Sixto C. Marella, Jr., concurring; *rollo*, pp. 30-33.

[2] *Rollo*, pp. 23-25.

Facts of the Case

Maj. Gen. Barbieto is the Division Commander of the 4th Infantry Division, PA, Camp Edilberto Evangelista, Cagayan de Oro City.

Several Complaint-Affidavits were filed before the ODO-MOLEO by various personnel of the 4th Infantry Division, PA, against Maj. Gen. Barbieto and his alleged bagman Staff Sergeant Roseller A. Echipare (S/Sgt. Echipare), charging the latter two with grave misconduct and violation of Republic Act No. 6713. Maj. Gen. Barbieto and S/Sgt. Echipare, for allegedly committed the following: (a) extortion of amounts ranging from ₱25,000.00 to ₱30,000.00 from applicants in order to guarantee their enlistment in the Philippine Army; (b) extortion of money from soldiers seeking reinstatement, in exchange for Maj. Gen. Barbieto's approval of their reinstatement, despite previous disapproval of said soldiers' requests for reinstatement by the 4th Infantry Division Reinstatement Board; and (c) anomalies in the clearing of payroll of the *Balik Baril* program fund of the Armed Forces of the Philippines (AFP). The administrative case against Maj. Gen. Barbieto and S/Sgt. Echipare was docketed as OMB-P-A-08-0201-B, and the criminal case was docketed as OMB-P-C-08-0204-B.[3]

On 29 February 2008, ODO-MOLEO ordered[4] the preventive suspension of Maj. Gen. Barbieto and S/Sgt. Echipare for six months during the pendency of OMB-P-A-08-0201-B, the administrative case, thus:

> WHEREFORE in accordance with Section 24 of Republic Act 6770 and Section 9 Rule III of Administrative Order No. 7 respondents MAJOR GENERAL JOSE T. BARBIETO and SSGT ROSELLER A. ECHEPARE are hereby PREVENTIVELY SUSPENDED during the pendency of this case until its termination, but not to exceed the total period of six (6) months, without pay. In case of delay in the disposition of the case due to the fault, negligence or any cause

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[3] *Id.* at 185-186.

[4] *Id.* at 131.

attributable to the respondents, the period of such delay shall not be counted in computing the period of the preventive suspension.

In accordance with Section 27, paragraph (1) of Republic Act 6770, this Order is immediately executory. Notwithstanding any motion, appeal or petition that may be filed by the respondents seeking relief from this Order, unless otherwise ordered by this office or by any court of competent jurisdiction, the implementation of this Order shall not be interrupted within the period prescribed.

The Chief of Staff GENERAL HERMOGENES ESPERON of the Armed Forces of the Philippines is hereby directed to implement this Order immediately upon receipt hereof, and to notify this Office within five (5) days from said receipt of the status of said implementation.

Maj. Gen. Barbieto filed a Motion for Reconsideration[5] of the foregoing Order.

Simultaneous with the proceedings before the ODO-MOLEO, the Army Investigator General (AIG) was also conducting an investigation on the same charges against Maj. Gen. Barbieto and S/Sgt. Echipare. The AIG recommended, and Lt. Gen. Yano, as CG-PA, approved, the indictment of Maj. Gen. Barbieto for violations of Articles 55 (Officer Making Unlawful Enlistment), 96 (Conduct Unbecoming of an Officer and a Gentleman), and 97 (Conduct Prejudicial to Good Order and Military Discipline); and of S/Sgt. Echipare for violations of Articles 96 and 97, all of the Articles of War.[6]

On 20 February 2008, Maj. Gen. Barbieto's 10-day leave of absence took effect to pave the way for an impartial investigation. On even date, S/Sgt. Echipare was arrested and confined at the Intelligence and Security Group Compound, Fort Bonifacio, Taguig City.[7]

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[5] *Id.* at 187.

[6] *Id.* at 45-75.

[7] *Id.*

Lt. Gen. Yano subsequently issued on 13 March 2008 an Order for the "Arrest and Confinement of Major General Barbieto AFP and SSG Echipare PA," directing the Commander of the Headquarters and Headquarters Support Group (HHSG), PA, "to arrest and take responsibility of Major General Barbieto and SSG Echipare PA x x x and to restrict them to quarters pending investigation with the end view of a General Court Martial Trial."[8] Pursuant to this Order of Arrest, Maj. Gen. Barbieto was arrested and confined to cluster officer housing, while S/Sgt. Echipare was transferred to and detained at the Custodial Management Unit (CMU), HHSG, PA, on 18 March 2008.[9]

On 10 April 2008, the Office of the Army Judge Advocate (OAJA), concurring in the findings of the Pre-Trial Investigation Panel, recommended the immediate trial of Maj. Gen. Barbieto and S/Sgt. Echipare before the General Court Martial and the endorsement of the case to the AFP General Headquarters for the conduct of General Court Martial Proceedings.[10]

Without waiting for the resolution by the ODO-MOLEO of his Motion for Reconsideration of the preventive suspension order issued against him in OMB-P-A-08-0201-B, Maj. Gen. Barbieto filed before the Court of Appeals a Petition for *Certiorari* with Prayer for the Issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction,[11] docketed as CA-G.R. SP. No. 102874. Maj. Gen. Barbieto specifically prayed for: (1) the issuance of a TRO enjoining respondents Mary Rawnsle V. Lopez (Lopez), Graft Investigation and Prosecution Officer II; Eulogio S. Cecilio, Director; Emilio A. Gonzalez, Deputy Ombudsman for MOLEO; and Orlando C. Casimiro, Acting Ombudsman, to lift and hold in abeyance the preventive suspension order; and ordering Alexander B. Yano,

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[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.* at 187.

Lieutenant General, Commanding General of the Philippine Army to nullify the warrant of arrest and confinement of petitioner; (2) the setting of a hearing on the preliminary injunction; and (3) after hearing on the preliminary injunction, the issuance of an order granting the injunction and making the injunction permanent, and such other and further relief as the appellate court may deem just and equitable in the premises.[12]

On 4 April 2008, the Court of Appeals directed respondents to submit, within 10 days, their comment stating the reasons or justifications why the TRO and/or writ of preliminary injunction Maj. Gen. Barbieto prayed for should not be issued.[13]

After the parties submitted all the required pleadings, the Court of Appeals issued a Resolution on 6 August 2008, denying Maj. Gen. Barbieto's prayer for a TRO and/or writ of preliminary injunction. The appellate court held:

> ***After due consideration of the factual circumstances of the instant case, we find no compelling reason to issue an injunctive writ and/or temporary restraining order.***
>
> The surrounding facts underpinning [Maj. Gen. Barbieto]'s plea for the issuance of an injunctive relief are intimately related to and inextricably intertwined with the issues raised in the instant *Petition for Certiorari*.
>
> Moreover, [Maj. Gen. Barbieto] failed to demonstrate extreme urgency, as well as great or irreparable injury that he may suffer while the instant Petition is pending adjudication. x x x.
>
> x x x x x x x x x
>
> Here, [Maj. Gen. Barbieto] failed to at least show a clear and unmistakable right entitling him to the issuance of a writ of preliminary injunction and/or temporary restraining order.[14] (Emphasis supplied.)

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[12] CA *rollo*, pp. 2-20.

[13] *Rollo*, p. 182.

[14] *Id.* at 32-33.

The dispositive portion of the Resolution reads:

> WHEREFORE, [Maj. Gen. Barbieto]'s prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction is hereby **DENIED.**[15]

Maj. Gen. Barbieto moved for reconsideration of the aforementioned Resolution, but the Court of Appeals, in its Resolution[16] dated 22 September 2008, refused to do so. The appellate court stressed that before there could be a question of whether to grant or deny the prayer for a writ of preliminary injunction, Maj. Gen. Barbieto, at the onset, should have established in his pleadings the existence of the grounds enumerated in Section 3, Rule 58 of the Revised Rules of Court. It stood by its pronouncement in the earlier Resolution that Maj. Gen. Barbieto failed to demonstrate urgency, as well as great or irreparable injury that he may suffer while his Petition in CA-G.R. SP No. 102874 is pending adjudication; hence, the necessity of a hearing did not even arise. The Court of Appeals further reasoned that it could properly deny Maj. Gen. Barbieto's prayer for preliminary injunctive relief since, being an ancillary remedy, the grant of the same, which would result in a premature resolution of the case, or will grant the principal objectives of the parties, before the merits could be passed, is proscribed.

The Court of Appeals decreed in its 22 September 2008 Resolution:

> In fine, [Maj. Gen. Barbieto]'s Motion for Reconsideration proffers no substantial issue which may warrant reversal of the assailed Resolution.
>
> WHEREFORE, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.[17]

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[15] *Id.* at 33.

[16] *Id.* at 23-25.

[17] *Id.* at 25.

Hence, Maj. Gen. Barbieto filed the instant Petition before this Court, raising the following issues:

I. THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING PETITIONER'S PRAYER FOR INJUNCTIVE RELIEF WITHOUT HEARING IN VIOLATION OF HIS RIGHT TO PROCEDURAL DUE PROCESS OF LAW.

II. THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RULING THAT PETITIONER FAILED TO DEMONSTRATE EXTREME URGENCY AS WELL AS GREAT OR IRREPARABLE INJURY THAT HE MAY SUFFER THAT SHOULD MERIT THE GRANT OF INJUNCTIVE RELIEF.

III. THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RULING THAT PETITIONER MAY BE FURTHER DEPRIVED OF THE PRIMORDIAL RIGHT TO LIBERTY GUARANTEED IN THE CONSTITUTION BY A MERE PROCEDURAL CONSIDERATION THAT THE INJUNCTIVE RELIEF IS INEXTRICABLY INTERTWINED WITH THE ISSUES RAISED IN THE PETITION.

During the pendency of the present Petition, an Order,[18] prepared by respondent Lopez on 27 March 2008, but approved by Ombudsman Merceditas N. Gutierrez only on 7 November 2008, denied Maj. Gen. Barbieto's Motion for Reconsideration of the preventive suspension order previously issued against Maj. Gen. Barbieto and S/Sgt. Echipare in OMB-P-A-08-0201-B. The Order cited the power of the Office of the Ombudsman to preventively suspend any public officer under Republic Act No. 6770, otherwise known as the Ombudsman Act of 1989, provided that the essential requisites under Section 24 thereof are present. The Order pointed out that this power of the Office of the Ombudsman had long been respected by the Supreme Court.

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[18] *See* Office of the Ombudsman's back-up file.

Maj. Gen. Barbieto's claim that he was denied his constitutional right to due process was rejected in this latest Ombudsman Order, because:

> The above-concept [of due process] is not a fixed or static one, as clearly acknowledged. What is due process of the law depends on circumstances, it varies with the subject matter and necessities of the situation *(Bernas, Joaquin.* **The Constitution of the Republic of the Philippines,** *p. 114*).
>
> Considering however, that this is an administrative case, the Supreme Court has recognized that there are two (2) types of preventive suspension. **Preventive suspension as a preventive measure and suspension as penalty.** x x x.
>
> x x x x x x x x x
>
> In the instant case, it is clear that the suspension issued is a mere preliminary step and not a penalty. Thus, the strict adherence to the rudiments of notice and hearing need not be applied due to the immediate nature of the action.[19]

The same Ombudsman Order rebuffed Maj. Gen. Barbieto's contention that there was forum shopping, given the existence of two similar administrative cases against him: one, OMB-P-A-08-0201-B before the Office of the Ombudsman; and two, before the military tribunal. OMB-P-A-08-0201-B determines Maj. Gen. Barbieto's fitness as a public officer; whereas the pending administrative case before the Provost Marshall General, PA, determines his fitness and efficiency as a military officer.

Therefore, the ultimate ruling in said Ombudsman Order is as follows:

> WHEREFORE, premises considered, the Motion for Reconsideration dated 12 March 2008, is hereby DENIED for lack of merit. The Order dated 29 February 2008 is hereby AFFIRMED.[20]

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

[20] *Id*. at 6.

Arguments of the Parties

Maj. Gen. Barbieto avers in the Petition[21] at bar that the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying his prayer for preliminary injunctive relief without hearing, in violation of his right to procedural due process of law; in finding that he failed to demonstrate extreme urgency, as well as great or irreparable injury that he may suffer from respondents' acts, which would have merited the grant of a TRO and/or writ of preliminary injunction; and in ruling that the preliminary injunctive relief prayed for is inextricably intertwined with the issues raised in his Petition in CA-G.R. SP No. 102874.

Maj. Gen. Barbieto insists that his right to procedural due process was violated by the Court of Appeals when said court denied his prayer for a TRO and/or writ of preliminary injunction without a hearing. Maj. Gen. Barbieto invoked Supreme Court Administrative Circular No. 20-95, which provides that "an application for TRO shall be acted upon only after all parties are heard in a summary hearing x x x."[22]

Maj. Gen. Barbieto further argues that all elements to warrant the grant of a writ of preliminary injunction are present in this case. His preventive suspension, merely a step in the administrative investigation against him, had already expired on 28 August 2008, and yet, he remains to be under arrest and confinement. Maj. Gen. Barbieto stresses that the urgent need for the issuance of a TRO and/or writ of preliminary injunction by the Court of Appeals is evident from the fact that he is being continuously deprived of his right to liberty.

The Office of the Ombudsman counters that Maj. Gen. Barbieto's reliance on Administrative Circular No. 20-95 is misplaced, for the same applies to trial courts only. Referring to Section 4, Rule VI of the 2002 Internal Rules of the Court of Appeals, the Office of the Ombudsman posits that procedural

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[21] *Rollo,* pp. 3-18.

[22] Paragraph (2) of Supreme Court Administrative Circular No. 20-95.

due process has been satisfied by the appellate court when the latter issued a resolution requiring the party, whose act was sought to be enjoined, to file a comment on the application for a TRO. The denial by the Court of Appeals of Maj. Gen. Barbieto's prayer for preliminary injunctive relief was grounded on both legal and logical considerations. The grant of the ancillary remedy of TRO and/or writ of preliminary injunction would have resulted in a premature resolution of the main case of *certiorari* in CA-G.R. SP No. 102874 before the merits of the latter could be passed upon.

The Office of the Ombudsman contends, likewise, that the expiration of Maj. Gen. Barbieto's six-month preventive suspension on 28 August 2008 renders the issue on the propriety of such suspension moot and academic. There is nothing more that an injunctive relief could seek to enjoin. Maj. Gen. Barbieto's continued confinement is no longer due to the preventive suspension order of the Ombudsman, but pursuant to Lt. Gen. Yano's Order of Arrest.

Lastly, the Office of the Ombudsman maintains that none of the requisites for the issuance of a TRO and/or writ of preliminary injunction exists in the instant case. Maj. Gen. Barbieto's proper recourse is to just await the resolution of his Petition for *Certiorari* in CA-G.R. SP No. 102874 still pending before the Court of Appeals, which involved the issue of the legality of his continued confinement.

Lt. Gen. Yano substantially joins in and/or adopts the arguments of the Office of the Ombudsman. He additionally asserts that there is no reason to enjoin the enforcement of the Order of Arrest against Maj. Gen. Barbieto, citing his authority as CG-PA to issue the same, pursuant to the Articles of War.

The Ruling of the Court

At the onset, the Court must clarify that Maj. Gen. Barbieto is actually seeking a TRO and/or a writ of preliminary injunction to enjoin the implementation of two distinct orders, issued by two different persons, in two separate proceedings: (1) the preventive suspension order issued by the ODO-MOLEO in OMB-P-A-08-

0201-B; and (2) the Order of Arrest issued by Lt. Gen. Yano as CG-PA in view of the impending General Court Martial Trial.

The preventive suspension order issued by the ODO-MOLEO merely suspended Maj. Gen. Barbieto from his office for six months, pending the administrative proceedings against the latter.[23] There is nothing in said preventive suspension order of the ODO-MOLEO that directed Maj. Gen. Barbieto's arrest. His arrest and continued confinement is solely by virtue of Lt. Gen. Yano's Order.

The Court takes note of the undisputed fact that Maj. Gen. Barbieto's six-month suspension, imposed by the ODO-MOLEO in an Order dated 28 February 2008 in OMB-P-A-08-0201-B, already expired on **28 August 2008**. Such an event necessarily renders this Petition moot and academic, insofar as the latter pertains to the said preventive suspension order issued by the ODO-MOLEO against Maj. Gen. Barbieto. Any ruling by this Court, whether affirming or reversing the denial by the appellate court of Maj. Gen. Barbieto's prayer for issuance of a TRO and/or writ of preliminary injunction to enjoin the implementation of said preventive suspension order, will no longer serve any practical purpose, because the act sought to be enjoined has long been consummated.[24]

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[23] The authority of the ODO-MOLEO to suspend Maj. Gen. Barbieto is rooted in Section 24 of Republic Act No. 6770, which reads:

SEC. 24. *Preventive Suspension.* — The Ombudsman or his Deputy may preventively suspend any officer or employee under his authority pending an investigation, if in his judgment the evidence of guilt is strong, and (a) the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; or (b) the charges would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him.

The preventive suspension shall continue until the case is terminated by the Office of the Ombudsman but not more than six months, without pay, except when the delay in the disposition of the case by the Office of the Ombudsman is due to the fault, negligence or petition of the respondent, in which case the period of such delay shall not be counted in computing the period of suspension herein provided.

[24] *Africa v. Sandiganbayan*, 350 Phil. 846, 857-858 (1998).

Time and again, courts have refrained from even expressing an opinion in a case where the issues have become moot and academic, there being no more justiciable controversy to speak of, so that a determination thereof would be of no practical use or value.[25] Where the issue has become moot and academic, there is no actual substantial relief to which Maj. Gen. Barbieto would be entitled and which would be negated by the dismissal of his Petition as regards the preventive suspension order of the ODO-MOLEO.[26]

Similarly, the Court finds the present Petition, insofar as it concerns Lt. Gen. Yano's Order of Arrest against Maj. Gen. Barbieto, dismissible for lack of merit.

Sine dubio, the grant or denial of a writ of preliminary injunction in a pending case rests on the sound discretion of the court taking cognizance of the case, since the assessment and evaluation of evidence towards that end involves findings of facts left to the said court for its conclusive determination. Hence, the exercise of judicial discretion by a court in injunctive matters must not be interfered with, except when there is grave abuse of discretion.[27]

Grave abuse of discretion means such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave abuse of discretion, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[28] The Court of Appeals

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[25] *Engaño v. Court of Appeals*, G.R. No. 156959, 27 June 2006, 493 SCRA 323, 329.

[26] *Gancho-on v. Secretary of Labor and Employment*, 337 Phil. 654, 658 (1997).

[27] *Cortez-Estrada v. Heirs of Domingo Samut*, 491 Phil. 458, 473-474 (2005).

[28] *Neri v. Senate Committee on Accountability of Public Officers and Investigations, Senate Committee on Trade and Commerce, and Senate Committee on National Defense and Security*, G.R. No. 180643, 25 March 2008, 549 SCRA 77, 131.

did not gravely abuse its discretion in refusing to issue a TRO and/or writ of preliminary injunction to enjoin the enforcement of Lt. Gen. Yano's Order of Arrest against Maj. Gen. Barbieto.

Maj. Gen. Barbieto cannot rely on Supreme Court Administrative Circular No. 20-95, providing special rules for temporary restraining orders and preliminary injunctions, to support his claim that he was denied due process when the Court of Appeals denied his prayer for the issuance of a TRO and/or writ of preliminary injunction without first conducting a summary hearing.

The whole text of said Administrative Circular is reproduced below:

1. Where an application for temporary restraining order (TRO) or writ of preliminary injunction is included **in a complaint or any initiatory pleading filed with the trial court**, such compliant or initiatory pleading shall be raffled only after notice to the adverse party and in the presence of such party or counsel.

2. The application for a TRO shall be acted upon only after all parties are heard in a summary hearing conducted within twenty-four (24) hours after the records are **transmitted to the branch selected by raffle**. The records shall be transmitted immediately after raffle.

3. If the matter is of extreme urgency, such that unless a TRO is issued, grave injustice and irreparable injury will arise, the **Executive Judge** shall issue the TRO effective only for seventy-two (72) hours from issuance but shall immediately summon the parties for conference and immediately raffle the case in their presence. Thereafter, before the expiry of the seventy-two (72) hours, the **Presiding Judge** to whom the case is assigned shall conduct a summary hearing to determine whether the TRO can be extended for another period until a hearing in the pending application for preliminary injunction can be conducted. In no case shall the total period of the TRO exceed twenty (20) days, including the original seventy-two (72) hours, for the TRO issued by the Executive Judge.

4. With the exception of the provisions which necessarily involve **multiple-*sala* stations**, these rules shall apply to **single-sala stations** especially with regard to immediate notice to all parties of all applications for TRO.

For immediate compliance. (Emphases ours.)

Maj. Gen. Barbieto overlooked that Supreme Court Administrative Circular No. 20-95 pertains to applications for TROs and/or writs of preliminary injunctions filed before trial courts, whether multi-*sala* or single-*sala*.

The Court of Appeals has its own Internal Rules.

Section 2, Rule IV of the 2002 Internal Rules of the Court of Appeals provides the following procedure in the case of a petition involving an urgent matter, such as an application for a TRO:

Sec. 2. *Action by the Presiding Justice.* – When a petition involves an urgent matter, such as an application for writ of *habeas corpus* or temporary restraining order, and there is no way of convening the Raffle Committee or calling any of its members, the Presiding Justice may conduct the raffle **or act on the petition**, subject to raffle on the next working day in accordance with Rule III hereof. (Emphasis ours.)

Noticeably, under the aforementioned circumstances, the Presiding Justice of the Court of Appeals may even, by himself, act on an urgent application for a TRO. There is no mention at all of the requirement that the Presiding Justice must hold a summary hearing prior to granting or denying such an application.

As for a preliminary injunction, Section 4, Rule VI of the 2002 Internal Rules of the Court of Appeals lays down the following procedure:

Sec. 4. *Hearing on Preliminary Injunction.* — **The requirement of a hearing on an application for preliminary injunction is satisfied with the issuance by the Court of a resolution served upon the party sought to be enjoined requiring him to comment on said application** within a period of not more than ten (10) days from notice. Said party may attach to his comment documents which may show why the application for preliminary injunction should be

denied. The Court may require the party seeking the injunctive relief to file his reply to the comment within five (5) days from receipt of the latter.

If the party sought to be enjoined fails to file his comment as provided for in the preceding paragraph, the Court may resolve the application on the basis of the petition and its annexes.

The preceding paragraphs, notwithstanding, **the Court may, in its sound discretion, set the application for a preliminary injunction for hearing** during which the parties may present their respective positions or submit evidence in support thereof. (Emphases ours.)

Based on the foregoing rule, the Court of Appeals clearly satisfied the requirement of a hearing when, in its Resolution dated 4 April 2008 in CA-G.R. SP No. 102874, it directed respondents to submit their comment on Maj. Gen. Barbieto's prayer for the issuance of a TRO and/or writ of preliminary injunction within ten days from notice.[29] While it is true that the right to due process safeguards the opportunity to be heard and to submit any evidence one may have in support of his claim or defense, the Court has time and again held that where the opportunity to be heard, either through verbal arguments or pleadings, is accorded, and the party can "present its side" or defend its "interest in due course," there is no denial of due process. What the law proscribes is the lack of opportunity to be heard.[30]

The last paragraph of Section 4, Rule VI of the 2002 Internal Rules of the Court of Appeals also proves false Maj. Gen. Barbieto's contention that the actual conduct of a hearing on an application for preliminary injunction is mandatory. Said rule explicitly states that the setting of a hearing on such an application is left to the sound discretion of the appellate court. Hence, it is not enough for Maj. Gen. Barbieto to show that no

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[29] *Rollo*, p. 182.

[30] *Ko v. Philippine National Bank*, G.R. Nos. 169131-32, 20 January 2006, 479 SCRA 298, 305-306.

hearing on his application for TRO and/or preliminary injunction was conducted by the Court of Appeals, but he must also be able to convince this Court that the appellate court gravely abused its discretion in choosing not to conduct such a hearing. Maj. Gen. Barbieto likewise failed in this regard.

The Court, in *Philippine Ports Authority v. Cipres Stevedoring & Arrastre, Inc.*,[31] provided the following elucidation on the general principles in issuing a writ of preliminary injunction:

> A preliminary injunction is an order granted at any stage of an action prior to judgment of final order, requiring a party, court, agency, or person to refrain from a particular act or acts. It is a preservative remedy to ensure the protection of a party's substantive rights or interests pending the final judgment in the principal action. A plea for an injunctive writ lies upon the existence of a claimed emergency or extraordinary situation which should be avoided for otherwise, the outcome of a litigation would be useless as far as the party applying for the writ is concerned.
>
> At times referred to as the "Strong Arm of Equity," we have consistently ruled that there is no power the exercise of which is more delicate and which calls for greater circumspection than the issuance of an injunction. It should only be extended in cases of great injury where courts of law cannot afford an adequate or commensurate remedy in damages; "in cases of extreme urgency; where the right is very clear; where considerations of relative inconvenience bear strongly in complainant's favor; where there is a willful and unlawful invasion of plaintiff's right against his protest and remonstrance, the injury being a continuing one, and where the effect of the mandatory injunction is rather to reestablish and maintain a preexisting continuing relation between the parties, recently and arbitrarily interrupted by the defendant, than to establish a new relation."
>
> For the writ to issue, two requisites must be present, namely, the existence of the right to be protected, and that the facts against which the injunction is to be directed are violative of said right. x x x.

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[31] G.R. No. 145742, 14 July 2005, 463 SCRA 358, 373-374.

A writ of preliminary injunction may be granted only upon showing by the applicant of a clear and unmistakable right that is a right in *esse*. Maj. Gen. Barbieto claims that his right in *esse* that is being violated herein is his right to liberty.

Indeed, Section I, Article III of the 1987 Constitution, guarantees that no person may be deprived of life, liberty, or property without due process of law. Also, the Republic of the Philippines, as a signatory to the Universal Declaration of Human Rights (UDHR), recognizes that everyone has the right to liberty and security of one's person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.[32]

Nevertheless, the right to liberty is not absolute. It bears to point out that while both the 1987 Constitution and the UDHR affirm the right of every person to liberty, they do concede that there are instances when a person must be deprived thereof for as long as **due process of law** has been observed.

Thus, Maj. Gen. Barbieto cannot just invoke herein his fundamental right to liberty; upon him also falls the burden of proving that he is being deprived of such right without due process.

To recall, Lt. Gen. Yano ordered Maj. Gen. Barbieto's arrest after the conduct of an investigation by and the recommendation of the AIG that Maj. Gen. Barbieto be charged before a court martial with violations of Articles 55 (Officer Making Unlawful Enlistment), 96 (Conduct Unbecoming of an Officer and Gentleman), and 97 (Conduct Prejudicial to Good Order and Military Discipline) of the Articles of War. Since Maj. Gen. Barbieto is being charged with serious offenses, Lt. Gen. Yano issued the Order of Arrest for the former under Article 70 of the Articles of War:

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[32] See *The Secretary of National Defense v. Manalo*, G.R. No. 180906, 7 October 2008, 568 SCRA 1, 49-50.

Art. 70. *Arrest or Confinement.* – **Any person subject to military law charged with crime or with a serious offense under these articles shall be placed in confinement or in arrest, as circumstances require**; but when charged with a minor offense only, such person shall not ordinarily be placed in confinement. Any person placed in arrest under the provisions of this Article, shall thereby be **restricted to his barracks, quarters or tent,** unless such limits shall be enlarged by proper authority. Any officer or cadet who breaks his arrest or who escapes from confinement, whether before or after trial or sentence and before he is set at liberty by proper authority, shall be dismissed from the service or suffer such other punishment as a court-martial may direct, and any other person subject to military law who escapes from confinement or who breaks his arrest, whether before or after trial or sentence and before he is set at liberty by proper authority, shall be punished as a court martial may direct. (Emphases ours.)

Now, is Lt. Gen. Yano's issuance of the Order of Arrest under the aforedescribed circumstances violative of Maj. Gen. Barbieto's right to liberty and due process? The Court accords to Lt. Gen. Yano the presumption of good faith and regularity in the issuance of said Order of Arrest, having done the same in the course of the performance of his official duties. Other than this, the Court cannot make any more pronouncements on the matter. Suffice it to say that the need for a more extensive determination of said question, by itself, already negates Maj. Gen. Barbieto's insistence of a clear and well-established right that warrants the protection of a TRO and/or writ of preliminary injunction. Where the complainant's (or in this case, petitioner's) right is doubtful or disputed, injunction is not proper.[33]

The Court must limit itself in the Petition at bar to the issue on the non-issuance by the Court of Appeals of a TRO and/or writ of preliminary injunction to prevent the enforcement of Maj. Gen. Barbieto's arrest. It must be careful not to preempt the resolution by the Court of Appeals of Maj. Gen. Barbieto's Petition for *Certiorari* in CA-G.R. SP No. 102874, wherein

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[33] *Tayag v. Lacson*, G.R. No. 134971, 25 March 2004, 426 SCRA 282, 299.

the propriety of his arrest and continued confinement is one of the central issues.

The prevailing rule is that the courts should avoid issuing a writ of preliminary injunction that would in effect dispose of the main case without trial. Otherwise, there would be a prejudgment of the main case and a reversal of the rule on the burden of proof, since such issuance would assume the proposition that Maj. Gen. Barbieto is inceptively bound to prove.[34]

WHEREFORE, the instant Petition is *DISMISSED*. The Resolutions dated 6 August 2008 and 22 September 2008 of the Court of Appeals in CA-G.R. SP No. 102874 are *AFFIRMED*. The Court of Appeals is *DIRECTED* to resolve petitioner Maj. Gen. Jose T. Barbieto's Petition for *Certiorari* in CA-G.R. SP No. 102874 with dispatch. Costs against petitioner.

SO ORDERED.

Quisumbing,[*] *Carpio (Chairperson), Peralta,* and *Abad,*[**] *JJ.,* concur.

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[34] See *Philippine Ports Authority v. Pier 8 Arrastre & Stevedoring Services, Inc.*, G.R. Nos. 147861 & 155252, 18 November 2005, 475 SCRA 426, 441.

[*] Per Special Order No. 755, dated 12 October 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Leonardo A. Quisumbing to replace Associate Justice Antonio Eduardo B. Nachura, who is on official leave.

[**] Per Special Order No. 753, dated 12 October 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Roberto A. Abad to replace Associate Justice Presbitero J. Velasco, Jr., who is on official leave.

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