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OF THE

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FROM

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MANILA
2014

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[G.R. No. 151800. November 5, 2009]

OFFICE OF THE OMBUDSMAN, represented by HON. ANIANO A. DESIERTO, *petitioner, vs.* **HEIRS OF MARGARITA *VDA. DE* VENTURA, represented by PACITA V. PASCUAL, EMILIANO EUSEBIO, JR., and CARLOS RUSTIA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; COURT OF APPEALS; JURISDICTION; ON ORDERS, DIRECTIVES AND DECISIONS OF THE OFFICE OF THE OMBUDSMAN IN ADMINISTRATIVE DISCIPLINARY CASES ONLY.— The crux of the matter is whether the CA has jurisdiction over decisions and orders of the Ombudsman in criminal cases. This issue has been directly addressed in *Kuizon v. Desierto* and reiterated in the more recent *Golangco v. Fung*, wherein the Court declared, thus: **The Court of Appeals has jurisdiction over orders, directives and decisions of the Office of the Ombudsman in administrative disciplinary cases only. It cannot, therefore, review the orders, directives or decisions of the Office of the Ombudsman in criminal or non-administrative cases**. In *Kuizon v. Desierto*, this Court clarified: *The appellate court correctly ruled that its jurisdiction extends only to decisions of the Office of the Ombudsman in administrative cases.* In the Fabian case, we ruled that appeals from decisions

of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals under Rule 43 of the 1997 Rules of Civil Procedure. It bears stressing that when we declared Section 27 of Republic Act No. 6770 as unconstitutional, we categorically stated that said provision is involved only whenever an appeal by *certiorari* under Rule 45 is taken from a decision in an administrative disciplinary action. It cannot be taken into account where an original action for *certiorari* under Rule 65 is resorted to as a remedy for judicial review, such as from an incident in a criminal action. x x x It is settled that a judgment rendered by a court without jurisdiction over the subject matter is void. **Since the Court of Appeals has no jurisdiction over decisions and orders of the Ombudsman in criminal cases, its ruling on the same is void.**

2. ID.; SUPREME COURT; JURISDICTION; ON RESOLUTIONS OF THE OFFICE OF THE OMBUDSMAN IN CRIMINAL CASES OR NON-ADMINISTRATIVE CASES.— In *Estrada v. Desierto*, the Court emphasized that parties seeking to question the resolutions of the Office of the Ombudsman in criminal cases or non-administrative cases, may file an original action for *certiorari* with this Court, not with the CA, when it is believed that the Ombudsman acted with grave abuse of discretion.

3. POLITICAL LAW; ADMINISTRATIVE LAW; PROCEDURAL DUE PROCESS; FORMAL HEARING, NOT REQUIRED. — It has long been acknowledged that in administrative proceedings, even those before the Ombudsman, a formal hearing is not required and cases may be submitted for resolution based only on affidavits, supporting documents and pleadings. Such procedure has been held to be sufficient compliance with the requirements of procedural due process as all that is needed is an opportunity to explain one's side or an opportunity to seek reconsideration of the action or ruling complained of.

4.REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; INVESTIGATORY AND PROSECUTORY POWERS OF THE OMBUDSMAN, RESPECTED. — The hornbook doctrine emphasized in *Presidential Commission on Good Government v. Desierto* must be borne in mind, to wit: x x x **the Supreme Court will not ordinarily interfere with the Ombudsman's exercise of his investigatory and prosecutory**

powers without good and compelling reasons to indicate otherwise. Said exercise of powers is based upon his constitutional mandate and the courts will not interfere in its exercise. The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman, but upon practicality as well. Otherwise, innumerable petitions seeking dismissal of investigatory proceedings conducted by the Ombudsman will grievously hamper the functions of the office and the courts, in much the same way that courts will be swamped if they had to review the exercise of discretion on the part of public prosecutors each time they decided to file an information or dismiss a complaint by a private complainant. Nevertheless, the Ombudsman's discretion in determining the existence of probable cause is not absolute. However, it is **incumbent upon petitioner to prove that such discretion was gravely abused** in order to warrant the reversal of the Ombudsman's findings by this Court.

5. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; ELUCIDATED.— In *Velasco v. Commission on Elections*, the Court defined "grave abuse of discretion" as follows: x x x grave abuse of discretion is such "capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or [an] exercise of power in an arbitrary and despotic manner by reason of passion or personal hostility, or an exercise of judgment so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act in a manner not at all in contemplation of law."

6. POLITICAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. No. 3019); SECTION 3, PAR. (E) ON GIVING OF UNWARRANTED ADVANTAGE OR PREFERENCE TO A PRIVATE PARTY; ELEMENTS.— The elements of the offense in Section 3(e) are: (1) that the accused are public officers or private persons charged in conspiracy with them; (2) that said public officers have committed the prohibited acts during the performance of their official duties or in relation to their public positions; (3) that they have caused undue injury to a party, whether the Government or a private party; (4) **that such injury was caused by giving an unwarranted benefit, advantage or preference to such party**; and (5) that the public

officers have acted with manifest partiality, evident bad faith or gross inexcusable negligence. From the foregoing, it can be seen that the complainants must show that the benefits, advantage or preference given to a party is **unwarranted**.

7. ID.; OFFICE OF THE OMBUDSMAN; PROVISIONAL DISMISSAL OF COMPLAINT FOR VIOLATION OF R.A. NO. 3019 WITHOUT PREJUDICE TO ITS RE-OPENING UPON FINAL RESOLUTION OF PRIOR AND PERTINENT DARAB CASE, PROPER.— The action of the Ombudsman in provisionally dismissing the complaint for violation of Section 3(e), without prejudice to its re-opening upon final resolution of DARAB Case No. 0040, was not whimsical or arbitrary. Such action finds support in the Court's rulings that a trial court, or in this case a quasi-judicial tribunal, has the inherent power to control the disposition of cases by holding in abeyance the proceedings before it in the exercise of its sound discretion, to await the outcome of another case pending in another court or body, especially where the parties and the issues are the same. This is to avoid multiplicity of suits and prevent vexatious litigations, conflicting judgments, and confusion between litigants and courts; and to ensure economy of time and effort for itself, for counsel, and for litigants. Where the rights of parties to the second action (in this case, the criminal complaint for Violation of Section 3(e) before the Ombudsman) cannot be properly determined until the questions raised in the first action (DARAB Case No. 0040) are settled, the second action should be stayed.

8. ID.; ID.; ID.; DOCTRINE OF PRIMARY JURISDICTION, APPLIED BY ANALOGY.— The reason behind the doctrine of primary jurisdiction may also be applied here by analogy. The objective of said doctrine is to guide a court in determining whether it should refrain from exercising its jurisdiction until after an administrative agency — which has special knowledge, experience and tools to determine technical and intricate matters of fact, has determined some question, or a particular aspect of some question, arising in the proceeding before the court. This is not to say that the Ombudsman cannot acquire jurisdiction or take cognizance of a criminal complaint until after the administrative agency has decided on a particular issue that is also involved in the complaint before it. Rather, using the same reasoning behind the doctrine of primary jurisdiction, it is only

prudent and practical for the Ombudsman to refrain from proceeding with the criminal action until after the DARAB, which is the administrative agency with special knowledge and experience over agrarian matters, has arrived at a final resolution on the issue of whether Edilberto Darang is indeed entitled under the law to be awarded the land in dispute. This would establish whether the benefits or advantages given to him by the public officials charged under the complaint, are truly unwarranted.

APPEARANCES OF COUNSEL

Public Attorney's Office for respondents.

Carlos Rustia for himself and Emiliano Eusebio, Jr.

D E C I S I O N

PERALTA, *J.*:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, praying that the Decision[1] of the Court of Appeals (CA) dated February 27, 2001, and the CA Resolution[2] dated December 11, 2001, be reversed and set aside.

The undisputed facts are as follows.

On November 17, 1996, respondents filed with the Office of the Ombudsman a Complaint for Falsification of Public Documents and Violation of Section 3, paragraph (e)[3] of Republic Act (R.A.)

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[1] Penned by Associate Justice Eliezer R. de Los Santos, with Associate Justices Godardo A. Jacinto and Bernardo P. Abesamis, concurring; *rollo*, pp. 37-51.

[2] *Id.* at 52-58.

[3] Section 3, par. (e) of R.A. No. 3019 provides, thus:

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

xxx xxx xxx

No. 3019, as amended (the Anti-Graft and Corrupt Practices Act) against Zenaida H. Palacio and spouses Edilberto and Celerina Darang. Respondents alleged therein that Palacio, then officer-in-charge of the Department of Agrarian Reform (DAR) Office in San Jose City, Nueva Ecija, designated Celerina Darang, Senior Agrarian Reform Program Technologist stationed at Sto. Tomas, San Jose City, to investigate the claims of respondents against the former's husband Edilberto Darang; that Celerina Darang accepted such designation, conducted an investigation and rendered a report favorable to her husband, Edilberto Darang; that Celerina Darang supported such report with public documents which she falsified; and that Palacios then issued a recommendation, based on Celerina Darang's report, to award the landholding in dispute to Edilberto Darang.[4]

Acting on respondents' complaint against the aforementioned DAR officers and Edilberto Darang, petitioner issued a Resolution[5] dated June 9, 1998, the dispositive portion of which reads as follows:

> WHEREFORE, premises considered, it is respectfully recommended that the charge against respondents for falsification of public documents be dismissed for insufficiency of evidence.
>
> It is further recommended that the charge against respondents for Violation of Section 3, par. (e) of R.A. No. 3019, as amended, be provisionally dismissed. This is, however, without prejudice to its re-opening should the outcome of DARAB Case No. 0040 pending before the DAR Adjudication Board, Diliman, Quezon City, so warrant.
>
> SO RESOLVED.[6]

> (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[4] *Rollo*, pp. 85-88.

[5] *Id.* at 87-91.

[6] *Id.* at 90-91.

Respondents filed several motions seeking reconsideration of the above Resolution, all of which were denied.

Herein respondents then filed a petition for *certiorari* and *mandamus* with this Court, but *per* Resolution dated July 14, 1999, the petition was referred to the CA. On February 27, 2001, the CA promulgated the assailed Decision, the dispositive portion of which is reproduced hereunder:

> WHEREFORE, premises considered, the petition for *certiorari*, in regard to the public respondent's Resolution dated June 09, 1998 and Orders dated August 06 and 26, 1998 in OMB-196-2268, is hereby **DENIED** as to the dismissal of the complaint against private respondents for falsification of public documents, but **GRANTED** as to the provisional dismissal of the complaint for violation of Section 3, Par. (e) of R.A. 3019, as amended, which is hereby **REVERSED** and **SET ASIDE** for having been done with grave abuse of discretion, and consequently, the appropriate criminal charges under the Anti-Graft and Corrupt Practices Act are hereby ordered filed against the individual respondents.
>
> SO ORDERED.[7]

Petitioner's motion for reconsideration of the CA Decision was denied in its Resolution dated December 11, 2001.

Hence, this petition, where it is alleged that:

I

THE COURT OF APPEALS HAS NO JURISDICTION TO REVIEW THE FINDINGS OF PROBABLE CAUSE BY THE OMBUDSMAN IN CRIMINAL CASE OMB-1-96-2268.

II

THE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THE OMBUDSMAN'S PROVISIONAL DISMISSAL OF OMB-1-96-2268 WAS INFIRM, AS THE SAID COURT CANNOT COMPEL THE OMBUDSMAN TO USURP THE PREROGATIVES AND FUNCTIONS OF THE DARAB.

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[7] *Id.* at 50.

III

THE COURT OF APPEALS HAS NO AUTHORITY TO DETERMINE THE EXISTENCE OF PROBABLE CAUSE IN OMB-1-96-2268 AS SUCH AUTHORITY IS GIVEN EXCLUSIVELY TO THE OMBUDSMAN.[8]

The petition deserves ample consideration.

The crux of the matter is whether the CA has jurisdiction over decisions and orders of the Ombudsman in criminal cases. This issue has been directly addressed in *Kuizon v. Desierto*[9] and reiterated in the more recent *Golangco v. Fung*,[10] wherein the Court declared, thus:

The Court of Appeals has jurisdiction over orders, directives and decisions of the Office of the Ombudsman in administrative disciplinary cases only. It cannot, therefore, review the orders, directives or decisions of the Office of the Ombudsman in criminal or non-administrative cases.

In *Kuizon v. Desierto,* this Court clarified:

The appellate court correctly ruled that its jurisdiction extends only to decisions of the Office of the Ombudsman in administrative cases. In the Fabian case, we ruled that appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals under Rule 43 of the 1997 Rules of Civil Procedure. It bears stressing that when we declared Section 27 of Republic Act No. 6770 as unconstitutional, we categorically stated that said provision is involved only whenever an appeal by *certiorari* under Rule 45 is taken from a decision in an administrative disciplinary action. It cannot be taken into account where an original action for *certiorari* under Rule 65 is resorted to as a remedy for judicial review, such as from an incident in a criminal action.

x x x It is settled that a judgment rendered by a court without jurisdiction over the subject matter is void. **Since the Court of**

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[8] *Id.* at 17.

[9] 406 Phil. 611 (2001).

[10] G.R. Nos. 147640 & 147762, October 16, 2006, 540 SCRA 321.

Appeals has no jurisdiction over decisions and orders of the Ombudsman in criminal cases, its ruling on the same is void.[11]

The question that arises next is what remedy should an aggrieved party avail of to assail the Ombudsman's finding of the existence or lack of probable cause in criminal cases or non-administrative cases. In *Estrada v. Desierto*,[12] the Court emphasized that parties seeking to question the resolutions of the Office of the Ombudsman in criminal cases or non-administrative cases, may file an original action for *certiorari* with this Court, not with the CA, when it is believed that the Ombudsman acted with grave abuse of discretion.

Respondents originally filed a petition for *certiorari* before this Court but the same was referred to the CA. It, thus, behooves this Court to now look into whether the Ombudsman indeed acted with grave abuse of discretion in dismissing the charge of Falsification of Public Documents and provisionally dismissing the charge of Violation of Section 3, par. (e) of R.A. No. 3019, as amended, against Zenaida H. Palacio and spouses Edilberto and Celerina Darang.

A close examination of the records will reveal that the Ombudsman acted properly in dismissing the charge for falsification of public documents because herein respondents utterly failed to identify the supposedly falsified documents and submit certified true copies thereof. In fact, respondents admitted in their petition for *certiorari*, originally filed with this Court but referred to the CA, that they had not yet submitted documents in support of the charge for falsification of documents as they intended to present the same in a formal preliminary investigation, which they expected to be conducted by the Ombudsman.[13] However, it has long been acknowledged that in administrative proceedings, even those before the Ombudsman, a formal hearing is not required and cases may be submitted for resolution based only on affidavits, supporting documents and pleadings. Such

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[11] *Id.* at 334-335. (Emphasis supplied.)

[12] 487 Phil. 169, 179 (2004).

[13] CA *rollo*, p. 17.

procedure has been held to be sufficient compliance with the requirements of procedural due process as all that is needed is an opportunity to explain one's side or an opportunity to seek reconsideration of the action or ruling complained of.[14] In this case, records show that respondents had been afforded such opportunities.

As to the provisional dismissal of the charge for Violation of Section 3 par. (e) of R.A. No. 3019, as amended, the Court likewise finds no reason to overturn the ruling of the Ombudsman. The hornbook doctrine emphasized in *Presidential Commission on Good Government v. Desierto*[15] must be borne in mind, to wit:

> x x x **the Supreme Court will not ordinarily interfere with the Ombudsman's exercise of his investigatory and prosecutory powers without good and compelling reasons to indicate otherwise. Said exercise of powers is based upon his constitutional mandate and the courts will not interfere in its exercise**. The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman, but upon practicality as well. Otherwise, innumerable petitions seeking dismissal of investigatory proceedings conducted by the Ombudsman will grievously hamper the functions of the office and the courts, in much the same way that courts will be swamped if they had to review the exercise of discretion on the part of public prosecutors each time they decided to file an information or dismiss a complaint by a private complainant.[16]

Nevertheless, the Ombudsman's discretion in determining the existence of probable cause is not absolute. However, it is **incumbent upon petitioner to prove that such discretion was gravely abused** in order to warrant the reversal of the Ombudsman's findings by this Court.[17]

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[14] *Marcelo v. Bungubung*, G.R. No. 175201, April 23, 2008, 552 SCRA 589, 603-604.

[15] G.R. No. 140231, July 9, 2007, 527 SCRA 61.

[16] *Id.* at 70-71. (Emphasis supplied.)

[17] *Luwalhati R. Antonino v. Ombudsman Aniano A. Desierto, et al.*, G.R. No. 144492, December 18, 2008, 574 SCRA 403, 425. (Emphasis supplied.)

In *Velasco v. Commission on Elections*,[18] the Court defined "grave abuse of discretion" as follows:

> x x x grave abuse of discretion is such "capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or [an] exercise of power in an arbitrary and despotic manner by reason of passion or personal hostility, or an exercise of judgment so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act in a manner not at all in contemplation of law."

Here, the Ombudsman based its provisional dismissal on the ground that the case between the same parties before the DAR Adjudication Board (DARAB), DARAB Case No. 0040, had not yet reached finality, as there was a pending Motion for Relief from Judgment that was yet to be resolved. The Ombudsman reasoned out that since what Section 3, par. (e), R.A. No. 3019 penalized was the giving of **unwarranted** advantage or preference to a private party, it was only prudent to await the **final** resolution in DARAB Case No. 0040, which would show if the favorable recommendation given by Celerina Darang benefiting her husband Edilberto was, indeed, unjustified, unwarranted or unfounded.

The Ombudsman's reasoning was not unfounded. Note that the elements of the offense in Section 3(e) are: (1) that the accused are public officers or private persons charged in conspiracy with them; (2) that said public officers have committed the prohibited acts during the performance of their official duties or in relation to their public positions; (3) that they have caused undue injury to a party, whether the Government or a private party; (4) **that such injury was caused by giving an unwarranted benefit, advantage or preference to such party;** and (5) that the public officers have acted with manifest partiality, evident bad faith or gross inexcusable negligence.[19] From the foregoing, it can be seen that the complainants must show that the benefits, advantage or preference given to a party is

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[18] G.R. No. 180051, December 24, 2008, 575 SCRA 590, 601-602.

[19] *Presidential Ad-Hoc Fact Finding Committee on Behest Loans v. Ombudsman Aniano Desierto*, G.R. No. 135703, April 15, 2009.

unwarranted. Since the main issue in DARAB Case No. 0040 is whether the disputed parcel of land should be awarded to Edilberto Darang, then it is true that a final resolution of the aforementioned DARAB case would establish whether the benefit or advantage given to him was indeed unwarranted.

Verily, the action of the Ombudsman in provisionally dismissing the complaint for violation of Section 3(e), without prejudice to its re-opening upon final resolution of DARAB Case No. 0040, was not whimsical or arbitrary. Such action finds support in the Court's rulings that a trial court, or in this case a quasi-judicial tribunal, has the inherent power to control the disposition of cases by holding in abeyance the proceedings before it in the exercise of its sound discretion, to await the outcome of another case pending in another court or body, especially where the parties and the issues are the same. This is to avoid multiplicity of suits and prevent vexatious litigations, conflicting judgments, and confusion between litigants and courts; and to ensure economy of time and effort for itself, for counsel, and for litigants. Where the rights of parties to the second action (in this case, the criminal complaint for Violation of Section 3(e) before the Ombudsman cannot be properly determined until the questions raised in the first action (DARAB Case No. 0040) are settled, the second action should be stayed.[20]

The reason behind the doctrine of primary jurisdiction may also be applied here by analogy. The objective of said doctrine is to guide a court in determining whether it should refrain from exercising its jurisdiction until after an administrative agency—which has special knowledge, experience and tools to determine technical and intricate matters of fact, has determined some question, or a particular aspect of some question, arising in the proceeding before the court.[21] This is not to say that the Ombudsman cannot acquire jurisdiction or take cognizance of

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[20] *Security Bank Corporation v. Victorio*, G.R. No. 155099, August 31, 2005, 468 SCRA 609, 627-628.

[21] *Omictin v. Court of Appeals*, G.R. No. 148004, January 22, 2007, 512 SCRA 70, 82.

a criminal complaint until after the administrative agency has decided on a particular issue that is also involved in the complaint before it. Rather, using the same reasoning behind the doctrine of primary jurisdiction, it is only prudent and practical for the Ombudsman to refrain from proceeding with the criminal action until after the DARAB, which is the administrative agency with special knowledge and experience over agrarian matters, has arrived at a final resolution on the issue of whether Edilberto Darang is indeed entitled under the law to be awarded the land in dispute. This would establish whether the benefits or advantages given to him by the public officials charged under the complaint, are truly unwarranted.

Thus, aside from the fact that the CA has no jurisdiction over decisions and orders of the Ombudsman in criminal cases, it was also incorrect to hold that the Ombudsman acted with grave abuse of discretion. The Court finds no cogent reason to disturb the assailed Resolution of the Ombudsman.

IN VIEW OF THE FOREGOING, the petition is *GRANTED*. The Decision of the Court of Appeals dated February 27, 2001, reversing the Resolution of the Office of the Ombudsman, dated June 9, 1998, and its Resolution dated December 11, 2001, are declared *VOID*.

SO ORDERED.

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

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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.

THIRD DIVISION

[G.R. No. 167706. November 5, 2009]

REYNALDO G. CABIGTING, *petitioner, vs.* **SAN MIGUEL FOODS, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW ARE PROPER; EXCEPTIONS.— The well-entrenched rule in our jurisdiction is that only questions of law may be entertained by this Court in a petition for review on *certiorari*. This rule, however, is not ironclad and admits certain exceptions, such as when (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.

2. ID.; ID.; ID.; FACTUAL FINDINGS OF QUASI-JUDICIAL BODIES; RESPECTED.— Factual findings of quasi-judicial bodies like the NLRC, particularly when they coincide with those of the Labor Arbiter and, if supported by substantial evidence, are accorded respect and even finality by this Court. Moreover, it is not the function of this Court to assess and evaluate the evidence all over again, particularly where the findings of the LA, the NLRC and the CA coincide. Thus, absent a showing of an error of law committed by the court below, or of whimsical or capricious exercise of judgment, or a demonstrable lack of basis for its conclusions, this Court may not disturb its factual findings.

3. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; SECURITY OF TENURE AND REINSTATEMENT; CONSTRUED. – Article 279 of the Labor Code of the Philippines provides the law on reinstatement, *viz*.: Article 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. Corollarily, Sections 2 and 3, Rule 1, Book VI of the Omnibus Rules Implementing the Labor Code state, *viz*.: Sec. 2. *Security of Tenure*. — In cases of regular employment, the employer shall not terminate the services of an employee, except for a just cause as provided in the Labor Code or when authorized by existing laws. Sec. 3. *Reinstatement*. — **An employee who is unjustly dismissed from work shall be entitled to reinstatement** without loss of seniority rights and to backwages.

4. ID.; ID.; ILLEGAL DISMISSAL; REINSTATEMENT; WHERE SEPARATION PAY PROPER IN LIEU OF REINSTATEMENT.— Under the law and prevailing jurisprudence, an illegally dismissed employee is entitled to reinstatement as a matter of right. However, if reinstatement would only exacerbate the tension and strained relations between the parties, or where the relationship between the employer and the employee has been unduly strained by reason of their irreconcilable differences, particularly where the illegally dismissed employee held a managerial or key position in the company, it would be more prudent to order payment of separation pay instead of reinstatement.

5. ID.; ID.; ID.; ID.; ID.; STAINED RELATIONS PRINCIPLE; LIMITATIONS AND QUALIFICATIONS FOR ITS APPLICATION, DISCUSSED.— In *Globe-Mackay Cable and Radio Corporation v. National Labor Relations Commission*, this Court discussed the limitations and qualifications for the application of the "strained relations" principle, in this wise: x x x If, in the wisdom of the Court, there may be a ground or grounds for non-application of the above-cited provision,

this should be by way of exception, such as when the reinstatement may be inadmissible due to ensuing strained relations between the employer and the employee. **In such cases, it should be proved that the employee concerned occupies a position where he enjoys the trust and confidence of his employer; and that it is likely that if reinstated, an atmosphere of antipathy and antagonism may be generated as to adversely affect the efficiency and productivity of the employee concerned.** A few examples will suffice to illustrate the Court's application of the above principle: where the employee is a Vice-President for Marketing and, as such, enjoys the full trust and confidence of top management; or is the Officer-In-Charge of the extension office of the bank where he works; or is an organizer of a union who was in a position to sabotage the union's efforts to organize the workers in commercial and industrial establishments; or is a warehouseman of a non-profit organization whose primary purpose is to facilitate and maximize voluntary gifts by foreign individuals and organizations to the Philippines; or is a manager of its Energy Equipment Sales. Obviously, the principle of "strained relations" cannot be applied indiscriminately. Otherwise, reinstatement can never be possible simply because some hostility is invariably engendered between the parties as a result of litigation. That is human nature. **Besides, no strained relations should arise from a valid and legal act of asserting one's right; otherwise, an employee who shall assert his right could be easily separated from the service, by merely paying his separation pay on the pretext that his relationship with his employer had already become strained.**

6. ID.; ID.; ID.; ID.; ID.; APPLICATION OF THE DOCTRINE OF STRAINED RELATIONS.— Chief Justice Reynato S. Puno, in his dissenting opinion in *MGG Marine Services, Inc. v. National Labor Relations Commission*, gives the following suggestion in the application of the doctrine of strained relations: x x x At the very least, I suggest that, henceforth, we should require that the alleged "strained relationship" must be pleaded and proved if either the employer or the employee does not want the employment tie to remain. By making "strained relationship" a triable issue of fact before the Arbiter or the NLRC we will eliminate rulings on "strained relationship" based on mere impression alone. Based on the foregoing, in order

for the doctrine of strained relations to apply, it should be proved that the employee concerned occupies a position where he enjoys the trust and confidence of his employer and that it is likely that if reinstated, an atmosphere of antipathy and antagonism may be generated as to adversely affect the efficiency and productivity of the employee concerned.

7. ID.; ID.; ID.; ID.; ID.; ID.; IMPUTATION OF MALICE AND BAD FAITH CANNOT BE MADE THE BASIS FOR DENYING REINSTATEMENT.— The words allegedly imputing malice and bad faith towards the respondent cannot be made a basis for denying his reinstatement. Respondent's perceived antipathy and antagonism is not of such degree as would preclude reinstatement of petitioner to his former position. In addition, by themselves alone, the words used by petitioner in his pleadings are insufficient to prove the presence of strained relations.

8. ID.; ID.; ID.; ID.; ID.; ID.; FILING OF THE COMPLAINT CANNOT BE USED AS BASIS FOR STRAINED RELATIONS.— The filing of the complaint by petitioner cannot be used as a basis for strained relations. As a rule, no strained relations should arise from a valid and legal act asserting one's right. x x x The doctrine of strained relations has been made applicable to cases where the employee decides not to be reinstated and demands for separation pay. The same, however, does not apply to herein petition, as petitioner is asking for his reinstatement despite his illegal dismissal. This Court takes note of the findings of fact of the NLRC that the position of inventory controller and warehouseman is still existing up to date. Petitioner has been an inventory controller for so many years, and there should be no problem in ordering the reinstatement with facility of a laborer, clerk, or other rank-and-file employee. In conclusion, it bears to stress that it is human nature that some hostility will inevitably arise between parties as a result of litigation, but the same does not always constitute strained relations in the absence of proof or explanation that such indeed exists.

APPEARANCES OF COUNSEL

Dolendo & Associates for petitioner.
Romero Valdecantos & Valencia Law Office for respondent.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a Petition for Review on *certiorari*[1] under Rule 45 of the Rules of Court assailing the August 31, 2004 Decision[2] and April 5, 2005 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 82810. The CA declared the dismissal of petitioner as illegal and ordered the payment of his full backwages, but did not decree his reinstatement.

The facts of the case:

Petitioner Reynaldo G. Cabigting was hired as a receiver/ issuer at the San Miguel Corporation, Feeds and Livestock Division (B-Meg) on February 16, 1984 and after years of service, he was promoted as inventory controller.[4]

On June 26, 2000, respondent San Miguel Foods, Inc., through its President, Mr. Arnaldo Africa, sent petitioner a letter informing him that his position as sales office coordinator under its logistic department has been declared redundant. Simultaneously, respondent terminated the services of petitioner effective July 31, 2000, and offered him an early retirement package. Thereafter, petitioner was included in the list of retrenched employees (for reason of redundancy) submitted by respondent to the Department of Labor and Employment.[5]

Petitioner was surprised upon receipt of the letter because he was not a sales office coordinator, and yet he was being terminated as such. Accordingly, petitioner refused to avail of the early retirement package.[6]

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[1] *Rollo*, pp. 8-27.

[2] Penned by Associate Justice Edgardo F. Sundiam, with Associate Justices Martin S. Villarama, Jr. and Japar B. Dimaampao, concurring; *id.* at 383-394.

[3] *Id.* at 29-31.

[4] *Rollo*, p. 384.

[5] *Id.*

[6] *Id.*

Prior to petitioner's termination on July 31, 2000, he was an inventory controller, performing at the same time the function of a warehouseman. Furthermore, petitioner was an active union officer of respondent's union but upon his termination, was only a member thereof.[7]

With the support of his union,[8] petitioner filed a Complaint questioning his termination primarily because he was not a sales office coordinator, but an inventory controller, performing the functions of both an inventory controller and a warehouseman.[9]

In reply, respondent reiterated its declaration that petitioner's position as sales office coordinator was redundant as a result of respondent's effort to streamline its operations.[10]

According to respondent, petitioner was supposed to be separated from employment (effective July 1, 1997) due to the cessation of business of the B-Meg Plant. However, upon petitioner's request for redeployment to another position, he was accommodated and was designated as sales coordinator from December 1997 to November 1998, even without rendering actual work as sales coordinator. Respondent claimed that the same was done on the assumption that petitioner would replace Mr. Luis del Rosario, Sales Coordinator of respondent's Luzon Operations Center, upon the latter's impending retirement and for the sole purpose of justifying his inclusion in the payroll. Respondent averred, however, that the position of Mr. Luis del Rosario as sales coordinator was abolished due to redundancy as a result of its streamlining efforts.[11]

On October 14, 2002, the Labor Arbiter (LA) rendered a Decision,[12] where it ruled that petitioner was illegally dismissed.

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[7] *Id.*

[8] San Miguel Foods, Inc. Employees Union-Philippine Transport and General Workers Organization.

[9] *Rollo,* pp. 384-385.

[10] *Id.* at 385.

[11] *Id.*

[12] *Id.* at 51-64.

Accordingly, the LA ordered respondent to pay petitioner backwages, separation pay in lieu of reinstatement and attorney's fees. The dispositive portion of said Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered ordering the respondent SAN MIGUEL FOODS, INC. to pay complainant REYNALDO CABIGTING the amount of ₱1,521,588.99, representing his separation pay under the CBA, backwages and attorney's fees.
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[13]

Respondent appealed the LA's Decision to the National Labor Relations Commission (NLRC). Likewise, petitioner partly appealed the LA's Decision as to his non-reinstatement to his previous post and for not awarding him moral and exemplary damages.[14]

On June 30, 2003, the NLRC rendered a Decision[15] affirming the LA's finding that petitioner was illegally dismissed by respondent. More importantly, the NLRC modified the LA's Decision by ordering the reinstatement of petitioner to his previous post, without loss of seniority rights. The dispositive portion of said Decision reads:

> WHEREFORE, premises considered, the decision under review is hereby MODIFIED by decreeing the REINSTATEMENT of the complainant to his former position without loss of seniority rights, in lieu of an earlier award of separation pay.
>
> Accordingly, backwages shall be computed from the time of the dismissal up to actual reinstatement.
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[16]

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[13] *Id.* at 64.

[14] *Id.* at 386.

[15] *Id.* at 32-50.

[16] *Id.* at. 49.

Respondent appealed the NLRC Decision to the CA *via* a Petition for *Certiorari*[17] under Rule 65 of the Rules of Court.

On August 31, 2004, the CA rendered a Decision partially granting respondent's petition. In said Decision, the CA affirmed the judgment of the LA and the NLRC finding that petitioner was illegally dismissed by respondent. However, the CA, on the ground that there were strained relations between employee and employer, reversed the portion of the NLRC Decision which decreed petitioner's reinstatement. The dispositive portion of the CA Decision reads:

> WHEREFORE, premises considered, the judgment of public respondent NLRC, affirming the judgment of the Labor Arbiter that private respondent Cabigting was illegally dismissed by petitioner, is hereby AFFIRMED. However, public respondent NLRC's judgment ordering the reinstatement of private respondent Cabigting is hereby REVERSED and SET ASIDE.
>
> The awards of backwages, separation pay and attorney's fees by the Labor Arbiter in his Decision dated October 14, 2002 REMAIN.
>
> SO ORDERED.[18]

Respondent filed a Motion for Reconsideration[19] of the said Decision. Likewise, petitioner filed a Partial Motion for Reconsideration[20] assailing the CA Decision insofar as it ruled against his reinstatement.

On April 5, 2005, the CA issued a Resolution[21] denying both motions.

Hence, herein petition, with petitioner raising the lone assignment of error, to wit:

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[17] *Id.* at 92-168.

[18] *Id.* at 393-394.

[19] *Id.* at 343-356.

[20] *Id.* at 65-71.

[21] *Id.* at 29-31.

THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN MODIFYING THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION, SECOND DIVISION.[22]

The petition is meritorious.

The crux of the controversy is whether or not "strained relations" bar petitioner's reinstatement.

At the outset, this Court shall address respondent's plea to re-open the issue of illegal dismissal. Respondent argues that it is axiomatic that an appeal, once accepted by the Supreme Court, throws the entire case open to review.[23] Accordingly, respondent posits that petitioner was not illegally dismissed, but was separated due to a valid redundancy/retrenchment program.[24]

The well-entrenched rule in our jurisdiction is that only questions of law may be entertained by this Court in a petition for review on *certiorari*. This rule, however, is not ironclad and admits certain exceptions, such as when (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.[25]

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[22] *Id.* at 11.

[23] *Id.* at 587.

[24] *Id.* at 590.

[25] *The Insular Life Assurance Company, Ltd. v. Court of Appeals*, G.R. No. 126850, April 28, 2004, 428 SCRA 79, 86.

After a painstaking review of the records, this Court finds no justification to warrant the application of any exception to the general rule.

It bears to stress that the LA, the NLRC and the CA all ruled that petitioner was illegally dismissed. Such being the case, factual findings of quasi-judicial bodies like the NLRC, particularly when they coincide with those of the Labor Arbiter and, if supported by substantial evidence, are accorded respect and even finality by this Court.[26] Moreover, it is not the function of this Court to assess and evaluate the evidence all over again, particularly where the findings of the LA, the NLRC and the CA coincide. Thus, absent a showing of an error of law committed by the court below, or of whimsical or capricious exercise of judgment, or a demonstrable lack of basis for its conclusions, this Court may not disturb its factual findings.[27]

Having settled the foregoing, this Court shall now address the lone issue of strained relations.

Article 279 of the Labor Code of the Philippines provides the law on reinstatement, *viz.*:

> Article 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.[28]

Corollarily, Sections 2 and 3, Rule 1, Book VI of the Omnibus Rules Implementing the Labor Code state, *viz.*:

> Sec. 2. *Security of Tenure*. — In cases of regular employment, the employer shall not terminate the services of an employee, except

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[26] *Tres Reyes v. Maxim's Tea House*, 446 Phil. 388, 401 (2003).

[27] See *Abalos v. Philex Mining Corporation*, 441 Phil. 386, 396 (2002).

[28] Emphasis supplied.

for a just cause as provided in the Labor Code or when authorized by existing laws.

Sec. 3. *Reinstatement*. — **An employee who is unjustly dismissed from work shall be entitled to reinstatement** without loss of seniority rights and to backwages.[29]

Under the law and prevailing jurisprudence, an illegally dismissed employee is entitled to reinstatement as a matter of right. However, if reinstatement would only exacerbate the tension and strained relations between the parties, or where the relationship between the employer and the employee has been unduly strained by reason of their irreconcilable differences, particularly where the illegally dismissed employee held a managerial or key position in the company, it would be more prudent to order payment of separation pay instead of reinstatement.[30]

In *Globe-Mackay Cable and Radio Corporation v. National Labor Relations Commission*,[31] this Court discussed the limitations and qualifications for the application of the "strained relations" principle, in this wise:

x x x If, in the wisdom of the Court, there may be a ground or grounds for non-application of the above-cited provision, this should be by way of exception, such as when the reinstatement may be inadmissible due to ensuing strained relations between the employer and the employee.

In such cases, it should be proved that the employee concerned occupies a position where he enjoys the trust and confidence of his employer; and that it is likely that if reinstated, an atmosphere of antipathy and antagonism may be generated as to adversely affect the efficiency and productivity of the employee concerned.

A few examples will suffice to illustrate the Court's application of the above principle: where the employee is a Vice-President for

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[29] Emphasis supplied.

[30] *Quijano v. Mercury Drug Corporation*, 354 Phil. 112, 121-122 (1998).

[31] G.R. No. 82511, March 3, 1992, 206 SCRA 701.

Marketing and, as such, enjoys the full trust and confidence of top management; or is the Officer-In-Charge of the extension office of the bank where he works; or is an organizer of a union who was in a position to sabotage the union's efforts to organize the workers in commercial and industrial establishments; or is a warehouseman of a non-profit organization whose primary purpose is to facilitate and maximize voluntary gifts by foreign individuals and organizations to the Philippines; or is a manager of its Energy Equipment Sales.

Obviously, the principle of "strained relations" cannot be applied indiscriminately. Otherwise, reinstatement can never be possible simply because some hostility is invariably engendered between the parties as a result of litigation. That is human nature.

Besides, no strained relations should arise from a valid and legal act of asserting one's right; otherwise, an employee who shall assert his right could be easily separated from the service, by merely paying his separation pay on the pretext that his relationship with his employer had already become strained.[32]

Moreover, Chief Justice Reynato S. Puno, in his dissenting opinion in *MGG Marine Services, Inc. v. National Labor Relations Commission*,[33] gives the following suggestion in the application of the doctrine of strained relations:

x x x At the very least, I suggest that, henceforth, we should require that the alleged "strained relationship" must be pleaded and proved if either the employer or the employee does not want the employment tie to remain. By making "strained relationship" a triable issue of fact before the Arbiter or the NLRC we will eliminate rulings on "strained relationship" based on mere impression alone.[34]

Based on the foregoing, in order for the doctrine of strained relations to apply, it should be proved that the employee concerned occupies a position where he enjoys the trust and confidence of his employer and that it is likely that if reinstated, an atmosphere of antipathy and antagonism may be generated as to adversely affect the efficiency and productivity of the employee concerned.

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[32] *Id.* at 711-712. (Emphasis and underscoring supplied.)

[33] 328 Phil. 1046, 1093 (1966).

[34] *MGG Marine Services, Inc. v. NLRC*, *supra*, at 698.

Although the determination of the applicability of the doctrine of strained relations is essentially a question of fact, which should not be the proper subject of herein petition, this Court shall address said issue in light of the conflicting findings of the LA and the NLRC.

The LA ruled that strained relations barred petitioner's reinstatement, to wit:

> Anent the aspect of reinstatement, this Office opines that to reinstate complainant to his former position at this point in time, is no longer practical and would not promote peace considering the animosity and strained relations that exist between the parties. xxx[35]

After a perusal of the LA Decision, this Court finds that the LA had no hard facts upon which to base the application of the doctrine of strained relations, as the same was not squarely discussed nor elaborated on. Also, it is of notice that said issue was addressed by the LA in just one sentence without indicating factual circumstances why strained relations exist.

The same is also true for the CA Decision which disposed of the issue in just one sentence without any elaboration, to wit:

> On the matter of reinstatement, We believe that under the circumstances in this case, there has been, and there will be, animosity and strained relationships between the parties, hence, private respondent Cabigting shall be entitled to separation pay.[36]

Accordingly, this Court is of the opinion that both the LA and the CA based their conclusions on impression alone. It bears to stress that reinstatement is the rule and, for the exception of strained relations to apply, it should be proved that it is likely that if reinstated, an atmosphere of antipathy and antagonism would be generated as to adversely affect the efficiency and productivity of the employee concerned. However, both the LA and the CA failed to state the basis for their finding that a strained relationship exists.

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

[36] *Id.* at 393.

Based on the foregoing, this Court upholds the ruling of the NLRC finding the doctrine of strained relations inapplicable to the factual circumstances of the case at bar, to wit:

> Finally, it is noted that the position of warehouseman and inventory controller is still existing up to date. The nature of the controversy where the parties to this case were engaged is not of such nature that would spawn a situation where the relations are severely strained between them as would bar the complainant to his continued employment. Neither may it be said that his position entails a constant communion with the respondent such that hostilities may bar smooth interactions between them. Accordingly, We find no basis for an award of separation pay in lieu of reinstatement.[37]

In its pleadings, however, respondent repeatedly argued against the reinstatement of petitioner, in the wise:

> 5.5 Strained relations may result, among others, from the imputations made by the employer and the employee as against each other or, by the filing of a complaint by the employee against the employer.
>
> 5.6 As will be discussed below, the strained relationship between the petitioner and the respondent, aside from the fact that the former was not illegally dismissed, further militates against the reinstatement of the petitioner.
>
> 5.7 The petitioner, in his pleadings submitted before the Honorable Labor Arbiter below, resorted to imputations and accusations which are totally uncalled for, hitting the respondent "below the belt," so to speak.
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> 5.8 For instance, in his reply position paper, petitioner declared as a "blatant display of arrogance" the alleged refusal of respondent to observe certain provisions of the collective bargaining agreement; that it was "highly ridiculous" on the part of the respondent to assert that his continued employment was due merely to an act of accommodation on the part of the respondent.
>
> 5.9 In fact, in his comment with the Court of Appeals, petitioner intimated that respondent fabricated evidence when it presented a document which showed that petitioner was a Sales Office

[37] *Id.* at 48.

Coordinator, claiming that he was assigned by the respondent to a "new and unknown position and thereafter declared [the position] redundant." Throughout his allegations, petitioner imputes "malice" and "bad faith" on the part of respondent.

5.10 These imputations effectively placed a strain on the relationship between the respondent and the petitioner, notwithstanding the fact that the former did everything within its resources to accommodate the petitioner so as to provide him employment even when there was no more work for him to do.

xxx xxx xxx

5.18 The antagonism and antipathy shown by petitioner towards the respondent is more real than imaginary. It bears to note that after the respondent extended him accommodation by instituting him in the payroll, the petitioner "turned the tables" on the respondent by declaring that his continued employment was not due to an accommodation, even alleging that it was "highly ridiculous" for the respondent to consider him as an accommodated employee.[38]

The claim of respondent is not meritorious. This Court shares petitioner's view that the words allegedly imputing malice and bad faith towards the respondent cannot be made a basis for denying his reinstatement. Respondent's perceived antipathy and antagonism is not of such degree as would preclude reinstatement of petitioner to his former position.[39] In addition, by themselves alone, the words used by petitioner in his pleadings are insufficient to prove the presence of strained relations. Thus, this Court finds that one should not fault petitioner for his choice of words, especially in light of overwhelming evidence showing he was illegally dismissed.

Moreover, the filing of the complaint by petitioner cannot be used as a basis for strained relations. As a rule, no strained relations should arise from a valid and legal act asserting one's right.[40] Likewise, respondent's claim that it was betrayed by

[38] *Id.* 579-584.

[39] *Id.* at 516.

[40] *Sagum v. Court of Appeals*, G.R. No. 158759, May 26, 2005, 459 SCRA 223, 233.

petitioner, after several accommodations it had extended to him,[41] deserves scant consideration. On this note, the NLRC was categorical that no such accommodation existed, to wit:

> On the argument that Cabigting was merely accommodated by the respondent after the closure of the Tacoma Warehouse, it, however, appears that no such accommodation existed. x x x[42]

The doctrine of strained relations has been made applicable to cases[43] where the employee decides not to be reinstated and demands for separation pay. The same, however, does not apply to herein petition, as petitioner is asking for his reinstatement despite his illegal dismissal.

Lastly, this Court takes note of the findings of fact of the NLRC that the position of inventory controller and warehouseman is still existing up to date.[44] Petitioner has been an inventory controller for so many years, and there should be no problem in ordering the reinstatement with facility of a laborer, clerk, or other rank-and-file employee.[45]

In conclusion, it bears to stress that it is human nature that some hostility will inevitably arise between parties as a result of litigation, but the same does not always constitute strained relations in the absence of proof or explanation that such indeed exists.

WHEREFORE, premises considered, the petition is *GRANTED*. The August 31, 2004 Decision and April 5, 2005 Resolution of the Court of Appeals in CA-G.R. SP No. 82810 are hereby *AFFIRMED* with the *MODIFICATION* that petitioner

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[41] *Rollo,* p. 584.

[42] *Id.* at 47.

[43] See *FRF Enterprise v. NLRC and R. Soriano*, 313 Phil. 493 (1995); *Starlite Plastic Industrial Corporation v. National Labor Relations Commission*, 253 Phil. 307 (1989).

[44] *Rollo*, p. 48

[45] See *Asiaworld Publishing House, Inc. v. Ople*, 236 Phil. 236, 245 (1987).

Reynaldo G. Cabigting is entitled to *REINSTATEMENT*. Respondent is *ORDERED* to *IMMEDIATELY REINSTATE* petitioner to his previous position without loss of seniority rights. In case the former position of petitioner is no longer available, respondent is directed to create an equivalent position and immediately reinstate petitioner without loss of seniority rights. Accordingly, backwages shall be computed from the time of dismissal up to the time of actual reinstatement.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 168746. November 5, 2009]

EQUITABLE PCI BANK, INC., *petitioner, vs.* **HON. SALVADOR Y. APURILLO in his capacity as Presiding Judge, Regional Trial Court of Tacloban City, Branch 8, and YKS REALTY DEVELOPMENT, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; GROUNDS FOR ISSUANCE THEREOF.— Section 3, Rule 58 of the Rules of Court provides that: **SEC.**

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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.

3. Grounds for issuance of preliminary injunctions. — A preliminary injunction may be granted when it is established: (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually; (b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or (c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual. As such, a writ of preliminary injunction may be issued only upon clear showing of an actual existing right to be protected during the pendency of the principal action. The twin requirements of a valid injunction are the existence of a right and its actual or threatened violations. Thus, to be entitled to an injunctive writ, the right to be protected and the violation against that right must be shown. Moreover, the rule is well entrenched that the issuance of the writ of preliminary injunction as an ancillary or preventive remedy to secure the right of a party in a pending case rests upon the sound discretion of the trial court.

2. ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION IN THE ISSUANCE OF THE WRIT OF PRELIMINARY INJUNCTION; REMEDY.— If the court commits grave abuse of its discretion in the issuance of the writ of preliminary injunction, such that the act amounts to excess or lack of jurisdiction, the same may be nullified through a writ of *certiorari* or prohibition. Such grave abuse of discretion in the issuance of writs of preliminary injunction implies a capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction or whether the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal aversion amounting to an evasion of positive duty or to a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law. For the extraordinary writ of *certiorari* to lie, there must be a capricious, arbitrary and whimsical exercise of power.

3. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPRIETY THEREOF; EXCESS OF JURISDICTION DISTINGUISHED

FROM ABSENCE OF JURISDICTION.— A Petition for *Certiorari*, under Rule 65 of the Rules of Court, is intended for the correction of errors of jurisdiction only or grave abuse of discretion amounting to lack or excess of jurisdiction. Its principal office is only to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction. It may issue only when the following requirements are alleged in the petition and established: (1) the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. Excess of jurisdiction as distinguished from absence of jurisdiction means that an act, though within the general power of a tribunal, board or officer is not authorized, and invalid with respect to the particular proceeding, because the conditions which alone authorize the exercise of the general power in respect of it are wanting. Without jurisdiction means lack or want of legal power, right or authority to hear and determine a cause or causes, considered either in general or with reference to a particular matter. It means lack of power to exercise authority.

4. ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; ELUCIDATED.— A writ of preliminary injunction is generally based solely on initial and incomplete evidence. The evidence submitted during the hearing on an application for a writ of preliminary injunction is not conclusive or complete for only a "sampling" is needed to give the trial court an idea of the justification for the preliminary injunction pending the decision of the case on the merits. As such, the findings of fact and opinion of a court when issuing the writ of preliminary injunction are interlocutory in nature and made even before the trial on the merits is commenced or terminated. There are vital facts that have yet to be presented during the trial which may not be obtained or presented during the hearing on the application for the injunctive writ. The trial court needs to conduct substantial proceedings in order to put the main controversy to rest. The sole object of a preliminary injunction is to maintain the *status quo* until the merits can be heard. 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 on 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.

APPEARANCES OF COUNSEL

Sumalpong Matibag Magturo Banzon Buenaventura & Yusi for petitioner.

Vicente A. Espina, Jr. for private respondent.

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] dated June 27, 2005, of the Court of Appeals (CA) in CA-G.R. SP No. 85484, dismissing the petition.

The factual and procedural antecedents are as follows:

YKS Realty Development, Inc. was a client of Philippine Commercial International Bank (PCIB) and Equitable Banking Corporation (EBC), the predecessors of herein petitioner Equitable PCI Bank, Inc. In their commercial transactions, PCIB and EBC granted YKS a series of loans and credit facilities secured by real estate mortgages.

The EBC Account

Through its transactions with EBC, YKS was granted a series of credit lines by the former. The entire line was secured by a

[1] Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Mercedes Gozo-Dadole and Ramon M. Bato, concurring, *rollo*, pp. 10-16.

Real Estate Mortgage on two properties covered by Transfer Certificates of Title (TCT) Nos. T-22461 and T-22460 owned by YKS situated in Tacloban City. The credit line was initially in the amount of ₱4,000,000.00,[2] but as a result of several amendments to the real estate mortgage, the initial loan consideration of ₱4,000,000.00 ballooned to ₱53,000,000.00.[3] YKS also alleged that EBC made its officers sign a blank surety agreement making it appear that the said corporate officers made themselves liable to the extent of ₱85,000,000.00.[4]

By June 29, 1998, through Promissory Note (PN) Nos. BD-98-084,[5] BD-98-086,[6] BD-98-093[7] and BD-98-097,[8] EBC partially released the total amount of ₱10,400,000.00 from the said credit line of ₱53,000,000.00.[9]

On March 12, 2001, EBC demanded YKS to pay its outstanding obligations, but the latter failed to heed the demand.

On May 23, 2001, EBC filed before the Office of the Clerk of Court, of the Regional Trial Court (RTC) of Tacloban City, an extrajudicial petition for the sale of the mortgaged properties in order to satisfy the mortgage indebtedness in the amount of ₱10,400,000.00, exclusive of interests, penalties, and other charges,[10] docketed as EJF No. 1399.

On May 31, 2001, Sheriff Leonardo G. Aguilar, issued a Notice of Extra-Judicial Sale,[11] setting the auction sale of the subject properties in the morning of June 29, 2001.

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[2] CA *rollo*, pp. 40-41.

[3] *Id.* at 40-61.

[4] *Rollo*, p. 69.

[5] CA *rollo*, p. 34.

[6] *Id.* at 35.

[7] *Id.* at 36.

[8] *Id.* at 37.

[9] *Rollo*, p. 69.

[10] CA *rollo*, pp. 75-78.

[11] *Id.* at 83-84

The PCIB Account

On August 13, 1997, YKS obtained a dollar denominated loan from PCIB in the amount of US$2,500,000.00, evidenced by PN No. 095/97-344.[12] However, while the loan was booked as a dollar denomination loan, it was actually converted to peso and was released to YKS in peso at the prevailing currency exchange rate of ₱26.00 to a dollar, more or less, or in the amount of ₱65,000,000.00, more or less.[13]

The credit line/loan accommodation with PCIB was secured by real estate mortgages over the properties of YKS in Tacloban City covered by TCT Nos. T-22457, T-22458, T-22459, T-22266, T-23066, T-23145, T-26055, T-26056, T-22697, T-42170, and T-16659.[14] In one of the promissory notes executed by YKS, PN No. 366-00756-98,[15] dated December 24, 1998, it appeared that the total obligation of YKS was ₱140,967,120.36. It also stated therein that the purpose of the loan was for "working capital" and that it would mature six years after date or on December 17, 2004.

On the same day, December 24, 1998, PCIB credited the amount of ₱103,240,277.90 to YKS' account as proceeds of the loan under "PN No. 756/98."[16] At the same time, PCIB debited the amount of $2,633,680.55 from YKS' account as payment of the loan principal and interest for the converted dollar denominated loan under PN No. 095/97-344.[17]

On January 23, 2001, PCIB sent YKS a letter[18] demanding the latter to pay its total obligation, which the former pegged at ₱162,295,233.54, exclusive of interest, penalty, and other charges. PCIB also warned YKS that its failure to heed the demand

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[12] *Rollo*, p. 118.

[13] *Id.* at 63.

[14] CA *rollo*, pp. 62-74.

[15] *Rollo*, p. 121.

[16] *Id*, at 122.

[17] *Id.* at 123.

[18] *Id.* at 24.

would result in the filing of appropriate actions against it, including the foreclosure of the mortgaged properties.

In a letter[19] received by PCIB's counsel on May 8, 2001, YKS protested the principal amount of the loan and reiterated its previous request for a breakdown of the amount, but PCIB ignored the request.

On May 23, 2001, petitioner filed a Petition for Sale[20] before the Office of the Executive Judge, RTC, Tacloban City, praying that the mortgaged properties be sold thru extrajudicial foreclosure proceedings to the highest bidder, in the manner and form prescribed by law.

On May 25, 2001, Sheriff Luis G. Copuaco issued a Sheriff's Notice of Extrajudicial Foreclosure Sale[21] setting the public auction of the mortgaged properties in the morning of June 29, 2001 at the RTC, Branch 7, *Bulwagan ng Katarungan*, Tacloban City.

Thus, on June 19, 2001, as a result of the filing of the two petitions for sale, YKS filed before the RTC a Complaint[22] for Declaratory Relief, Annulment or Declaration of Nullity of Foreclosure, Application for Foreclosure, Notice of Foreclosure Sale, Documents, Interest, *Etc*., Release of Mortgages, Injunction, and Damages, later docketed as Civil Case No. 2001-06-93.

YKS alleged therein, among other things, that the two petitions for sale are defective, since they do not specify the correct amount of the claims. The petitions also include amounts that were not covered by the real estate mortgages, among which are the quantified penalties which were not mentioned in the mortgages. YKS added that the promissory notes should not be allowed to be the bases for the enforcement of payment through extrajudicial foreclosure since their validity are sill in question. YKS pointed out that the EBC credit line that was extended to it was for the amount of ₱53,000,000.00, however, in its petition

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[19] *Id.* at 125.

[20] CA *rollo*, pp. 79-82.

[21] *Id.* at 85-88.

[22] *Id.* at 89-115.

for sale, the availments for the said credit line was only ₱10,400,000.00. Accordingly, the entire property cannot be foreclosed to satisfy the indebtedness of only ₱10,400,000.00.

YKS also insisted that PN No. 366-00756-98, which was the basis of PCIB's petition for sale is null and void and lacks consideration, or at the very least, is erroneously bloated. In addition, the said promissory note has not yet matured at the time the petition for sale was filed, considering that it would mature only on December 17, 2004; thus, the debt is not yet due and demandable. YKS claimed that its corporate officers were induced to sign blank surety agreements which were later on filled in by petitioner to reflect erroneous loan amounts. Moreover, the amounts appearing in the promissory notes are different from the one claimed by petitioner in its petition for sale.

To buttress its application for temporary restraining order and writ of preliminary injunction, YKS posited that the continuance of the questioned acts of petitioner despite its claim that there were no valid obligations and no valid basis for extrajudicial foreclosure proceedings is a clear and wanton violation of its rights and would effectively render any favorable judgment of the court ineffectual if the same were not granted pending determination of the main action.

Ultimately, YKS prayed, among other things, that judgment be rendered declaring the two petitions for sale and notices of extrajudicial sale void; declaring the promissory notes that were used as basis for the petition void and without valid consideration; ordering the release of the subject properties from their respective real estate mortgages; declaring that there is no legal default with respect to PN No. 366-00756-98 because the said promissory note was to mature only on December 17, 2004; declaring the bank's act of making the properties liable beyond the individual assigned loan values void; directing the bank to specify the extent of its claims against each of the properties using the assigned value; ordering the bank to make an accounting, summary and computation of its actual releases and the payments made by it for the purpose of determining the true and correct principal amount and the total of whatever obligations it may have with

the bank; and that a temporary restraining order and subsequently a preliminary injunction be issued enjoining EBC and PCIB from committing or proceeding *pendente lite* with the posting of notices of sale, conduct foreclosure sales, execute certificate of sales and its subsequent registration with the register of deeds, execution of deeds of final sale, and disturbing the *status quo ante litem*.

On June 25, 2001, the RTC heard YKS' application for temporary restraining order. After hearing the respective arguments of the parties and weighing the pros and cons in issuing the same, the RTC issued a temporary restraining order on June 27, 2001.[23] In the meantime, the hearing for the application of the writ of preliminary injunction was set for July 13, 2001. On the said hearing date, the parties jointly manifested that they will just be submitting position papers together with the other necessary documents to abbreviate the proceedings.

On December 3, 2001, after the parties have submitted their respective pleadings, the RTC issued a Resolution[24] granting YKS' application for a writ of preliminary injunction, the dispositive portion of which reads:

> WHEREFORE, premises considered, plaintiff['s] prayer for the issuance of a Writ of Preliminary Injunction is hereby given Due Course and Granted and the defendants, their agents, representatives or any persons or entities acting in their behalf are hereby directed to maintain the *status quo ante litem* and to cease and desist from posting or publishing any notice of sale with respect to properties subject of this case, conducting any foreclosure sale, executing any Certificate of Sale, registering the same with the Register of Deeds, executing any Deed of Final Sale and/or other consolidation document, paying any capital gains, documentary and other transfer taxes or any other act that shall disturb the *status quo ante litem* until further order of this Court. This Writ of Preliminary Injunction shall become effective and operative upon posting by the plaintiff of the necessary bond in the sum of ₱3,000,000.00.

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[23] *Id.* at 26.

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

SO ORDERED.[25]

In granting the writ, the RTC ratiocinated that it was not equitable and just for petitioner to foreclose and sell the two properties that were mortgaged to EBC for its credit line availments of only ₱10,400,000.00 out of the ₱53,000,000.00. As for the PCIB loan, the RTC opined that the same was not yet due and demandable since it was stipulated on Promissory Note No. 366-00756-98 that the obligation will be satisfied *via* a one time payment, single payment, on December 17, 2004.

Petitioner filed a motion for reconsideration, but it was denied in the Resolution[26] dated May 20, 2004. In denying the motion, the RTC noted that there are certain ambiguities in the PCIB promissory note that need to be resolved. In addition, the discrepancies between the promissory note, the credit memo, and the demand letter are too substantial for the RTC to ignore.

Aggrieved, petitioner sought recourse before the CA *via* a petition for *certiorari* under Rule 65 of the Rules of Court, docketed as CA-G.R. SP No. 85484,[27] wherein it prayed for the nullification of the resolutions of the RTC granting the writ of preliminary injunction and denying its motion for reconsideration.

Petitioner claimed that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it granted the writ of preliminary injunction despite the absence of a clear and convincing right on the part of YKS and despite the absence of any showing of grave and irreparable injury.[28]

On June 27, 2005, the CA rendered a Decision[29] denying the petition for lack of merit and ordered the RTC to proceed with the trial of the main case on its merits. The decretal portion of the Decision reads:

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[25] *Id.* at 28-29.

[26] *Id.* at 30-33.

[27] *Id.* at 2-133.

[28] *Id.* at 8.

[29] *Rollo*, pp. 41-47.

WHEREFORE, premises considered, the petition for *certiorari* is **DENIED** for lack of merit. The court a *quo* is ordered to proceed with the trial on the merits of the main case. In the meantime, the preliminary injunction issued shall remain in force until the merits of the main case are resolved.

SO ORDERED.[30]

Hence, the petition assigning the following errors:

I.

THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS AND REVERSIBLE ERROR WHEN IT UPHELD THE FINDING OF THE TRIAL COURT THAT PRIVATE RESPONDENT IS ENTITLED TO THE WRIT OF PRELIMINARY INJUNCTION.[31]

II.

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT PRIVATE RESPONDENT HAS A RIGHT TO BE PROTECTED BY THE INJUNCTIVE WRIT BY REASON OF THE DISPUTE IN THE AMOUNT OF THE PRINCIPAL OBLIGATION.[32]

Petitioner argues that since YKS is a delinquent debtor, it had all the right to foreclose the mortgaged properties. Petitioner contends that it had a choice between two remedies, *i.e.*, foreclose the mortgage or to file an ordinary suit for collection. Since it opted to foreclose the mortgage, it was improper on the part of the RTC to enjoin such legitimate exercise of its option in order to satisfy the obligations owing to it. In light of the undisputed fact that YKS defaulted in paying its obligation, the bank was justified in foreclosing the property and such valid act cannot be enjoined by the RTC.

Petitioner insists that YKS' right to enjoin the foreclosure of the mortgages is not clear and convincing, as it will not be deprived of its absolute ownership over the mortgaged property since it may exercise its right of redemption within one year

[30] CA *rollo*, p. 47.

[31] *Id.* at 24.

[32] *Id.* at 33.

after its sale. Petitioner adds that YKS failed to show that it would suffer grave and irreparable injury if the foreclosure sale was not enjoined. Moreover, petitioner maintains that YKS has no right to be protected by the injunctive writ based on the discrepancies in the amount of the principal obligation.

On its part, YKS contends that there was no grave abuse of discretion on the part of the CA in issuing the injunctive writ. The CA correctly affirmed the RTC because it saw that there was a need to maintain the status *quo ante* while the case is being tried and heard to prevent one party from unilaterally adjudicating the case in its favor without trial on the merits and to prevent the case and whatever decision thereon to be rendered moot and academic. YKS also maintains that the sampling of evidence adduced during the hearing and determination by the trial court of the propriety of issuing a writ of preliminary injunction would show that the issuance thereof was proper and was not attended by grave abuse of discretion.

The petition is bereft of merit.

The only issue that needs to be determined in the case at bar is whether or not the RTC acted with grave abuse of discretion in issuing the writ of preliminary injunction enjoining the foreclosure and public auction of YKS' property during the proceedings and pending determination of the main cause of action for annulment of foreclosure in Civil Case No. 2001-06-93.

Section 3, Rule 58 of the Rules of Court provides that:

SEC. 3. *Grounds for issuance of preliminary injunctions.* — A preliminary injunction may be granted when it is established:

> (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;
>
> (b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

> (c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

As such, a writ of preliminary injunction may be issued only upon clear showing of an actual existing right to be protected during the pendency of the principal action. The twin requirements of a valid injunction are the existence of a right and its actual or threatened violations. Thus, to be entitled to an injunctive writ, the right to be protected and the violation against that right must be shown.[33] Moreover, the rule is well entrenched that the issuance of the writ of preliminary injunction as an ancillary or preventive remedy to secure the right of a party in a pending case rests upon the sound discretion of the trial court.[34] However, if the court commits grave abuse of its discretion in the issuance of the writ of preliminary injunction, such that the act amounts to excess or lack of jurisdiction, the same may be nullified through a writ of *certiorari* or prohibition.[35] Such grave abuse of discretion in the issuance of writs of preliminary injunction implies a capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction or whether the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal aversion amounting to an evasion of positive duty or to a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law. For the extraordinary writ of *certiorari* to lie, there must be a capricious, arbitrary and whimsical exercise of power.[36]

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[33] *Borromeo v. Court of Appeals*, G.R. No. 169846, March 28, 2008, 550 SCRA 269, 280-281.

[34] *Overseas Workers Welfare Association v. Chavez*, G.R. No. 169802, June 8, 2007, 524 SCRA 451, 471; *Toyota Motor Phils. Corporation Workers' Association (TMPCWA) v. Court of Appeals*, 458 Phil. 661 (2003); *Urbanes, Jr. v. Court of Appeals*, 407 Phil. 856 (2001).

[35] *Overseas Workers Welfare Association v. Chavez, supra* note 34, at 472.

[36] *Toyota Motor Phils. Corporation Workers' Association (TMPCWA) v. Court of Appeals*, 458 Phil. 661, 681 (2003).

A Petition for *Certiorari*, under Rule 65 of the Rules of Court, is intended for the correction of errors of jurisdiction only or grave abuse of discretion amounting to lack or excess of jurisdiction. Its principal office is only to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction.[37] It may issue only when the following requirements are alleged in the petition and established: (1) the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.[38] Excess of jurisdiction as distinguished from absence of jurisdiction means that an act, though within the general power of a tribunal, board or officer is not authorized, and invalid with respect to the particular proceeding, because the conditions which alone authorize the exercise of the general power in respect of it are wanting. Without jurisdiction means lack or want of legal power, right or authority to hear and determine a cause or causes, considered either in general or with reference to a particular matter. It means lack of power to exercise authority.[39]

In the case at bar, this Court agrees with the conclusion of the CA that the RTC committed no grave abuse of discretion in granting YKS' plea for injunctive relief.

In the exercise of its discretion, the trial court found all the requisites for the issuance of an injunctive writ to be attendant. First, it was well established that YKS had a clear and unmistakable right over the mortgaged properties. Evidently, as owner of the subject properties that stand to be foreclosed, YKS is entitled to the possession and protection thereof when the threat to its

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[37] *People of the Philippines v. Court of Appeals*, 468 Phil. 1, 10 (2004).

[38] Rules of Court, Rule 65, Sec.1.

[39] *Toyota Motors Phils. Corporation Workers' Association v. Court of Appeals*, *supra* note 36.

foreclosure was apparent even before the respective rights of the parties are determined and the issues threshed out in the main action before the RTC are resolved.

Second, there clearly exists an urgent and paramount necessity to prevent serious injury on the part of YKS. As aptly concluded by the RTC in the Resolution denying petitioner's motion for reconsideration:

> With regards to the first, it will be recalled that in 1997, plaintiff was granted a credit line of Php53,000,000.00. This line was secured by a Real Estate Mortgage on two properties owned by the plaintiff located in Tacloban City covered by TCT Nos. 22460 and 22461. Out of this credit line, plaintiff availed of Php10,400,000.00. The question that came to the mind of the Court is that, it is not righteous, just and equitable for the defendant to foreclose and sell the two properties for the availment of Php10,400,000.00 out of this line for Php53,000,000.00. Defendant contends otherwise and cited two Articles of the Civil Code, to wit:
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> Article 2089 of the Civil Code is hereunder quoted:
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> xxx xxx xxx
>
> Article 2126 of the Civil Code is likewise hereunder quoted:
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> xxx xxx xxx
>
> With regards to Article 2089, the case at bench does not fall within the ambit of said Article. The same covers a situation wherein the mortgage debt or credit has passed on to several heirs and not all the heirs/debtors have paid the entire mortgage debt or vice-versa. The same is not true in the case at bench. Neither the debt [n]or credit has been passed on to anyone. To go along with the stand of the defendant would, therefore, undoubtedly and inevitably result in unjust enrichment, which the Court can't allow.
>
> As regards Article 2126, this Court noted that there has been no transfer of possession of the mortgaged property. The mortgaged properties are, in fact, still in the possession of the plaintiff and this Article cannot [be] construed on such a manner as to cause what the law does not allow.
>
> As regards the second issue/point, this Court took a long hard look at the subject Promissory Note and what is in there, typewritten

into the space indicating maturity is 12.17.2004. This Court likewise noted in the Disclosure Statement under the heading Mode of Payment, it is stated that "Single Payment on: 12.17.2004.["] It is, therefore, clear and there can be no mistake about the maturity date as well as the mode of payment.

xxx xxx xxx

This Court also noted the variance in the amounts being demanded by the defendant from the plaintiff. The Promissory Note speaks of the sum of Php140,967,120.36. Its Credit Memo speaks of Php103,240,277.90. That is a discrepancy of Php37,726,842.36. The Demand Letter speaks of Php162,295,233.54. It shall mean a discrepancy of Php59,054,955.64. These discrepancies are too substantial for this Court to ignore.

It is, therefore, clear that only after a trial on the merits can the true amount be determined and the foreclosure proceedings will have to wait until the presentation of the evidence on the merits.[40]

To be sure, to allow the foreclosure proceedings to continue even before determination of the issues that were brought to the RTC would place YKS in an oppressively unjust situation where it would be tied up in litigation for the recovery of its properties should the RTC later conclude that YKS is entitled to the reliefs prayed for in the main action.

A writ of preliminary injunction is generally based solely on initial and incomplete evidence. The evidence submitted during the hearing on an application for a writ of preliminary injunction is not conclusive or complete for only a "sampling" is needed to give the trial court an idea of the justification for the preliminary injunction pending the decision of the case on the merits. As such, the findings of fact and opinion of a court when issuing the writ of preliminary injunction are interlocutory in nature and made even before the trial on the merits is commenced or terminated. There are vital facts that have yet to be presented during the trial which may not be obtained or presented during the hearing on the application for the injunctive writ. The trial

[40] CA *rollo*, pp. 30-32.

court needs to conduct substantial proceedings in order to put the main controversy to rest.[41]

The sole object of a preliminary injunction is to maintain the *status quo* until the merits can be heard. 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 on 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.[42]

This Court finds no cogent reason to deviate from the factual findings and conclusion of law of the trial court and the appellate court. Evidently, there exists in the case at bar a pressing necessity for the issuance of an injunctive writ. After a careful scrutiny of the attendant circumstances, We find no reason for reversing the assailed decision of the CA and questioned resolutions of the RTC granting injunctive relief to YKS.

WHEREFORE, premises considered, the petition is *DENIED*. Subject to additional rules with respect to extrajudicial foreclosure of real estate mortgages embodies in A.M. No. 99-10-05-O,[43] The Decision of the Court of Appeals in CA-G.R. SP No. 85484, dated June 27, 2005, is *AFFIRMED*.

SO ORDERED.

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

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[41] *Urbanes Jr. v. Court of Appeals*, *supra* note 34, at 867.

[42] *Philippine National Bank v. RJ Ventures Realty and Development Corporation*, G.R. No. 164548, September 27, 2006, 503 SCRA 639, 658-659.

[43] Re: Procedure in Extrajudicial on Judicial Foreclosure of Real Estate Mortgages.

[*] 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. 169681. November 5, 2009]

THE ESTATE OF PEDRO C. GONZALES and HEIRS OF PEDRO C. GONZALES, *petitioners, vs.* **THE HEIRS OF MARCOS PEREZ,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; REVISED ADMINISTRATIVE CODE; EXECUTION OF DEEDS; PROVINCIAL GOVERNOR'S POWER TO APPROVE CONTRACTS ENTERED INTO BY A MUNICIPAL GOVERNMENT; NATURE AND EFFECT THEREOF; THAT ABSENCE THEREOF MAKES THE CONTRACT VOIDABLE.— Section 2196 of the Revised Administrative Code provides: SECTION 2196. *Execution of deeds*. – When the government of a municipality is a party to a deed or an instrument which conveys real property or any interest therein or which creates a lien upon the same, such deed or instrument shall be executed on behalf of the municipal government by the mayor, upon resolution of the council, with the approval of the governor. In *Municipality of Camiling v. Lopez*, the Court found occasion to expound on the nature and effect of the provincial governor's power to approve contracts entered into by a municipal government as provided for under Section 2196 of the Revised Administrative Code. The Court held, thus: x x x The approval by the provincial governor of contracts entered into and executed by a municipal council, as required in [S]ection 2196 of the Revised Administrative Code, is part of the system of supervision that the provincial government exercises over the municipal governments. It is not a prohibition against municipal councils entering into contracts regarding municipal properties subject of municipal administration or control. It does not deny the power, right or capacity of municipal councils to enter into such contracts; such power or capacity is recognized. Only the exercise thereof is subject to supervision by approval or disapproval, *i.e.*, contracts entered in pursuance of the power would ordinarily be approved if entered into in good faith and for the best interests of the municipality; they

would be denied approval if found illegal or unfavorable to public or municipal interest. **The absence of the approval, therefore, does not *per se* make the contracts null and void**. This pronouncement was later reiterated in *Pechueco Sons Company v. Provincial Board of Antique*, where the Court ruled more emphatically that: In other words, as regards the municipal transactions specified in Section 2196 of the Revised Administrative Code, the Provincial Governor has two courses of action to take – either to approve or disapprove the same. **And since absence of such approval does not necessarily render the contract entered into by the municipality null and void, the transaction remains voidable until such time when by subsequent unfavorable action of the governor, for reasons of public interest, the contract is thereby invalidated.**

2. **ID.; ID.; ID.; ID.; ID.; ID.; ID.; CASE AT BAR.—** In the instant case, there is no showing that the contract of sale entered into between Pedro and the Municipality of Marikina was ever acted upon by the Provincial Governor. Hence, consistent with the rulings enunciated above, the subject contract should be considered voidable. Voidable or annullable contracts, before they are set aside, are existent, valid, and binding, and are effective and obligatory between the parties. In the present case, since the contract was never annulled or set aside, it had the effect of transferring ownership of the subject property to Pedro. Having lawfully acquired ownership of Lots A and C, Pedro, in turn, had the full capacity to transfer ownership of these parcels of land or parts thereof, including the subject property which comprises a portion of Lot C.

3. **CIVIL LAW; SPECIAL CONTRACTS; SALES; OBLIGATIONS OF THE VENDOR; OWNERSHIP OF THE THING SOLD ACQUIRED BY THE VENDEE UPON DELIVERY THEREOF; CASE AT BAR.—** Article 1496 of the Civil Code provides: The ownership of the thing sold is acquired by the vendee from the moment it is delivered to him in any of the ways specified in Articles 1497 to 1501, or in any other manner signifying an agreement that the possession is transferred from the vendor to the vendee. In conjunction with the above-stated provision, Article 1497 of the Civil Code states that: The thing sold shall be understood as delivered when it is placed in the control and possession of the vendee. In the present case, there

is no dispute that Pedro took control and possession of the said lot immediately after his bid was accepted by the Municipal Government of Marikina. In fact, herein petitioners, in their Answer with Compulsory Counterclaim admit that both Pedro and Marcos, together with their respective heirs, were already occupying the subject property even before the same was sold to Pedro and that, after buying the same, Pedro allowed Marcos and his family to stay thereon. This only shows that upon perfection of the contract of sale between the Municipality of Marikina and Pedro, the latter acquired ownership of the subject property by means of delivery of the same to him. Hence, the issuance of TCT No. 223361, as well as the execution of the Deed of Absolute Transfer of Real Property on February 7, 1992 by the Municipal Mayor of Marikina, could not be considered as the operative acts which transferred ownership of Lot C to Pedro. Pedro already acquired ownership of the subject property as early as 1966 when the same was delivered to him by the Municipality of Marikina, and the execution of the Deed of Absolute Transfer of Real Property as well as the consequent issuance of TCT No. 223316 are simply a confirmation of such ownership.

4. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTIONS OF FACT, NOT PROPER.— In the instant petition, petitioners would have us review the factual determinations of the CA. However, settled is the rule that the Court is not a trier of facts and only questions of law are the proper subject of a petition for review on *certiorari* in this Court. While there are exceptions to this rule, the Court finds that the instant case does not fall under any of them. Hence, the Court sees no reason to disturb the findings of the CA, which are supported by evidence on record.

5. CIVIL LAW; OBLIGATIONS AND CONTRACTS; FORM OF CONTRACTS; PUBLIC DOCUMENTS; FAILURE TO OBSERVE PROPER FORM THEREFOR DOES NOT RENDER THE CONTRACTS INVALID.— On the question of whether the subject Deed of Sale is invalid on the ground that it does not appear in a public document, Article 1358 of the same Code enumerates the acts and contracts that should be embodied in a public document, to wit: Art. 1358. The following must appear in a public document: (1) **Acts and contracts which have for their object the creation,**

transmission, modification or extinguishment of real rights over immovable property; sales of real property or of an interest therein are governed by Articles 1403, No. 2 and 1405; x x x Nonetheless, it is a settled rule that the failure to observe the proper form prescribed by Article 1358 does not render the acts or contracts enumerated therein invalid. It has been uniformly held that the form required under the said Article is not essential to the validity or enforceability of the transaction, but merely for convenience. The Court agrees with the CA in holding that a sale of real property, though not consigned in a public instrument or formal writing, is, nevertheless, valid and binding among the parties, for the time-honored rule is that even a verbal contract of sale of real estate produces legal effects between the parties. Stated differently, although a conveyance of land is not made in a public document, it does not affect the validity of such conveyance. Article 1358 does not require the accomplishment of the acts or contracts in a public instrument in order to validate the act or contract but only to insure its efficacy.

6. ID.; ID.; UNENFORCEABLE CONTRACTS; CONTRACTS UNENFORCEABLE UNLESS RATIFIED; SALE OF REAL PROPERTY IN CASE AT BAR.— Pertinent portions of Article 1403 of the Civil Code provide as follows: Art. 1403. The following contracts are unenforceable, unless they are ratified: x x x (2) Those that do not comply with the Statute of Frauds as set forth in this number. **In the following cases an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party charged, or by his agent**; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents: (a) An agreement that by its terms is not to be performed within a year from the making thereof; x x x (e) An agreement for the leasing for a longer period than one year, or **for the sale of real property or of an interest therein**; x x x Under Article 1403(2), the sale of real property should be in writing and subscribed by the party charged for it to be enforceable. In the case before the Court, the Deed of Sale between Pedro and Marcos is in writing and subscribed by Pedro and his wife Francisca; hence, it is enforceable under the Statute of Frauds.

APPEARANCES OF COUNSEL

Evelina R. Tamayao-Volante for petitioners.

Reynaldo S. Samson for respondents.

D E C I S I O N

PERALTA, *J.*:

This resolves the instant Petition for Review on *Certiorari* under Rule 45 of the Rules of Court praying for the nullification of the Decision[1] of the Court of Appeals (CA) dated April 25, 2005 in CA-G.R. CV No. 60998 and its Resolution[2] dated September 14, 2005. The challenged Decision of the CA reversed and set aside the judgment of the Regional Trial Court (RTC) of Marikina City, Branch 272 in Civil Case No. 94-57-MK while its assailed Resolution denied petitioners' motion for reconsideration.

The antecedent facts are as follows:

The former Municipality of Marikina in the Province of Rizal (now City of Marikina, Metro Manila) used to own a parcel of land located in Barrio Concepcion of the said municipality covered by Original Certificate of Title (OCT) No. 629[3] of the Register of Deeds of Rizal. The said property was subdivided into three (3) lots, namely, lots A, B and C, per subdivision plan (LRC) Psd-4571.[4]

On January 14, 1966, the Municipal Council of Marikina passed Resolution No. 9, series of 1966 which authorized the sale through public bidding of Municipal Lots A and C.

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[1] Penned by Associate Justice Aurora Santiago-Lagman, with Associate Justices Conrado M. Vasquez, Jr. (now Presiding Justice) and Rebecca De Guia-Salvador, concurring; *rollo,* pp. 23-36.

[2] *Id.* at 37.

[3] Exhibit "15", folder of exhibits, pp. 63-65.

[4] Exhibit "15-B", *id.* at 65.

On April 25, 1966, a public bidding was conducted wherein Pedro Gonzales was the highest bidder. Two days thereafter, or on April 27, 1966, the Municipal Council of Marikina issued Resolution No. 75 accepting the bid of Pedro. Thereafter, a deed of sale was executed in favor of the latter which was later forwarded to the Provincial Governor of Rizal for his approval. The Governor, however, did not act upon the said deed.

Sometime in September 1966, Pedro sold to Marcos Perez a portion of Lot C, denominated as Lot C-3, which contains an area of 375 square meters. The contract of sale was embodied in a Deed of Sale[5] which, however, was not notarized. To segregate the subject property from the remaining portions of Lot C, Marcos had the same surveyed wherein a technical description of the subject lot was prepared by a surveyor.[6]

Subsequently, Pedro and Marcos died.

On February 7, 1992, the Municipality of Marikina, through its then Mayor Rodolfo Valentino, executed a Deed of Absolute Transfer of Real Property over Lots A and C in favor of the Estate of Pedro C. Gonzales.[7] On June 25, 1992, Transfer Certificate of Title (TCT) No. 223361, covering Lot C, was issued in the name of the said estate.[8]

Subsequently, herein petitioners executed an extra-judicial partition wherein Lot C was subdivided into three lots. As a result of the subdivision, new titles were issued wherein the 370-square-meter portion of Lot C-3 is now denominated as Lot C-1 and is covered by TCT No. 244447[9] and the remaining 5 square meters of the subject lot (Lot C-3) now forms a portion of another lot denominated as Lot C-2 and is now covered by TCT No. 244448.[10]

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[5] Exhibit "D", *id.* at 4.

[6] See Exhibit "A", *id.* at 1.

[7] Exhibit "G"/ Exhibit "12", *id.* at 10 and 60.

[8] Exhibit "K"/ Exhibit "9", *id.* at 16.

[9] Exhibit "N"/ Exhibit "13", *id.* at 28.

[10] Exhibit "O"/ Exhibit "14", *id.* at 29.

On October 1, 1992, herein respondents sent a demand letter to one of herein petitioners asking for the reconveyance of the subject property.[11] However, petitioners refused to reconvey the said lot. As a consequence, respondents filed an action for "Annulment and/or Rescission of Deed of Absolute Transfer of Real Property x x x and for Reconveyance with Damages."[12]

On February 2, 1998, the RTC rendered its Decision with the following dispositive portion:

> WHEREFORE, foregoing premises, judgment is hereby rendered as follows:
>
> 1. DISMISSING the complaint subject of the case in caption for lack of merit;
> 2. DECLARING VALID both Transfer Certificates of Title Nos. 244447 and 244448 issued by the Register of Deeds of Marikina;
> 3. DISMISSING the defendants' counterclaim.
>
> No pronouncement as to costs.
>
> SO ORDERED.[13]

The RTC ruled that since the Deed of Sale executed between Pedro and Marcos was not notarized, the same is considered void and of no effect. In addition, the trial court also held that Pedro became the owner of the subject lot only on February 7, 1992; as such, he could not have lawfully transferred ownership thereof to Marcos in 1966.

Herein respondents appealed the RTC Decision to the CA contending that the RTC erred in relying only on Articles 1356 and 1358 of the Civil Code. Instead, respondents assert that the RTC should also have applied the provisions of Articles 1357, 1403 (2), 1405 and 1406 of the same Code.

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[1] [1] Exhibit "L", *id.* at 18.

[12] Records, pp. 1-8.

[13] *Id.* at 394-395.

On April 25, 2005, the CA rendered its presently assailed Decision disposing as follows:

> WHEREFORE, premises considered, the instant Appeal is hereby **GRANTED** and the assailed Decision dated February 2, 1998 is **REVERSED** and **SET ASIDE.** TCT No. 244447 and partially, TCT No. 244448, with respect to five (5) square meters, are declared NULL and VOID and defendants-appellees are ordered to reconvey in favor of the plaintiffs-appellants the subject property covered by said Transfer Certificates of Title (five square meters only with respect to TCT No. 244448). The trial court's dismissal of defendants-appellees' counterclaim is, however, **AFFIRMED.**
>
> SO ORDERED.[14]

The CA held that a sale of real property, though not consigned in a public instrument, is nevertheless valid and binding among the parties and that the form required in Article 1358 of the Civil Code is not essential to the validity or enforceability of the transactions but only for convenience.

Petitioners filed a motion for reconsideration, but the same was denied by the CA in its Resolution of September 14, 2005 on the ground that the said motion was filed out of time.

Hence, the present petition with the following assignment of errors:

> WITH DUE RESPECT TO THE HONORABLE COURT OF APPEALS, ITS FINDINGS OF FACT RUN COUNTER TO THOSE OF THE TRIAL COURT, THUS, IT HAS DECIDED THE CASE IN A WAY NOT IN ACCORD WITH LAW AND JURISPRUDENCE.
>
> WITH DUE RESPECT, THE ALLEGED DEED OF SALE IS SUSPECT AND RIDDEN WITH INCONSISTENCIES. IN FACT, THE LOWER COURT HELD THAT THE DEED OF SALE FAILED TO MEET THE SOLEMNITY REQUIREMENTS PROVIDED UNDER THE LAW FOR ITS VALIDITY.
>
> WITH DUE RESPECT, THE COURT OF APPEALS ERRED IN DISREGARDING THE FINDINGS OF FACT AND THE APPLICATION OF LAW BY THE REGIONAL TRIAL COURT THAT

[14] *Rollo,* p. 35.

UNDER THE PURPORTED DEED OF SALE THE VENDOR COULD NOT HAVE TRANSFERRED OWNERSHIP.[15]

In their first and last assigned errors, petitioners contend that Marcos, who is respondents' predecessor-in-interest, could not have legally bought the disputed parcel of land from petitioners' predecessor-in-interest, Pedro, in September 1966 because, during that time, Pedro had not yet acquired ownership of the subject lot. Petitioners' assertion is based on the premise that as of February 29, 1968, the Deed of Sale between Pedro and the Municipality of Marikina was still subject to approval by the Provincial Governor of Rizal, as required under Section 2196 of the Revised Administrative Code. Considering that on the supposed date of sale in favor of Marcos, the requisite approval of the Provincial Governor was not yet secured, petitioners conclude that Pedro could not be considered as the owner of the subject property and, as such, he did not yet possess the right to transfer ownership thereof and, thus, could not have lawfully sold the same to Marcos.

The Court does not agree.

Section 2196 of the Revised Administrative Code provides:

SECTION 2196. *Execution of deeds*. – When the government of a municipality is a party to a deed or an instrument which conveys real property or any interest therein or which creates a lien upon the same, such deed or instrument shall be executed on behalf of the municipal government by the mayor, upon resolution of the council, with the approval of the governor.

In *Municipality of Camiling v. Lopez*,[16] the Court found occasion to expound on the nature and effect of the provincial governor's power to approve contracts entered into by a municipal government as provided for under Section 2196 of the Revised Administrative Code. The Court held, thus:

x x x The approval by the provincial governor of contracts entered into and executed by a municipal council, as required in [S]ection 2196

[15] *Id.* at 14, 16, and 18.

[16] 99 Phil. 187. (1956).

of the Revised Administrative Code, is part of the system of supervision that the provincial government exercises over the municipal governments. It is not a prohibition against municipal councils entering into contracts regarding municipal properties subject of municipal administration or control. It does not deny the power, right or capacity of municipal councils to enter into such contracts; such power or capacity is recognized. Only the exercise thereof is subject to supervision by approval or disapproval, *i.e.*, contracts entered in pursuance of the power would ordinarily be approved if entered into in good faith and for the best interests of the municipality; they would be denied approval if found illegal or unfavorable to public or municipal interest. **The absence of the approval, therefore, does not *per se* make the contracts null and void**.[17]

This pronouncement was later reiterated in *Pechueco Sons Company v. Provincial Board of Antique*,[18] where the Court ruled more emphatically that:

In other words, as regards the municipal transactions specified in Section 2196 of the Revised Administrative Code, the Provincial Governor has two courses of action to take – either to approve or disapprove the same. **And since absence of such approval does not necessarily render the contract entered into by the municipality null and void, the transaction remains voidable until such time when by subsequent unfavorable action of the governor, for reasons of public interest, the contract is thereby invalidated**.[19]

It is clear from the above-quoted pronouncements of the Court that, pending approval or disapproval by the Provincial Governor of a contract entered into by a municipality which falls under the provisions of Section 2196 of the Revised Administrative Code, such contract is considered voidable. In the instant case, there is no showing that the contract of sale entered into between Pedro and the Municipality of Marikina was ever acted upon by the Provincial Governor. Hence, consistent

[17] *Id.* at 189-190. (Emphasis supplied.)

[18] G.R. No. L-27038, January 30, 1970, 31 SCRA 320.

[19] *Id.* at 325. (Emphasis supplied.)

with the rulings enunciated above, the subject contract should be considered voidable. Voidable or annullable contracts, before they are set aside, are existent, valid, and binding, and are effective and obligatory between the parties.[20]

In the present case, since the contract was never annulled or set aside, it had the effect of transferring ownership of the subject property to Pedro. Having lawfully acquired ownership of Lots A and C, Pedro, in turn, had the full capacity to transfer ownership of these parcels of land or parts thereof, including the subject property which comprises a portion of Lot C.

It is wrong for petitioners to argue that it was only on June 25, 1992, when TCT No. 223361 covering Lot C was issued in the name of the estate of Pedro, that he became the owner thereof.

Article 1496 of the Civil Code provides:

> The ownership of the thing sold is acquired by the vendee from the moment it is delivered to him in any of the ways specified in Articles 1497 to 1501, or in any other manner signifying an agreement that the possession is transferred from the vendor to the vendee.

In conjunction with the above-stated provision, Article 1497 of the Civil Code states that:

> The thing sold shall be understood as delivered when it is placed in the control and possession of the vendee.

In the present case, there is no dispute that Pedro took control and possession of the said lot immediately after his bid was accepted by the Municipal Government of Marikina. In fact, herein petitioners, in their Answer with Compulsory Counterclaim admit that both Pedro and Marcos, together with their respective heirs, were already occupying the subject property even before the same was sold to Pedro and that, after buying the same, Pedro allowed Marcos and his family to stay thereon.[21] This only shows that upon perfection of the contract of sale between

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[20] *Gonzales v. Climax Mining Ltd*., G.R. No. 161957, February 28, 2005, 452 SCRA 607, 622, citing IV Tolentino, 1991 ed., p. 596.

[21] Exhibit "11", folder of exhibits, p. 49.

the Municipality of Marikina and Pedro, the latter acquired ownership of the subject property by means of delivery of the same to him.

Hence, the issuance of TCT No. 223361, as well as the execution of the Deed of Absolute Transfer of Real Property on February 7, 1992 by the Municipal Mayor of Marikina, could not be considered as the operative acts which transferred ownership of Lot C to Pedro. Pedro already acquired ownership of the subject property as early as 1966 when the same was delivered to him by the Municipality of Marikina, and the execution of the Deed of Absolute Transfer of Real Property as well as the consequent issuance of TCT No. 223316 are simply a confirmation of such ownership.

It may not be amiss to point out at this juncture that the Deed of Absolute Transfer of Real Property executed by the Mayor of Marikina was no longer subject to approval by the Provincial Governor of Rizal because Marikina already became part of Metro Manila on November 7, 1975.[22] On December 8, 1996, Marikina became a chartered city.[23]

In their second assignment of error, petitioners question the authenticity and due execution of the Deed of Sale executed by Pedro in favor of Marcos. Petitioners also argue that even assuming that Pedro actually executed the subject Deed of Sale, the same is not valid because it was not notarized as required under the provisions of Articles 1403 and 1358 of the Civil Code.

The Court is not persuaded.

The RTC, in its abbreviated discussion of the questions raised before it, did not touch on the issue of whether the Deed of Sale between Pedro and Marcos is authentic and duly executed. However, the CA, in its presently assailed Decision, adequately discussed this issue and ruled as follows:

x x x In the present case, We are convinced that plaintiffs-appellants [herein respondents] have substantially proven that Pedro, indeed,

[22] By virtue of Presidential Decree No. 824.

[23] By virtue of Republic Act No. 8223.

sold the subject property to Marcos for ₱9,378.75. The fact that no receipt was presented to prove actual payment of consideration, in itself, the absence of receipts, or any proof of consideration, would not be conclusive since consideration is always presumed. Likewise, the categorical statement in the trial court of Manuel P. Bernardo, one of the witnesses in the Deed of Sale, that he himself saw Pedro sign such Deed lends credence. This was corroborated by another witness, Guillermo Flores. Although the defendants-appellees [herein petitioners] are assailing the genuineness of the signatures of their parents on the said Deed, they presented no evidence of the genuine signatures of their parents as would give this Court a chance to scrutinize and compare it with the assailed signatures. Bare allegations, unsubstantiated by evidence, are not equivalent to proof under our Rules.[24]

In the instant petition, petitioners would have us review the factual determinations of the CA. However, settled is the rule that the Court is not a trier of facts and only questions of law are the proper subject of a petition for review on *certiorari* in this Court.[25] While there are exceptions to this rule,[26] the Court finds that the instant case does not fall under any of them.

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[24] CA *rollo*, p. 87.

[25] *Programme Incorporated v. Province of Bataan,* G.R. No. 144635, June 26, 2006, 492 SCRA 529, 534.

[26] 1. When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;

2. When the inference made is manifestly mistaken, absurd or impossible;

3. Where there is a grave abuse of discretion;

4. When the judgment is based on a misapprehension of facts;

5. When the findings of fact are conflicting;

6. When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;

7. When the findings are contrary to those of the trial court;

8. When the findings of fact are conclusions without citation of specific evidence on which they are based;

9. When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and

Hence, the Court sees no reason to disturb the findings of the CA, which are supported by evidence on record.

On the question of whether the subject Deed of Sale is invalid on the ground that it does not appear in a public document, Article 1358 of the same Code enumerates the acts and contracts that should be embodied in a public document, to wit:

Art. 1358. The following must appear in a public document:

(1) Acts and contracts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property; sales of real property or of an interest therein are governed by Articles 1403, No. 2 and 1405;

(2) The cession, repudiation or renunciation of hereditary rights or of those of the conjugal partnership of gains;

(3) The power to administer property, or any other power which has for its object an act appearing or which should appear in a public document, or should prejudice a third person; and

(4) The cession of actions or rights proceeding from an act appearing in a public document.

All other contracts where the amount involved exceeds five hundred pesos must appear in writing, even a private one. But sales of goods, chattels or things in action are governed by Articles 1403, No. 2 and 1405.

On the other hand, pertinent portions of Article 1403 of the Civil Code provide as follows:

Art. 1403. The following contracts are unenforceable, unless they are ratified:

xxx xxx xxx

(2) Those that do not comply with the Statute of Frauds as set forth in this number. **In the following cases an agreement hereafter made shall be unenforceable by action, unless the same, or some**

10. When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record. (*Samaniego-Celada v. Abena,* G.R. No. 145545, June 30, 2008, 556 SCRA 569, 576-577)

note or memorandum thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents:

(a) An agreement that by its terms is not to be performed within a year from the making thereof;

xxx xxx xxx

(e) An agreement for the leasing for a longer period than one year, or **for the sale of real property or of an interest therein**; x x x[27]

Under Article 1403(2), the sale of real property should be in writing and subscribed by the party charged for it to be enforceable.[28] In the case before the Court, the Deed of Sale between Pedro and Marcos is in writing and subscribed by Pedro and his wife Francisca; hence, it is enforceable under the Statute of Frauds.

However, not having been subscribed and sworn to before a notary public, the Deed of Sale is not a public document and, therefore, does not comply with Article 1358 of the Civil Code.

Nonetheless, it is a settled rule that the failure to observe the proper form prescribed by Article 1358 does not render the acts or contracts enumerated therein invalid. It has been uniformly held that the form required under the said Article is not essential to the validity or enforceability of the transaction, but merely for convenience.[29] The Court agrees with the CA in holding that a sale of real property, though not consigned in a public instrument or formal writing, is, nevertheless, valid and binding among the parties, for the time-honored rule is that even a verbal contract of sale of real estate produces legal effects between the parties.[30] Stated differently, although a conveyance of land

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[27] Emphasis supplied.

[28] *Cenido v. Spouses Apacionado*, 376 Phil. 801, 819 (1999).

[29] *James Estreller, et al. v. Luis Miguel Ysmael, et al.*, G.R. No. 170264, March 13, 2009; *Tigno v. Aquino*, 486 Phil. 254, 268 (2004).

[30] *Id.*

is not made in a public document, it does not affect the validity of such conveyance. Article 1358 does not require the accomplishment of the acts or contracts in a public instrument in order to validate the act or contract but only to insure its efficacy.[31] Thus, based on the foregoing, the Court finds that the CA did not err in ruling that the contract of sale between Pedro and Marcos is valid and binding.

WHEREFORE, the instant petition is *DENIED*. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 60998 are *AFFIRMED*.

SO ORDERED.

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

EN BANC

[G.R. No. 179370. November 18, 2009]

EUGENIO S. CAPABLANCA, *petitioner, vs.* **CIVIL SERVICE COMMISSION,**[*] *respondent.*

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[31] *Chong v. Court of Appeals,* G.R. No. 148280, July 10, 2007, 527 SCRA 144, 163; *Cenido v. Apacionado*, *supra* note 28, at 820.

[*] 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.

[*] The Court of Appeals is deleted as co-respondent pursuant to Section 4, Rule 45 of the Rules of Court.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE COMMISSION (CSC); COVERAGE; INCLUDES MEMBERS OF THE PHILIPPINE NATIONAL POLICE (PNP) AS EMPLOYEES OF THE NATIONAL GOVERNMENT.—** Uniformed members of the Philippine National Police (PNP) are considered employees of the National Government, and all personnel of the PNP are subject to civil service laws and regulations. Petitioner cannot evade liability under the pretense that another agency has primary jurisdiction over him. Settled is the rule that jurisdiction is conferred only by the Constitution or the law. When it clearly declares that a subject matter falls within the jurisdiction of a tribunal, the party involved in the controversy must bow and submit himself to the tribunal on which jurisdiction is conferred. The CSC, as the central personnel agency of the Government, is mandated to establish a career service, to strengthen the merit and rewards system, and to adopt measures to promote morale, efficiency and integrity in the civil service. The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the government, including government-owned or controlled corporations with original charters. Specifically, Section 91 of Republic Act (RA) No. 6975 (1990) or the "Department of Interior and Local Government Act of 1990" provides that the "Civil Service Law and its implementing rules and regulations shall apply to all personnel of the Department," to which herein petitioner belongs.

2. **ID.; ID.; ID.; POWERS AND FUNCTIONS OF THE CSC UNDER THE ADMINISTRATIVE CODE OF 1987 (EO NO. 292).—** Section 12 of Executive Order (EO) No. 292 or the "Administrative Code of 1987," enumerates the powers and functions of the CSC, to wit: SEC. 12. *Powers and Functions.* — The Commission shall have the following powers and functions: (1) Administer and enforce the constitutional and statutory provisions on the merit system for all levels and ranks in the Civil Service; x x x (7) Control, supervise and coordinate Civil Service examinations. xxx (11) Hear and decide administrative cases instituted by or brought before it directly or on appeal, including contested appointments, and review decisions and actions of its offices and of the agencies attached to it. x x x

3. ID.; ID.; ID.; AUTHORITY TO TAKE COGNIZANCE OVER ANY IRREGULARITIES CONNECTED WITH THE CIVIL SERVICE EXAMINATION, THROUGH ITS CIVIL SERVICE REGIONAL OFFICES.—Section 28, Rule XIV of the Omnibus Civil Service Rules and Regulations specifically confers upon the CSC the authority to take cognizance over any irregularities or anomalies connected with the examinations, thus: Sec. 28. The Commission shall have original disciplinary jurisdiction over all its officials and employees and over all cases involving civil service examination anomalies or irregularities. To carry out this mandate, the CSC issued Resolution No. 991936, or the Uniform Rules on Administrative Cases in the Civil Service, empowering its Regional Offices to take cognizance of cases involving CSC examination anomalies: SECTION 6. *Jurisdiction of Civil Service Regional Offices.*— The Civil Service Commission Regional Offices shall have jurisdiction over the following cases: A. Disciplinary 1. Complaints initiated by, or brought before, the Civil Service Commission Regional Offices provided that the alleged acts or omissions were committed within the jurisdiction of the Regional Office, including Civil Service examination anomalies or irregularities and the persons complained of are employees of agencies, local or national, within said geographical areas; x x x Based on the foregoing, it is clear that the CSC acted within its jurisdiction when it initiated the conduct of a preliminary investigation on the alleged civil service examination irregularity committed by the petitioner.

4. ID.; ID.; ID.; APPELLATE POWER OF THE CSC DOES NOT APPLY ON CASES WHERE ACTS OF COMPLAINANT AROSE FROM CHEATING IN THE CIVIL SERVICE EXAMINATIONS AS IN CASE AT BAR.— It has already been settled in *Cruz v. Civil Service Commission* that the appellate power of the CSC will only apply when the subject of the administrative cases filed against erring employees is in connection with the duties and functions of their office, and not in cases where the acts of complainant arose from cheating in the civil service examinations. Thus: Petitioner's invocation of the law is misplaced. The provision is applicable to instances where administrative cases are filed against erring employees in connection with their duties and functions of the office. This is, however, not the scenario contemplated in the case at

bar. It must be noted that the acts complained of arose from a cheating caused by the petitioners in the Civil Service (Subprofessional) examination. The examinations were under the direct control and supervision of the Civil Service Commission. The culprits are government employees over whom the Civil Service Commission undeniably has jurisdiction. xxx Moreover, in *Civil Service Commission v. Albao*, we rejected the contention that the CSC, under the aforestated Sections 47 and 48 of Book V of EO 292, only has appellate disciplinary jurisdiction on charges of dishonesty and falsification of documents in connection with an appointment to a permanent position in the government service.

APPEARANCES OF COUNSEL

Poculan and Associates Law Office for petitioner.
Office of the Legal Affairs (CSC) for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Uniformed members of the Philippine National Police (PNP) are considered employees of the National Government, and all personnel of the PNP are subject to civil service laws and regulations.[1] Petitioner cannot evade liability under the pretense that another agency has primary jurisdiction over him. Settled is the rule that jurisdiction is conferred only by the Constitution or the law.[2] When it clearly declares that a subject matter falls within the jurisdiction of a tribunal, the party involved in the controversy must bow and submit himself to the tribunal on which jurisdiction is conferred.

Factual Antecedents

On October 3, 1996, the PNP-Regional Office 10 appointed petitioner Eugenio S. Capablanca into the PNP service with the

[1] Republic Act No. 6975 (1990), Secs. 36 and 91.

[2] *Civil Service Commission v. Albao*, G.R. No. 155784, October 13, 2005, 472 SCRA 548, 555.

rank of Police Officer 1 (PO1) with a temporary status[3] and was assigned at the PNP Station in Butuan City. On November 29, 1998, petitioner took the PNP Entrance Examination conducted by the National Police Commission (NAPOLCOM)[4] and passed the same. On July 28, 2000, he took the Career Service Professional Examination-Computer Assisted Test (CSP-CAT) given by the Civil Service Commission (CSC)[5] and likewise passed the same. Thereafter, or on October 3, 2000, the Regional Director of Police Regional Office XIII conferred upon petitioner the permanent status as PO1.[6]

Proceedings before the Civil Service Commission

On October 15, 2001, the CSC Caraga Regional Office XIII (CSC Caraga) through its Regional Director Lourdes Clavite-Vidal informed PO1 Capablanca about certain alleged irregularities relative to the CSP-CAT which he took on July 28, 2000. According to the CSC, the "person in the picture pasted in the Picture Seat Plan (PS-P) is different from the person whose picture is attached in the Personal Data Sheet (PDS)" and that the signature appearing in the PS-P was different from the signature affixed to the PDS.[7] The CSC further informed petitioner that such findings of alleged examination irregularities constituted the offense of dishonesty if *prima facie* evidence was established.

A Preliminary Investigation was scheduled on November 16, 2001;[8] petitioner failed to appear but was represented by counsel who moved to dismiss the proceedings. He argued that it is the NAPOLCOM which has sole authority to conduct entrance and promotional examinations for police officers to the exclusion of the CSC, pursuant to *Civil Service Commission v. Court of*

[3] *Rollo*, p. 70.

[4] *Id.* at 71.

[5] *Id.* at 107.

[6] *Id.* at 106.

[7] *Id.* at 74.

[8] *Id*.

Appeals.[9] Thus, the CSP-CAT conducted on July 28, 2000 was void. Moreover, he alleged that the administrative discipline over police officers falls under the jurisdiction of the PNP and/or NAPOLCOM.[10]

In an Order[11] dated November 16, 2001, the CSC Caraga held that there was no dispute that it was the NAPOLCOM which had the sole authority to conduct the entrance and promotional examinations of police officers. However, since petitioner submitted a CSC Career Service Professional eligibility and not a NAPOLCOM eligibility to support his appointment on a permanent status, then the CSC had jurisdiction to conduct the preliminary investigation.

The dispositive portion of the CSC Order dated November 16, 2001, reads:

> WHEREFORE, the Motion to Dismiss filed by Atty. Poculan, for his client, Eugenio S. Capablanca is hereby DENIED for lack of merit. Accordingly, Capablanca is directed to submit his counter-affidavit within five (5) days from receipt hereof.[12]

Proceedings before the Regional Trial Court

To prevent the CSC Caraga from further proceeding with the conduct of the administrative investigation, PO1 Capablanca filed on January 16, 2002 a Petition[13] for prohibition and injunction with a prayer for the issuance of a temporary restraining order and writ of preliminary injunction with the Regional Trial Court of Butuan. The said court issued a 20-day temporary restraining

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[9] G.R. No. 141732, promulgated on September 25, 2001 in the form of a Minute Resolution, wherein we affirmed *in toto* the decision of the Court of Appeals in CA-G.R. SP No. 46503.

[10] See CSC Order dated November 16, 2001, *rollo*, p. 75.

[11] *Id.* at 75-76.

[12] *Id.* at 76.

[13] *Id.* at 77-82. Docketed as S.P. Civil Case No. 1059 and raffled to Branch 32.

order and set the case for summary hearing on February 8, 2002 to resolve the application for preliminary injunction.[14]

Instead of filing its Answer, the CSC Caraga moved to dismiss the case,[15] arguing *inter alia* that: a) PO1 Capablanca failed to exhaust administrative remedies by appealing before the CSC Central Office instead of filing a petition before the trial court; b) PO1 Capablanca's reliance on *Civil Service Commission v. Court of Appeals*[16] was misplaced because what he took was a career service professional examination and not a police entrance examination; and c) the CSC was not stripped of its original disciplinary jurisdiction over all cases involving civil service examination anomalies.

In its March 8, 2002 Resolution,[17] the trial court denied CSC's Motion to Dismiss for lack of merit. It held that the CSC had no jurisdiction to conduct the preliminary investigation, much less to prosecute PO1 Capablanca. The dispositive portion of the Resolution, reads:

> WHEREFORE, in view of all the foregoing, respondent's motion to dismiss is denied for lack of merit. As a consequence and for want of jurisdiction, herein respondent, its Regional Director, Region 13 Caraga, or its officers, attorneys' agents, or any person acting for and its behalf, is hereby ordered to finally, permanently and perpetually desist, cease and stop from proceeding or conducting any administrative investigation against the petitioner Eugenio S. Capablanca.
>
> No pronouncement as to costs.
>
> IT IS SO ORDERED.[18]

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

[15] *Id.* at 89-105.

[16] *Supra* note 9.

[17] *Rollo,* pp. 114-122; penned by Judge Victor A. Tomaneng.

[18] *Id.* at 122.

Proceedings before the Court of Appeals

Its Motion for Reconsideration[19] unheeded,[20] the CSC Caraga filed a Petition for *Certiorari*[21] before the Court of Appeals praying for the nullification of the Resolution of the trial court, and at the same time insisting on its jurisdictional power to prosecute the administrative case involving dishonesty and that PO1 Capablanca failed to exhaust administrative remedies.

In his Comment,[22] the petitioner contended that there was no need to exhaust administrative remedies because the proceeding before the CSC was an absolute nullity, and that it was the NAPOLCOM, the People's Law Enforcement Board (PLEB), or PNP which had primary jurisdiction over the alleged irregularities in the CSP-CAT. He alleged that the case involved a purely legal issue and that he would suffer irreparable injury if he should still await the outcome of the administrative action before the CSC Central Office. PO1 Capablanca stressed that the July 28, 2000 CSP-CAT was ineffectual as far as he was concerned, because it was in the nature of a promotional examination for policemen and was solely within the province of NAPOLCOM.

On March 22, 2006, the Court of Appeals rendered its Decision[23] granting CSC's petition. The Court of Appeals found that PO1 Capablanca prematurely resorted to court intervention when the remedy of appeal to the CSC Central Office was available. Upholding the jurisdiction of the CSC Caraga, the appellate court declared that the subject of the latter's preliminary investigation was not with respect to PO1 Capablanca's acts in the conduct of his duties as a police officer, but with respect to the authenticity of the documents he submitted before the CSC

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[19] *Id.* at 123-124.

[20] *Id.* at 140.

[21] *Id.* at 141-160.

[22] *Id.* at 161-176

[23] *Id.* at 47-57; penned by Associate Justice Romulo V. Borja and concurred in by Associate Justices Myrna Dimaranan-Vidal and Ricardo R. Rosario.

Caraga in support of his application for permanent status as well as the veracity of its contents. It held that pursuant to the CSC's constitutional duty to protect the integrity of the civil service system, it acted within its authority to investigate irregularities or anomalies involving civil service examinations, and to ascertain whether a prospective civil service appointee is qualified in accordance with all the legal requirements.

Hence, this petition.

Petitioner's Arguments

Petitioner PO1 Capablanca assigns the following errors:

1

THE HONORABLE COURT OF APPEALS, WITH DUE RESPECT, GRAVELY ERRED IN DECLARING THAT RESPONDENT CSC HAS JURISDICTION AND DISCIPLINARY AUTHORITY OVER HEREIN PETITIONER, A MEMBER OF THE PHILIPPINE NATIONAL POLICE.

1-A

GRANTING THAT IT HAS, THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT DECLARING THAT IT HAS ONLY APPELLATE JURISDICTION OVER THE CASE AND IT IS THE NATIONAL POLICE COMMISSION (NAPOLCOM) WHICH HAS THE JURISDICTION TO CONDUCT INITIATORY INVESTIGATION OF THE CASE, AS HELD IN THE CASE OF *MIRALLES VS. GO, G.R. NO. 139943, JANUARY 18, 2001*.

II

THE HONORABLE COURT OF APPEALS, WITH DUE RESPECT GRAVELY ERRED IN DECLARING THAT HEREIN PETITIONER FAILED TO EXHAUST ADMINISTRATIVE REMEDIES.[24]

Respondent's Arguments

The CSC, through the Office of the Solicitor General (OSG) argues that in pursuing a case against one who undermines the integrity of the CSC examinations, the CSC Caraga was only acting within its mandated powers and duties. The OSG clarifies

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

that the PNP does not have exclusive jurisdiction over disciplinary cases. Rather, its jurisdiction over such cases is concurrent with that of the CSC. It also argues that *Civil Service Commission v. Court of Appeals*[25] is irrelevant to petitioner's situation because the ruling therein does not affect the authority of the CSC to conduct the CSP examination and to investigate examination anomalies. Lastly, the OSG contends that petitioner should not have directly resorted to court action, because the CSC proper could still review the decisions and actions of the CSC Caraga.[26]

Issue

The case at bar boils down to the issue of whether the CSC Caraga has jurisdiction to conduct the preliminary investigation of a possible administrative case of dishonesty against PO1 Capablanca for alleged CSP examination irregularity.

Our Ruling

The petition lacks merit.

The CSC, as the central personnel agency of the Government, is mandated to establish a career service, to strengthen the merit and rewards system, and to adopt measures to promote morale, efficiency and integrity in the civil service.[27] The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the government, including government-owned or controlled corporations with original charters.[28] Specifically, Section 91 of Republic Act (RA) No. 6975 (1990) or the "Department of Interior and Local Government Act of 1990" provides that the "Civil Service Law and its implementing rules and regulations shall apply to all personnel of the Department," to which herein petitioner belongs.

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[25] *Supra* note 9.

[26] *Rollo,* pp. 199-221.

[27] CONSTITUTION, Art. IX-B, Sec. 3. See Sec. 1, Book V of Executive Order (E.O.) No. 292 or the "Administrative Code of 1987."

[28] CONSTITUTION, Art. IX-B, Sec. 2(1). See Sec. 6, *id.*

Section 12 of Executive Order (EO) No. 292 or the "Administrative Code of 1987," enumerates the powers and functions of the CSC, to wit:

SEC. 12. *Powers and Functions*.— The Commission shall have the following powers and functions:

(1) Administer and enforce the constitutional and statutory provisions on the merit system for all levels and ranks in the Civil Service;

xxx xxx xxx

(7) Control, supervise and coordinate Civil Service examinations. x x x

xxx xxx xxx

(11) Hear and decide administrative cases instituted by or brought before it directly or on appeal, including contested appointments, and review decisions and actions of its offices and of the agencies attached to it. x x x

In addition, Section 28, Rule XIV of the Omnibus Civil Service Rules and Regulations specifically confers upon the CSC the authority to take cognizance over any irregularities or anomalies connected with the examinations, thus:

Sec. 28. The Commission shall have original disciplinary jurisdiction over all its officials and employees and over all cases involving civil service examination anomalies or irregularities.

To carry out this mandate, the CSC issued Resolution No. 991936, or the Uniform Rules on Administrative Cases in the Civil Service, empowering its Regional Offices to take cognizance of cases involving CSC examination anomalies:

SECTION 6. *Jurisdiction of Civil Service Regional Offices*.— The Civil Service Commission Regional Offices shall have jurisdiction over the following cases:

A. Disciplinary

1. Complaints initiated by, or brought before, the Civil Service Commission Regional Offices provided that the alleged acts or

omissions were committed within the jurisdiction of the Regional Office, including Civil Service examination anomalies or irregularities and the persons complained of are employees of agencies, local or national, within said geographical areas;

xxx xxx xxx

Based on the foregoing, it is clear that the CSC acted within its jurisdiction when it initiated the conduct of a preliminary investigation on the alleged civil service examination irregularity committed by the petitioner.

However, petitioner contends that a citizen who has complaints against a police officer should bring his complaint before the following, citing Section 41 of RA 6975,[29] to wit:

(a) x x x x

(1) Chiefs of police, where the offense is punishable by withholding of privileges, restriction to specified limits, suspension or forfeiture of salary, or any combination thereof for a period not exceeding fifteen (15) days;

(2) Mayors of cities or municipalities, where the offense is punishable by withholding of privileges, restriction to specified limits, suspension or forfeiture of salary, or any combination thereof, for a period of not less than sixteen (16) days but not exceeding thirty (30) days;

(3) People's Law Enforcement Board, as created under Section 43 hereof, where the offense is punishable by withholding of privileges, restriction to specified limits, suspension or forfeiture of salary, or any combination thereof, for a period exceeding thirty (30) days; or by dismissal.

xxx xxx xxx

(c) Exclusive Jurisdiction.— A complaint or a charge filed against a PNP member shall be heard and decided exclusively by the disciplining authority who has acquired original jurisdiction over the case and notwithstanding the existence of concurrent jurisdiction

[29] Section 52 of Republic Act No. 8551 amended Section 41 of Republic Act No. 6975, referring to "citizen's complaints" as those complaints filed by either a natural or juridical person.

as regards the offense: Provided, That offenses which carry higher penalties referred to a disciplining authority shall be referred to the appropriate authority which has jurisdiction over the offense.

Based on the foregoing, petitioner avers that the CSC does not have the authority to conduct an initiatory investigation of the case, but it only has appellate jurisdiction to review the decision of any of the disciplining authorities above mentioned. Petitioner anchors his argument on the following provisions of EO 292 stating that the heads of departments, agencies, offices or bureaus should first commence disciplinary proceedings against their subordinates before their decisions can be reviewed by the CSC:

Section 47, Book V of EO 292:

Disciplinary Jurisdiction. — (1) 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 x x x

(2) The Secretaries and heads of 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 Secretary concerned.

Section 48, Book V of EO 292:

Procedure in Administrative Cases Against Non-Presidential Appointees. — (1) Administrative proceedings may be commenced against a subordinate officer or employee by the Secretary or head of office of equivalent rank, or head of local government, or chiefs of agencies, or regional directors, or upon sworn, written complaint of any other person.

We are not persuaded. It has already been settled in *Cruz v. Civil Service Commission*[30] that the appellate power of the CSC will only apply when the subject of the administrative cases filed against erring employees is in connection with the duties and functions of their office, and not in cases where the acts of complainant arose from cheating in the civil service examinations. Thus:

> Petitioner's invocation of the law is misplaced. The provision is applicable to instances where administrative cases are filed against erring employees in connection with their duties and functions of the office. This is, however, not the scenario contemplated in the case at bar. It must be noted that the acts complained of arose from a cheating caused by the petitioners in the Civil Service (Subprofessional) examination. The examinations were under the direct control and supervision of the Civil Service Commission. The culprits are government employees over whom the Civil Service Commission undeniably has jurisdiction. x x x

Moreover, in *Civil Service Commission v. Albao,*[31] we rejected the contention that the CSC, under the aforestated Sections 47 and 48 of Book V of EO 292, only has appellate disciplinary jurisdiction on charges of dishonesty and falsification of documents in connection with an appointment to a permanent position in the government service. We enunciated, thus:

> Pursuant to Section 47 (1), (2) and Section 48 above, it is the Vice President of the Philippines, as head of office, who is vested with jurisdiction to commence *disciplinary* action against respondent Albao.
>
> Nevertheless, this Court does not agree that petitioner is helpless to act directly and *motu proprio*, on the alleged acts of dishonesty and falsification of official document committed by respondent in connection with his appointment to a permanent position in the Office of the Vice President.
>
> It is true that Section 47 (2), Title I (A), Book V of EO No. 292 gives the heads of government offices original *disciplinary* jurisdiction

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[30] G.R. No. 144464, November 27, 2001, 370 SCRA 650, 655-656.

[31] *Supra* note 2 at 557-558.

over their own subordinates. 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. It is only when the penalty imposed exceeds the aforementioned penalties that an appeal may be brought before the Civil Service Commission which has appellate jurisdiction over the same in accordance with Section 47 (1) Title I(A), Book V of EO No. 292, thus:

> SEC. 47. *Disciplinary Jurisdiction*. – (1) 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. x x x

The present case, however, partakes of an act by petitioner to protect the integrity of the civil service system, and does not fall under the provision on disciplinary actions under Sec. 47. **It falls under the provisions of Sec. 12, par. 11, on administrative cases instituted by it directly**. **This is an integral part of its duty, authority and power to administer the civil service system and protect its integrity, as provided in Article IX-B, Sec. 3 of the Constitution, by removing from its list of eligibles those who falsified their qualifications. This is to be distinguished from ordinary proceedings intended to discipline a bona fide member of the system, for acts or omissions that constitute violations of the law or the rules of the service.** (Emphasis Ours)

Incidentally, it must be mentioned at this juncture that citizen's complaints before the PLEB under RA 6975 pertain to complaints lodged by private citizens against erring PNP members for the redress of an injury, damage or disturbance caused by the latter's illegal or irregular acts, an example being that of a policeman who takes fish from the market without paying for it.[32] Clearly, the PLEB has no jurisdiction concerning matters involving the integrity of the civil service system.

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[32] *Fianza v. People's Law Enforcement Board (PLEB)*, G.R. No. 109638, March 31, 1995, 243 SCRA 165, 178 and *Cordoviz v. People's Law Enforcement Board (PLEB)*, G.R. No. 109639, March 31, 1995, 243 SCRA 165.

Finally, petitioner's reliance on *Civil Service Commission v. Court of Appeals*,[33] is misplaced. In said case, the NAPOLCOM assailed Item 3 of CSC Resolution No. 96-5487, which provides:

> 3. Appointees to Police Officer and Senior Police Officer positions in the Philippine National Police must have passed any of the following examinations:
>
> a) PNP Entrance Examination;
>
> b) Police Officer 3rd Class Examination; and
>
> c) CSC Police Officer Entrance Examination.

The NAPOLCOM took exception to this provision, particularly letter (c), arguing that the requirement of taking a CSC Police Officer Entrance Examination is only applicable to entrance in the first-level position in the PNP, *i.e.*, the rank of PO1.[34] NAPOLCOM stressed that what would entitle a police officer to the appropriate eligibility for his promotion in the PNP are the promotional examinations conducted by the NAPOLCOM, and not the CSC Police Officer Entrance Examination.

The Court of Appeals found in favor of the NAPOLCOM and held that the CSC, by issuing Item 3 of CSC Resolution No. 96-5487 encroached on the exclusive power of NAPOLCOM under RA 6975[35] to administer promotional examinations for policemen and to impose qualification standards for promotion of PNP personnel to the ranks of PO2 up to Senior Police Officers 1-4. Thus:

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[33] *Supra* note 2.

[34] Under Section 32 of RA 6975, the CSC administered the qualifying entrance examination for policemen on the basis of the standards set by the NAPOLCOM. RA 8551 amended this and now mandates the NAPOLCOM to administer both the entrance and promotional examinations for policemen on the basis of the standards it has set.

[35] Specifically Section 38 of the law which states:

> *Promotions.* — (a) A member of the PNP shall not be eligible for promotion to a higher position or rank unless he has successfully passed the corresponding promotional examination given by the Commission, or the Bar or corresponding board examinations for technical services and other professions x x x

Admittedly, the CSC is mandated to conduct the qualifying entrance examination (CSC Police Officer Entrance Examination) for Police Officer 1. However, when the CSC prescribes the same examination for appointment of Senior Police Officer (SPO) under the questioned Item 3, it in effect imposes an examination for promotion (appointment) of a policeman to PO2 up to other higher ranks up to SP04. Thus Item 3 encompasses examinations for the positions of Police Officer as well as that of Senior Police Officer, meaning examination not only for appointment to PO1 but promotion to PO2 and PO3 up to the four SPO ranks.[36]

The Court of Appeals thus ordered the CSC to desist from conducting any promotional examination for Police Officers and Senior Police Officers.

In a Minute Resolution dated September 25, 2001 in G.R. No. 141732, we affirmed the Court of Appeals thereby sustaining the authority of the NAPOLCOM to administer promotional examinations for policemen.

It must be stressed however that the subject matter in the above cited case was the conduct of promotional examination for policemen. On the contrary, the issue in the instant case is the jurisdiction of the CSC with regard to anomalies or irregularities in the CSP-CAT, which is a totally different matter.

In fine, we find that CSC Caraga acted within its powers when it instituted the conduct of a preliminary investigation against herein petitioner. In view of the foregoing, we need not anymore attend to the issue of the doctrine of exhaustion of administrative remedies.

WHEREFORE, the petition is *DENIED* for lack of merit.

SO ORDERED.

Puno, C.J., Carpio, Carpio Morales, Chico-Nazario, Nachura, Leonardo-de Castro, Brion, Bersamin, Abad, and *Villarama, Jr., JJ.,* concur.

Corona, Velasco, Jr., and *Peralta, JJ.,* on official leave.

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[36] *Rollo,* pp. 181-182.

EN BANC

[G.R. No. 187956. November 19, 2009]

RAMON P. TORRES, *petitioner, vs.* **COMMISSION ON ELECTIONS and JOSEPHINE "JOY" H. GAVIOLA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; FOUND PRESENT IN THE APPRECIATION OF CONTESTED BALLOTS AND ELECTION DOCUMENTS IN CASE AT BAR.— The Court finds, after examining the challenged ballots, that the COMELEC, as petitioner Torres points out, gravely abused its discretion in invalidating a number of ballots that would have otherwise been counted for him. Although as a rule, the appreciation of contested ballots and election documents involves a question of fact best left to the determination of the COMELEC, still when it can be shown that, as in this case, it grossly misread evidence of such nature that compels a different conclusion, the Court will not hesitate to reverse that body's factual findings.

2. ID.; EVIDENCE; HANDWRITING DISCREPANCY DESPITE THE SIMILARITY; CASE AT BAR.— It is by now a settled truth that no two persons write alike. Even if two handwritings have a common general outlook, they are apt to be at variance in some basic characteristics that set them apart. Every person uses his own style for forming letters, technically called personal characteristics. Whatever features two specimens of handwriting may have in common, they cannot be regarded as written by one person if they show even but one **consistent dissimilarity** in any feature which is fundamental to the structure of the handwriting. Here, the Court did not find, after examining 93 of the excluded ballots pertaining to petitioner Torres, any two or more of ballots that were filled in by a single hand. Of the 47 pairs of ballots that the *En Banc* excluded, only two pairs were correctly excluded because they were written by one person for each pair. 45 pairs turned out to

have been filled up by different hands. While the general outlook of the handwritings on each of the two ballots in any given pair is the same, such handwritings have distinct personal characteristics. In the same way, the three ballots that were supposedly written on by one person turned out to have been the work of three different hands.

APPEARANCES OF COUNSEL

Francisco Paredes and Morales Law Office for petitioner.
The Solicitor General for public respondent.
George Erwin M. Garcia for private respondent.

D E C I S I O N

ABAD, *J.*:

This petition for *certiorari* assails the May 25, 2009 Resolution[1] of the Commission on Elections (COMELEC) *En Banc* which denied the motion for reconsideration of petitioner Ramon P. Torres (Torres) and affirmed with modification the March 4, 2009 Resolution[2] of the COMELEC Second Division in EAC (BRGY.) 214-2008, which in turn reversed the May 7, 2008 Decision[3] of the Metropolitan Trial Court of Makati City in Election Case 07-2874. The latter court had annulled the proclamation of Torres and declared respondent Josephine "Joy" H. Gaviola (Gaviola) as the elected *Punong Barangay* of *Barangay* San Antonio, Makati City.

The Facts and the Case

Petitioner Torres and respondent Gaviola ran against each other for *Punong Barangay* of *Barangay* San Antonio, Makati City in the October 29, 2007 synchronized *Barangay* and *Sangguniang Kabataan* Elections. On October 30, 2007 the *Barangay* Board of Canvassers proclaimed Torres winner with

[1] *Rollo*, p. 42.

[2] *Id.* at 53.

[3] *Id.* at 636.

a lead of 71 votes over Gaviola, as follows: Torres – 2,438 votes; Gaviola – 2,367 votes.

Respondent Gaviola filed an election protest[4] before the Metropolitan Trial Court (MeTC) of Makati City, assailing the results of the election in the 56 precincts of *Barangay* San Antonio. On May 7, 2008 the MeTC rendered a decision, dismissing her protest.[5] Dissatisfied, Gaviola appealed[6] to the Commission on Elections (COMELEC).

On March 4, 2009 the COMELEC Second Division reversed the ruling of the MeTC. Noting that the MeTC did not examine all the contested ballots, the Second Division re-examined them all. It affirmed the MeTC's appreciation of 12 additional ballots for respondent Gaviola and invalidated 100 ballots cast for petitioner Torres because of a) instances of one person filling up two ballots and there were 47 pairs of ballots filled up in this way; b) one person filling up three ballots; c) two distinct handwritings filling up one ballot; and d) and two ballots being marked. As a result, the Second Division proclaimed Gaviola winner by a margin of 35 votes, that is, 2,379 votes for her and 2,344 votes for Torres.[7]

Petitioner Torres filed a motion for reconsideration but the COMELEC *En Banc* denied it. The *En Banc* affirmed with modifications the resolution of the Second Division. As modified, respondent Gaviola still emerged as the winner but her lead had been reduced to 10 votes because the *En Banc* declared 25 ballots, previously set aside, not written by one person and counted them for Torres. The final results were: Torres: 2,344 + 25 = **2,369**, Gaviola: **2,379**.

On June 30, 2009 the COMELEC *En Banc* issued an Order for the implementation of its decision.[8] This prompted petitioner

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[4] *Id.* at 126.

[5] *Id.* at 769.

[6] *Id.* at 793.

[7] *Id.* at 125.

[8] *Id.* at 938.

Torres to file this petition with prayer for the issuance of a temporary restraining order (TRO). On July 7, 2009 the Court issued the TRO asked of it.[9]

The Issues

The issues that this petition presents are whether or not the COMELEC *En Banc* and its Second Division gravely abused their discretion a) in taking up respondent Gaviola's objections to petitioner Torres' ballots but not the latter's counter objections to Gaviola's ballots; b) in examining and appreciating the contested ballots in the absence of the parties; and c) in invalidating the ballots for Torres.

The Rulings

1. Petitioner Torres points out that the COMELEC *En Banc* and its Second Division gravely abused their discretion when they took up and resolved respondent Gaviola's objection to Torres' ballots but did not do the same with respect to the objections of Torres to the ballots for Gaviola.

But the COMELEC Second Division did not limit its examination only to those ballots that were cast in respondent Gaviola's favor. It in fact ruled on the validity of the ballots for petitioner Torres as well. The pertinent portion of the March 4, 2009 Resolution of the COMELEC Second Division reads:

> As regards the (a) ballots counted in favor of protestant [Gaviola] which were objected to by protestee [Torres] and the (b) ballots claimed by the protestee [Torres], we found that the appreciation done by the trial court is in consonance with existing laws, rules and jurisprudence. Hence, we find no reason to depart from its rulings.[10]

On the other hand, no grave abuse of discretion could be imputed to the COMELEC *En Banc* when it addressed only the ruling of the Second Division that annulled the 100 ballots

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[9] *Id.* at 943-946.

[10] *Id.* at 124.

previously counted for Torres since the latter's motion for reconsideration targeted only those ballots.[11]

2. Petitioner Torres points out that the COMELEC *En Banc* did commit grave abuse of discretion in appreciating the ballots in the absence of the parties. But the Court finds that such action is internal and is but a part of that tribunal's decision-making process. The *En Banc's* action is akin to that of a Judge going over the exhibits in the case in the course of deliberating over the issues that he needs to resolve by his decision.

3. But the Court finds, after examining the challenged ballots, that the COMELEC, as petitioner Torres points out, gravely abused its discretion in invalidating a number of ballots that would have otherwise been counted for him.

Although as a rule, the appreciation of contested ballots and election documents involves a question of fact best left to the determination of the COMELEC, still when it can be shown that, as in this case, it grossly misread evidence of such nature that compels a different conclusion, the Court will not hesitate to reverse that body's factual findings.[12]

It is by now a settled truth that no two persons write alike. Even if two handwritings have a common general outlook, they are apt to be at variance in some basic characteristics that set them apart. Every person uses his own style for forming letters, technically called personal characteristics.[13] Whatever features two specimens of handwriting may have in common, they cannot be regarded as written by one person if they show even but one **consistent dissimilarity** in any feature which is fundamental to the structure of the handwriting.[14]

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[11] *Id.* at 888.

[12] *De Guzman v. Commission on Elections*, G.R. No. 159713, March 31, 2004, 426 SCRA 698, 707-708.

[13] M.K. Metha, *Identification of Handwriting & Cross Examination of Experts*, 1970, p. 177.

[14] *Silverio v. Clamor*, 125 Phil. 917, 927 (1967).

Here, the Court did not find, after examining 93 of the excluded ballots pertaining to petitioner Torres, any two or more of ballots that were filled in by a single hand. Of the 47 pairs of ballots that the *En Banc* excluded, only two pairs were correctly excluded because they were written by one person for each pair. 45 pairs turned out to have been filled up by different hands. While the general outlook of the handwritings on each of the two ballots in any given pair is the same, such handwritings have distinct personal characteristics. In the same way, the three ballots that were supposedly written on by one person turned out to have been the work of three different hands. Thus:

(1) Precinct No. 534A/535A – In GAV-2, the "E's" in TORRES and RENE are connected to the immediately succeeding letter using a stroke from the top most horizontal line of E; while in GAV-1, the connecting stroke comes from the bottom horizontal line of E as in TORRES, APELO, MELVIN, ALBERT and MATEO;

(2) Precinct No. 534A/535A – In GAV-6, there is a loop in the upper zone of "S" in TORRES, BABES, BASMAYOR and UBAS; while there is no loop in the S found in "TORRES" of GAV-5. The final stroke in the "R's" of GAV-6 are either pointing upwards (as in TORRES and ROMY) or slightly curved (as in ALBERT, RC, and ROQUERO). In GAV 5, the terminal stroke in the "R's" are either pointed downwards (as in RAMON) or written horizontally (as in TORRES) but never curved or pointing upwards like those in GAV-6;

(3) Precinct No. 534A/535A – In GAV-40, the connecting stroke between the vertical lines forming the letter "M" in MON, MATEO, and BASMAYOR is a concave stroke; while the connecting stroke in GAV-39 in MON, DUMILON, JOMCI, MATEO, and ROMY is an angular stroke that reaches the base line; In GAV-40, the lower portion of the letter "C" in CECIL and CAJES is curved; while those in CAJES, JOMCI and CERRADO of GAV-39 are not curved but written in a horizontal stroke.

(4) Precinct No. 536A/537A – In GAV-6, the "A's" are connected to the immediately succeeding letter using an overhand stroke that creates a loop from the bottom of the right diagonal line and extends to the upper zone of the next letter (as in RAMON, ALBERT, GABUYA and BASMAYOR); while in GAV-5, the "A's" are connected to the next letter by a horizontal upward stroke that extends from the middle of the left diagonal line of A to the upper zone of the following

letter (as in BASMAYOR and ALBERT). In GAV-6, the connecting stroke between the 2 vertical lines of M is concave in shape; while that in GAV-5 is angular and tapering downwards;

(5) Precinct No. 538A/542A – In GAV-22, the vertical line and horizontal top and bottom lines of the letter E are written using a single stroke that resembles a "C" (as in TORRES and MATEO); while an E with extended horizontal top and middle strokes appear in GAV-21 (TORRES, MATEO and ROMEO); In GAV-22, the upper portion of "Y" is concave (WILLY); while in GAV-21, the same is angular in ARBY of GAV-21;

(6) Precinct No. 548A/548B – The characters in GAV-1 are bigger than those in GAV-2. Also in GAV-2, the "R's" in TORRES and CABRAL are leaning to the right; while the "R's" in GAV-1 are written in straight up and down strokes (TORRES, FERRERA, CERRADO and ALEGRE). In GAV 2, the "C's" found in "CABRAL" and "CUDIAMAT" have loops at the upper zone while no such loops are found in the "Cs" of "CERRADO" and "CAJES" in GAV 1. The letter "G's" in GUANZON and GABUYA in GAV-2 have an angular lower portion while a rounded base characterizes the "G" in GUANZON of GAV-1;

(7) Precinct No. 549A – In GAV-22, the "M's" are narrow and angular in structure (as in RAMON, MATEO, ROMEO, and BASMAYOR) while in GAV-21, the "M's," and all the other characters, are written in wide angular letters. The vertical stroke of the "B's" in GAV-21 extends above the upper and lower loops (as in BASMAYOR, ALBERT, and GABUYA);

(8) Precinct No. 550A – In GAV-1, a buckle (or a loop made as a flourish),[15] connects the second and final stroke in the "R's" found in "Ramon" "Romy," "RC" and "Raqueño"; while no such loop is found in the "R's" of "RC" and "Raqueño" in GAV-2. In GAV-1, "á" is used at the beginning of the name and surname while GAV-2 uses the character "A."

(9) Precinct No. 550A – In GAV-5, the letter "G" in GABUYA has a spur[16] at the final stroke; while the "G's" in ALEGRE and

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[15] M.K. Metha, *Identification of Handwriting & Cross Examination of Experts*, 1970, p. 195.

[16] Spur – A short initial or terminal stroke, *id.* at 197.

GUDIAMAT of GAV-6 has no spurs. Also in GAV-6, the "J's" in CAJES, BAJUN, and JEBONG have beards (preliminary embellished initial stroke which usually occur in capital letters);[17] the "J" in JOSELITO in GAV-5 has no beard.

(10) Precinct No. 550A – In GAV-16, the "A's" are formed by 2 slanting lines that overlap at the upper zone with the horizontal stroke written close to the intersection, as in BASMAYOR, GABUYA and MATEO. In GAV-16, the diagonal lines at upper zone of the "A's" are concave to slightly tapering but they never overlap as in GAV-15 and the horizontal line of the "A's" is written in the middle portion of the diagonal lines (as in RAMON, MATEO, GABUYA, ALBERT and BASMAYOR).

(11) Precinct No. 550C/550D – In GAV-6 the second and final strokes of the "R's" do not intersect with the first vertical stroke (as in TORRES and RESTY); while the "R's" in GAV-5, have a gap between the first vertical stroke and the point where the second and terminal stroke fuses (as shown in TORRES, RESTY, RS, ROMY, LIRIO and NARDING).

(12) Precinct No. 551A/551B – In GAV-1 the "R's" in TORRES, FERRERA and CABRAL appear to have a loop created by the intersection of the second and final strokes with the first vertical line; while no such loop appear in the "R's" in GAV-2. In GAV-2, the right vertical stroke of the "N's" is unusually higher than the left vertical stroke as shown in RAMON, CHAN, and GUANZON; while the "N's" in RAMON, BAJUN, and ENTENG in GAV-1 are regularly shaped and proportioned.

(13) Precinct No. 552A/552B – In GAV-4, the "m's" in Ramon, Melinda, Dumilon, and Basmayor have three shoulders (or the outside portion of the top curve);[18] while in GAV-5, the same letter is made up of four shoulders as shown in Ramon, Basmayor, Cudiamat, and Romeo.

(14) Precinct No. 552A/552B – The characters in GAV-6 are medium sized while in GAV-7, the letters are elongated. In GAV-6, the "J's" in CAJES, JOMEL, JOSEPH and JOEL have beards (or preliminary embellished initial stroke which usually occur in capital letters); while none appears in the "J's" found in CAJES, JHE, and JOSE of GAV-7.

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[17] *Id.* at 195.

[18] *Id.* at 197.

(15) Precinct No. 552A/552B – In GAV-46, the vertical line of the letter "T" is a continuous stroke that merges with the upper portion of the immediately following vowel in **TO**RRES and MA**TE**O; while in GAV-45, said letters are written in separate strokes.

(16) Precinct No. 552A/552B – In GAV-48 the "R's" in RAMON, TORRES, LIRIO, NARDING, RESTY and CERRADO have a spur (or a short initial stroke) but they do not have buckles nor retraced portions; while in GAV-49, the "R's" have no spurs and are characterized by buckles and retraced portions as in TORRES, RAMON, BASMAYOR, ALBERT, LEONARDO and MARIA. In GAV-48, the final stroke in "R" points upwards while in GAV-49, the final stroke points downwards.

(17) Precinct No. 554A – In GAV-4, the vowel "U" in GABUYA, UBAS, CUDIAMAT and RAQUEÑO has a spur (short terminal stroke) but none appears in CUDIAMAT, GABUYA, and UBAS of GAV-3. In addition, the lower case "m's" in GAV-4 have spurs (either in the initial or both in the initial and terminal strokes) while the upper case "M" in GAV-3 are without spurs.

(18) Precinct No. 554B – In GAV-6 the horizontal stroke in the lower portion of the letter "L" in RONALD, JONNEL, ALBERT and ALEGRE is curved upwards; while the same is diagonal in the "L" found in RONALD, LIRIO, ALBERT and CECIL in GAV-7. In addition, the angle formed by the "L" in GAV-7 is sharper and more pronounced;

(19) Precinct No. 555B/555C – In GAV-6, the lower case of the letter "L" forms a loop with rounded top in Dumilon, Arnaldo, Silverio, Melvin, Joselito, and Melinda; while in GAV-5, said letter is written either as a loop with tapering top or a single stroke as in Jomel, Dumilon, Joel, and Ronald. In GAV-6, lower case of "M" is written with three arcs (curves formed inside the top curve or loop) as in Ramon, Dumilon, and Cudiamat; while in GAV-5, the same is written with two arcs as shown in Jomel and Dumilon.

(20) Precinct No. 556B – In GAV-1, the "A's" resemble a triangle as the connecting horizontal strokes are written too close to the base of the two intersecting and tapering slanting strokes (as in ALBERT, BASMAYOR, DANNY, RAQUEÑO, BABES, and GABUYA); while the "A" in APELO of GAV-2, is regularly shaped with the horizontal line written between the middle portion of the diagonal strokes.

(21) Precinct No. 556B – In GAV-3, the letter "M" has a concave shaped connecting stroke (MON, JOMEL, BASMAYOR, and CUDIAMAT); while the connecting stroke in GAV-4 is tapering downwards (in RAMON, BASMAYOR, JOMEL, ROMY and MATEO). The "U's" in GAV-4 have a narrow base or lower portion such as those in GABUYA and UBAS; while in GAV-3, the "U's" have wider semi-rectangular shape as in CUDIAMAT, RESTITUTO, UBAS and GUANZON;

(22) Precinct No. 556B – In GAV-16 the angular lower case "m" has three shoulders and a spur (either at the initial only or both at the initial and terminal strokes) as in MON, DUMILON, ROMY, and MATEO; while in GAV-15, the "M" used is in upper case and has a concave connecting line. Also in GAV-16, the lower case "y" has an elongated lower portion (RESTY, ROMY and GABUYA); while in GAV 15, the letter "Y' used in GABUYA is the printed upper case character.

(23) Precinct No. 556C – In GAV-1, the "S" is either lower case printed (TORRES and UBAS) or cursive with rounded top (Basmayor); while GAV-2 a shows consistently cursive lower case "s" with tapering top (Torres, Basmayor, Babes, Raqueño, and Ubas).

(24) Precinct No. 556C – In GAV-5, the "E" is connected to the immediately succeeding letter by a stroke from the upper most horizontal line of "E" and extends to the upper portion of the next letter (TORRES, APELO, ALBERT JEBAG, ALEGRE, ROMEO and MATEO); while the "E" in GAV-6 is written as a separate letter and not connected to the next character.

(25) Precinct No. 558A/559A – In GAV-1, the final stroke of the letter "B" forms a connecting loop that extends to the upper portion of the next letter (ALBERT, BASMAYOR and BABES). All the "B's" in GAV-2, even those without a connecting loop (GABUYA, UBAS, and ZABLAN), have an open lower portion. In GAV-2, the final stroke in "B" neither forms a connecting loop nor extends to the next letter but ends or closes at the base of the vertical stroke of "B" (UBAS, BASMAYOR, BABES, and GABUYA).

(26) Precinct No. 561B – In GAV 1, the top portion of the lower case "r" is curved or pointing downwards (Torres, Cerrado, Maria. Ferrera, Alegre, and Victor); while in GAV 2, the top portion is a straight vertical stroke (Torres, Cerrado, Basmayor, Albert, and Ferrera). In GAV-1 the voter consistently used the printed lower

case "á" in Rámon, Cerrádo, Melindá, and Máriá; while in GAV-2, the character used is "a" in Cerrado, Melinda, Cudiamat, Basmayor, Chan, Ferrera and Ronald.

(27) Precinct No. 562A – In GAV-1, the cursive upper case "M" has a spur pointed upwards (Melinda and Melvin); while in GAV-2, the spur of the same letter is downwards (Mon).

(28) Precinct No. 563A/563B – In GAV-1, the "R's" are leaning to the right. Also, the point where the second and final strokes fuses is connected to the middle portion of the first stroke (TORRES, BASMAYOR, ALBERT, R.C., RESTY). In GAV-2 the "R's" are slightly ascending and there is a gap between the first stroke and the point where the second and final stroke fuses (TORRES and CERRADO).

(29) Precinct No. 565A/565B – The letter "B's" in GAV-5 have an open loop at the lower portion as in GABUYA, BABES, UBAS, and BASMAYOR. In GAV-4, the loop in the lower portion of "B" (UBAS, GABUYA and BASMAYOR) is closed. The "U's" in GAV-4 have spurs (short terminal stokes) while those in GAV-5 have none;

(30) Precinct No. 573A – In GAV-9, the letter "U" in UTO, UBAS, and CUDIAMAT has a spur in the final stroke; while the "U" in GAV-10 (UBAS) has none.

(31) Precinct No. 573A – In GAV-12, the upper portion of the "R's" in TORRES, RAMON, CABRAL MARCIANO and RESTITUTIO is an ascending elongated curve; while in GAV-11, said upper portion is rounded in shape (TORRES, RAMON, FERRERA and CABRAL). In GAV-12, the vertical as well as the top and bottom horizontal strokes of the letter "E" are written using a single stoke that resembles a letter "C" while the E's in GAV-11 are regularly shaped.

(32) Precinct No. 573B – In GAV-4, the characters are rounded while those in GAV-3 are angular. In GAV-4, the "R's" in RAMON, TORRES, RAQUENO and BASMAYOR have a buckle while the "R's" in GAV-3 have none (RAMON, TORRES, FERRERA and RESTY).

(33) Precinct No. 574A – In GAV-2, the lower zone of the lower case "y" curves back to the baseline (Resty and Gabuya); while in GAV-1 said lower zone is an elongated stroke that slightly curves at the tip (Basmayor and Danny).

(34) Precinct No. 574A – In GAV-6, the final stroke of the "R's" in RAMON, TORRES, RESTY and CABRAL is directed downwards; while the same final stroke is going right ward in GAV-5 (TORRES).

(35) Precinct No. 574A – The "r" in TORRES in GAV-9 is written in the cursive lower case and has a loop at the upper left side; while there is none in the plateau shaped top of the cursive lower case "r" in GAV-10.

(36) Precinct No. 575A – The letter "T's" in GAV-2 (TORRES and MATEO) are written using a single stroke that resembles a Ö. In GAV- 3, the vertical stroke of the "Ts" intersect at the middle portion of the top horizontal stroke (TORRES, LITO, ALBERT, CUDIAMAT, and MATEO); while in GAV-4, the intersection is at the left most portion of the horizontal stroke (TORRES, ALBERT and CUDIAMAT).

(37) Precinct No. 575A – In GAV-9, the vertical stroke in "T" slightly overlaps with the top horizontal stoke (TORRES, ALBERT and MATEO); while in GAV-10 the vertical and horizontal strokes do not overlap.

(38) Precinct No. 575A – In GAV-12 the connecting stroke in "M" is angular and tapering downwards (MON, BASMAYOR, CUDIAMAT, and MATEO) while in GAV-11, the connecting stroke is angular and does not extend beyond the middle portion.

(39) Precinct No. 575A – In GAV-36 and GAV-37, the characters differ in all aspects. GAV-37 appears to have been written by a literate voter using regular cursive lower and upper case stokes; while GAV-36 is by a semi-literate voter using a combination of printed and cursive strokes, mostly retraced, with some characters scribbled below the base line.

(40) Precinct No. 575B/576B – In GAV-13, the connecting stroke in "M" is angular and tapering downwards (MON, BASMAYOR, and MATEO) while in GAV-14, the connecting stroke is concave (MON, DUMLON, ROMY and MATEO). In GAV-14, the voter used both upper and lower case characters in the middle of the words but is consistent in using the lower case "Y" with elongated single stroke at the lower portion.

(41) Precinct No. 575B/576B – In GAV-22, the top most and middle horizontal strokes in "E" do not overlap with the vertical stroke (TORRES CERRADO, JOSEPH, CECILLE, ALEGRE, CAJES and RESTY); while in GAV-21, said overlapping exist in TORRES and CECIL.

(42) Precinct No. 575B/576B – In GAV-25, the "R's" have small and rounded upper portion (TORRES, ALBERT, and BASMAYOR); while in GAV-24 such upper portion has wider breadth (TORRES, R.C. and ROMY). The spur of the letter "U" in GAV-25 is curved to the right (GABUYA, CUDIAMAT, RAQUEÑO, and UBAS); while the spur of the same letter in GAV-24 is a vertical stroke (GABUYA, DANNY, and RAOUSN).

(43) Precinct No. 575B/576B – GAV-27 has retraced characters (as in CAAN and CABRAL) and overlapping strokes (as in ENTENG); while GAV-28 has neatly written single-stroke letters. The "S' in GAV-27 has an over extended lower portion that reaches up to the upper left portion of the letter (TORRES and UBAS). In GAV- 28, a small loop appears on the upper portion of the "S" in TORRES and UBAS.

(44) Precinct No. 575B/576B – In GAV-29, the "A's" resemble an asterisk (*) due to the overlapping of the diagonal and vertical stokes that form the letter "A" in UBAS, BADJUN, CABRAL, BABES, GABUYA, ALEGRE, MARIA, BASMAYOR and ALBERT; while the "A" in GAV-30 is regularly shaped as in OROPESA and CABRAL.

(45) Precinct No. 576A – In GAV-2, a spur appears as an initial stroke in the "R's" of TORRES, CERRADO, RESTY, and ALEGRE. The "R's" in GAV-1 have no spurs (TORRES, RESTITUTO, and RAQUEÑO).

(46) Precinct No. 576A – In GAV-30, breaks or gaps, not found in the characters of GAV-29, occur in letters – "G" in ALEGRE, "A" in CABRAL, in "B" and "A" in UBAS, "G" in SALANGA and in "Z" and "A" in ALZONA.

As for the remaining seven ballots that the COMELEC *En Banc* invalidated, the Court affirms the common findings of the *En Banc* and the Second Division that Exhibits GAV-3 and GAV-4 (Precinct No. 549B/D) were marked ballots. Indeed, the irrelevant words "JUMONG HE…HE…HE" in GAV-3 and 'Y.S." in GAV-4 are indicative of an intention to identify the voter.

We also affirm the ruling of the COMELEC that GAV-2 and GAV-3 from Precinct No. 552A/B were written by one person as shown by the manner in which the letters "R," "G" and "O"

were written on the ballots; and GAV-1 and GAV-2 in Precinct No. 565A/565B, in view of the striking similarities in the stroke and handwriting style. These ballots were correctly invalidated, there being neither an assisted voter nor an assistor authorized to prepare the ballots. GAV-1 of Precinct No. 566A/D was correctly invalidated for having been written by two persons. The difference in the style or stroke in writing "DANILO ROQUERO" and "CUDIAMAT ARNALDO" is evident.

Considering that the 93 ballots nullified by the COMELEC Second Division are valid votes for petitioner Torres, the same are to be added to the latter's votes, thus: 2,344 + 93 votes = 2,437. Consequently, Torres won by a margin of 58 votes over respondent Gaviola who garnered 2,379 votes.

WHEREFORE, the Court *REVERSES* and *SETS ASIDE* both the May 25, 2009 Resolution of the Commission on Elections *En Banc* and the March 4, 2009 Resolution of the COMELEC Second Division in EAC (BRGY.) 214-2008 that annulled the proclamation of petitioner Ramon P. Torres and proclaimed respondent Josephine "Joy" Gaviola as the elected *Punong Barangay* of *Barangay* San Antonio, Makati City. The Court *AFFIRMS* the October 30, 2007 proclamation of petitioner Torres by the *Barangay* Board of Canvassers and the May 7, 2008 decision of the Metropolitan Trial Court of Makati City in Election Case 07-2874 that affirmed such proclamation but now based on the revised counts of votes stated in this decision.

SO ORDERED.

Puno, C.J., Carpio, Carpio Morales, Chico-Nazario, Nachura, Leonardo-de Castro, Brion, Bersamin, Del Castillo, and *Villarama, Jr., JJ.,* concur.

Corona, Velasco, Jr., and *Peralta, JJ.,* on official leave.

EN BANC

[A.C. No. 8380. November 20, 2009]

ARELLANO UNIVERSITY, INC., *complainant, vs.* **ATTY. LEOVIGILDO H. MIJARES III,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; DISBARMENT OR SUSPENSION OF LAWYER; GROUNDS.— Section 27, Rule 138 of the Revised Rules of Court provides for the disbarment or suspension of a lawyer for the following: (1) deceit; (2) malpractice; (3) gross misconduct in office; (4) grossly immoral conduct; (5) conviction of a crime involving moral turpitude; (6) violation of the lawyer's oath; (7) willful disobedience of any lawful order of a superior court; and (8) willfully appearing as an attorney for a party without authority to do so.

2. ID.; ATTORNEYS; HAVE THE RESPONSIBILITY TO PROTECT THE INTERESTS OF THEIR CLIENT SUCH THAT THEY MUST PROMPTLY ACCOUNT FOR MONEY OR PROPERTY THE CLIENT HAS ENTRUSTED TO THEM.— Every lawyer has the responsibility to protect and advance the interests of his client such that he must promptly account for whatever money or property his client may have entrusted to him. As a mere trustee of said money or property, he must hold them separate from that of his own and make sure that they are used for their intended purpose. If not used, he must return the money or property immediately to his client upon demand, otherwise the lawyer shall be presumed to have misappropriated the same in violation of the trust reposed on him. A lawyer's conversion of funds entrusted to him is a gross violation of professional ethics.

APPEARANCES OF COUNSEL

Frederick G. Dedace for complainant.

D E C I S I O N

PER CURIAM:

This disbarment case is about the need for a lawyer to account for funds entrusted to him by his client.

The Facts and the Case

The facts are taken from the record of the case and the report and recommendation of the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP).

Sometime in January 2004, complainant Arellano University, Inc. (the University) engaged the services of respondent Leovigildo H. Mijares III, a member of the Bar, for securing a certificate of title covering a dried up portion of the Estero de San Miguel that the University had been occupying. The property was the subject of a Deed of Exchange dated October 1, 1958 between the City of Manila and the University.

In its complaint for disbarment against Mijares, the University alleged that it gave him all the documents he needed to accomplish his work. Later, Mijares asked the University for and was given ₱500,000.00 on top of his attorney's fees, supposedly to cover the expenses for "facilitation and processing." He in turn promised to give the money back in case he was unable to get the work done.

On July 5, 2004 Mijares informed the University that he already completed Phase I of the titling of the property, meaning that he succeeded in getting the Metro Manila Development Authority (MMDA) to approve it and that the documents had already been sent to the Department of Environment and Natural Resources (DENR). The University requested Mijares for copies of the MMDA approval but he unjustifiably failed to comply despite his client's repeated demands. Then he made himself scarce, prompting the University to withdraw all the cases it had entrusted to him and demand the return of the ₱500,000.00 it gave him.

On November 23, 2005 the University wrote Mijares by registered letter, formally terminating his services in the titling matter and demanding the return of the ₱500,000.00. But the letter could not be served because he changed office address without telling the University. Eventually, the University found his new address and served him its letter on January 2, 2006. Mijares personally received it yet he did not return the money asked of him.

In his answer to the complaint, Mijares alleged that he and the University agreed on a number of courses of action relating to the project assigned to him: first, get the University's application for a survey plan which the DENR-NCR approved for a "facilitation cost" of ₱500,000.00; second, get a favorable MMDA endorsement for a "facilitation cost" of another ₱500,000.00; and, third, the titling of the property by the Land Registration Authority for a "facilitation cost" of still another ₱500,000.00.

Mijares also alleged that the DENR-NCR Assistant Regional Director told him that he needed to get a favorable endorsement from MMDA and that the person to talk to about it was Undersecretary Cesar Lacuna. Mijares later met the latter through a common friend. At their meeting, Mijares and Lacuna allegedly agreed on what the latter would get for recommending approval of the application. Later, Mijares said, he gave the ₱500,000.00 to Lacuna through their common friend on Lacuna's instruction.

Mijares next alleged that, after he received the money, Lacuna told him that the University filed an identical application earlier on March 15, 2002. Mijares claimed that the University deliberately withheld this fact from him. Lacuna said that, because of the denial of that prior application, he would have difficulty recommending approval of the present application. It appeared that Lacuna endorsed the previous application to the Mayor of Manila on July 23, 2003 but the latter did not act on it.

Mijares finally alleged that he and Lacuna wanted to bypass the Mayor of Manila in the paper work but they were unable to arrive at a concrete plan. Mijares claimed that the University

gave him only ₱45,000.00 as his fees and that it was with the University's conformity that he gave the ₱500,000.00 to Lacuna.

The IBP designated Atty. Dennis B. Funa as Commissioner to conduct a formal investigation of the complaint. Despite numerous settings, however, Mijares failed to appear before the Commissioner and adduce evidence in his defense.

On October 17, 2008 Commissioner Funa submitted his Report and Recommendation[1] in the case to the Integrated Bar of the Philippines' Board of Governors. The Report said that the University did not authorize Mijares to give ₱500,000.00 to the then MMDA Deputy Chairman Cesar Lacuna; that Mijares had been unable to account for and return that money despite repeated demands; and that he admitted under oath having bribed a government official.

Commissioner Funa recommended a) that Mijares be held guilty of violating Rules 1.01 and 1.02, Canon 15, Rule 15.05, Canon 16, Rules 16.01 and 16.03, and Canon 18, Rule 18.04 of the Code of Professional Responsibility and meted out the penalty of disbarment; b) that he be ordered to return the ₱500,000.00 and all the pertinent documents to the University; and c) that Mijares' sworn statement that formed part of his Answer be endorsed to the Office of the Ombudsman for investigation and, if warranted, for prosecution with respect to his shady dealing with Deputy Chairman Lacuna.

On December 11, 2008 the IBP Board of Governors passed Resolution XVIII-2008-631, adopting and approving the Investigating Commissioner's recommendation but modifying the penalty from disbarment to indefinite suspension from the practice of law and ordering Mijares to return the ₱500,000.00 and all pertinent documents to the University within six months from receipt of the Court's decision.[2]

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[1] *Rollo*, pp. 80-91.

[2] *Id.* at 78.

The Question Presented

The only question presented in this case is whether or not respondent Mijares is guilty of misappropriating the ₱500,000.00 that his client, the University, entrusted to him for use in facilitating and processing the titling of a property that it claimed.

The Court's Ruling

Section 27, Rule 138 of the Revised Rules of Court provides for the disbarment or suspension of a lawyer for the following: (1) deceit; (2) malpractice; (3) gross misconduct in office; (4) grossly immoral conduct; (5) conviction of a crime involving moral turpitude; (6) violation of the lawyer's oath; (7) willful disobedience of any lawful order of a superior court; and (8) willfully appearing as an attorney for a party without authority to do so.[3]

Every lawyer has the responsibility to protect and advance the interests of his client such that he must promptly account for whatever money or property his client may have entrusted to him. As a mere trustee of said money or property, he must hold them separate from that of his own and make sure that they are used for their intended purpose. If not used, he must return the money or property immediately to his client upon demand, otherwise the lawyer shall be presumed to have misappropriated the same in violation of the trust reposed on him.[4] A lawyer's conversion of funds entrusted to him is a gross violation of professional ethics.[5]

Here, respondent Mijares chose not to be heard on his evidence. Technically, the only evidence on record that the Court can consider is the University's evidence that he got ₱500,000.00 from complainant for expenses in facilitating and processing its

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[3] *Re: Administrative Case Against Atty. Occeña*, 433 Phil. 138, 155 (2002).

[4] *Barnachea v. Quiocho*, 447 Phil. 67, 75 (2003), citing *In Re: David*, 84 Phil. 627, 630 (1949) and *Capulong v. Aliño*, 130 Phil. 510, 512 (1968).

[5] *Id.*, citing *Sipin-Nabor v. Baterina*, 412 Phil. 419, 424 (2001).

title application; that he undertook to return the money if he did not succeed in his purpose; that he falsely claimed having obtained the MMDA approval of the application; and that he nonetheless refused to return the money despite repeated demands. Unopposed, this evidence supports the finding of guilt of the Investigating Commissioner and the IBP Board of Governors.

Besides, even if the Court were to consider the defense that Mijares laid out in his answer, the same does not rouse sympathy. He claims that he gave the ₱500,000.00 to Undersecretary Lacuna, with the University's conformity, for a favorable MMDA endorsement to the Mayor of Manila. He also claims that, in a complete turnaround, Lacuna later said that he could not provide the endorsement because, as it turned out, the MMDA had previously given such endorsement of the University's earlier application and the Mayor of Manila did not act on that endorsement.

But, if this were so, there was no reason for Mijares not to face the University and make it see that it had no cause for complaint, having given him clearance to pass on the ₱500,000.00 to Lacuna. Instead, Mijares kept silent. He did not deny that the University went all over town looking for him after he could not return the money. Nor did he take any action to compel Lacuna to hand back the money that the University gave him. More, his not showing up to testify on his behalf at the investigation of the case is a dead giveaway of the lack of merit of his defense. No evidence exists to temper the doom that he faces.

Even more unfortunate for Mijares, he admitted under oath having bribed a government official to act favorably on his client's application to acquire title to a dried-up creek. That is quite dishonest. The Court is not, therefore, inclined to let him off with the penalty of indefinite suspension which is another way of saying he can resume his practice after a time if he returns the money and makes a promise to shape up.

The Court is also not inclined to go along with the IBP's recommendation that the Court include in its decision an order directing Mijares to return the ₱500,000.00 that the University

entrusted to him. The University knowingly gave him that money to spend for "facilitation" and processing. It is not naïve. There is no legitimate expense called "facilitation" fee. This term is a deodorized word for bribe money. The Court will not permit the conversion of a disbarment proceeding into a remedy for recovering bribe money lost in a bad deal.

WHEREFORE, the Court finds respondent Leovigildo H. Mijares III, a member of the Bar, *GUILTY* of violation of Rules 1.01 and 1.02, Canon 15, Rule 15.05, Canon 16, Rules 16.01 and 16.03, and Canon 18, Rule 18.04 of the Code of Professional Responsibility and imposes on him the penalty of *DISBARMENT*. He is, in addition, directed to return to complainant Arellano University, Inc. all the documents in his possession covering the titling matter that it referred to him.

Let the sworn statement of respondent Mijares, forming his Answer, be forwarded to the Office of the Ombudsman for whatever action it deems proper under the circumstances.

SO ORDERED.

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

Corona, Velasco, Jr., and Peralta, JJ., on official leave.

EN BANC

[G.R. Nos. 152613 & 152628. November 20, 2009]

APEX MINING CO., INC., *petitioner, vs.* **SOUTHEAST MINDANAO GOLD MINING CORP., THE MINES ADJUDICATION BOARD, PROVINCIAL MINING REGULATORY BOARD (PMRB-DAVAO), MONKAYO INTEGRATED SMALL SCALE MINERS ASSOCIATION, INC., ROSENDO VILLAFLOR, BALITE COMMUNAL PORTAL MINING COOPERATIVE, DAVAO UNITED MINERS COOPERATIVE, ANTONIO DACUDAO, PUTING-BATO GOLD MINERS COOPERATIVE, ROMEO ALTAMERA, THELMA CATAPANG, LUIS GALANG, RENATO BASMILLO, FRANCISCO YOBIDO, EDUARDO GLORIA, EDWIN ASION, MACARIO HERNANDEZ, REYNALDO CARUBIO, ROBERTO BUNIALES, RUDY ESPORTONO, ROMEO CASTILLO, JOSE REA, GIL GANADO, PRIMITIVA LICAYAN, LETICIA ALQUEZA and JOEL BRILLANTES MANAGEMENT MINING CORPORATION,** *respondents.*

[G.R. Nos. 152619-20. November 20, 2009]

BALITE COMMUNAL PORTAL MINING COOPERATIVE, *petitioner, vs.* **SOUTHEAST MINDANAO GOLD MINING CORP., APEX MINING CO., INC., THE MINES ADJUDICATION BOARD, PROVINCIAL MINING REGULATORY BOARD (PMRB-DAVAO), MONKAYO INTEGRATED SMALL SCALE MINERS ASSOCIATION, INC., ROSENDO VILLAFLOR, DAVAO UNITED MINERS COOPERATIVE, ANTONIO DACUDAO, PUTING-BATO GOLD MINERS COOPERATIVE, ROMEO ALTAMERA, THELMA CATAPANG, LUIS GALANG, RENATO BASMILLO, FRANCISCO YOBIDO, EDUARDO**

GLORIA, EDWIN ASION, MACARIO HERNANDEZ, REYNALDO CARUBIO, ROBERTO BUNIALES, RUDY ESPORTONO, ROMEO CASTILLO, JOSE REA, GIL GANADO, PRIMITIVA LICAYAN, LETICIA ALQUEZA and JOEL BRILLANTES MANAGEMENT MINING CORPORATION, *respondents.*

[G.R. Nos. 152870-71. November 20, 2009]

THE MINES ADJUDICATION BOARD AND ITS MEMBERS, THE HON. VICTOR O. RAMOS (Chairman), UNDERSECRETARY VIRGILIO MARCELO (Member) and DIRECTOR HORACIO RAMOS (Member), *petitioners, vs.* **SOUTHEAST MINDANAO GOLD MINING CORPORATION,** *respondent.*

SYLLABUS

1. POLITICAL LAW; PHILIPPINE BILL OF 1902; PERFECTED MINING CLAIM UNDER PHILIPPINE BILL OF 1902; CASE OF *MCDANIEL V. APACIBLE, ET AL.* AND *GOLD CREEK MINING CORP. V. RODRIGUEZ*, CITED. — In 1916, *McDaniel*, petitioner therein, located minerals, *i.e.*, petroleum, on an unoccupied public land and registered his mineral claims with the office of the mining recorder pursuant to the Philippine Bill of 1902, where a mining claim locator, soon after locating the mine, enjoyed possessory rights with respect to such mining claim with or without a patent therefor. In that case, the Agriculture Secretary, by virtue of Act No. 2932, approved in 1920, which provides that "all public lands may be leased by the then Secretary of Agriculture and Natural Resources," was about to grant the application for lease of therein respondent, overlapping the mining claims of the subject petitioner. Petitioner argued that, being a valid locator, he had vested right over the public land where his mining claims were located. There, the Court ruled that the mining claim perfected under the Philippine Bill of 1902, is "property in the highest sense of that term, which may be sold and conveyed, and will pass by descent, and is not therefore subject to the disposal of the

Government." The Court then declared that since petitioner had already perfected his mining claim under the Philippine Bill of 1902, a subsequent statute, *i.e.,* Act No. 2932, could not operate to deprive him of his already perfected mining claim, without violating his property right. *Gold Creek Mining* reiterated the ruling in *McDaniel* that a perfected mining claim under the Philippine Bill of 1902 no longer formed part of the public domain; hence, such mining claim does not come within the prohibition against the alienation of natural resources under Section 1, Article XII of the 1935 Constitution. Gleaned from the ruling on the foregoing cases is that for this law to apply, it must be established that the mining claim must have been perfected when the Philippine Bill of 1902 was still in force and effect. This is so because, unlike the subsequent laws that prohibit the alienation of mining lands, the Philippine Bill of 1902 sanctioned the alienation of mining lands to private individuals. The Philippine Bill of 1902 contained provisions for, among many other things, the open and free exploration, occupation and purchase of mineral deposits and the land where they may be found. It declared "**all valuable mineral deposits in public lands in the Philippine Islands, both surveyed and unsurveyed x x x to be free and open to exploration, occupation, and purchase, and the land in which they are found to occupation and purchase, by citizens of the United States, or of said Islands x x x**." Pursuant to this law, the holder of the mineral claim is entitled to all the minerals that may lie within his claim, provided he does three acts: First, he enters the mining land and locates a plot of ground measuring, where possible, but not exceeding, one thousand feet in length by one thousand feet in breadth, in as nearly a rectangular form as possible. Second, the mining locator has to record the mineral claim in the mining recorder within thirty (30) days after the location thereof. Lastly, he must comply with the annual actual work requirement. Complete mining rights, namely, the rights to explore, develop and utilize, are acquired by a mining locator by simply following the foregoing requirements.

2. ID.; CONSTITUTIONAL LAW; REGALIAN DOCTRINE; THAT ALL NATURAL RESOURCES OF THE PHILIPPINES BELONG TO THE STATE EXCLUDING, HOWEVER, MINERAL LANDS PERFECTED BY VIRTUE OF PHILIPPINE BILL OF 1902.— With the effectivity of

the 1935 Constitution, where the *regalian* doctrine was adopted, it was declared that all natural resources of the Philippines, including mineral lands and minerals, were property belonging to the State. Excluded, however, from the property of public domain were the mineral lands and minerals that were located and perfected by virtue of the Philippine Bill of 1902, since they were already considered private properties of the locators. Commonwealth Act No. 137 or the Mining Act of 1936, which expressly adopted the *regalian* doctrine following the provision of the 1935 Constitution, also proscribed the alienation of mining lands and granted only lease rights to mining claimants, who were prohibited from purchasing the mining claim itself. When Presidential Decree No. 463, which revised Commonwealth Act No. 137, was in force in 1974, it likewise recognized the *regalian* doctrine embodied in the 1973 Constitution. It declared that all mineral deposits and public and private lands belonged to the state while, nonetheless, recognizing mineral rights that had already been existing under the Philippine Bill of 1902 as being beyond the purview of the *regalian* doctrine. The possessory rights of mining claim holders under the Philippine Bill of 1902 remained intact and effective, and such rights were recognized as property rights that the holders could convey or pass by descent.

3. ID.; ID.; ID.; ID.; SOUTHEAST MINDANAO GOLD MINING CORP. (SEM) IN CASE HAS NO MINING RIGHTS PERFECTED UNDER THE PHILIPPINE BILL OF 1902.— In the instant cases, SEM does not aver or prove that its mining rights had been perfected and completed when the Philippine Bill of 1902 was still the operative law. Surely, it is impossible for SEM to successfully assert that it acquired mining rights over the disputed area in accordance with the same bill, since it was only in 1984 that Marcopper Mining Corporation (MMC), SEM's predecessor-in-interest, filed its declaration of locations and its prospecting permit application in compliance with Presidential Decree No. 463. It was on 1 July 1985 and 10 March 1986 that a Prospecting Permit and Exploration Permit (EP) 133, respectively, were issued to MMC. Considering these facts, there is no possibility that MMC or SEM could have acquired a perfected mining claim under the auspices of the Philippine Bill of 1902. Whatever mining rights MMC had that it invalidly transferred to SEM cannot, by any stretch of

imagination, be considered "mining rights" as contemplated under the Philippine Bill of 1902 and immortalized in *McDaniel* and *Gold Creek Mining*.

4. ID.; ID.; ID.; ID.; MINERAL RESOURCES ARE OWNED BY THE STATE AND NOT BY THEIR DISCOVERER WHO CAN ONLY DEVELOP AND UTILIZE THE MINERALS UPON COMPLIANCE WITH THE LEGAL REQUIREMENTS.— SEM likens EP 133 with a building permit. SEM likewise equates its supposed rights attached to the exploration permit with the rights that a private property land owner has to said landholding. This analogy has no basis in law. As earlier discussed, under the 1935, 1973 and 1987 Constitutions, national wealth, such as mineral resources, are owned by the State and not by their discoverer. The discoverer or locator can only develop and utilize said minerals for his own benefit if he has complied with all the requirements set forth by applicable laws and if the State has conferred on him such right through permits, concessions or agreements. In other words, without the imprimatur of the State, any mining aspirant does not have any definitive right over the mineral land because, unlike a private landholding, mineral land is owned by the State, and the same cannot be alienated to any private person as explicitly stated in Section 2, Article XIV of the 1987 Constitution: All lands of public domain, waters, **minerals x x x and all other natural resources are owned by the State**. With the exception of agricultural lands, all other **natural resources shall not be alienated**.

5. ID.; ID.; ID.; ID.; ID.; EXPLORATION PERMIT (EP); MARCOPPER MINING CORP. (MMC) ASSIGNMENT OF RIGHTS AND INTERESTS OF ITS EP NO. 133 TO SEM, NOT EFFECTIVE WITHOUT APPROVAL OF THE PROPER AUTHORITY.— A closer scrutiny of the deed of assignment in favor of SEM reveals that MMC assigned to the former the rights and interests it had in EP 133. x x x It is evident that what MMC had over the disputed area during the assignment was an exploration permit. Clearly, the right that SEM acquired was limited to exploration, only because MMC was a mere holder of an exploration permit. As previously explained, SEM did not acquire the rights inherent in the permit, as the assignment by MMC to SEM was done in violation of the condition stipulated in the permit, and the assignment was

effected without the approval of the proper authority in contravention of the provision of the mining law governing at that time. In addition, the permit expired on 6 July 1994. It is, therefore, quite clear that SEM has no right over the area.

6. ID.; ID.; ID.; ID.; ID.; EXPLORATION PERMIT (EP); ELUCIDATED.— An exploration permit does not automatically ripen into a right to extract and utilize the minerals; much less does it develop into a vested right. The holder of an exploration permit only has the right to conduct exploration works on the area awarded. Presidential Decree No. 463 defined **exploration as "the examination and investigation of lands supposed to contain valuable minerals, by drilling, trenching, shaft sinking, tunneling, test pitting and other means, for the purpose of probing the presence of mineral deposits and the extent thereof**." Exploration does not include development and exploitation of the minerals found. Development is defined by the same statute as the **steps necessarily taken to reach an ore body or mineral deposit so that it can be mined**, whereas exploitation is defined as "**the extraction and utilization of mineral deposits**." An exploration permit is nothing more than a mere right accorded to its holder to be given priority in the government's consideration in the granting of the right to develop and utilize the minerals over the area. An exploration permit is merely inchoate, in that the holder still has to comply with the terms and conditions embodied in the permit. This is manifest in the language of Presidential Decree No. 463, thus: Sec. 8. x x x The right to exploit therein shall be awarded by the President under such terms and conditions as recommended by the Director and approved by the Secretary *Provided*, That the persons or corporations who undertook prospecting and exploration of said area shall be given priority.

7. ID.; ID.; ID.; ID.; ID.; ID.; VALID TRANSFER OF AN EP, ITS RIGHT IS NOT THAT OF A MINING CONTRACTOR.— SEM did not acquire the rights attached to EP 133, since their transfer was without legal effect. Granting for the sake of argument that SEM was a valid transferee of the permit, its right is not that of a mining contractor. An **exploration permit grantee** is vested with the **right to conduct exploration only**, while a Financial Technical Assistance Agreement (**FTAA) or** Mineral Production Sharing Agreement **(MPSA) contractor**

is **authorized to extract and carry off the mineral resources** that may be discovered in the area. An exploration permit holder still has to comply with the mining project feasibility and other requirements under the mining law. It has to obtain approval of such accomplished requirements from the appropriate government agencies. Upon obtaining this approval, the exploration permit holder has to file an application for an FTAA or an MPSA and have it approved also. Until the MPSA application of SEM is approved, it cannot lawfully claim that it possesses the rights of an MPSA or FTAA holder, thus: x x x prior to the issuance of such FTAA or mineral agreement, the exploration permit grantee (or prospective contractor) cannot yet be deemed to have entered into any contract or agreement with the State x x x.

8. ID.; ID.; ID.; ID.; ID.; ID.; THE NATURE OF A NATURAL RESOURCE EXPLORATION PERMIT IS ANALOGOUS TO THAT OF A LICENSE THAT CAN BE VALIDLY AMENDED BY THE REPUBLIC'S PRESIDENT WHEN NATIONAL INTERESTS SUITABLY NECESSITATE; CASE AT BAR.— The Court has consistently ruled that the nature of a natural resource exploration permit is analogous to that of a license. In *Republic v. Rosemoor Mining and Development Corporation*, this Court articulated: Like timber permits, **mining exploration permits do not vest in the grantee any permanent or irrevocable right within the purview of the non-impairment of contract and due process clauses of the Constitution**, since the State, under its all-encompassing police power, may alter, modify or amend the same, in accordance with the demands of the general welfare. As a mere license or privilege, an exploration permit can be validly amended by the President of the Republic when national interests suitably necessitate. The Court instructed thus: Timber licenses, permits and license agreements are the principal instruments by which the State regulates the utilization and disposition of forest resources to the end that the public welfare is promoted. x x x They may be validly amended, modified, replaced or rescinded by the Chief Executive when national interests so require. Recognizing the importance of the country's natural resources, not only for national economic development, but also for its security and national defense, Section 5 of Republic Act No. 7942 empowers the President, when the national interest so requires, to establish mineral reservations where mining

operations shall be undertaken directly by the State or through a contractor. x x x Due to the pressing concerns in the Diwalwal Gold Rush Area brought about by unregulated small to medium-scale mining operations causing ecological, health and peace and order problems, the President, on 25 November 2002, issued Proclamation No. 297, which declared the area as a mineral reservation and as an environmentally critical area. This executive fiat was aimed at preventing the further dissipation of the natural environment and rationalizing the mining operations in the area in order to attain an orderly balance between socio-economic growth and environmental protection. The area being a mineral reservation, the Executive Department has full control over it pursuant to Section 5 of Republic Act No. 7942. It can either directly undertake the exploration, development and utilization of the minerals found therein, or it can enter into agreements with qualified entities. Since the Executive Department now has control over the exploration, development and utilization of the resources in the disputed area, SEM's exploration permit, assuming that it is still valid, has been effectively withdrawn. The exercise of such power through Proclamation No. 297 is in accord with *jura regalia*, where the State exercises its sovereign power as owner of lands of the public domain and the mineral deposits found within. Thus, Article XII, Section 2 of the 1987 Constitution emphasizes: SEC. 2. All lands of the public domain, water, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. **The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or product-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens.** Furthermore, said proclamation cannot be denounced as offensive to the fundamental law because the State is sanctioned to do so in the exercise of its police power. The issues on health and peace and order, as well the decadence of the forest resources brought about by unregulated mining in the area, are matters of national interest. The declaration of the Chief

Executive making the area a mineral reservation, therefore, is sanctioned by Section 5 of Republic Act No. 7942.

9. ID.; ID.; ID.; ID.; ID.; ID.; ASSIGNMENT OF EP NO. 133 BY MMC IN FAVOR OF SEM VIOLATED SEC. 97 OF PD NO. 463 AND THE TERMS AND CONDITIONS SET FORTH IN THE PERMIT; THAT AN EXPLORATION PERMIT CANNOT BE ASSIGNED WITHOUT THE IMPRIMATUR OF THE SECRETARY OF THE DENR.— Exploration Permit 133 was issued in favor of MMC on 10 March 1986, when Presidential Decree No. 463 was still the governing law. Presidential Decree No. 463 pertains to the old system of exploration, development and utilization of natural resources through "license, concession or lease." Pursuant to this law, a mining lease contract confers on the lessee or his successors the right to extract, to remove, process and utilize the mineral deposits found on or underneath the surface of his mining claims covered by the lease. The lessee may also enter into a service contract for the **exploration**, development and exploitation of the minerals from the lands covered by his lease, x x x In other words, the lessee's interests are not only limited to the extraction or utilization of the minerals in the contract area, but also to include the right to explore and develop the same. This right to explore the mining claim or the contract area is derived from the exploration permit duly issued by the proper authority. An exploration permit is, thus, covered by the term "*any other interest therein*." Section 97 is entitled, "***Assignment of Mining Rights***." This alone gives a hint that before mining rights — namely, the rights to explore, develop and utilize — are transferred or assigned, prior approval must be obtained from the DENR Secretary. An exploration permit, thus, cannot be assigned without the imprimatur of the Secretary of the DENR. The rationale for the approval requirement under Section 97 of Presidential Decree No. 463 is not hard to see. Exploration permits are strictly granted to entities or individuals possessing the resources and capability to undertake mining operations. Mining industry is a major support of the national economy and the continuous and intensified exploration, development and wise utilization of mining resources is vital for national development. For this reason, Presidential Decree No. 463 makes it imperative that in awarding mining operations, only persons possessing the financial resources and technical

skill for modern exploratory and development techniques are encouraged to undertake the exploration, development and utilization of the country's natural resources.

10. ID.; ID.; ID.; ID.; ID.; CASE OF *PNOC-EDC V. VENERACION, JR.* ON THE FIVE REQUIREMENTS FOR ACQUIRING MINING RIGHTS IN RESERVED LANDS UNDER PD 463.— It is instructive to note that under Section 13 of Presidential Decree No. 463, the prospecting and exploration of minerals in government reservations, such as forest reservations, are prohibited, except with the permission of the government agency concerned. It is the government agency concerned that has the prerogative to conduct prospecting, exploration and exploitation of such reserved lands. It is only in instances wherein said government agency, in this case the Bureau of Mines, cannot undertake said mining operations that qualified persons may be allowed by the government to undertake such operations. *PNOC-EDC v. Veneracion, Jr.* outlines the five requirements for acquiring mining rights in reserved lands under Presidential Decree No. 463: (1) a prospecting permit from the agency that has jurisdiction over the land; (2) an exploration permit from the Bureau of Mines and Geo-Sciences (BMGS); (3) if the exploration reveals the presence of commercial deposit, application to BMGS by the permit holder for the exclusion of the area from the reservation; (4) a grant by the President of the application to exclude the area from the reservation; and (5) a mining agreement (lease, license or concession) approved by the DENR Secretary.

11. ID.; ID.; ID.; ID.; ID.; EXPLORATION PERMIT (EP); ASSIGNMENT OF EP NO. 133 BY MMC IN FAVOR OF SEM TRANSGRESSED A CONDITION IN THE GRANT OF PERMIT.— Not only did the assignment of EP 133 to SEM violate Section 97 of Presidential Decree No. 463, it likewise transgressed one of the conditions stipulated in the grant of the said permit. Thus, x x x 6. That this permit shall be for the **exclusive use and benefit of the permittee or his duly authorized agents** and shall be used for mineral exploration purposes only and for no other purpose. Where parties have entered into a well-defined contractual relationship, it is imperative that they should honor and adhere to their rights and obligations as stated in their contracts, because obligations arising from these have the force of law between the contracting

parties and should be complied with in good faith. Condition Number 6 categorically states that the permit shall be for the exclusive use and benefit of MMC or its duly authorized agents. While it may be true that SEM, the assignee of EP 133, is a 100% subsidiary corporation of MMC, records are bereft of any evidence showing that the former is the duly authorized agent of the latter. This Court cannot condone such utter disregard on the part of MMC to honor its obligations under the permit. Undoubtedly, having violated this condition, the assignment of EP 133 to SEM is void and has no legal effect.

12. ID.; WHEN QUESTIONS OF CONSTITUTIONALITY RAISED; REQUISITES; THAT EXERCISE OF JUDICIAL REVIEW PLEADED AT THE EARLIEST OPPORTUNITY; NOT PRESENT IN CASE AT BAR.— In its last-ditch effort to salvage its case, SEM contends that Proclamation No. 297, issued by President Gloria Macapagal-Arroyo and declaring the Diwalwal Gold Rush Area as a mineral reservation, is invalid on the ground that it lacks the concurrence of Congress. xxx It is well-settled that when questions of constitutionality are raised, the court can exercise its power of judicial review only if the following requisites are present: (1) an actual and appropriate case exists; (2) there is a personal and substantial interest of the party raising the constitutional question; (3) the exercise of judicial review is pleaded at the earliest opportunity; and (4) the constitutional question is the *lis mota* of the case. Taking into consideration the foregoing requisites of judicial review, it is readily clear that the third requisite is absent. The general rule is that the question of constitutionality must be raised at the earliest opportunity, so that if it is not raised in the pleadings, ordinarily it may not be raised at the trial; and if not raised in the trial court, it will not be considered on appeal. It must be pointed out that in the Reply to Respondent SEM's Consolidated Comment filed on 20 May 2003, MAB mentioned Proclamation No. 297, which was issued on 25 November 2002. This proclamation, according to the MAB, has rendered SEM's claim over the contested area moot, as the President has already declared the same as a mineral reservation and as an environmentally critical area. SEM did not put to issue the validity of said proclamation in any of its pleadings despite numerous opportunities to question the same. It was only after the assailed Decision was promulgated —

i.e., in SEM's Motion for Reconsideration of the questioned Decision filed on 13 July 2006 and its Motion for Referral of the Case to the Court *En Banc* and for Oral Arguments filed on 22 August 2006 — that it assailed the validity of said proclamation. Certainly, posing the question on the constitutionality of Proclamation No. 297 for the first time in its Motion for Reconsideration is, indeed, too late. In fact, this Court, when it rendered the Decision it merely recognized that the questioned proclamation came from a co-equal branch of government, which entitled it to a strong presumption of constitutionality. The presumption of its constitutionality stands inasmuch as the parties in the instant cases did not question its validity, much less present any evidence to prove that the same is unconstitutional. This is in line with the precept that administrative issuances have the force and effect of law and that they benefit from the same presumption of validity and constitutionality enjoyed by statutes.

13. ID.; CONSTITUTIONAL LAW; NATIONAL ECONOMY AND PATRIMONY; THAT THE POWER TO DETERMINE SPECIFIC LIMITS OF FOREST LANDS AND NATIONAL PARKS BELONGS TO CONGRESS; NOT VIOLATED BY PROCLAMATION NO. 297 WHERE THE PRESIDENT PROCLAIMS A FOREST RESERVATION AS A MINERAL RESERVATION.— SEM asserts that Article XII, Section 4 of the Constitution, bars the President from excluding forest reserves/reservations and proclaiming the same as mineral reservations, since the power to de-classify them resides in Congress. Section 4, Article XII of the Constitution reads: The Congress shall as soon as possible, determine by law the specific limits of forest lands and national parks, marking clearly their boundaries on the ground. Thereafter, such forest lands and national parks shall be conserved and may not be increased nor diminished, except by law. The Congress shall provide, for such periods as it may determine, measures to prohibit logging in endangered forests and in watershed areas. The above-quoted provision says that the area covered by forest lands and national parks may not be expanded or reduced, unless pursuant to a law enacted by Congress. Clear in the language of the constitutional provision is its prospective tenor, since it speaks in this manner: "*Congress shall as soon as possible*." It is only after the specific limits of the forest lands shall

have been determined by the legislature will this constitutional restriction apply. SEM does not allege nor present any evidence that Congress had already enacted a statute determining with specific limits forest lands and national parks. Considering the absence of such law, Proclamation No. 297 could not have violated Section 4, Article XII of the 1987 Constitution. Section 4, Article XII of the Constitution, addresses the concern of the drafters of the 1987 Constitution about forests and the preservation of national parks. This was brought about by the drafters' awareness and fear of the continuing destruction of this country's forests. In view of this concern, Congress is tasked to fix by law the specific limits of forest lands and national parks, after which the trees in these areas are to be taken care of. Hence, these forest lands and national parks that Congress is to delimit through a law could be changed only by Congress. In addition, there is nothing in the constitutional provision that prohibits the President from declaring a forest land as an environmentally critical area and from regulating the mining operations therein by declaring it as a mineral reservation in order to prevent the further degradation of the forest environment and to resolve the health and peace and order problems that beset the area. A closer examination of Section 4, Article XII of the Constitution and Proclamation No. 297 reveals that there is nothing contradictory between the two. Proclamation No. 297, a measure to attain and maintain a rational and orderly balance between socio-economic growth and environmental protection, jibes with the constitutional policy of preserving and protecting the forest lands from being further devastated by denudation. In other words, the proclamation in question is in line with Section 4, Article XII of the Constitution, as the former fosters the preservation of the forest environment of the Diwalwal area and is aimed at preventing the further degradation of the same. These objectives are the very same reasons why the subject constitutional provision is in place. What is more, jurisprudence has recognized the policy of **multiple land use** in our laws towards the end that the country's precious natural resources may be rationally explored, developed, utilized and conserved. It has been held that forest reserves or reservations can at the same time be open to mining operations, provided a prior written clearance by the government agency having jurisdiction over

such reservation is obtained. In other words mineral lands can exist within forest reservations. These two terms are not anti-thetical. This is made manifest if we read Section 47 of Presidential Decree No. 705 or the Revised Forestry Code of the Philippines. x x x Also, Section 6 of Republic Act No. 7942 or the Mining Act of 1995, states that mining operations in reserved lands other than mineral reservations, such as forest reserves/reservations, are allowed. x x x Since forest reservations can be made mineral lands where mining operations are conducted, then there is no argument that the disputed land, which lies within a forest reservation, can be declared as a mineral reservation as well.

14. ID.; ADMINISTRATIVE LAW; ALLEGATION THAT PROCLAMATION NO. 297 IS INVALID AS IT TRANSGRESSED THE STATUTES GOVERNING THE EXCLUSION OF AREAS ALREADY DECLARED AS FOREST RESERVES; NOT APPRECIATED AS SAID PROCLAMATION WAS ISSUED PURSUANT TO SEC. 5 OF THE PHILIPPINE MINING ACT OF 1995 (RA 7942) AUTHORIZING THE PRESIDENT TO ESTABLISH MINERAL RESERVATIONS, REGARDLESS OF WHETHER SUCH LAND IS ALSO AN EXISTING FOREST RESERVATION. (RA 7942).— Determined to rivet its crumbling cause, SEM then argues that Proclamation No. 297 is invalid, as it transgressed the statutes governing the exclusion of areas already declared as forest reserves. x x x Proclamation No. 297, declaring a certain portion of land located in Monkayo, Compostela Valley, with an area of 8,100 hectares, more or less, as a mineral reservation, was issued by the President pursuant to Section 5 of Republic Act No. 7942, also known as the "Philippine Mining Act of 1995." Proclamation No. 297 did not modify the boundaries of the Agusan-Davao-Surigao Forest Reserve since, as earlier discussed, mineral reservations can exist within forest reserves because of the multiple land use policy. The metes and bounds of a forest reservation remain intact even if, within the said area, a mineral land is located and thereafter declared as a mineral reservation. More to the point, a perusal of Republic Act No. 3092, "An Act to Amend Certain Sections of the Revised Administrative Code of 1917," which was approved on 17 August 1961, and the Administrative Code of 1987, shows that only those public lands declared by

the President as reserved pursuant to these two statutes are to remain subject to the specific purpose. The tenor of the cited provisions, namely: "*the President of the Philippines shall set apart forest reserves*" and "*the reserved land shall thereafter remain,*" speaks of future public reservations to be declared, pursuant to these two statutes. These provisions do not apply to forest reservations earlier declared as such, as in this case, which was proclaimed way back on 27 February 1931, by Governor General Dwight F. Davis under Proclamation No. 369. Over and above that, Section 5 of Republic Act No. 7942 authorizes the President to establish mineral reservations. x x x It is a rudimentary principle in legal hermeneutics that where there are two acts or provisions, one of which is special and particular and certainly involves the matter in question, the other general, which, if standing alone, would include the matter and thus conflict with the special act or provision, the special act must as intended be taken as constituting an exception to the general act or provision, especially when such general and special acts or provisions are contemporaneous, as the Legislature is not to be presumed to have intended a conflict. Hence, it has become an established rule of statutory construction that where one statute deals with a subject in general terms, and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible; but if there is any conflict, the latter shall prevail regardless of whether it was passed prior to the general statute. Or where two statutes are of contrary tenor or of different dates but are of equal theoretical application to a particular case, the one specially designed therefor should prevail over the other. It must be observed that Republic Act No. 3092 and the Administrative Code of 1987 are general laws. Section 1 of Republic Act No. 3092 and Section 14 of the Administrative Code of 1987 require the concurrence of Congress before any portion of a forest reserve can be validly excluded therefrom. These provisions are broad since they deal with all kinds of exclusion or reclassification relative to forest reserves, *i.e.*, forest reserve areas can be transformed into all kinds of public purposes, not only the establishment of a mineral reservation. Section 5 of Republic Act No. 7942 is a special provision, as it specifically treats of the establishment of mineral reservations only. Said provision grants the President the power to proclaim a mineral land as a mineral reservation, regardless

of whether such land is also an existing forest reservation. Furthermore, the settled rule of statutory construction is that if two or more laws of different dates and of contrary tenors are of equal theoretical application to a particular case, the statute of later date must prevail being a later expression of legislative will. In the case at bar, there is no question that Republic Act No. 7942 was signed into law later than Republic Act No. 3092, the Administrative Code of 1987,and other laws cited by SEM. Applying the principle, the provisions of the earlier laws cited by SEM must yield to Section 5 of Republic Act No. 7942.

15. ID.; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; SECTION 2, ARTICLE XII OF THE CONSTITUTION AND R.A. NO. 7942 SANCTIONS THE STATE, THROUGH THE EXECUTIVE DEPARTMENT, TO UNDERTAKE MINING OPERATIONS; PREROGATIVE THEREIN, RESPECTED.— The fourth paragraph of Section 2, Article XII of the Constitution and Section 5 of Republic Act No. 7942 sanctions the State, through the executive department, to undertake mining operations directly, as an operator and not as a mere regulator of mineral undertakings. This is made clearer by the fourth paragraph of Section 2, Article XII of the 1987 Constitution. x x x Also, Section 5 of Republic Act No. 7942 states that the mining operations in mineral reservations shall be undertaken by the Department of Environment and Natural Resources or a contractor x x x Undoubtedly, the Constitution, as well as Republic Act No. 7942, allows the executive department to undertake mining operations. x x x Pursuant to Section 5 of Republic Act No. 7942, the executive department has the option to undertake directly the mining operations in the Diwalwal Gold Rush Area or to award mining operations therein to private entities. The phrase "if it wishes" must be understood within the context of this provision. Hence, the Court cannot dictate this co-equal branch to choose which of the two options to select. It is the sole prerogative of the executive department to undertake directly or to award the mining operations of the contested area. Even assuming that the proper authority may decide to award the mining operations of the disputed area, this Court cannot arrogate unto itself the task of determining who, among the applicants, is qualified. It is the duty of the appropriate administrative body to determine the qualifications

of the applicants. It is only when this administrative body whimsically denies the applications of qualified applicants that the Court may interfere. But until then, the Court has no power to direct said administrative body to accept the application of any qualified applicant.

16. REMEDIAL LAW; APPEALS; ISSUE CANNOT BE RAISED FOR THE FIRST TIME ON APPPEAL; CASE AT BAR.— SEM wants to emphasize that its predecessor-in-interest, MMC, complied with the mandatory exploration work program, required under EP 133, by attaching therewith quarterly reports on exploration work from 20 June 1986 to March 1994. It must be observed that this is the very first time at this very late stage that SEM has presented the quarterly exploration reports. From the early phase of this controversy, SEM did not disprove the arguments of the other parties that Marcopper violated the terms under EP 133, among other violations, by not complying with the mandatory exploration work program. Neither did it present evidence for the appreciation of the lower tribunals. Hence, the non-compliance with the mandatory exploration work program was not made an issue in any stage of the proceedings. The rule is that an issue that was not raised in the lower court or tribunal cannot be raised for the first time on appeal, as this would violate the basic rules of fair play, justice and due process. Thus, this Court cannot take cognizance of the issue of whether or not MMC complied with the mandatory work program.

BERSAMIN, *J., separate opinion*:

1. POLITICAL LAW; RE THE MAIN DECISION IN CASE AT BAR, WITH ISSUES; WHETHER THE ISSUANCE OF PROCLAMATION 297 DECLARING THE DISPUTED AREA MINERAL RESERVATION OUTWEIGHS THE CLAIM OF APEX AND BALITE OVER THE DIWALWAL GOLD RUSH AREA, AND WHICH BETWEEN APEX AND BALITE WILL HAVE PRIORITY ONCE THE GOVERNMENT OPTS TO AWARD MINING OPERATIONS IN THE MINERAL RESERVATION TO PRIVATE ENTITIES, INCLUDING APEX AND BALITE IF IT SO WISHES; THAT THESE ISSUES SHOULD NOW BE ADDRESSED.— The decision affirms the application in this

jurisdiction of the Regalian Doctrine, which means that the State has dominion over all agricultural, timber and mineral lands. It also affirms that Proclamation 297 dated November 25, 2002 was a constitutionally-sanctioned act. Proclamation 297 has excluded 8,100 hectares of mineral land in Monkayo, Compostela Valley, and has declared that: x x x. Mining operations in the area may be undertaken either by the DENR directly, subject to payment of just compensation that may be due to legitimate and existing claimants, or thru a qualified contractor, subject to existing rights, if any. It is clear that under the Proclamation 297 regime of exploration, development and utilization of mineral resources within the Diwalwal Gold Rush Area, the State is bound to either pay lawful claimants just compensation (should it elect to operate the mine directly), or to honor existing rights (should it choose to outsource mining operations to a service contractor). The priority right of an interested party is only deemed superseded by Proclamation 297 and DENR Administrative Order (DAO) 2002-18 *if* the State elects to directly undertake mining operations in the Diwalwal Gold Rush Area (but nonetheless requires the State to pay just compensation that may be due to legitimate and existing claimants). If the State chooses to outsource mining operations to a service contractor, Proclamation 297 mandates that the existing rights *should still be* recognized and honored. Yet, the decision states that: x x x **It is now up to the Executive Department whether to take the first option, *i.e.*, to undertake directly the mining operations of the Diwalwal Gold Rush Area. As already ruled, the State may not be precluded from considering a direct takeover of the mines, if it is the only plausible remedy in sight to the gnawing complexities generated by the gold rush. The State need be guided only by the demands of public interest in settling on this option, as well as its material and logistic feasibility. The State can also opt to award mining operations in the mineral reservation to private entities including petitioners Apex and Balite, if it wishes. The exercise of this prerogative lies with the Executive Department over which courts will not interfere.** That the aforequoted passage of the decision, particularly the highlighted portion, has generated interpretation by the parties causes me to pause in order to ask whether the issuance of Proclamation 297 declaring the disputed area as a mineral reservation

outweighs the claims of Apex and Balite over the Diwalwal Gold Rush Area; and which between Apex and Balite will have priority once the Government opts to award mining operations in the mineral reservation to private entities, including Apex and Balite, if it so wishes. I humbly submit that the answers to these questions should be given by the Court now, not later, if we are to prevent another round of litigation that will surely undermine the efforts of the Government to establish a new order of peace, development and prosperity in the Diwalwal Gold Rush Area. I also submit that these questions are entirely justiciable in the present case. We have already eliminated the claim of SEM and its parent company, Marcopper Mining Corporation (MMC), due to the latter's numerous violations of the terms of Exploration Permit (EP) 133, which meanwhile expired without being renewed. The issuance of Proclamation 297, and the declaration by this Court of the nullity of DAO No. 66 (declaring 729 hectares within the Agusan-Davao-Surigao Forest Reserve as non-forest land open to small-scale mining operations) necessitate a *final* and *definitive* determination of the existing right of the *remaining* claimants in this dispute, who can replace SEM and fill the void created by the expiration of EP 133. I have no difficulty in understanding from the decision that the remaining claimants are Apex and Balite.

2. ID.; ID.; THAT THE DECISION SHOULD BE MODIFIED BY DECLARING THAT APEX HAS AN EXISTING PRIORITY RIGHT TO EXPLORE, DEVELOP AND UTILIZE THE MINERAL DEPOSITS IN THE DIWALWAL GOLD RUSH AREA PURSUANT TO PROCLAMATION 297.— The right of a *legitimate* and *existing* claimant envisioned in Proclamation 297 (*i.e.*, "Mining operations in the area may be undertaken either by the DENR directly, subject to payment of just compensation that may be due to legitimate and existing claimants, or thru a qualified contractor, subject to existing rights, if any") is a real right acquired over time by a person who discovered mineral deposits, and was first to stake his claim through location and registration with the mining recorder. Under Philippine mining laws, which are essentially patterned after Anglo-American models, the location and registration of a mining claim must be followed by actual exploration and extraction of mineral deposits. The person who is first to locate and register his mining claim and who subsequently explores

the area and extracts mineral deposits has a valid and existing right regardless of technical defect in the registration. Which between Apex and Balite has priority? On the one hand, Apex rests its claim to priority on the precept of *first-in-time, first-in-right*, a principle that is explicitly recognized by Section 1 of Presidential Decree (P.D.) No. 99-A, which amended Commonwealth Act (C.A.) No. 137 (*Mining Act*), which provides: Whenever there is a conflict between claim owners over a mining claim, whether mineral or non-mineral, the locator of the claim who first registered his claim with the proper mining registrar, notwithstanding any defect in form or technicality, shall have the exclusive right to possess, exploit, explore, develop and operate such mining claim. Apex argues that Proclamation 297 does not extinguish its existing right over Diwalwal Gold Rush Area, because: (1) it conducted exploration work in the area from 1983 to 1991; (2) it spent a total of ₱15 million on exploration and development work alone; and (3) its petition for intervention was admitted by the Court in this case, which was indicative of its existing right over the disputed area. x x x Under the circumstances, it should be Apex who should be recognized as the claimant with priority, with or without Proclamation 297. x x x I vote to grant the *motion for clarification* of Apex Mining Co., Inc., and to modify the decision by declaring that Apex Mining Co., Inc. has an existing priority right to explore, develop and utilize the mineral deposits in the Diwalwal Gold Rush Area pursuant to Proclamation 297, subject only to the superior right of the State to directly explore, develop and utilize.

APPEARANCES OF COUNSEL

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Martin T. Lu for Camilo Banad, *et al.*
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R E S O L U T I O N

CHICO-NAZARIO, *J.*:

This resolves the motion for reconsideration dated 12 July 2006, filed by Southeast Mindanao Gold Mining Corporation (SEM), of this Court's Decision dated 23 June 2006 (Assailed Decision). The Assailed Decision held that the assignment of Exploration Permit (EP) 133 in favor of SEM violated one of the conditions stipulated in the permit, *i.e.*, that the same shall be for the exclusive use and benefit of Marcopper Mining Corporation (MMC) or its duly authorized agents. Since SEM did not claim or submit evidence that it was a designated agent of MMC, the latter cannot be considered as an agent of the former that can use EP 133 and benefit from it. It also ruled that the transfer of EP 133 violated Presidential Decree No. 463, which requires that the assignment of a mining right be made with the prior approval of the Secretary of the Department of Environment and Natural Resources (DENR). Moreover, the Assailed Decision pointed out that EP 133 expired by non-renewal since it was not renewed before or after its expiration.

The Assailed Decision likewise upheld the validity of Proclamation No. 297 absent any question against its validity. In view of this, and considering that under Section 5 of Republic Act No. 7942, otherwise known as the "Mining Act of 1995," mining operations in mineral reservations may be undertaken directly by the State or through a contractor, the Court deemed the issue of ownership of priority right over the contested Diwalwal Gold Rush Area as having been overtaken by the said proclamation. Thus, it was held in the Assailed Decision that it is now within the prerogative of the Executive Department to undertake directly the mining operations of the disputed area or to award the operations to private entities including petitioners

Apex and Balite, subject to applicable laws, rules and regulations, and provided that these private entities are qualified.

SEM also filed a Motion for Referral of Case to the Court *En Banc* and for Oral Arguments dated 22 August 2006.

Apex, for its part, filed a Motion for Clarification of the Assailed Decision, praying that the Court elucidate on the Decision's pronouncement that "mining operations, are now, therefore within the full control of the State through the executive branch." Moreover, Apex asks this Court to order the Mines and Geosciences Board (MGB) to accept its application for an exploration permit.

In its Manifestation and Motion dated 28 July 2006, Balite echoes the same concern as that of Apex on the actual takeover by the State of the mining industry in the disputed area to the exclusion of the private sector. In addition, Balite prays for this Court to direct MGB to accept its application for an exploration permit.

Camilo Banad, *et al*., likewise filed a motion for reconsideration and prayed that the disputed area be awarded to them.

In the Resolution dated 15 April 2008, the Court *En Banc* resolved to accept the instant cases. The Court, in a resolution dated 29 April 2008, resolved to set the cases for Oral Argument on 1 July 2008.

During the Oral Argument, the Court identified the following principal issues to be discussed by the parties:

1. *Whether the transfer or assignment of Exploration Permit (EP) 133 by MMC to SEM was validly made without violating any of the terms and conditions set forth in Presidential Decree No. 463 and EP 133 itself.*
2. *Whether Southeast Mindanao Mining Corp. acquired a vested right over the disputed area, which constitutes a property right protected by the Constitution.*
3. *Whether the assailed Decision dated 23 June 2006 of the Third Division in this case is contrary to and*

overturns the earlier Decision of this Court in Apex v. Garcia (G.R. No. 92605, 16 July 1991, 199 SCRA 278).

4. *Whether the issuance of Proclamation No. 297 declaring the disputed area as mineral reservation outweighs the claims of SEM, Apex Mining Co. Inc. and Balite Communal Portal Mining Cooperative over the Diwalwal Gold Rush Area.*

5. *Whether the issue of the legality/constitutionality of Proclamation No. 297 was belatedly raised.*

6. *Assuming that the legality/constitutionality of Proclamation No. 297 was timely raised, whether said proclamation violates any of the following:*

   a. *Article XII, Section 4 of the Constitution;*
   b. *Section 1 of Republic Act No. 3092;*
   c. *Section 14 of the Administrative Code of 1987;*
   d. *Section 5(a) of Republic Act No. 7586;*
   e. *Section 4(a) of Republic Act No. 6657; and*
   f. *Section 2, Subsection 2.1.2 of Executive Order No. 318 dated 9 June 2004.*

After hearing the arguments of the parties, the Court required them to submit their respective memoranda. Memoranda were accordingly filed by SEM, Apex, Balite and Mines Adjudication Board (MAB).

We shall resolve the second issue before dwelling on the first, third and the rest of the issues.

MMC or SEM Did Not Have Vested Rights Over the Diwalwal Gold Rush Area

Petitioner SEM vigorously argues that *Apex Mining Co., Inc. v. Garcia*[1] vested in MMC mining rights over the disputed area. It claims that the mining rights that MMC acquired under the said case were the ones assigned to SEM, and not the right to

[1] G.R. No. 92605, 16 July 1991, 199 SCRA 278.

explore under MMC's EP 133. It insists that mining rights, once obtained, continue to subsist regardless of the validity of the exploration permit; thus, mining rights are independent of the exploration permit and therefore do not expire with the permit. SEM insists that a mining right is a vested property right that not even the government can take away. To support this thesis, SEM cites this Court's ruling in *McDaniel v. Apacible and Cuisia*[2] and in *Gold Creek Mining Corporation v. Rodriguez*,[3] which were decided in 1922 and 1938, respectively.

McDaniel and *Gold Creek Mining Corporation* are not in point.

In 1916, *McDaniel*, petitioner therein, located minerals, *i.e.*, petroleum, on an unoccupied public land and registered his mineral claims with the office of the mining recorder pursuant to the Philippine Bill of 1902, where a mining claim locator, soon after locating the mine, enjoyed possessory rights with respect to such mining claim with or without a patent therefor. In that case, the Agriculture Secretary, by virtue of Act No. 2932, approved in 1920, which provides that "all public lands may be leased by the then Secretary of Agriculture and Natural Resources," was about to grant the application for lease of therein respondent, overlapping the mining claims of the subject petitioner. Petitioner argued that, being a valid locator, he had vested right over the public land where his mining claims were located. There, the Court ruled that the mining claim perfected under the Philippine Bill of 1902, is "property in the highest sense of that term, which may be sold and conveyed, and will pass by descent, and is not therefore subject to the disposal of the Government." The Court then declared that since petitioner had already perfected his mining claim under the Philippine Bill of 1902, a subsequent statute, *i.e.*, Act No. 2932, could not operate to deprive him of his already perfected mining claim, without violating his property right.

Gold Creek Mining reiterated the ruling in *McDaniel* that a perfected mining claim under the Philippine Bill of 1902 no longer formed part of the public domain; hence, such mining

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[2] 42 Phil. 749 (1922).

[3] 66 Phil. 259 (1938).

claim does not come within the prohibition against the alienation of natural resources under Section 1, Article XII of the 1935 Constitution.

Gleaned from the ruling on the foregoing cases is that for this law to apply, it must be established that the mining claim must have been perfected when the Philippine Bill of 1902 was still in force and effect. This is so because, unlike the subsequent laws that prohibit the alienation of mining lands, the Philippine Bill of 1902 sanctioned the alienation of mining lands to private individuals. The Philippine Bill of 1902 contained provisions for, among many other things, the open and free exploration, occupation and purchase of mineral deposits and the land where they may be found. It declared "**all valuable mineral deposits in public lands in the Philippine Islands, both surveyed and unsurveyed x x x to be free and open to exploration, occupation, and purchase, and the land in which they are found to occupation and purchase, by citizens of the United States, or of said Islands x x x.**"[4] Pursuant to this law, the holder of the mineral claim is entitled to all the minerals that may lie within his claim, provided he does three acts: First, he enters the mining land and locates a plot of ground measuring, where possible, but not exceeding, one thousand feet in length by one thousand feet in breadth, in as nearly a rectangular form as possible.[5] Second, the mining locator has to record the mineral claim in the mining recorder within thirty (30) days after the location thereof.[6] Lastly, he must comply with the annual actual work requirement.[7] Complete mining rights, namely, the rights to explore, develop and utilize, are acquired by a mining locator by simply following the foregoing requirements.

With the effectivity of the 1935 Constitution, where the *regalian* doctrine was adopted, it was declared that all natural

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[4] *Atok Big-Wedge Mining Co. v. Intermediate Appellate Court*, 330 Phil. 244, 262 (1996).

[5] *Id.* at 262.

[6] *Id.*

[7] *Id.* at 263.

resources of the Philippines, including mineral lands and minerals, were property belonging to the State.[8] Excluded, however, from the property of public domain were the mineral lands and minerals that were located and perfected by virtue of the Philippine Bill of 1902, since they were already considered private properties of the locators.[9]

Commonwealth Act No. 137 or the Mining Act of 1936, which expressly adopted the *regalian* doctrine following the provision of the 1935 Constitution, also proscribed the alienation of mining lands and granted only lease rights to mining claimants, who were prohibited from purchasing the mining claim itself.

When Presidential Decree No. 463, which revised Commonwealth Act No. 137, was in force in 1974, it likewise recognized the *regalian* doctrine embodied in the 1973 Constitution. It declared that all mineral deposits and public and private lands belonged to the state while, nonetheless, recognizing mineral rights that had already been existing under the Philippine Bill of 1902 as being beyond the purview of the *regalian* doctrine.[10] The possessory rights of mining claim holders under the Philippine Bill of 1902 remained intact and effective, and such rights were recognized as property rights that the holders could convey or pass by descent.[11]

In the instant cases, SEM does not aver or prove that its mining rights had been perfected and completed when the Philippine Bill of 1902 was still the operative law. Surely, it is impossible for SEM to successfully assert that it acquired mining rights over the disputed area in accordance with the same bill, since it was only in 1984 that MMC, SEM's predecessor-in-interest, filed its declaration of locations and its prospecting permit application in compliance with Presidential Decree No. 463. It was on 1 July 1985 and 10 March 1986 that a Prospecting

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[8] *Id.*

[9] *Id.* at 264.

[10] *Id*.

[11] *Id.* at 267-268.

Permit and EP 133, respectively, were issued to MMC. Considering these facts, there is no possibility that MMC or SEM could have acquired a perfected mining claim under the auspices of the Philippine Bill of 1902. Whatever mining rights MMC had that it invalidly transferred to SEM cannot, by any stretch of imagination, be considered "mining rights" as contemplated under the Philippine Bill of 1902 and immortalized in *McDaniel* and *Gold Creek Mining*.

SEM likens EP 133 with a building permit. SEM likewise equates its supposed rights attached to the exploration permit with the rights that a private property land owner has to said landholding. This analogy has no basis in law. As earlier discussed, under the 1935, 1973 and 1987 Constitutions, national wealth, such as mineral resources, are owned by the State and not by their discoverer. The discoverer or locator can only develop and utilize said minerals for his own benefit if he has complied with all the requirements set forth by applicable laws and if the State has conferred on him such right through permits, concessions or agreements. In other words, without the imprimatur of the State, any mining aspirant does not have any definitive right over the mineral land because, unlike a private landholding, mineral land is owned by the State, and the same cannot be alienated to any private person as explicitly stated in Section 2, Article XIV of the 1987 Constitution:

> All lands of public domain, waters, **minerals x x x and all other natural resources are owned by the State**. With the exception of agricultural lands, all other **natural resources shall not be alienated**. (Emphases supplied.)

Further, a closer scrutiny of the deed of assignment in favor of SEM reveals that MMC assigned to the former the rights and interests it had in EP 133, thus:

> 1. That for ONE PESO (₱1.00) and other valuable consideration received by the ASSIGNOR from the ASSIGNEE, the ASSIGNOR hereby **ASSIGNS, TRANSFERS and CONVEYS unto the ASSIGNEE whatever rights or interest the ASSIGNOR may have in the area situated in Monkayo, Davao del Norte and Cateel, Davao Oriental, identified as Exploration Permit No. 133**_and

Application for a Permit to Prospect in Bunawan, Agusan del Sur respectively. (Emphasis supplied.)

It is evident that what MMC had over the disputed area during the assignment was an exploration permit. Clearly, the right that SEM acquired was limited to exploration, only because MMC was a mere holder of an exploration permit. As previously explained, SEM did not acquire the rights inherent in the permit, as the assignment by MMC to SEM was done in violation of the condition stipulated in the permit, and the assignment was effected without the approval of the proper authority in contravention of the provision of the mining law governing at that time. In addition, the permit expired on 6 July 1994. It is, therefore, quite clear that SEM has no right over the area.

Even assuming *arguendo* that SEM obtained the rights attached in EP 133, said rights cannot be considered as property rights protected under the fundamental law.

An exploration permit does not automatically ripen into a right to extract and utilize the minerals; much less does it develop into a vested right. The holder of an exploration permit only has the right to conduct exploration works on the area awarded. Presidential Decree No. 463 defined **exploration** as "**the examination and investigation of lands supposed to contain valuable minerals, by drilling, trenching, shaft sinking, tunneling, test pitting and other means, for the purpose of probing the presence of mineral deposits and the extent thereof**." Exploration does not include development and exploitation of the minerals found. Development is defined by the same statute as the **steps necessarily taken to reach an ore body or mineral deposit so that it can be mined**, whereas exploitation is defined as "**the extraction and utilization of mineral deposits**." An exploration permit is nothing more than a mere right accorded to its holder to be given priority in the government's consideration in the granting of the right to develop and utilize the minerals over the area. An exploration permit is merely inchoate, in that the holder still has to comply with the terms and conditions embodied in the permit. This is manifest in the language of Presidential Decree No. 463, thus:

Sec. 8. x x x The right to exploit therein shall be awarded by the President under such terms and conditions as recommended by the Director and approved by the Secretary *Provided*, That the persons or corporations who undertook prospecting and exploration of said area shall be given priority.

In *La Bugal-B'laan Tribal Association, Inc. v. Ramos*,[12] this Court emphasized:

Pursuant to Section 20 of RA 7942, an exploration permit merely grants to a qualified person the right to conduct exploration for all minerals in specified areas. **Such a permit does not amount to an authorization to extract and carry off the mineral resources that may be discovered.** x x x.

Pursuant to Section 24 of RA 7942, an exploration permit grantee who determines the commercial viability of a mining area may, within the term of the permit, file with the MGB a declaration of mining project feasibility accompanied by a work program for development. **The approval of the mining project feasibility and compliance with other requirements of RA 7942 vests in the grantee the exclusive right to an MPSA or any other mineral agreement, or to an FTAA.** (Underscoring ours.)

The non-acquisition by MMC or SEM of any vested right over the disputed area is supported by this Court's ruling in *Southeast Mindanao Gold Mining Corporation v. Balite Portal Mining Cooperative*:[13]

Clearly then, the **Apex Mining case did not invest petitioner with any definite right to the Diwalwal mines which it could now set up against respondent BCMC and other mining groups.**

Incidentally, it must likewise be pointed out that under no circumstances may petitioner's rights under EP No. 133 be regarded as total and absolute. As correctly held by the Court of Appeals in its challenged decision, EP No. 133 merely evidences a privilege granted by the State, which may be amended, modified or rescinded when the national interest so requires. x x x. (Underscoring supplied.)

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[12] 486 Phil. 754, 828-829 (2004).

[13] 429 Phil. 668, 682 (2002).

Unfortunately, SEM cannot be given priority to develop and exploit the area covered by EP 133 because, as discussed in the assailed Decision, EP 133 expired by non-renewal on 6 July 1994. Also, as already mentioned, the transfer of the said permit to SEM was without legal effect because it was done in contravention of Presidential Decree No. 463 which requires prior approval from the proper authority. Simply told, SEM holds nothing for it to be entitled to conduct mining activities in the disputed mineral land.

SEM wants to impress on this Court that its alleged mining rights, by virtue of its being a transferee of EP 133, is similar to a Financial and Technical Assistance Agreement (FTAA) of a foreign contractor, which merits protection by the due process clause of the Constitution. SEM cites *La Bugal-B'laan Tribal Association, Inc. v. Ramos*,[14] as follows:

> To say that an FTAA is just like a mere timber license or permit and does not involve contract or property rights which merit protection by the due process clause of the Constitution, and may therefore be revoked or cancelled in the blink of an eye, is to adopt a well-nigh confiscatory stance; at the very least, it is downright dismissive of the property rights of businesspersons and corporate entities that have investments in the mining industry, whose investments, operations and expenditures do contribute to the general welfare of the people, the coffers of government, and the strength of the economy. xxx.

Again, this argument is not meritorious. SEM did not acquire the rights attached to EP 133, since their transfer was without legal effect. Granting for the sake of argument that SEM was a valid transferee of the permit, its right is not that of a mining contractor. An **exploration permit grantee** is vested with the **right to conduct exploration only**, while an **FTAA or MPSA contractor** is **authorized to extract and carry off the mineral resources** that may be discovered in the area.[15] An exploration permit holder still has to comply with the mining project feasibility and other requirements under the mining law. It has to obtain

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[14] *Supra* note 12 at 895.

[15] *Southeast Mindanao Gold Mining Corporation v. Balite Portal Mining Cooperative*, *supra* note 13 at 682-683.

approval of such accomplished requirements from the appropriate government agencies. Upon obtaining this approval, the exploration permit holder has to file an application for an FTAA or an MPSA and have it approved also. Until the MPSA application of SEM is approved, it cannot lawfully claim that it possesses the rights of an MPSA or FTAA holder, thus:

> x x x prior to the issuance of such FTAA or mineral agreement, the exploration permit grantee (or prospective contractor) cannot yet be deemed to have entered into any contract or agreement with the State x x x.[16]

But again, SEM is not qualified to apply for an FTAA or any mineral agreement, considering that it is not a holder of a valid exploration permit, since EP 133 expired by non-renewal and the transfer to it of the same permit has no legal value.

More importantly, assuming *arguendo* that SEM has a valid exploration permit, it cannot assert any mining right over the disputed area, since the State has taken over the mining operations therein, pursuant to Proclamation No. 297 issued by the President on 25 November 2002. The Court has consistently ruled that the nature of a natural resource exploration permit is analogous to that of a license. In *Republic v. Rosemoor Mining and Development Corporation*, this Court articulated:

> Like timber permits, **mining exploration permits do not vest in the grantee any permanent or irrevocable right within the purview of the non-impairment of contract and due process clauses of the Constitution**, since the State, under its all-encompassing police power, may alter, modify or amend the same, in accordance with the demands of the general welfare.[17] (Emphasis supplied.)

As a mere license or privilege, an exploration permit can be validly amended by the President of the Republic when national interests suitably necessitate. The Court instructed thus:

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[16] *Id*.

[17] G.R. No. 149927, 30 March 2004, 426 SCRA 517, 530.

Timber licenses, permits and license agreements are the principal instruments by which the State regulates the utilization and disposition of forest resources to the end that the public welfare is promoted. x x x They may be validly amended, modified, replaced or rescinded by the Chief Executive when national interests so require.[18]

Recognizing the importance of the country's natural resources, not only for national economic development, but also for its security and national defense, Section 5 of Republic Act No. 7942 empowers the President, when the national interest so requires, to establish mineral reservations where mining operations shall be undertaken directly by the State or through a contractor, *viz*:

SEC 5. Mineral Reservations. – When the national interest so requires, such as when there is a need to preserve strategic raw materials for industries critical to national development, or certain minerals for scientific, cultural or ecological value, the President may establish mineral reservations upon the recommendation of the Director through the Secretary. **Mining operations in existing mineral reservations and such other reservations as may thereafter be established, shall be undertaken by the Department or through a contractor** x x x. (Emphasis supplied.)

Due to the pressing concerns in the Diwalwal Gold Rush Area brought about by unregulated small to medium-scale mining operations causing ecological, health and peace and order problems, the President, on 25 November 2002, issued Proclamation No. 297, which declared the area as a mineral reservation and as an environmentally critical area. This executive fiat was aimed at preventing the further dissipation of the natural environment and rationalizing the mining operations in the area in order to attain an orderly balance between socio-economic growth and environmental protection. The area being a mineral reservation, the Executive Department has full control over it pursuant to Section 5 of Republic Act No. 7942. It can either directly undertake the exploration, development and utilization of the minerals found therein, or it can enter into agreements with qualified entities. Since the Executive Department now has control over the exploration, development and utilization of the resources in the

[18] *Id*.

disputed area, SEM's exploration permit, assuming that it is still valid, has been effectively withdrawn. The exercise of such power through Proclamation No. 297 is in accord with *jura regalia,* where the State exercises its sovereign power as owner of lands of the public domain and the mineral deposits found within. Thus, Article XII, Section 2 of the 1987 Constitution emphasizes:

> SEC. 2. All lands of the public domain, water, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. **The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or product-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens.** (Emphasis supplied.)

Furthermore, said proclamation cannot be denounced as offensive to the fundamental law because the State is sanctioned to do so in the exercise of its police power.[19] The issues on health and peace and order, as well the decadence of the forest resources brought about by unregulated mining in the area, are matters of national interest. The declaration of the Chief Executive making the area a mineral reservation, therefore, is sanctioned by Section 5 of Republic Act No. 7942.

The Assignment of EP No. 133 by MMC in Favor of SEM Violated Section 97 of Presidential Decree No. 463 and the Terms and Conditions Set Forth in the Permit

SEM claims that the approval requirement under Section 97 of Presidential Decree No. 463 is not applicable to this case,

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[19] *Id* at 531.

because MMC neither applied for nor was granted a mining lease contract. The said provision states:

> SEC. 97. ***Assignment of Mining Rights***. – **A mining lease contract or any interest therein shall not be transferred, assigned, or subleased without the prior approval of the Secretary:** *Provided*, that such transfer, assignment or sublease may be made only to a qualified person possessing the resources and capability to continue the mining operations of the lessee and that the assignor has complied with all the obligations of the lease: *Provided, further*, That such transfer or assignment shall be duly registered with the office of the mining recorder concerned. (Emphasis supplied.)

Exploration Permit 133 was issued in favor of MMC on 10 March 1986, when Presidential Decree No. 463 was still the governing law. Presidential Decree No. 463 pertains to the old system of exploration, development and utilization of natural resources through "license, concession or lease."[20]

Pursuant to this law, a mining lease contract confers on the lessee or his successors the right to extract, to remove, process and utilize the mineral deposits found on or underneath the surface of his mining claims covered by the lease. The lessee may also enter into a service contract for the **exploration**, development and exploitation of the minerals from the lands covered by his lease, to wit:

> SEC. 44. A **mining lease contract** shall grant to the lessee, his heirs, successors, and assigns the right to extract all mineral deposits found on or underneath the surface of his mining claims covered by the lease, continued vertically downward; to remove, process, and otherwise utilize the mineral deposits for his own benefit; and to use the lands covered by the lease for the purpose or purposes specified therein x x x That **a lessee may on his own or through the Government, enter into a service contract… for the exploration,** development and exploitation of his claims and the processing and marketing of the product thereof, subject to the rules and regulations that shall be promulgated by the Director, with the approval of the Secretary x x x. (Emphases supplied.)

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[20] *Miners Association of the Philippines, Inc. v. Factoran, Jr.*, 310 Phil. 113, 130 (1995).

In other words, the lessee's interests are not only limited to the extraction or utilization of the minerals in the contract area, but also to include the right to explore and develop the same. This right to explore the mining claim or the contract area is derived from the exploration permit duly issued by the proper authority. An exploration permit is, thus, covered by the term "*any other interest therein*." Section 97 is entitled, "***Assignment of Mining Rights.***" This alone gives a hint that before mining rights — namely, the rights to explore, develop and utilize — are transferred or assigned, prior approval must be obtained from the DENR Secretary. An exploration permit, thus, cannot be assigned without the imprimatur of the Secretary of the DENR.

It is instructive to note that under Section 13 of Presidential Decree No. 463, the prospecting and exploration of minerals in government reservations, such as forest reservations, are prohibited, except with the permission of the government agency concerned. It is the government agency concerned that has the prerogative to conduct prospecting, exploration and exploitation of such reserved lands.[21] It is only in instances wherein said government agency, in this case the Bureau of Mines, cannot undertake said mining operations that qualified persons may be allowed by the government to undertake such operations. *PNOC-EDC v. Veneracion, Jr.*[22] outlines the five requirements for acquiring mining rights in reserved lands under Presidential Decree No. 463: (1) a prospecting permit from the agency that has jurisdiction over the land; (2) an exploration permit from the Bureau of Mines and Geo-Sciences (BMGS); (3) if the exploration reveals the presence of commercial deposit, application to BMGS by the permit holder for the exclusion of the area from the reservation; (4) a grant by the President of the application to exclude the area from the reservation; and (5) a mining agreement (lease, license or concession) approved by the DENR Secretary.

Here, MMC met the first and second requirements and obtained an exploration permit over the disputed forest reserved land.

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[21] *PNOC-Energy Development Corporation (PNOC-EDC) v. Veneracion, Jr.*, G.R. No. 129820, 30 November 2006, 509 SCRA 93, 106.

[22] *Id.* at 107-110.

Although MMC still has to prove to the government that it is qualified to develop and utilize the subject mineral land, as it has yet to go through the remaining process before it can secure a lease agreement, nonetheless, it is bound to follow Section 97 of Presidential Decree No. 463. The logic is not hard to discern. If a lease holder, who has already demonstrated to the government his capacity and qualifications to further develop and utilize the minerals within the contract area, is prohibited from transferring his mining rights (rights to explore, develop and utilize), with more reason will this proscription apply with extra force to a mere exploration permit holder who is yet to exhibit his qualifications in conducting mining operations. The rationale for the approval requirement under Section 97 of Presidential Decree No. 463 is not hard to see. Exploration permits are strictly granted to entities or individuals possessing the resources and capability to undertake mining operations. Mining industry is a major support of the national economy and the continuous and intensified exploration, development and wise utilization of mining resources is vital for national development. For this reason, Presidential Decree No. 463 makes it imperative that in awarding mining operations, only persons possessing the financial resources and technical skill for modern exploratory and development techniques are encouraged to undertake the exploration, development and utilization of the country's natural resources. The preamble of Presidential Decree No. 463 provides thus:

> WHEREAS, effective and continuous mining operations require considerable outlays of capital and resources, and make it imperative that persons possessing the financial resources and technical skills for modern exploratory and development techniques be encouraged to undertake the exploration, development and exploitation of our mineral resources;

The Court has said that a "preamble" is the key to understanding the statute, written to open the minds of the makers to the mischiefs that are to be remedied, and the purposes that are to be accomplished, by the provisions of the statute.[23] As such,

[23] *Estrada v. Escritor*, 455 Phil. 411, 569 (2003).

when the statute itself is ambiguous and difficult to interpret, the preamble may be resorted to as a key to understanding the statute.

Indubitably, without the scrutiny by the government agency as to the qualifications of the would-be transferee of an exploration permit, the same may fall into the hands of non-qualified entities, which would be counter-productive to the development of the mining industry. It cannot be overemphasized that the exploration, development and utilization of the country's natural resources are matters vital to the public interest and the general welfare; hence, their regulation must be of utmost concern to the government, since these natural resources are not only critical to the nation's security, but they also ensure the country's survival as a viable and sovereign republic.[24]

The approval requirement of the Secretary of the DENR for the assignment of exploration permits is bolstered by Section 25 of Republic Act No. 7942 (otherwise known as the Philippine Mining Act of 1995), which provides that:

> Sec. 25. *Transfer or Assignment*. – An exploration permit may be transferred or assigned to a qualified person subject to the approval of the Secretary upon the recommendation of the Director.

SEM further posits that Section 97 of Presidential Decree No. 463, which requires the prior approval of the DENR when there is a transfer of mining rights, cannot be applied to the assignment of EP 133 executed by MMC in favor of SEM because during the execution of the Deed of Assignment on 16 February 1994, Executive Order No. 279[25] became the governing statute, inasmuch as the latter abrogated the old mining system — *i.e.*, license, concession or lease — which was espoused by the former.

This contention is not well taken. While Presidential Decree No. 463 has already been repealed by Executive Order No. 279, the administrative aspect of the former law nonetheless remains

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[24] *Miners Association of the Philippines, Inc. v. Factoran, Jr.*, 310 Phil. 113, 130-131 (1995).

[25] Promulgated on 25 July 1987.

applicable. Hence, the transfer or assignment of exploration permits still needs the prior approval of the Secretary of the DENR. As ruled in *Miners Association of the Philippines, Inc. v. Factoran, Jr.*:[26]

> Presidential Decree No. 463, as amended, pertains to the old system of exploration, development and utilization of natural resources through "license, concession or lease" which, however, has been disallowed by Article XII, Section 2 of the 1987 Constitution. By virtue of the said constitutional mandate and its implementing law, Executive Order No. 279, which superseded Executive Order No. 211, the provisions dealing on "license, concession, or lease" of mineral resources under Presidential Decree No. 463, as amended, and other existing mining laws are deemed repealed and, therefore, ceased to operate as the governing law. In other words, **in all other areas of administration and management of mineral lands, the provisions of Presidential Decree No. 463, as amended, and other existing mining laws, still govern**. (Emphasis supplied.)

Not only did the assignment of EP 133 to SEM violate Section 97 of Presidential Decree No. 463, it likewise transgressed one of the conditions stipulated in the grant of the said permit. The following terms and conditions attached to EP 133 are as follows:[27]

> 1. That the permittee shall abide by the work program submitted with the application or statements made later in support thereof, and which shall be considered as conditions and essential parts of this permit;
>
> 2. That permittee shall maintain a complete record of all activities and accounting of all expenditures incurred therein subject to periodic inspection and verification at reasonable intervals by the Bureau of Mines at the expense of the applicant;
>
> 3. That the permittee shall submit to the Director of Mines within 15 days after the end of each calendar quarter a report under oath of a full and complete statement of the work done in the area covered by the permit;

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[26] *Supra* note 24 at 130.

[27] Records, Vol. 2, pp. 84-85.

4. That the term of this permit shall be for two (2) years to be effective from this date, renewable for the same period at the discretion of the Director of Mines and upon request of the applicant;

5. That the Director of Mines may at any time cancel this permit for violation of its provision or in case of trouble or breach of peace arising in the area subject hereof by reason of conflicting interests without any responsibility on the part of the government as to expenditures for exploration that might have been incurred, or as to other damages that might have been suffered by the permittee;

6. That this permit shall be for the **exclusive use and benefit of the permittee or his duly authorized agents** and shall be used for mineral exploration purposes only and for no other purpose.

It must be noted that under Section 90[28] of Presidential Decree No. 463, which was the applicable statute during the issuance of EP 133, the DENR Secretary, through the Director of the Bureau of Mines and Geosciences, was charged with carrying out the said law. Also, under Commonwealth Act No. 136, also known as "An Act Creating the Bureau of Mines," which was approved on 7 November 1936, the Director of Mines had the direct charge of the administration of the mineral lands and minerals; and of the survey, classification, lease or any other form of concession or disposition thereof under the Mining Act.[29] This power of administration included the power to prescribe terms and conditions in granting exploration permits to qualified entities.

Thus, in the grant of EP 133 in favor of the MMC, the Director of the BMG acted within his power in laying down the terms and conditions attendant thereto. MMC and SEM did not dispute the reasonableness of said conditions.

Quite conspicuous is the fact that neither MMC nor SEM denied that they were unaware of the terms and conditions attached to EP 133. MMC and SEM did not present any evidence that they objected to these conditions. Indubitably, MMC wholeheartedly accepted these terms and conditions, which formed

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[28] Executive Officer.— The Secretary, through the Director, shall be the Executive Officer charged with carrying out the provisions of this Decree. xxx.

[29] Section 3, Commonwealth Act No. 136.

part of the grant of the permit. MMC agreed to abide by these conditions. It must be accentuated that a party to a contract cannot deny its validity, without outrage to one's sense of justice and fairness, after enjoying its benefits.[30] Where parties have entered into a well-defined contractual relationship, it is imperative that they should honor and adhere to their rights and obligations as stated in their contracts, because obligations arising from these have the force of law between the contracting parties and should be complied with in good faith.[31] Condition Number 6 categorically states that the permit shall be for the exclusive use and benefit of MMC or its duly authorized agents. While it may be true that SEM, the assignee of EP 133, is a 100% subsidiary corporation of MMC, records are bereft of any evidence showing that the former is the duly authorized agent of the latter. This Court cannot condone such utter disregard on the part of MMC to honor its obligations under the permit. Undoubtedly, having violated this condition, the assignment of EP 133 to SEM is void and has no legal effect.

To boot, SEM squandered whatever rights it assumed it had under EP 133. On 6 July 1993, EP 133 was extended for twelve more months or until 6 July 1994. MMC or SEM, however, never renewed EP 133 either prior to or after its expiration. Thus, EP 133 expired by non-renewal on 6 July 1994. With the expiration of EP 133 on 6 July 1994, MMC lost any right to the Diwalwal Gold Rush Area.

The Assailed Decision Resolved Facts and Issues That Transpired after the Promulgation of *Apex Mining Co., Inc. v. Garcia*

SEM asserts that the 23 June 2006 Decision reversed the 16 July 1991 Decision of the Court *en banc* entitled, "*Apex Mining Co., Inc. v. Garcia*."[32]

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[30] *Premiere Development Bank v. Court of Appeals*, 471 Phil. 704, 716 (2004).

[31] *Id*.

[32] *Supra* note 1 at 284.

The assailed Decision DID NOT overturn the 16 July 1991 Decision in *Apex Mining Co., Inc. v. Garcia*.

It must be pointed out that what *Apex Mining Co., Inc. v. Garcia* resolved was the issue of **which, between Apex and MMC, availed itself of the proper procedure in acquiring the right to prospect and to explore** in the Agusan-Davao-Surigao Forest Reserve. Apex registered its Declarations of Location (DOL) with the then BMGS, while MMC was granted a permit to prospect by the Bureau of Forest Development (BFD) and was subsequently granted an exploration permit by the BMGS. Taking into consideration Presidential Decree No. 463, which provides that "mining rights within forest reservation can be acquired by initially applying for a permit to prospect with the BFD and subsequently for a permit to explore with the BMGS," the Court therein ruled that MMC availed itself of the proper procedure to validly operate within the forest reserve or reservation.

While it is true that *Apex Mining Co., Inc. v. Garcia* settled the issue of which between Apex and MMC was legally entitled to explore in the disputed area, such rights, though, were extinguished by **subsequent events** that transpired after the decision was promulgated. These subsequent events, which were not attendant in *Apex Mining Co., Inc. v. Garcia*[33] dated 16 July 1991, are the following:

(1) the expiration of EP 133 by non-renewal on 6 July 1994;

(2) the transfer/assignment of EP 133 to SEM on 16 February 1994 which was done in violation to the condition of EP 133 proscribing its transfer;

(3) the transfer/assignment of EP 133 to SEM is without legal effect for violating PD 463 which mandates that the assignment of mining rights must be with the prior approval of the Secretary of the DENR.

Moreover, in *Southeast Mindanao Gold Mining Corporation v. Balite Portal Mining Cooperative*,[34] the Court, through

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[33] *Supra* note 1 at 283-284.

[34] *Supra* note 13 at 681.

Associate Justice Consuelo Ynares-Santiago (now retired), declared that *Apex Mining Co., Inc. v. Garcia* did not deal with the issues of the expiration of EP 133 and the validity of the transfer of EP 133 to SEM, *viz*:

> **Neither can the Apex Mining case foreclose any question pertaining to the continuing validity of EP No. 133 on grounds which arose after the judgment in said case was promulgated. While it is true that the Apex Mining case settled the issue of who between Apex and Marcopper validly acquired mining rights over the disputed area by availing of the proper procedural requisites mandated by law, it certainly did not deal with the question raised by the oppositors in the Consolidated Mines cases, *i.e.*, whether EP No. 133 had already expired and remained valid subsequent to its transfer by Marcopper to petitioner.** (Emphasis supplied.)

What is more revealing is that in the Resolution dated 26 November 1992, resolving the motion for reconsideration of *Apex Mining Co., Inc. v. Garcia,* the Court clarified that the ruling on the said decision was binding only between Apex and MMC and with respect the particular issue raised therein. Facts and issues not attendant to the said decision, as in these cases, are not settled by the same. A portion of the disposition of the *Apex Mining Co., Inc. v. Garcia* Resolution dated 26 November 1992 decrees:

> x x x The decision rendered in this case is **conclusive only between the parties with respect to the particular issue herein raised and under the set of circumstances herein prevailing**. In **no case should the decision be considered as a precedent to resolve or settle claims of persons/entities not parties hereto.** Neither is it intended to unsettle rights of persons/entities which have been acquired or which may have accrued upon reliance on laws passed by the appropriate agencies. (Emphasis supplied.)

The Issue of the Constitutionality of Proclamation Is Raised Belatedly

In its last-ditch effort to salvage its case, SEM contends that Proclamation No. 297, issued by President Gloria Macapagal-

Arroyo and declaring the Diwalwal Gold Rush Area as a mineral reservation, is invalid on the ground that it lacks the concurrence of Congress as mandated by Section 4, Article XII of the Constitution; Section 1 of Republic Act No. 3092; Section 14 of Executive Order No. 292, otherwise known as the Administrative Code of 1987; Section 5(a) of Republic Act No. 7586, and Section 4(a) of Republic Act No. 6657.

It is well-settled that when questions of constitutionality are raised, the court can exercise its power of judicial review only if the following requisites are present: (1) an actual and appropriate case exists; (2) there is a personal and substantial interest of the party raising the constitutional question; (3) the exercise of judicial review is pleaded at the earliest opportunity; and (4) the constitutional question is the *lis mota* of the case.

Taking into consideration the foregoing requisites of judicial review, it is readily clear that the third requisite is absent. The general rule is that the question of constitutionality must be raised at the earliest opportunity, so that if it is not raised in the pleadings, ordinarily it may not be raised at the trial; and if not raised in the trial court, it will not be considered on appeal.[35]

In the instant case, it must be pointed out that in the Reply to Respondent SEM's Consolidated Comment filed on 20 May 2003, MAB mentioned Proclamation No. 297, which was issued on 25 November 2002. This proclamation, according to the MAB, has rendered SEM's claim over the contested area moot, as the President has already declared the same as a mineral reservation and as an environmentally critical area. SEM did not put to issue the validity of said proclamation in any of its pleadings despite numerous opportunities to question the same. It was only after the assailed Decision was promulgated — *i.e.*, in SEM's Motion for Reconsideration of the questioned Decision filed on 13 July 2006 and its Motion for Referral of the Case to the Court *En Banc* and for Oral Arguments filed on 22 August 2006 — that it assailed the validity of said proclamation.

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[35] *Matibag v. Benipayo*, 429 Phil. 554, 578-579 (2002).

Certainly, posing the question on the constitutionality of Proclamation No. 297 for the first time in its Motion for Reconsideration is, indeed, too late.[36]

In fact, this Court, when it rendered the Decision it merely recognized that the questioned proclamation came from a co-equal branch of government, which entitled it to a strong presumption of constitutionality.[37] The presumption of its constitutionality stands inasmuch as the parties in the instant cases did not question its validity, much less present any evidence to prove that the same is unconstitutional. This is in line with the precept that administrative issuances have the force and effect of law and that they benefit from the same presumption of validity and constitutionality enjoyed by statutes.[38]

Proclamation No. 297 Is in Harmony with Article XII, Section 4, of the Constitution

At any rate, even if this Court were to consider the arguments belatedly raised by SEM, said arguments are not meritorious.

SEM asserts that Article XII, Section 4 of the Constitution, bars the President from excluding forest reserves/reservations and proclaiming the same as mineral reservations, since the power to de-classify them resides in Congress.

Section 4, Article XII of the Constitution reads:

> The Congress shall as soon as possible, determine by law the specific limits of forest lands and national parks, marking clearly their boundaries on the ground. Thereafter, such forest lands and national parks shall be conserved and may not be increased nor diminished, except by law. The Congress shall provide, for such periods as it may determine, measures to prohibit logging in endangered forests and in watershed areas.

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[36] *Umali v. Executive Secretary Guingona, Jr.*, 365 Phil. 77, 87 (1999).

[37] *Senate of the Philippines v. Ermita*, G.R. No. 169777, 20 April 2006, 488 SCRA 1, 66.

[38] *Mirasol v. Department of Public Works and Highways*, G.R. No. 158793, 8 June 2006, 490 SCRA 318, 347-348.

The above-quoted provision says that the area covered by forest lands and national parks may not be expanded or reduced, unless pursuant to a law enacted by Congress. Clear in the language of the constitutional provision is its prospective tenor, since it speaks in this manner: "*Congress shall as soon as possible*." It is only after the specific limits of the forest lands shall have been determined by the legislature will this constitutional restriction apply. SEM does not allege nor present any evidence that Congress had already enacted a statute determining with specific limits forest lands and national parks. Considering the absence of such law, Proclamation No. 297 could not have violated Section 4, Article XII of the 1987 Constitution. In *PICOP Resources, Inc. v. Base Metals Mineral Resources Corporation*,[39] the Court had the occasion to similarly rule in this fashion:

> x x x Sec. 4, Art. XII of the 1987 Constitution, on the other hand, provides that Congress shall determine the specific limits of forest lands and national parks, marking clearly their boundaries on the ground. Once this is done, the area thus covered by said forest lands and national parks may not be expanded or reduced except also by congressional legislation. **Since Congress has yet to enact a law determining the specific limits of the forest lands covered by Proclamation No. 369 and marking clearly its boundaries on the ground, there can be no occasion that could give rise to a violation of the constitutional provision**.

Section 4, Article XII of the Constitution, addresses the concern of the drafters of the 1987 Constitution about forests and the preservation of national parks. This was brought about by the drafters' awareness and fear of the continuing destruction of this country's forests.[40] In view of this concern, Congress is tasked to fix by law the specific limits of forest lands and national parks, after which the trees in these areas are to be taken cared of.[41] Hence, these forest lands and national parks that Congress is to delimit through a law could be changed only by Congress.

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[39] G.R. No. 163509, 6 December 2006, 510 SCRA 400, 416.

[40] Records of the Constitutional Commission, Vol. III, pp. 592-593.

[41] *Id*.

In addition, there is nothing in the constitutional provision that prohibits the President from declaring a forest land as an environmentally critical area and from regulating the mining operations therein by declaring it as a mineral reservation in order to prevent the further degradation of the forest environment and to resolve the health and peace and order problems that beset the area.

A closer examination of Section 4, Article XII of the Constitution and Proclamation No. 297 reveals that there is nothing contradictory between the two. Proclamation No. 297, a measure to attain and maintain a rational and orderly balance between socio-economic growth and environmental protection, jibes with the constitutional policy of preserving and protecting the forest lands from being further devastated by denudation. In other words, the proclamation in question is in line with Section 4, Article XII of the Constitution, as the former fosters the preservation of the forest environment of the Diwalwal area and is aimed at preventing the further degradation of the same. These objectives are the very same reasons why the subject constitutional provision is in place.

What is more, jurisprudence has recognized the policy of **multiple land use** in our laws towards the end that the country's precious natural resources may be rationally explored, developed, utilized and conserved.[42] It has been held that forest reserves or reservations can at the same time be open to mining operations, provided a prior written clearance by the government agency having jurisdiction over such reservation is obtained. In other words mineral lands can exist within forest reservations. These two terms are not anti-thetical. This is made manifest if we read Section 47 of Presidential Decree No. 705 or the Revised Forestry Code of the Philippines, which provides:

> Mining operations in forest lands shall be regulated and conducted with due regard to protection, development and utilization of other surface resources. **Location, prospecting, exploration, utilization**

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[42] *PICOP Resources, Inc. v. Base Metals Mineral Resources Corporation*, *supra* note 39 at 419.

or exploitation of mineral resources in forest reservations shall be governed by mining laws, rules and regulations. (Emphasis supplied.)

Also, Section 6 of Republic Act No. 7942 or the Mining Act of 1995, states that mining operations in reserved lands other than mineral reservations, such as forest reserves/reservations, are allowed, *viz*:

Mining operations in reserved lands other than mineral reservations may be undertaken by the Department, subject to limitations as herein provided. In the event that the Department cannot undertake such activities, they may be undertaken by a qualified person in accordance with the rules and regulations promulgated by the Secretary. (Emphasis supplied.)

Since forest reservations can be made mineral lands where mining operations are conducted, then there is no argument that the disputed land, which lies within a forest reservation, can be declared as a mineral reservation as well.

Republic Act No. 7942 Otherwise Known as the "Philippine Mining Act of 1995," is the Applicable Law

Determined to rivet its crumbling cause, SEM then argues that Proclamation No. 297 is invalid, as it transgressed the statutes governing the exclusion of areas already declared as forest reserves, such as Section 1 of Republic Act No. 3092,[43] Section 14 of the Administrative Code of 1987, Section 5(a) of Republic Act No. 7586,[44] and Section 4(a) of Republic Act No. 6657.[45]

Citing Section 1 of Republic Act No. 3092, which provides as follows:

Upon the recommendation of the Director of Forestry, with the approval of the Department Head, the President of the Philippines

[43] Approved on 17 August 1961.

[44] Approved on 1 June 1992, this statute is known as the "National Integrated Protected Areas System Act of 1992."

[45] This Act is known as the "Comprehensive Agrarian Reform Law of 1998." It took effect on 15 June 1988.

shall set apart forest reserves which shall include denuded forest lands from the public lands and he shall by proclamation declare the establishment of such forest reserves and the boundaries thereof, and thereafter such forest reserves shall not be entered, or otherwise disposed of, but shall remain indefinitely as such for forest uses.

The President of the Philippines may, in like manner upon the recommendation of the Director of Forestry, with the approval of the Department head, **by proclamation, modify the boundaries of any such forest reserve to conform with subsequent precise survey but not to exclude any portion thereof except with the concurrence of Congress.** (Underscoring supplied.)

SEM submits that the foregoing provision is the governing statute on the exclusion of areas already declared as forest reserves. Thus, areas already set aside by law as forest reserves are no longer within the proclamation powers of the President to modify or set aside for any other purposes such as mineral reservation.

To bolster its contention that the President cannot disestablish forest reserves into mineral reservations, SEM makes reference to Section 14, Chapter 4, Title I, Book III of the Administrative Code of 1987, which partly recites:

The President **shall have the power to reserve** for settlement or public use, and for specific public purposes, any of the lands of the public domain, **the use of which is not otherwise directed by law**. The reserved land shall thereafter remain subject to the specific public purpose indicated until otherwise provided by law or proclamation. (Emphases supplied.)

SEM further contends that Section 7 of Republic Act No. 7586,[46] which declares that the disestablishment of a protected area shall be done by Congress, and Section 4(a) of Republic Act

[46] *Disestablishment as Protected Area*. – When in the opinion of the DENR a certain protected area should be withdrawn or disestablished, or its boundaries modified as warranted by a study and sanctioned by the majority of the members of the respective boards for the protected area as herein established in Section 11, it shall, in turn, advise Congress. **Disestablishment of a protected area under the System or modification of its boundary shall take effect pursuant to an act of Congress.**

No. 6657,[47] which in turn requires a law passed by Congress before any forest reserve can be reclassified, militate against the validity of Proclamation No. 297.

Proclamation No. 297, declaring a certain portion of land located in Monkayo, Compostela Valley, with an area of 8,100 hectares, more or less, as a mineral reservation, was issued by the President pursuant to Section 5 of Republic Act No. 7942, also known as the "Philippine Mining Act of 1995."

Proclamation No. 297 did not modify the boundaries of the Agusan-Davao-Surigao Forest Reserve since, as earlier discussed, mineral reservations can exist within forest reserves because of the multiple land use policy. The metes and bounds of a forest reservation remain intact even if, within the said area, a mineral land is located and thereafter declared as a mineral reservation.

More to the point, a perusal of Republic Act No. 3092, "An Act to Amend Certain Sections of the Revised Administrative Code of 1917," which was approved on 17 August 1961, and the Administrative Code of 1987, shows that only those public lands declared by the President as reserved pursuant to these two statutes are to remain subject to the specific purpose. The tenor of the cited provisions, namely: "*the President of the Philippines* ***shall*** *set apart forest reserves*" and "*the reserved land shall thereafter remain,"* speaks of future public reservations to be declared, pursuant to these two statutes. These provisions do not apply to forest reservations earlier declared as such, as in this case, which was proclaimed way back on 27 February 1931, by Governor General Dwight F. Davis under Proclamation No. 369.

Over and above that, Section 5 of Republic Act No. 7942 authorizes the President to establish mineral reservations, to wit:

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[47] All alienable and disposable lands of the public domain devoted to or suitable for agriculture. **No reclassification of forest or mineral lands to agricultural lands shall be undertaken after the approval of this Act until Congress, taking into account ecological, developmental and equity considerations, shall have determined by law, the specific limits of the public domain.**

Sec. 5. *Mineral Reservations.* - When the national interest so requires, such as when there is a need to preserve strategic raw materials for industries critical to national development, or certain minerals for scientific, cultural or ecological value, **the President may establish mineral reservations upon the recommendation of the Director through the Secretary.** Mining operations in existing mineral reservations and such other reservations as may thereafter be established, shall be undertaken by the Department or through a contractor x x x. (Emphasis supplied.)

It is a rudimentary principle in legal hermeneutics that where there are two acts or provisions, one of which is special and particular and certainly involves the matter in question, the other general, which, if standing alone, would include the matter and thus conflict with the special act or provision, the special act must as intended be taken as constituting an exception to the general act or provision, especially when such general and special acts or provisions are contemporaneous, as the Legislature is not to be presumed to have intended a conflict.

Hence, it has become an established rule of statutory construction that where one statute deals with a subject in general terms, and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible; but if there is any conflict, the latter shall prevail regardless of whether it was passed prior to the general statute. Or where two statutes are of contrary tenor or of different dates but are of equal theoretical application to a particular case, the one specially designed therefor should prevail over the other.

It must be observed that Republic Act No. 3092, "An Act to Amend Certain Sections of the Revised Administrative Code of 1917," and the Administrative Code of 1987, are general laws. Section 1 of Republic Act No. 3092 and Section 14 of the Administrative Code of 1987 require the concurrence of Congress before any portion of a forest reserve can be validly excluded therefrom. These provisions are broad since they deal with all kinds of exclusion or reclassification relative to forest reserves, *i.e.*, forest reserve areas can be transformed into all kinds of public purposes, not only the establishment of a mineral reservation. Section 5 of Republic Act No. 7942 is a special

provision, as it specifically treats of the establishment of mineral reservations only. Said provision grants the President the power to proclaim a mineral land as a mineral reservation, regardless of whether such land is also an existing forest reservation.

Sec. 5(a) of Republic Act No. 7586 provides:

> Sec. 5. *Establishment and Extent of the System*. — The establishment and operationalization of the System shall involve the following:
>
> (a) All areas or islands in the Philippines proclaimed, designated or set aside, pursuant to a law, presidential decree, presidential proclamation or executive order as national park, game refuge, bird and wildlife sanctuary, wilderness area, strict nature reserve, watershed, mangrove reserve, fish sanctuary, natural and historical landmark, protected and managed landscape/seascape as well as identified virgin forests before the effectivity of this Act are hereby designated as initial components of the System. The initial components of the System shall be governed by existing laws, rules and regulations, not inconsistent with this Act.

Glaring in the foregoing enumeration of areas comprising the initial component of the NIPAS System under Republic Act No. 7586 is the absence of forest reserves. Only protected areas enumerated under said provision cannot be modified. Since the subject matter of Proclamation No. 297 is a forest reservation proclaimed as a mineral reserve, Republic Act No. 7586 cannot possibly be made applicable. Neither can Proclamation No. 297 possibly violate said law.

Similarly, Section 4(a) of Republic Act No. 6657 cannot be made applicable to the instant case.

Section 4(a) of Republic Act No. 6657 reads:

> All alienable and disposable lands of the public domain devoted to or suitable for agriculture. **No reclassification of forest or mineral lands to agricultural lands shall be undertaken after the approval of this Act until Congress, taking into account ecological, developmental and equity considerations, shall have determined by law, the specific limits of the public domain**. (Underscoring supplied.)

Section 4(a) of Republic Act No. 6657 prohibits the reclassification of forest or mineral lands into agricultural lands until Congress shall have determined by law the specific limits of the public domain. A cursory reading of this provision will readily show that the same is not relevant to the instant controversy, as there has been no reclassification of a forest or mineral land into an agricultural land.

Furthermore, the settled rule of statutory construction is that if two or more laws of different dates and of contrary tenors are of equal theoretical application to a particular case, the statute of later date must prevail being a later expression of legislative will.[48]

In the case at bar, there is no question that Republic Act No. 7942 was signed into law later than Republic Act No. 3092, the Administrative Code of 1987,[49] Republic Act No. 7586 and Republic Act No. 6657. Applying the cited principle, the provisions of Republic Act No. 3092, the Administrative Code of 1987, Republic Act No. 7586 and Republic Act No. 6657 cited by SEM must yield to Section 5 of Republic Act No. 7942.

Camilo Banad, *et al.*, Cannot Seek Relief from This Court

Camilo Banad and his group admit that they are members of the Balite Cooperative. They, however, claim that they are distinct from Balite and move that this Court recognize them as prior mining locators.

Unfortunately for them, this Court cannot grant any relief they seek. Records reveal that although they were parties to the instant cases before the Court of Appeals, they did not file a petition for review before this Court to contest the decision of the appellate court. The only petitioners in the instant cases are the MAB, SEM, Balite and Apex. Consequently, having no

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[48] *Philippine National Bank v. Cruz*, G.R. No. 80593, 18 December 1989, 180 SCRA 206, 213.

[49] This law is dated 25 July 1987.

personality in the instant cases, they cannot seek any relief from this Court.

Apex's Motion for Clarification and Balite's Manifestation and Motion

In its Motion for Clarification, Apex desires that the Court elucidate the assailed Decision's pronouncement that "mining operations, are now, therefore within the full control of the State through the executive branch" and place the said pronouncement in the proper perspective as the declaration in *La Bugal-B'Laan*, which states that –

> The concept of control adopted in Section 2 of Article XII must be taken to mean less than dictatorial, all-encompassing control; but nevertheless sufficient to give the State the power to direct, restrain, regulate and govern the affairs of the extractive enterprise.[50]

Apex states that the subject portion of the assailed Decision could send a chilling effect to potential investors in the mining industry, who may be of the impression that the State has taken over the mining industry, not as regulator but as an operator. It is of the opinion that the State cannot directly undertake mining operations.

Moreover, Apex is apprehensive of the following portion in the questioned Decision– "The State can also opt to award mining operations in the mineral reservation to private entities including petitioner Apex and Balite, if it wishes." It avers that the phrase "if it wishes" may whimsically be interpreted to mean a blanket authority of the administrative authority to reject the former's application for an exploration permit even though it complies with the prescribed policies, rules and regulations.

Apex likewise asks this Court to order the MGB to accept its application for an exploration permit.

Balite echoes the same concern as that of Apex on the actual take-over by the State of the mining industry in the disputed area to the exclusion of the private sector. In addition, Balite

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[50] *Supra* note 12 at 1093.

prays that this Court direct MGB to accept Balite's application for an exploration permit.

Contrary to the contention of Apex and Balite, the fourth paragraph of Section 2, Article XII of the Constitution and Section 5 of Republic Act No. 7942 sanctions the State, through the executive department, to undertake mining operations directly, as an operator and not as a mere regulator of mineral undertakings. This is made clearer by the fourth paragraph of Section 2, Article XII of the 1987 Constitution, which provides in part:

> SEC. 2. x x x **The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens**. x x x. (Emphasis supplied.)

Also, Section 5 of Republic Act No. 7942 states that the mining operations in mineral reservations shall be undertaken by the Department of Environment and Natural Resources or a contractor, to wit:

> SEC. 5. *Mineral Reservations*. – When the national interest so requires, such as when there is a need to preserve strategic raw materials for industries critical to national development, or certain minerals for scientific, cultural or ecological value, the President may establish mineral reservations upon the recommendation of the Director through the Secretary. **Mining operations in existing mineral reservations and such other reservations as may thereafter be established, shall be undertaken by the Department or through a contractor** x x x. (Emphasis supplied.)

Undoubtedly, the Constitution, as well as Republic Act No. 7942, allows the executive department to undertake mining operations. Besides, *La Bugal-B'Laan*, cited by Apex, did not refer to the fourth sentence of Section 2, Article XII of the Constitution, but to the third sentence of the said provision, which states:

> SEC. 2. x x x The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. x x x.

Pursuant to Section 5 of Republic Act No. 7942, the executive department has the option to undertake directly the mining operations in the Diwalwal Gold Rush Area or to award mining operations therein to private entities. The phrase "if it wishes" must be understood within the context of this provision. Hence, the Court cannot dictate this co-equal branch to choose which of the two options to select. It is the sole prerogative of the executive department to undertake directly or to award the mining operations of the contested area.

Even assuming that the proper authority may decide to award the mining operations of the disputed area, this Court cannot arrogate unto itself the task of determining who, among the applicants, is qualified. It is the duty of the appropriate administrative body to determine the qualifications of the applicants. It is only when this administrative body whimsically denies the applications of qualified applicants that the Court may interfere. But until then, the Court has no power to direct said administrative body to accept the application of any qualified applicant.

In view of this, the Court cannot grant the prayer of Apex and Balite asking the Court to direct the MGB to accept their applications pending before the MGB.

SEM's Manifestation and Motion dated 25 January 2007

SEM wants to emphasize that its predecessor-in-interest, Marcopper or MMC, complied with the mandatory exploration work program, required under EP 133, by attaching therewith quarterly reports on exploration work from 20 June 1986 to March 1994.

It must be observed that this is the very first time at this very late stage that SEM has presented the quarterly exploration reports. From the early phase of this controversy, SEM did not disprove the arguments of the other parties that Marcopper violated the terms under EP 133, among other violations, by not complying with the mandatory exploration work program. Neither did it present evidence for the appreciation of the lower tribunals. Hence, the non-compliance with the mandatory

exploration work program was not made an issue in any stage of the proceedings. The rule is that an issue that was not raised in the lower court or tribunal cannot be raised for the first time on appeal, as this would violate the basic rules of fair play, justice and due process.[51] Thus, this Court cannot take cognizance of the issue of whether or not MMC complied with the mandatory work program.

In sum, this Court finds:

1. The assailed Decision did not overturn the 16 July 1991 Decision in *Apex Mining Co., Inc. v. Garcia.* The former was decided on facts and issues that were not attendant in the latter, such as the expiration of EP 133, the violation of the condition embodied in EP 133 prohibiting its assignment, and the unauthorized and invalid assignment of EP 133 by MMC to SEM, since this assignment was effected without the approval of the Secretary of DENR;

2. SEM did not acquire vested right over the disputed area because its supposed right was extinguished by the expiration of its exploration permit and by its violation of the condition prohibiting the assignment of EP 133 by MMC to SEM. In addition, even assuming that SEM has a valid exploration permit, such is a mere license that can be withdrawn by the State. In fact, the same has been withdrawn by the issuance of Proclamation No. 297, which places the disputed area under the full control of the State through the Executive Department;

3. The approval requirement under Section 97 of Presidential Decree No. 463 applies to the assignment of EP 133 by MMC to SEM, since the exploration permit is an interest in a mining lease contract;

4. The issue of the constitutionality and the legality of Proclamation No. 297 was raised belatedly, as SEM

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[51] *Multi-Realty Development Corporation v. Makati Tuscany Condominium Corporation*, G.R. No. 146726, 16 June 2006, 491 SCRA 9, 23.

questions the same for the first time in its Motion for Reconsideration. Even if the issue were to be entertained, the said proclamation is found to be in harmony with the Constitution and other existing statutes;

5. The motion for reconsideration of Camilo Banad, *et al*. cannot be passed upon because they are not parties to the instant cases;

6. The prayers of Apex and Balite asking the Court to direct the MGB to accept their applications for exploration permits cannot be granted, since it is the Executive Department that has the prerogative to accept such applications, if ever it decides to award the mining operations in the disputed area to a private entity;

7. The Court cannot pass upon the issue of whether or not MMC complied with the mandatory exploration work program, as such was a non-issue and was not raised before the Court of Appeals and the lower tribunals.

WHEREFORE, premises considered, the Court holds:

1. The Motions for Reconsideration filed by Camilo Banad, *et al*. and Southeast Mindanao Gold Mining Corporation are *DENIED* for lack of merit;

2. The Motion for Clarification of Apex Mining Co., Inc. and the Manifestation and Motion of the Balite Communal Portal Mining Cooperative, insofar as these motions/manifestation ask the Court to direct the Mines and Geo-Sciences Bureau to accept their respective applications for exploration permits, are *DENIED*;

3. The Manifestation and Urgent Motion dated 25 January 2007 of Southeast Mindanao Gold Mining Corporation is *DENIED*.

4. The State, through the Executive Department, should it so desire, may now award mining operations in the disputed area to any qualified entities it may determine. The Mines and Geosciences Bureau may process exploration permits pending before it, taking into consideration the applicable mining laws, rules and regulations relative thereto.

SO ORDERED.

Puno, C.J., Carpio, Carpio Morales, Leonardo-de Castro, Brion, Del Castillo, Abad, and *Villarama, Jr., JJ.,* concur.

Bersamin, J., with separate opinion.

Nachura, J., no part.

Corona, Velasco, Jr., and *Peralta, JJ.,* on official leave.

SEPARATE OPINION

BERSAMIN, *J.*:

I concur with Honorable Minita V. Chico-Nazario's disposition of the challenges posed by the *motion for reconsideration* and *manifestation and urgent motion* dated January 25, 2007 filed by Southeast Mindanao Gold Mining Corporation (SEM); the *motion for clarification* dated July 18, 2006 filed by Apex Mining (Apex); and the *manifestation and motion* dated July 28, 2006 filed by Balite Communal Portal Mining Cooperative (Balite).

Yet, I feel compelled to write in order to suggest that we *should* look at and determine which between Apex and Balite has *any* priority right to explore, develop and mine the Diwalwal Gold Rush Area in the event that the State, represented by the Executive Department, decides *either* to develop and mine the area directly, *or* to outsource the task to a service contractor. I am sure that doing so will preclude further litigations from arising. I feel that such an approach can only further the intent and letter of Section 1,[1] Rule 36, of the *Rules of Court* to determine the merits of the case, not leaving anything undetermined.

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[1] Section 1. *Rendition of judgments and final orders*. — A judgment or final order determining the merits of the case shall be in writing personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed by him, and filed with the clerk of the court. (1a)

Antecedents

The relevant antecedents excellently recounted in the decision are adopted herein for purposes of giving this separate opinion the requisite backdrop, *viz*:

On 27 February 1931, Governor General Dwight F. Davis issued Proclamation No. 369, establishing the Agusan-Davao-Surigao Forest Reserve consisting of approximately 1,927,400 hectares.

The disputed area, a rich tract of mineral land, is inside the forest reserve located at Monkayo, Davao del Norte, and Cateel, Davao Oriental, consisting of 4,941.6759 hectares. This mineral land is encompassed by Mt. Diwata, which is situated in the municipalities of Monkayo and Cateel. It later became known as the "Diwalwal Gold Rush Area." It has since the early 1980's been stormed by conflicts brought about by the numerous mining claimants scrambling for gold that lies beneath its bosom.

On 21 November 1983, Camilo Banad and his group, who claimed to have first discovered traces of gold in Mount Diwata, filed a Declaration of Location (DOL) for six mining claims in the area.

Camilo Banad and some other natives pooled their skills and resources and organized the Balite Communal Portal Mining Cooperative (Balite).

On 12 December 1983, Apex Mining Corporation (Apex) entered into operating agreements with Banad and his group.

From November 1983 to February 1984, several individual applications for mining locations over mineral land covering certain parts of the Diwalwal gold rush area were filed with the Bureau of Mines and Geo-Sciences (BMG).

On 2 February 1984, Marcopper Mining Corporation (MMC) filed 16 DOLs or mining claims for areas adjacent to the area covered by the DOL of Banad and his group. After realizing that the area encompassed by its mining claims is a forest reserve within the coverage of Proclamation No. 369 issued by Governor General Davis, MMC abandoned the same and instead applied for a prospecting permit with the Bureau of Forest Development (BFD).

On 1 July 1985, BFD issued a Prospecting Permit to MMC covering an area of 4,941.6759 hectares traversing the municipalities of

Monkayo and Cateel, an area within the forest reserve under Proclamation No. 369. The permit embraced the areas claimed by Apex and the other individual mining claimants.

On 11 November 1985, MMC filed Exploration Permit Application No. 84-40 with the BMG. On 10 March 1986, the BMG issued to MCC Exploration Permit No. 133 (EP 133).

Discovering the existence of several mining claims and the proliferation of small-scale miners in the area covered by EP 133, MMC thus filed on 11 April 1986 before the BMG a *Petition for the Cancellation of the Mining Claims of Apex and Small Scale Mining Permit Nos. (x-1)-04 and (x-1)-05* which was docketed as MAC No. 1061. MMC alleged that the areas covered by its EP 133 and the mining claims of Apex were within an established and existing forest reservation (Agusan-Davao-Surigao Forest Reserve) under Proclamation No. 369 and that pursuant to Presidential Decree No. 463, acquisition of mining rights within a forest reserve is through the application for a permit to prospect with the BFD and not through registration of a DOL with the BMG.

On 23 September 1986, Apex filed a motion to dismiss MMC's petition alleging that its mining claims are not within any established or proclaimed forest reserve, and as such, the acquisition of mining rights thereto must be undertaken *via* registration of DOL with the BMG and not through the filing of application for permit to prospect with the BFD.

On 9 December 1986, BMG dismissed MMC's petition on the ground that the area covered by the Apex mining claims and MMC's permit to explore was not a forest reservation. It further declared null and void MMC's EP 133 and sustained the validity of Apex mining claims over the disputed area.

MMC appealed the adverse order of BMG to the Department of Environment and Natural Resources (DENR).

On 15 April 1987, after due hearing, the DENR reversed the 9 December 1996 order of BMG and declared MMC's EP 133 valid and subsisting.

Apex filed a Motion for Reconsideration with the DENR which was subsequently denied. Apex then filed an appeal before the Office of the President. On 27 July 1989, the Office of the President, through Assistant Executive Secretary for Legal Affairs, Cancio C.

Garcia, dismissed Apex's appeal and affirmed the DENR ruling.

Apex filed a Petition for *Certiorari* before this Court. The Petition was docketed as G.R. No. 92605 entitled, "*Apex Mining Co., Inc. v. Garcia.*" On 16 July 1991, this Court rendered a Decision against Apex holding that the disputed area is a forest reserve; hence, the proper procedure in acquiring mining rights therein is by initially applying for a permit to prospect with the BFD and not through a registration of DOL with the BMG.

On 27 December 1991, then DENR Secretary Fulgencio Factoran, Jr. issued Department Administrative Order No. 66 (DAO No. 66) declaring 729 hectares of the areas covered by the Agusan-Davao-Surigao Forest Reserve as non-forest lands and open to small-scale mining purposes.

As DAO No. 66 declared a portion of the contested area open to small scale miners, several mining entities filed applications for Mineral Production Sharing Agreement (MPSA).

On 25 August 1993, Monkayo Integrated Small Scale Miners Association (MISSMA) filed an MPSA application which was denied by the BMG on the grounds that the area applied for is within the area covered by MMC EP 133 and that the MISSMA was not qualified to apply for an MPSA under DAO No. 82, Series of 1990.

On 5 January 1994, Rosendo Villaflor and his group filed before the BMG a Petition for Cancellation of EP 133 and for the admission of their MPSA Application. The Petition was docketed as RED Mines Case No. 8-8-94. Davao United Miners Cooperative (DUMC) and Balite intervened and likewise sought the cancellation of EP 133.

On 16 February 1994, MMC assigned EP 133 to Southeast Mindanao Gold Mining Corporation (SEM), a domestic corporation which is alleged to be a 100% -owned subsidiary of MMC.

On 14 June 1994, Balite filed with the BMG an MPSA application within the contested area that was later on rejected.

On 23 June 1994, SEM filed an MPSA application for the entire 4,941.6759 hectares under EP 133, which was also denied by reason of the pendency of RED Mines Case No. 8-8-94. On 1 September 1995, SEM filed another MPSA application.

On 20 October 1995, BMG accepted and registered SEM's MPSA application and the Deed of Assignment over EP 133 executed in

its favor by MMC. SEM's application was designated MPSA Application No. 128 (MPSAA 128). After publication of SEM's application, the following filed before the BMG their adverse claims or oppositions:

a) MAC Case No. 004 (XI) – JB Management Mining Corporation;

b) MAC Case No. 005(XI) – Davao United Miners Cooperative;

c) MAC Case No. 006(XI) – Balite Integrated Small Scale Miner's Cooperative;

d) MAC Case No. 007(XI) – Monkayo Integrated Small Scale Miner's Association, Inc. (MISSMA);

e) MAC Case No. 008(XI) – Paper Industries Corporation of the Philippines;

f) MAC Case No. 009(XI) – Rosendo Villafor, *et al.*;

g) MAC Case No. 010(XI) – Antonio Dacudao;

h) MAC Case No. 011(XI) – Atty. Jose T. Amacio;

i) MAC Case No. 012(XI) – Puting-Bato Gold Miners Cooperative;

j) MAC Case No. 016(XI) – Balite Communal Portal Mining Cooperative;

k) MAC Case No. 97-01(XI) – Romeo Altamera, *et al.*

To address the matter, the DENR constituted a Panel of Arbitrators (PA) to resolve the following:

(a) The adverse claims on MPSAA No. 128; and

(b) The Petition to Cancel EP 133 filed by Rosendo Villaflor docketed as RED Case No. 8-8-94.

On 13 June 1997, the PA rendered a resolution in RED Mines Case No. 8-8-94. As to the Petition for Cancellation of EP 133 issued to MMC, the PA relied on the ruling in *Apex Mining Co., Inc. v. Garcia* and opined that EP 133 was valid and subsisting. It also declared that the BMG Director, under Section 99 of the Consolidated Mines Administrative Order implementing Presidential

Decree No. 463, was authorized to issue exploration permits and to renew the same without limit.

With respect to the adverse claims on SEM's MPSAA No. 128, the PA ruled that adverse claimants' petitions were not filed in accordance with the existing rules and regulations governing adverse claims because the adverse claimants failed to submit the sketch plan containing the technical description of their respective claims, which was a mandatory requirement for an adverse claim that would allow the PA to determine if indeed there is an overlapping of the area occupied by them and the area applied for by SEM. It added that the adverse claimants were not claim owners but mere occupants conducting illegal mining activities at the contested area since only MMC or its assignee SEM had valid mining claims over the area as enunciated in *Apex Mining Co., Inc. v. Garcia*. Also, it maintained that the adverse claimants were not qualified as small-scale miners under DENR Department Administrative Order No. 34 (DAO No. 34), or the Implementing Rules and Regulation of Republic Act No. 7076 (otherwise known as the "People's Small-Scale Mining Act of 1991"), as they were not duly licensed by the DENR to engage in the extraction or removal of minerals from the ground, and that they were large-scale miners. The decretal portion of the PA resolution pronounces:

> VIEWED IN THE LIGHT OF THE FOREGOING, the validity of Exploration Permit No. 133 is hereby reiterated and all the adverse claims against MPSAA No. 128 are DISMISSED.

Undaunted by the PA ruling, the adverse claimants appealed to the Mines Adjudication Board (MAB). In a Decision dated 6 January 1998, the MAB considered erroneous the dismissal by the PA of the adverse claims filed against MMC and SEM over a mere technicality of failure to submit a sketch plan. It argued that the rules of procedure are not meant to defeat substantial justice as the former are merely secondary in importance to the latter. Dealing with the question on EP 133's validity, the MAB opined that said issue was not crucial and was irrelevant in adjudicating the appealed case because EP 133 has long expired due to its non-renewal and that the holder of the same, MMC, was no longer a claimant of the Agusan-Davao-Surigao Forest Reserve having relinquished its right to SEM. After it brushed aside the issue of the validity of EP 133 for being irrelevant, the MAB proceeded to treat SEM's MPSA application over the disputed area as an entirely new and distinct

application. It approved the MPSA application, excluding the area segregated by DAO No. 66, which declared 729 hectares within the Diwalwal area as non-forest lands open for small-scale mining. The MAB resolved:

> WHEREFORE, PREMISES CONSIDERED, the decision of the Panel of Arbitrators dated 13 June 1997 is hereby VACATED and a new one entered in the records of the case as follows:
>
> 1. SEM's MPSA application is hereby given due course subject to the full and strict compliance of the provisions of the Mining Act and its Implementing Rules and Regulations;
>
> 2. The area covered by DAO 66, series of 1991, actually occupied and actively mined by the small-scale miners on or before August 1, 1987 as determined by the Provincial Mining Regulatory Board (PMRB), is hereby excluded from the area applied for by SEM;
>
> 3. A moratorium on all mining and mining-related activities, is hereby imposed until such time that all necessary procedures, licenses, permits, and other requisites as provided for by RA 7076, the Mining Act and its Implementing Rules and Regulations and all other pertinent laws, rules and regulations are complied with, and the appropriate environmental protection measures and safeguards have been effectively put in place;
>
> 4. Consistent with the spirit of RA 7076, the Board encourages SEM and all small-scale miners to continue to negotiate in good faith and arrive at an agreement beneficial to all. In the event of SEM's strict and full compliance with all the requirements of the Mining Act and its Implementing Rules and Regulations, and the concurrence of the small-scale miners actually occupying and actively mining the area, SEM may apply for the inclusion of portions of the areas segregated under paragraph 2 hereof, to its MPSA application. In this light, subject to the preceding paragraph, the contract between JB [JB Management Mining Corporation] and SEM is hereby recognized.

Dissatisfied, the Villaflor group and Balite appealed the decision to this Court. SEM, aggrieved by the exclusion of 729 hectares from its MPSA application, likewise appealed. Apex filed a *Motion for Leave to Admit Petition for Intervention* predicated on its right to stake its claim over the Diwalwal gold rush which was granted by

the Court. These cases, however, were remanded to the Court of Appeals for proper disposition pursuant to Rule 43 of the 1997 Rules of Civil Procedure. The Court of Appeals consolidated the remanded cases as CA-G.R. SP No. 61215 and No. 61216.

In the assailed Decision dated 13 March 2002, the Court of Appeals affirmed *in toto* the decision of the PA and declared null and void the MAB decision.

The Court of Appeals, banking on the premise that the SEM is the agent of MMC by virtue of its assignment of EP 133 in favor of SEM and the purported fact that SEM is a 100% subsidiary of MMC, ruled that the transfer of EP 133 was valid. It argued that since SEM is an agent of MMC, the assignment of EP 133 did not violate the condition therein prohibiting its transfer except to MMC's duly designated agent. Thus, despite the non-renewal of EP 133 on 6 July 1994, the Court of Appeals deemed it relevant to declare EP 133 as valid since MMC's mining rights were validly transferred to SEM prior to its expiration.

The Court of Appeals also ruled that MMC's right to explore under EP 133 is a property right which the 1987 Constitution protects and which cannot be divested without the holder's consent. It stressed that MMC's failure to proceed with the extraction and utilization of minerals did not diminish its vested right to explore because its failure was not attributable to it.

Reading Proclamation No. 369, Section 11 of Commonwealth Act 137, and Sections 6, 7, and 8 of Presidential Decree No. 463, the Court of Appeals concluded that the issuance of DAO No. 66 was done by the DENR Secretary beyond his power for it is the President who has the sole power to withdraw from the forest reserve established under Proclamation No. 369 as non-forest land for mining purposes. Accordingly, the segregation of 729 hectares of mining areas from the coverage of EP 133 by the MAB was unfounded.

The Court of Appeals also faulted the DENR Secretary in implementing DAO No. 66 when he awarded the 729 hectares segregated from the coverage area of EP 133 to other corporations who were not qualified as small-scale miners under Republic Act No. 7076.

As to the petitions of Villaflor and company, the Court of Appeals argued that their failure to submit the sketch plan to the PA, which is a jurisdictional requirement, was fatal to their appeal. It likewise

stated the Villaflor and company's mining claims, which were based on their alleged rights under DAO No. 66, cannot stand as DAO No. 66 was null and void. The dispositive portion of the Decision decreed:

> WHEREFORE, premises considered, the Petition of Southeast Mindanao Gold Mining Corporation is GRANTED while the Petition of Rosendo Villaflor, *et al.*, is DENIED for lack of merit. The Decision of the Panel of Arbitrators dated 13 June 1997 is AFFIRMED *in toto* and the assailed MAB Decision is hereby SET ASIDE and declared as NULL and VOID.

Hence, the instant Petitions for Review on *Certiorari* under Rule 45 of the Rules of Court filed by Apex, Balite and MAB.

During the pendency of these Petitions, President Gloria Macapagal-Arroyo issued Proclamation No. 297 dated 25 November 2002. This proclamation excluded an area of 8,100 hectares located in Monkayo, Compostela Valley, and proclaimed the same as mineral reservation and as environmentally critical area. Subsequently, DENR Administrative Order No. 2002-18 was issued declaring an emergency situation in the Diwalwal gold rush area and ordering the stoppage of all mining operations therein. Thereafter, Executive Order No. 217 dated 17 June 2003 was issued by the President creating the National Task Force Diwalwal which is tasked to address the situation in the Diwalwal Gold Rush Area.

In G.R. No. 152613 and No. 152628, Apex raises the following issues:

I

WHETHER OR NOT SOUTHEAST MINDANAO GOLD MINING'S [SEM] E.P. 133 IS NULL AND VOID DUE TO THE FAILURE OF MARCOPPER TO COMPLY WITH THE TERMS AND CONDITIONS PRESCRIBED IN EP 133.

II

WHETHER OR NOT APEX HAS A SUPERIOR AND PREFERENTIAL RIGHT TO STAKE IT'S CLAIM OVER THE ENTIRE 4,941 HECTARES AGAINST SEM AND THE OTHER CLAIMANTS PURSUANT TO THE TIME-HONORED PRINCIPLE IN MINING LAW THAT "PRIORITY IN TIME IS PRIORITY IN RIGHT."

In G.R. No. 152619-20, Balite anchors its petition on the following

grounds:

I

WHETHER OR NOT THE MPSA OF SEM WHICH WAS FILED NINE (9) DAYS LATE (JUNE 23, 1994) FROM THE FILING OF THE MPSA OF BALITE WHICH WAS FILED ON JUNE 14, 1994 HAS A PREFERENTIAL RIGHT OVER THAT OF BALITE.

II

WHETHER OR NOT THE DISMISSAL BY THE PANEL OF ARBITRATORS OF THE ADVERSE CLAIM OF BALITE ON THE GROUND THAT BALITE FAILED TO SUBMIT THE REQUIRED SKETCH PLAN DESPITE THE FACT THAT BALITE, HAD IN FACT SUBMITTED ON TIME WAS A VALID DISMISSAL OF BALITE'S ADVERSE CLAIM.

III

WHETHER OR NOT THE ACTUAL OCCUPATION AND SMALL-MINING OPERATIONS OF BALITE PURSUANT TO DAO 66 IN THE 729 HECTARES WHICH WAS PART OF THE 4,941.6759 HECTARES COVERED BY ITS MPSA WHICH WAS REJECTED BY THE BUREAU OF MINES AND GEOSCIENCES WAS ILLEGAL.

In G.R. No. 152870-71, the MAB submits two issues, to wit:

I

WHETHER OR NOT EP NO. 133 IS STILL VALID AND SUBSISTING.

II

WHETHER OR NOT THE SUBSEQUENT ACTS OF THE GOVERNMENT SUCH AS THE ISSUANCE OF DAO NO. 66, PROCLAMATION NO. 297, AND EXECUTIVE ORDER 217 CAN OUTWEIGH EP NO. 133 AS WELL AS OTHER ADVERSE CLAIMS OVER THE DIWALWAL GOLD RUSH AREA.

The common issues raised by petitioners may be summarized as follows:

I. Whether or not the Court of Appeals erred in upholding the validity and continuous existence of EP 133 as well as its transfer to SEM;

II. Whether or not the Court of Appeals erred in declaring that the DENR Secretary has no authority to issue DAO No. 66; and

III. Whether or not the subsequent acts of the executive department such as the issuance of Proclamation No. 297, and DAO No. 2002-18 can outweigh Apex and Balite's claims over the Diwalwal Gold Rush Area.

On the first issue, Apex takes exception to the Court of Appeals' ruling upholding the validity of MMC's EP 133 and its subsequent transfer to SEM asserting that MMC failed to comply with the terms and conditions in its exploration permit, thus, MMC and its successor-in-interest SEM lost their rights in the Diwalwal Gold Rush Area. Apex pointed out that MMC violated four conditions in its permit. First, MMC failed to comply with the mandatory work program, to complete exploration work, and to declare a mining feasibility. Second, it reneged on its duty to submit an Environmental Compliance Certificate. Third, it failed to comply with the reportorial requirements. Fourth, it violated the terms of EP 133 when it assigned said permit to SEM despite the explicit proscription against its transfer.

Apex likewise emphasizes that MMC failed to file its MPSA application required under DAO No. 82 which caused its exploration permit to lapse because DAO No. 82 mandates holders of exploration permits to file a Letter of Intent and a MPSA application not later than 17 July 1991. It said that because EP 133 expired prior to its assignment to SEM, SEM's MPSA application should have been evaluated on its own merit.

As regards the Court of Appeals recognition of SEM's vested right over the disputed area, Apex bewails the same to be lacking in statutory bases. According to Apex, Presidential Decree No. 463 and Republic Act No. 7942 impose upon the claimant the obligation of actually undertaking exploration work within the reserved lands in order to acquire priority right over the area. MMC, Apex claims, failed to conduct the necessary exploration work, thus, MMC and its successor-in-interest SEM lost any right over the area.

In its Memorandum, Balite maintains that EP 133 of MMC, predecessor-in-interest of SEM, is an expired and void permit which cannot be made the basis of SEM's MPSA application.

Similarly, the MAB underscores that SEM did not acquire any right from MMC by virtue of the transfer of EP 133 because the transfer directly violates the express condition of the exploration permit stating that "it shall be for the exclusive use and benefit of the permittee or his duly authorized agents." It added that while MMC is the permittee, SEM cannot be considered as MMC's duly designated agent as there is no proof on record authorizing SEM to represent MMC in its business dealings or undertakings, and neither did SEM pursue its interest in the permit as an agent of MMC. According to the MAB, the assignment by MMC of EP 133 in favor of SEM did not make the latter the duly authorized agent of MMC since the concept of an agent under EP 133 is not equivalent to the concept of assignee. It finds fault in the assignment of EP 133 which lacked the approval of the DENR Secretary in contravention of Section 25 of Republic Act No. 7942 requiring his approval for a valid assignment or transfer of exploration permit to be valid.

SEM, on the other hand, counters that the errors raised by petitioners Apex, Balite and the MAB relate to factual and evidentiary matters which this Court cannot inquire into in an appeal by *certiorari*.

Effects of the Decision

The decision affirms the application in this jurisdiction of the Regalian Doctrine, which means that the State has dominion over all agricultural, timber and mineral lands. It also affirms that Proclamation 297 dated November 25, 2002 was a constitutionally-sanctioned act.

Proclamation 297 has excluded 8,100 hectares of mineral land in Monkayo, Compostela Valley, and has declared that:

> xxx. Mining operations in the area may be undertaken either by the DENR directly, subject to payment of just compensation that may be due to legitimate and existing claimants, or thru a qualified contractor, subject to existing rights, if any.

It is clear that under the Proclamation 297 regime of exploration, development and utilization of mineral resources within the Diwalwal Gold Rush Area, the State is bound to either pay

lawful claimants just compensation (should it elect to operate the mine directly), or to honor existing rights (should it choose to outsource mining operations to a service contractor). The priority right of an interested party is only deemed superseded by Proclamation 297 and DENR Administrative Order (DAO) 2002-18 *if* the State elects to directly undertake mining operations in the Diwalwal Gold Rush Area (but nonetheless requires the State to pay just compensation that may be due to legitimate and existing claimants). If the State chooses to outsource mining operations to a service contractor, Proclamation 297 mandates that the existing rights *should still be* recognized and honored.

Yet, the decision states that:

> The issue on who has priority right over the disputed area is deemed overtaken by the above subsequent developments particularly with the issuance of Proclamation 297 and DAO No. 2002-18, both being constitutionally-sanctioned acts of the Executive Branch. Mining operations in the Diwalwal Mineral Reservation are now, therefore, within the full control of the State through the executive branch. Pursuant to Section 5 of Republic Act No. 7942, the State can either directly undertake the exploration, development and utilization of the area or it can enter into agreements with qualified entities, *viz*:
>
> > SEC 5. *Mineral Reservations*. – When the national interest so requires, such as when there is a need to preserve strategic raw materials for industries critical to national development, or certain minerals for scientific, cultural or ecological value, the President may establish mineral reservations upon the recommendation of the Director through the Secretary. Mining operations in existing mineral reservations and such other reservations as may thereafter be established, shall be undertaken by the Department or through a contractor x x x .
>
> **It is now up to the Executive Department whether to take the first option, *i.e.*, to undertake directly the mining operations of the Diwalwal Gold Rush Area. As already ruled, the State may not be precluded from considering a direct takeover of the mines, if it is the only plausible remedy in sight to the gnawing complexities generated by the gold rush. The State need be guided only by the demands of public interest in settling on this option, as well as its material and logistic feasibility.**

The State can also opt to award mining operations in the mineral reservation to private entities including petitioners Apex and Balite, if it wishes. The exercise of this prerogative lies with the Executive Department over which courts will not interfere.

That the aforequoted passage of the decision, particularly the highlighted portion, has generated interpretation by the parties causes me to pause in order to ask whether the issuance of Proclamation 297 declaring the disputed area as a mineral reservation *outweighs* the claims of Apex and Balite over the Diwalwal Gold Rush Area; and which between Apex and Balite will have priority once the Government opts to award mining operations in the mineral reservation to private entities, including Apex and Balite, if it so wishes.

I humbly submit that the answers to these questions should be given by the Court now, not later, if we are to prevent another round of litigation that will surely undermine the efforts of the Government to establish a new order of peace, development and prosperity in the Diwalwal Gold Rush Area.

I also submit that these questions are entirely justiciable in the present case. We have already eliminated the claim of SEM and its parent company, Marcopper Mining Corporation (MMC), due to the latter's numerous violations of the terms of Exploration Permit (EP) 133, which meanwhile expired without being renewed. The issuance of Proclamation 297, and the declaration by this Court of the nullity of DAO No. 66 (declaring 729 hectares within the Agusan-Davao-Surigao Forest Reserve as non-forest land open to small-scale mining operations) necessitate a *final* and *definitive* determination of the existing right of the *remaining* claimants in this dispute, who can replace SEM and fill the void created by the expiration of EP 133.

I have no difficulty in understanding from the decision that the remaining claimants are Apex and Balite.

Submissions

The right of a *legitimate* and *existing* claimant envisioned in Proclamation 297 (*i.e.*, "Mining operations in the area may be

undertaken either by the DENR directly, subject to payment of just compensation that may be due to legitimate and existing claimants, or thru a qualified contractor, subject to existing rights, if any") is a real right acquired over time by a person who discovered mineral deposits, and was first to stake his claim through location and registration with the mining recorder.

Under Philippine mining laws, which are essentially patterned after Anglo-American models, the location and registration of a mining claim must be followed by actual exploration and extraction of mineral deposits. The person who is first to locate and register his mining claim and who subsequently explores the area and extracts mineral deposits has a valid and existing right regardless of technical defect in the registration.

Which between Apex and Balite has priority?

On the one hand, Apex rests its claim to priority on the precept of *first-in-time, first-in-right*, a principle that is explicitly recognized by Section 1 of Presidential Decree (P.D.) No. 99-A, which amended Commonwealth Act (C.A.) No. 137 (*Mining Act*), which provides:

> Whenever there is a conflict between claim owners over a mining claim, whether mineral or non-mineral, the locator of the claim who first registered his claim with the proper mining registrar, notwithstanding any defect in form or technicality, shall have the exclusive right to possess, exploit, explore, develop and operate such mining claim.

Apex argues that Proclamation 297 does not extinguish its existing right over Diwalwal Gold Rush Area, because: (1) it conducted exploration work in the area from 1983 to 1991; (2) it spent a total of ₱15 million on exploration and development work alone; and (3) its petition for intervention was admitted by the Court in this case, which was indicative of its existing right over the disputed area.

On the other hand, Balite states that it filed on June 14, 1994 its application for a Mineral Production Sharing Agreement (MPSA) ahead of SEM; and that it had an existing right over

the disputed area by virtue of its *native title right* under R.A. No. 8371 (IPRA),[2] because its members are indigenous peoples (IPs) belonging to the four tribes of Mangguangan, Manobo, Mandaya and Dibabawon.

During the oral arguments, Balite's counsel described Balite as a "cooperative for everybody," for its members were comprised of nomads, lowlanders, and IPs belonging to the four tribes thus mentioned. Balite further asserts that it is a small-scale mining cooperative, as defined under R.A. No. 7076, and is thus entitled to apply for 25% percent of the Diwalwal mineral reservation.

Under the circumstances, it should be Apex who should be recognized as the claimant with priority, with or without Proclamation 297.

Firstly: Being a cooperative whose principal purpose is to engage in the business of mining, and not in the protection of the rights and interest of cultural minorities, Balite is not entitled to preference *by virtue of* IPRA. I must point out that IPRA speaks of rights of IPs, and of those belonging to the Indigenous Cultural Communities (ICCs), but does not include a cooperative like Balite. Under Sec. 7(b) of IPRA, only IPs and ICCs have the right to "manage and conserve natural resources within the territories and uphold the responsibilities for future generations; to benefit and share the profits from the allocation and utilization of natural resources." IPs and ICCs have also the "right to negotiate the terms and conditions for the exploration of natural resources."

I hasten to clarify, however, that in order to protect the rights of its IP members over certain portions of the Diwalwal mineral reservation, Balite may represent its IP members in negotiating the terms and conditions for the sharing of profit and other benefits arising from the utilization of the mineral deposits that lay beneath their ancestral land with the service contractor chosen by the State, but it cannot directly undertake exploration, development and mining in the Diwalwal mineral reservation.

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[2] *Indigenous People Rights Act of* 1997.

Secondly: Upon learning of MMC's assignment of its EP 133 to SEM, Balite filed with the Regional Executive Director of the Department of Environment and Natural Resources (DENR) a petition seeking the cancellation of EP 133, and the admission of its MPSA (entitled *Rosendo Villaflor, et al. v. Marcopper Mining Corporation* and docketed as RED MINES Case No. 8-8-94). The petition was referred to the Panel of Arbitrator (PA) pursuant to R.A. No. 7942.

Yet, Balite's application for an MPSA, although filed prior to SEM's application, did not qualify Balite as a first locator and registrant of a mining claim, because Apex had registered its claims with the Bureau of Mines and Geo-Sciences (BMG) in 1982, much earlier than either Balite, or any other claimant.

Thirdly: While discovery and prior registration of a mining claim with the mining recorder pave the way for a claimant to acquire a priority right over mineral land, it is also important that the claimant must follow his discovery and registration with actual exploration and mining. The final stage of exploration, development and utilization is crucial to bestow upon the discoverer or first registrant an existing right that he can invoke against the whole world, even against the government.

Apex met the requirements of discovery, registration, actual exploration and mining. In 1982, it explored and developed the area covered by its claims located within the Diwalwal mineral reservation. It constructed mining tunnels, access roads and bridges in and around its mine site to facilitate the extraction and processing of gold ores. It sold tons of gold bullions to the Philippine government from 1982 to 1992, and remitted millions of pesos in tax revenues to the national coffers. It operated a modern gold processing plant, as contrasted from gold panners who used crude mining techniques to extract gold ores.

Fourthly: The primordial consideration for granting or recognizing the existence of real rights over mineral lands is discovery. The State rewards the discoverer of mineral deposits for his labor and perseverance, and encourages other persons to search for more minerals and sources of renewable energy to propel the Nation's economic growth and development. For

this reason, the Philippines adheres to the *first-in-time, first-in-right* postulate not only in resolving disputes involving conflicting claims, but also in determining existing rights of claimants.

In view of the foregoing, Apex has an existing priority right in the Diwalwal mineral reservation by virtue of *first-in-time, first-in-right*, for having performed the requisite acts of location and registration, followed by actual exploration and mining. Although it did not follow the procedure for registering its mining claim laid down in the *Apex Mining Co., Inc. v. Garcia* (G.R. No. 92605, July 16, 1991, 199 SCRA 278), Apex is not barred from acquiring a superior right over the area to the exclusion of other claimants, because the registration of its claims pre-dated that of the other claimants, including MMC, and because by express provision of law (*i.e.*, Sec. 1 of P.D. No. 99-A, which amended C.A. No. 137, *Mining Act*, *supra*) no defect in form or technicality should bar the priority.

Fifthly: That the Court in *Apex Mining Co., Inc. v. Garcia* affirmed the decision of the OP and the DENR nullifying and rendering inoperative Apex's mining claims or declarations of location (DOLs) is of no moment. The priority right of Apex that this Court ought to recognize herein, which the State must honor, does not emanate from the DOLs, but is predicated on the principle of *first-in-time, first-in-right*. The right of Apex to be recognized herein is distinct from its right as a registered owner and operator of the DOLs, considering that the former arises from a vacuum resulting from the extinction and nullification of MMC's EP 133.

Conclusion

I vote to grant the *motion for clarification* of Apex Mining Co., Inc., and to modify the decision by declaring that Apex Mining Co., Inc. has an existing priority right to explore, develop and utilize the mineral deposits in the Diwalwal Gold Rush Area pursuant to Proclamation 297, subject only to the superior right of the State to directly explore, develop and utilize.

EN BANC

[G.R. No. 186616. November 20, 2009]

COMMISSION ON ELECTIONS, *petitioner, vs.* **CONRADO CRUZ, SANTIAGO P. GO, RENATO F. BORBON, LEVVINO CHING, CARLOS C. FLORENTINO, RUBEN G. BALLEGA, LOIDA ALCEDO, MARIO M. CAJUCOM, EMMANUEL M. CALMA, MANUEL A. RAYOS, WILMA L. CHUA, EUFEMIO S. ALFONSO, JESUS M. LACANILAO, BONIFACIO N. ALCAPA, JOSE H. SILVERIO, RODRIGO DEVELLES, NIDA R. PAUNAN, MARIANO B. ESTUYE, JR., RAFAEL C. AREVALO, ARTURO T. MANABAT, RICARDO O. LIZARONDO, LETICIA C. MATURAN, RODRIGO A. ALAYAN, LEONILO N. MIRANDA, DESEDERIO O. MONREAL, FRANCISCO M. BAHIA, NESTOR R. FORONDA, VICENTE B. QUE, JR., AURELIO A. BILUAN, DANILO R. GATCHALIAN, LOURDES R. DEL MUNDO, EMMA O. CALZADO, FELIMON DE LEON, TANY V. CATACUTAN, and CONCEPCION P. JAO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; POLITICAL QUESTION; THESE QUESTIONS PREVIOUSLY IMPERVIOUS TO JUDICIAL SCRUTINY CAN NOW BE INQUIRED INTO UNDER THE LIMITED WINDOW PROVIDED BY SECTION 1, ARTICLE VIII OF THE 1987 CONSTITUTION; SUSTAINED.— Political questions refer "to those questions which, under the Constitution, are to be **decided by the people** in their sovereign capacity, or in regard to which **full discretionary authority** has been delegated to the legislative or executive branch of the government; it is concerned with issues dependent upon the **wisdom**, not **legality** of a particular measure." These questions, previously impervious to judicial scrutiny can now be inquired into under the limited window provided by Section 1, Article VIII. *Estrada v. Desierto* best describes this constitutional

development, and we quote: To a great degree, the 1987 Constitution has narrowed the reach of the political doctrine when it expanded the power of judicial review of this court not only to settle actual controversies involving rights which are legally demandable and enforceable but also 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 government. Heretofore, the judiciary has focused on the "thou shalt not's" of the Constitution directed against the exercise of its jurisdiction. With the new provision, however, courts are given a greater prerogative to determine what it can do to prevent grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government. Clearly, the new provision did not just grant the Court power of doing nothing. In sync and symmetry with this intent are other provisions of the 1987 Constitution trimming the so called political thicket. x x x Thus, we can inquire into a congressional enactment despite the political question doctrine, although the window provided us is narrow; the challenge must show grave abuse of discretion to justify our intervention. Other than the Section 1, Article VIII route, courts can declare a law invalid when it is contrary to any provision of the Constitution. This requires the appraisal of the challenged law against the legal standards provided by the Constitution, not on the basis of the wisdom of the enactment. To justify its nullification, the breach of the Constitution must be clear and unequivocal, not a doubtful or equivocal one, as every law enjoys a strong presumption of constitutionality. These are the hurdles that those challenging the constitutional validity of a law must overcome.

2. CIVIL LAW; RETROACTIVITY OF LAWS; CONGRESS MAY PERMISSIBLY PROVIDE THAT LAWS MAY HAVE RETROACTIVE EFFECT.— Retroactivity of laws is a matter of civil law, not of a constitutional law, as its governing law is the Civil Code, not the Constitution. Article 4 of the Civil Code provides that laws shall have no retroactive effect unless the contrary is provided. The application of the Civil Code is of course self-explanatory – laws enacted by Congress may permissibly provide that they shall have retroactive effect. The Civil Code established a statutory norm, not a constitutional standard. The closest the issue of retroactivity of laws can get to a genuine constitutional issue is if a law's retroactive

application will impair vested rights. Otherwise stated, if a right has already vested in an individual and a subsequent law effectively takes it away, a genuine due process issue may arise. What should be involved, however, is a vested right to life, liberty or property, as these are the ones that may be considered protected by the due process clause of the Constitution. xxx To recapitulate, we find no merit in the respondents' retroactivity arguments because: (1) the challenged proviso did not provide for the retroactive application to *barangay* officials of the three-term limit; Section 43(b) of RA No. 9164 simply continued what had been there before; and (2) the constitutional challenge based on retroactivity was not anchored on a constitutional standard but on a mere statutory norm.

3. POLITICAL LAW; LEGISLATIVE DEPARTMENT; THE QUESTION OF ELIGIBILITY FOR AN ELECTIVE OFFICIAL IS A MATTER FOR CONGRESS TO DECIDE.— What the Constitution clearly provides is the power of Congress to prescribe the qualifications for elective local posts; thus, the question of eligibility for an elective local post is a matter for Congress, not for the courts, to decide. We dealt with a strikingly similar issue in *Montesclaros v. Commission on Elections* where we ruled that SK membership – which was claimed as a property right within the meaning of the Constitution – is a mere statutory right conferred by law.

4. ID.; ID.; EVERY BILL PASSED BY CONGRESS SHALL EMBRACE ONLY ONE SUBJECT WHICH SHALL BE EXPRESSED IN THE TITLE THEREOF; RATIONALE.— Every bill passed by the Congress shall embrace only one subject which shall be expressed in the title thereof. *Fariñas v. Executive Secretary* provides the reasons for this constitutional requirement and the test for its application, as follows: The proscription is aimed against the evils of the so-called omnibus bills and log-rolling legislation as well as surreptitious and/or unconsidered encroaches. The provision merely calls for all parts of an act relating to its subject finding expression in its title. To determine whether there has been compliance with the constitutional requirement that the subject of an act shall be expressed in its title, the Court laid down the rule that – Constitutional provisions relating to the subject matter and titles of statutes should not be so narrowly construed as to cripple or impede the power of legislation. The requirement

that the subject of an act shall be expressed in its title should receive a reasonable and not a technical construction. It is sufficient if the title be comprehensive enough reasonably to include the general object which a statute seeks to effect, without expressing each and every end and means necessary or convenient for the accomplishing of that object. Mere details need not be set forth. The title need not be an abstract or index of the Act. x x x This Court has held that an act having a single general subject, indicated in the title, may contain any number of provisions, no matter how diverse they may be, so long as they are not inconsistent with or foreign to the general subject, and may be considered in furtherance of such subject by providing for the method and means of carrying out the general subject. x x x Moreover, the avowed purpose of the constitutional directive that the subject of a bill should be embraced in its title is to apprise the legislators of the purposes, the nature and scope of its provisions, and prevent the enactment into law of matters which have not received the notice, action and study of the legislators and the public.

5. ID.; BILL OF RIGHTS; EQUAL PROTECTION CLAUSE; EQUALITY GUARANTEED IS THE EQUALITY UNDER THE SAME CONDITIONS AND AMONG PERSONS SIMILARLY SITUATED; NOT APPLICABLE IN CASE AT BAR.— The equal protection guarantee under the Constitution is found under its Section 2, Article III, which provides: *"Nor shall any person be denied the equal protection of the laws."* Essentially, the equality guaranteed under this clause is equality under the same conditions and among persons similarly situated. It is equality among equals, not similarity of treatment of persons who are different from one another on the basis of substantial distinctions related to the objective of the law; when things or persons are different in facts or circumstances, they may be treated differently in law. Appreciation of how the constitutional equality provision applies inevitably leads to the conclusion that no basis exists in the present case for an equal protection challenge. The law can treat *barangay* officials differently from other local elective officials because the Constitution itself provides a significant distinction between these elective officials with respect to length of term and term limitation. The clear distinction, expressed in the Constitution itself, is that while the Constitution provides for a three-year term and

three-term limit for local elective officials, it left the length of term and the application of the three-term limit or any form of term limitation for determination by Congress through legislation. Not only does this disparate treatment recognize substantial distinctions, it recognizes as well that the Constitution itself allows a non-uniform treatment. No equal protection violation can exist under these conditions. From another perspective, we see no reason to apply the equal protection clause as a standard because the challenged proviso did not result in any differential treatment between *barangay* officials and all other elective officials. This conclusion proceeds from our ruling on the retroactivity issue that the challenged proviso does not involve any retroactive application.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Melita D. Go for respondents.

D E C I S I O N

BRION, *J.*:

We resolve in this Decision the constitutional challenge, originally filed before the Regional Trial Court of Caloocan City, Branch 128 (*RTC*), against the following highlighted portion of Section 2 of Republic Act (*RA*) No. 9164 (entitled "An Act Providing for Synchronized Barangay and Sangguniang Kabataan Elections, amending RA No. 7160, as amended, otherwise known as the Local Government Code of 1991"):

Sec. 2. *Term of Office*. – The term of office of all *barangay* and *sangguniang kabataan* officials after the effectivity of this Act shall be three (3) years.

No *barangay* elective official shall serve for more than three (3) consecutive terms in the same position: **Provided, however, That the term of office shall be reckoned from the 1994 *barangay* elections.** Voluntary renunciation of office for any length of time shall not be considered as an interruption in the continuity of service for the full term for which the elective official was elected.

The RTC granted the petition and declared the challenged proviso constitutionally infirm. The present petition, filed by the Commission on Elections (*COMELEC*), seeks a review of the RTC decision.[1]

THE ANTECEDENTS

Before the October 29, 2007 Synchronized *Barangay* and *Sangguniang Kabataan* (*SK*) Elections, some of the then incumbent officials of several *barangays* of Caloocan City[2] filed with the RTC a **petition for declaratory relief** to challenge the constitutionality of the above-highlighted proviso, based on the following arguments:

I. The term limit of *Barangay* officials should be applied prospectively and not retroactively.

II. Implementation of paragraph 2 Section 2 of RA No. 9164 would be a violation of the equal protection of the law.

III. *Barangay* officials have always been apolitical.

The RTC agreed with the respondents' contention that the challenged proviso *retroactively* applied the three-term limit for *barangay* officials under the following reasoning:

> When the Local Government Code of 1991 took effect abrogating all other laws inconsistent therewith, a different term was ordained. Here, this Court agrees with the position of the petitioners that Section 43 of the Code specifically exempted *barangay* elective officials from the coverage of the three (3) consecutive term limit

[1] Filed under Rule 45 of the Rules of Court; the RTC Decision was penned by Judge Eleonor Kwong.

[2] The respondents herein: Conrado Cruz, Santiago P. Go, Renato F. Borbon, Levvino Ching, Carlos C. Florentino, Ruben G. Ballega, Loida Alcedo, Mario M. Cajucom, Emmanuel M. Calma, Manuel A. Rayos, Wilma L. Chua, Eufemio S. Alfonso, Jesus M. Lacanilao, Bonifacio N. Alcapa, Jose H. Silverio, Rodrigo Develles, Nida R. Paunan, Mariano B. Estuye, Jr., Rafael C. Arevalo, Arturo T. Manabat, Ricardo O. Lizarondo, Leticia C. Maturan, Rodrigo A. Alayan, Leonilo N. Miranda, Desederio O. Monreal, Francisco M. Bahia, Nestor R. Foronda, Vicente B. Que, Jr., Aurelio A. Biluan, Danilo R. Gatchalian, Lourdes R. del Mundo, Emma O. Calzado, Felimon de Leon, Tany V. Catacutan, and Concepcion P. Jao.

rule considering that the provision applicable to these *(sic)* class of elective officials was significantly separated from the provisions of paragraphs (a) and (b) thereof. Paragraph (b) is indeed intended to qualify paragraph (a) of Section 43 as regards to *(sic)* all local elective officials except *barangay* officials. Had the intention of the framers of the Code is (*sic*) to include *barangay* elective officials, then no excepting proviso should have been expressly made in paragraph (a) thereof or, by implication, the contents of paragraph (c) should have been stated ahead of the contents of paragraph (b).

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Clearly, the intent of the framers of the constitution *(sic)* is to exempt the *barangay* officials from the three (3) term limits (*sic*) which are otherwise applicable to other elected public officials from the Members of the House of Representatives down to the members of the *sangguniang bayan*/*panlungsod*. It is up for the Congress whether the three (3) term limit should be applied by enacting a law for the purpose.

The amendment introduced by R.A. No. 8524 merely increased the term of office of *barangay* elective officials from three (3) years to five (5) years. Like the Local Government Code, it can be noted that no consecutive term limit for the election of *barangay* elective officials was fixed therein.

The advent of R.A. 9164 marked the revival of the consecutive term limit for the election of *barangay* elective officials after the Local Government Code took effect. Under the assailed provision of this Act, the term of office of *barangay* elective officials reverted back to three (3) years from five (5) years, and, this time, the legislators expressly declared that no *barangay* elective official shall serve for more than three (3) consecutive terms in the same position. The petitioners are very clear that they are not assailing the validity of such provision fixing the three (3) consecutive term limit rule for the election of *barangay* elective officials to the same position. The particular provision the constitutionality of which is under attack is that portion providing for the reckoning of the three (3) consecutive term limit of *barangay* elective officials beginning from the 1994 *barangay* elections.

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Section 2, paragraph 2 of R.A. 9164 is not a mere restatement of Section 43(c) of the Local Government Code. As discussed above,

Section 43(c) of the Local Government Code does not provide for the consecutive term limit rule of *barangay* elective officials. Such specific provision of the Code has in fact amended the previous enactments (R.A. 6653 and R.A. 6679) providing for the consecutive term limit rule of *barangay* elective officials. But, such specific provision of the Local Government Code was amended by R.A. 9164, which reverted back to the previous policy of fixing consecutive term limits of *barangay* elective officials."[3]

In declaring this retroactive application unconstitutional, the RTC explained that:

By giving a retroactive reckoning of the three (3) consecutive term limit rule for *barangay* officials to the 1994 *barangay* elections, Congress has violated not only the principle of prospective application of statutes but also the equal protection clause of the Constitution inasmuch as the *barangay* elective officials were singled out that their consecutive term limit shall be counted retroactively. There is no rhyme or reason why the consecutive limit for these *barangay* officials shall be counted retroactively while the consecutive limit for other local and national elective officials are counted prospectively. For if the purpose of Congress is [*sic*] to classify elective *barangay* officials as belonging to the same class of public officers whose term of office are limited to three (3) consecutive terms, then to discriminate them by applying the proviso retroactively violates the constitutionally enshrined principle of equal protection of the laws.

Although the Constitution grants Congress the power to determine such successive term limit of *barangay* elective officials, the exercise of the authority granted shall not otherwise transgress other constitutional and statutory privileges.

This Court cannot subscribe to the position of the respondent that the legislature clearly intended that the provision of RA No. 9164 be made effective in 1994 and that such provision is valid and constitutional. If we allow such premise, then the term of office for those officials elected in the 1997 *barangay* elections should have ended in year 2000 and not year 2002 considering that RA No. 9164 provides for a three-year term of *barangay* elective officials. The amendment introduced by R.A. No. 8524 would be

[3] *Rollo*, pp. 46-56

rendered nugatory in view of such retroactive application. This is absurd and illusory.

True, no person has a vested right to a public office, the same not being property within the contemplation of constitutional guarantee. However, a cursory reading of the petition would show that the petitioners are not claiming vested right to their office but their right to be voted upon by the electorate without being burdened by the assailed provision of the law that, in effect, rendered them ineligible to run for their incumbent positions. Such right to run for office and be voted for by the electorate is the right being sought to be protected by assailing the otherwise unconstitutional provision.

Moreover, the Court likewise agrees with the petitioners that the law violated the one-act-one subject rule embodied in the Constitution. x x x x The challenged law's title is "AN ACT PROVIDING FOR THE SYNCHRONIZED *BARANGAY* AND *SANGGUNIANG KABATAAN* ELECTIONS, AMENDING REPUBLIC ACT 7160 OTHERWISE KNOWN AS THE LOCAL GOVERNMENT CODE OF 1991 AND FOR OTHER PURPOSES." x x x

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To this court, the non-inclusion in the title of the act on the retroactivity of the reckoning of the term limits posed a serious constitutional breach, particularly on the provision of the constitution [*sic*] that every bill must embrace only one subject to be expressed in the title thereof.

x x x the Court is of the view that the affected *barangay* officials were not sufficiently given notice that they were already disqualified by a new act, when under the previous enactments no such restrictions were imposed.

Even if this Court would apply the usual test in determining the sufficiency of the title of the bill, the challenged law would still be insufficient for how can a retroactivity of the term limits be germane to the synchronization of an election x x x.[4]

The COMELEC moved to reconsider this decision but the RTC denied the motion. Hence, the present petition on a pure question of law.

[4] *Ibid.*

The Petition

The COMELEC takes the position that the assailed law is valid and constitutional. RA No. 9164 is an amendatory law to RA No. 7160 (the Local Government Code of 1991 or *LGC*) and is not a penal law; hence, it cannot be considered an *ex post facto law*. The three-term limit, according to the COMELEC, has been specifically provided in RA No. 7160, and RA No. 9164 merely restated the three-term limitation. It further asserts that laws which are not penal in character may be applied retroactively when expressly so provided and when it does not impair vested rights. As there is no vested right to public office, much less to an elective post, there can be no valid objection to the alleged retroactive application of RA No. 9164.

The COMELEC also argues that the RTC's invalidation of RA No. 9164 essentially involves the wisdom of the law – the aspect of the law that the RTC has no right to inquire into under the constitutional separation of powers principle. The COMELEC lastly argues that there is no violation of the one subject-one title rule, as the matters covered by RA No. 9164 are related; the assailed provision is actually embraced within the title of the law.

THE COURT'S RULING

We find the petition meritorious. The RTC legally erred when it declared the challenged proviso unconstitutional.

Preliminary Considerations

We find it appropriate, as a preliminary matter, to hark back to the pre-1987 Constitution history of the *barangay* political system as outlined by this Court in *David v. COMELEC*,[5] and we quote:

As a unit of government, the *barangay* antedated the Spanish conquest of the Philippines. The word "*barangay*" is derived from the Malay "*balangay*," a boat which transported them (the Malays)

[5] 337 Phil. 534 (1997); penned by Associate Justice, later Chief Justice, Artemio V. Panganiban (retired).

to these shores. Quoting from Juan de Plasencia, a Franciscan missionary in 1577, Historian Conrado Benitez wrote that the *barangay* was ruled by a *dato* who exercised absolute powers of government. While the Spaniards kept the *barangay* as the basic structure of government, they stripped the *dato* or *rajah* of his powers. Instead, power was centralized nationally in the governor general and locally in the *encomiendero* and later, in the *alcalde mayor* and the *gobernadorcillo*. The *dato* or *rajah* was much later renamed *cabeza de barangay*, who was elected by the local citizens possessing property. The position degenerated from a title of honor to that of a "mere government employee. Only the poor who needed a salary, no matter how low, accepted the post."

After the Americans colonized the Philippines, the *barangays* became known as "barrios." For some time, the laws governing barrio governments were found in the Revised Administrative Code of 1916 and later in the Revised Administrative Code of 1917. Barrios were granted autonomy by the original Barrio Charter, RA 2370, and formally recognized as quasi-municipal corporations by the Revised Barrio Charter, RA 3590. During the martial law regime, barrios were "declared" or renamed "*barangays*" — a reversion really to their pre-Spanish names — by PD. No. 86 and PD No. 557. Their basic organization and functions under RA 3590, which was expressly "adopted as the *Barangay* Charter," were retained. However, the titles of the officials were changed to "*barangay* captain," "*barangay* councilman," "*barangay* secretary" and "*barangay* treasurer."

Pursuant to Sec. 6 of Batas Pambansa Blg. 222, "a *Punong Barangay* (*Barangay* Captain) and six *Kagawads ng Sangguniang Barangay* (*Barangay* Councilmen), who shall constitute the presiding officer and members of the *Sangguniang Barangay* (*Barangay* Council) respectively" were first elected on May 17, 1982. They had a term of six years which began on June 7, 1982.

The Local Government Code of 1983 also fixed the term of office of local elective officials at six years. **Under this Code, the chief officials of the *barangay* were the *punong barangay*, six elective *sangguniang barangay* members, the *kabataang barangay* chairman, a *barangay* secretary and a *barangay* treasurer.**

B.P. Blg. 881, the Omnibus Election Code, reiterated that *barangay* officials "shall hold office for six years," and stated that their election was to be held "on the second Monday of May nineteen hundred and

eighty eight and on the same day every six years thereafter." [Emphasis supplied.]

The 1987 Philippine Constitution extended constitutional recognition to *barangays* under Article X, Section 1 by specifying *barangays* as one of the territorial and political subdivisions of the country, supplemented by Section 8 of the same Article X, which provides:

SEC. 8. The term of office of elective local officials, **except *barangay* officials, which shall be determined by law**, shall be three years and **no such official shall serve for more than three consecutive terms**. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected. [Emphasis supplied.]

The Constitutional Commission's deliberations on Section 8 show that the authority of Congress to legislate relates not only to the fixing of the term of office of *barangay* officials, but also to the application of the three-term limit. The following deliberations of the Constitutional Commission are particularly instructive on this point:

MR. NOLLEDO: One clarificatory question, Madam President. What will be the term of the office of *barangay* officials as provided for?

MR. DAVIDE: **As may be determined by law**.

MR. NOLLEDO: As provided for in the Local Government Code?

MR. DAVIDE: Yes.

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THE PRESIDENT: Is there any other comment? Is there any objection to this proposed new section as submitted by Commissioner Davide and accepted by the Committee?

MR. RODRIGO: Madam President, does this prohibition to serve for more than three consecutive terms apply to *barangay* officials?

MR. DAVIDE: **Madam President, the voting that we had on the terms of office did not include the *barangay* officials because it was then the stand of the Chairman of the Committee on Local Governments that the term of *barangay* officials must be determined by law. So it is now for the law to determine whether the restriction on the number of reelections will be included in the Local Government Code.**

MR. RODRIGO: **So that is up to Congress to decide.**

MR. DAVIDE: **Yes.**

MR. RODRIGO: **I just wanted that clear in the record."**[6] [Emphasis supplied.]

After the effectivity of the 1987 Constitution, the *barangay* election originally scheduled by ***Batas Pambansa Blg.* 881**[7] on the second Monday of May 1988 was reset to "the second Monday of November 1988 and every five years thereafter by **RA No. 6653.**"[8] Section 2 of RA No. 6653 changed the term of office of *barangay* officials and introduced a term limitation as follows:

SEC. 2. The term of office of *barangay* officials shall be for **five (5) years** from the first day of January following their election. **Provided, however, That no *kagawad* shall serve for more than two (2) consecutive terms**. [Emphasis supplied]

Under Section 5 of RA No. 6653, the *punong barangay* was to be chosen by seven *kagawads* from among themselves, and they in turn, were to be elected at large by the *barangay* electorate. The *punong barangay*, under Section 6 of the law, may be recalled for loss of confidence by an absolute majority vote of the *Sangguniang Barangay*, embodied in a resolution that shall necessarily include the *punong barangay's* successor.

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[6] Underscoring supplied; cited in *David v. Comelec*, *supra*.

[7] Omnibus Election Code.

[8] Section 1, R.A. No. 6653.

The election date set by RA No. 6653 on the second Monday of November 1988 was postponed yet again to March 28, 1989 by **RA No. 6679** whose pertinent provision states:

SEC. 1. The elections of *barangay* officials set on the second Monday of November 1988 by Republic Act No. 6653 are hereby postponed and reset to March 28, 1989. **They shall serve a term which shall begin on the first day of May 1989 and ending on the thirty-first day of May 1994**.

There shall be held a regular election of *barangay* officials on the second Monday of May 1994 and on the same day every five (5) years thereafter. Their term shall be for five (5) years which shall begin on the first day of June following the election and until their successors shall have been elected and qualified: **Provided, That no *barangay* official shall serve for more than three (3) consecutive terms**.

The *barangay* elections shall be nonpartisan and shall be conducted in an expeditious and inexpensive manner.

Significantly, the manner of election of the *punong barangay* was changed – Section 5 of the law provided that while the seven *kagawads* were to be elected by the registered voters of the *barangay*, "(t)he candidate who obtains the highest number of votes shall be the *punong barangay* and in the event of a tie, there shall be a drawing of lots under the supervision of the Commission on Elections."

More than two (2) years after the 1989 *barangay* elections, **RA No. 7160** (the *LGC*) introduced the following changes in the law:

SEC. 41. *Manner of Election.* — (a) The x x x *punong barangay* shall be elected at large x x x by the qualified voters" therein.

SEC. 43. *Term of Office.*— (a) The term of office of all local elective officials elected after the effectivity of this Code shall be three (3) years, starting from noon of June 30, 1992 or such date as may be provided for by law, except that of elective *barangay* officials: Provided, That all local officials first elected during the

local elections immediately following the ratification of the 1987 Constitution shall serve until noon of June 30, 1992.

(b) **No local elective official shall serve for more than three (3) consecutive terms in the same position**. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of service for the full term for which the elective official concerned was elected.

(c) The term of office of *barangay* officials and members of the *sangguniang kabataan* shall be for three (3) years, which shall begin after the regular election of *barangay* officials on the second Monday of May 1994.

SEC. 387. *Chief Officials and Offices.* — (a) There shall be in each *barangay* a *punong barangay*, seven (7) *sangguniang barangay* members, the *sangguniang kabataan* chairman, a *barangay* secretary and a *barangay* treasurer.

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SEC. 390. *Composition*. — The *Sangguniang barangay*, the legislative body of the *barangay*, shall be composed of the *punong barangay* as presiding officer, and the seven (7) regular *sanguniang barangay* members elected at large and the *sanguniang kabataan* chairman as members. [Emphasis supplied.]

This law started the direct and separate election of the *punong barangay* by the "qualified voters" in the *barangay* and not by the seven (7) *kagawads* from among themselves.[9]

Subsequently or on February 14, 1998, **RA No. 8524** changed the three-year term of office of *barangay* officials under Section 43 of the LGC to five (5) years. On March 19, 2002, **RA No. 9164** introduced the following significant changes: (1) the term of office of *barangay* officials was again fixed at three years on the reasoning that the *barangay* officials should not serve a longer term than their supervisors;[10] and (2) **the challenged**

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[9] See *David v. COMELEC*, *supra* note 5.

[10] See the Deliberations in the Senate, cited in the respondents' Petition for Declaratory Relief; *rollo*, pp. 66-67.

proviso, which states that the 1994 election shall be the reckoning point for the application of the three-term limit, was introduced. Yet another change was introduced three years after or on July 25, 2005 when **RA No. 9340** extended the term of the then incumbent *barangay* officials – due to expire at noon of November 30, 2005 under RA No. 9164 – to noon of November 30, 2007. The three-year term limitation provision survived all these changes.

Congress' Plenary Power to Legislate Term Limits for Barangay Officials and Judicial Power

In passing upon the issues posed to us, we clarify at the outset the parameters of our powers.

As reflected in the above-quoted deliberations of the 1987 Constitution, Congress has plenary authority under the Constitution to determine by legislation not only the duration of the term of *barangay* officials, but also the application to them of a consecutive term limit. Congress invariably exercised this authority when it enacted no less than six (6) *barangay*-related laws since 1987.

Through all these statutory changes, Congress had determined at its discretion both the length of the term of office of *barangay* officials and their term limitation. Given the textually demonstrable commitment by the 1987 Constitution to Congress of the authority to determine the term duration and limition of *barangay* officials under the Constitution, we consider it established that whatever Congress, in its wisdom, decides on these matters are ***political questions beyond the pale of judicial scrutiny***,[11] subject only to the *certiorari* jurisdiction of the courts provided under Section 1, Article VIII of the Constitution and to the judicial authority to invalidate any law contrary to the Constitution.[12]

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[11] See *Baker v. Carr*, 369 US 186, 82 S.Ct. 691, 7 L ed 2d 663, 686 (1962), as cited in *Estrada v. Desierto*, 406 Phil. 1 (2001).

[12] *Garcia v. Executive Secretary* (G.R. No. 157584, April 2, 2009) holds:

> **The power of judicial review is the power of the courts to test the validity of executive and legislative acts for their conformity**

Political questions refer "to those questions which, under the Constitution, are to be **decided by the people** in their sovereign capacity, or in regard to which **full discretionary authority** has been delegated to the legislative or executive branch of the government; it is concerned with issues dependent upon the **wisdom**, not **legality** of a particular measure."[13] These questions, previously impervious to judicial scrutiny can now be inquired into under the limited window provided by Section 1, Article VIII. *Estrada v. Desierto*[14] best describes this constitutional development, and we quote:

To a great degree, the 1987 Constitution has narrowed the reach of the political doctrine when it expanded the power of judicial review of this court not only to settle actual controversies involving rights which are legally demandable and enforceable but also 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 government. Heretofore, the judiciary has focused on the "thou shalt not's" of the Constitution directed against the exercise of its jurisdiction. With the new provision, however, courts are given a greater prerogative to determine what it can do to prevent grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government. Clearly, the new provision did not just grant the Court power of doing nothing.

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with the Constitution. Through such power, the judiciary enforces and upholds the supremacy of the Constitution. For a court to exercise this power, certain requirements must first be met, namely:

(1) an actual case or controversy calling for the exercise of judicial power;

(2) the person challenging the act must have "standing" to challenge; he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement;

(3) the question of constitutionality must be raised at the earliest possible opportunity; and

(4) the issue of constitutionality must be the very *lis mota* of the case.

[13] See *Estrada v. Desierto*, *supra* note 11.

[14] *Ibid.*

In sync and symmetry with this intent are other provisions of the 1987 Constitution trimming the so called political thicket. xxx

Thus, we can inquire into a congressional enactment despite the political question doctrine, although the window provided us is narrow; the challenge must show grave abuse of discretion to justify our intervention.

Other than the Section 1, Article VIII route, courts can declare a law invalid when it is contrary to any provision of the Constitution. This requires the appraisal of the challenged law against the legal standards provided by the Constitution, not on the basis of the wisdom of the enactment. To justify its nullification, the breach of the Constitution must be clear and unequivocal, not a doubtful or equivocal one, as every law enjoys a strong presumption of constitutionality.[15] These are the hurdles that those challenging the constitutional validity of a law must overcome.

The present case, as framed by the respondents, poses no challenge on the issue of grave abuse of discretion. The legal issues posed relate strictly to compliance with constitutional standards. It is from this prism that we shall therefore resolve this case.

The Retroactive Application Issue

a. Interpretative / Historical Consideration

The respondents' first objection to the challenged proviso's constitutionality is its purported retroactive application of the three-term limit when it set the 1994 *barangay* elections as a reckoning point in the application of the three-term limit.

The respondents argued that the term limit, although present in the previous laws, was not in RA No. 7160 when it amended all previous *barangay* election laws. Hence, it was re-introduced

[15] *Abakada Guro Party List v. Purisima*, G.R. No. 166715, August 14, 2008, 562 SCRA 251.

for the first time by RA No. 9164 (signed into law on March 19, 2002) and was applied retroactively when it made the term limitation effective from the 1994 *barangay* elections. As the appealed ruling quoted above shows, the RTC fully agreed with the respondents' position.

Our first point of disagreement with the respondents and with the RTC is on their position that a retroactive application of the term limitation was made under RA No. 9164. Our own reading shows that no retroactive application was made because **the three-term limit has been there all along as early as the second *barangay* law (RA No. 6679) after the 1987 Constitution took effect; it was continued under the LGC and can still be found in the current law. We find this obvious from a reading of the historical development of the law.**

The first law that provided a term limitation for *barangay* officials was **RA No. 6653** (1988); it imposed a two-consecutive term limit. After only six months, Congress, under **RA No. 6679** (1988), changed the two-term limit by providing for a three-consecutive term limit. This consistent imposition of the term limit gives no hint of any equivocation in the congressional intent to provide a term limitation. Thereafter, RA No. 7160 – the LGC – followed, bringing with it the issue of whether it provided, *as originally worded*, for a three-term limit for *barangay* officials. We differ with the RTC analysis of this issue.

Section 43 is a provision under Title II of the LGC on Elective Officials. Title II is divided into several chapters dealing with a wide range of subject matters, **all** relating to local elective officials, as follows: a. Qualifications and Election (Chapter I); b. Vacancies and Succession (Chapter II), c. Disciplinary Actions (Chapter IV) and d. Recall (Chapter V). Title II likewise contains a chapter on Local Legislation (Chapter III).

These Title II provisions are intended to apply to all local elective officials, ***unless the contrary is clearly provided***. A contrary application is provided with respect to the length of the term of office under Section 43(a); while it applies to all

local elective officials, it does not apply to *barangay* officials whose length of term is specifically provided by Section 43(c). In contrast to this clear case of an exception to a general rule, the three-term limit under Section 43(b) does not contain any exception; it applies to all local elective officials who must perforce include *barangay* officials.

An alternative perspective is to view Sec. 43(a), (b) and (c) separately from one another as independently standing and self-contained provisions, except to the extent that they expressly relate to one another. Thus, Sec. 43(a) relates to the term of local elective officials, except *barangay* officials whose term of office is separately provided under Sec. 43(c). Sec. 43(b), by its express terms, relates to all local elective officials without any exception. Thus, the term limitation applies to all local elective officials without any exclusion or qualification.

Either perspective, both of which speak of the same resulting interpretation, is the correct legal import of Section 43 in the context in which it is found in Title II of the LGC.

To be sure, it may be argued, as the respondents and the RTC did, that paragraphs (a) and (b) of Section 43 are the general law for elective officials (other than *barangay* officials); and paragraph (c) is the specific law on *barangay* officials, such that the silence of paragraph (c) on term limitation for *barangay* officials indicates the legislative intent to exclude *barangay* officials from the application of the three-term limit. This reading, however, is flawed for two reasons.

First, reading Section 43(a) and (b) together to the exclusion of Section 43(c), is not justified by the plain texts of these provisions. Section 43(a) plainly refers to local elective officials, except elective *barangay* officials. In comparison, Section 43(b) refers to all local elective officials without exclusions or exceptions. Their respective coverages therefore vary so that one cannot be said to be of the same kind as the other. Their separate topics additionally strengthen their **distinction**; Section 43(a) refers to the term of office while Section 43(b) refers to the

three-term limit. These differences alone indicate that Sections 43(a) and (b) cannot be read together as one organic whole in the way the RTC suggested. Significantly, these same distinctions apply between Sec. 43(b) and (c).

Second, the RTC interpretation is flawed because of its total disregard of the historical background of Section 43(c) – a backdrop that we painstakingly outlined above.

From a historical perspective of the law, the inclusion of Section 43(c) in the LGC is an absolute necessity to clarify the length of term of *barangay* officials. Recall that under RA No. 6679, the term of office of *barangay* officials was five (5) years. The real concern was how Section 43 would interface with RA No. 6679. Without a categorical statement on the length of the term of office of *barangay* officials, a general three-year term for all local elective officials under Section 43(a), standing alone, may not readily and completely erase doubts on the intended abrogation of the 5-year term for *barangay* officials under RA No. 6679. Thus, Congress added Section 43(c) which provided a categorical three-year term for these officials. History tells us, of course, that the unequivocal provision of Section 43(c) notwithstanding, an issue on what is the exact term of office of *barangay* officials was still brought to us *via* a petition filed by no less than the President of the *Liga ng Mga Barangay* in 1997. We fully resolved the issue in the cited *David v. Comelec*.

Section 43(c) should therefore be understood in this context and not in the sense that it intended to provide the complete rule for the election of *barangay* officials, so that in the absence of any term limitation proviso under this subsection, no term limitation applies to *barangay* officials. That Congress had the LGC's three-term limit in mind when it enacted RA No. 9164 is clear from the following deliberations in the House of Representatives (*House*) on House Bill No. 4456 which later became RA No. 9164:

MARCH 5, 2002:

THE DEPUTY SPEAKER (Rep. Espinosa, E.R.). Majority Leader.

REP. ESCUDERO. Mr. Speaker, next to interpellate is the Gentleman from Zamboanga City. I ask that the Honorable Lobregat be recognized.

THE DEPUTY SPEAKER (Rep. Espinosa, E.R.). The Honorable Lobregat is recognized.

REP. LOBREGAT. Thank you very much, Mr. Speaker. Mr. Speaker, this is just …

REP. MACIAS. Willingly to the Gentleman from Zamboanga City.

REP. LOBREGAT. … points of clarification, Mr. Speaker, the term of office. It says in Section 4, "The term of office of all Barangay and *sangguniang kabataan* officials after the effectivity of this Act shall be three years." Then it says, "No *Barangay* elective official shall serve for more than three (3) consecutive terms in the same position."

Mr. Speaker, I think it is the position of the committee that the first term should be reckoned from election of what year, Mr. Speaker?

REP. MACIAS. After the adoption of the Local Government Code, Your Honor. So that the first election is to be reckoned on, would be May 8, 1994, as far as the *Barangay* election is concerned.

REP. LOBREGAT. Yes, Mr. Speaker. So there was an election in 1994.

REP. MACIAS. Then an election in 1997.

REP. LOBREGAT. There was an election in 1997. And there will be an election this year …

REP. LOBREGAT. … election this year.

REP. MACIAS.

That is correct. This will be the third.

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REP. SUMULONG. Mr. Speaker.

THE DEPUTY SPEAKER (Rep. Espinosa, E.R.) The Honorable Sumulong is recognized.

REP. SUMULONG. Again, with the permission of my Chairman, I would like to address the question of Congressman Lobregat.

THE DEPUTY SPEAKER (Rep. Espinosa, E.R.). Please proceed.

REP. SUMULONG. **With respect to the three-year consecutive term limits of *Barangay* Captains that is not provided for in the Constitution and that is why the election prior to 1991 during the enactment of the Local Government Code is not counted because it is not in the Constitution but in the Local Government Code where the three consecutive term limits has been placed**. [Emphasis supplied.]

which led to the following exchanges in the House Committee on Amendments:

March 6, 2002

COMMITTEE ON AMENDMENTS

REP. GONZALES. May we now proceed to committee amendment, if any, Mr. Speaker.

THE DEPUTY SPEAKER (Rep. Gonzalez). The Chair recognizes the distinguished Chairman of the Committee on Suffrage and Electoral Reforms.

REP. SYJUCO. Mr. Speaker, on page 2, line 7, after the word "position", substitute the period (.) and add the following: PROVIDED HOWEVER THAT THE TERM OF OFFICE SHALL BE RECKONED FROM THE 1994 BARANGAY ELECTIONS. So that the amended Section 4 now reads as follows:

> "SEC. 4. *Term of Office*. – The term of office of all *barangay* and *sangguniang kabataan* officials after the effectivity of this Act shall be three (3) years.
>
> No *barangay* elective local official shall serve for more than three (3) consecutive terms in the same position COLON (:) PROVIDED, HOWEVER, THAT THE TERM OF OFFICE SHALL BE RECKONED FROM THE 1994 *BARANGAY* ELECTIONS. Voluntary renunciation of office for any length of time shall not be considered as an interruption in the continuity of service for the full term for which the elective official was elected.

The House therefore clearly operated on the premise that the LGC imposed a three-term limit for *barangay* officials, and the challenged proviso is its way of addressing any confusion that may arise from the numerous changes in the law.

All these inevitably lead to the conclusion that the challenged proviso has been there all along and does not simply retroact the application of the three-term limit to the *barangay* elections of 1994. Congress merely integrated the past statutory changes into a seamless whole by coming up with the challenged proviso.

With this conclusion, the respondents' constitutional challenge to the proviso – based on retroactivity – must fail.

b. No Involvement of Any Constitutional Standard

Separately from the above reason, the constitutional challenge must fail for a more fundamental reason – the respondents' retroactivity objection does not involve a violation of any constitutional standard.

Retroactivity of laws is a matter of civil law, not of a constitutional law, as its governing law is the Civil Code,[16] not the Constitution. Article 4 of the Civil Code provides that laws shall have no retroactive effect unless the contrary is provided. The application of the Civil Code is of course self-explanatory – laws enacted by Congress may permissibly provide that they shall have retroactive effect. The Civil Code established a statutory norm, not a constitutional standard.

The closest the issue of retroactivity of laws can get to a genuine constitutional issue is if a law's retroactive application will impair vested rights. Otherwise stated, if a right has already vested in an individual and a subsequent law effectively takes it away, a genuine due process issue may arise. What should be involved, however, is a vested right to life, liberty or property,

[16] Republic Act No. 386, otherwise known as the Civil Code of the Philippines.

as these are the ones that may be considered protected by the due process clause of the Constitution.

In the present case, the respondents never raised due process as an issue. But even assuming that they did, the respondents themselves concede that there is no vested right to public office.[17] As the COMELEC correctly pointed out, too, there is no vested right to an elective post in view of the uncertainty inherent in electoral exercises.

Aware of this legal reality, the respondents theorized instead that they had a right to be voted upon by the electorate without being burdened by a law that effectively rendered them ineligible to run for their incumbent positions. Again, the RTC agreed with this contention.

We do not agree with the RTC, as we find no such right under the Constitution; if at all, this claimed right is merely a restatement of a claim of vested right to a public office. What the Constitution clearly provides is the power of Congress to prescribe the qualifications for elective local posts;[18] thus, the question of eligibility for an elective local post is a matter for Congress, not for the courts, to decide. We dealt with a strikingly similar issue in *Montesclaros v. Commission on Elections*[19] where we ruled that SK membership – which was claimed as a property right within the meaning of the Constitution – is a

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[17] See Respondents' Comment, pp. 8-9.

[18] CONSTITUTION, Article X, Section 3 provides:

Section 3. The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and **provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units**.

[19] 433 Phil. 620 (2002).

mere statutory right conferred by law. *Montesclaros* instructively tells us:

Congress exercises the power to prescribe the qualifications for SK membership. One who is no longer qualified because of an amendment in the law cannot complain of being deprived of a proprietary right to SK membership. Only those who qualify as SK members can contest, based on a statutory right, any act disqualifying them from SK membership or from voting in the SK elections. **SK membership is not a property right protected by the Constitution because it is a mere statutory right conferred by law. Congress may amend at any time the law to change or even withdraw the statutory right.**

A public office is not a property right. As the Constitution expressly states, a "[P]ublic office is a public trust." No one has a vested right to any public office, much less a vested right to an expectancy of holding a public office. In *Cornejo v. Gabriel*, decided in 1920, the Court already ruled:

> Again, for this petition to come under the due process of law prohibition, it would be necessary to consider an office a "property." ***It is, however, well settled*** x x x ***that a public office is not property within the sense of the constitutional guaranties of due process of law***, but is a public trust or agency. x x x The basic idea of the government x x x is that of a popular representative government, the officers being mere agents and not rulers of the people, one where no one man or set of men has a proprietary or contractual right to an office, but where every officer accepts office pursuant to the provisions of the law and holds the office as a trust for the people he represents.

Petitioners, who apparently desire to hold public office, should realize from the very start that no one has a proprietary right to public office. While the law makes an SK officer an *ex-officio* member of a local government legislative council, the law does not confer on petitioners a proprietary right or even a proprietary expectancy to sit in local legislative councils. The constitutional principle of a public office as a public trust precludes any proprietary claim to public office. Even the State policy directing "equal access to opportunities for public service" cannot bestow on petitioners a

proprietary right to SK membership or a proprietary expectancy to *ex-officio* public offices.

Moreover, while the State policy is to encourage the youth's involvement in public affairs, this policy refers to those who belong to the class of people defined as the youth. Congress has the power to define who are the youth qualified to join the SK, which itself is a creation of Congress. Those who do not qualify because they are past the age group defined as the youth cannot insist on being part of the youth. In government service, once an employee reaches mandatory retirement age, he cannot invoke any property right to cling to his office. In the same manner, since petitioners are now past the maximum age for membership in the SK, they cannot invoke any property right to cling to their SK membership. [Emphasis supplied.]

To recapitulate, we find no merit in the respondents' retroactivity arguments because: (1) the challenged proviso did not provide for the retroactive application to *barangay* officials of the three-term limit; Section 43(b) of RA No. 9164 simply continued what had been there before; and (2) the constitutional challenge based on retroactivity was not anchored on a constitutional standard but on a mere statutory norm.

The Equal Protection Clause Issue

The equal protection guarantee under the Constitution is found under its Section 2, Article III, which provides: *"Nor shall any person be denied the equal protection of the laws."* Essentially, the equality guaranteed under this clause is equality under the same conditions and among persons similarly situated. It is equality among equals, not similarity of treatment of persons who are different from one another on the basis of substantial distinctions related to the objective of the law; when things or persons are different in facts or circumstances, they may be treated differently in law.[20]

Appreciation of how the constitutional equality provision applies inevitably leads to the conclusion that no basis exists in the

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[20] *Abakada Guro Party List v. Purisima, supra* note 16.

present case for an equal protection challenge. The law can treat *barangay* officials differently from other local elective officials because the Constitution itself provides a significant distinction between these elective officials with respect to length of term and term limitation. The clear distinction, expressed in the Constitution itself, is that while the Constitution provides for a three-year term and three-term limit for local elective officials, it left the length of term and the application of the three-term limit or any form of term limitation for determination by Congress through legislation. Not only does this disparate treatment recognize substantial distinctions, it recognizes as well that the Constitution itself allows a non-uniform treatment. No equal protection violation can exist under these conditions.

From another perspective, we see no reason to apply the equal protection clause as a standard because the challenged proviso did not result in any differential treatment between *barangay* officials and all other elective officials. This conclusion proceeds from our ruling on the retroactivity issue that the challenged proviso does not involve any retroactive application.

Violation of the Constitutional One Subject- One Title Rule

Every bill passed by the Congress shall embrace only one subject which shall be expressed in the title thereof. *Fariñas v. Executive Secretary*[21] provides the reasons for this constitutional requirement and the test for its application, as follows:

> The proscription is aimed against the evils of the so-called omnibus bills and log-rolling legislation as well as surreptitious and/or unconsidered encroaches. The provision merely calls for all parts of an act relating to its subject finding expression in its title.
>
> To determine whether there has been compliance with the constitutional requirement that the subject of an act shall be expressed in its title, the Court laid down the rule that –

[21] 463 Phil. 179 (2003).

> Constitutional provisions relating to the subject matter and titles of statutes should not be so narrowly construed as to cripple or impede the power of legislation. The requirement that the subject of an act shall be expressed in its title should receive a reasonable and not a technical construction. It is sufficient if the title be comprehensive enough reasonably to include the general object which a statute seeks to effect, without expressing each and every end and means necessary or convenient for the accomplishing of that object. Mere details need not be set forth. The title need not be an abstract or index of the Act.
>
> xxx xxx xxx
>
> x x x This Court has held that an act having a single general subject, indicated in the title, may contain any number of provisions, no matter how diverse they may be, so long as they are not inconsistent with or foreign to the general subject, and may be considered in furtherance of such subject by providing for the method and means of carrying out the general subject.
>
> xxx xxx xxx
>
> x x x Moreover, the avowed purpose of the constitutional directive that the subject of a bill should be embraced in its title is to apprise the legislators of the purposes, the nature and scope of its provisions, and prevent the enactment into law of matters which have not received the notice, action and study of the legislators and the public.

We find, under these settled parameters, that the challenged proviso does not violate the one subject-one title rule.

First, the title of RA No. 9164, "An Act Providing for Synchronized *Barangay* and *Sangguniang Kabataang* Elections, amending Republic Act No. 7160, as amended, otherwise known as the Local Government Code of 1991," states the law's general subject matter – the amendment of the LGC to synchronize the *barangay* and SK elections and for other purposes. To achieve synchronization of the *barangay* and SK elections, the reconciliation of the varying lengths of the terms of office of *barangay* officials and SK officials is necessary. Closely related with length of term is term limitation which defines the total

number of terms for which a *barangay* official may run for and hold office. This natural linkage demonstrates that term limitation is not foreign to the general subject expressed in the title of the law.

Second, the congressional debates we cited above show that the legislators and the public they represent were fully informed of the purposes, nature and scope of the law's provisions. Term limitation therefore received the notice, consideration, and action from both the legislators and the public.

Finally, to require the inclusion of term limitation in the title of RA No. 9164 is to make the title an index of all the subject matters dealt with by law; this is not what the constitutional requirement contemplates.

WHEREFORE, premises considered, we *GRANT* the petition and accordingly *AFFIRM* the constitutionality of the challenged proviso under Section 2, paragraph 2 of Republic Act No. 9164. Costs against the respondents.

SO ORDERED.

Puno, C.J., Carpio, Carpio Morales, Chico-Nazario, Nachura, Leonardo-de Castro, Bersamin, Del Castillo, Abad, and *Villarama, Jr., JJ.,* concur.

Corona, Velasco, Jr., and *Peralta, JJ.,* on official leave.

SECOND DIVISION

[G.R. No. 163406. November 24, 2009]

POWER SITES AND SIGNS, INC., *petitioner, vs.* **UNITED NEON (a Division of Ever Corporation),** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; ACCEPTANCE OR REJECTION BY THE COURT OF APPEALS OF A PETITION FOR *CERTIORARI* RESTS IN ITS SOUND DISCRETION.— Section 1 of Rule 65 of the Rules of Court provides: Section 1. *Petition for certiorari.* — x x x The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46. A plain reading of the provision indicates that there is no specific enumeration of the documents that must be appended to the petition, other than a certified true copy of the assailed judgment, order, or resolution. In *Condes v. Court of Appeals*, we held that the acceptance or rejection by the Court of Appeals of a petition for *certiorari* rests in its sound discretion. Thus: x x x The initial determination of what pleadings, documents or orders are relevant and pertinent to the petition rests on the petitioner. Thereafter, the CA will review the petition and determine whether additional pleadings, documents or orders should have been attached thereto. The appellate court found the present petition sufficient in form when it proceeded to decide the case on the merits, without raising any question as to the sufficiency of the petition. **Acceptance of a petition for certiorari, as well as granting due course thereto is addressed to the sound discretion of the court. Where it does not appear, as in this case, that in giving due course to the petition for certiorari, the CA committed any error that prejudiced the substantial rights of the parties, there is no reason to disturb its determination that the copies of the pleadings and documents attached to the petition were sufficient to make out a *prima facie* case.** In the same

manner, we find no reversible error when the Court of Appeals gave due course to the petition, since it evidently found that the documents attached to the petition were sufficient.

2. ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; WHEN PROPER.— A preliminary injunction may be granted only where the plaintiff appears to be clearly entitled to the relief sought and has substantial interest in the right sought to be defended. While the existence of the right need not be conclusively established, it must be clear. The standard is even higher in the case of a preliminary mandatory injunction, which should only be granted – x x x 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 x x x. The evidence presented before us in support of a preliminary injunction is weak and inconclusive, and the alleged right sought to be protected by petitioner is vehemently disputed.

3. ID.; ID.; ID.; A WRIT OF PRELIMINARY INJUNCTION SHOULD BE ISSUED ONLY TO PREVENT GRAVE AND IRREPARABLE INJURY; NOT PRESENT IN CASE AT BAR.— It is settled that a writ of preliminary injunction should be issued only to prevent grave and irreparable injury, that is, injury that is actual, substantial, and demonstrable. Here, there is no "irreparable injury" as understood in law. Rather, the damages alleged by the petitioner, namely, "immense loss in profit and possible damage claims from clients" and the cost of the billboard which is "a considerable amount of money" is easily quantifiable, and certainly does not fall within the concept of irreparable damage or injury as described in *Social Security Commission v. Bayona:* Damages are irreparable within the meaning of the rule relative to the issuance of injunction where **there is no standard by which their amount can be measured with reasonable accuracy**. "An irreparable injury which a court of equity will enjoin includes that degree of wrong of a repeated and continuing kind which **produce hurt, inconvenience, or damage that can be estimated only by conjecture, and not**

> **by any accurate standard of measurement**." An irreparable injury to authorize an injunction consists of a serious charge of, or is destructive to, the property it affects, either physically or in the character in which it has been held and enjoined, or when the property has some peculiar quality or use, so that **its pecuniary value will not fairly recompense the owner of the loss thereof**. Here, any damage petitioner may suffer is easily subject to mathematical computation and, if proven, is fully compensable by damages. Thus, a preliminary injunction is not warranted. As previously held in *Golding v. Balatbat*, the writ of injunction — should *never* issue when an action for damages would adequately compensate the injuries caused. The very foundation of the jurisdiction to issue the writ rests in the probability of irreparable injury, the inadequacy of pecuniary compensation, and the prevention of the multiplicity of suits, and where facts are not shown to bring the case within these conditions, the relief of injunction should be refused.

APPEARANCES OF COUNSEL

Uy Clerigo & De Guzman Law Offices for petitioner.

Zamora Poblador Vasquez and Bretaña Law Offices for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Before a court grants injunctive relief, the following must be demonstrated: that complainant is entitled to the relief sought, the actual or threatened violation of complainant's rights, the probability of irreparable injury, and the inadequacy of pecuniary compensation as relief.[1] Otherwise, there is no basis for the issuance of a writ of injunction.

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court of the Decision[2] dated January 29, 2004 and

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[1] See *Golding v. Balatbat*, 36 Phil. 941 (1917).

[2] *Rollo*, pp. 36-46; penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Eubolo G. Verzola and Edgardo F. Sundiam.

the Resolution[3] dated April 28, 2004 of the Court of Appeals in CA-G.R. SP No. 72689.

Petitioner's Factual Allegations

Power Sites and Signs, Inc. (Power Sites) is a corporation engaged in the business of installing outdoor advertising signs or billboards. It applied for, and was granted, the necessary permits to construct a billboard on a site located at Km. 23, East Service Road, Alabang, Muntinlupa (the site).[4] After securing all the necessary permits, Power Sites began to construct its billboard on the site.

Subsequently, in March 2002, petitioner discovered that respondent United Neon, a Division of Ever Corporation (United Neon), had also began installation and erection of a billboard only one meter away from its site and which completely blocked petitioner's sign. Thus, on March 5, 2002, petitioner requested United Neon to make adjustments to its billboard to ensure that petitioner's sign would not be obstructed.[5] However, petitioner's repeated requests that respondent refrain from constructing its billboard were ignored,[6] and attempts to amicably resolve the situation failed.[7]

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[3] *Id.* at 48-50; penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Mario L. Guariña III and Edgardo F. Sundiam.

[4] *Id.* at 68-74; the records reflect that a *barangay* clearance was granted to HCLC Resources and Development Corporation on February 1, 2002. Mr. Renato Reyes So was granted a Building Permit and an Electrical Permit by the Muntinlupa City Engineer and Building Official on February 21, 2002. On that same date, HCLC Resources and Development Corporation was granted a Signboard/Building Permit. Mr. Renato So obtained an exemption from securing a Contractor's Permit and a Temporary Use Permit on February 15, 2001, and paid the required fees on February 21, 2002.

[5] *Id.* at 75.

[6] *Id.* at 77; on June 18, 2002, petitioner again wrote a letter to respondent reiterating that the proposal to share space was turned down, and appealing to respondent's sense of justice and fair play.

[7] *Id.* at 76; United Neon's President, Mr. Danny Lim, suggested that the space be shared on the site. However, petitioner's client was unwilling to accede to the suggestion. Thus, Mr. Lim's offer was declined. This decision was made known to respondent in a letter dated May 10, 2002.

Respondent's Factual Allegations

In January 2002, United Neon and Power Sites separately negotiated with Gen. Pedro R. Balbanero to lease a portion of a property located at East Service Road, South Superhighway, Alabang, Muntinlupa City, in order to build a billboard on the premises.[8] Gen. Balbanero rejected Power Sites' proposal and decided to lease the premises to United Neon. Thus, on January 26, 2002, United Neon and Gen. Balbanero entered into a Contract of Lease (the lease contract).[9]

On January 28, 2002, United Neon registered the lease contract with the Outdoor Advertising Association of the Philippines (OAAP), in accordance with Article 11, Sec. 3.6 of the OAAP Code of Ethics/Guidelines.[10] By virtue of its registration of the Contract of Lease with the OAAP, United Neon alleged that it obtained the exclusive right to the line of sight over the leased property, in accordance with Article 11, Section 3.7 of the OAAP Code of Ethics/Guidelines.[11]

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[8] *Id.* at 117.

[9] *Id.* at 118-119.

[10] The trade practices of the outdoor advertising industry are regulated by the Outdoor Advertising Association of the Philippines (OAAP). Article 11, Section 3.6 of the OAAP Code of Ethics/Guidelines provides:

> 3.6 A duly signed memorandum of agreement, lease agreement or contract of lease with the site owner shall be required before an outdoor company can put up markers on a leased site. Markers must include a prominent sign indicating the company that has leased the site.
>
> It is highly suggested that said document, together with the general details of the intended billboard structure, (such as display dimensions, whether single or double face and structure height), be registered with the Secretariat for recording purposes to protect its intended line of sight rights against possible challenge or debate by other outdoor companies.

[11] Article 11, Section 3.7 provides:

> 3.7 Once registered with the OAAP, the outdoor advertising firm shall have exclusive rights to the intended line-of-sight for the structure for a period of four (4) months from the date of registration. Failure to start construction of the structure within the prescribed four (4) month period to its registered dimensions shall render the said line-of-sight open.

Sometime in February 2002, United Neon started construction of its billboard. Power Sites, after failing to lease the premises from Gen. Balbanero, negotiated with the owner of the adjacent property and secured its own lease in order to erect a billboard that would disrupt United Neon's exclusive line of sight.[12] To protect its rights, on March 6, 2002, United Neon urged Power Sites to relocate the latter's sign to another location, or to construct it in such a way that the sign would not obstruct the view of United Neon's billboard.[13]

Legal Proceedings

In a letter-complaint dated June 29, 2002, petitioner requested the Muntinlupa City Engineer and Building Official to revoke United Neon's building permit and to issue a Cease and Desist Order against it.[14] On July 4, 2002, the City Building Official, Engineer Robert M. Bunyi, referred the complaint to United Neon for comment:

> This refers to your ongoing construction of signboard located at East Service Road, Alabang, City of Muntinlupa, which was granted Building Permit No. 12-02-05-357 dated May 22, 2002 and which is the object of an attached formal complaint x x x
>
> Relative to the foregoing and per inspection conducted by this office, we have noted that your sign is 4 meters away from an existing and on going sign construction with building permit no. 12-02-02-111 which was granted earlier than your permit.
>
> We therefore direct you to submit your position and all your related supporting evidence whether or not you violated the Code of Ethics of Advertisement which is expressly supported by the National

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> The outdoor advertising firm shall have a period of one (1) year from the date of registration to complete the structure in accordance with its registered dimensions. At the expiration of the one (1) year period, the outdoor advertising firm's exclusive right to the line-of-sight shall pertain only to the line-of-sight of the structure, taking into consideration the dimensions thereof at the time.

[12] *Rollo*, pp. 121-123.

[13] *Id.* at 120.

[14] *Id.* at 96-108.

Building Code (PD 1096) Rule V, Section 2.1 of the General Provision and to maintain status quo by desisting from all construction activities in the meantime that this matter is being studied for resolution by this office.[15]

However, before a resolution could be made by the City Building Official, Power Sites filed on July 1, 2002, a *Petition for Injunction with Writ of Preliminary Injunction and Prayer for Temporary Restraining Order and Damages*[16] against United Neon before the Regional Trial Court (RTC) of Muntinlupa City, which was raffled to Branch 256 and docketed as Civil Case No. 02-143.

After the filing of the parties' respective memoranda,[17] which took the place of testimonial evidence, the RTC granted petitioner's prayer for the issuance of a preliminary injunction in an Order dated August 1, 2002.[18] The Writ of Injunction was issued on the same day.[19] The RTC ruled:

After considering the arguments raised by both parties in their respective Memoranda, this Court finds that the plaintiff is entitled to the relief sought considering that the commission and/or continuance of the act of installing the signage by the respondent during the litigation would work grave injustice and irreparable damage to petitioner since it would surely cause immense loss in profit and possible damage claims from its clients because it would certainly cover the sign of the petitioner's clients.

xxx xxx xxx

WHEREFORE, this Court finds the plaintiff's application for the issuance of a Writ of Preliminary Injunction to be meritorious and well taken.

Let therefore a Writ of Preliminary Injunction be issued against the respondent UNITED NEON to cease and desist from constructing/

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[15] *Id.* at 109.

[16] *Id.* at 52-59.

[17] *Id.* at 60-123; on July 28, 2002, petitioner and respondent simultaneously filed their respective Memoranda.

[18] *Id.* at 124-125; penned by Judge Alberto L. Lerma.

[19] *Id.* at 434.

installing the signage and to dismantle any existing sign, girds [sic] or post that support said sign.

xxx xxx xxx[20]

United Neon then filed a *Petition for Prohibition and Certiorari with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction*[21] before the Court of Appeals, which was docketed as CA-G.R. SP No. 72689. In brief, United Neon claimed that the grant of preliminary injunction was unwarranted, particularly because Power Sites only prayed for a prohibitory injunction in its original petition, but the Order went as far as to grant a mandatory injunction in favor of Power Sites. United Neon prayed that the Court of Appeals invalidate the RTC's Order and Writ dated August 1, 2002, issue a temporary restraining order enjoining the RTC from further proceeding with Civil Case No. 02-143, and, after hearing, enjoin the RTC from enforcing the August 1, 2002 Order.

After the parties' exchange of pleadings, the Court of Appeals invalidated the Order of the RTC dated August 1, 2002 and the Writ of Preliminary Injunction, but denied the prayer for prohibition, to wit:

> To warrant the issuance of an injunction, whether prohibitory or mandatory, private respondent's right to the line of sight must be clear. In this case, there is a cloud of doubt as to private respondent's right to the claimed line of sight as petitioner had manifested prior registration of its billboard with the Outdoor Advertising Association of the Philippines (OAAP) which allegedly gave petitioner a protection of its exclusive right to the line of sight.
>
> Injunction should be issued when there is a substantial challenge to the claimed right. The conflicting claims by the parties to the right to the line of sight present an impression that the right claimed by private respondent as its basis for the prayer for the injunctive relief is far from clear. While it is not required that private respondent's right be conclusively established at this stage, it is nevertheless necessary to show, at least tentatively, that it exists

[20] *Id.* at 124-125.

[21] *Id.* at 126-177.

and is not vitiated by any substantial challenge or contradiction, such as has been made by petitioner.

Even the issue of the status quo ante cannot be determined clearly in this case. The status quo ante referred to by private respondent was seriously challenged by petitioner by claiming it was the first to build its structure. Hence, public respondent had no clear basis for the status quo ordered in the injunctive order.

xxx xxx xxx

On the matter of the prayer for prohibition, it is incorrect and improper to declare public respondent incapable of rendering a fair trial due to the erroneous injunctive order issued. Petitioner may avail of other legal remedies if it truly believes that public respondent can no longer deliver fair judgment in this case.

WHEREFORE, premises considered, the petition is PARTIALLY GRANTED, as follows:

1. The assailed Order dated August 1, 2002 and the Writ of Preliminary Injunction issued by public respondent in Civil Case No. 02-143 are hereby declared NULL AND VOID for having issued with grave abuse of discretion amounting to lack or excess of jurisdiction; and

2. The prayer for prohibition is hereby DENIED for lack of merit.

SO ORDERED.[22]

Petitioner's Motion for Partial Reconsideration was denied by the Court of Appeals in a Resolution dated April 28, 2004.[23] Hence, this petition.

Arguments

In essence, Power Sites claims that the Court of Appeals gravely erred in invalidating the Writ of Preliminary Injunction for the following reasons:

1) Power Sites has a better right over the line of sight because it constructed its billboard ahead of the

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

[23] *Id.* at 48-50.

respondent and is therefore entitled to protection under the National Building Code. United Neon could not have begun construction ahead of Power Sites (allegedly in February 2002), since it only obtained its Building Permit in May of 2002. Further, the alleged registration of the lease contract with the OAAP does not bind Power Sites, since the latter is not a member of the OAAP. In any event, proof of the alleged registration of the lease contract was not presented before the trial court; all that was submitted in evidence was an application letter to the OAAP.

2) Even if its original petition did not contain a prayer for the issuance of a mandatory injunction, its Memorandum before the trial court requested the grant of a mandatory injunction.[24] United Neon was still in the initial stages of construction at the time the original petition was filed; hence, Power Sites only prayed for the issuance of a preliminary prohibitory injunction to preserve the *status quo*. However, at the time the parties were required to file their respective memoranda, United Neon's structure was already fully completed. Thus, a preliminary mandatory injunction was required.

3) The Court of Appeals should have dismissed outright the Petition for *Certiorari*, since United Neon failed to attach all the relevant pleadings, in disregard of the Rules of Court.

On the other hand, United Neon claims that the Court of Appeals' Decision and Resolution were correct, and the trial court's Order dated August 1, 2002 and the writ of injunction were patently illegal, for the following reasons:

1) Power Sites has no clear and unmistakable right to be protected, since it failed to register its lease contract

[24] The Memorandum stated:

WHEREFORE, premises considered, it is respectfully prayed that the Honorable Court issue a Writ of Preliminary Injunction directing respondent UNITED NEON to dismantle any existing sign, grids or post that support said sign and to cease and desist from installing the signage until the final resolution of the case.

with the OAAP. In contrast, it is United Neon that has the exclusive right to the line of sight because United Neon began construction ahead of Power Sites, and registered its lease with the OAAP.

2) The issuance of the preliminary mandatory injunction by the RTC, which went beyond the allegations and prayer in the initiatory petition, constituted grave abuse of discretion amounting to lack or excess of jurisdiction.

3) Power Sites did not even have the required permits to construct a billboard, since all the permits issued by the Muntinlupa City government were issued to HCLC Resources and Development Corporation, and not to Power Sites.

4) Power Sites willfully violated the rules against forum shopping, since it sought the same relief from the Muntinlupa City Building Official and before the RTC.

Our Ruling

We find the grant of a preliminary mandatory injunction by the trial court not warranted. Consequently, we affirm the Decision of the Court of Appeals dated January 29, 2004 and its Resolution dated April 28, 2004 in CA-G.R. SP No. 72689.

Procedural Issue

The Court of Appeals properly exercised its discretion in giving due course to the petition

Power Sites claims that the Court of Appeals should not have entertained the petition for *certiorari* because United Neon failed to attach the requisite documentary evidence to its petition.

We are not persuaded. Section 1 of Rule 65 of the Rules of Court provides:

Section 1. *Petition for certiorari.* — x x x

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a

sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

A plain reading of the provision indicates that there is no specific enumeration of the documents that must be appended to the petition, other than a certified true copy of the assailed judgment, order, or resolution. In *Condes v. Court of Appeals*,[25] we held that the acceptance or rejection by the Court of Appeals of a petition for *certiorari* rests in its sound discretion. Thus:

> x x x The initial determination of what pleadings, documents or orders are relevant and pertinent to the petition rests on the petitioner. Thereafter, the CA will review the petition and determine whether additional pleadings, documents or orders should have been attached thereto.
>
> The appellate court found the present petition sufficient in form when it proceeded to decide the case on the merits, without raising any question as to the sufficiency of the petition. **Acceptance of a petition for *certiorari*, as well as granting due course thereto is addressed to the sound discretion of the court**. **Where it does not appear, as in this case, that in giving due course to the petition for *certiorari*, the CA committed any error that prejudiced the substantial rights of the parties, there is no reason to disturb its determination that the copies of the pleadings and documents attached to the petition were sufficient to make out a *prima facie* case**. (Emphasis supplied)

In the same manner, we find no reversible error when the Court of Appeals gave due course to the petition, since it evidently found that the documents attached to the petition were sufficient.

Substantive Issues

The applicant must show that it is entitled to the relief sought, and that acts are being undertaken in violation of the applicant's rights

We emphasize that at this stage of the proceedings, we are not concerned with the merits of the case, but only with the

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[25] G.R. No. 161304, July 27, 2007, 528 SCRA 339, 349-350.

propriety of the issuance of the preliminary injunction by the trial court. After a painstaking review of the arguments and evidence presented by the parties, we find that petitioner was not entitled to the grant of a preliminary injunction for two reasons: first, the alleged right sought to be protected by the petitioner was not clearly demonstrated; second, the requirement of grave and irreparable injury is absent.

A preliminary injunction may be granted only where the plaintiff appears to be clearly entitled to the relief sought[26] and has substantial interest in the right sought to be defended.[27] While the existence of the right need not be conclusively established, it must be clear.[28] The standard is even higher in the case of a preliminary mandatory injunction, which should only be granted—

> xxx 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 xxx.[29]

The evidence presented before us in support of a preliminary injunction is weak and inconclusive, and the alleged right sought to be protected by petitioner is vehemently disputed. We note that both parties allege that: (1) they began construction of their respective billboards first; (2) the billboard of the other party blocks the other's exclusive line of sight; (3) they are entitled

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[26] RULES OF COURT, Rule 58; Sec. 3. See also *Buayan Cattle Co., Inc. v. Quintillan*, 213 Phil. 244, 254 (1984); *Toyota Motor Philippines Corporation v. Court of Appeals*, G.R. No. 102881, December 7, 1992, 216 SCRA 236, 251.

[27] *Angela Estate, Inc. v. Court of First Instance of Negros Occidental*, 133 Phil. 561, 572 (1968).

[28] *Developers Group of Companies, Inc. v. Court of Appeals*, G.R. No. 104583, March 8, 1993, 219 SCRA 715, 721.

[29] *Manila Electric Railroad and Light Company v. Del Rosario*, 22 Phil. 433 (1912).

to protection under the provisions of the National Building Code and OAAP Code of Ethics/Guidelines.[30] However, we are not in a position to resolve these factual matters, which should be resolved by the trial court. The question of which party began construction first and which party is entitled to the exclusive line of sight is inextricably linked to whether or not petitioner has the right that deserves protection through a preliminary injunction. Indeed, the trial court would be in the best position to determine which billboard was constructed first, their actual location, and whether or not an existing billboard was obstructed by another.

At this juncture, it is not even clear to us what relationship Power Sites has to the billboard that would entitle it to seek an injunction, since the documents before us indicate that the *barangay* clearance and the Billboard/Signboard permit were issued to HCLC Resource and Development Corporation, while the Building Permit and Electrical Permit were issued to Mr. Renato Reyes So.[31] As regards the identity of these parties, the explanation thus far presented was –

> HCLC Resource and Development Corp. (HCLC) is a corporation whose majority shares of stock are owned by Mr. Renato So, the same majority owner and President of Power Sites. HCLC and Power Sites are closely connected. HCLC was the entity which constructs the billboards of Power Sites, while the latter remains the owner of the billboards.

Needless to say, this flies in the face of the basic principle in corporation law – that a corporation has a personality separate and distinct from those of its stockholders and other corporations to which it may be connected. Nonetheless, these are matters that are better resolved in the course of trial.

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[30] Rule V(B), Sec. 1 of the National Building Code's Implementing Rules provides that "signs shall adhere to the Code of Ethics for Advertising and Promotions and to the rules and regulations of the appropriate agency in charge of the conduct of business. In this connection, Sec. 3.3 of the OAAP Code of Ethics/Guidelines provides that parties must "avoid installation of an advertising sign that will cover another sign which has been existing."

[31] *Supra* note 4.

The damages alleged by petitioner can be quantified; it cannot be considered as "Grave and Irreparable Injury" as understood in law

It is settled that a writ of preliminary injunction should be issued only to prevent grave and irreparable injury, that is, injury that is actual, substantial, and demonstrable. Here, there is no "irreparable injury" as understood in law. Rather, the damages alleged by the petitioner, namely, "immense loss in profit and possible damage claims from clients" and the cost of the billboard which is "a considerable amount of money"[32] is easily quantifiable, and certainly does not fall within the concept of irreparable damage or injury as described in *Social Security Commission v. Bayona:*[33]

> Damages are irreparable within the meaning of the rule relative to the issuance of injunction where **there is no standard by which their amount can be measured with reasonable accuracy**. "An irreparable injury which a court of equity will enjoin includes that degree of wrong of a repeated and continuing kind which **produce hurt, inconvenience, or damage that can be estimated only by conjecture, and not by any accurate standard of measurement."** An irreparable injury to authorize an injunction consists of a serious charge of, or is destructive to, the property it affects, either physically or in the character in which it has been held and enjoined, or when the property has some peculiar quality or use, so that **its pecuniary value will not fairly recompense the owner of the loss thereof.** (Emphasis supplied)

Here, any damage petitioner may suffer is easily subject to mathematical computation and, if proven, is fully compensable by damages.[34] Thus, a preliminary injunction is not warranted. As previously held in *Golding v. Balatbat*,[35] the writ of injunction–

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[32] *Id*.

[33] 115 Phil. 105, 110 (1962).

[34] *Ollendorff v. Abrahamson*, 38 Phil. 585 (1918).

[35] *Supra* note 1 at 946.

should *never* issue when an action for damages would adequately compensate the injuries caused. The very foundation of the jurisdiction to issue the writ rests in the probability of irreparable injury, the inadequacy of pecuniary compensation, and the prevention of the multiplicity of suits, and where facts are not shown to bring the case within these conditions, the relief of injunction should be refused.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals dated January 29, 2004 in CA-G.R. SP No. 72689 declaring as null the August 1, 2002 Order of the Regional Trial Court of Muntinlupa City, Branch 256 and the Writ of Injunction in Civil Case No. 02-143, and denying the prayer for prohibition, and its Resolution dated April 28, 2004 denying the Motion for Reconsideration, are *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson),[*] *Leonardo-de Castro,*[**] *Brion*, and *Abad, JJ.,* concur.

SECOND DIVISION

[G.R. No. 164886. November 24, 2009]

JOSE FELICIANO LOY, JR., RAYMUNDO HIPOLITO III, and EDGARDO RIDAO, *petitioners, vs.* **SAN MIGUEL CORPORATION EMPLOYEES UNION-PHILIPPINE TRANSPORT AND GENERAL WORKERS ORGANIZATION (SMCEU-PTGWO), as represented by its President Ma. Pilar B. Aquino and SAN MIGUEL CORPORATION CREDIT COOPERATIVE, INC., as represented by its President Daniel Borbon,** *respondents.*

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[*] Per Special Order No. 775 dated November 3, 2009.

[**] Additional member per Special Order No. 776 dated November 3, 2009.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; PLEADINGS; SUPPLEMENTAL ANSWER AND AMENDED ANSWER, DISTINGUISHED.— Pleadings are amended in order to allege facts which occurred prior to the filing of the original pleading. An amended pleading supersedes the pleading that it amends. In the case at bar, the subsequent answer could neither validly amend the first answer nor result in the withdrawal of the latter. It is to be noted that the new Union officers, upon their election, moved for their intervention and substitution on the premise that they became the real party in interest since the defendants in the case have ceased to be the legal representatives of the Union. Certainly, their election as new officers is an occurrence which arose after the filing of the first answer. Hence, the purported amended answer should have been designated as a supplemental answer. A supplemental pleading states the transactions, occurrences or events which took place since the time the pleading sought to be supplemented was filed. A supplemental pleading is meant to supply deficiencies in aid of the original pleading and not to dispense with or substitute the latter. It does not supersede the original, but assumes that the original pleading is to stand. As such, the Answer with Counterclaim filed by Aquino and Frisnedi did not result in the withdrawal of the Answer with Cross-Claim filed by the original defendants in this case, but was merely supplemented by the subsequent answer.

2. ID.; ATTORNEYS; ATTORNEY'S FEES; THE ABSENCE OF AN EXPRESS AUTHORITY FROM THE BOARD OF DIRECTORS IS NOT A BAR TO THE RECOVERY OF ATTORNEY'S FEES; SUSTAINED.— It is relevant to mention that in *Hipolito, Jr. v. Ferrer-Calleja*, we ruled that, notwithstanding the absence of an express authority from the board, a lawyer who represented the union with the knowledge and acquiescence of the board, and the acceptance of benefits arising from the service rendered, is entitled to a reasonable value of his professional services on a *quantum meruit* basis. This finds application in this case considering that the record establishes clearly that petitioners acted as union counsel in the negotiation and consummation of the 1992-1995 CBA and that the benefits from the CBA had been enjoyed by the Union.

In *Research and Services Realty, Inc. v. Court of Appeals*, we enunciated that *quantum meruit* simply means "as much as he deserves." In no case, however, must a lawyer be allowed to recover more than what is reasonable, pursuant to Section 24, Rule 138 of the Rules of Court.

3. ID.; ID.; ID.; *QUANTUM MERUIT*; THE DETERMINATION OF A REASONABLE COMPENSATION FOR THE SERVICES RENDERED BY A LAWYER REQUIRES A FULL-BLOWN TRIAL; ELEMENTS.— The Rules of Court allows the rendition of a summary judgment if the pleadings, supporting affidavits, depositions and admissions on file, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. There can be no summary judgment where questions of fact are in issue or where material allegations of the pleadings are in dispute. In fixing a reasonable compensation for the services rendered by a lawyer on the basis of *quantum meruit*, the elements to be considered are generally (1) the importance of the subject matter in controversy, (2) the extent of services rendered and (3) the professional standing of the lawyer. A determination of these factors would indispensably require nothing less than a full-blown trial where the party can adduce evidence to establish the right to lawful attorney's fees and for the other party to oppose or refute the same. x x x When material allegations are disputed, it cannot be asserted that there is no real issue necessitating a formal trial. We deem it necessary, therefore, that further inquiry should be made in order for petitioners to prove the extent of the services they rendered, the time they consumed in the negotiations and such other matters necessary for the determination of the reasonable value of their services. Mindful that the instant case has been pending for more than a decade, we painstakingly reviewed the records. Unfortunately, we find them inadequate and insufficient to determine the reasonableness of the amount claimed or to fix, for that matter, a reasonable amount of attorney's fees in order to finally resolve the present controversy. Thus, in order to adequately afford both parties ample opportunity to present their evidence in support of their respective claims, a remand is inevitable, but only for the purpose of determining the reasonable amount of attorney's fees on *quantum meruit* basis.

4. ID.; ID.; ID.; WHEN THE IMPOSITION OF INTEREST ON THE AMOUNT CLAIMED IS NOT WARRANTED.—The imposition of any interest, as prayed for in this instant petition, on any amount payable to petitioners is, however, unwarranted. Contracts for attorney's services are unlike any other contracts for the payment of compensation for any other services which allow the imposition of interest in case of delay under the provisions of the Civil Code. The practice of law is a profession, not a moneymaking venture.

5. ID.; APPEALS; AS A RULE THERE CAN BE NO MODIFICATION OF JUDGMENT TO A PARTY WHO DID NOT APPEAL; APPLICATION IN CASE AT BAR.— The purpose of the filing of the brief is merely to present, in coherent and concise form, the points and questions in controversy, and by fair argument on the facts and law of the case, to assist the court in arriving at a just and proper conclusion. The Court of Appeals may have ordered the Credit Cooperative to submit its brief to enable it to properly dispose of the case on appeal. However, in the Credit Cooperative's brief, not only did it ask for the reversal of the Summary Judgment but also prayed for the return of its garnished funds. This cannot be allowed. It would be grave error to grant the relief prayed for without violating the well-settled rule that a party who does not appeal from the decision may not obtain any affirmative relief from the appellate court other than what he has obtained from the lower court, if any, whose decision is brought up on appeal. The rule is clear that no modification of judgment could be granted to a party who did not appeal.

APPEARANCES OF COUNSEL

Raymundo G. Hipolito, III for petitioners.

Luciano R. Caraang for SMCEU-PTGWO.

Dolendo & Associates and *Jaime D. Lauron* for San Miguel Corporation Credit Cooperative, Inc.

D E C I S I O N

DEL CASTILLO, *J.*:

Summary judgments are sanctioned by the Rules of Court as a device to simplify and expedite the resolution of cases when, as shown by pleadings, affidavits, depositions or admissions on the records, there are no genuine issues which would entail an expensive, lengthy and protracted trial. However, if there is a genuine issue of material fact which calls for the presentation of evidence, resort to summary judgment would not be proper. Stated otherwise, if there exists an issue of fact, the motion for summary judgment should be denied.

The instant case is not ripe for summary judgment because the determination of the amount of reasonable attorney's fees requires presentation of evidence and a full-blown trial.

This Petition for Review on *Certiorari*[1] assails the Decision[2] dated September 29, 2003 of the Court of Appeals in CA-G.R. CV No. 66261. The Court of Appeals nullified the Decision[3] rendered by the Regional Trial Court (RTC) of Manila, Branch 53, in Civil Case No. 93-67275, which granted the motion for summary judgment and ordered the release of the ₱3 million garnished funds in favor of petitioners Jose Feliciano Loy, Jr. (Loy, Jr.), Raymundo Hipolito III (Hipolito III) and Edgardo Ridao (Ridao), as payment for their claim for attorney's fees.

Petitioners' Factual Allegations

Petitioners filed a Complaint with Application for Preliminary Attachment[4] for the collection of unpaid attorney's fees for the legal services they rendered to respondent San Miguel Corporation Employees Union - Philippine Transport and General Workers Organization (SMCEU-PTGWO), herein referred to as the Union.

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[1] *Rollo*, pp. 10-41.

[2] *Id.* at 43-56; penned by Associate Justice Roberto A. Barrios and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Arsenio J. Magpale.

[3] *Id.* at 58-72; penned by Judge Manuel T. Muro.

[4] Records, Vol. I, pp. 1-7.

Also impleaded as defendants in said complaint were Raymundo Hipolito, Jr. (Hipolito, Jr.), Efren Carreon (Carreon), Josefina Tongol (Tongol) and Pablo Dee (Dee), who were then the President, Vice-President, Treasurer and Auditor of the Union, respectively.

Petitioners averred that they acted as counsel for the Union in the negotiations of the 1992-1995 Collective Bargaining Agreement (CBA) between the management of three corporations (San Miguel Corporation, Magnolia Corporation and San Miguel Foods, Incorporated) and the Union. They claimed that the legal services they rendered to the Union amounted to at least ₱3 million. In support of their claim, petitioners presented Board Resolution No. 93-02-28[5] allegedly issued by the Union's Board of Directors on February 27, 1993 where it was allegedly resolved that herein petitioners are entitled to 5% attorney's fees based on the 10% assessment fee collected from union members and 10% agency fee collected from non-union members. Petitioners also alleged that pending resolution of the case, they are entitled to the protection of attachment of some of the Union's properties.

On August 24, 1993, the RTC issued an Order[6] attaching all the properties of the Union.

Respondents' Factual Allegations

The Union, Carreon and Tongol filed a Motion to Discharge Writ of Attachment and Dismiss Complaint.[7] They alleged that Board Resolution No. 93-02-28 was not validly passed by the Union's Board or ratified by the Union's general membership. Carreon also alleged that no demand to pay attorney's fees was made to the Union or any of the defendants and that petitioners had already been paid for their services.

On the other hand, defendants Hipolito, Jr. and Dee filed an Answer with Cross-Claim.[8] They admitted that demand was made for the Union to pay attorney's fees and that the Union

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

[6] *Id.* at 12-13; penned by Judge Rosalio G. De La Rosa.

[7] *Id.* at 28-34.

[8] *Id.* at 43-46.

was liable therefor. They, however, denied any personal liability over the same. They also claimed that Carreon and Tongol have absconded with the Union's money. Thus, by way of cross-claim, Hipolito, Jr. and Dee prayed that Carreon and Tongol be ordered to indemnify them in the event they shall be adjudged personally liable to pay petitioners.

By way of Reply with Counterclaim (to Answer with Cross Claim),[9] Carreon and Tongol denied the allegations against them and reiterated their position regarding the defective board resolution.

Proceedings before the Regional Trial Court

On January 3, 1994, the RTC denied the Motion to Discharge Writ of Attachment and Dismiss Complaint.[10] In its Order dated January 4, 1994,[11] the RTC ordered the garnishees – San Miguel Corporation, Magnolia Corporation, San Miguel Foods, Inc., and United Coconut Planters Bank (UCPB) – to deliver the garnished funds to the Clerk of Court, RTC-Manila. Meanwhile, San Miguel Corporation Credit Cooperative, Inc. (Credit Cooperative) moved to intervene in the case claiming that the garnished funds included cooperative dues, the seed capital of which appears to have come from the union funds. In its Answer in Intervention,[12] the Credit Cooperative prayed for the lifting of the garnishment of its funds, arguing that said funds do not belong to or are owned by the Union but actually came from the individual share capital of its members.

On September 29, 1994, a Compromise Agreement[13] was entered into by petitioners and Hipolito, Jr., the latter acting in his capacity as President of the Union and obligating the Union to pay petitioners' claim for attorney's fees in the reduced amount of ₱1.5 million. This Compromise Agreement, although initially approved by the RTC, was later on invalidated and set aside by

[9] *Id.* at 70-75.

[10] *Id.* at 165; penned by Judge Maximo A. Savellana, Jr.

[11] *Id.* at 166.

[12] *Id.* at 300-306.

[13] Records, Vol. II, pp. 501-502.

the trial court on the ground of irregularities surrounding its execution.[14]

The case was then set for pre-trial conference.

Meanwhile, in a local union election of officers held on August 21, 1996, Ma. Pilar B. Aquino (Aquino) and Marcial A. Frisnedi (Frisnedi) were elected as the President and Vice-President, respectively. As newly elected officers of the Union, they filed a Motion for Substitution/Intervention,[15] which was granted in an Order of the RTC dated May 7, 1997.[16] The RTC also allowed the Union, under its new set of officers, to amend its answer to the complaint. As a result, an Answer with Counterclaim[17] was filed on September 29, 1997.

The RTC ordered the garnished funds of the Union in the amount of ₱3 million to be deposited with the Philippine National Bank.[18] On May 6, 1999, the trial court denied the Union's motion to resume pre-trial and instead, set the trial of the case on June 17, July 1 and 15, 1999.[19]

However, on June 16, 1999, petitioners filed a Motion for Summary Judgment.[20] They averred that the case was ripe for Summary Judgment because there was a judicial admission that legal services were indeed rendered which resulted to the benefits enjoyed by the workers in the 1992-1995 CBA.

The Union opposed the motion arguing that it only admitted the allegation in the complaint insofar as the benefits enjoyed by the workers in the 1992-1995 CBA are concerned but not the legal services allegedly rendered by petitioners. Further, it alleged that the amount claimed as attorney's fees was unconscionable.

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[14] RTC Order dated August 16, 1996 and August 25, 1997, Records, Vol. III, pp. 933-934 and 1101, respectively.

[15] *Id.* at 978-985.

[16] *Id.* at 1013.

[17] *Id.* at 1112-1117.

[18] RTC Order dated June 23, 1997, *id.* at 1073.

[19] RTC Order dated May 6, 1999, *id.* at 1250.

[20] *Id.* at 1254-1258.

On September 14, 1999, the trial court rendered its Decision granting the motion for summary judgment. It held that the case was ripe for summary judgment in view of the Union's admission, through Hipolito, Jr., of its monetary obligation to petitioners in the amount of ₱3 million for the legal services they rendered. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, the Motion for Summary Judgment is granted and judgment is hereby rendered in favor of the plaintiffs as alleged in their complaint.
>
> The PNB, Escolta Branch, is therefore ordered to release immediately the Three Million Pesos (₱3,000,000.00) garnished funds in the name of Regional Trial Court of Manila, Branch 53, in connection with Civil Case No. 93-67275 in favor of herein plaintiffs, in compliance with this judgment.
>
> SO ORDERED.[21]

Proceedings before the Court of Appeals

The Union appealed to the Court of Appeals which rendered the assailed September 29, 2003 Decision,[22] nullifying the RTC's Decision and remanding the case to the trial court for further proceedings. The appellate court noted that in the amended answer, the Union denied the legal services which petitioners claimed to have been rendered. It was also alleged therein that Hipolito, Jr. fraudulently executed the compromise agreement where he acceded, allegedly on behalf of the Union, to pay the reduced amount of ₱1.5 million as attorney's fees. Moreover, it was claimed that Board Resolution No. 93-02-28 was not validly acted upon by the Board or ratified by the general membership of the Union. The ₱3 million attorney's fees was also described as unconscionable. Finally, the intervenor Credit Cooperative denied that the Union owned the funds that were garnished. As found by the Court of Appeals, these were issues which required the presentation of evidence and which could only be resolved through full-blown trial and proceedings.

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[21] *Rollo,* p. 72.

[22] CA *rollo,* pp. 43-52.

The dispositive portion of the Decision of the Court of Appeals reads:

WHEREFORE, finding merit in the appeal, the assailed decision of September 14, 1999 is NULLIFIED and SET ASIDE. Let the records be remanded to the court *a quo* for further proceedings.

SO ORDERED.[23]

Petitioners filed a motion for reconsideration but it was denied.

Issues

Hence, this petition anchored on the following grounds:

THE HONORABLE COURT OF APPEALS HAS DECIDED THE CASE CONTRARY TO LAW ON SUMMARY JUDGMENT AND TOTALLY IGNORING THE TWO (2) APPLICABLE AND SIMILAR DECISION[24] AND RESOLUTION[25] OF THE HONORABLE SUPREME COURT INVOLVING THE SAME PARTIES, SAME ISSUES AND/OR SAME INCIDENT.

THE HONORABLE COURT OF APPEALS ERRONEOUSLY RECOGNIZED INTERVENOR-RESPONDENT SAN MIGUEL CORPORATION EMPLOYEES CREDIT COOPERATIVE INC., CONTRARY TO LAW UNDER ARTICLE 242 (D) AND (F) OF THE LABOR CODE, AS AMENDED AND WHOSE IDENTITY TO BE

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[23] *Rollo*, p. 52.

[24] In *Hipolito, Jr. v. Ferrer-Calleja*, G.R. No. 81830, October 1, 1990, 190 SCRA 182, we ruled in favor of Atty. Raymundo Hipolito III's (one of the petitioners in the case at bar) entitlement to a reasonable value of his professional services on a *quantum meruit* basis in the amount of ₱130,000.00, for acting as union counsel in the negotiation and consummation of the 1986 CBA between the San Miguel Corporation management and SMCEU-PTGWO (herein respondent Union), although his appointment as union counsel was not authorized by a board resolution since the legal services were rendered with the knowledge and acquiescence of the board and that such services redounded to the benefit of the union.

[25] In the Minute Resolution dated September 19, 2001 in Administrative Case CBD No. 97-521, entitled *Ma. Pilar B. Aquino and Marcial Frisnedi v. Atty. Raymundo Hipolito III*, we affirmed the Integrated Bar of the Philippines' (IBP) Resolution dismissing the disbarment case filed by SMCEU-PTGWO's President Ma. Pilar Aquino and Vice President Marcial Frisnedi (respondents in the case at bar), against Atty. Raymundo Hipolito III (one

THAT OF THE DEFENDANT UNION HAD ALREADY BEEN FINALLY RULED BY THE COURT *A QUO*.[26]

Petitioners contend that there are no genuine issues necessitating a full-blown trial in view of the Answer with Cross-Claim[27] filed by Hipolito, Jr. and Dee, which essentially admitted all the allegations of the complaint. They argue that the Court of Appeals erred in holding that the Answer with Cross-Claim was superseded and replaced by the Amended Answer with Counterclaim[28]filed by the Union through its new set of officers in 1997. They allege that their right to be compensated for their legal services and the reasonableness of the amount of their claim were already heard, tried and upheld in *Hipolito, Jr. v. Ferrer-Calleja*[29] and *Aquino and Frisnedi v. Atty. Raymundo Hipolito III*.[30] Therefore, the controversy cannot anymore be heard again on the theory of conclusiveness of judgment. Finally, they claim that the Credit Cooperative has no *locus standi* before the Court of Appeals and this Court since it did not appeal from the RTC's Decision as well as the RTC's Order[31] declaring that its funds were part of union funds and were, therefore, properly garnished. Hence, the Court of Appeals should not have remanded the case to the RTC but instead affirmed the September 14, 1999 Decision.

Our Ruling

The petition is partially meritorious.

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of the petitioners in the case at bar). The IBP upheld Atty. Hipolito III's right to attorney's fees for acting in collaboration with two other lawyers, Atty. Jose Feliciano Loy and Atty. Edgardo Ridao, in representing the Union SMCEU-PTGWO, whose endeavors led to the conclusion of the 1992-1995 CBA between the Union and the management.

[26] *Rollo*, p. 24.

[27] *Supra* note 8.

[28] *Supra* note 17.

[29] *Supra* note 24.

[30] *Supra* note 25.

[31] RTC Order dated January 4, 1994, Records, Vol. I, p.166; Annex "K"/ "L" of the Petition, *rollo*, pp. 110-112.

The Answer with Counterclaim filed by Aquino and Frisnedi merely supplemented the Answer with Cross-Claim filed by Hipolito, Jr. and Dee; it cannot be deemed to have replaced the same.

The voluminous records of this case disclose that on September 23, 1993, an Answer with Cross-Claim[32] essentially admitting all the allegations of the Complaint[33] was filed by defendants Hipolito, Jr. and Dee, as incumbent officers of the Union. Four years later, or on September 29, 1997, another Answer with Counterclaim[34] was filed by the Union through its new set of officers. Petitioners contend that it was error for the Court of Appeals to consider the first answer as expunged by the subsequent answer filed by the new Union officers. In refutation, respondent Union asserts that the former answer has been superseded by its amended answer, which disputes the material allegations of the complaint.

On this point, we agree with petitioners' contention that the first answer cannot be deemed to have been replaced by the subsequent answer filed by the new Union officers. Pleadings are amended in order to allege facts which occurred prior to the filing of the original pleading. An amended pleading supersedes the pleading that it amends.[35] In the case at bar, the subsequent answer could neither validly amend the first answer nor result in the withdrawal of the latter. It is to be noted that the new Union officers, upon their election, moved for their intervention and substitution on the premise that they became the real party in interest since the defendants in the case have ceased to be the legal representatives of the Union. Certainly, their election as new officers is an occurrence which arose after the filing of the first answer. Hence, the purported amended answer should have been designated as a supplemental answer. A supplemental pleading

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[32] *Supra* note 8.

[33] *Supra* note 4.

[34] *Supra* note 17.

[35] RULES OF COURT, Rule 10, Section 8.

states the transactions, occurrences or events which took place since the time the pleading sought to be supplemented was filed.[36] A supplemental pleading is meant to supply deficiencies in aid of the original pleading and not to dispense with or substitute the latter. It does not supersede the original, but assumes that the original pleading is to stand.[37] As such, the Answer with Counterclaim filed by Aquino and Frisnedi did not result in the withdrawal of the Answer with Cross-Claim filed by the original defendants in this case, but was merely supplemented by the subsequent answer.

There is an implied admission that petitioners rendered legal services to the Union.

The supplemental answer contains an averment that petitioners were already duly paid for their legal services as shown by a Statement of Receipt and Disbursements[38] issued by the union officers confirming payment of petitioners' legal fees. The same averment was likewise evident in the Motion to Discharge Writ of Attachment and Dismiss Complaint[39] filed by defendants Carreon and Tongol. Indubitably, even without considering the first answer, which admitted the allegations in the complaint, an implied admission that petitioners rendered legal services for the Union is apparent in the pleadings filed by the defendants in the case.

At any rate, the records of the case reveal that petitioners indeed took part in the negotiations for the consummation of the CBA. The letter of the Union President addressed to San Miguel Corporation dated July 8, 1992, regarding the Union's CBA proposals for 1992,[40] as well as the Minutes of the First

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[36] *De Rama v. Court of Appeals*, 405 Phil. 531, 547 (2001).

[37] *Asset Privatization Trust v. Court of Appeals*, 381 Phil. 530, 545(2000).

[38] Annex "A" of the Union's Answer with Counterclaim, Records, Vol. III, p. 1118.

[39] *Supra* note 7.

[40] Records, Vol. I, pp. 115-116.

CBA Negotiation Meeting held on July 23, 1992,[41] indicated petitioners as members of the union negotiating panel. Furthermore, the Integrated Bar of the Philippines (IBP) confirmed petitioners' representation for the Union in the 1992-1995 collective bargaining negotiations, as shown in an investigation conducted in connection with the disbarment case filed against petitioner Hipolito III.

Based on the foregoing, we find that petitioners indeed rendered legal services to the Union.

The absence of an express authority from the Board is not a bar to the recovery of attorney's fees.

The validity of the board resolution put forth by petitioners as basis for their claim as well as the absence of a written agreement as to the amount of attorney's fees were questioned. However, it is relevant to mention that in *Hipolito, Jr. v. Ferrer-Calleja*,[42] we ruled that, notwithstanding the absence of an express authority from the board, a lawyer who represented the union with the knowledge and acquiescence of the board, and the acceptance of benefits arising from the service rendered, is entitled to a reasonable value of his professional services on a *quantum meruit* basis. This finds application in this case considering that the record establishes clearly that petitioners acted as union counsel in the negotiation and consummation of the 1992-1995 CBA and that the benefits from the CBA had been enjoyed by the Union.

In *Research and Services Realty, Inc. v. Court of Appeals*,[43] we enunciated that *quantum meruit* simply means "as much as he deserves." In no case, however, must a lawyer be allowed

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[41] *Id.* at 117.

[42] *Supra* note 24.

[43] 334 Phil. 652, 668 (1997).

to recover more than what is reasonable, pursuant to Section 24, Rule 138 of the Rules of Court.[44]

The determination of the amount of reasonable attorney's fees would require presentation of evidence and a full-blown trial.

The Rules of Court allows the rendition of a summary judgment if the pleadings, supporting affidavits, depositions and admissions on file, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.[45] There can be no summary judgment where questions of fact are in issue or where material allegations of the pleadings are in dispute.[46]

In fixing a reasonable compensation for the services rendered by a lawyer on the basis of *quantum meruit*, the elements to be considered are generally (1) the importance of the subject matter in controversy, (2) the extent of services rendered and (3) the professional standing of the lawyer. A determination of these factors would indispensably require nothing less than a full-blown trial where the party can adduce evidence to establish the right to lawful attorney's fees and for the other party to oppose or refute the same.[47]

The Union considers the attorney's fees in the amount of ₱3 million as unreasonable, unconscionable and without basis. In

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[44] Sec. 24. *Compensation of attorneys; agreement as to fees*. — An attorney shall be entitled to have and recover from his client no more than a reasonable compensation for his services, with a view to the importance of the subject matter of the controversy, the extent of the services rendered, and the professional standing of the attorney. No court shall be bound by the opinion of attorneys as expert witnesses as to the proper compensation, but may disregard such testimony and base its conclusion on its own professional knowledge. A written contract for services shall control the amount to be paid therefor unless found by the court to be unconscionable or unreasonable.

[45] RULES OF COURT, Rule 35.

[46] *Cotabato Timberland Co., Inc. v. C. Alcantara and Sons, Inc*., G.R. No. 145469, May 28, 2004, 430 SCRA 227, 236.

[47] *Rilloraza, Africa, De Ocampo and Africa v. Eastern Telecommunication Phils., Inc*., 369 Phil. 1, 11-12 (1999).

fixing said amount of attorney's fees, the RTC ratiocinated that the issue of the reasonableness of the amount claimed as attorney's fees had been heard by the IBP in the disbarment case. It also relied on the testimony given by Ms. Oswalda Abuerne (Abuerne), the Credit Cooperative's bookkeeper, on October 4, 1994, as follows:

> Q Now, according to your earlier statement in open Court you said that ₱589,992.83 of the money now in the possession of the San Miguel Corporation Employees Credit Cooperative, Inc., came from union members?
>
> A Yes, sir.
>
> Q How did you happen to collect these from the union members, to receive these from the union members?
>
> A Based on the records of the cooperative, I think it was 1990 CBA, that the union, I mean, there is an agreement between the members, that the members of the union, I think all the employees of the San Miguel Corporation signed an agreement that the lump sum money they will receive they will give five (5%) percent for attorney's fee and that five (5%) percent, **4% is for attorney's fee** and one (1%) percent is for the seed capital of the cooperative.[48]

Based on this testimony, the RTC concluded that:

> The question of unconscionableness of ₱3,000,000,00 (sic) Attorney's fees of Atty. Hipolito has been heard and tried by the Integrated Bar of the Philippines. Hence, all defenses and claims of defendant Union now through the new president Aquino shall be dismissed under Section 7, Rule 9, 1997 Rules of Civil Procedure necessitating a Summary judgment, attaching therewith the various transcripts of stenographic notes of the Integrated Bar of the Philippines. That there is [sic] no more triable issues otherwise what was heard by the IBP on unconscionable attorney's fees would be heard again. That if the defendant Union in 1990 prior to the instant case paid a single lone-lawyer of the Union of 5% broken down as follows: 4% (2.3 Million as Attorney's fees) and 1% (670,799.52 as seed capital of the Union's cooperative) as shown in the Court's T.S.N. dated October 4, 1994; the defendant Union can not now claim

[48] TSN, October 4, 1994, Records, Vol. III, pp. 1166-1167.

the ₱3 Million Attorney's fees for three (3) lawyers with a higher and subsequent 1993 CBA benefits as unconscionable.[49]

We find that the RTC erroneously ruled on this matter. First, it does not appear from the Report and Recommendation[50] of Commissioner Jaime M. Vibar, the IBP Commissioner who tried the disbarment case, that a pronouncement was made as to how much Hipolito III (petitioner herein) should receive as attorney's fees. The IBP merely sustained Hipolito III's entitlement to compensation for acting as union counsel in collaboration with Loy, Jr. and Ridao (co-petitioners herein) in concluding the 1992-1995 CBA, but refused to fix an amount as the matter was already being heard in court. Second, the testimony of Abuerne was unsubstantiated by evidence, thereby making her an incompetent witness to testify on such matters. The records of the Credit Cooperative were not presented to substantiate Abuerne's statements. The lawyer who was allegedly paid ₱2.3 million attorney's fees in 1990 was not also presented to testify. No proof was proffered to show that Hipolito III was entitled to or actually received the amount. Hence, the RTC arbitrarily fixed petitioners' attorney's fees at ₱3 million despite insufficient factual basis.

When material allegations are disputed, it cannot be asserted that there is no real issue necessitating a formal trial.[51] We deem it necessary, therefore, that further inquiry should be made in order for petitioners to prove the extent of the services they rendered, the time they consumed in the negotiations and such other matters necessary for the determination of the reasonable value of their services.

Mindful that the instant case has been pending for more than a decade, we painstakingly reviewed the records. Unfortunately, we find them inadequate and insufficient to determine the reasonableness of the amount claimed or to fix, for that matter,

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[49] Records, Vol. III, pp. 1319-1320.

[50] Annex "F" of the Petition for Review on *Certiorari*, *rollo*, pp. 75-82.

[51] *Cotabato Timberland Co., Inc. v. C. Alcantara and Sons, Inc.*, *supra* note 46.

a reasonable amount of attorney's fees in order to finally resolve the present controversy. Thus, in order to adequately afford both parties ample opportunity to present their evidence in support of their respective claims, a remand is inevitable, but only for the purpose of determining the reasonable amount of attorney's fees on *quantum meruit* basis.

The imposition of interest on the amount claimed is not warranted.

The imposition of any interest, as prayed for in this instant petition, on any amount payable to petitioners is, however, unwarranted. Contracts for attorney's services are unlike any other contracts for the payment of compensation for any other services which allow the imposition of interest in case of delay under the provisions of the Civil Code.[52] The practice of law is a profession, not a moneymaking venture.[53]

The Credit Cooperative has no locus standi for failure to file an appeal.

Petitioners correctly argue that the Credit Cooperative has no *locus standi* on appeal, since it failed to file a notice of appeal to the RTC's September 14, 1999 Decision granting the motion for summary judgment. It was only the Union which appealed the case through a notice of appeal filed by its counsel, Atty. Luciano R. Caraang (Atty. Caraang). There is also no showing that Atty. Caraang represented both the Union and the Credit Cooperative in filing such notice of appeal. In fact, the Credit Cooperative did not deny its failure to file an appeal; however, it argued that it filed with the Court of Appeals an appellant's brief in compliance with the appellate court's directive to submit one. Suffice it to state that the Court of Appeals' directive for the Credit Cooperative to file its brief did not clothe the Credit Cooperative with *locus standi* on appeal. The purpose of the filing of the brief is merely to present, in coherent and

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[52] *Cortes v. Court of Appeals*, 443 Phil. 42, 54 (2003).

[53] *Atty. Victoriano V. Orocio v. Edmund P. Anguluan, Lorna T. Dy and National Power Corporation*, G.R. Nos. 179892-93, January 30, 2009.

concise form, the points and questions in controversy, and by fair argument on the facts and law of the case, to assist the court in arriving at a just and proper conclusion.[54] The Court of Appeals may have ordered the Credit Cooperative to submit its brief to enable it to properly dispose of the case on appeal. However, in the Credit Cooperative's brief, not only did it ask for the reversal of the Summary Judgment but also prayed for the return of its garnished funds. This cannot be allowed. It would be grave error to grant the relief prayed for without violating the well-settled rule that a party who does not appeal from the decision may not obtain any affirmative relief from the appellate court other than what he has obtained from the lower court, if any, whose decision is brought up on appeal.[55] The rule is clear that no modification of judgment could be granted to a party who did not appeal.[56]

WHEREFORE, the petition is *PARTIALLY GRANTED*. The Decision of the Court of Appeals is *AFFIRMED with MODIFICATION* that the case is ordered remanded to the court of origin for further trial but only for the purpose of fixing the petitioners' attorney's fees (without interest) on *quantum meruit* basis, to be conducted with deliberate dispatch in accordance with this Decision.

SO ORDERED.

Carpio (Chairperson),[*] *Leonardo-de Castro,*[**] *Brion,* and *Abad, JJ.,* concur.

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[54] *Philippine Coconut Authority v. Corona International, Inc.*, 395 Phil. 742, 750 (2000).

[55] *Go v. Court of Appeals*, 188 Phil. 540, 543 (1980).

[56] *Pepsi Cola Products (Phils) v. Patan, Jr.*, 464 Phil. 517, 523 (2004).

[*] Per Special Order No. 775 dated November 3, 2009.

[**] Additional member per Special Order dated November 3, 2009.

SECOND DIVISION

[G.R. No. 168940. November 24, 2009]

SPS. ISAGANI CASTRO and DIOSDADA CASTRO, *petitioners, vs.* **ANGELINA DE LEON TAN, SPS. CONCEPCION T. CLEMENTE and ALEXANDER C. CLEMENTE, SPS. ELIZABETH T. CARPIO and ALVIN CARPIO, SPS. MARIE ROSE T. SOLIMAN and ARVIN SOLIMAN and JULIUS AMIEL TAN,** *respondents.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; MORTGAGE; STIPULATIONS AUTHORIZING INIQUITOUS OR UNCONSCIONABLE INTERESTS ARE CONTRARY TO MORALS.— In several cases, we have ruled that stipulations authorizing iniquitous or unconscionable interests are contrary to morals, if not against the law. In *Medel v. Court of Appeals*, we annulled a stipulated 5.5% per month or 66% per annum interest on a ₱500,000.00 loan and a 6% per month or 72% per annum interest on a ₱60,000.00 loan, respectively, for being excessive, iniquitous, unconscionable and exorbitant. In *Ruiz v. Court of Appeals*, we declared a 3% monthly interest imposed on four separate loans to be excessive. In both cases, the interest rates were reduced to 12% per annum. In this case, the 5% monthly interest rate, or 60% per annum, compounded monthly, stipulated in the *Kasulatan* is even higher than the 3% monthly interest rate imposed in the *Ruiz* case. Thus, we similarly hold the 5% monthly interest to be excessive, iniquitous, unconscionable and exorbitant, contrary to morals, and the law. It is therefore void *ab initio* for being violative of Article 1306 of the Civil Code. With this, and in accord with the *Medel* and *Ruiz* cases, we hold that the Court of Appeals correctly imposed the legal interest of 12% per annum in place of the excessive interest stipulated in the *Kasulatan.*

2. ID.; ID.; ID.; ID.; THE LEGAL INTEREST OF 12% PER ANNUM MUST BE IMPOSED IN LIEU OF EXCESSIVE INTEREST STIPULATED IN THE AGREEMENT;

SUSTAINED.— In *Abe v. Foster Wheeler Corporation,* we held that the freedom of contract is not absolute. The same is understood to be subject to reasonable legislative regulation aimed at the promotion of public health, morals, safety and welfare. One such legislative regulation is found in Article 1306 of the Civil Code which allows the contracting parties to "establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order or public policy." To reiterate, we fully agree with the Court of Appeals in holding that the compounded interest rate of 5% per month, is iniquitous and unconscionable. Being a void stipulation, it is deemed inexistent from the beginning. The debt is to be considered without the stipulation of the iniquitous and unconscionable interest rate. Accordingly, the legal interest of 12% per annum must be imposed in lieu of the excessive interest stipulated in the agreement, in line with our ruling in *Ruiz v. Court of Appeals,* thus: The foregoing rates of interests and surcharges are in accord with *Medel vs. Court of Appeals*, *Garcia vs. Court of Appeals*, *Bautista vs. Pilar Development Corporation,* and the recent case of *Spouses Solangon vs. Salazar*. This Court invalidated a stipulated 5.5% per month or 66% per annum interest on a ₱500,000.00 loan in *Medel* and a 6% per month or 72% per annum interest on a ₱60,000.00 loan in *Solangon* for being excessive, iniquitous, unconscionable and exorbitant. In both cases, we reduced the interest rate to 12% per annum. We held that while the Usury Law has been suspended by Central Bank Circular No. 905, s. 1982, effective on January 1, 1983, and parties to a loan agreement have been given wide latitude to agree on any interest rate, still stipulated interest rates are illegal if they are unconscionable. Nothing in the said circular grants lenders *carte blanche* authority to raise interest rates to levels which will either enslave their borrowers or lead to a hemorrhaging of their assets. On the other hand, in *Bautista vs. Pilar Development Corp.*, this Court upheld the validity of a 21% per annum interest on a ₱142,326.43 loan, and in *Garcia vs. Court of Appeals*, sustained the agreement of the parties to a 24% per annum interest on an ₱8,649,250.00 loan. It is on the basis of these cases that we reduce the 36% per annum interest to 12%. An interest of 12% per annum is deemed fair and reasonable. While it is true that this Court invalidated a much higher interest rate of 66% per annum in *Medel* and

72% in *Solangon* it has sustained the validity of a much lower interest rate of 21% in *Bautista* and 24% in *Garcia*. We still find the 36% per annum interest rate in the case at bar to be substantially greater than those upheld by this Court in the two (2) aforecited cases. From the foregoing, it is clear that there is no unilateral alteration of the terms and conditions of the *Kasulatan* entered into by the parties. Surely, it is more consonant with justice that the subject interest rate be equitably reduced and the legal interest of 12% per annum is deemed fair and reasonable.

3. ID.; LIQUIDATED DAMAGES; DEFINED; NOT APPLICABLE IN CASE AT BAR.— Article 2226 of the Civil Code provides that "[L]iquidated damages are those *agreed upon by the parties to a contract*, to be paid in case of breach thereof." In the instant case, a cursory reading of the *Kasulatan* would show that it is devoid of any stipulation with respect to liquidated damages. Neither did any of the parties allege or prove the existence of any agreement on liquidated damages. Hence, for want of any stipulation on liquidated damages in the *Kasulatan* entered into by the parties, we hold that the liquidated damages awarded by the trial court and affirmed by the Court of Appeals to be without legal basis and must be deleted.

4. REMEDIAL LAW; APPEALS; APPELLATE JURISDICTION IS CLOTHED WITH AMPLE AUTHORITY TO REVIEW FINDINGS AND RULINGS OF THE LOWER COURTS EVEN IF THEY ARE NOT ASSIGNED AS ERRORS.— In the exercise of our appellate jurisdiction, we are clothed with ample authority to review findings and rulings of lower courts even if they are not assigned as errors. This is especially so if we find that their consideration is necessary in arriving at a just decision of the case. We have consistently held that an unassigned error closely related to an error properly assigned, or upon which a determination of the question raised by the error properly assigned is dependent, will be considered notwithstanding the failure to assign it as an error.

5. ID.; FORECLOSURE OF MORTGAGE; WHEN THE AMOUNT DEMANDED AS THE OUTSTANDING LOAN WAS OVERSTATED, FORECLOSURE PROCEEDINGS CANNOT BE GIVEN EFFECT; SUSTAINED. – In the case of *Heirs of Zoilo Espiritu v. Landrito*, which is on all fours with the instant case, we held that: Since the Spouses Landrito,

the debtors in this case, were not given an opportunity to settle their debt, at the correct amount and without the iniquitous interest imposed, **no foreclosure proceedings may be instituted**. A judgment ordering a foreclosure sale is conditioned upon a finding on the correct amount of the unpaid obligation and the failure of the debtor to pay the said amount. In this case, it has not yet been shown that the Spouses Landrito had already failed to pay the correct amount of the debt and, therefore, a foreclosure sale cannot be conducted in order to answer for the unpaid debt. The foreclosure sale conducted upon their failure to pay ₱874,125.00 in 1990 should be nullified since the amount demanded as the outstanding loan was overstated; consequently it has not been shown that the mortgagors – the Spouses Landrito, have failed to pay their outstanding obligation. x x x As a result, the subsequent registration of the foreclosure sale cannot transfer any rights over the mortgaged property to the Spouses Espiritu. The registration of the foreclosure sale, herein declared invalid, cannot vest title over the mortgaged property. x x x On this basis, we nullify the foreclosure proceedings held on March 3, 1999 since the amount demanded as the outstanding loan was overstated. Consequently, it has not been shown that the respondents have failed to pay the correct amount of their outstanding obligation. Accordingly, we declare the registration of the foreclosure sale invalid and cannot vest title over the mortgaged property.

APPEARANCES OF COUNSEL

Karaan and Karaan Law Office for petitioners.
Natividad Law Office for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

The imposition of an unconscionable rate of interest on a money debt, even if knowingly and voluntarily assumed, is immoral and unjust. It is tantamount to a repugnant spoliation and an iniquitous deprivation of property, repulsive to the common sense of man. It has no support in law, in principles of justice,

or in the human conscience nor is there any reason whatsoever which may justify such imposition as righteous and as one that may be sustained within the sphere of public or private morals.[1]

In this Petition for Review on *Certiorari*,[2] petitioners assail the October 29, 2004 Decision[3] and July 18, 2005 Resolution[4] of the Court of Appeals (CA) in CA-G.R. CV No. 76842, affirming the June 11, 2002 Decision[5] of the Regional Trial Court of Bulacan, Branch 79, which equitably reduced the stipulated interest rate in an agreement entered into by the parties from 60% per annum (or 5% per month) to 12% per annum, with the modification that herein respondents may redeem the mortgaged property notwithstanding the lapse of redemption period on grounds of equity and substantial justice.

Factual antecedents

Respondent Angelina de Leon Tan, and her husband Ruben Tan were the former registered owners of a 240-square meter residential lot, situated at *Barrio* Canalate, Malolos, Bulacan and covered by Transfer Certificate of Title No. T-8540. On February 17, 1994, they entered into an agreement with petitioners spouses Isagani and Diosdada Castro denominated as *Kasulatan ng Sanglaan ng Lupa at Bahay* (*Kasulatan*) to secure a loan of ₱30,000.00 they obtained from the latter. Under the *Kasulatan*, the spouses Tan undertook to pay the mortgage debt within six months or until August 17, 1994, with an interest rate of 5% per month, compounded monthly.

When her husband died on September 2, 1994, respondent Tan was left with the responsibility of paying the loan. However, she failed to pay the same upon maturity. Thereafter, she offered

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[1] See *Ibarra v. Aveyro*, 37 Phil. 273, 282 (1917).

[2] *Rollo*, pp. 9-21.

[3] *Id.* at 144-161; penned by Associate Justice Ruben T. Reyes and concurred in by Associate Justices Perlita J. Tria Tirona and Jose C. Reyes, Jr.

[4] *Id.* at 168-169; penned by Associate Justice Ruben T. Reyes and concurred in by Associate Justices Eugenio S. Labitoria and Jose C. Reyes, Jr.

[5] *Id*. at 48-82; penned by Judge Arturo G. Tayag.

to pay petitioners the principal amount of ₱30,000.00 plus a portion of the interest but petitioners refused and instead demanded payment of the total accumulated sum of ₱359,000.00.

On February 5, 1999, petitioners caused the extrajudicial foreclosure of the real estate mortgage and emerged as the only bidder in the auction sale that ensued. The period of redemption expired without respondent Tan having redeemed the property; thus title over the same was consolidated in favor of petitioners. After a writ of possession was issued, the Sheriff ejected respondents from the property and delivered the possession thereof to petitioners.

Proceedings before the Regional Trial Court

On September 26, 2000, respondent Tan, joined by respondents Sps. Concepcion T. Clemente and Alexander C. Clemente, Sps. Elizabeth T. Carpio and Alvin Carpio, Sps. Marie Rose T. Soliman and Arvin Soliman and Julius Amiel Tan filed a Complaint for Nullification of Mortgage and Foreclosure and/or Partial Rescission of Documents and Damages[6] before the Regional Trial Court of Malolos, Bulacan. They alleged, *inter alia*, that the interest rate imposed on the principal amount of ₱30,000.00 is unconscionable.[7]

On June 11, 2002, the trial court rendered judgment in favor of respondents, *viz*:

> PREMISES CONSIDERED, this Court cannot declare the mortgage and foreclosure null and void but the x x x *Kasulatan ng Sanglaan ng Lupa* x x x herebelow quoted:
>
> > *2. Na ang nasabing pagkakautang ay aming babayaran sa loob ng anim (6) na buwan simula sa petsa ng kasulatang ito o dili kaya ay sa bago dumating ang Agosto 17, 1994 na may pakinabang na 5% bawat buwan. Na ang tubo ay aani pa rin ng tubong 5% bawat buwan.*
>
> Is partially rescinded to only 12% interest per annum and additional one percent a month penalty charges – as liquidated damages beginning

[6] *Id.* at 22-37.

[7] *Id.* at 26.

February 17, 1994 up to June 21, 2000 per Delivery of Possession x x x and/or for the defendants to accept the offer of ₱200,000.00 by the plaintiffs to redeem or reacquire the property in *litis.*

The Court is not inclined to award moral damages since plaintiffs failed to buttress her claim of moral damages and/or proof of moral damages. x x x

No award of attorney's fees because the general rule is that no [premium] should be placed on the right to litigate. x x x

The counterclaim of the defendants is hereby DISMISSED for lack of merit.

Costs against the defendants.

SO ORDERED."[8]

Proceedings before the Court of Appeals

Petitioners appealed to the Court of Appeals which affirmed the trial court's finding that the interest rate stipulated in the *Kasulatan* is iniquitous or unconscionable and, thus, its equitable reduction to the legal rate of 12% per annum is warranted.[9] At the same time, the appellate court declared that respondents may redeem the mortgaged property notwithstanding the expiration of the period of redemption, in the interest of substantial justice and equity.[10] The dispositive portion of said Decision reads:

WHEREFORE, the appealed judgment is hereby AFFIRMED with the MODIFICATION that plaintiffs-appellees may redeem the mortgaged property by paying the defendants-appellants spouses Isagani and Diosdada Castro the amount of ₱30,000.00, with interest thereon at 12% per annum from February 17, 1994 until fully paid plus penalty charges at the same rate from February 17, 1994 to June 21, 2000.

SO ORDERED.[11]

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[8] *Id.* at 82.

[9] *Id.* at 155.

[10] *Id.* at 158.

[11] *Id.* at 160.

Petitioners' Motion for Reconsideration was denied by the Court of Appeals in a Resolution dated July 18, 2005.

Issues

Hence, the present Petition for Review on *Certiorari* raising the following issues:

1. THE COURT OF APPEALS GROSSLY ERRED IN NULLIFYING THE INTEREST RATE VOLUNTARILY AGREED UPON BY THE PETITIONERS AND RESPONDENTS AND EXPRESSLY STIPULATED IN THE CONTRACT OF MORTGAGE ENTERED INTO BETWEEN THEM.

2. THE COURT OF APPEALS GROSSLY ERRED IN MAKING A CONTRACT BETWEEN THE PETITIONERS AND RESPONDENTS BY UNILATERALLY CHANGING THE TERMS AND CONDITIONS OF THE CONTRACT OF MORTGAGE ENTERED INTO BETWEEN THEM.

3. THE COURT OF APPEALS GROSSLY ERRED IN EXTENDING THE PERIOD OF REDEMPTION IN FAVOR OF THE RESPONDENTS IN VIOLATION OF THE CLEAR AND UNEQUIVOCAL PROVISIONS OF ACT NO. 3135 PROVIDING A PERIOD OF ONLY ONE YEAR FOR THE REDEMPTION OF A FORECLOSED REAL PROPERTY.[12]

Petitioners' Arguments

Petitioners contend that with the removal by the *Bangko Sentral* of the ceiling on the rate of interest that may be stipulated in a contract of loan,[13] the lender and the borrower could validly agree on any interest rate on loans. Thus, the Court of Appeals gravely erred when it declared the stipulated interest in the *Kasulatan* as null as if there was no express stipulation on the compounded interest.[14]

Respondents' Arguments

On the other hand, respondents assert that the appellate court correctly struck down the said stipulated interest for being

[12] *Id.* at 12.

[13] *Id.* at 197.

[14] *Id*.

excessive and contrary to morals, if not against the law.[15] They also point out that a contract has the force of law between the parties, but only when the terms, clauses and conditions thereof are not contrary to law, morals, public order or public policy.[16]

Our Ruling

The petition lacks merit.

The Court of Appeals correctly found that the 5% monthly interest, compounded monthly, is unconscionable and should be equitably reduced to the legal rate of 12% per annum.

While we agree with petitioners that parties to a loan agreement have wide latitude to stipulate on any interest rate in view of the Central Bank Circular No. 905 s. 1982 which suspended the Usury Law ceiling on interest effective January 1, 1983, it is also worth stressing that interest rates whenever unconscionable may still be declared illegal. There is certainly nothing in said circular which grants lenders *carte blanche* authority to raise interest rates to levels which will either enslave their borrowers or lead to a hemorrhaging of their assets.[17]

In several cases, we have ruled that stipulations authorizing iniquitous or unconscionable interests are contrary to morals, if not against the law. In *Medel v. Court of Appeals*,[18] we annulled a stipulated 5.5% per month or 66% per annum interest on a ₱500,000.00 loan and a 6% per month or 72% per annum interest on a ₱60,000.00 loan, respectively, for being excessive, iniquitous, unconscionable and exorbitant. In *Ruiz v. Court of Appeals*,[19]

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[15] *Id.* at 213.

[16] *Id.* at 214.

[17] *Cuaton v. Salud*, G.R. No. 158382, January 27, 2004, 421 SCRA 278, 282; *Almeda v. Court of Appeals*, 326 Phil. 309, 319 (1996)

[18] 359 Phil. 820 (1998).

[19] 449 Phil. 419 (2003).

we declared a 3% monthly interest imposed on four separate loans to be excessive. In both cases, the interest rates were reduced to 12% per annum.

In this case, the 5% monthly interest rate, or 60% per annum, compounded monthly, stipulated in the *Kasulatan* is even higher than the 3% monthly interest rate imposed in the *Ruiz* case. Thus, we similarly hold the 5% monthly interest to be excessive, iniquitous, unconscionable and exorbitant, contrary to morals, and the law. It is therefore void *ab initio* for being violative of Article 1306[20] of the Civil Code. With this, and in accord with the *Medel* and *Ruiz* cases, we hold that the Court of Appeals correctly imposed the legal interest of 12% per annum in place of the excessive interest stipulated in the *Kasulatan.*

The Court of Appeals did not unilaterally change the terms and conditions of the Contract of Mortgage entered into between the petitioners and the respondents.

Petitioners allege that the *Kasulatan* was entered into by the parties freely and voluntarily.[21] They maintain that there was already a meeting of the minds between the parties as regards the principal amount of the loan, the interest thereon and the property given as security for the payment of the loan, which must be complied with in good faith.[22] Hence, they assert that the Court of Appeals should have given due respect to the provisions of the *Kasulatan*.[23] They also stress that it is a settled principle that the law will not relieve a party from the effects of an unwise, foolish or disastrous contract, entered into with

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[20] Article 1306 of the CIVIL CODE provides:

The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.

[21] *Rollo*, p. 199.

[22] *Id.*

[23] *Id.* at 200.

all the required formalities and with full awareness of what he was doing.[24]

Petitioners' contentions deserve scant consideration. In *Abe v. Foster Wheeler Corporation*,[25] we held that the freedom of contract is not absolute. The same is understood to be subject to reasonable legislative regulation aimed at the promotion of public health, morals, safety and welfare. One such legislative regulation is found in Article 1306 of the Civil Code which allows the contracting parties to "establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order or public policy."

To reiterate, we fully agree with the Court of Appeals in holding that the compounded interest rate of 5% per month, is iniquitous and unconscionable. Being a void stipulation, it is deemed inexistent from the beginning. The debt is to be considered without the stipulation of the iniquitous and unconscionable interest rate. Accordingly, the legal interest of 12% per annum must be imposed in lieu of the excessive interest stipulated in the agreement, in line with our ruling in *Ruiz v. Court of Appeals*,[26] thus:

> The foregoing rates of interests and surcharges are in accord with *Medel vs. Court of Appeals*, *Garcia vs. Court of Appeals*, *Bautista vs. Pilar Development Corporation*, and the recent case of *Spouses Solangon vs. Salazar*. This Court invalidated a stipulated 5.5% per month or 66% per annum interest on a ₱500,000.00 loan in *Medel* and a 6% per month or 72% per annum interest on a ₱60,000.00 loan in *Solangon* for being excessive, iniquitous, unconscionable and exorbitant. In both cases, we reduced the interest rate to 12% per annum. We held that while the Usury Law has been suspended by Central Bank Circular No. 905, s. 1982, effective on January 1, 1983, and parties to a loan agreement have been given wide latitude to agree on any interest rate, still stipulated interest rates are illegal if they are unconscionable. Nothing in the said circular grants lenders

[24] *Id.* at 201.

[25] Nos. L-14785 and L-14923, 110 Phil. 198, 203 (1960).

[26] *Supra* note 19.

carte blanche authority to raise interest rates to levels which will either enslave their borrowers or lead to a hemorrhaging of their assets. On the other hand, in *Bautista vs. Pilar Development Corp.*, this Court upheld the validity of a 21% per annum interest on a ₱142,326.43 loan, and in *Garcia vs. Court of Appeals*, sustained the agreement of the parties to a 24% per annum interest on an ₱8,649,250.00 loan. It is on the basis of these cases that we reduce the 36% per annum interest to 12%. An interest of 12% per annum is deemed fair and reasonable. While it is true that this Court invalidated a much higher interest rate of 66% per annum in *Medel* and 72% in *Solangon* it has sustained the validity of a much lower interest rate of 21% in *Bautista* and 24% in *Garcia*. We still find the 36% per annum interest rate in the case at bar to be substantially greater than those upheld by this Court in the two (2) aforecited cases. (Emphasis supplied, citations omitted)

From the foregoing, it is clear that there is no unilateral alteration of the terms and conditions of the *Kasulatan* entered into by the parties. Surely, it is more consonant with justice that the subject interest rate be equitably reduced and the legal interest of 12% per annum is deemed fair and reasonable.[27]

The additional 1% per month penalty awarded as liquidated damages does not have any legal basis.

In its June 11, 2002 Decision,[28] the trial court granted an additional 1% per month penalty as liquidated damages[29] beginning February 17, 1994 up to June 21, 2000.[30] Since respondents did not file their appellees' brief despite notice, the appellate court declared this to be not in issue.[31]

Although the issue of the liquidated damages was not presented squarely in either Memorandum of the parties, this does not

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[27] *Spouses Solangon v. Salazar*, 412 Phil. 816, 823 (2001).

[28] *Rollo*, pp. 48-82.

[29] *Id.* at 82.

[30] This is the date the Sheriff delivered possession to the petitioners of the subject property by virtue of a Writ of Possession.

[31] *Rollo*, p. 11.

prevent us from ruling on the matter. In the exercise of our appellate jurisdiction, we are clothed with ample authority to review findings and rulings of lower courts even if they are not assigned as errors. This is especially so if we find that their consideration is necessary in arriving at a just decision of the case. We have consistently held that an unassigned error closely related to an error properly assigned, or upon which a determination of the question raised by the error properly assigned is dependent, will be considered notwithstanding the failure to assign it as an error.[32] On this premise, we deem it proper to pass upon the matter of liquidated damages.

Article 2226 of the Civil Code provides that "[L]iquidated damages are those *agreed upon by the parties to a contract*, to be paid in case of breach thereof."

In the instant case, a cursory reading of the *Kasulatan* would show that it is devoid of any stipulation with respect to liquidated damages. Neither did any of the parties allege or prove the existence of any agreement on liquidated damages. Hence, for want of any stipulation on liquidated damages in the *Kasulatan* entered into by the parties, we hold that the liquidated damages awarded by the trial court and affirmed by the Court of Appeals to be without legal basis and must be deleted.

The foreclosure proceedings held on March 3, 1999 cannot be given effect.

The Court of Appeals modified the judgment of the trial court by holding that respondents, in the interest of substantial justice and equity, may redeem the mortgaged property notwithstanding the lapse of the period of redemption.

Petitioners argue that this cannot be done because the right of redemption had long expired and same is no longer possible beyond the one-year period provided under Act No. 3135.[33]

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[32] *Cuaton v. Salud, supra* note 17, at 283.

[33] *Rollo*, p. 201.

On the other hand, respondents insist that to disallow them to redeem the property would render meaningless the declaration that the stipulated interest is null and void.

It is undisputed that sometime after the maturity of the loan, respondent Tan attempted to pay the mortgage debt of ₱30,000.00 as principal and some interest. Said offer was refused by petitioners because they demanded payment of the total accumulated amount of ₱359,000.00.[34] Moreover, the trial court also mentioned an offer by respondent Tan of the amount of ₱200,000.00 to petitioners in order for her to redeem or re-acquire the property *in litis*.[35]

From these, it is evident that despite considerable effort on her part, respondent Tan failed to redeem the mortgaged property because she was unable to raise the total amount of ₱359,000.00, an amount grossly inflated by the excessive interest imposed. Thus, it is only proper that respondents be given the opportunity to repay the real amount of their indebtedness.

In the case of *Heirs of Zoilo Espiritu v. Landrito*,[36] which is on all fours with the instant case, we held that:

Since the Spouses Landrito, the debtors in this case, were not given an opportunity to settle their debt, at the correct amount and without the iniquitous interest imposed, no foreclosure proceedings may be instituted. A judgment ordering a foreclosure sale is conditioned upon a finding on the correct amount of the unpaid obligation and the failure of the debtor to pay the said

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[34] *Rollo,* p. 146.

[35] June 11, 2002 *Decision* of the Regional Trial Court reads:

PREMISES CONSIDERED, this Court cannot declare the mortgage and foreclosure null and void but the documents [sic] *Kasulatan ng Sanglaan ng Lupa x x x*

x x x

Is partially rescinded to only 12% interest per annum and additional one percent a month penalty charges – as liquidated damage beginning February 17, 1994 up to June 21, 2000 per Delivery of Possession Exh. "9", by the Sheriff of Branch 78 by virtue of the Writ of Possession **and/or for the defendants to accept [sic] offer of ₱200,000.00 by the plaintiffs to redeem or reacquire the property in *litis*.** x x x (Emphasis supplied)

[36] G.R. No. 169617, April 3, 2007, 520 SCRA 383, 396-397.

amount. In this case, it has not yet been shown that the Spouses Landrito had already failed to pay the correct amount of the debt and, therefore, a foreclosure sale cannot be conducted in order to answer for the unpaid debt. The foreclosure sale conducted upon their failure to pay ₱874,125.00 in 1990 should be nullified since the amount demanded as the outstanding loan was overstated; consequently it has not been shown that the mortgagors – the Spouses Landrito, have failed to pay their outstanding obligation. x x x

As a result, the subsequent registration of the foreclosure sale cannot transfer any rights over the mortgaged property to the Spouses Espiritu. The registration of the foreclosure sale, herein declared invalid, cannot vest title over the mortgaged property. x x x (Emphasis supplied)

On this basis, we nullify the foreclosure proceedings held on March 3, 1999 since the amount demanded as the outstanding loan was overstated. Consequently, it has not been shown that the respondents have failed to pay the correct amount of their outstanding obligation. Accordingly, we declare the registration of the foreclosure sale invalid and cannot vest title over the mortgaged property.

Anent the allegation of petitioners that the Court of Appeals erred in extending the period of redemption, same has been rendered moot in view of the nullification of the foreclosure proceedings.

WHEREFORE, the instant petition is *DENIED*. The assailed Decision of the Court of Appeals dated October 29, 2004 as well as the Resolution dated July 18, 2005 are *AFFIRMED* with the *MODIFICATION* that the award of 1% liquidated damages per month be *DELETED* and that petitioners are *ORDERED* to reconvey the subject property to respondents conditioned upon the payment of the loan together with the rate of interest fixed herein.

SO ORDERED.

Carpio[*] (*Chairperson*), *Leonardo-de Castro,*[**] *Brion,* and *Abad, JJ.,* concur.

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[*] Per Special Order No. 775 dated November 3, 2009.

[**] Additional member per Special Order No. 776 dated November 3, 2009.

SECOND DIVISION

[G.R. No. 170891. November 24, 2009]

MANUEL C. ESPIRITU, JR., AUDIE LLONA, FREIDA F. ESPIRITU, CARLO F. ESPIRITU, RAFAEL F. ESPIRITU, ROLANDO M. MIRABUNA, HERMILYN A. MIRABUNA, KIM ROLAND A. MIRABUNA, KAYE ANN A. MIRABUNA, KEN RYAN A. MIRABUNA, JUANITO P. DE CASTRO, GERONIMA A. ALMONITE and MANUEL C. DEE, who are the officers and directors of BICOL GAS REFILLING PLANT CORPORATION, *petitioners, vs.* **PETRON CORPORATION and CARMEN J. DOLOIRAS, doing business under the name "KRISTINA PATRICIA ENTERPRISES,"** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; CERTIFICATE OF NON-FORUM SHOPPING; WHEN CERTIFICATION BY ONE OF THE PETITIONERS MAY BE DEEMED SUFFICIENT COMPLIANCE.— While procedural requirements such as that of submittal of a certificate of non-forum shopping cannot be totally disregarded, they may be deemed substantially complied with under justifiable circumstances. One of these circumstances is where the petitioners filed a collective action in which they share a common interest in its subject matter or raise a common cause of action. In such a case, the certification by one of the petitioners may be deemed sufficient. Here, KPE and Petron shared a common cause of action against petitioners Espiritu, *et al.*, namely, the violation of their proprietary rights with respect to the use of Gasul tanks and trademark. Furthermore, Atty. Cruz said in his certification that he was executing it "for and on behalf of the Corporation, and co-petitioner Carmen J. Doloiras." Thus, the object of the requirement – to ensure that a party takes no recourse to multiple forums – was substantially achieved. Besides, the failure of KPE to sign the certificate of non-forum shopping does not render the petition defective with respect to Petron

which signed it through Atty. Cruz. The Court of Appeals, therefore, acted correctly in giving due course to the petition before it.

2. CRIMINAL LAW; VIOLATION OF REPUBLIC ACT 623 (ILLEGALLY FILLING UP REGISTERED CYLINDER TANKS); WHEN PRESENT; EXEMPLIFIED.— R.A. 623, as amended, punishes any person who, without the written consent of the manufacturer or seller of gases contained in duly registered steel cylinders or tanks, fills the steel cylinder or tank, for the purpose of sale, disposal or trafficking, other than the purpose for which the manufacturer or seller registered the same. This was what happened in this case, assuming the allegations of KPE's manager to be true. Bicol Gas employees filled up with their firm's gas the tank registered to Petron and bearing its mark without the latter's written authority. Consequently, they may be prosecuted for that offense.

3. ID.; VIOLATION OF INTELLECTUAL PROPERTY CODE (R.A. 8293); INFRINGEMENT OF TRADE MARKS; WHEN COMMITTED; NOT PRESENT IN CASE AT BAR.— As for the crime of trademark infringement, Section 155 of R.A. 8293 (in relation to Section 170) provides that it is committed by any person who shall, without the consent of the owner of the registered mark: 1. Use in commerce any reproduction, counterfeit, copy or colorable imitation of a registered mark or the same container or a dominant feature thereof in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or 2. Reproduce, counterfeit, copy or colorably imitate a registered mark or a dominant feature thereof and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive. KPE and Petron have to show that the alleged infringer, the responsible officers and staff of Bicol Gas, used Petron's Gasul trademark or a confusingly similar trademark on Bicol Gas

tanks with intent to deceive the public and defraud its competitor as to what it is selling. Examples of this would be the acts of an underground shoe manufacturer in Malabon producing "Nike" branded rubber shoes or the acts of a local shirt company with no connection to La Coste, producing and selling shirts that bear the stitched logos of an open-jawed alligator. Here, however, the allegations in the complaint do not show that Bicol Gas painted on its own tanks Petron's Gasul trademark or a confusingly similar version of the same to deceive its customers and cheat Petron. Indeed, in this case, the one tank bearing the mark of Petron Gasul found in a truck full of Bicol Gas tanks was a genuine Petron Gasul tank, more of a captured cylinder belonging to competition. No proof has been shown that Bicol Gas has gone into the business of distributing imitation Petron Gasul LPGs.

4. ID.; ID.; UNFAIR COMPETITION; ACTS CONSTITUTING THE OFFENSE; NOT PRESENT IN CASE AT BAR.—As to the charge of unfair competition, Section 168.3 (a) of R.A. 8293 (also in relation to Section 170) describes the acts constituting the offense as follows: 168.3. In particular, and without in any way limiting the scope of protection against unfair competition, the following shall be deemed guilty of unfair competition: (a) Any person, who is selling his goods and gives them the general appearance of goods of another manufacturer or dealer, either as to the goods themselves or in the wrapping of the packages in which they are contained, or the devices or words thereon, or in any other feature of their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer, other than the actual manufacturer or dealer, or who otherwise clothes the goods with such appearance as shall deceive the public and defraud another of his legitimate trade, or any subsequent vendor of such goods or any agent of any vendor engaged in selling such goods with a like purpose; Essentially, what the law punishes is the act of giving one's goods the general appearance of the goods of another, which would likely mislead the buyer into believing that such goods belong to the latter. Examples of this would be the act of manufacturing or selling shirts bearing the logo of an alligator, similar in design to the open-jawed alligator in La Coste shirts, except that the jaw of the alligator in the former is closed, or the act of a producer or seller of tea bags with red tags showing

the shadow of a black dog when his competitor is producing or selling popular tea bags with red tags showing the shadow of a black cat. Here, there is no showing that Bicol Gas has been giving its LPG tanks the general appearance of the tanks of Petron's Gasul. As already stated, the truckfull of Bicol Gas tanks that the KPE manager arrested on a road in Sorsogon just happened to have mixed up with them one authentic Gasul tank that belonged to Petron.

5. COMMERCIAL LAW; CORPORATION CODE; STOCKHOLDERS; WHEN MAY BE HELD CRIMINALLY LIABLE FOR ACTS COMMITTED BY A CORPORATION. – The "owners" of a corporate organization are its stockholders and they are to be distinguished from its directors and officers. The petitioners here, with the exception of Audie Llona, are being charged in their capacities as stockholders of Bicol Gas. But the Court of Appeals forgets that in a corporation, the management of its business is generally vested in its board of directors, not its stockholders. Stockholders are basically investors in a corporation. They do not have a hand in running the day-to-day business operations of the corporation unless they are at the same time directors or officers of the corporation. Before a stockholder may be held criminally liable for acts committed by the corporation, therefore, it must be shown that he had knowledge of the criminal act committed in the name of the corporation and that he took part in the same or gave his consent to its commission, whether by action or inaction.

APPEARANCES OF COUNSEL

Ungco and Ungco for petitioners.
Angara Abello Concepcion Regala and Cruz for respondents.

D E C I S I O N

ABAD, *J.*:

This case is about the offense or offenses that arise from the reloading of the liquefied petroleum gas cylinder container of one brand with the liquefied petroleum gas of another brand.

The Facts and the Case

Respondent Petron Corporation (Petron) sold and distributed liquefied petroleum gas (LPG) in cylinder tanks that carried its trademark "Gasul."[1] Respondent Carmen J. Doloiras owned and operated Kristina Patricia Enterprises (KPE), the exclusive distributor of Gasul LPGs in the whole of Sorsogon.[2] Jose Nelson Doloiras (Jose) served as KPE's manager.

Bicol Gas Refilling Plant Corporation (Bicol Gas) was also in the business of selling and distributing LPGs in Sorsogon but theirs carried the trademark "Bicol Savers Gas." Petitioner Audie Llona managed Bicol Gas.

In the course of trade and competition, any given distributor of LPGs at times acquired possession of LPG cylinder tanks belonging to other distributors operating in the same area. They called these "captured cylinders." According to Jose, KPE's manager, in April 2001 Bicol Gas agreed with KPE for the swapping of "captured cylinders" since one distributor could not refill captured cylinders with its own brand of LPG. At one time, in the course of implementing this arrangement, KPE's Jose visited the Bicol Gas refilling plant. While there, he noticed several Gasul tanks in Bicol Gas' possession. He requested a swap but Audie Llona of Bicol Gas replied that he first needed to ask the permission of the Bicol Gas owners. That permission was given and they had a swap involving around 30 Gasul tanks held by Bicol Gas in exchange for assorted tanks held by KPE.

KPE's Jose noticed, however, that Bicol Gas still had a number of Gasul tanks in its yard. He offered to make a swap for these but Llona declined, saying the Bicol Gas owners wanted to send those tanks to Batangas. Later Bicol Gas told Jose that it had no more Gasul tanks left in its possession. Jose observed on almost a daily basis, however, that Bicol Gas' trucks which plied the streets of the province carried a load of Gasul tanks.

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[1] The LPG cylinders and the trademark "Gasul" are registered under the name of Petron in the Intellectual Property Office under Registration Nos. 142, 147, 57945 and 61920. CA *rollo*, pp. 52-57.

[2] As shown by a dealership agreement. *Id.* at 60-71.

He noted that KPE's volume of sales dropped significantly from June to July 2001.

On August 4, 2001 KPE's Jose saw a particular Bicol Gas truck on the Maharlika Highway. While the truck carried mostly Bicol Savers LPG tanks, it had on it one unsealed 50-kg Gasul tank and one 50-kg Shellane tank. Jose followed the truck and when it stopped at a store, he asked the driver, Jun Leorena, and the Bicol Gas sales representative, Jerome Misal, about the Gasul tank in their truck. They said it was empty but, when Jose turned open its valve, he noted that it was not. Misal and Leorena then admitted that the Gasul and Shellane tanks on their truck belonged to a customer who had them filled up by Bicol Gas. Misal then mentioned that his manager was a certain Rolly Mirabena.

Because of the above incident, KPE filed a complaint[3] for violations of Republic Act (R.A.) 623 (illegally filling up registered cylinder tanks), as amended, and Sections 155 (infringement of trade marks) and 169.1 (unfair competition) of the Intellectual Property Code (R.A. 8293). The complaint charged the following: Jerome Misal, Jun Leorena, Rolly Mirabena, Audie Llona, and several John and Jane Does, described as the directors, officers, and stockholders of Bicol Gas. These directors, officers, and stockholders were eventually identified during the preliminary investigation.

Subsequently, the provincial prosecutor ruled that there was probable cause only for violation of R.A. 623 (unlawfully filling up registered tanks) and that only the four Bicol Gas employees, Mirabena, Misal, Leorena, and petitioner Llona, could be charged. The charge against the other petitioners who were the stockholders and directors of the company was dismissed.

Dissatisfied, Petron and KPE filed a petition for review with the Office of the Regional State Prosecutor, Region V, which initially denied the petition but partially granted it on motion for reconsideration. The Office of the Regional State Prosecutor

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[3] Docketed as I.S. 2001-9231 but was inadvertently referred to in subsequent documents and proceedings as I.S. 2001-9234.

ordered the filing of additional informations against the four employees of Bicol Gas for unfair competition. It ruled, however, that no case for trademark infringement was present. The Secretary of Justice denied the appeal of Petron and KPE and their motion for reconsideration.

Undaunted, Petron and KPE filed a special civil action for *certiorari* with the Court of Appeals[4] but the Bicol Gas employees and stockholders concerned opposed it, assailing the inadequacy in its certificate of non-forum shopping, given that only Atty. Joel Angelo C. Cruz signed it on behalf of Petron. In its Decision[5] dated October 17, 2005, the Court of Appeals ruled, however, that Atty. Cruz's certification constituted sufficient compliance. As to the substantive aspect of the case, the Court of Appeals reversed the Secretary of Justice's ruling. It held that unfair competition does not necessarily absorb trademark infringement. Consequently, the court ordered the filing of additional charges of trademark infringement against the concerned Bicol Gas employees as well.

Since the Bicol Gas employees presumably acted under the direct order and control of its owners, the Court of Appeals also ordered the inclusion of the stockholders of Bicol Gas in the various charges, bringing to 16 the number of persons to be charged, now including petitioners Manuel C. Espiritu, Jr., Freida F. Espiritu, Carlo F. Espiritu, Rafael F. Espiritu, Rolando M. Mirabuna, Hermilyn A. Mirabuna, Kim Roland A. Mirabuna, Kaye Ann A. Mirabuna, Ken Ryan A. Mirabuna, Juanito P. de Castro, Geronima A. Almonite, and Manuel C. Dee (together with Audie Llona), collectively, petitioners Espiritu, *et al*. The court denied the motion for reconsideration of these employees and stockholders in its Resolution dated January 6, 2006, hence, the present petition for review[6] before this Court.

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[4] Docketed as CA-G.R. SP 87711.

[5] CA *rollo*, pp. 371-399. Penned by Associate Justice Renato C. Dacudao and concurred in by Associate Justices Rodrigo V. Cosico and Lucas P. Bersamin (now a member of this Court).

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

The Issues Presented

The petition presents the following issues:

1. Whether or not the certificate of non-forum shopping that accompanied the petition filed with the Court of Appeals, signed only by Atty. Cruz on behalf of Petron, complied with what the rules require;

2. Whether or not the facts of the case warranted the filing of charges against the Bicol Gas people for:

a) Filling up the LPG tanks registered to another manufacturer without the latter's consent in violation of R.A. 623, as amended;

b) Trademark infringement consisting in Bicol Gas' use of a trademark that is confusingly similar to Petron's registered "Gasul" trademark in violation of Section 155 also of R.A. 8293; and

c) Unfair competition consisting in passing off Bicol Gas-produced LPGs for Petron-produced Gasul LPG in violation of Section 168.3 of R.A. 8293.

The Court's Rulings

First. Petitioners Espiritu, *et al*. point out that the certificate of non-forum shopping that respondents KPE and Petron attached to the petition they filed with the Court of Appeals was inadequate, having been signed only by Petron, through Atty. Cruz.

But, while procedural requirements such as that of submittal of a certificate of non-forum shopping cannot be totally disregarded, they may be deemed substantially complied with under justifiable circumstances.[7] One of these circumstances is where the petitioners filed a collective action in which they share a common interest in its subject matter or raise a common cause of action. In such a case, the certification by one of the petitioners may be deemed sufficient.[8]

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[7] *Cavile v. Heirs of Cavile*, 448 Phil. 302, 311 (2003); *MC Engineering, Inc. v. National Labor Relations Commission*, 412 Phil. 614, 622-623 (2001).

[8] *San Miguel Corporation v. Aballa*, G.R. No. 149011, June 28, 2005, 461 SCRA 392, 412.

Here, KPE and Petron shared a common cause of action against petitioners Espiritu, *et al.*, namely, the violation of their proprietary rights with respect to the use of Gasul tanks and trademark. Furthermore, Atty. Cruz said in his certification that he was executing it "for and on behalf of the Corporation, and co-petitioner Carmen J. Doloiras."[9] Thus, the object of the requirement – to ensure that a party takes no recourse to multiple forums – was substantially achieved. Besides, the failure of KPE to sign the certificate of non-forum shopping does not render the petition defective with respect to Petron which signed it through Atty. Cruz.[10] The Court of Appeals, therefore, acted correctly in giving due course to the petition before it.

Second. The Court of Appeals held that under the facts of the case, there is probable cause that petitioners Espiritu, *et al.* committed all three crimes: (a) illegally filling up an LPG tank registered to Petron without the latter's consent in violation of R.A. 623, as amended; (b) trademark infringement which consists in Bicol Gas' use of a trademark that is confusingly similar to Petron's registered "Gasul" trademark in violation of Section 155 of R.A. 8293; and (c) unfair competition which consists in petitioners Espiritu, *et al.* passing off Bicol Gas-produced LPGs for Petron-produced Gasul LPG in violation of Section 168.3 of R.A. 8293.

Here, the complaint adduced at the preliminary investigation shows that the one 50-kg Petron Gasul LPG tank found on the Bicol Gas' truck "belonged to [a Bicol Gas] customer who had the same filled up by BICOL GAS."[11] In other words, the customer had that one Gasul LPG tank brought to Bicol Gas for refilling and the latter obliged.

R.A. 623, as amended,[12] punishes any person who, without the written consent of the manufacturer or seller of gases contained

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[9] CA *rollo*, p. 43.

[10] See *Toyota Motor Phils. Corp. Workers Association v. National Labor Relations Commission*, G.R. Nos. 158786 & 158789, October 19, 2007, 537 SCRA 171, 199.

[11] *Rollo*, p. 54.

[12] Sec. 1. Persons engaged or licensed to engage in the manufacture, bottling, or selling of soda water, mineral or aerated waters, cider, milk, cream

in duly registered steel cylinders or tanks, fills the steel cylinder or tank, for the purpose of sale, disposal or trafficking, other than the purpose for which the manufacturer or seller registered the same. This was what happened in this case, assuming the allegations of KPE's manager to be true. Bicol Gas employees filled up with their firm's gas the tank registered to Petron and bearing its mark without the latter's written authority. Consequently, they may be prosecuted for that offense.

But, as for the crime of trademark infringement, Section 155 of R.A. 8293 (in relation to Section 170[13]) provides that it is committed by any person who shall, without the consent of the owner of the registered mark:

1. Use in commerce any reproduction, counterfeit, copy or colorable imitation of a registered mark or the same container or

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or other lawful beverages in bottles, boxes, casks, kegs, or barrels, and other similar containers, or in the manufacture, compressing or selling of gases such as oxygen, acetylene, nitrogen, carbon dioxide, ammonia, hydrogen, chloride, helium, sulphur dioxide, butane, propane, freon, methyl chloride or similar gases contained in steel cylinders, tanks, flasks, accumulators or similar containers, with their names or the names of their principals of products, or other marks of ownership stamped or marked thereon, may register with the Philippines Patent Office a description of the names or marks, and the purpose for which the containers so marked are used by them, under the same conditions, rules, and regulations, made applicable by law or regulation to the issuance of trademarks.

Sec. 2. It shall be unlawful for any person, without the written consent of the manufacturer, bottler, or seller, who has successfully registered the marks of ownership in accordance with the provisions of the next preceding section, to fill such bottles, boxes, kegs, barrels, steel cylinders, tanks, flasks, accumulators, or other similar containers so marked or stamped, for the purpose of sale, or to sell, dispose of, buy or traffic in, or wantonly destroy the same, whether filled or not to use the same for drinking vessels or glasses or drain pipes, foundation pipes, for any other purpose than that registered by the manufacturer, bottler or seller. Any violation of this section shall be punished by a fine of not more than one thousand pesos or imprisonment of not more than one year or both.

[13] Sec. 170. *Penalties*. – Independent of the civil and administrative sanctions imposed by law, a criminal penalty of imprisonment from two (2) years to five (5) years and a fine ranging from Fifty thousand pesos (₱50,000) to Two hundred thousand pesos (₱200,000), shall be imposed on any person who is found guilty of committing any of the acts mentioned in Section 155, Section 168 and Subsection 169.1.

a dominant feature thereof in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or

2. Reproduce, counterfeit, copy or colorably imitate a registered mark or a dominant feature thereof and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive.

KPE and Petron have to show that the alleged infringer, the responsible officers and staff of Bicol Gas, used Petron's Gasul trademark or a confusingly similar trademark on Bicol Gas tanks with intent to deceive the public and defraud its competitor as to what it is selling.[14] Examples of this would be the acts of an underground shoe manufacturer in Malabon producing "Nike" branded rubber shoes or the acts of a local shirt company with no connection to La Coste, producing and selling shirts that bear the stitched logos of an open-jawed alligator.

Here, however, the allegations in the complaint do not show that Bicol Gas painted on its own tanks Petron's Gasul trademark or a confusingly similar version of the same to deceive its customers and cheat Petron. Indeed, in this case, the one tank bearing the mark of Petron Gasul found in a truck full of Bicol Gas tanks was a genuine Petron Gasul tank, more of a captured cylinder belonging to competition. No proof has been shown that Bicol Gas has gone into the business of distributing imitation Petron Gasul LPGs.

As to the charge of unfair competition, Section 168.3 (a) of R.A. 8293 (also in relation to Section 170) describes the acts constituting the offense as follows:

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[14] *McDonald's Corporation v. L.C. Big Mak Burger, Inc.*, 480 Phil. 402, 439 (2004).

168.3. In particular, and without in any way limiting the scope of protection against unfair competition, the following shall be deemed guilty of unfair competition:

> (a) Any person, who is selling his goods and gives them the general appearance of goods of another manufacturer or dealer, either as to the goods themselves or in the wrapping of the packages in which they are contained, or the devices or words thereon, or in any other feature of their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer, other than the actual manufacturer or dealer, or who otherwise clothes the goods with such appearance as shall deceive the public and defraud another of his legitimate trade, or any subsequent vendor of such goods or any agent of any vendor engaged in selling such goods with a like purpose;

Essentially, what the law punishes is the act of giving one's goods the general appearance of the goods of another, which would likely mislead the buyer into believing that such goods belong to the latter. Examples of this would be the act of manufacturing or selling shirts bearing the logo of an alligator, similar in design to the open-jawed alligator in La Coste shirts, except that the jaw of the alligator in the former is closed, or the act of a producer or seller of tea bags with red tags showing the shadow of a black dog when his competitor is producing or selling popular tea bags with red tags showing the shadow of a black cat.

Here, there is no showing that Bicol Gas has been giving its LPG tanks the general appearance of the tanks of Petron's Gasul. As already stated, the truckfull of Bicol Gas tanks that the KPE manager arrested on a road in Sorsogon just happened to have mixed up with them one authentic Gasul tank that belonged to Petron.

The only point left is the question of the liability of the stockholders and members of the board of directors of Bicol Gas with respect to the charge of unlawfully filling up a steel cylinder or tank that belonged to Petron. The Court of Appeals ruled that they should be charged along with the Bicol Gas

employees who were pointed to as directly involved in overt acts constituting the offense.

Bicol Gas is a corporation. As such, it is an entity separate and distinct from the persons of its officers, directors, and stockholders. It has been held, however, that corporate officers or employees, through whose act, default or omission the corporation commits a crime, may themselves be individually held answerable for the crime.[15]

Jose claimed in his affidavit that, when he negotiated the swapping of captured cylinders with Bicol Gas, its manager, petitioner Audie Llona, claimed that he would be consulting with the owners of Bicol Gas about it. Subsequently, Bicol Gas declined the offer to swap cylinders for the reason that the owners wanted to send their captured cylinders to Batangas. The Court of Appeals seized on this as evidence that the employees of Bicol Gas acted under the direct orders of its owners and that "the owners of Bicol Gas have full control of the operations of the business."[16]

The "owners" of a corporate organization are its stockholders and they are to be distinguished from its directors and officers. The petitioners here, with the exception of Audie Llona, are being charged in their capacities as stockholders of Bicol Gas. But the Court of Appeals forgets that in a corporation, the management of its business is generally vested in its board of directors, not its stockholders.[17] Stockholders are basically investors in a corporation. They do not have a hand in running the day-to-day business operations of the corporation unless they are at the same time directors or officers of the corporation. Before a stockholder may be held criminally liable for acts committed by the corporation, therefore, it must be shown that he had knowledge of the criminal act committed in the name of

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[15] *Ching v. Secretary of Justice*, G.R. No. 164317, February 6, 2006, 481 SCRA 609, 635-636.

[16] CA *rollo*, pp. 396-397.

[17] Section 23, P.D. 902-A.

the corporation and that he took part in the same or gave his consent to its commission, whether by action or inaction.

The finding of the Court of Appeals that the employees "could not have committed the crimes without the consent, [abetment], permission, or participation of the owners of Bicol Gas"[18] is a sweeping speculation especially since, as demonstrated above, what was involved was just one Petron Gasul tank found in a truck filled with Bicol Gas tanks. Although the KPE manager heard petitioner Llona say that he was going to consult the owners of Bicol Gas regarding the offer to swap additional captured cylinders, no indication was given as to which Bicol Gas stockholders Llona consulted. It would be unfair to charge all the stockholders involved, some of whom were proved to be minors.[19] No evidence was presented establishing the names of the stockholders who were charged with running the operations of Bicol Gas. The complaint even failed to allege who among the stockholders sat in the board of directors of the company or served as its officers.

The Court of Appeals of course specifically mentioned petitioner stockholder Manuel C. Espiritu, Jr. as the registered owner of the truck that the KPE manager brought to the police for investigation because that truck carried a tank of Petron Gasul. But the act that R.A. 623 punishes is the unlawful filling up of registered tanks of another. It does not punish the act of transporting such tanks. And the complaint did not allege that the truck owner connived with those responsible for filling up that Gasul tank with Bicol Gas LPG.

WHEREFORE, the Court *REVERSES and SETS ASIDE* the Decision of the Court of Appeals in CA-G.R. SP 87711 dated October 17, 2005 as well as its Resolution dated January 6, 2006, the Resolutions of the Secretary of Justice dated March 11, 2004 and August 31, 2004, and the Order of the Office of the

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[18] CA *rollo*, p. 397.

[19] As shown by certified true copies of birth certificates of Carlo F. Espiritu, Rafael F. Espiritu, Kim Roland A. Mirabuna, Kaye Ann A. Mirabuna, and Ken Ryan A. Mirabuna. *Rollo*, pp. 492-496.

Regional State Prosecutor, Region V, dated February 19, 2003. The Court *REINSTATES* the Resolution of the Office of the Provincial Prosecutor of Sorsogon in I.S. 2001-9231 (inadvertently referred in the Resolution itself as I.S. 2001-9234), dated February 26, 2002. The names of petitioners Manuel C. Espiritu, Jr., Freida F. Espititu, Carlo F. Espiritu, Rafael F. Espiritu, Rolando M. Mirabuna, Hermilyn A. Mirabuna, Kim Roland A. Mirabuna, Kaye Ann A. Mirabuna, Ken Ryan A. Mirabuna, Juanito P. De Castro, Geronima A. Almonite and Manuel C. Dee are *ORDERED* excluded from the charge.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro, Brion, and *Del Castillo, JJ.,* concur.

SECOND DIVISION

[G.R. No. 177429. November 24, 2009]

ANICIA VALDEZ-TALLORIN, *petitioner, vs.* **HEIRS OF JUANITO TARONA, Represented by CARLOS TARONA, ROGELIO TARONA and LOURDES TARONA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; PARTIES; WHEN INDISPENSABLE; JOINING INDISPENSABLE PARTIES INTO AN ACTION IS MANDATORY. – The rules mandate the joinder of indispensable parties. Thus: ***Sec. 7. Compulsory joinder of indispensable parties.—*** Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs and defendants. Indispensable parties are those with

such an interest in the controversy that a final decree would necessarily affect their rights, so that the courts cannot proceed without their presence. Joining indispensable parties into an action is mandatory, being a requirement of due process. Without their presence, the judgment of the court cannot attain real finality. Judgments do not bind strangers to the suit. The absence of an indispensable party renders all subsequent actions of the court null and void. Indeed, it would have no authority to act, not only as to the absent party, but as to those present as well. And where does the responsibility for impleading all indispensable parties lie? It lies in the plaintiff. x x x

2. ID.; ID.; ID.; ID.; EFFECT OF FAILURE TO JOIN INDISPENSABLE PARTIES.— The Court held in *Plasabas v. Court of Appeals*, that the non-joinder of indispensable parties is not a ground for dismissal. Section 11, Rule 3 of the 1997 Rules of Civil Procedure prohibits the dismissal of a suit on the ground of non-joinder or misjoinder of parties and allows the amendment of the complaint at any stage of the proceedings, through motion or on order of the court on its own initiative. Only if plaintiff refuses to implead an indispensable party, despite the order of the court, may it dismiss the action.

3. CIVIL LAW; LAND REGISTRATION; IMPORTANCE OF TAX DECLARATION; EXPLAINED.— The Court cannot discount the importance of tax declarations to the persons in whose names they are issued. Their cancellation adversely affects the rights and interests of such persons over the properties that the documents cover. The reason is simple: a tax declaration is a primary evidence, if not the source, of the right to claim title of ownership over real property, a right enforceable against another person. The Court held in *Uriarte v. People* that, although not conclusive, a tax declaration is a telling evidence of the declarant's possession which could ripen into ownership. In *Director of Lands v. Court of Appeals*, the Court said that no one in his right mind would pay taxes for a property that he did not have in his possession. This honest sense of obligation proves that the holder claims title over the property against the State and other persons, putting them on notice that he would eventually seek the issuance of a certificate of title in his name. Further, the tax declaration expresses his intent to contribute needed revenues to the

Government, a circumstance that strengthens his *bona fide* claim to ownership.

APPEARANCES OF COUNSEL

Victor P. De Dios, Jr. for petitioner.
Adonis J. Basa for respondents.

D E C I S I O N

ABAD, *J.*:

This case is about a court's annulment of a tax declaration in the names of three persons, two of whom had not been impleaded in the case, for the reason that the document was illegally issued to them.

The Facts and the Case

On February 9, 1998 respondents Carlos, Rogelio, and Lourdes Tarona (the Taronas) filed an action before the Regional Trial Court (RTC) of Balanga, Bataan,[1] against petitioner Anicia Valdez-Tallorin (Tallorin) for the cancellation of her and two other women's tax declaration over a parcel of land.

The Taronas alleged in their complaint that, unknown to them, in 1981, the Assessor's Office of Morong in Bataan cancelled Tax Declaration 463 in the name of their father, Juanito Tarona (Juanito), covering 6,186 square meters of land in Morong, Bataan. The cancellation was said to be based on an unsigned though notarized affidavit that Juanito allegedly executed in favor of petitioner Tallorin and two others, namely, Margarita Pastelero *Vda. de* Valdez and Dolores Valdez, who were not impleaded in the action. In place of the cancelled one, the Assessor's Office issued Tax Declaration 6164 in the names of the latter three persons. The old man Tarona's affidavit had been missing and no copy could be found among the records of the Assessor's Office.[2]

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[1] In Civil Case 6739.

[2] In Morong, Bataan; see Amended Complaint, records, pp. 79-84.

The Taronas further alleged that, without their father's affidavit on file, it followed that his tax declaration had been illegally cancelled and a new one illegally issued in favor of Tallorin and the others with her. The unexplained disappearance of the affidavit from official files, the Taronas concluded, covered-up the falsification or forgery that caused the substitution.[3] The Taronas asked the RTC to annul Tax Declaration 6164, reinstate Tax Declaration 463, and issue a new one in the name of Juanito's heirs.

On March 6, 1998 the Taronas filed a motion to declare petitioner Tallorin in default for failing to answer their complaint within the allowed time.[4] But, before the RTC could act on the motion, Tallorin filed a belated answer, alleging among others that she held a copy of the supposedly missing affidavit of Juanito who was merely an agricultural tenant of the land covered by Tax Declaration 463. He surrendered and waived in that affidavit his occupation and tenancy rights to Tallorin and the others in consideration of ₱29,240.00. Tallorin also put up the affirmative defenses of non-compliance with the requirement of conciliation proceedings and prescription.

On March 12, 1998 the RTC set Tallorin's affirmative defenses for hearing[5] but the Taronas sought reconsideration, pointing out that the trial court should have instead declared Tallorin in default based on their earlier motion.[6] On June 2, 1998 the RTC denied the Taronas' motion for reconsideration[7] for the reasons that it received Tallorin's answer before it could issue a default order and that the Taronas failed to show proof that Tallorin was notified of the motion three days before the scheduled hearing. Although the presiding judge inhibited himself from the case on motion of the Taronas, the new judge to whom the case was re-raffled stood by his predecessor's previous orders.

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[3] *Id.*

[4] *Id.* at 22.

[5] *Id.* at 21.

[6] *Id.* at 24.

[7] *Id.* at 69.

By a special civil action for *certiorari* before the Court of Appeals (CA),[8] however, the Taronas succeeded in getting the latter court to annul the RTC's March 12 and June 2, 1998 orders.[9] The CA ruled that the RTC gravely abused its discretion in admitting Tallorin's late answer in the absence of a motion to admit it. Even if petitioner Tallorin had already filed her late answer, said the CA, the RTC should have heard the Taronas' motion to declare Tallorin in default.

Upon remand of the case, the RTC heard the Taronas' motion to declare Tallorin in default,[10] granted the same, and directed the Taronas to present evidence *ex parte*.[11]

On January 30, 2002 the RTC rendered judgment, a) annulling the tax declaration in the names of Tallorin, Margarita Pastelero *Vda. de* Valdez, and Dolores Valdez; b) reinstating the tax declaration in the name of Juanito; and c) ordering the issuance in its place of a new tax declaration in the names of Juanito's heirs. The trial court also ruled that Juanito's affidavit authorizing the transfer of the tax declaration had no binding force since he did not sign it.

Tallorin appealed the above decision to the CA,[12] pointing out *1)* that the land covered by the tax declaration in question was titled in her name and in those of her two co-owners; *2)* that Juanito's affidavit only dealt with the surrender of his tenancy rights and did not serve as basis for canceling Tax Declaration 463 in his name; *3)* that, although Juanito did not sign the affidavit, he thumbmarked and acknowledged the same before a notary public; and *4)* that the trial court erred in not dismissing the complaint for failure to implead Margarita Pastelero *Vda. de* Valdez and Dolores Valdez who were indispensable parties in

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[8] In CA-G.R. SP 50096.

[9] Records, pp. 149-156.

[10] *Id.* at 223.

[11] *Id*.

[12] In CA-G.R. CV 74762.

the action to annul Juanito's affidavit and the tax declaration in their favor.[13]

On May 22, 2006 the CA rendered judgment, affirming the trial court's decision.[14] The CA rejected all of Tallorin's arguments. Since she did not assign as error the order declaring her in default and since she took no part at the trial, the CA pointed out that her claims were in effect mere conjectures, not based on evidence of record.[15] Notably, the CA did not address the issue Tallorin raised regarding the Taronas' failure to implead Margarita Pastelero *Vda. de Valdez* and Dolores Valdez as indispensable party-defendants, their interest in the cancelled tax declarations having been affected by the RTC judgment.

Questions Presented

The petition presents the following questions for resolution by this Court:

1. Whether or not the CA erred in failing to dismiss the Taronas' complaint for not impleading Margarita Pastelero *Vda. de* Valdez and Dolores Valdez in whose names, like their co-owner Tallorin, the annulled tax declaration had been issued;

2. Whether or not the CA erred in not ruling that the Taronas' complaint was barred by prescription; and

3. Whether or not the CA erred in affirming the RTC's finding that Juanito's affidavit had no legal effect because it was unsigned; when at the hearing of the motion to declare Tallorin in default, it was shown that the affidavit bore Juanito's thumbmark.

The Court's Rulings

The first question, whether or not the CA erred in failing to dismiss the Taronas' complaint for not impleading Margarita

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[13] CA *rollo*, pp. 27-42.

[14] *Id.* at 50-55.

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

Pastelero *Vda. de* Valdez and Dolores Valdez in whose names, like their co-owner Tallorin, the annulled tax declaration had been issued, is a telling question.

The rules mandate the joinder of indispensable parties. Thus:

Sec. 7. *Compulsory joinder of indispensable parties.* – Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs and defendants.[16]

Indispensable parties are those with such an interest in the controversy that a final decree would necessarily affect their rights, so that the courts cannot proceed without their presence.[17] Joining indispensable parties into an action is mandatory, being a requirement of due process. Without their presence, the judgment of the court cannot attain real finality.

Judgments do not bind strangers to the suit. The absence of an indispensable party renders all subsequent actions of the court null and void. Indeed, it would have no authority to act, not only as to the absent party, but as to those present as well. And where does the responsibility for impleading all indispensable parties lie? It lies in the plaintiff.[18]

Here, the Taronas sought the annulment of the tax declaration in the names of defendant Tallorin and two others, namely, Margarita Pastelero *Vda. de* Valdez and Dolores Valdez and, in its place, the reinstatement of the previous declaration in their father Juanito's name. Further, the Taronas sought to strike down as void the affidavit in which Juanito renounced his tenancy right in favor of the same three persons. It is inevitable that any decision granting what the Taronas wanted would necessarily affect the rights of such persons to the property covered by the tax declaration.

The Court cannot discount the importance of tax declarations to the persons in whose names they are issued. Their cancellation

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[16] 1997 Rules of Civil Procedure, Rule 3, Sec. 7.

[17] *Quilatan v. Heirs of Quilatan*, G.R. No. 183059, August 28, 2009.

[18] *Moldes v. Villanueva*, G.R. No. 161955, August 31, 2005, 468 SCRA 697, 708; *Domingo v. Scheer*, 466 Phil. 235, 265 (2004).

adversely affects the rights and interests of such persons over the properties that the documents cover. The reason is simple: a tax declaration is a primary evidence, if not the source, of the right to claim title of ownership over real property, a right enforceable against another person. The Court held in *Uriarte v. People*[19] that, although not conclusive, a tax declaration is a telling evidence of the declarant's possession which could ripen into ownership.

In *Director of Lands v. Court of Appeals*,[20] the Court said that no one in his right mind would pay taxes for a property that he did not have in his possession. This honest sense of obligation proves that the holder claims title over the property against the State and other persons, putting them on notice that he would eventually seek the issuance of a certificate of title in his name. Further, the tax declaration expresses his intent to contribute needed revenues to the Government, a circumstance that strengthens his *bona fide* claim to ownership.[21]

Here, the RTC and the CA annulled Tax Declaration 6164 that belonged not only to defendant Tallorin but also to Margarita Pastelero *Vda. de* Valdez and Dolores Valdez, which two persons had no opportunity to be heard as they were never impleaded. The RTC and the CA had no authority to annul that tax declaration without seeing to it that all three persons were impleaded in the case.

But the Taronas' action cannot be dismissed outright. As the Court held in *Plasabas v. Court of Appeals*,[22] the non-joinder of indispensable parties is not a ground for dismissal. Section 11, Rule 3 of the 1997 Rules of Civil Procedure prohibits the dismissal of a suit on the ground of non-joinder or misjoinder of parties and allows the amendment of the complaint at any

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[19] G.R. No. 169251, December 20, 2006, 511 SCRA 471, 491.

[20] 367 Phil. 597, 604 (1999).

[21] Also in *Republic v. Court of Appeals*, 328 Phil. 238, 248 (1996); see also *Heirs of Severo Legaspi, Sr. v. Vda. de Dayot*, G.R. No. 83904, August 13, 1990, 188 SCRA 508, 517.

[22] G.R. No. 166519, March 31, 2009, 582 SCRA 686.

stage of the proceedings, through motion or on order of the court on its own initiative. Only if plaintiff refuses to implead an indispensable party, despite the order of the court, may it dismiss the action.

There is a need, therefore, to remand the case to the RTC with an order to implead Margarita Pastelero *Vda. de* Valdez and Dolores Valdez as defendants so they may, if they so desire, be heard.

In view of the Court's resolution of the first question, it would serve no purpose to consider the other questions that the petition presents. The resolution of those questions seems to depend on the complete evidence in the case. This will not yet happen until all the indispensable party-defendants are impleaded and heard on their evidence.

WHEREFORE, the Court *GRANTS* the petition and *SETS ASIDE* the decision of the Regional Trial Court of Balanga, Bataan in Civil Case 6739 dated January 30, 2002 and the decision of the Court of Appeals in CA-G.R. CV 74762 dated May 22, 2006. The Court *REMANDS* the case to the Regional Trial Court of Balanga, Bataan which is *DIRECTED* to have Margarita Pastelero *Vda. de* Valdez and Dolores Valdez impleaded by the plaintiffs as party-defendants and, afterwards, to hear the case in the manner prescribed by the rules.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro, Brion, and *Del Castillo, JJ.,* concur.

SECOND DIVISION

[G.R. No. 178255. November 24, 2009]

RICARDO C. SILVERIO, *petitioner, vs.* **EUFEMIA ALMEDA and PONCIANO ALMEDA, substituted by his legal heirs EUFEMIA ALMEDA, ELENITA CERVANTES, SUSAN ALCAZAR, LAURENCE ALMEDA, FLORECITA DATOD, ROMEL ALMEDA, MARLON ALMEDA, ALAN ALMEDA, WENILDA DIAZ and CAROLYN SANTOS,** *respondents.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; SALES; OBLIGATIONS OF A BUYER.— It is said that when the buyer enters into a contract of sale, he assumes two obligations, *first,* the payment of the consideration and, *second,* the performance of such first obligation in good faith, an implied obligation but just as binding and as important as the first. Good faith is of course a matter of intent. It means giving what one owes to the other without concealment and evasion. Since intent is a state of mind, however, good faith needs a face that one can see. The steps that a party takes in fulfilling his obligation usually constitute the face that expresses good faith or lack of it.

2. ID.; DAMAGES; ATTORNEY'S FEES; REDUCED AND FIX THE LEGAL INTEREST TO 6% PER ANNUM. — This Court must, however, reduce the award of attorney's fees to the Almedas to the more reasonable amount of ₱250,000.00 and fix the legal interest on the award of $100,000.00 in their favor to 6 percent per annum from the time of the filing of this suit until the obligation is fully paid since it would not be fair for the Almedas to earn interest for the delay brought about by the wrong remedy they pursued in the U.S. court.

APPEARANCES OF COUNSEL

Quisumbing Torres for petitioner.

V.Y. Eleazar & Associates for respondents.

D E C I S I O N

ABAD, *J.*:

This case is about the need for parties to an agreement to comply with their respective obligations in good faith.

The Facts and the Case

In 1973 respondents Ponciano and Eufemia Almeda (the Almedas) sold three lots in the Meridian County of Los Angeles, California, U.S.A., to petitioner Ricardo C. Silverio (Silverio) for $200,000.00, payable in 12 monthly installments[1] plus an additional 20 percent of the net profit but not exceeding $100,000.00 should Silverio be able to sell the same and make a profit.[2] The pertinent provisions of their agreement read:

> 2) That the TRANSFEREE shall pay the TRANSFERORS the total sum of TWO HUNDRED THOUSAND ($200,000.00) DOLLARS US Currency, in twelve (12) monthly installments without interests, either to be paid in the United States or in the Philippines at the option of the TRANSFERORS, the first installment of which shall be due after the consent of the Trustee-Sellers shall have been obtained x x x and every month thereafter until fully paid;
>
> xxx xxx xxx
>
> 4) That it being evident that this sale/assignment/transfer of the herein real estate properties is $150,000.00 less than the actual amount including taxes and all other expenses paid by herein TRANSFERORS, it is further agreed that in the event that TRANSFEREE sells in the future the herein properties for a profit, the TRANSFERORS shall be entitled to a further payment of twenty per cent (20%) of the net profit but not to exceed ONE HUNDRED THOUSAND ($100,000.00) US Dollars, the said amount to accrue immediately after consummation of the said future sale.

Eleven years later or on February 24, 1984 Silverio executed a grant deed transferring ownership of the three lots to Silcor

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[1] *Rollo*, p. 99, par. 2 of the contract.

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

USA, Inc. (Silcor),[3] a company of which he was the president,[4] "for a valuable consideration."[5] After about 10 months or in December 1984, Silcor in turn sold the property to Lancaster Properties of Oregon (Lancaster),[6] a partnership that included Silverio,[7] also "for a valuable consideration."[8] The Almedas apparently got wind of the sale of the lots and demanded payment of the additional sum due them from that sale. In a letter dated August 26, 1985 Silverio wrote the U.S. lawyer of the Almedas, admitting that he had sold the subject property conditionally and that he would pay the Almedas what he owed them as soon as he got the proceeds of the sale.[9]

In 1988, the Almedas sued Silverio and others with him for breach of contract before the Superior Court of California for the County of Los Angeles.[10] The Almedas asked the court to order Silverio to pay them $100,000.00 with interest from the date he resold the subject lots to Silcor to the date of judgment. But the court dismissed the complaint,[11] saying that the Almedas

[3] *Id.* at 141.

[4] *Id.* at 143.

[5] *Id.* at 141.

[6] *Id.* at 143.

[7] *Id.* at 146.

[8] *Id.* at 143.

[9] *Id.* at 158. The lawyer of the Almedas wrote a letter to Silverio dated August 22, 1985 regarding the agreement of transfer of properties dated June 25, 1973.

[10] Docketed as Case No. C 707 605.

[11] *Rollo*, pp. 488-489; Decision: After full consideration of the evidence and the opening statement of plaintiffs, it appeared, and the court finds that xxx and/or Assignment of Rights, Claims, Interests, and/or Title dated June 25, 1973 x x x and because defendant Ricardo Silverio has admitted his obligation to plaintiffs to pay the sum of $100,000 in accordance with said paragraph 4 of the Agreement, in his letter dated August 26, 1985 to John P. Kenosian, former attorney of plaintiffs.

It is hereby ordered, adjudged and decreed that plaintiffs take nothing by this complaint and defendant have judgment against plaintiffs for costs of suit in this action.

were "non-suited" on their cause of action. It denied their request for declaratory relief regarding their agreement with Silverio since no issue involving interpretation of its resale clause existed. Indeed, said the U.S. court, Silverio admitted to the Almedas' former lawyer that he owed the Almedas "the sum of $100,000.00 in accordance with said paragraph 4 of the Agreement."[12]

In 1990 the Almedas sued Silverio for sum of money before the Regional Trial Court (RTC) of Makati City,[13] alleging that Silverio still owed the Almedas $150,000.00 out of the initial payment due the latter and that, although Silverio made a profit from reselling the three Meridian County lots, he did not make the second promised payment which was equivalent to 20 percent of his profit but not exceeding $100,000.00.[14] In his defense,[15] Silverio said that he already paid the principal amount due; that the action was barred by a prior foreign judgment and by prescription; and that, at any rate, he was unable to sell the lots for a substantial profit. His attempt to sell them in December 1984 to Lancaster had been aborted by a bankruptcy court's order rescinding the sale.[16]

In its decision of July 27, 1998,[17] the RTC dismissed the Almedas' complaint. It ruled that Silverio had paid them the principal consideration due on the sale of the lots and that, as for the additional consideration, they did not have a valid claim because they had been unable to prove that Silverio sold the properties to Silcor for a profit. It also dismissed Silverio's counterclaim for moral damages for lack of evidence to support it. Finally, the RTC ordered the Almedas to pay Silverio ₱100,000.00 as attorney's fees for having been forced to defend against a clearly unfounded action.

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[12] *Id.* at 110.

[13] Branch 60 in Civil Case No. 90-3340.

[14] Records, Vol. 1, p. 3, Complaint.

[15] *Id.* at 91-93, Answer.

[16] *Id.* at 105-107.

[17] *Rollo*, pp. 253-269; in Civil Case No. 90-3340.

On appeal,[18] the Court of Appeals (CA) reversed the RTC decision insofar as the Almedas' second claim was concerned. Citing paragraph 4 of the agreement between the parties, it ordered Silverio to pay the Almedas $100,000.00 with legal interest from the time the amount fell due until fully paid plus ₱500,000.00 in attorney's fees. The court found from the "whereas clauses" of the agreement that the lots had an actual value of at least $854,000.00. Silverio paid the Almedas only $291,000.00. Based on these figures, the CA concluded that the Almedas could not have intended to sell their lots to Silverio for only $200,000.00. Thus, their agreement provided for additional compensation in the event Silverio resold the lots for a profit. The CA regarded the grant deeds transferring ownership of the properties from Silverio to Silcor and from Silcor to Lancaster, as attempts of Silverio to defraud the Almedas of what was due them from the resale.

The Issue Presented

The core issue in this case is whether or not Silverio's conveyance of the subject three lots to Silcor and the latter's subsequent sale of the same to Lancaster made him liable to the Almedas for their share in whatever profits he made.

The Court's Ruling

To justify its ruling against Silverio in the controversy regarding paragraph 4 of his agreement with the Almedas that involved the payment of additional compensation based on any profit he would make in case he resells the lots, the CA pointed out a) that based on the "whereas clause" of the agreement, the lots were valued at far more than the $200,000.00 stated in its paragraph 2; b) that Silverio admitted in a letter to the Almedas' U.S. lawyer an obligation to pay more to the Almedas as soon as he had received the proceeds of the sale; c) that the U.S. court acknowledged in its order that Silverio owed the Almedas "the sum of $100,000.00 in accordance with said paragraph 4 of the Agreement"; and d) that the subsequent sale of the lots

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

to Silcor and later to Lancaster were Silverio's attempts to defraud the Almedas of their share of the profits from the resale.[19]

It is difficult to ascertain exactly how much the three lots were really worth at the time the Almedas sold them to Silverio.[20] This is not clear from the so-called "whereas clauses" of their agreement. But the parties themselves said in paragraph 4 that the price of $200,000.00 stated in paragraph 2 was lower by at least $150,000.00 than the actual value of the property.[21] And this is their reason for providing a profit sharing scheme in the event Silverio was able to resell the lots to others. From this it is clear that the parties did not contemplate for Silverio to own, take possession of, and use the lots on a long term basis. The parties would have Silverio resell them to others so the Almedas could recoup their loss in the transfer made to him.

Actually, Silverio does not deny the full import of his obligation under paragraph 4. His main defense is that he had been unable to sell the lots for a profit. But, as the CA pointed out, Silverio said in his letter of August 26, 1985 to the Almedas' U.S. lawyer that Silverio had already conditionally sold the lots and that he was going to pay the Almedas as soon as he got the proceeds of the sale.[22] If he did not make a profit in that sale, what did he have to pay the Almedas for? Further, as the CA also pointed out, although the U.S. court dismissed the Almedas' action for declaratory relief, it affirmed that Silverio admitted owing them money, specifically, "the sum of $100,000.00."[23]

Silverio of course points out that neither the RTC nor the CA could give weight to his letter of August 26, 1985 to the Almedas' U.S. lawyer since the letter was a mere photocopy and had not been properly authenticated.[24] The RTC, Silverio

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[19] *Id.* at 18-25.

[20] *Id.* at 136-137. The Almedas purchased the lot in 1970 for $854,000.00 and sold them to Silverio in 1973.

[21] Records, Vol. II, p. 641.

[22] *Rollo,* p. 158.

[23] *Id.* at 109-110.

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

adds, merely admitted the letter as part of Ponciano Almeda's testimony in court.[25] This may be so but the record shows that Silverio never appeared in court to deny this testimony. Indeed, he has been careful not to say or even hint in his pleadings here and below that the letter was a fabrication. The CA did not, therefore, commit an error in taking cognizance of that letter in the context of Ponciano's testimony.

It is said that when the buyer enters into a contract of sale, he assumes two obligations, *first*, the payment of the consideration and, *second*, the performance of such first obligation in good faith, an implied obligation but just as binding and as important as the first.[26] Good faith is of course a matter of intent.[27] It means giving what one owes to the other without concealment and evasion. Since intent is a state of mind, however, good faith needs a face that one can see. The steps that a party takes in fulfilling his obligation usually constitute the face that expresses good faith or lack of it.[28]

Here, although paragraph 4 of their agreement did not fix a period within which Silverio must resell the lots to make a profit for the parties, it is implicit that he would do so within such a reasonable time as the ordinary course of the business of selling lands dictates. Yet, Silverio waited 11 years before he made his move.[29] Since actions based on contracts ordinarily prescribe in 10 years,[30] he probably calculated that he did not have to

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[25] *Id.* at 54.

[26] Civil Code, Art. 19: Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith; see *Castillo v. Tolentino*, G.R. No. 181525, March 4, 2009, 580 SCRA 629, 654.

[27] *Civil Service Commission v. Maala*, G.R. No. 165253, August 18, 2005, 467 SCRA 390, 399, cited in *Bacsasar v. Civil Service Commission*, G.R. No. 180853, January 20, 2009, 576 SCRA 787, 795.

[28] *Id*.

[29] *Rollo*, p. 139, Silverio and the Almedas executed the agreement to transfer on June 25, 1973; *id.* at 141, Silverio transferred the properties to Silcor on February 21, 1984.

[30] Civil Code, Art. 1144: The following actions must be brought within ten years from the time the right of action accrues: (1) Upon a written contract xxx.

share any profit he would make if he resold the lots after 10 years. Indeed, part of his defense before the RTC was that the Almedas' action under paragraph 4 already prescribed.[31] The RTC, however, ruled[32] and quite correctly that the period of prescription under paragraph 4 began to run only from the time Silverio sold the lots to Silcor.[33]

And to conceal any sale of the lots that he planned to make in favor of genuine third parties, Silverio first put in two layers of sales in favor of his own firms: the first by grant deed (as a gift) to Silcor,[34] a company of which he was the president[35] and, the second, also by grant deed from Silcor to Lancaster[36] of which he was a partner.[37] Unfortunately, the Almedas somehow got wind of these transactions and hired a U.S. lawyer to run after Silverio in 1985. This forced him to write to that lawyer about his intention to pay the Almedas what was due them as soon as he could collect the proceeds from the conditional sale of the lots.

Silverio of course points out that the Almedas had been unable to prove that he made a profit out of his sale of the lots to Silcor. Indeed, he adds, that the "grant deed,"[38] the name

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[31] Records, Vol. 1, p. 93.

[32] *Rollo*, p. 268, RTC Decision: x x x [E]ven again assuming that they discovered the sale on February 21, 1984 – the date of the execution of the GRANT DEED, they had a period of ten (10) years within which to file their action under the said paragraph 4 (Article 1144, New Civil Code). This action was filed on December 4, 1990 –or only more than six (6) years only from February 21, 1994.

[33] *De Castro v. Court of Appeals*, 434 Phil. 53, 68 (2000), cited in *Unlad Resources Development Corporation v. Dragon*, G.R. No. 149338, July 28, 2008, 560 SCRA 63, 77: Article 1144 specifically provides that the 10-year period is counted from "the time the right of action accrues." The right of action accrues from the moment the breach of right or duty occurs.

[34] *Rollo*, p. 141.

[35] *Id.* at 143.

[36] *Id.*

[37] *Id.* at 146.

[38] Records, Vol. II, p. 644.

given to the transaction, while "for a valuable consideration,"[39] included a statement that it was a "gift deed."[40] In the same way, Silcor's transfer of the lots to Lancaster was also by way of "corporation grant deed x x x for a valuable consideration"[41] with the amount of consideration unstated. Consequently, Silverio would conclude that the CA had no basis for ordering him to pay $100,000.00 to the Almedas pursuant to paragraph 4 of their agreement.

But Silverio's theory can be faulted for the following reasons:

First. In transferring the titles of the lots to Silcor, a company of which he was president, Silverio actually violated what the parties clearly intended, namely, that Silverio would resell the lots to third parties for a profit. The parties did not contemplate his giving them away as a gift to his company. Consequently, since Silverio tried in this case to defraud the Almedas of their share of the profit that they would have made out of a resale to a third party, the CA was justified in awarding damages to them equivalent to the maximum profit they would have earned, that is, $100,000.00, had Silverio done the right thing.

Parenthetically, Silverio's admission in his letter to the Almedas' U.S. lawyer that he had already conditionally sold the property and would shortly pay the Almedas what he owed them directly contradicts his gift-to-Silcor theory. This grinds deeply against his pretension that he had not made a substantial profit from the sale.

Second. The grants of deed from Silverio to Silcor and from Silcor to Lancaster were silent as to the actual amounts that the lots were sold for; the grant deeds said merely that the transactions were "for valuable consideration x x x receipt of which is hereby acknowledged."[42] Yet, Silverio continued not to disclose the actual amounts of those considerations despite the suit filed in

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[39] *Id*.

[40] *Id*.

[41] *Id.* at 646.

[42] *Id.* at 644 and 646.

court and the trial that followed. He even uses to his personal advantage the non-mention of those amounts in the grants of deed, saying that those grants of deed do not prove profit on their faces.

But, since it is Silverio alone who was in a position to say whether or not the "valuable consideration" mentioned in those grants spelt profit for the sellers, the call for truth nudges at him. His suppression of it gives rise to the assumption that its disclosure would hurt his interest,[43] that it would show him to have made a profit from the resale of the lots and so be liable to the Almedas for that profit. Since the agreement places a cap of $100,000.00 on the additional compensation arising from the resale, the CA was correct in ordering Silverio to pay the same.

This Court must, however, reduce the award of attorney's fees to the Almedas to the more reasonable amount of ₱250,000.00 and fix the legal interest on the award of $100,000.00 in their favor to 6 percent per annum from the time of the filing of this suit until the obligation is fully paid[44] since it would not be fair for the Almedas to earn interest for the delay brought about by the wrong remedy they pursued in the U.S. court.

WHEREFORE, the Court *DENIES* the petition and *AFFIRMS* the decision of the Court of Appeals dated October 10, 2006 subject to the *MODIFICATION* that the award of attorney's fees to the Almedas be reduced to ₱250,000.00 and that the interest on the award of $100,000.00 in their favor be fixed at 6 percent per annum from the time of the filing of this suit until finality of this Decision and thereafter 12% interest per annum until full payment.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro, Brion, and *Del Castillo, JJ.,* concur.

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[43] *SCC Chemicals Corporation v. Court of Appeals*, 405 Phil. 514, 523 (2001).

[44] Civil Code, Art. 2209: If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six percent *per annum*.

SECOND DIVISION

[G.R. No. 185396. November 24, 2009]

RUFINA FAJARDO, VIRGILIO FAJARDO, MARIA AUREA FAJARDO, ISABELO FAJARDO and CARMINA GENOVEVA FAJARDO-SULLIVAN, represented by their Attorney-in-Fact, PIA CECILIA B. CASTILLO, *petitioners, vs.* **ALBERTO COMANDANTE, substituted by MARIALITA M. COMANDANTE, ARTHUR M. COMANDANTE, MARITES C. AYOSO, ANGELITA C. HANDY and ERIBERTO COMANDANTE,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; FINAL AND VALID ORDER COULD NOT BE COLLATERALLY ATTACKED.— Since the Fajardos did not appeal from the May 11, 2006 Order of the RTC, the same became final and executory as a matter of course. It can no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it is made by the court that rendered it or by an appellate court. As a final and valid order, it could not be collaterally attacked through the Fajardos' artful motion to treat Alberto's April 24, 2006 motion as a scrap of paper, where the sole object, in truth, is the nullification of the May 11, 2006 Order.

APPEARANCES OF COUNSEL

Teddy C. Macapagal for petitioners.
Nestor F. Dantes for respondents.

D E C I S I O N

ABAD, *J.*:

This case is about a collateral attack of a final order of dismissal of the trial court after the party against whom it was rendered failed to file a motion for its reconsideration or a notice of appeal from it.

The Facts and the Case

On March 8, 2004 petitioner Rufina Fajardo and her husband, Victor Fajardo (the Fajardos), filed a complaint[1] against respondent Alberto Comandante (Alberto) and the Register of Deeds of Iba, Zambales, before the Regional Trial Court (RTC) of Olongapo City.[2] The Fajardos asked the court to annul the deed of sale that they supposedly executed in Alberto's favor on February 7, 1977, covering 43,750 square meters of land in Barangay Calapacuan, Subic, Zambales, their signatures on the document having been forged. They also asked the court to cancel Transfer Certificate of Title 57763 that the register of deeds issued in Alberto's name based on that deed of sale. In his answer,[3] Alberto denied the Fajardos' allegations and claimed that the deed of sale had been regularly executed and the subject property validly transferred to him.

On November 29, 2005 Alberto moved for the dismissal of the complaint on two grounds: first, the Fajardos failed to set the case for pre-trial[4] six months after the last pleading had been served and, second, they did not prosecute the case for an unreasonable length of time.[5] But the RTC denied the motion.[6]

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[1] *Rollo*, p. 10; the complaint was subsequently amended on April 6, 2004.

[2] Branch 24; in Civil Case 111-0-2004.

[3] *Rollo,* pp. 54-55.

[4] Pursuant to Section 1, Rule 18 of the Revised Rules of Civil Procedure.

[5] Under Section 3, Rule 17 of the same Rule.

[6] *Rollo,* p. 56.

It held that the amended rules[7] imposed on the branch clerk of court the duty to issue a notice of pre-trial in cases where the plaintiff failed to do so. The trial court thus directed its officer-in-charge to set the case for pre-trial with notice to the parties as soon as possible.

Alberto moved for reconsideration,[8] however, pointing out that while the branch clerk of court should set the case for pre-trial, the RTC should still dismiss the action for failure of the Fajardos to prosecute it for an unreasonable length of time. The RTC found merit in this, noting that the Fajardos had not even bothered to oppose Alberto's motion to dismiss. And, although it required the Fajardos to comment on Alberto's motion for reconsideration, they did not do so. Thus, the RTC issued an Order[9] dated February 27, 2006, setting aside its previous Order of February 7, 2006 and dismissing the Fajardos' complaint *without prejudice*.

Unsatisfied, Alberto filed a manifestation/motion,[10] substantially asking the RTC to reconsider its February 27, 2006 Order and dismiss the complaint *with prejudice*. For their part, the Fajardos filed a motion for reconsideration of the same Order and asked that the case be set for pre-trial.[11] The trial court denied both motions in its Omnibus Order[12] dated April 4, 2006. It explained that it could not dismiss the complaint "with prejudice" since it was more of counsel's fault rather than of the Fajardos that the case had not moved. The trial court could not, on the other hand, grant the Fajardos' motion because their counsel did not bother to inform it that he could not appear at the hearing due

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[7] Section 1 of Rule 18, as amended by A.M. No. 03-1-09-SC, Proposed Rule on Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures, that took effect on August 16, 2004.

[8] *Rollo*, pp. 57-58.

[9] *Id.* at 60.

[10] *Id.* at 61-62.

[11] *Id.* at 63-65.

[12] *Id.* at 66.

to some illness and because the motion did not conform to the notice requirements of Rule 15 of the Rules of Civil Procedure.

On April 24, 2006 Alberto again moved for reconsideration, insisting that the trial court's dismissal of the complaint should be *with prejudice*.[13] Now, finding that neither the Fajardos nor their counsel had shown real interest in pressing their action even up to that time, the trial court reconsidered its earlier order and dismissed the complaint "*with*" prejudice in its Order[14] dated May 11, 2006.

On September 11, 2006 the Fajardos filed a motion[15] for the trial court to treat Alberto's April 24, 2006 motion for reconsideration, which had already been granted and resulted in the dismissal of the case *with* prejudice, as a mere scrap of paper for its non-compliance with the three-day notice rule.[16] Alberto's motion, according to them, did not produce any legal effect such as the court's Order of May 11, 2006 that dismissed their complaint with prejudice.[17]

On October 4, 2006 the trial court issued an order, denying the Fajardos' motion.[18] It chided them for not even bothering to file any motion for reconsideration of its Orders of February 27 and May 11, 2006 although they were in receipt of these. The spouses moved for reconsideration.[19] Subsequently, they submitted in support of it a certification[20] that the post office delivered Alberto's April 24, 2006 motion for reconsideration to the Fajardos'

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[13] *Id.* at 67-68.

[14] *Id.* at 70.

[15] The motion was denominated as Motion to Treat Defendants' "Motion to Reconsider Order of 4th April 2006 Denying Defendants' Motion/Plea for an Order of Dismissal with Prejudice" Dated 24 April 2006 as a Mere Scrap of Paper.

[16] Section 4 of Rule 15 of the Revised Rules of Civil Procedure.

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

[18] *Id.* at 75.

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

[20] *Id.* at 80.

counsel only on April 28, 2006, the day after the hearing of such motion. But, on finding that the Fajardos did not bother to appeal from its order dismissing the case with prejudice, rendering the same final and executory, the RTC issued an Order[21] on May 28, 2007, denying their motion for reconsideration.

Undeterred, the Fajardos filed a petition for *certiorari* with the Court of Appeals,[22] imputing grave abuse of discretion on the RTC for issuing its May 11, 2006, October 4, 2006, and May 28, 2007 Orders. They reiterated their earlier position that the RTC should not have taken cognizance of Alberto's April 24, 2006 motion, which prompted the dismissal of the case with prejudice, for failing to abide by the notice requirements for motions. The motion being defective, the Fajardos conclude that the RTC order it elicited is void.

On April 30, 2008 the Court of Appeals rendered a decision,[23] dismissing the petition for failure of the Fajardos[24] to clearly demonstrate the RTC's grave abuse of discretion and jurisdictional errors.[25] Their motion for reconsideration having been denied on November 17, 2008,[26] they filed the present petition.

Question Presented

The only question the petition presents is whether or not the RTC gravely abused its discretion a) in not treating Alberto's April 24, 2006 motion for reconsideration as a mere scrap of paper for non-compliance with the three-day notice rule and b)

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[21] *Id.* at 81-82.

[22] In CA-G.R. SP No. 99471.

[23] *Rollo*, pp. 23-36. Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Jose C. Reyes, Jr. and Ramon M. Bato, Jr., concurring.

[24] Victor Fajardo died in the meantime; his children, petitioners Virgilio Fajardo, Maria Aurea Fajardo, Isabelo Fajardo, and Carmina Genoveva Fajardo-Sullivan, substituted for him. *Id.* at 13. Alberto likewise died and was substituted by respondents Marialita M. Comandante, Arthur M. Comandante, Marites C. Ayoso, Angelita C. Handy, and Eriberto Comandante.

[25] *Rollo*, p. 32.

[26] *Id.* at 38-39.

in not setting aside, as a consequence, the order that dismissed their case "with" prejudice.

The Court's Ruling

From the start, the Fajardos have shown a cavalier attitude in moving their case forward. Although the issues in the case had been long joined by the pleadings of the parties, they, being the plaintiffs, did not ask the RTC to set it for pre-trial hearing. This omission prompted Alberto, after six months, to file a motion to dismiss the Fajardos' action for failure to prosecute. And when the court required the Fajardos to oppose the motion or file a comment on it, they did not. Still, on February 7, 2006 the court denied Alberto's motion to dismiss. When Alberto filed his February 9, 2006 motion for reconsideration of the denial of his motion, the court again directed the Fajardos to oppose the motion or file a comment on it but, like before, they did not, eventually persuading the court on February 27, 2006 to dismiss their action "without" prejudice.

At any rate, the Fajardos point out that since Alberto failed to give them proper notice with respect to his April 24, 2006 motion for reconsideration that sought dismissal of the case "with" prejudice, the RTC should have treated that motion as a mere scrap of paper and not act on it. This claim is correct as far as it goes. Alberto set his motion for hearing on April 27, 2006 but served a copy of it on the Fajardos' counsel by registered mail, which the latter received only on April 28, 2006, one day after the scheduled hearing.[27] Mistaken in its belief that proper notice had been given to the Fajardos, however, the RTC considered Alberto's motion submitted for resolution.

But what did the Fajardos do with Alberto's motion that they received on April 28, 2006, which motion asked the RTC to change its order of dismissal of their case from "without" prejudice to one "with" prejudice? Nothing! It apparently did not alarm them or their counsel at all. They did not oppose it

[27] *Id.* at 80.

or bother to check with the court the outcome of the motion that had been set for hearing on April 27, 2006. Yet they had ample time to do this since the RTC incurred delay in acting on Alberto's motion. Only on May 11, 2006 or about two weeks later did the court grant the same and dismissed the case, now "with" prejudice.

Since the RTC's May 11, 2006 Order of dismissal "with" prejudice was a final order, the Fajardos' remedy was to file either a motion for its reconsideration or a notice of appeal to have the RTC's error in entertaining Alberto's defective motion rectified.[28] But the Fajardos allowed the period for filing such motion or notice of appeal to lapse. Only on September 11, 2006, four months later, did they file their motion to treat Alberto's motion of April 24, 2006 as a mere scrap of paper for failing to comply with the three-day notice requirement for motions. Actually, this was in the nature of a motion for reconsideration of the May 11, 2006 Order, crudely masked to hide the fact that they filed it out of time. And, when the RTC denied this belated motion, the Fajardos resorted to the remedy of a special civil action of *certiorari* under Rule 65 filed with the Court of Appeals to get that May 11, 2006 Order reviewed and set aside. That remedy is not available to them.[29]

Since the Fajardos did not appeal from the May 11, 2006 Order of the RTC, the same became final and executory as a

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[28] RULES OF COURT, Rule 41, Section 2. *Modes of appeal*.—

> *(a) Ordinary appeal*.— The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

[29] See: *Vios v. Pantangco, Jr.*, G.R. No. 163103, February 6, 2009, 578 SCRA 129, 144; *Heirs of Placido Miranda v. Court of Appeals*, 325 Phil. 674, 685 (1996).

matter of course. It can no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it is made by the court that rendered it or by an appellate court.[30] As a final and valid order, it could not be collaterally attacked through the Fajardos' artful motion to treat Alberto's April 24, 2006 motion as a scrap of paper, where the sole object, in truth, is the nullification of the May 11, 2006 Order.[31]

WHEREFORE, the Court *DENIES* the petition and *AFFIRMS* the Court of Appeals' decision of April 30, 2008 and resolution of November 17, 2008. No costs.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro, Brion, and *Del Castillo, JJ.,* concur.

EN BANC

[A.M. No. 06-3-07-SC. November 25, 2009]

RE: REQUEST FOR APPROVAL OF THE REVISED QUALIFICATION STANDARD FOR THE CHIEF OF MISO.

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[30] *Temic Semiconductors, Inc. Employees Union v. Federation of Free Workers*, G.R. No. 160993, May 20, 2008, 554 SCRA 122, 134; *Bearneza v. National Labor Relations Commission*, G.R. No. 146930, September 11, 2006, 501 SCRA 372, 375; *Gallardo-Corro v. Gallardo*, 403 Phil. 498, 511 (2001).

[31] See: *Filinvest Credit Corporation v. Intermediate Appellate Court*, G.R. No. 66641, March 6, 1992, 207 SCRA 59, 65.

Re: Request for Approval of the Revised Qualification Standard for the Chief of MISO

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; MANAGEMENT INFORMATION SYSTEMS OFFICE (MISO) RE-ENGINEERING DEVELOPMENT PLAN (MRDP); THE RECOMMENDATION OF INDRA SISTEMAS S.A. (INDRA) ON THE QUALIFICATION STANDARDS FOR THE CHIEF OF OFFICE OF THE MISO WAS APPROVED BY THE COURT.— It has also come to our attention that, in our efforts at maintaining uniformity in the QS, we may have overlooked an important component of the MISO Re-engineering Development Plan (MRDP). As discussed in our September 10, 2009 Resolution, the MISO has an ongoing ICT consultancy project with Indra Sistemas S.A. (INDRA), part of which specifically deals with the creation of the MRDP. Among the concerns studied by INDRA is the staffing pattern of MISO and the QS for each position in the office's plantilla. INDRA recognizes that both lawyers and non-lawyers may apply for the position, and recommends the QS [of the MISO Chief of Office position] xxx. The MRDP was approved by this Court in a Resolution dated August 11, 2009. Thus, in order to fully implement the MISO's MRDP, we resolve to adopt INDRA's recommendation for the QS of the MISO Chief of Office position.

R E S O L U T I O N

NACHURA, *J.*:

On September 10, 2009, this Court promulgated a Resolution in the above-captioned case, approving the Qualification Standards (QS) for Chief of Office, Management Information Systems Office (MISO); and Judicial Reform Program Administrator, Program Management Office (PMO), as follows:

	MISO Chief of Office	**PMO Judicial Reform Program Administrator**
Education	Bachelor of Laws with at least 18 units in computer science, information technology or any similar computer academic course or Bachelor's Degree in computer science or information technology and post-graduate degree, preferably in computer science or information technology	Bachelor of Laws with at least 18 units in public administration, business administration, finance, economics, social sciences or any related field or Bachelor's degree and post-graduate degree in public administration, finance, economics, social sciences or any related field
Experience	10 years or more of relevant supervisory work experience either in the government (acquired under career service) or private sector, with at least 5 years relevant experience in the field of computer science or information and communication technology	10 years or more of relevant supervisory work experience either in the government (acquired under career service) or private sector, with at least 5 years relevant experience in the field of economics, social sciences, or any related field, as well as in donor coordination and project management.
Training	32 hours of relevant experience in management and supervision	32 hours relevant training in project management and supervision
Eligibility	RA 1080 (Bar), CSC Professional or IT eligibility	RA 1080 (Bar) or CSC Professional

and the Qualification Standards for Assistant Chief of Office, MISO and Deputy Judicial Reform Program Administrator, PMO:

	MISO Assistant Chief of Office	**PMO Deputy Judicial Reform Program Administrator**
Education	Bachelor of Laws with units and/or studies in computer science or information technology or post-graduate units in computer science or information technology	Bachelor of Laws with units and/or studies in public administration, finance, economics, social sciences or any related field or post-graduate units in public administration, business administration, finance, economics, social sciences or any related field
Experience	10 years or more of relevant supervisory work experience either in the government (acquired under career service) or private sector with at least 3 years experience in the field of computer science or information and communication technology	10 years or more relevant supervisory work experience either in the government (acquired under career service) or private sector with at least 3 years relevant experience in the field of economics, social sciences or any related field, as well as in donor coordination and project management
Training	At least 32 hours of relevant trainings in computer operation, information and communication technology	At least 32 hours of relevant trainings in project management and supervision
Eligibility	RA 1080 (Bar) or any appropriate CSC 2nd level eligibility	RA 1080 (Bar) or any appropriate CSC 2nd level eligibility

In a letter dated October 30, 2009, Deputy Clerk of Court and Chief Administrative Officer Atty. Eden T. Candelaria called this Court's attention to what might be an inadvertent minor error in the dispositive portion of our Resolution, specifically on the Training requirement for the Chief of Office, MISO. In particular, the Resolution stated: "32 hours of relevant experience in management and supervision." Atty. Candelaria points out that the word "experience" may have been inadvertently typed instead of "training," which would have been more compatible with the category "Training." If, indeed, such an error was committed, Atty. Candelaria requests the Court to make the necessary correction.

The request is noted and granted.

It has also come to our attention that, in our efforts at maintaining uniformity in the QS, we may have overlooked an important component of the MISO Re-engineering Development Plan (MRDP). As discussed in our September 10, 2009 Resolution, the MISO has an ongoing ICT consultancy project with Indra Sistemas S.A. (INDRA), part of which specifically deals with the creation of the MRDP. Among the concerns studied by INDRA is the staffing pattern of MISO and the QS for each position in the office's plantilla. INDRA recognizes that both lawyers and non-lawyers may apply for the position, and recommends the following QS:

	FOR LAWYERS	**FOR NON-LAWYERS**
Education	Bachelor of Laws and 18 MA units in a relevant ICT course or 3 years of relevant ICT experience or 160 hours of ICT training or relevant ICT certification	Bachelor's Degree in a relevant ICT course and an MBA or Post Graduate Degree in a Management related course or Bachelor's Degree in a Management-related course and an MBA or Post Graduate Degree

		in a Management-related course and 18 MA units in a relevant ICT course or 3 years of relevant ICT experience or 160 hours of ICT training or relevant ICT certification
Experience	10 years of supervisory experience (within or outside the Supreme Court)	10 years of supervisory experience (within or outside the Supreme Court)
Training	40 hours of relevant training in management and supervision	40 hours of relevant ICT training
Eligibility	RA 1080 (Attorney)	CSC Professional or IT eligibility
	An additional project management certification is proposed for all managerial/supervisory positions to enable them to effectively manage ICT projects.	

The MRDP was approved by this Court in a Resolution dated August 11, 2009. Thus, in order to fully implement the MISO's MRDP, we resolve to adopt INDRA's recommendation for the QS of the MISO Chief of Office position.

WHEREFORE, the foregoing premises considered, the Court's Resolution dated September 10, 2009 in A.M. No. 06-3-07-SC is hereby *AMENDED* as follows:

"IN VIEW OF THE FOREGOING, the Court **APPROVES,** with modification, the recommendations of the OAS on the Qualification Standards for Chief of Office, Management Information Systems Office and Judicial Reform Program Administrator, Program Management Office, as follows:

	MISO Chief of Office	**PMO Judicial Reform Program Administrator**
Education	Bachelor of Laws and at least 18 units in computer science, information technology or any similar computer academic course, or 3 years of relevant ICT experience, or 160 hours of ICT training, or relevant ICT certification or Bachelor's Degree in computer science or information technology and post-graduate degree, preferably in computer science or information technology	Bachelor of Laws and at least 18 units in public administration, business administration, finance, economics, social sciences or any related field or Bachelor's degree and post-graduate degree in public administration, finance, economics, social sciences or any related field
Experience	10 years or more of relevant supervisory work experience either in the government (acquired under career service) or private sector	10 years or more of relevant supervisory work experience either in the government (acquired under career service) or private sector, with at least 5

		years relevant experience in the field of economics, social sciences, or any related field, as well as in donor coordination and project management
Training	40 hours of relevant training in management and supervision	32 hours of relevant training in project management and supervision
Eligibility	RA 1080 (Bar), CSC Professional or IT eligibility	RA 1080 (Bar) or CSC Professional

and the Qualification Standards for Assistant Chief of Office, MISO and Deputy Judicial Reform Program Administrator, PMO:

	MISO **Assistant Chief of Office**	**PMO** **Deputy Judicial Reform Program Administrator**
Education	Bachelor of Laws and units and/or studies in computer science or information technology or post-graduate units in computer science or information technology	Bachelor of Laws with units and/or studies in public administration, finance, economics, social sciences or any related field or post-graduate units in public administration, business administration, finance, economics, social sciences or any related field

Experience	10 years or more of relevant supervisory work experience either in the government (acquired under career service) or private sector with at least 3 years experience in the field of computer science or information and communication technology	10 years or more of relevant supervisory work experience either in the government (acquired under career service) or private sector with at least 3 years of relevant experience in the field of economics, social sciences or any related field, as well as in donor coordination and project management
Training	At least 32 hours of relevant trainings in computer operation, information and communication technology	At least 32 hours of relevant trainings in project management and supervision
Eligibility	RA 1080 (Bar) or any appropriate CSC 2nd level eligibility	RA 1080 (Bar) or any appropriate CSC 2nd level eligibility

SO ORDERED."

SO ORDERED.

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

Carpio, J., votes to retain the QS in previous Resolution.

THIRD DIVISION

[G.R. No. 136466. November 25, 2009]

THE HEIRS OF AURELIO REYES, *petitioners, vs.* **HON. ERNESTO D. GARILAO, as the Secretary of the Department of Agrarian Reform, and EXEQUIEL ROMAN, BASILIO NUÑEZ, ONOFRE LAVARIAS, GAVINO BUENSUCESO, CENON MANUEL, ALFONSO RODRIGO, TEOFILO ICO, ALFREDO LAVARIAS, MIGUEL RIVERA, ROMULO ALFONSO, LYDIA TOLENTINO, EDILBERTO EUGENIO, BEATA *VDA. DE* DUNGCA, WILFREDO MILANIO, ANDRES RAMOS, RUDY POLICARPIO, PELAGIA PULMONEZ, ALBERTO DE LEON, LAURO REYES, FELICIO GUEVARRA, EMILIO GARCIA, JR., TERESITA GUEVARRA, GUILLERMO GUEVARRA, JOSE ESTRILLA, FEDERICO ALFONSO, JOSE MEDINA, BENITO OCAMPO, ERNESTO TOLENTINO, FERNANDO TOLENTINO, RUPERTO BRILLANTE, MARGARITO BUENSUCESO, PRIMITIVO MAYUYO, GENARO ROMAN, DEOGRACIAS ROMAN, LUIS TOLENTINO, ELIGIO VERGARA, CARLOS RAMOS, PABLO ALFONSO, SERAFIN MEDINA, CARMEN *VDA. DE* YUSI, ALEJANDRO BALAN, and EMETERIO DUNCA,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRARIAN REFORM; RIGHT OF RETENTION; LETTER OF INSTRUCTION (LOI) NO. 474; VALIDITY THEREOF, UPHELD.— LOI No. 474 provides for a restrictive condition on the exercise of the right of retention, specifically disqualifying landowners who "own other agricultural lands of more than seven hectares in aggregate areas, or lands used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families."

Said condition is essentially the same one contained in Administrative Order No. 4, series of 1991. In *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, this Court upheld the validity of LOI No. 474, in the wise: The Court wryly observes that during the past dictatorship, every presidential issuance, by whatever name it was called, had the force and effect of law because it came from President Marcos. Such are the ways of despots. Hence, it is futile to argue, as petitioners do in G.R. No. 79744, that LOI 474 could not have repealed P.D. No. 27 because the former was only a letter of instruction. The important thing is that it was issued by President Marcos, whose word was law during the time.

2. STATUTORY CONSTRUCTION; INTERPRETATION OF STATUTES; REPEAL; IMPLIED REPEAL; ELABORATED.— Petitioners, however, argue that RA No. 6657 has impliedly repealed LOI No. 474 on the theory that the latter is inconsistent with the former. Consequently, petitioners contend that Administrative Order No. 4, series of 1991 has no statutory basis. This Court cannot subscribe to petitioners' view. This Court is guided by *Social Justice Society v. Atienza Jr.*, wherein the operation of implied repeals was extensively discussed, to wit: Repeal by implication proceeds on the premise that where a statute of later date clearly reveals the intention of the legislature to abrogate a prior act on the subject, that intention must be given effect. There are two kinds of implied repeal. The first is: where the provisions in the two acts on the same subject matter are irreconcilably contradictory, the latter act, to the extent of the conflict, constitutes an implied repeal of the earlier one. The second is: if the later act covers the whole subject of the earlier one and is clearly intended as a substitute, it will operate to repeal the earlier law. The oil companies argue that the situation here falls under the first category. Implied repeals are not favored and will not be so declared unless the intent of the legislators is manifest. As statutes and ordinances are presumed to be passed only after careful deliberation and with knowledge of all existing ones on the subject, it follows that, in passing a law, the legislature did not intend to interfere with or abrogate a former law relating to the same subject matter. If the intent to repeal is not clear, the later act should be construed as a continuation of, and not a substitute for, the earlier act.

3. ID.; ID.; ID.; ABSENT INTENT TO REPEAL AN EARLIER ENACTMENT, EVERY EFFORT AT A REASONABLE CONSTRUCTION MUST BE MADE TO RECONCILE THE STATUTES, SO THAT BOTH CAN BE GIVEN EFFECT; NO IMPLIED REPEAL OF LOI NO. 474.— [T]his Court disagrees with the theory advanced by petitioners that RA No. 6657 has impliedly repealed LOI No. 474. The congressional deliberations cited by petitioners are insufficient to indicate an intent to repeal LOI No. 474. A perusal thereof shows that said deliberations were confined only to the matter of retention limits (*i.e.*, 3, 5 or 7 hectares), and no mention was made of the restrictive conditions found in LOI No. 474. As a matter of fact, what is clear from said deliberations is that the framers of RA No. 6657 had intended to distribute more lands. While both laws may have the same subject matter, *i.e*. agrarian reform and its mechanism, if there is no intent to repeal the earlier enactment, every effort at a reasonable construction must be made to reconcile the statutes, so that both can be given effect.

4. ID.; ID.; ID.; ID.; ID.; REPUBLIC ACT NO. 6657 DISTINGUISHED FROM LOI NO. 474.— To stress, RA No. 6657 is a social justice and poverty alleviation program which seeks to empower the lives of agrarian reform beneficiaries through equitable distribution and ownership of the land based on the principle of land to the tiller. RA No. 6657, however, allows landowners to retain five hectares of their landholding. LOI No. 474, on the other hand, imposes restrictive conditions on the exercise of the right of retention by mandating that landowners who possess other lands used for residential, commercial, industrial, or other urban purposes, from which they derive adequate income to support themselves and their families are disqualified from exercising their right of retention.

5. ID.; ID.; ID.; ID.; GENERALIA SPECIALIBUS NON DEROGANT; A SUBSEQUENT GENERAL LAW DOES NOT REPEAL A PRIOR SPECIAL LAW ON THE SAME SUBJECT MATTER UNLESS IT CLEARLY APPEARS THAT THE LEGISLATURE HAS INTENDED BY THE LATTER GENERAL ACT TO MODIFY OR REPEAL THE EARLIER SPECIAL LAW; NO CONFLICT BETWEEN REPUBLIC ACT NO. 6675 AND LOI NO. 474.— It is a well-settled rule in statutory construction that **a subsequent general**

law does not repeal a prior special law on the same subject matter unless it clearly appears that the legislature has intended by the latter general act to modify or repeal the earlier special law. *Generalia specialibus non derogant* (a general law does not nullify a specific or special law). This is so even if the provisions of the general law are sufficiently comprehensive to include what was set forth in the special act. Moreover, the special act and the general law must stand together, one as the law of the particular subject and the other as the law of general application. There is no conflict between RA No. 6675 and LOI No. 474 as both can be given a reasonable construction so as to give them effect. The suppletory application of laws is sanctioned under Section 75 of RA No. 6675, to wit: SEC. 75. *Suppletory Application of Existing Legislation.* — The provisions of Republic Act Number 3844, as amended, Presidential Decree Numbers 27 and 266 as amended, Executive Order Numbers 228 and 229, both Series of 1987, and other laws not inconsistent with this Act shall have suppletory effect. Withal, this Court concludes that while RA No. 6675 is the law of general application, LOI No. 474 may still be applied to the latter. Hence, landowners under RA No. 6675 are entitled to retain five hectares of their landholding; however, if they too own other "lands used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families," they are disqualified from exercising their right of retention. For the same reasons previously discussed, this Court cannot subscribe to petitioners' view that Section 76, or the Repealing Clause of RA No. 6675, has repealed LOI No. 474.

6. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE REGULATIONS AND POLICIES HAVE THE FORCE OF LAW, AND ARE ENTITLED TO GREAT WEIGHT AND RESPECT; ADMINISTRATIVE ORDER NO. 4, SERIES OF 1991 DECLARED VALID.— It is a general rule that the power of administrative officials to promulgate rules and regulations in the implementation of a statute is necessarily limited only to carrying into effect what is provided in the legislative enactment. Furthermore, it is an elementary rule in administrative law that administrative regulations and policies enacted by administrative bodies to interpret the law which they are entrusted to enforce, have the force of law, and are entitled to

great weight and respect. Since the validity of LOI No. 474 and its suppletory application to RA No. 6675 has been settled, it is clear that Administrative Order No. 4, series of 1991, is valid as it is merely a reiteration of LOI No. 474.

7. LABOR AND SOCIAL LEGISLATION; AGRARIAN REFORM; DEPARTMENT OF AGRARIAN REFORM; FINDINGS THEREOF ACCORDED NOT ONLY RESPECT BUT EVEN FINALITY, IF SUPPORTED BY SUBSTANTIAL EVIDENCE.— [T]he DAR Secretary made the following findings, to wit: Be that as it may, records however disclosed that Antonia Reyes, the surviving spouse, owned 55.0602 has. tenanted riceland as of October 21, 1972 representing her ½ and 1/9 shares of the landholding in question. Records further show that each compulsory heir owns, aside from the 5.5060 has. representing their 1/9 share of the said property, other landholdings presumably used either as residential, commercial, industrial, or for other urban purposes located at Makati and Manila (See: Petition for Approval of Amended Project of Partition dated July 9, 1975). Said findings were also made by the CA as its basis in affirming the decision of the DAR Secretary. The same is a question of fact which cannot be the subject of herein petition. More importantly, the findings of the DAR are accorded not only respect but even finality by this Court, because it has acquired the necessary expertise on the matter. Said findings appear to be supported by substantial evidence which is all that is required in agrarian cases. Hence, this Court finds no reason to disturb said findings of the Secretary.

APPEARANCES OF COUNSEL

Saludo Agpalo Fernandez & Aquino Law Offices for petitioners.

The Solicitor General for public respondent.

Dante G. Ilaya for private respondents.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a Petition for Review on *Certiorari*,[1] under Rule 45 of the Rules of Court, assailing the April 16, 1997 Decision[2] and December 2, 1998 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP 42847.

The facts of the case:

Petitioners are the registered co-owners of a parcel of land known as Lot No. 166 of the Cadastral survey of Orani, Bataan, consisting of an area of 99.1085 hectares and covered under Transfer Certificate of Title No. T-91171 of the Registry of Deeds of Bataan.[4] Particularly, the individual shares of petitioners are hereunder enumerated, thus:

1. Antonia Reyes (widow)	55.0602 has.
2. Cesar H. Reyes	5.5060 has.
3. Aurelio H. Reyes	5.5060 has.
4. Lourdes R. Mateo	5.5060 has.
5. Teresita H. Reyes	5.5060 has.
6. Gregorio H. Reyes	5.5060 has.
7. Carlos H. Reyes	5.5060 has.
8. Manuel H. Reyes	5.5060 has.
9. Maria Rosario R. Bartolome	5.5060 has.
	99.1082 has.[5]

Said property was originally owned by the spouses Antonia Reyes and the late Aurelio Reyes (Aurelio), who died in January 21, 1972 (before the effectivity of Presidential Decree

[1] *Rollo*, pp. 10-50.

[2] Penned by Associate Justice Oswaldo D. Agcaoili, with Associate Justices Jaime M. Lantin and Buenaventura J. Guerrero, concurring; *id.* at 53-62.

[3] *Id.* at 64.

[4] *Id.* at 66.

[5] *Id.*

No 27).[6] Upon the death of Aurelio, said property passed by succession to petitioners, who divided the same as shown above.

On September 21, 1988, emancipation patents were issued to respondents as farmer-beneficiaries over the entire landholding in question.[7]

On August 2, 1993, petitioners lodged a petition for the cancellation of the emancipation patents issued to the respondents before the Department of Agrarian Reform Adjudication Board San Fernando, Pampanga, which is now pending and docketed as DARAB Case No. 118-BAT-93.[8]

Earlier, however, on July 15, 1993, petitioners filed with the Department of Agrarian Reform (DAR), Region III, San Fernando, Pampanga, their respective applications for retention[9] over Lot No. 166, at five (5) hectares each, pursuant to Section 6[10] of

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[6] *Id.*

[7] *Id.*

[8] *Id.* at 54.

[9] Annexes E-1 to E-8; *id.* at 74-81.

[10] SEC. 6. ***Retention Limits***. — Except as otherwise provided in this Act, no person may own or retain, directly, any public or private agricultural land, the size of which shall vary according to factors governing a viable family-sized farm, such as commodity produced, terrain, infrastructure, and soil fertility as determined by the Presidential Agrarian Reform Council (PARC) created hereunder, **but in no case shall the retention by the landowner exceed five (5) hectares**. Three (3) hectares may be awarded to each child of the landowner, subject to the following qualifications: (1) that he is at least fifteen (15) years of age; and (2) that he is actually tilling the land or directly managing the farm: *Provided,* That landowners whose lands have been covered by Presidential Decree No. 27 shall be allowed to keep the area originally retained by them thereunder; *Provided, further,* That original homestead grantees or direct compulsory heirs who still own the original homestead at the time of the approval of this Act shall retain the same areas as long as they continue to cultivate said homestead.

The right to choose the area to be retained, which shall be compact or contiguous, shall pertain, to the landowner: *Provided, however,* That in case the area selected for retention by the landowner is tenanted, the tenant shall have the option to choose whether to remain therein or be a beneficiary in the same or another agricultural land with similar or comparable features. In case the

Republic Act No. 6657, or the Comprehensive Agrarian Reform Law of 1988 (RA No. 6657).[11]

On October 25, 1994, the OIC-Regional Director issued an Order[12] granting petitioners' applications for retention, the dispositive portion of which reads:

> WHEREFORE, premises considered, an Order is hereby issued:
>
> 1. GRANTING the Application for individual retention of the heirs of Aurelio P. Reyes with each heir to retain not more than five (5) hectares of their landholding at Barangay Mulawin, Orani, Bataan, which must be compact and contiguous;
> 2. DIRECTING the said heirs to make the segregation of their retainable area at their own expense and to submit the result thereof to this Office;
> 3. DIRECTING the parties concerned to initiate the cancellation of emancipation patent(s), if any has (have) been issued over the retained landholding before the proper forum; and
> 4. DIRECTING the DAR personnel concerned to make provisions for the welfare of the affected farmer-beneficiaries, if any.

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tenant chooses to remain in the retained area, he shall be considered a leaseholder and shall lose his right to be a beneficiary under this Act. In case the tenant chooses to be a beneficiary in another agricultural land, he loses his right as a leaseholder to the land retained by the landowner. The tenant must exercise this option within a period of one (1) year from the time the landowner manifests his choice of the area for retention.

In all cases, the security of tenure of the farmers or farm workers on the land prior to the approval of this Act shall be respected.

Upon the effectivity of this Act, any sale, disposition, lease, management contract or transfer of possession of private lands executed by the original landowner in violation of this Act shall be null and void: *Provided, however,* That those executed prior to this Act shall be valid only when registered with the Register of Deeds within a period of three (3) months after the effectivity of this Act . Thereafter, all Registers of Deeds shall inform the DAR within thirty (30) days of any transaction involving agricultural lands in excess of five (5) hectares.

[11] *Rollo*, p. 67.

[12] *Id*. at 71-73.

SO ORDERED.[13]

On July 31, 1995, respondents appealed the October 25, 1994 Order of the OIC-Regional Director to the DAR Secretary. On November 30, 1996, the DAR Secretary issued an Order[14] setting aside the Order of the Regional Director, the dispositive portion of which reads:

> WHEREFORE, premises considered, Order is hereby issued setting aside the Order dated October 25, 1994. Consequently, the granting of applicants-appellees' individual retention rights is hereby revoked.
>
> SO ORDERED.[15]

The DAR Secretary found that each compulsory heir owns, aside from the 5.5060 has. representing their 1/9 share of the property in dispute, other landholdings presumably used either as residential, commercial, industrial or for other urban purposes located in Makati and Manila.[16] The DAR Secretary further held that landowners who own lands devoted to non-agricultural purposes are presumed to derive adequate income therefrom to support themselves and their families.[17] Accordingly, the DAR Secretary denied the applications for exemption of petitioners pursuant to DAR Administrative Order No. 4, series of 1991.[18]

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[13] *Id*. at 72-73.

[14] *Id.* at 65-70.

[15] *Id*. at 69.

[16] *Id*. at 68.

[17] *Id*. at 69.

[18] B. Policy Statements.

1. Landowners covered by P.D. 27 are entitled to retain to retain seven hectares, except those whose entire tenanted rice and corn lands are subject of acquisition and distribution under Operation Land Transfer (OLT). **An owner of tenanted rice and corn lands may not retain these lands under the following cases:**

a. If he as of 21 October 1972 owned more than 24 hectares of tenanted rice and corn lands; or by virtue of LOI 474, if he has of 21 October 1976 owned less than 24 hectares of tenanted rice or corn lands but additionally owned the following:

Aggrieved by the Order of the DAR Secretary, petitioners sought to assail the same *via* a petition for review before the CA. On April 16, 1997, the CA rendered a Decision[19] ruling in favor of respondents, the dispositive portion of which reads:

WHEREFORE, the petition for review is DISMISSED for lack of merit.

SO ORDERED.[20]

The CA ruled that Administrative Order No. 4, series of 1991, and Letter of Instruction (LOI) No. 474 restricts the right of retention of landowners, in the wise:

Petitioners' land has been subjected to land reform under P.D. No. 27. On September 21, 1988, emancipation patents were issued over the subject land in favor of farmer-beneficiaries. Petitioners filed their individual applications for retention of their share in the subject land only on July 15, 1993, after the effectivity of R.A. No. 6657. Thus, the provisions of R.A. No. 6657 shall govern petitioner's exercise of their right of retention. Section 6 of R.A. No. 6657 provides that "landowners whose lands have been covered by P.D. No. 27 shall be allowed to keep the area originally retained by them thereunder." Since petitioners did not exercise their right of retention under P.D. No. 27, the provisions of R.A. No. 6657 on retention limit shall govern. **However, since LOI No. 474 and Administrative Order No. 4, series of 1991, restricts the right of retention of landowners, in the sense that those who own other non-agricultural lands and derive adequate income therefrom have no right of retention, the said restriction should be applied to herein petitioner.**[21]

- Other agricultural lands of more than seven hectares, whether tenanted or not, and regardless of the income derived therefore; or

- Lands used for residential, commercial, industrial, or other urban purposes, from which he derives adequate income to support himself and his family.

[19] *Rollo*, pp. 53-62.

[20] *Id*. at 62.

[21] *Id*. at 61. (Emphasis supplied.)

Moreover, the CA upheld the finding of the DAR Secretary, that in addition to the share of petitioners in the land subject of herein petition, petitioners have other landholdings presumably used either as residential, commercial, industrial, or for other urban purposes located in Makati and Manila.[22] Hence, the CA concluded that petitioners were not entitled to exercise their retention rights as a result of the restrictions contained in Administrative Order No. 4, series of 1991, as well as LOI No. 474.

Petitioners then filed a Motion for Reconsideration, which was, however, denied by the CA in a Resolution[23] dated December 2, 1998.

Hence, herein petition, with petitioners raising the following grounds in support of the petition, to wit:

A.

PETITIONERS' RIGHT TO RETENTION OF PORTIONS OF THEIR LANDHOLDINGS IS NOT FORECLOSED BY ANY VESTED RIGHT THAT PRIVATE RESPONDENTS MAY CLAIM.

B.

LOI NO. 474 DATED OCTOBER 21, 1976 HAS BEEN REPEALED BY REP. ACT NO. 6657, HENCE, THE RESTRICTIVE CONDITIONS IN THE EARLIER LAW SHOULD NOT BE APPLIED TO PETITIONERS' EXERCISE OF THEIR RETENTION RIGHTS UNDER THE LATTER LAW.

C.

DEPARTMENT OF AGRARIAN REFORM ADMINISTRATIVE ORDER NO. 04, SERIES OF 1991, HAS THEREFORE NO STATUTORY BASIS INSOFAR AS RETENTION RIGHTS UNDER REPUBLIC ACT NO. 6657 ARE CONCERNED. SAID ISSUANCE APPLIES ONLY TO RETENTION RIGHTS OF (7) HECTARES UNDER PRESIDENTIAL DECREE NO. 27.[24]

The petition is not meritorious.

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[22] *Id*.

[23] *Id.* at 64.

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

At the crux of the controversy is the determination of the applicability of the restrictive conditions found in LOI No. 474 to RA No. 6657.

In order to understand the case at bar, this Court shall hereunder discuss the various laws and administrative order pertinent to herein petition and their relation to one another.

Presidential Decree No. 27 (PD No. 27),[25] issued on October 21, 1972 by then President Ferdinand E. Marcos, proclaimed the entire country as a "land reform area" and decreed the emancipation of tenants from the bondage of the soil, transferring to them the ownership of the land they till. To achieve its purpose, the decree laid down a system for the purchase by tenant-farmers, long recognized as the backbone of the economy, of the lands they were tilling. Owners of rice and corn lands that exceeded the minimum retention area were bound to sell their lands to qualified farmers at liberal terms and subject to conditions.[26]

More importantly, PD No. 27 also provides that, "in all cases, the landowner may retain an area not more than seven (7) hectares if such landowner is cultivating such area or will now cultivate it."

Meanwhile, on October 21, 1976, then President Marcos, issued LOI No. 474, addressed to the Secretary of Agrarian Reform, the pertinent portions of which read:

To: The Secretary of Agrarian Reform.

WHEREAS, last year I ordered that small landowners of tenanted rice/corn lands with areas of less than twenty-four hectares but above seven hectares shall retain not more than seven hectares of such lands except when they own other agricultural lands containing more than seven hectares or land used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families;

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[25] "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 therefore."

[26] *Pagtalunan v. Tamayo,* G.R. No. 54281, March 19, 1990, 183 SCRA 252, 258.

WHEREAS, the Department of Agrarian Reform found that in the course of implementing my directive there are many landowners of tenanted rice/corn lands with areas of seven hectares or less who also own other agricultural lands containing more than seven hectares or lands used for residential, commercial, industrial or other urban purposes where they derive adequate income to support themselves and their families;

WHEREAS, it is therefore necessary to cover said lands under the Land Transfer Program of the government to emancipate the tenant-farmers therein.

NOW, THEREFORE, I, PRESIDENT FERDINAND E. MARCOS, President of the Philippines, do hereby order the following:

> **"1. You shall undertake to place under the Land Transfer Program of the government pursuant to Presidential Decree No. 27, all tenanted rice/corn lands with areas of seven hectares or less belonging to landowners who own other agricultural lands of more than seven hectares in aggregate areas or lands used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families."**[27]

LOI No. 474, thus, amended PD No. 27 by removing "any right of retention from persons who own other agricultural lands of more than 7 hectares, or lands used for residential, commercial, industrial or other purposes from which they derive adequate income to support themselves and their families."[28]

After Martial Law, on June 10, 1988, Congress, under the leadership of then President Corazon Aquino passed RA No. 6657[29] or the Comprehensive Agrarian Reform Law. Of importance is Section 6 which provides for the right of retention of landowners, to wit:

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[27] Emphasis Supplied.

[28] *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, G.R. No. 78742, July 14, 1989, 175 SCRA 343, 362.

[29] "An Act Instituting a Comprehensive Agrarian Reform Program to Promote Social Justice and Industrialization, Providing the Mechanism for its Implementation, and For Other Purposes."

SEC. 6. ***Retention Limits***. — Except as otherwise provided in this Act, no person may own or retain, directly, any public or private agricultural land, the size of which shall vary according to factors governing a viable family-sized farm, such as commodity produced, terrain, infrastructure, and soil fertility as determined by the Presidential Agrarian Reform Council (PARC) created hereunder, **but in no case shall the retention by the landowner exceed five (5) hectares**. Three (3) hectares may be awarded to each child of the landowner, subject to the following qualifications: (1) that he is at least fifteen (15) years of age; and (2) that he is actually tilling the land or directly managing the farm: *Provided,* That landowners whose lands have been covered by Presidential Decree No. 27 shall be allowed to keep the area originally retained by them thereunder; *Provided, further,* That original homestead grantees or direct compulsory heirs who still own the original homestead at the time of the approval of this Act shall retain the same areas as long as they continue to cultivate said homestead.

The right to choose the area to be retained, which shall be compact or contiguous, shall pertain, to the landowner: *Provided, however,* That in case the area selected for retention by the landowner is tenanted, the tenant shall have the option to choose whether to remain therein or be a beneficiary in the same or another agricultural land with similar or comparable features. In case the tenant chooses to remain in the retained area, he shall be considered a leaseholder and shall lose his right to be a beneficiary under this Act. In case the tenant chooses to be a beneficiary in another agricultural land, he loses his right as a leaseholder to the land retained by the landowner. The tenant must exercise this option within a period of one (1) year from the time the landowner manifests his choice of the area for retention.

In all cases, the security of tenure of the farmers or farm workers on the land prior to the approval of this Act shall be respected.

Upon the effectivity of this Act, any sale, disposition, lease, management contract or transfer of possession of private lands executed by the original landowner in violation of this Act shall be null and void: *Provided, however,* That those executed prior to this Act shall be valid only when registered with the Register of Deeds within a period of three (3) months after the effectivity of this Act. Thereafter, all Registers of Deeds shall inform the DAR within thirty

(30) days of any transaction involving agricultural lands in excess of five (5) hectares.[30]

As can be observed, Section 6 of RA No. 6657, while providing for a right of retention of five hectares, does not prescribe the limitation or conditions provided for in LOI No. 474.

Soon after, Administrative Order No. 4, series of 1991, was issued by the Secretary of the Department of Agrarian Reform, the pertinent portions of which read:

> B. Policy Statements.
>
> 1. Landowners covered by P.D. 27 are entitled to retain seven hectares, except those whose entire tenanted rice and corn lands are subject of acquisition and distribution under Operation Land Transfer (OLT). **An owner of tenanted rice and corn lands may not retain these lands under the following cases:**
>
> a. If he, as of 21 October 1972, owned more than 24 hectares of tenanted rice and corn lands; or by virtue of LOI 474, if he, as of 21 October 1976, owned less than 24 hectares of tenanted rice or corn lands, but additionally owned the following:
>
> - Other agricultural lands of more than seven hectares, whether tenanted or not, whether cultivated or not, and regardless of the income derived therefrom; or
>
> **- Lands used for residential, commercial, industrial, or other urban purposes, from which he derives adequate income to support himself and his family**.[31]

Based on the foregoing, petitioners anchor herein petition on their observation that Section 6 of RA No. 6657 does not provide for the limitation or exception to the exercise of retention rights previously found in LOI No. 474. Petitioners, thus, posit that those parts of the section amended, which are omitted in the amendments, are deemed repealed.[32] Likewise, petitioners

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[30] Emphasis Supplied.

[31] *Rollo*, pp. 58-59. See http://www.dar.gov.ph/pdf_files/issuance_91/ao04_91.pdf; last visited October 31, 2009; (Emphasis supplied.)

[32] *Rollo*, p. 32.

contend that LOI No. 474 is inconsistent with the provisions of RA No. 6657 and was therefore repealed by the latter.[33]

After a judicious examination of the laws and relevant jurisprudence to the case at bar, this Court holds that petitioner's positions are without merit.

LOI No. 474 provides for a restrictive condition on the exercise of the right of retention, specifically disqualifying landowners who "own other agricultural lands of more than seven hectares in aggregate areas, or lands used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families." Said condition is essentially the same one contained in Administrative Order No. 4, series of 1991.

In *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform,*[34] this Court upheld the validity of LOI No. 474, in the wise:

> The Court wryly observes that during the past dictatorship, every presidential issuance, by whatever name it was called, had the force and effect of law because it came from President Marcos. Such are the ways of despots. Hence, it is futile to argue, as petitioners do in G.R. No. 79744, that LOI 474 could not have repealed P.D. No. 27 because the former was only a letter of instruction. The important thing is that it was issued by President Marcos, whose word was law during the time.

Petitioners, however, argue that RA No. 6657 has impliedly repealed LOI No. 474 on the theory that the latter is inconsistent with the former. Consequently, petitioners contend that Administrative Order No. 4, series of 1991 has no statutory basis.

This Court cannot subscribe to petitioners' view. This Court is guided by *Social Justice Society v. Atienza Jr.,*[35] wherein

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[33] *Id.* at 38.

[34] *Supra* note 28, at 368-369.

[35] G.R. No. 156052, February 13, 2008, 545 SCRA 92.

the operation of implied repeals was extensively discussed, to wit:

> Repeal by implication proceeds on the premise that where a statute of later date clearly reveals the intention of the legislature to abrogate a prior act on the subject, that intention must be given effect.
>
> There are two kinds of implied repeal. The first is: where the provisions in the two acts on the same subject matter are irreconcilably contradictory, the latter act, to the extent of the conflict, constitutes an implied repeal of the earlier one. The second is: if the later act covers the whole subject of the earlier one and is clearly intended as a substitute, it will operate to repeal the earlier law. The oil companies argue that the situation here falls under the first category.
>
> Implied repeals are not favored and will not be so declared unless the intent of the legislators is manifest. As statutes and ordinances are presumed to be passed only after careful deliberation and with knowledge of all existing ones on the subject, it follows that, in passing a law, the legislature did not intend to interfere with or abrogate a former law relating to the same subject matter. If the intent to repeal is not clear, the later act should be construed as a continuation of, and not a substitute for, the earlier act.[36]

Based on the foregoing, this Court disagrees with the theory advanced by petitioners that RA No. 6657 has impliedly repealed LOI No. 474. The congressional deliberations[37] cited by petitioners

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[36] *Id*. at 129-130.

[37] Rep. Jose Roño: "In other words, what we want to conceive in this specific provision of the House is the hectarage that a small landowner as of right may retain and that must be respected. So that it cannot be anywhere between one hectare to seven hectares depending on what PARCOM or other administrative agencies decide because in effect, we are abdicating legislative authority to administrative bodies. In other words, it should be Congress that should decide what is the retention limit"; October 6, 1987, 4:48p.m. deliberation of House Bill No. 400; (*Rollo*, p. 34.)

Senator Aquino: "Yes, well, maybe, to clarify to everybody, we are talking here of the retention limits to be retained by the former landowners xxx. I am asking for the basis of the seven (7) hectares, because as far back as I can remember, this has only been the favorite number of the previous regime.

are insufficient to indicate an intent to repeal LOI No. 474. A perusal thereof shows that said deliberations were confined only to the matter of retention limits (*i.e.*, 3, 5 or 7 hectares), and no mention was made of the restrictive conditions found in LOI No. 474. As a matter of fact, what is clear from said deliberations is that the framers of RA No. 6657 had intended to distribute more lands.[38]

While both laws may have the same subject matter, *i.e.* agrarian reform and its mechanism, if there is no intent to repeal the earlier enactment, every effort at a reasonable construction must be made to reconcile the statutes, so that both can be given effect.[39]

To stress, RA No. 6657 is a social justice and poverty alleviation program which seeks to empower the lives of agrarian

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That is the reason they chose seven. But there is no scientific, technical or economic basis for seven hectares. And that is the reason why in searching for an economically viable family-size plot, all farmers we have talked to, including the Gentleman, seem to agree that three hectares is economically viable for after all that is also the Gentleman's award ceiling for beneficiaries"; January 27, 1988; (*Rollo*, p. 36.)

[38] Rep. Lagman: "Finally, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands, House Bill No. 400 would, if enacted into law, put to efficacy all theses constitutional mandates and principles. But I would limit my statement this afternoon to two controversial issues related to agrarian reform which are retention limits and priorities. On retention limit, Mr. Speaker, honorable colleagues, let us legislate on it consistent with social justice and distributive justice. Let us legislate on a retention limit which would maximize the land for coverage and the number of beneficiaries of agrarian reforms"; March 9, 1988: (*Rollo*, p. 35.)

Senator Aquino: "So, anyway, to summarize, on this retention limit, while we are proposing three hectares which, right now covers already 69% of all farms in the Philippines, if we move up to seven hectares' retention limit, we will be touching only six per cent of all farms. And as far as the area is covered, we were interested in the distribution of 70 per cent of agricultural land in the Philippines to make this a truly comprehensive agrarian reform program."

"If, however, we stick to the Gentleman's seven hectares, then we will only be distributing 32% of agricultural land"; January 27, 1988 Deliberations: (*Rollo* pp. 36-37.)

[39] *Social Justice Society (SJS) v. Atienza, Jr., supra* note 35, at 131.

reform beneficiaries through equitable distribution and ownership of the land based on the principle of land to the tiller. RA No. 6657, however, allows landowners to retain five hectares of their landholding. LOI No. 474, on the other hand, imposes restrictive conditions on the exercise of the right of retention by mandating that landowners who possess other lands used for residential, commercial, industrial, or other urban purposes, from which they derive adequate income to support themselves and their families are disqualified from exercising their right of retention.

Respondents, in their Comment,[40] argue that LOI No. 474 partakes of a special law, while RA No. 6657 is a general law, to wit:

> It will be noted that LOI No. 474, as implemented by Administrative Order No. 04, Series of 1991, partakes of a special law specifically governing the acquisition of "all tenanted rice/corn lands with [an] area of seven hectares or less belonging to landowners who own other agricultural lands of more than seven hectares in aggregate areas or lands used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families" under the Land Transfer Program of the government pursuant to Presidential Decree No. 27. x x x
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> On the other hand, Section 6 of R.A. No. 6657, otherwise known as the Comprehensive Agrarian Reform Law of 1988, merely provides, in relations to lands retained by the landowners under P.D. No. 27, that "landowners whose lands have been covered by Presidential Decree No. 27 shall be allowed to keep the area originally retained by them thereunder." R.A. No. 6657 does not govern nor provide for the manner and conditions by which the right of retention of landowners of rice/corn lands may be exercised. It is, therefore, a general law covering "all public and private agricultural lands as provided in Proclamation No. 131 and Executive Order No. 229, including other lands of the public domain suitable for agriculture. x x x[41]

Respondents also contend that both laws are complementary to each other such that while RA No. 6657 does not provide

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[40] *Rollo*, pp. 152-162.

[41] *Id.* at 157-158.

for the mechanism for the exercise of the right of retention of landowners under PD No. 27, LOI No. 474, as implemented by DAR Administrative Order No. 4, series of 1991, supplies that mechanism.[42] Lastly, respondents argue that as between a general law (R.A. No. 6657) and a special law (LOI No. 474), there is no dispute that the latter shall prevail.[43]

The position of respondents is well-taken. It is a well-settled rule in statutory construction that **a subsequent general law does not repeal a prior special law on the same subject matter unless it clearly appears that the legislature has intended by the latter general act to modify or repeal the earlier special law**.[44] *Generalia specialibus non derogant* (a general law does not nullify a specific or special law).[45] This is so even if the provisions of the general law are sufficiently comprehensive to include what was set forth in the special act.[46] Moreover, the special act and the general law must stand together, one as the law of the particular subject and the other as the law of general application.[47]

There is no conflict between RA No. 6675 and LOI No. 474 as both can be given a reasonable construction so as to give them effect. The suppletory application of laws is sanctioned under Section 75 of RA No. 6675, to wit:

SEC. 75. *Suppletory Application of Existing Legislation.* — The provisions of Republic Act Number 3844, as amended, Presidential Decree Numbers 27 and 266 as amended, Executive Order Numbers 228 and 229, both Series of 1987, and other laws not inconsistent with this Act shall have suppletory effect.

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[42] *Id.* at 158.

[43] *Id*.

[44] Emphasis and underscoring supplied.

[45] *Social Justice Society v. Atienza Jr.*, *supra* note 35, at 132, citing *Leynes v. Commission on Audit*, 418 SCRA 180, 196 (2003).

[46] *Id*.

[47] *Id.*, citing *Philippine National Oil Company v. Court of Appeals*, 457 SCRA 32, 80 (2005).

Withal, this Court concludes that while RA No. 6675 is the law of general application, LOI No. 474 may still be applied to the latter. Hence, landowners under RA No. 6675 are entitled to retain five hectares of their landholding; however, if they too own other "lands used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families," they are disqualified from exercising their right of retention.

For the same reasons previously discussed, this Court cannot subscribe to petitioners' view that Section 76,[48] or the Repealing Clause of RA No. 6675, has repealed LOI No. 474.

Anent petitioners' claim that Administrative Order No. 4, series of 1991, has no statutory basis, the same is without merit.

It is a general rule that the power of administrative officials to promulgate rules and regulations in the implementation of a statute is necessarily limited only to carrying into effect what is provided in the legislative enactment.[49] Furthermore, it is an elementary rule in administrative law that administrative regulations and policies enacted by administrative bodies to interpret the law which they are entrusted to enforce, have the force of law, and are entitled to great weight and respect.[50] Since the validity of LOI No. 474 and its suppletory application to RA No. 6675 has been settled, it is clear that Administrative Order No. 4, series of 1991, is valid as it is merely a reiteration of LOI No. 474.

Lastly, petitioners contend that even on the assumption that Administrative Order No. 4 or even LOI No. 474, may be applied to the retention rights under RA No. 6657, still there is no

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[48] SEC. 76. *Repealing Clause.* — Section 35 of Republic Act Number 3844, Presidential Decree Number 316, the last two paragraphs of Section 12 of Presidential Decree Number 1038, and all other laws, decrees, executive orders, rules and regulations, issuances or parts thereof inconsistent with this Act are hereby repealed or amended accordingly.

[49] See *United States v. Barias*, 11 Phil. 327. (1908)

[50] *Rizal Empire Insurance Group v. NLRC*, G.R. No. 73140, May 29, 1987, 150 SCRA 565, 568-569.

substantial evidence to support the finding of respondent Secretary that petitioners own other lands devoted to non-agricultural uses from which they derived adequate income to support their family.[51]

On this point, the DAR Secretary made the following findings, to wit:

> Be that as it may, records however disclosed that Antonia Reyes, the surviving spouse, owned 55.0602 has. tenanted riceland as of October 21, 1972 representing her ½ and 1/9 shares of the landholding in question. Records further show that each compulsory heir owns, aside from the 5.5060 has. representing their 1/9 share of the said property, other landholdings presumably used either as residential, commercial, industrial, or for other urban purposes located at Makati and Manila (See: Petition for Approval of Amended Project of Partition dated July 9, 1975).[52]

Said findings were also made by the CA as its basis in affirming the decision of the DAR Secretary. The same is a question of fact which cannot be the subject of herein petition.[53] More importantly, the findings of the DAR are accorded not only respect but even finality by this Court, because it has acquired the necessary expertise on the matter.[54] Said findings appear to be supported by substantial evidence which is all that is required in agrarian cases.[55] Hence, this Court finds no reason to disturb said findings of the Secretary.

Given the foregoing, it would be unnecessary to discuss the first issue raised by petitioners as the same is immaterial, considering this Court's ruling that LOI No. 474 applies suppletorily to RA No. 6675.

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[51] *Rollo*, p. 44.

[52] *Id.* at 68.

[53] See *The Insular Life Assurance Company, Ltd. v. Court of Appeals*, G.R. No. 126850, April 28, 2004, 428 SCRA 79.

[54] *Machete v. Court of Appeals*, G.R. No. 109093, November 20, 1995, 250 SCRA 176, 183.

[55] *Castro v. Court of Appeals*, G.R. No. L-34613, January 26, 1989, 169 SCRA 383, 389.

WHEREFORE, premises considered, the petition is *DENIED*. The April 16, 1997 Decision and December 2, 1998 Resolution of the Court of Appeals in CA-G.R. SP No. 42847 are hereby *AFFIRMED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 160239. November 25, 2009]

ANGELINA SORIENTE and ALL OTHER PERSONS CLAIMING RIGHTS UNDER HER, *petitioners, vs.* **THE ESTATE OF THE LATE ARSENIO E. CONCEPCION, represented by NENITA S. CONCEPCION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; QUESTIONS OF LAW DISTINGUISHED FROM QUESTION OF FACTS.— There is a question of law in a given case when the doubt or difference arises as to what the law is on a certain state of facts; there is a question of fact when the doubt or difference arises as to the truth or the falsehood of alleged facts. Moreover, *Republic v. Sandiganbayan* ruled: x x x A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted. A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites

calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation. The Court notes that petitioner raised both questions of fact and law in her petition. The Court shall resolve only the pertinent questions of law raised.

2. ID.; SPECIAL CIVIL ACTIONS; EJECTMENT; CO-OWNER OF THE PROPERTY IS CAPACITATED TO PROSECUTE THE EJECTMENT CASE AS A REAL PARTY-IN-INTEREST.— Further, as the successor-in-interest of the late Arsenio E. Concepcion and co-owner of the subject property, respondent Nenita S. Concepcion is entitled to prosecute the ejectment case not only in a representative capacity, but as a real party-in-interest. Article 487 of the Civil Code states, "Any one of the co-owners may bring an action in ejectment." Hence, assuming that respondent failed to submit the proper documents showing her capacity to sue in a representative capacity for the estate of her deceased husband, the Court, in the interest of speedy disposition of cases, may deem her capacitated to prosecute the ejectment case as a real party-in-interest being a co-owner of the subject property considering that the trial court has jurisdiction over the subject matter and has also acquired jurisdiction over the parties, including respondent Nenita S. Concepcion.

3. ID.; ID.; ID.; UNLAWFUL DETAINER; WHO MAY INSTITUTE PROCEEDINGS; ONE-YEAR PERIOD FOR FILING AN ACTION FOR EJECTMENT COUNTED FROM THE DATE OF DEMAND; COMPLIED WITH IN CASE AT BAR.— The Court holds that the RTC correctly affirmed the ejectment of petitioner from the property. To make out a case of unlawful detainer under Section 1, Rule 70 of the Rules of Court, the Complaint must allege that the defendant is unlawfully withholding from the plaintiff the possession of certain real property after the expiration or termination of the former's right to hold possession by virtue of a contract, express or implied, and that the action is being brought within one year from the time the defendant's possession became unlawful. The Complaint alleged that petitioner occupied the subject property by tolerance of the late Arsenio Concepcion. While tolerance is lawful, such possession becomes illegal upon

demand to vacate by the owner and the possessor by tolerance refuses to comply with such demand. Respondent sent petitioner a demand letter dated September 22, 2000 to vacate the subject property, but petitioner did not comply with the demand. A person who occupies the land of another at the latter's tolerance or permission, without any contract between them, is necessarily bound by an implied promise that he will vacate upon demand, failing which a summary action for ejectment is the proper remedy against him. Under Section 1, Rule 70 of the Rules of Court, the one-year period within which a complaint for unlawful detainer can be filed should be counted from the date of demand, because only upon the lapse of that period does the possession become unlawful. Respondent filed the ejectment case against petitioner on April 27, 2001, which was less than a year from the date of formal demand. Clearly, therefore, the action was filed within the one-year period prescribed for filing an ejectment or unlawful detainer case.

4. ID.; ID.; ID.; ID.; SOLE ISSUE FOR RESOLUTION IS PHYSICAL OR MATERIAL POSSESSION; QUESTION OF OWNERSHIP MAY BE DECIDED ONLY IF IT IS NECESSARY TO DECIDE THE QUESTION OF POSSESSION; REASON.— The sole issue for resolution in an unlawful detainer case is physical or material possession. All that the trial court can do is to make an initial determination of who is the owner of the property, so that it can resolve who is entitled to its possession absent other evidence to resolve ownership. Courts in ejectment cases decide questions of ownership only it is necessary to decide the question of possession. The reason for this rule is to prevent the defendant from trifling with the summary nature of an ejectment suit by the simple expedient of asserting ownership over the disputed property. In this case, the trial court found that respondent owns the property on the basis of Transfer Certificate of Title No. 12892, which was "issued in the name of Arsenio E. Concepcion, x x x married to Nenita L. Songco." It is settled rule that the person who has a Torrens title over a land is entitled to possession thereof. Hence, as the registered owner of the subject property, respondent is preferred to possess it.

5. ID.; ID.; ID.; ID.; THE VALIDITY OF THE CERTIFICATE OF TITLE CANNOT BE ATTACKED IN AN ACTION FOR EJECTMENT.— The validity of respondent's certificate of

title cannot be attacked by petitioner in this case for ejectment. Under Section 48 of Presidential Decree No. 1529, a certificate of title shall not be subject to collateral attack. It cannot be altered, modified or cancelled, except in a direct proceeding for that purpose in accordance with law. The issue of the validity of the title of the respondents can only be assailed in an action expressly instituted for that purpose. Whether or not the petitioner has the right to claim ownership over the property is beyond the power of the trial court to determine in an action for unlawful detainer.

6. ID.; ID.; ID.; HOLDER OF A TORRENS TITLE OVER THE PROPERTY IS ENTITLED TO THE POSSESSION THEREOF.— Although petitioner alleges that substantial evidence exists that she and her predecessors-in-interest had continuously and openly occupied and possessed, in the concept of owner, the subject property since time immemorial, petitioner failed to present evidence to substantiate her allegation. Whereas respondent holds a Torrens title over the subject property; hence, she is entitled to the possession of the property.

7. ID.; ID.; ID.; ADJUDICATION OF OWNERSHIP IS MERELY PROVISIONAL.— The court's adjudication of ownership in an ejectment case is merely provisional, and affirmance of the trial court's decision would not bar or prejudice an action between the same parties involving title to the property, if and when such action is brought seasonably before the proper forum.

8. ID.; SUMMARY PROCEDURE; SECTION 7 OF THE 1991 REVISED RULES ON SUMMARY PROCEDURE; APPLICABLE TO CASE AT BAR.— The Court notes that the ejectment case filed by respondent against petitioner was docketed in the trial court as Civil Case No. 17973, the case against Alfredo Caballero was docketed as Civil Case No. 17974, while the case against Severina Sadol was docketed as Civil Case No. 17932. These cases were consolidated by the trial court. Under Section 7 of the 1991 Revised Rules on Summary Procedure, if a sole defendant shall fail to appear in the preliminary conference, the plaintiff shall be entitled to judgment in accordance with Section 6 of the Rule, that is, the court shall render judgment as may be warranted by the facts alleged in the Complaint and limited to what is prayed for therein.

However, "[t]his Rule (Sec. 7) shall not apply where one of two or more defendants sued under a common cause of action, who had pleaded a common defense, shall appear at the preliminary conference." Petitioner claims that the preceding provision applies to her as a defendant, since the ejectment cases were consolidated by the trial court, and she and Caballero filed the same Answer to the Complaint; hence, the trial court should not have rendered judgment against her when she failed to appear in the preliminary conference. The Court holds that the italicized provision above does not apply in the case of petitioner, since she and Caballero were not co-defendants in the same case. The ejectment case filed against petitioner was distinct from that of Caballero, even if the trial court consolidated the cases and, in the interest of justice, considered the Answer filed by Caballero in Civil Case No. 17974 as the Answer also of petitioner since she affixed her signature thereto. Considering that petitioner was sued in a separate case for ejectment from that of Caballero and Sadol, petitioner's failure to appear in the preliminary conference entitled respondent to the rendition of judgment by the trial court on the ejectment case filed against petitioner, docketed as Civil Case No. 17973, in accordance with Section 7 of the 1991 Revised Rules on Summary Procedure.

APPEARANCES OF COUNSEL

Evelyn V. Lucero-Gutierrez for petitioners.
Romarico F. Lutap for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari*[1] of the Order[2] dated October 3, 2003 of the Regional Trial Court of Mandaluyong City, Branch 213, National Capital Judicial Region in Civil Case No. MC-03-407-A, which affirmed the Decision dated

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

[2] Penned by Judge Amalia F. Dy; *rollo*, pp. 35-43.

April 8, 2003 of the Metropolitan Trial Court of Mandaluyong City, Branch 59 in Civil Case No. 17973, ordering petitioner to vacate the property, subject matter of this unlawful detainer case, and surrender the possession thereof to respondent.

The facts, as stated by the trial court,[3] are as follows:

Respondent Nenita S. Concepcion established that she was the registered owner of the lot occupied by petitioner Angelina Soriente at No. 637 Cavo F. Sanchez Street, Mandaluyong City, Metro Manila. The lot, with an area of 295 square meters, is covered by Transfer Certificate of Title (TCT) No. 12892[4] issued by the Register of Deeds of Metro Manila, District II.

During the lifetime of Arsenio E. Concepcion, who acquired the lot in 1978, he allowed and tolerated the occupancy of the lot by petitioner, who was already staying on the property. Petitioner was allowed to stay on the lot for free, but on a temporary basis until such time that Concepcion and/or his family needed to develop the lot.

After Arsenio E. Concepcion died on December 27, 1989, his family initiated steps to develop the lot, but petitioner's occupancy of the lot prevented them from pursuing their plan.

Verbal demands to vacate the lot was made on petitioner. Petitioner pleaded for time to transfer to another place, but she never left.

In June 2000, Elizabeth Concepcion-Dela Cruz, daughter of respondent, filed a complaint for conciliation proceedings before the *barangay* at the instance of respondent. However, the parties did not reach a settlement, which resulted in the issuance of a Certificate to File Action[5] dated February 17, 2001 by the *Barangay* Captain of Barangay Hagdan Bato Itaas, Mandaluyong City.

Respondent sent petitioner a demand letter dated September 22, 2000 by registered mail, demanding that she peacefully

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[3] MTC Decision, Records, pp. 45-46.

[4] Annex "A", *id.* at 5.

[5] Annex "B", *id.* at 6.

surrender the property and extending financial assistance for her relocation. Despite receipt of the demand letter, petitioner did not vacate the premises.

On April 27, 2001, respondent filed against petitioner a Complaint[6] for unlawful detainer with the Metropolitan Trial Court of Mandaluyong City, Branch 59 (trial court). The Complaint was docketed as Civil Case No. 17973. The Complaint alleged that respondent was the registered owner of the subject property, while petitioner had no title to the property and her free occupancy thereof was merely tolerated by respondent. Moreover, petitioner was occupying the premises together with her family, and she had maintained boarders for a fee. Respondent prayed that petitioner be ordered to vacate the lot, surrender the possession thereof to respondent, pay monthly rent of ₱5,000.00 from June 2000 until she vacates the premises, and pay actual, moral and exemplary damages, as well as litigation expenses.

It appears from the records of the case that petitioner Soriente, as a defendant in the lower court, did not file a separate Answer, but affixed her signature to the Answer filed by defendant Alfredo Caballero in another ejectment case, docketed as Civil Case No. 17974, which was filed by respondent against Caballero. Hence, respondent, through counsel, filed a Motion to Render Judgment[7] under Section 7, Rule 70 of the 1997 Revised Rules of Civil Procedure for Soriente's failure to file an Answer to the Complaint. Petitioner filed an Opposition to the Motion to Render Judgment.[8]

In an Order[9] dated December 5, 2001, the trial court denied the Motion to Render Judgment. It stated that the allegations of the Complaint in Civil Case No. 17973 and 17974 are similar, the only substantial difference being the time when defendants occupied the subject property allegedly through the tolerance

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[6] Records, pp. 1-3.

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

[8] *Id.* at 20-27.

[9] *Id.* at 32-33.

of Arsenio Concepcion. The trial court believed that in signing the Answer filed in Civil Case No. 17974, Soriente intended to adopt the same as her own, as both defendants Caballero and Soriente had a common defense against plaintiff's (respondent's) separate claim against them. The trial court denied the Motion to Render Judgment in the interest of justice and considered that the two cases, including Civil Case No. 17932 against Severina Sadol, had been consolidated.

Pursuant to Section 7 of the 1991 Revised Rule on Summary Procedure, the trial court set a preliminary conference on October 9, 2001 at 8:30 a.m. The preliminary conference was reset to November 15, 2001, and then to December 18, 2001 because the Motion to Render Judgment was still pending resolution. On December 18, 2001, the preliminary conference was reset to January 24, 2002 as prayed for by defendants on the ground that their common counsel was absent despite proper notice, and plaintiff (respondent) did not object to the resetting.[10]

On January 24, 2002, the scheduled preliminary conference was again reset to March 5, 2002 because no notice was sent to defendants' counsel, and plaintiff (respondent) and her counsel were both absent despite proper notice.

On March 5, 2002, the trial court reset the preliminary conference to April 16, 2002 on the ground that there was no notice sent to defendants' counsel.

In the scheduled preliminary conference held on February 18, 2003, only plaintiff's (respondent's) counsel and defendants Severina Sadol and Alfredo Caballero were present. Plaintiff's (respondent's) counsel submitted a secretary's certificate attesting to the existence of a board resolution authorizing him to enter into a compromise agreement. A representative of defendant (petitioner) Angelina Soriente appeared, but failed to submit a Special Power of Attorney authorizing her to enter into a compromise agreement. Counsel for defendants was not in court, and there was no proof of service on her for the hearing. However, defendants Sadol and Caballero informed the court

[10] Joint Order dated December 18, 2001, records, p. 35.

that they informed their counsel of the hearing scheduled that day. In view of the absence of defendant Angelina Soriente or her authorized representative, plaintiff's (respondent's) counsel moved that the case be submitted for decision, and that he be given 15 days within which to submit his position paper.[11]

In its Order[12] dated February 18, 2003, the trial court granted the motion of plaintiff's (respondent's) counsel and considered the case against defendant (petitioner) Angelina Soriente submitted for decision in accordance with Section 7 of the Rules on Summary Procedure.[13]

On April 8, 2003, the trial court rendered a Decision[14] holding that respondent established by preponderance of evidence that she was entitled to the relief prayed for. The dispositive portion of the Decision reads:

WHEREFORE, judgment is hereby rendered ordering defendant Angelina Soriente and all other persons claiming rights under her to:

1. Vacate the subject premises and surrender the possession thereof to plaintiff;
2. Pay the amount of PESOS: FIVE THOUSAND (₱5,000.00) per month as reasonable compensation for use and

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[11] Joint Order dated February 18, 2003, records, p. 44.

[12] *Id*.

[13] SEC. 7. *Preliminary conference; appearance of parties*. — Not later than thirty (30) days after the last answer is filed, a preliminary conference shall be held. The rules on pre-trial in ordinary cases shall be applicable to the preliminary conference unless inconsistent with the provisions of this Rule.

The failure of the plaintiff to appear in the preliminary conference shall be a cause for the dismissal of his complaint. The defendant who appears in the absence of the plaintiff shall be entitled to judgment on his counterclaim in accordance with Section 6 hereof. All cross-claims shall be dismissed.

If a sole defendant shall fail to appear, the plaintiff shall be entitled to judgment in accordance with Section 6 hereof. This Rule shall not apply where one of two or more defendants sued under a common cause of action who had pleaded a common defense shall appear at the preliminary conference.

[14] Records, pp. 45-47.

occupation of the premises as of June 2000 until she finally vacates the subject premises;

3. Pay the amount [of] PESOS: THREE THOUSAND (₱3,000.00) as attorney's fees; and

4. Pay the litigation expenses and cost of suit.[15]

Petitioner appealed the trial court's Decision to the RTC of Mandaluyong City, Branch 213, raising the following issues:

1. The lower court erred in holding that the plaintiff was able to establish that she is the registered owner of the lot occupied by the defendant-appellant instead of dismissing the complaint outright for lack of legal capacity to sue.

2. The lower court erred in holding that the plaintiff was able to establish by preponderance of evidence that she is entitled to the relief prayed for despite lack of jurisdiction.

3. The lower court erred in holding that this instant case subject of this appeal be decided in accordance with Section 7 of the Rules on Summary Procedure.[16]

In an Order[17] dated October 3, 2003, the RTC affirmed the trial court's Decision, disposing thus:

PRESCINDING FROM THE FOREGOING CONSIDERATIONS, judgment is hereby rendered AFFIRMING *IN TOTO* the decision dated April 8, 2003 rendered by the Metropolitan Trial Court, Branch 59, Mandaluyong City.[18]

The RTC held:

Case records readily disclosed that the ownership of the subject lot belongs to the late Arsenio E. Concepcion, married to herein Plaintiff-Appellee Nenita S. Concepcion, as evidenced by the Transfer Certificate of Title No. 12892 (Annex "A" in the complaint for Unlawful Detainer). This Certificate of Title shall be received as

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[15] *Id.* at 46-47.

[16] RTC Order, *rollo*, p. 36.

[17] *Rollo*, pp. 35-43.

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

evidence in all courts of the Philippines and shall be conclusive as to all matters contained therein principally, the identity of the owner of the land covered thereby except as provided in the Land Registration Act. Said title can be attacked only for fraud within one year after the date of the issuance of the decree of registration. Such attack must be direct and not by a collateral proceeding. The title represented by the certificate cannot be changed, altered, modified, enlarged or diminished in a collateral proceeding such as this instant appeal from the decision rendered by the Metropolitan Trial Court of Mandaluyong City in an ejectment case. As should be known by Appellant Soriente through counsel, no title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession. Prescription is unavailing not only against the registered owner Arsenio E. Concepcion but also against his hereditary successors because the latter merely steps into the shoes of the decedent by operation of law and are merely the continuation of the personalities of their predecessors-in-interest (*Barcelona v. Barcelona*, 100 Phil. 251; PD 1529, Sec. 47). x x x

xxx xxx xxx

Noteworthy to mention in the case at bar is the ruling laid down in *Calubayan v. Pascual*, 21 SCRA 146, where the Supreme Court [held] that a person who occupies the land of another at the latter's tolerance or permission, without any contract between them, is necessarily bound by an implied promise that he will vacate upon demand, failing which a summary action for ejectment is the proper remedy against [him]. x x x[19]

Petitioner filed this petition raising the following issues:

I

THE REGIONAL TRIAL COURT ERRED IN AFFIRMING THE DECISION OF THE LOWER COURT IN HOLDING THAT THE PLAINTIFF WAS ABLE TO ESTABLISH THAT SHE IS THE REGISTERED OWNER OF THE LOT OCCUPIED BY THE DEFENDANT-APPELLANT INSTEAD OF DISMISSING THE COMPLAINT OUTRIGHT FOR LACK OF LEGAL CAPACITY TO

[19] *Id.* at 39.

SUE.

II

THE REGIONAL TRIAL COURT ERRED IN AFFIRMING THE DECISION OF THE LOWER COURT IN HOLDING THAT THE PLAINTIFF WAS ABLE TO ESTABLISH BY PREPONDERANCE OF EVIDENCE THAT SHE IS ENTITLED TO THE RELIEF PRAYED FOR DESPITE LACK OF JURISDICTION.

III

THE REGIONAL TRIAL COURT ERRED IN HOLDING THAT THIS INSTANT CASE SUBJECT OF THIS APPEAL BE DECIDED IN ACCORDANCE WITH SECTION 7 OF THE RULES ON SUMMARY PROCEDURE.[20]

Petitioner appealed from the RTC's decision directly to this Court on pure questions of law. There is a question of law in a given case when the doubt or difference arises as to what the law is on a certain state of facts; there is a question of fact when the doubt or difference arises as to the truth or the falsehood of alleged facts.[21]

Moreover, *Republic v. Sandiganbayan*[22] ruled:

> x x x A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted. A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation.[23]

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[20] *Id.* at 16.

[21] *Ramos v. Pepsi-Cola Bottling Co. of the Philippines, et al.*, 125 Phil. 701, 705 (1967).

[22] 426 Phil. 104 (2002).

[23] *Id.* at 110.

The Court notes that petitioner raised both questions of fact and law in her petition. The Court shall resolve only the pertinent questions of law raised.

First, petitioner questioned respondent Nenita Concepcion's capacity to sue as a representative of the Estate of her husband, Arsenio Concepcion, alleging absence of proof of the issuance of the requisite letters testamentary or letters of administration evidencing her legal capacity to sue in behalf of the Estate of Arsenio Concepcion in contravention of Section 4, Rule 8 of the 1997 Rules of Civil Procedure, thus:

> Sec. 4. *Capacity*. — Facts showing the capacity of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, must be averred. A party desiring to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued in a representative capacity, shall do so by specific denial, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

Petitioner asserts that lack of legal capacity to sue is a ground for dismissal under Section 1 (d) of Rule 16 of the Revised Rules of Court, and considering that a motion to dismiss is a prohibited pleading under the summary procedure, the trial court failed to exercise its duty to order the outright dismissal of the complaint as mandated under Section 4[24] of the 1991 Revised Rule on Summary Procedure.

Petitioner's contention lacks merit.

Section 4, Rule 8 of the 1997 Rules of Civil Procedure provides:

> Sec. 4. *Capacity*. – x x x **A party desiring to raise an issue** as to the legal existence of any party or **the capacity of any party to sue or be sued in a representative capacity, shall do so by specific denial, which shall include such supporting particulars as are peculiarly within the pleader's knowledge**.[25]

[24] SEC. 4. *Duty of Court.* – After the court determines that the case falls under summary procedure, it may, from an examination of the allegations therein and such evidence as may be attached thereto, dismiss the case outright on any of the grounds apparent therefrom for the dismissal of a civil action.

[25] Emphasis supplied.

Based on the provision cited above, the RTC correctly ruled:

> The argument is not tenable. This court, upon cursory reading of the provisions of Rule 8, Section 4 of the Rules of Court, in relation to the Rules on Summary Procedure, finds it relevant to note x x x that although a Motion to Dismiss or a Motion for Bill of Particulars cannot be availed of to challenge the capacity of the party under the Rules on Summary Procedure, the Defendant–Appellant should have at least SPECIFICALLY DENIED such capacity of the party in the Answer, which should have included such supporting particulars as are peculiarly within the pleader's knowledge. The case records clearly disclosed that no such specific denial was made by the appellant and this court believes that the lower court had carefully and dutifully taken into account the applicable rules particularly Section 4 of the Revised Rules on Summary Procedure, in relation to Section 4, Rule 8 of the Rules of Court and pertinent jurisprudence, before rendering the assailed decision dated April 8, 2003. The presumption of the regular performance of duties applies in this case and the same shall prevail over mere allegations of the herein Defendant-Appellant.[26]

Further, as the successor-in-interest of the late Arsenio E. Concepcion and co-owner of the subject property, respondent Nenita S. Concepcion is entitled to prosecute the ejectment case not only in a representative capacity, but as a real party-in-interest. Article 487 of the Civil Code states, "Any one of the co-owners may bring an action in ejectment." Hence, assuming that respondent failed to submit the proper documents showing her capacity to sue in a representative capacity for the estate of her deceased husband, the Court, in the interest of speedy disposition of cases, may deem her capacitated to prosecute the ejectment case as a real party-in-interest being a co-owner of the subject property considering that the trial court has jurisdiction over the subject matter and has also acquired jurisdiction over the parties, including respondent Nenita S. Concepcion.

Second, petitioner questions whether respondent has established by a preponderance of evidence that she is entitled to the relief prayed for, which is the ejectment of petitioner from the subject

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[26] *Rollo,* p. 40.

property. Petitioner contends that respondent admitted in her Complaint that her right to the subject property arose only in 1978, when the late Arsenio E. Concepcion acquired the same. Petitioner alleges that to the contrary, substantial evidence exists that she and her predecessors-in-interest have continuously and openly occupied and possessed, in the concept of owner, the subject property since time immemorial.

The Court holds that the RTC correctly affirmed the ejectment of petitioner from the property.

To make out a case of unlawful detainer under Section 1,[27] Rule 70 of the Rules of Court, the Complaint must allege that the defendant is unlawfully withholding from the plaintiff the possession of certain real property after the expiration or termination of the former's right to hold possession by virtue of a contract, express or implied, and that the action is being brought within one year from the time the defendant's possession became unlawful.[28]

The Complaint alleged that petitioner occupied the subject property by tolerance of the late Arsenio Concepcion. While tolerance is lawful, such possession becomes illegal upon demand to vacate by the owner and the possessor by tolerance refuses to comply with such demand.[29] Respondent sent petitioner a demand letter dated September 22, 2000 to vacate the subject property, but petitioner did not comply with the demand. A person who occupies the land of another at the latter's tolerance

[27] SECTION 1. *Who may institute proceedings, and when.* – Subject to the provisions of the next succeeding section, x x x 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.

[28] *Barbosa v. Hernandez*, G.R. No. 133564, July 10, 2007, 527 SCRA 99.

[29] *Pangilinan v. Aguilar*, 150 Phil. 166, 176 (1972).

or permission, without any contract between them, is necessarily bound by an implied promise that he will vacate upon demand, failing which a summary action for ejectment is the proper remedy against him.[30] Under Section 1, Rule 70 of the Rules of Court, the one-year period within which a complaint for unlawful detainer can be filed should be counted from the date of demand, because only upon the lapse of that period does the possession become unlawful.[31] Respondent filed the ejectment case against petitioner on April 27, 2001, which was less than a year from the date of formal demand. Clearly, therefore, the action was filed within the one-year period prescribed for filing an ejectment or unlawful detainer case.

The sole issue for resolution in an unlawful detainer case is physical or material possession.[32] All that the trial court can do is to make an initial determination of who is the owner of the property, so that it can resolve who is entitled to its possession absent other evidence to resolve ownership.[33] Courts in ejectment cases decide questions of ownership only it is necessary to decide the question of possession.[34] The reason for this rule is to prevent the defendant from trifling with the summary nature of an ejectment suit by the simple expedient of asserting ownership over the disputed property.[35]

In this case, the trial court found that respondent owns the property on the basis of Transfer Certificate of Title No. 12892,[36] which was "issued in the name of Arsenio E. Concepcion, x x x married to Nenita L. Songco." It is settled rule that the person who has a Torrens title over a land is entitled to

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[30] *Id.*

[31] *Lopez v. David, Jr.*, G.R. No. 152145, March 30, 2004, 426 SCRA 535, 542.

[32] *Arambulo v. Gungab*, G.R. No. 156581, September 30, 2005, 471 SCRA 640, 649.

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] Records, p. 5.

possession thereof.[37] Hence, as the registered owner of the subject property, respondent is preferred to possess it.[38]

The validity of respondent's certificate of title cannot be attacked by petitioner in this case for ejectment. Under Section 48 of Presidential Decree No. 1529, a certificate of title shall not be subject to collateral attack.[39] It cannot be altered, modified or cancelled, except in a direct proceeding for that purpose in accordance with law.[40] The issue of the validity of the title of the respondents can only be assailed in an action expressly instituted for that purpose.[41] Whether or not the petitioner has the right to claim ownership over the property is beyond the power of the trial court to determine in an action for unlawful detainer.[42]

Although petitioner alleges that substantial evidence exists that she and her predecessors-in-interest had continuously and openly occupied and possessed, in the concept of owner, the subject property since time immemorial, petitioner failed to present evidence to substantiate her allegation. Whereas respondent holds a Torrens title over the subject property; hence, she is entitled to the possession of the property.[43]

The court's adjudication of ownership in an ejectment case is merely provisional, and affirmance of the trial court's decision would not bar or prejudice an action between the same parties involving title to the property, if and when such action is brought seasonably before the proper forum.[44]

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[37] *Arambulo v. Gungab*, *supra* note 32, at 649-650.

[38] *Id.* at 649.

[39] *Apostol v. Court of Appeals*, 476 Phil. 403, 414 (2004).

[40] *Id*.

[41] *Id*.

[42] *Id*.

[43] *Pangilinan v. Aguilar*, *supra* note 29, at 145.

[44] *Id*.

Lastly, petitioner contends that the lower court erred in deciding this case in accordance with Section 7 of the Rules on Summary Procedure, thus:

SEC. 7. *Preliminary conference; appearance of parties*. – Not later than thirty (30) days after the last answer is filed, a preliminary conference shall be held. The rules on pre-trial in ordinary cases shall be applicable to the preliminary conference unless inconsistent with the provisions of this Rule.

The failure of the plaintiff to appear in the preliminary conference shall be a cause for the dismissal of his complaint. The defendant who appears in the absence of the plaintiff shall be entitled to judgment on his counterclaim in accordance with Section 6 hereof. All cross-claims shall be dismissed.

If a sole defendant shall fail to appear, the plaintiff shall be entitled to judgment in accordance with Section 6 hereof. This Rule shall not apply where one of two or more defendants sued under a common cause of action who had pleaded a common defense shall appear at the preliminary conference.[45]

Section 6 of the 1991 Revised Rules on Summary Procedure, which is referred to by Section 7 above, states:

SEC. 6. *Effect of failure to answer*. – Should the defendant fail to answer the complaint within the period above provided, **the court**, *motu proprio*, or on motion of the plaintiff, **shall render judgment as may be warranted by the facts alleged in the complaint and limited to what is prayed for therein**: Provided, however, That the court may in its discretion reduce the amount of damages and attorney's fees claimed for being excessive or otherwise unconscionable. This is without prejudice to the applicability of Section 4, Rule 18 of the Rules of Court, if there are two or more defendants.

Petitioner asserts that considering that the cases against her, defendants Caballero and Sadol were consolidated, and she and defendant Caballero signed and filed one common Answer to the Complaint, thus, pleading a common defense, the trial court should not have rendered judgment on her case based on

[45] Emphasis supplied.

Section 7 of the 1991 Revised Rules on Summary Procedure when she failed to appear in the preliminary conference.

The contention lacks merit.

The Court notes that the ejectment case filed by respondent against petitioner was docketed in the trial court as Civil Case No. 17973, the case against Alfredo Caballero was docketed as Civil Case No. 17974, while the case against Severina Sadol was docketed as Civil Case No. 17932. These cases were consolidated by the trial court.

Under Section 7 of the 1991 Revised Rules on Summary Procedure, if a sole defendant shall fail to appear in the preliminary conference, the plaintiff shall be entitled to judgment in accordance with Section 6 of the Rule, that is, the court shall render judgment as may be warranted by the facts alleged in the Complaint and limited to what is prayed for therein. *However, "[t]his Rule (Sec. 7) shall not apply where one of two or more defendants sued under a common cause of action, who had pleaded a common defense, shall appear at the preliminary conference."* Petitioner claims that the preceding provision applies to her as a defendant, since the ejectment cases were consolidated by the trial court, and she and Caballero filed the same Answer to the Complaint; hence, the trial court should not have rendered judgment against her when she failed to appear in the preliminary conference.[46]

The Court holds that the italicized provision above does not apply in the case of petitioner, since she and Caballero were not co-defendants in the same case. The ejectment case filed against petitioner was distinct from that of Caballero, even if the trial court consolidated the cases and, in the interest of justice, considered the Answer filed by Caballero in Civil Case No. 17974 as the Answer also of petitioner since she affixed her signature thereto.

Considering that petitioner was sued in a separate case for ejectment from that of Caballero and Sadol, petitioner's failure to appear in the preliminary conference entitled respondent to

[46] Italics supplied.

the rendition of judgment by the trial court on the ejectment case filed against petitioner, docketed as Civil Case No. 17973, in accordance with Section 7 of the 1991 Revised Rules on Summary Procedure.

WHEREFORE, the petition is *DENIED*. The Order dated October 3, 2003 of the Regional Trial Court of Mandaluyong City, Branch 213, National Capital Judicial Region in Civil Case No. MC-03-407-A is *AFFIRMED*.

No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 161318. November 25, 2009]

JULIE NABUS,[*] MICHELLE NABUS[*] and BETTY TOLERO, *petitioners, vs.* **JOAQUIN PACSON and JULIA PACSON,** *respondents.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; SALES; CONTRACT OF SALE DISTINGUISHED FROM CONTRACT TO SELL.— The Court holds that the contract entered into by the Spouses Nabus and respondents was a contract to sell, not a contract of sale. A contract of sale is defined in Article 1458 of the Civil Code, thus: Art. 1458. By the contract of sale, one of the contracting parties obligates himself to

[*] Referred to as NABOS in the RTC and CA Decisions, and in the pleadings.

transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent. A contract of sale may be absolute or conditional. *Ramos v. Heruela* differentiates a contract of absolute sale and a contract of conditional sale as follows: Article 1458 of the Civil Code provides that a contract of sale may be absolute or conditional. A contract of sale is absolute when title to the property passes to the vendee upon delivery of the thing sold. A deed of sale is absolute when there is no stipulation in the contract that title to the property remains with the seller until full payment of the purchase price. The sale is also absolute if there is no stipulation giving the vendor the right to cancel unilaterally the contract the moment the vendee fails to pay within a fixed period. In a conditional sale, as in a contract to sell, ownership remains with the vendor and does not pass to the vendee until full payment of the purchase price. The full payment of the purchase price partakes of a suspensive condition, and non-fulfillment of the condition prevents the obligation to sell from arising. xxx

2. ID.; ID.; ID.; THE EXPRESS TERMS AND STIPULATIONS OF THE CONTRACT, NOT THE TITLE THEREOF, DETERMINE THE KIND OF CONTRACT ENTERED INTO BY THE PARTIES.— It is not the title of the contract, but its express terms or stipulations that determine the kind of contract entered into by the parties. In this case, the contract entitled "Deed of Conditional Sale" is actually a contract to sell. The contract stipulated that "***as soon as the full consideration of the sale has been paid*** *by the vendee,* ***the corresponding transfer documents shall be executed by the vendor*** *to the vendee for the portion sold*." Where the vendor promises to execute a deed of absolute sale upon the completion by the vendee of the payment of the price, the contract is only a contract to sell." The aforecited stipulation shows that the vendors reserved title to the subject property until full payment of the purchase price.

3. ID.; ID.; ID.; CONTRACT TO SELL; FAILURE OF THE BUYER TO MAKE FULL PAYMENT OF THE PURCHASE PRICE IS NOT A BREACH OF CONTRACT BUT MERELY AN EVENT THAT PREVENTS THE OBLIGATION OF THE VENDOR TO CONVEY TITLE FROM ACQUIRING BINDING FORCE.— Unfortunately for the Spouses Pacson,

since the Deed of Conditional Sale executed in their favor was merely a contract to sell, the obligation of the seller to sell becomes demandable only upon the happening of the suspensive condition. The full payment of the purchase price is the positive suspensive condition, **the failure of which is not a breach of contract, but simply an event that prevented the obligation of the vendor to convey title from acquiring binding force**. Thus, for its non-fulfilment, there is no contract to speak of, the obligor having failed to perform the suspensive condition which enforces a juridical relation. With this circumstance, there can be no rescission or fulfilment of an obligation that is still non-existent, the suspensive condition not having occurred as yet. Emphasis should be made that the breach contemplated in Article 1191 of the New Civil Code is the obligor's failure to comply with an obligation already extant, not a failure of a condition to render binding that obligation.

4. ID.; ID.; ID.; ID.; NON-PAYMENT OF THE PURCHASE PRICE RENDERS THE CONTRACT TO SELL INEFFECTIVE AND WITHOUT FORCE AND EFFECT; ABSENT BREACH OF CONTRACT, THE REMEDY OF SPECIFIC PERFORMANCE CANNOT BE AVAILED OF.— The trial court, therefore, erred in applying Article 1191 of the Civil Code in this case by ordering fulfillment of the obligation, that is, the execution of the deed of absolute sale in favor of the Spouses Pacson upon full payment of the purchase price, which decision was affirmed by the Court of Appeals. *Ayala Life Insurance, Inc. v. Ray Burton Development Corporation* held: Evidently, before the remedy of specific performance may be availed of, there must be a **breach** of the contract. Under a contract to sell, the title of the thing to be sold is retained by the seller until the purchaser makes full payment of the agreed purchase price. Such payment is a positive suspensive condition, the non-fulfillment of which is **not a breach of contract** but merely an event that prevents the seller from conveying title to the purchaser. The non-payment of the purchase price renders the contract to sell ineffective and without force and effect. Thus, a cause of action for specific performance does not arise. Since the contract to sell was without force and effect, Julie Nabus **validly** conveyed the subject property to another buyer, petitioner Betty Tolero, through a contract of absolute sale, and on the strength thereof,

new transfer certificates of title over the subject property were duly issued to Tolero.

5. ID.; DAMAGES; NOMINAL DAMAGES; WHEN MAYBE AWARDED; REIMBURSEMENT OF PAYMENTS MADE BY THE RESPONDENTS AND AWARD OF NOMINAL DAMAGES THERETO, PROPER.— The Spouses Pacson, however, have the right to the reimbursement of their payments to the Nabuses, and are entitled to the award of nominal damages. The Civil Code provides: Art. 2221. Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him. Art. 2222. The court may award nominal damages in every obligation arising from any source enumerated in article 1157, or in every case where any property right has been invaded. As stated by the trial court, under the Deed of Conditional Sale, respondents had the right to demand from petitioners Julie and Michelle Nabus that the latter execute in their favor a deed of absolute sale when they were ready to pay the remaining balance of the purchase price. The Nabuses had the corresponding duty to respect the respondents' right, but they violated such right, for they could no longer execute the document since they had sold the property to Betty Tolero. Hence, nominal damages in the amount of ₱10,000.00 are awarded to respondents.

6. ID.; ID.; MORAL DAMAGES; AWARD THEREOF NOT PROPER ABSENT BREACH OF CONTRACT.— Respondents are not entitled to moral damages because contracts are not referred to in Article 2219 of the Civil Code, which enumerates the cases when moral damages may be recovered. Article 2220 of the Civil Code allows the recovery of moral damages in **breaches of contract** where the defendant acted fraudulently or in bad faith. However, this case involves a contract to sell, wherein full payment of the purchase price is a positive suspensive condition, the non-fulfillment of which is **not a breach of contract,** but merely an event that prevents the seller from conveying title to the purchaser. Since there is no breach of contract in this case, respondents are not entitled to moral damages. In the absence of moral, temperate, liquidated or compensatory damages, exemplary damages cannot be granted

for they are allowed only in addition to any of the four kinds of damages mentioned.

APPEARANCES OF COUNSEL

Rolando V. Rivera for petitioners.
Dante S. David for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari*[1] of the Decision[2] of the Court of Appeals in CA-G.R. CV No. 44941 dated November 28, 2003. The Court of Appeals affirmed with modification the Decision of the Regional Trial Court of La Trinidad, Benguet, Branch 10, ordering petitioner Betty Tolero to execute a deed of absolute sale in favor of respondents, spouses Joaquin and Julia Pacson, over the lots covered by Transfer Certificate of Title (TCT) Nos. T-18650 and T-18651 upon payment to her by respondents of the sum of ₱57,544.[8]4 representing the balance due for the full payment of the property subject of this case; and ordering petitioner Betty Tolero to surrender to respondents her owner's duplicate copy of TCT Nos. T-18650 and T-18651.

The facts, as stated by the trial court,[3] are as follows:

The spouses Bate and Julie Nabus were the owners of parcels of land with a total area of 1,665 square meters, situated in Pico, La Trinidad, Benguet, duly registered in their names under TCT No. T-9697 of the Register of Deeds of the Province of Benguet. The property was mortgaged by the Spouses Nabus to the Philippine National Bank (PNB), La Trinidad Branch, to

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

[2] Penned by Associate Justice Sergio L. Pestaño, with Associate Justices Marina L. Buzon and Jose C. Mendoza, concurring; *rollo*, pp. 38-43.

[3] CA *rollo*, pp. 20-26.

secure a loan in the amount of ₱30,000.00.

On February 19, 1977, the Spouses Nabus executed a Deed of Conditional Sale[4] covering 1,000 square meters of the 1,665 square meters of land in favor of respondents Spouses Pacson for a consideration of ₱170,000.00, which was duly notarized on February 21, 1977. The consideration was to be paid, thus:

> THAT, the consideration of the amount of ₱170,000.00 will be paid by the VENDEE herein in my favor in the following manner:
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> a. That the sum of ₱13,000.00, more or less, on or before February 21, 1977 and which amount will be paid directly to the PNB, La Trinidad Branch, and which will form part of the purchase price;
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> b. That after paying the above amount to the PNB, La Trinidad, Benguet branch, a balance of about ₱17,500.00 remains as my mortgage balance and this amount will be paid by the VENDEE herein at the rate of not less than ₱3,000.00 a month beginning March 1977, until the said mortgage balance is fully liquidated, and that all payments made by the VENDEE to the PNB, La Trinidad, Benguet branch, shall form part of the consideration of this sale;
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> c. That, as soon as the mortgage obligation with the PNB as cited above is fully paid, then the VENDEE herein hereby obligates himself, his heirs and assigns, to pay the amount of not less than ₱2,000.00 a month in favor of the VENDOR, his heirs and assigns, until the full amount of ₱170,000.00 is fully covered (including the payments cited in Pars. a and b above);
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> THAT, as soon as the full consideration of this sale has been paid by the VENDEE, the corresponding transfer documents shall be executed by the VENDOR to the VENDEE for the portion sold;
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> THAT, the portion sold is as shown in the simple sketch hereto attached as Annex "A" and made part hereof;
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> THAT, a segregation survey for the portion sold in favor of the VENDEE and the portion remaining in favor of the VENDOR shall

[4] Exhibit "B", compilation of exhibits, p. 5.

be executed as soon as possible, all at the expense of the VENDEE herein;

THAT, it is mutually understood that in as much as there is a claim by other persons of the entire property of which the portion subject of this Instrument is only a part, and that this claim is now the subject of a civil case now pending before Branch III of the Court of First Instance of Baguio and Benguet, should the VENDOR herein be defeated in the said civil action to the end that he is divested of title over the area subject of this Instrument, then he hereby warrants that he shall return any and all monies paid by the VENDEE herein whether paid to the PNB, La Trinidad, Benguet Branch, or directly received by herein VENDOR, all such monies to be returned upon demand by the VENDEE;

THAT, [a] portion of the parcel of land subject of this instrument is presently in the possession of Mr. Marcos Tacloy, and the VENDOR agrees to cooperate and assist in any manner possible in the ouster of said Mr. Marcos Tacloy from said possession and occupation to the end that the VENDEE herein shall make use of said portion as soon as is practicable;

THAT, finally, the PARTIES hereby agree that this Instrument shall be binding upon their respective heirs, successors or assigns.[5]

Pursuant to the Deed of Conditional Sale, respondents paid PNB the amount of ₱12,038.86 on February 22, 1977[6] and ₱20,744.30 on July 17, 1978[7] for the full payment of the loan.

At the time of the transaction, Mr. Marcos Tacloy had a basket-making shop on the property, while the spouses Delfin and Nelita Flores had a store. Tacloy and the Spouses Flores vacated the property after respondents paid them ₱4,000.00 each.

Thereafter, respondents took possession of the subject property. They constructed an 80 by 32-feet building and a steel-matting fence around the property to house their truck

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[5] *Rollo*, pp. 57-58.

[6] Exhibit "D", compilation of exhibits, p. 13.

[7] Exhibit "E", *id.*

body-building shop which they called the "Emiliano Trucking Body Builder and Auto Repair Shop."

On December 24, 1977, before the payment of the balance of the mortgage amount with PNB, Bate Nabus died. On August 17, 1978, his surviving spouse, Julie Nabus, and their minor daughter, Michelle Nabus, executed a Deed of Extra Judicial Settlement over the registered land covered by TCT No. 9697. On the basis of the said document, TCT No. T- 17718[8] was issued on February 17, 1984 in the names of Julie Nabus and Michelle Nabus.

Meanwhile, respondents continued paying their balance, not in installments of ₱2,000.00 as agreed upon, but in various, often small amounts ranging from as low as ₱10.00[9] to as high as ₱15,566.00,[10] spanning a period of almost seven years, from March 9, 1977[11] to January 17, 1984.[12]

There was a total of 364 receipts of payment,[13] which receipts were mostly signed by Julie Nabus, who also signed as Julie Quan when she remarried. The others who signed were Bate Nabus; PNB, La Trinidad Branch; Maxima Nabus; Sylvia Reyes; Michelle Nabus and the second husband of Julie Nabus, Gereon Quan. Maxima Nabus is the mother of Bate Nabus, while Sylvia Reyes is a niece.

The receipts showed that the total sum paid by respondents to the Spouses Nabus was ₱112,455.16,[14] leaving a balance of ₱57,544.84. The sum of ₱30,000.00 which was the value of the pick-up truck allegedly sold and delivered in 1978 to the

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[8] Exhibit "R", *id.* at 60.

[9] Exhibits "K-14", "K-25", "K-29", and "L-27", *id.* at 33-34, 37.

[10] Exhibit "J-19", *id.* at 31.

[11] Exhibit "H", *id.* at 22.

[12] Exhibit "N-1", *id.* at 41.

[13] Exhibits "D" to "F"; "F-1" to "F-3"; "G"; "G-1" to "G-88"; "H"; "H-1" to "H-42"; "I"; "I-1" to "I-57"; "J"; "J-1" to "J-62"; "K"; "K-1" to "K-52"; "L"; "L-1" to "L-28"; "M"; "M-1" to "M-40"; "N" and "N-1", *id.* at 13-41.

[14] Exhibits "UU", "UU-1" to "UU-9", *id.* at 131.

Spouses Nabus, was not considered as payment because the registration papers remained in the name of its owner, Dominga D. Pacson, who is the sister of Joaquin Pacson. The vehicle was also returned to respondents.

During the last week of January 1984, Julie Nabus, accompanied by her second husband, approached Joaquin Pacson to ask for the full payment of the lot. Joaquin Pacson agreed to pay, but told her to return after four days as his daughter, Catalina Pacson, would have to go over the numerous receipts to determine the balance to be paid. When Julie Nabus returned after four days, Joaquin sent her and his daughter, Catalina, to Atty. Elizabeth Rillera for the execution of the deed of absolute sale. Since Julie was a widow with a minor daughter, Atty. Rillera required Julie Nabus to return in four days with the necessary documents, such as the deed of extrajudicial settlement, the transfer certificate of title in the names of Julie Nabus and minor Michelle Nabus, and the guardianship papers of Michelle. However, Julie Nabus did not return.

Getting suspicious, Catalina Pacson went to the Register of Deeds of the Province of Benguet and asked for a copy of the title of the land. She found that it was still in the name of Julie and Michelle Nabus.

After a week, Catalina Pacson heard a rumor that the lot was already sold to petitioner Betty Tolero. Catalina Pacson and Atty. Rillera went to the Register of Deeds of the Province of Benguet, and found that Julie Nabus and her minor daughter, Michelle Nabus, represented by the former's mother as appointed guardian by a court order dated October 29, 1982, had executed a Deed of Absolute Sale in favor of Betty Tolero on March 5, 1984, covering the whole lot comprising 1,665 square meters.[15] The property was described in the deed of sale as comprising four lots: (1) Lot A-2-A, with an area of 832 square meters; (2) Lot A-2-B, 168 square meters; (3) Lot A-2-C, 200 square meters; and (4) Lot A-2-D, 465 square meters. Lots A-2-A and A-2-B, with a combined area of 1,000 square meters,

[15] Exhibit "Q", *id.* at 55.

correspond to the lot previously sold to Joaquin and Julia Pacson in the Deed of Conditional Sale.

Catalina Pacson and Atty. Rillera also found that the Certificate of Title over the property in the name of Julie and Michelle Nabus was cancelled on March 16, 1984, and four titles to the fours lots were issued in the name of Betty Tolero, namely: TCT No. T-18650[16] for Lot A-2-A; TCT No. 18651[17] for Lot A-2-B; TCT No. T-18652[18] for Lot A-2-C; and T-18653[19] for Lot A-2-D.

On March 22, 1984, the gate to the repair shop of the Pacsons was padlocked. A sign was displayed on the property stating "No Trespassing."[20]

On March 26, 1984, Catalina Pacson filed an affidavit-complaint regarding the padlocking incident of their repair shop with the police station at La Trinidad, Benguet.

On March 28, 2008, respondents Joaquin and Julia Pacson filed with the Regional Trial Court of La Trinidad, Benguet (trial court) a Complaint[21] for Annulment of Deeds, with damages and prayer for the issuance of a writ of preliminary injunction.[22] They sought the annulment of (1) the Extra-judicial Settlement of Estate, insofar as their right to the 1,000-square-meter lot subject of the Deed of Conditional Sale[23] was affected; (2) TCT No. T-17718 issued in the names of Julie and Michelle Nabus; and (3) the Deed of Absolute Sale[24] in favor of Betty Tolero and the transfer certificates of title issued pursuant thereto. They also prayed for the award of actual, moral and exemplary damages, as well as attorney's fees.

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[16] Exhibit "S", *id.* at 61.

[17] Exhibit "T", *id.* at 62.

[18] Exhibit "U", *id.* at 63.

[19] Exhibit "V", *id.* at 64.

[20] Exhibit "W", *id.* at 65.

[21] Annex "C", *rollo*, pp. 48-56.

[22] Docketed as Civil Case No. 84-CV-0079.

[23] *Rollo*, pp. 57-60.

[24] *Id.* at 61-65.

In their Answer,[25] Julie and Michelle Nabus alleged that respondent Joaquin Pacson did not proceed with the conditional sale of the subject property when he learned that there was a pending case over the whole property. Joaquin proposed that he would rather lease the property with a monthly rental of ₱2,000.00 and apply the sum of ₱13,000.00 as rentals, since the amount was already paid to the bank and could no longer be withdrawn. Hence, he did not affix his signature to the second page of a copy of the Deed of Conditional Sale.[26] Julie Nabus alleged that in March 1994, due to her own economic needs and those of her minor daughter, she sold the property to Betty Tolero, with authority from the court.

During the hearing on the merits, Julie Nabus testified that she sold the property to Betty Tolero because she was in need of money. She stated that she was free to sell the property because the Deed of Conditional Sale executed in favor of the Spouses Pacson was converted into a contract of lease. She claimed that at the time when the Deed of Conditional Sale was being explained to them by the notary public, Joaquin Pacson allegedly did not like the portion of the contract stating that there was a pending case in court involving the subject property. Consequently, Joaquin Pacson did not continue to sign the document; hence, the second page of the document was unsigned.[27] Thereafter, it was allegedly their understanding that the Pacsons would occupy the property as lessees and whatever amount paid by them would be considered rentals.

Betty Tolero put up the defense that she was a purchaser in good faith and for value. She testified that it was Julie Nabus who went to her house and offered to sell the property consisting of two lots with a combined area of 1,000 square meters. She consulted Atty. Aurelio de Peralta before she agreed to buy the property. She and Julie Nabus brought to Atty. De Peralta the pertinent papers such as TCT No. T-17718 in the names of

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[25] *Id.* at 66-73.

[26] Annex "A", records, vol. I, p. 11.

[27] *Id.*

Julie and Michelle Nabus, the guardianship papers of Michelle Nabus and the blueprint copy of the survey plan showing the two lots. After examining the documents and finding that the title was clean, Atty. De Peralta gave her the go-signal to buy the property.

Tolero testified that upon payment of the agreed price of ₱200,000.00, the Deed of Absolute Sale was executed and registered, resulting in the cancellation of the title of Julie and Michelle Nabus and the issuance in her name of TCT Nos. T-18650 and T-18651[28] corresponding to the two lots. Thereafter, she asked her common-law husband, Ben Ignacio, to padlock the gate to the property and hang the "No Trespassing" sign.

Tolero also testified that as the new owner, she was surprised and shocked to receive the Complaint filed by the Spouses Pacson. She admitted that she knew very well the Spouses Pacson, because they used to buy vegetables regularly from her. She had been residing along the highway at Kilometer 4, La Trinidad, Benguet since 1971. She knew the land in question, because it was only 50 meters away across the highway. She also knew that the Spouses Pacson had a shop on the property for the welding and body-building of vehicles. She was not aware of the Deed of Conditional Sale executed in favor of the Pacsons, and she saw the document for the first time when Joaquin Pacson showed it to her after she had already bought the property and the title had been transferred in her name. At the time she was buying the property, Julie Nabus informed her that the Pacsons were merely renting the property. She did not bother to verify if that was true, because the Pacsons were no longer in the property for two years before she bought it.

In a Decision dated September 30, 1993, the trial court ruled in favor of respondents. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs, ordering defendant Betty Tolero to execute a deed of absolute sale in favor of the Spouses Joaquin and Julia

[28] Exhibits "9" and "10", records, vol. II, pp. 1469-1470.

Pacson over the lots covered by Transfer Certificates of Title Nos. T-18650 and T-18651 upon payment to her by the plaintiffs of the sum of ₱57,544.[8]4 representing the balance due for the full payment of the property subject of this case. In addition to the execution of a deed of absolute sale, defendant Betty Tolero shall surrender to the plaintiffs her owner's duplicate copy of Transfer Certificates of Title Nos. T-18650 and T-18651.

Defendants Julie Nabus, Michelle Nabus, and Betty Tolero shall also pay the plaintiffs damages as follows: ₱50,000.00 for moral damages; ₱20,000.00 for exemplary damages; and ₱10,000.00 for attorney's fees and expenses for litigation.[29]

Two issues determined by the trial court were: (1) Was the Deed of Conditional Sale between the Spouses Pacson and the Nabuses converted into a contract of lease? and (2) Was Betty Tolero a buyer in good faith?

The trial court held that the Deed of Conditional Sale was not converted into a contract of lease because the original copy of the contract[30] showed that all the pages were signed by all the parties to the contract. By the presumption of regularity, all other carbon copies must have been duly signed. The failure of Joaquin Pacson to sign the second page of one of the carbon copies of the contract was by sheer inadvertence. The omission was of no consequence since the signatures of the parties in all the other copies of the contract were complete. Moreover, all the receipts of payment expressly stated that they were made in payment of the lot. Not a single receipt showed payment for rental.

Further, the trial court held that Betty Tolero was not a purchaser in good faith as she had actual knowledge of the Conditional Sale of the property to the Pacsons.

The trial court stated that the Deed of Conditional Sale contained reciprocal obligations between the parties, thus:

THAT, as soon as the full consideration of this sale has been paid by the VENDEE, the corresponding transfer documents shall be executed by the VENDOR to the VENDEE for the portion sold;

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[29] CA *rollo*, pp. 29-30.

[30] Exhibit "A", compilation of exhibits, p. 1.

xxx xxx xxx

THAT, finally, the PARTIES hereby agree that this Instrument shall be binding upon their respective heirs, successors or assigns.[31]

In other words, the trial court stated, when the vendees (the Spouses Pacson) were already ready to pay their balance, it was the corresponding obligation of the vendors (Nabuses) to execute the transfer documents.

The trial court held that "[u]nder Article 1191 of the Civil Code, an injured party in a reciprocal obligation, such as the Deed of Conditional Sale in the case at bar, may choose between the fulfillment [or] the rescission of the obligation, with the payment of damages in either case." It stated that in filing the case, the Spouses Pacson opted for fulfillment of the obligation, that is, the execution of the Deed of Absolute Sale in their favor upon payment of the purchase price.

Respondents appealed the decision of the trial court to the Court of Appeals.

In the Decision dated November 28, 2003, the Court of Appeals affirmed the trial court's decision, but deleted the award of attorney's fees. The dispositive portion of the Decision reads:

WHEREFORE, finding no reversible error in the September 30, 1993 Decision of the Regional Trial Court of La Trinidad, Benguet, Branch 10, in Civil Case No. 84-CV-0079, the instant appeal is hereby DISMISSED for lack of merit, and the assailed Decision is hereby AFFIRMED and UPHELD with the modification that the award of attorney's fees is deleted.[32]

Petitioners filed this petition raising the following issues:

I

THE [COURT OF APPEALS] ERRED IN CONSIDERING THE CONTRACT ENTERED INTO BETWEEN THE SPOUSES BATE

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[31] *Rollo*, p. 58.

[32] *Id.* at 42.

NABUS AND JULIE NABUS AND SPOUSES JOAQUIN PACSON AND JULIA PACSON TO BE A CONTRACT OF SALE.

II

THE COURT *A QUO* ERRED IN FINDING THAT THERE ARE ONLY TWO ISSUES IN THE CASE ON APPEAL AND THEY ARE: WHETHER THE DEED OF CONDITIONAL SALE WAS CONVERTED INTO A CONTRACT OF LEASE; AND THAT [WHETHER] PETITIONER BETTY TOLERO WAS A BUYER IN GOOD FAITH.

III

THAT THE TRIAL COURT ERRED IN HOLDING THAT [RESPONDENTS'] BALANCE TO THE SPOUSES NABUS UNDER THE CONDITIONAL SALE IS ONLY ₱57,544.[8]4.

IV

THAT ASSUMING WITHOUT ADMITTING THAT PETITIONER BETTY TOLERO WAS AWARE OF THE EXISTENCE OF THE DEED OF CONDITIONAL SALE, THE TRIAL COURT, AS WELL AS THE [COURT OF APPEALS], ERRED IN ORDERING PETITIONER BETTY TOLERO TO EXECUTE A DEED OF ABSOLUTE SALE IN FAVOR OF THE [RESPONDENTS] AND TO SURRENDER THE OWNER'S DUPLICATE COPY OF TCT NOS. T-18650 AND T-18651, WHICH WAS NOT PRAYED FOR IN THE PRAYER IN THE COMPLAINT.

V

THAT THE [COURT OF APPEALS] ERRED IN FINDING BETTY TOLERO [AS] A BUYER [WHO] FAILED TO TAKE STEPS IN INQUIRING FROM THE [RESPONDENTS] THE STATUS OF THE PROPERTY IN QUESTION BEFORE HER PURCHASE, CONTRARY TO FACTS ESTABLISHED BY EVIDENCE.

VI

THE [COURT OF APPEALS] ERRED IN CONSIDERING PETITIONER BETTY TOLERO A BUYER IN BAD FAITH, IGNORING THE APPLICATION OF THE DOCTRINE IN THE RULING OF THE SUPREME COURT IN THE CASE OF *RODOLFO ALFONSO, ET AL. VS. COURT OF APPEALS*, G.R. NO. 63745.[33]

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

The main issues to be resolved are:

1) Whether or not the Deed of Conditional Sale was converted into a contract of lease;

2) Whether the Deed of Conditional Sale was a contract to sell or a contract of sale.

As regards the first issue, the Deed of Conditional Sale entered into by the Spouses Pacson and the Spouses Nabus was not converted into a contract of lease. The 364 receipts issued to the Spouses Pacson contained either the phrase "as partial payment of lot located in Km. 4" or "cash vale" or "cash vale (partial payment of lot located in Km. 4)," evidencing sale under the contract and not the lease of the property. Further, as found by the trial court, Joaquin Pacson's non-signing of the second page of a carbon copy of the Deed of Conditional Sale was through sheer inadvertence, since the original contract[34] and the other copies of the contract were all signed by Joaquin Pacson and the other parties to the contract.

On the second issue, petitioners contend that the contract executed by the respondents and the Spouses Nabus was a contract to sell, not a contract of sale. They allege that the contract was subject to the suspensive condition of full payment of the consideration agreed upon before ownership of the subject property could be transferred to the vendees. Since respondents failed to pay the full amount of the consideration, having an unpaid balance of ₱57,544.84, the obligation of the vendors to execute the Deed of Absolute Sale in favor of respondents did not arise. Thus, the subsequent Deed of Absolute Sale executed in favor of Betty Tolero, covering the same parcel of land was valid, even if Tolero was aware of the previous deed of conditional sale.

Moreover, petitioners contend that respondents violated the stipulated condition in the contract that the monthly installment to be paid was ₱2,000.00, as respondents gave meager amounts as low as ₱10.00.

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[34] Exhibits "A" and "A-5", compilation of exhibits, pp. 1-2.

Petitioners also assert that respondents' allegation that Julie Nabus' failure to bring the pertinent documents necessary for the execution of the final deed of absolute sale, which was the reason for their not having paid the balance of the purchase price, was untenable, and a lame and shallow excuse for violation of the Deed of Conditional Sale. Respondents could have made a valid tender of payment of their remaining balance, as it had been due for a long time, and upon refusal to accept payment, they could have consigned their payment to the court as provided by law. This, respondents failed to do.

The Court holds that the contract entered into by the Spouses Nabus and respondents was a contract to sell, not a contract of sale.

A contract of sale is defined in Article 1458 of the Civil Code, thus:

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

Ramos v. Heruela[35] differentiates a contract of absolute sale and a contract of conditional sale as follows:

> Article 1458 of the Civil Code provides that a contract of sale may be absolute or conditional. A contract of sale is absolute when title to the property passes to the vendee upon delivery of the thing sold. A deed of sale is absolute when there is no stipulation in the contract that title to the property remains with the seller until full payment of the purchase price. The sale is also absolute if there is no stipulation giving the vendor the right to cancel unilaterally the contract the moment the vendee fails to pay within a fixed period. In a conditional sale, as in a contract to sell, ownership remains with the vendor and does not pass to the vendee until full payment of the purchase price. The full payment of the purchase price partakes of a suspensive condition, and non-fulfillment of the condition prevents the obligation to sell from arising.[36]

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[35] G.R. No. 145330, October 14, 2005, 473 SCRA 79.

[36] *Id.* at 86. (Emphasis supplied.)

Coronel v. Court of Appeals[37] distinguished a contract to sell from a contract of sale, thus:

> Sale, by its very nature, is a consensual contract because it is perfected by mere consent. The essential elements of a contract of sale are the following:
>
> a) Consent or meeting of the minds, that is, consent to transfer ownership in exchange for the price;
>
> b) Determinate subject matter; and
>
> c) Price certain in money or its equivalent.
>
> Under this definition, a Contract *to* Sell may not be considered as a Contract *of* Sale because the first essential element is lacking. **In a contract to sell, the prospective seller explicitly reserves the transfer of title to the prospective buyer, meaning, the prospective seller does not as yet agree or consent to transfer ownership of the property subject of the contract to sell until the happening of an event, which for present purposes we shall take as the full payment of the purchase price. What the seller agrees or obliges himself to do is to fulfill his promise to sell the subject property when the entire amount of the purchase price is delivered to him. In other words, the full payment of the purchase price partakes of a suspensive condition, the non-fulfilment of which prevents the obligation to sell from arising and, thus, ownership is retained by the prospective seller without further remedies by the prospective buyer**.
>
> xxx xxx xxx
>
> Stated positively, upon the fulfillment of the suspensive condition which is the full payment of the purchase price, the prospective seller's obligation to sell the subject property by entering into a contract of sale with the prospective buyer becomes demandable as provided in Article 1479 of the Civil Code which states:
>
> > Art. 1479. A promise to buy and sell a determinate thing for a price certain is reciprocally demandable.
> >
> > An accepted unilateral promise to buy or to sell a determinate thing for a price certain is binding upon the promissor if the promise is supported by a consideration distinct from the price.

[37] 331 Phil. 294 (1996).

A contract to sell may thus be defined as a bilateral contract whereby the prospective seller, while expressly reserving the ownership of the subject property despite delivery thereof to the prospective buyer, binds himself to sell the said property exclusively to the prospective buyer upon fulfillment of the condition agreed upon, that is, full payment of the purchase price.

A contract to sell as defined hereinabove, may not even be considered as a conditional contract of sale where the seller may likewise reserve title to the property subject of the sale until the fulfillment of a suspensive condition, because in a conditional contract of sale, the first element of consent is present, although it is conditioned upon the happening of a contingent event which may or may not occur. If the suspensive condition is not fulfilled, the perfection of the contract of sale is completely abated. However, if the suspensive condition is fulfilled, the contract of sale is thereby perfected, such that if there had already been previous delivery of the property subject of the sale to the buyer, ownership thereto automatically transfers to the buyer by operation of law without any further act having to be performed by the seller.

In a contract to sell, upon the fulfillment of the suspensive condition which is the full payment of the purchase price, ownership will not automatically transfer to the buyer although the property may have been previously delivered to him. The prospective seller still has to convey title to the prospective buyer by entering into a contract of absolute sale.[38]

Further, *Chua v. Court of Appeals*[39] cited this distinction between a contract of sale and a contract to sell:

In a contract of sale, the title to the property passes to the vendee upon the delivery of the thing sold; in a contract to sell, ownership is, by agreement, reserved in the vendor and is not to pass to the vendee until full payment of the purchase price. Otherwise stated, in a contract of sale, the vendor loses ownership over the property and cannot recover it until and unless the contract is resolved or rescinded; whereas, in a contract to sell, title is retained by the vendor until full payment of the price. In the latter contract, payment of the price is a positive suspensive condition, failure of which is not a

[38] *Id.* at 308-311. (Emphasis supplied; citations omitted).

[39] 449 Phil. 25 (2003).

breach but an event that prevents the obligation of the vendor to convey title from becoming effective.[40]

It is not the title of the contract, but its express terms or stipulations that determine the kind of contract entered into by the parties. In this case, the contract entitled "Deed of Conditional Sale" is actually a contract to sell. The contract stipulated that "***as soon as the full consideration of the sale has been paid*** *by the vendee,* ***the corresponding transfer documents shall be executed by the vendor*** *to the vendee for the portion sold*."[41] Where the vendor promises to execute a deed of absolute sale upon the completion by the vendee of the payment of the price, the contract is only a contract to sell."[42] The aforecited stipulation shows that the vendors reserved title to the subject property until full payment of the purchase price.

If respondents paid the Spouses Nabus in accordance with the stipulations in the Deed of Conditional Sale, the consideration would have been fully paid in June 1983. Thus, during the last week of January 1984, Julie Nabus approached Joaquin Pacson to ask for the full payment of the lot. Joaquin Pacson agreed to pay, but told her to return after four days as his daughter, Catalina Pacson, would have to go over the numerous receipts to determine the balance to be paid.

When Julie Nabus returned after four days, Joaquin Pacson sent Julie Nabus and his daughter, Catalina, to Atty. Elizabeth Rillera for the execution of the deed of sale. Since Bate Nabus had already died, and was survived by Julie and their minor daughter, Atty. Rillera required Julie Nabus to return in four days with the necessary documents such as the deed of extrajudicial settlement, the transfer certificate of title in the names of Julie Nabus and minor Michelle Nabus, and the guardianship papers of Michelle. However, Julie Nabus did not return.

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[40] *Id.* at 41-42, citing *Salazar v. Court of Appeals*, 258 SCRA 317 (1996).

[41] Emphasis supplied.

[42] *Ver Reyes v. Salvador, Sr.*, G.R. Nos. 139047 & 139365, September 11, 2008, 564 SCRA 456, 479-480.

As vendees given possession of the subject property, the ownership of which was still with the vendors, the Pacsons should have protected their interest and inquired from Julie Nabus why she did not return and then followed through with full payment of the purchase price and the execution of the deed of absolute sale. The Spouses Pacson had the legal remedy of consigning their payment to the court; however, they did not do so. A rumor that the property had been sold to Betty Tolero prompted them to check the veracity of the sale with the Register of Deeds of the Province of Benguet. They found out that on March 5, 1984, Julie Nabus sold the same property to Betty Tolero through a Deed of Absolute Sale, and new transfer certificates of title to the property were issued to Tolero.

Thus, the Spouses Pacson filed this case for the annulment of the contract of absolute sale executed in favor of Betty Tolero and the transfer certificates of title issued in her name.

Unfortunately for the Spouses Pacson, since the Deed of Conditional Sale executed in their favor was merely a contract to sell, the obligation of the seller to sell becomes demandable only upon the happening of the suspensive condition.[43] The full payment of the purchase price is the positive suspensive condition, **the failure of which is not a breach of contract, but simply an event that prevented the obligation of the vendor to convey title from acquiring binding force**.[44] Thus, for its non-fulfilment, there is no contract to speak of, the obligor having failed to perform the suspensive condition which enforces a juridical relation.[45] With this circumstance, there can be no rescission or fulfilment of an obligation that is still non-existent, the suspensive condition not having occurred as yet.[46] Emphasis should be made that the breach contemplated in Article 1191 of the New Civil Code is the obligor's failure to comply with an

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[43] *Chua v. Court of Appeals*, *supra* note 39.

[44] *Heirs of Pedro Escanlar v. Court of Appeals*, G.R. No. 119777, October 23, 1997, 281 SCRA 176, 188. (Emphasis supplied.)

[45] *Cheng v. Genato*, 360 Phil. 891, 904-905 (1998).

[46] *Id.* at 905.

obligation already extant, not a failure of a condition to render binding that obligation.[47]

The trial court, therefore, erred in applying Article 1191 of the Civil Code[48] in this case by ordering fulfillment of the obligation, that is, the execution of the deed of absolute sale in favor of the Spouses Pacson upon full payment of the purchase price, which decision was affirmed by the Court of Appeals. *Ayala Life Insurance, Inc. v. Ray Burton Development Corporation*[49] held:

> Evidently, before the remedy of specific performance may be availed of, there must be a **breach** of the contract.
>
> Under a contract to sell, the title of the thing to be sold is retained by the seller until the purchaser makes full payment of the agreed purchase price. Such payment is a positive suspensive condition, the non-fulfillment of which is **not a breach of contract** but merely an event that prevents the seller from conveying title to the purchaser. The non-payment of the purchase price renders the contract to sell ineffective and without force and effect. Thus, a cause of action for specific performance does not arise.[50]

Since the contract to sell was without force and effect, Julie Nabus **validly** conveyed the subject property to another buyer, petitioner Betty Tolero, through a contract of absolute sale,

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[47] *Id*.

[48] Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with articles 1385 and 1388 and the Mortgage Law.

[49] G.R. No. 163075, January 23, 2006, 479 SCRA 462.

[50] *Id.* at 469. (Emphasis supplied.)

and on the strength thereof, new transfer certificates of title over the subject property were duly issued to Tolero.[51]

The Spouses Pacson, however, have the right to the reimbursement of their payments to the Nabuses, and are entitled to the award of nominal damages. The Civil Code provides:

Art. 2221. Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.

Art. 2222. The court may award nominal damages in every obligation arising from any source enumerated in article 1157, or in every case where any property right has been invaded.

As stated by the trial court, under the Deed of Conditional Sale, respondents had the right to demand from petitioners Julie and Michelle Nabus that the latter execute in their favor a deed of absolute sale when they were ready to pay the remaining balance of the purchase price. The Nabuses had the corresponding duty to respect the respondents' right, but they violated such right, for they could no longer execute the document since they had sold the property to Betty Tolero.[52] Hence, nominal damages in the amount of ₱10,000.00 are awarded to respondents.

Respondents are not entitled to moral damages because contracts are not referred to in Article 2219[53] of the Civil Code, which

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[51] See *Ver Reyes v. Salvador, Sr.*, *supra* note 42.

[52] RTC Decision, records, p. 20.

[53] Art. 2219. Moral damages may be recovered in the following analogous cases:

(1) A criminal case resulting in physical injuries;
(2) Quasi-delicts causing physical injuries;
(3) Seduction, abduction, rape, or other lascivious acts;
(4) Adultery or concubinage
(5) Illegal or arbitrary detention or arrest;
(6) Illegal search;
(7) Libel, slander or any other form of defamation;
(8) Malicious prosecution;
(9) Acts mentioned in Article 309;

enumerates the cases when moral damages may be recovered. Article 2220[54] of the Civil Code allows the recovery of moral damages in **breaches of contract** where the defendant acted fraudulently or in bad faith. However, this case involves a contract to sell, wherein full payment of the purchase price is a positive suspensive condition, the non-fulfillment of which is **not a breach of contract,** but merely an event that prevents the seller from conveying title to the purchaser. Since there is no breach of contract in this case, respondents are not entitled to moral damages.

In the absence of moral, temperate, liquidated or compensatory damages, exemplary damages cannot be granted for they are allowed only in addition to any of the four kinds of damages mentioned.[55]

WHEREFORE, the petition is *GRANTED*. The Decision of the Court of Appeals in CA-G.R. CV No. 44941, dated November 28, 2003, is *REVERSED* and *SET ASIDE*. Judgment is hereby rendered upholding the validity of the sale of the subject property made by petitioners Julie Nabus and Michelle Nabus in favor of petitioner Betty Tolero, as well as the validity of Transfer Certificates of Title Nos. T-18650 and T-18651 issued in the name of Betty Tolero. Petitioners Julie Nabus and Michelle Nabus are *ORDERED* to *REIMBURSE* respondents spouses Joaquin and Julia Pacson the sum of One Hundred Twelve Thousand Four Hundred Fifty-Five Pesos and Sixteen Centavos (₱112,455.16), and to pay Joaquin and Julia Pacson nominal damages in the amount of Ten Thousand Pesos (₱10,000.00), with annual interest of twelve percent (12%) until full payment of the amounts due to Joaquin and Julia Pacson.

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(10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

[54] Art. 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

[55] Civil Code, Art. 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good; in addition to the moral, temperate, liquidated or compensatory damages.

No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 161925. November 25, 2009]

SPOUSES EXEQUIEL LOPEZ and EUSEBIA LOPEZ, *petitioners, vs.* **SPOUSES EDUARDO LOPEZ and MARCELINA R. LOPEZ,** *respondents.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; ACTION FOR RECONVEYANCE; DOES NOT SEEK TO REOPEN THE PROCEEDINGS AND TO SET ASIDE THE DECREE OF REGISTRATION, BUT ONLY TO SHOW THAT THE PERSON WHO SECURED THE REGISTRATION OF THE PROPERTY IS NOT THE REAL OWNER THEREOF.— An action for reconveyance is a legal and equitable remedy granted to the rightful owner of a land which has been wrongfully or erroneously registered in the name of another for the purpose of compelling the latter to transfer or reconvey the land to him. The action does not seek to reopen the registration proceedings and to set aside the decree of registration but only purports to show that the person who secured the registration of the property in controversy is not the real owner thereof.

2. ID.; ID.; ID.; CERTIFICATES OF TITLE CANNOT BE USED TO PROTECT A USURPER FROM THE TRUE OWNER, NOR CAN THEY BE USED AS A SHIELD FOR THE COMMISSION OF FRAUD, OR TO PERMIT ONE TO

ENRICH ONESELF AT THE EXPENSE OF OTHERS.— Initially, we affirm the CA's findings of fact that respondents are the rightful owners of the subject property, an 80-sq-m portion of land, wrongfully included in either or in both of the certificates of title of petitioners or Villadares, and that petitioners were not innocent purchasers for value. As neighbors of respondents, petitioners certainly would have known that respondents actually occupied the subject property. Thus, Villadares, not being the owner of the subject property, could not have transferred ownership of the subject 80-sq-m portion of land to petitioners. As a logical consequence, petitioners did not become the owners of the subject property even after a TCT had been issued in their names. After all, registration does not vest title. Certificates of title merely confirm or record title already existing and vested. They cannot be used to protect a usurper from the true owner, nor can they be used as a shield for the commission of fraud, or to permit one to enrich oneself at the expense of others. Hence, reconveyance of the subject property is warranted.

3. ID.; ID.; ID.; WHERE THE ACTION ENTAILS THE SEGREGATION OF THE PORTION WRONGFULLY INCLUDED IN THE TITLE, THE DECREE OF REGISTRATION MUST BE RESPECTED, BUT THE CERTIFICATE OF TITLE WILL BE AMENDED TO EXCLUDE THE PORTION WRONGFULLY INCLUDED THEREIN; CASE AT BAR.— It is well to remember that in an action for reconveyance, the decree of registration is highly regarded as incontrovertible. What is sought is the transfer of the property or its title, which has been wrongfully or erroneously registered in another person's name, to its rightful owner or to one who has a better right. The present action for reconveyance only entails the segregation of the portion wrongfully included in the certificate of title. The decree of registration is to be respected, but the certificate of title will be cancelled for the purpose of amending it in order to exclude the portion wrongfully included therein. A new certificate covering the portion reconveyed shall then be subsequently issued in the name of the real owner. However, the CA went beyond this and declared the entire deed of sale, covering 273 sq m, void for being simulated. As such, the CA decision would result not only in the amendment of petitioners' certificate of

title, but in the absolute revocation of petitioners' title itself. The property would then revert to its previous owner, subject to the right of respondents over the portion of the lot which they claim as their own.

4. ID.; ID.; LAND REGISTRATION PROCEEDINGS; THE FINAL JUDGMENT OF THE COURT CONFIRMING THE TITLE OF THE APPLICANT OR OPPOSITOR AND ORDERING ITS REGISTRATION IN HIS NAME CONSTITUTES *RES JUDICATA* AGAINST THE WHOLE WORLD; REVIEW OF THE VALIDITY OF THE CONTRACT OF SALE IN CASE AT BAR WARRANTED.— Understandably, petitioners anxiously insist that their TCT should not be cancelled even if the deed of sale is declared void. They maintain that they own the entire Lot 9954-B, not because they purchased the same from Villadares, but because they previously acquired the same from Pedro Manansala, in whose name the lot was previously declared for taxation purposes. Petitioners allegedly acquired the property from Pedro Manansala long before they bought the property from Villadares, and they claim that they and their predecessors-in-interest have been in possession thereof for more than 50 years. Hence, even if the deed of sale executed by Villadares in their favor is nullified, they would remain owners of the land and their title thereto should not be cancelled. However, petitioners are barred from raising this issue as it constitutes a collateral attack on the decree of registration. The record shows that petitioners had participated in the land registration proceeding by filing their opposition to Villadares' application for registration. Petitioners' alleged possession of the property prior to Villadares' filing of the application for registration was, in fact, the meat of their opposition in the land registration proceeding. And in a proceeding for land registration, whether with or without opposition, the final judgment of the court confirming the title of the applicant or oppositor, as the case may be, and ordering its registration in his name constitutes *res judicata* against the whole world. Thus, the Court is compelled to exercise its authority to review the validity of the Deed of Absolute Sale of Portions of a Parcel of Land, though not specifically assigned as error in this petition, because its resolution is necessary to arrive at a just decision and complete disposition of the case.

5. ID.; OBLIGATIONS AND CONTRACTS; CONTRACTS; INTENTION OF THE PARTIES DETERMINED NOT ONLY FROM THE EXPRESS TERMS OF THEIR AGREEMENT, BUT ALSO FROM THE CONTEMPORANEOUS AND SUBSEQUENT ACTS OF THE PARTIES; SIMULATED CONTRACT, ELABORATED; VALIDITY OF THE DEED OF SALE, UPHELD.— The primary consideration in determining the true nature of a contract is the intention of the parties. Such intention is determined not only from the express terms of their agreement, but also from the contemporaneous and subsequent acts of the parties. Simulation takes place when the parties do not really want the contract they have executed to produce the legal effects expressed by its wordings. This Court's pronouncement in *Valerio v. Refresca* is instructive — *Article 1345 of the Civil Code* provides that the simulation of a contract may either be absolute or relative. In *absolute simulation*, there is a colorable contract but it has no substance as the parties have no intention to be bound by it. *The main characteristic of an absolute simulation is that the apparent contract is not really desired or intended to produce legal effect or in any way alter the juridical situation of the parties.* As a result, an absolutely simulated or fictitious contract is void, and the parties may recover from each other what they may have given under the contract. *However, if the parties state a false cause in the contract to conceal their real agreement, the contract is relatively simulated and the parties are still bound by their real agreement.* Hence, where the essential requisites of a contract are present and the simulation refers only to the content or terms of the contract, the agreement is absolutely binding and enforceable between the parties and their successors in interest. Based on the foregoing, the subject deed of sale can hardly be considered simulated. There is no showing that the parties did not intend to be bound by the contract and to comply with its terms. xxx. We, therefore, uphold the validity of the deed of sale subject to the reconveyance of respondents' 80-sq-m portion of the land.

APPEARANCES OF COUNSEL

Gregorio L. Salazar for petitioners.

Ma. Elenita R. Quintana for respondents.

D E C I S I O N

NACHURA, *J.*:

This is a petition for review on *certiorari* of the Court of Appeals (CA) Decision[1] dated January 26, 2004, which ordered the cancellation of Transfer Certificate of Title (TCT) No. T-5066 in the name of petitioners.

Respondents, spouses Eduardo and Marcelina Lopez, are the owners and occupants of an 80-square-meter residential lot situated in San Pascual, Hagonoy, Bulacan. They acquired the property by donation *inter vivos* from Maria Alvarado and Agatona Caparas, in whose names the lot was previously declared for taxation purposes. Respondents have occupied the lot since 1977.[2]

In November 1992, respondents discovered that Victor Villadares was granted a free patent over an 885-sq-m land, which included respondents' lot, and was subsequently issued Original Certificate of Title (OCT) No. RP-253 (P-8511) on March 8, 1978. Thereafter, Villadares subdivided the entire parcel of land into 3 lots, namely: Lot 9954-A, Lot 9954-B and Lot 9954-C. As shown in the Deed of Absolute Sale of Portions of a Parcel of Land, Villadares sold Lot 9954-B with an area of 273 sq m to petitioners, spouses Eusebia and Exequiel Lopez, and Lot 9954-C with an area of 337 square meters to Filomena Caparas. Consequently, OCT No. RP-253 (P-8511) was cancelled and TCT Nos. T-5065, T-5066 and T-5067 were issued to Villadares, to petitioners, and to Caparas, respectively.

Respondents filed an action for reconveyance, declaration of nullity of a deed of absolute sale, cancellation of titles, and damages against Villadares and petitioners. The action was filed only against the two parties because respondents' property is situated between their properties, Lots 9954-A and 9954-B.

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[1] Penned by Associate Justice Lucas P. Bersamin (now a member of this Court), with Associate Justices Godardo A. Jacinto and Elvi John S. Asuncion, concurring; *rollo,* pp. 7-13.

[2] TSN, February 1, 1994, p. 5.

In their Answer, petitioners averred that respondents had no personality to institute the action, that the free patent in favor of Villadares was issued pursuant to law, that they were innocent purchasers for value, and that their certificate of title was already incontrovertible.[3]

During trial, Pedro Manansala, a witness for respondents, testified that petitioners' lot consisted of 168 sq m only, which they bought from him for ₱20,000.00 sometime after Martial Law.[4]

Petitioner Eusebia Lopez refuted this by stating that she bought a 273-sq-m lot from Pedro Manansala.[5] She admitted that she filed a protest against Villadares' application for registration but claimed that Villadares later agreed to sell the property to her for ₱30,000.00.[6] Villadares corroborated her testimony, saying that when petitioners showed him proof that they owned a portion of the lot registered in his name, he agreed to transfer the title of the said portion to their names.[7]

The Regional Trial Court ruled in favor of respondents. According to the trial court, the declaration of the subject property for taxation purposes in the name of respondents, coupled with their actual possession thereof, strongly indicated that they owned the same. It held that petitioners were not buyers in good faith because it appeared that the execution of the deed of sale was only an afterthought. The dispositive portion of the trial court's decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and against herein defendants:

1. that the deed of absolute sale, dated May 8, 1990 is hereby declared null and void;

2. that defendants reconvey to the plaintiffs the subject 80-square meter lot;

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[3] Records, pp. 23-24.

[4] TSN, June 30, 1994, pp. 6-7.

[5] TSN, September 6, 1994, p. 5.

[6] *Id.* at 16.

[7] TSN, January 5, 1995, pp. 7-8.

3. the Register of Deeds of Tabang, Guiguinto, Bulacan is hereby ordered to cancel TCT Nos. T-5065 in the name of defendant Victor Villadares and T-5066 in the name of defendants/Spouses Exequiel and Eusebia Lopez;

4. that defendants jointly and severally pay the plaintiffs the sum of: ₱10,000.00 for moral damages; ₱10,000.00 for exemplary damages and ₱10,000.00 for attorney's fees and cost of suit.

SO ORDERED.[8]

Subsequently, the case was elevated to the CA on appeal, through petitioners' and Villadares' respective notices of appeal.

Based on the doctrine that land registration proceedings cannot shield fraud or permit the enrichment of a person at the expense of another, the CA affirmed the trial court's decision. In so ruling, the appellate court considered the following: (a) respondents' ownership of the 80-sq-m lot was admitted by petitioners during pre-trial; (b) petitioners were not innocent purchasers for value; (c) respondents were in possession of the subject property and paid the real property taxes thereon; and (d) the conveyance of the 273-sq-m lot from Villadares to petitioners was simulated.[9]

Only Villadares filed a motion for reconsideration with the CA; petitioners elevated the case immediately to this Court. In a Resolution[10] dated April 28, 2004, the CA resolved to hold in abeyance the resolution of Villadares' motion and to consider it abandoned if the present petition would be given due course by this Court.

In this petition, petitioners ascribe the following errors to the CA:

I.

THE HONORABLE COURT OF APPEALS FAILED TO RECOGNIZE THE ACTUAL POSSESSION OF PETITIONERS AND THEIR

[8] CA *rollo,* p. 46.

[9] *Rollo,* p. 12.

[10] CA *rollo,* pp. 207-208.

PREDECESSORS-IN-INTEREST ON (sic) THE PROPERTY NOW COVERED BY TCT NO. T-5066 OF THE REGISTRY OF DEEDS FOR THE PROVINCE OF BULACAN FOR MORE THAN FIFTY (50) YEARS.

II.

THE HONORABLE COURT OF APPEALS FAILED TO RECOGNIZE THAT PETITIONERS EXEQUIEL LOPEZ AND EUSEBIA LOPEZ HAVE BEEN PAYING REAL ESTATE TAXES ON THE SUBJECT PROPERTY AFTER THEY HAVE BOUGHT IT FROM PEDRO MANANSALA AND MIGUELA AYUSON MANANSALA ON AUGUST 2, 1974.

III.

THE HONORABLE COURT OF APPEALS ERRED IN CONSIDERING THE POSSESSION OF RESPONDENTS ON (sic) THE SUBJECT PROPERTY FOR LESS THAN THIRTY (30) YEARS.

IV.

THE HONORABLE COURT OF APPEALS FAILED TO RECOGNIZE THAT THE DEED OF ABSOLUTE SALE OF PORTION OF PARCEL OF LAND EXECUTED BY DEFENDANT VICTOR VILLADARES IN FAVOR OF PETITIONERS, EXEQUIEL LOPEZ AND EUSEBIA LOPEZ, WAS MERELY TO SETTLE THEIR CONFLICT OF OWNERSHIP ON THE SUBJECT PROPERTY AND TO EXPEDITE THE TRANSFER THEREOF TO THE PETITIONERS.

V.

THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE RULING OF THE LOWER COURT FOR THE CANCELLATION OF TCT NO. T-5065 WITH AN AREA OF 275 SQUARE METERS IN THE NAME OF DEFENDANT VICTOR VILLADARES AND THE CANCELLATION OF TCT NO. T-5066 WITH AN AREA OF 273 SQUARE METERS IN THE NAME OF PETITIONERS EXEQUIEL LOPE[Z] AND EUSEBIA LOPEZ, WHEN THE CLAIM OF RESPONDENTS IS ONLY EIGHTY (80) SQUARE METERS.[11]

The petition is partly meritorious.

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[11] *Rollo*, pp. 21-22.

An action for reconveyance is a legal and equitable remedy granted to the rightful owner of a land which has been wrongfully or erroneously registered in the name of another for the purpose of compelling the latter to transfer or reconvey the land to him.[12] The action does not seek to reopen the registration proceedings and to set aside the decree of registration but only purports to show that the person who secured the registration of the property in controversy is not the real owner thereof.[13]

Initially, we affirm the CA's findings of fact that respondents are the rightful owners of the subject property, an 80-sq-m portion of land, wrongfully included in either or in both of the certificates of title of petitioners or Villadares, and that petitioners were not innocent purchasers for value. As neighbors of respondents, petitioners certainly would have known that respondents actually occupied the subject property. Thus, Villadares, not being the owner of the subject property, could not have transferred ownership of the subject 80-sq-m portion of land to petitioners.

As a logical consequence, petitioners did not become the owners of the subject property even after a TCT had been issued in their names. After all, registration does not vest title. Certificates of title merely confirm or record title already existing and vested. They cannot be used to protect a usurper from the true owner, nor can they be used as a shield for the commission of fraud, or to permit one to enrich oneself at the expense of others.[14] Hence, reconveyance of the subject property is warranted.

It is well to remember that in an action for reconveyance, the decree of registration is highly regarded as incontrovertible. What is sought is the transfer of the property or its title, which has been wrongfully or erroneously registered in another person's name, to its rightful owner or to one who has a

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[12] *Hi-Tone Marketing Corporation v. Baikal Realty Corporation,* G.R. No. 149992, August 20, 2004, 437 SCRA 121, 143.

[13] *Barrera v. Court of Appeals,* 423 Phil. 559, 566 (2001).

[14] *Lim v. Chuatoco,* G.R. No. 161861, March 11, 2005, 453 SCRA 308, 317.

better right.[15] The present action for reconveyance only entails the segregation of the portion wrongfully included in the certificate of title. The decree of registration is to be respected, but the certificate of title will be cancelled for the purpose of amending it in order to exclude the portion wrongfully included therein. A new certificate covering the portion reconveyed shall then be subsequently issued in the name of the real owner.

However, the CA went beyond this and declared the entire deed of sale, covering 273 sq m, void for being simulated. As such, the CA decision would result not only in the amendment of petitioners' certificate of title, but in the absolute revocation of petitioners' title itself. The property would then revert to its previous owner, subject to the right of respondents over the portion of the lot which they claim as their own.

Understandably, petitioners anxiously insist that their TCT should not be cancelled even if the deed of sale is declared void. They maintain that they own the entire Lot 9954-B, not because they purchased the same from Villadares, but because they previously acquired the same from Pedro Manansala, in whose name the lot was previously declared for taxation purposes. Petitioners allegedly acquired the property from Pedro Manansala long before they bought the property from Villadares, and they claim that they and their predecessors-in-interest have been in possession thereof for more than 50 years. Hence, even if the deed of sale executed by Villadares in their favor is nullified, they would remain owners of the land and their title thereto should not be cancelled.[16]

However, petitioners are barred from raising this issue as it constitutes a collateral attack on the decree of registration. The record shows that petitioners had participated in the land registration proceeding by filing their opposition to Villadares' application for registration. Petitioners' alleged possession of the property prior to Villadares' filing of the application for

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[15] *Aliño v. Heirs of Angelica A. Lorenzo*, G.R. No. 159550, June 27, 2008, 556 SCRA 139, 152.

[16] *Rollo*, pp. 24-25.

registration was, in fact, the meat of their opposition in the land registration proceeding. And in a proceeding for land registration, whether with or without opposition, the final judgment of the court confirming the title of the applicant or oppositor, as the case may be, and ordering its registration in his name constitutes *res judicata* against the whole world.[17]

Thus, the Court is compelled to exercise its authority to review the validity of the Deed of Absolute Sale of Portions of a Parcel of Land, though not specifically assigned as error in this petition, because its resolution is necessary to arrive at a just decision and complete disposition of the case.[18]

In finding that the contract of sale was simulated, the CA held that petitioner's opposition to Villadares' application for registration, together with Pedro Manansala's testimony that petitioners actually bought the property from him, evinces the falsity of the claim that petitioners purchased the property from Villadares.

We are not convinced. The primary consideration in determining the true nature of a contract is the intention of the parties. Such intention is determined not only from the express terms of their agreement, but also from the contemporaneous and subsequent acts of the parties.[19]

Simulation takes place when the parties do not really want the contract they have executed to produce the legal effects expressed by its wordings.[20] This Court's pronouncement in *Valerio v. Refresca*[21] is instructive —

Article 1345 of the Civil Code provides that the simulation of a contract may either be absolute or relative. In *absolute simulation,*

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[17] *Ting v. Heirs of Diego Lirio,* G.R. No. 168913, March 14, 2007, 518 SCRA 334, 338.

[18] *Buñing v. Santos,* G.R. No. 152544, September 19, 2006, 502 SCRA 315, 321.

[19] *Aliño v. Heirs of Angelica A. Lorenzo, supra* note 15, at 148.

[20] *Cruz v. Bancom Finance Corporation,* 429 Phil. 225, 233 (2002).

[21] G.R. No. 163687, March 28, 2006, 485 SCRA 494.

there is a colorable contract but it has no substance as the parties have no intention to be bound by it. *The main characteristic of an absolute simulation is that the apparent contract is not really desired or intended to produce legal effect or in any way alter the juridical situation of the parties.* As a result, an absolutely simulated or fictitious contract is void, and the parties may recover from each other what they may have given under the contract. *However, if the parties state a false cause in the contract to conceal their real agreement, the contract is relatively simulated and the parties are still bound by their real agreement.* Hence, where the essential requisites of a contract are present and the simulation refers only to the content or terms of the contract, the agreement is absolutely binding and enforceable between the parties and their successors in interest.[22]

Based on the foregoing, the subject deed of sale can hardly be considered simulated. There is no showing that the parties did not intend to be bound by the contract and to comply with its terms. In fact, Villadares surrendered to petitioners any right he had over the property. He caused the titling of the property and the transfer of the tax declaration in petitioners' names, and thereafter, delivered the certificate of title and the tax declaration to petitioners and accepted the purchase price from them. To recall, Villadares admitted that he was swayed by petitioners' claim that they had a right over the property and thus, he agreed to sell it to them. Such motivation for entering into the contract would not negate the efficacy of the contract. In the same way, petitioners' opposition in the land registration case does not necessarily mean that petitioners did not really intend to purchase the property. Petitioners could have accepted or acquiesced to Villadares' title and entered into the agreement to finally settle their claim over the property. The following testimony of petitioner Eusebia Lopez is telling:

Q Then after filing the protest, what did you do?

A I talked with Victor Villadares and we agreed that he will sell the land in a much lower price, sir.

Q Did he comply with his promise?

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[22] *Id.* at 500-501.

A Yes, sir.

Q So how much was it sold [to] you[;] as you said it will be sold to you at a lower price. How much was the selling price?

A ₱30,000.00, sir.

Q Did you pay the ₱30,000.00 to him?

A Yes, sir.

Q When did you pay it to defendant Victor Villadares?

A When the title was given to me by him as well as the tax declaration and the Bilihang Patuluyan, sir.[23]

We, therefore, uphold the validity of the deed of sale subject to the reconveyance of respondents' 80-sq-m portion of the land.

WHEREFORE, premises considered, the petition is *PARTIALLY GRANTED*. The Court of Appeals Decision dated January 26, 2004 is *AFFIRMED WITH MODIFICATIONS.* The Deed of Absolute Sale of Portions of a Parcel of Land dated May 8, 1990 is declared *VALID* but subject to our disposition hereunder. Petitioners and Victor Villadares are directed to cause a *SURVEY* of Lots 9954-A and 9954-B in order to determine the exact location of the 80-sq m portion pertaining to respondents. Thereafter, the Register of Deeds of Tabang, Guiguinto, Bulacan is ordered to *ISSUE* the corresponding transfer certificates of title in the names of petitioners, respondents and Victor Villadares, in accordance with said survey.

SO ORDERED.

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

[23] TSN, September 6, 1994, pp. 16-17.

THIRD DIVISION

[G.R. No. 162523. November 25, 2009]

NORTON RESOURCES AND DEVELOPMENT CORPORATION, *petitioner, vs.* **ALL ASIA BANK CORPORATION,**[*] *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; PAROLE EVIDENCE RULE; EVIDENCE OF WRITTEN AGREEMENTS; RULE; EXCEPTIONS; NOT PRESENT IN CASE AT BAR; WHATEVER IS NOT FOUND IN THE WRITING IS UNDERSTOOD TO HAVE BEEN WAIVED AND ABANDONED.— Moreover, Section 9, Rule 130 of the Revised Rules of Court clearly provides: **SEC. 9.** *Evidence of written agreements*. — When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement. However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading: (a) An intrinsic ambiguity, mistake, or imperfection in the written agreement; (b) The failure of the written agreement to express the true intent and agreement of the parties thereto; (c) The validity of the written agreement; or (d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement. The "parol evidence rule" forbids any addition to or contradiction of the terms of a written instrument by testimony or other evidence purporting to show that, at or before the execution of the parties' written agreement, other or different terms were agreed upon by the parties, varying the purport of the written contract. When an agreement has been reduced to writing, the parties cannot be permitted to adduce evidence to prove alleged practices which, to all purposes, would alter the terms of the written agreement. Whatever is not found in the writing is understood

[*] Formerly known as Banco Davao-Davao City Development Bank.

to have been waived and abandoned. None of the above-cited exceptions finds application in this case, more particularly the alleged failure of the MOA to express the true intent and agreement of the parties concerning the commitment/service fee of ₱320,000.00.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; SO LONG AS THE CONTRACT IS NOT CONTRARY TO LAW, MORALS, GOOD CUSTOMS OR PUBLIC POLICY, THE COURTS CANNOT STIPULATE FOR THE PARTIES OR AMEND THE LATTER'S AGREEMENT; REASON.— The agreement or contract between the parties is the formal expression of the parties' rights, duties and obligations. It is the best evidence of the intention of the parties. Thus, when the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be no evidence of such terms other than the contents of the written agreement between the parties and their successors in interest. Time and again, we have stressed the rule that a contract is the law between the parties, and courts have no choice but to enforce such contract so long as it is not contrary to law, morals, good customs or public policy. Otherwise, courts would be interfering with the freedom of contract of the parties. Simply put, courts cannot stipulate for the parties or amend the latter's agreement, for to do so would be to alter the real intention of the contracting parties when the contrary function of courts is to give force and effect to the intention of the parties.

3. ID.; ID.; ID.; CONTRACT OF ADHESION; DEFINED; NOT INVALID *PER SE*.— A contract of adhesion is defined as one in which one of the parties imposes a ready-made form of contract, which the other party may accept or reject, but which the latter cannot modify. One party prepares the stipulation in the contract, while the other party merely affixes his signature or his "adhesion" thereto, giving no room for negotiation and depriving the latter of the opportunity to bargain on equal footing. It must be borne in mind, however, that contracts of adhesion are not invalid *per se*. Contracts of adhesion, where one party imposes a ready-made form of contract on the other, are not entirely prohibited. The one who adheres to the contract is, in reality, free to reject it entirely; if he adheres, he gives his consent.

4. REMEDIAL LAW; APPEALS; POINTS OF LAW, THEORIES, ISSUES AND ARGUMENTS NOT ADEQUATELY BROUGHT TO THE ATTENTION OF THE TRIAL COURT CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.— Finally, as correctly observed by respondent, petitioner's claim that the MOA is a contract of adhesion was never raised by petitioner before the lower courts. Settled is the rule that points of law, theories, issues, and arguments not adequately brought to the attention of the trial court need not be, and ordinarily will not be, considered by a reviewing court. They cannot be raised for the first time on appeal. To allow this would be offensive to the basic rules of fair play, justice and due process.

APPEARANCES OF COUNSEL

Ruben R. Basa for petitioner.

Hilario N. Marbella & Mylene S. Fariñas-Pasamba for respondent.

D E C I S I O N

NACHURA, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Civil Procedure, seeking the reversal of the Court of Appeals (CA) Decision[2] dated November 28, 2002 which set aside the Decision[3] of the Regional Trial Court (RTC) of Davao City, Branch 14, dated August 27, 1999.

The Facts

Petitioner Norton Resources and Development Corporation (petitioner) is a domestic corporation engaged in the business

[1] *Rollo*, pp. 11-20.

[2] Penned by Associate Justice Bienvenido L. Reyes, with Associate Justices Romeo A. Brawner (deceased) and Danilo B. Pine, concurring; *rollo*, pp. 27-39.

[3] Records, pp. 221-231.

of construction and development of housing subdivisions based in Davao City, while respondent All Asia Bank Corporation (respondent), formerly known as Banco Davao-Davao City Development Bank, is a domestic banking corporation operating in Davao City.

On April 13, 1982, petitioner applied for and was granted a loan by respondent in the amount of Three Million Eight Hundred Thousand Pesos (₱3,800,000.00) as evidenced by a Loan Agreement.[4] The loan was intended for the construction of 160 housing units on a 3.9 hectare property located in Matina Aplaya, Davao City which was subdivided by petitioner per Subdivision Sketch Plan.[5] To speed up the processing of all documents necessary for the release of the funds, petitioner allegedly offered respondent a service/commitment fee of ₱320,000.00 for the construction of 160 housing units, or at ₱2,000.00 per unit. The offer having been accepted, both parties executed a Memorandum of Agreement[6] (MOA) on the same date.

As guarantor, the Home Financing Corporation (HFC), a government entity tasked to encourage lending institutions to participate in the government's housing programs, extended security coverage obligating itself to pay the said loan upon default of petitioner. Out of the loan proceeds in the amount of ₱3,800,000.00, respondent deducted in advance the amount of ₱320,000.00 as commitment/service fee.

Unfortunately, petitioner was only able to construct 35 out of the 160 housing units proposed to be constructed under the contract. In addition, petitioner defaulted in the payment of its loan obligation. Thus, respondent made a call on the unconditional cash guarantee of HFC. In order to recover from HFC, respondent assigned to HFC its interest over the mortgage by virtue of a Deed of Assignment[7] on August 28, 1983 coupled with the delivery of the Transfer Certificate of Title.

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[4] Exhibit "1", *id.* at 148-151.

[5] Exhibit "C", *id.* at 134.

[6] Exhibit "2", *id.* at 152-154.

[7] Records, pp. 185-188.

As of August 2, 1983, the outstanding obligation of petitioner amounted to ₱3,240,757.99. HFC paid only ₱2,990,757.99, withholding the amount of ₱250,000.00. Upon payment, HFC executed a Deed of Release of Mortgage[8] on February 14, 1984, thereby canceling the mortgage of all properties listed in the Deed of Assignment. Respondent made several demands from HFC for the payment of the amount of ₱250,000.00 but HFC continued to withhold the same upon the request of petitioner. Thus, respondent filed an action to recover the ₱250,000.00 with the RTC, Branch 15, of Davao City, docketed as Civil Case No. 17048.[9] On April 13, 1987, said RTC rendered a Decision[10] in favor of respondent, the dispositive portion thereof reads as follows:

IN VIEW WHEREOF, judgment is hereby rendered as follows:

1. The defendant shall return to the plaintiff the ₱250,000.00 with legal interest to be computed from April 12, 1984 until fully paid.

2. The defendant shall pay the plaintiff fifty thousand pesos (₱50,000.00) as attorney's fees and ₱7,174.82 as collection expenses.

3. The defendant shall pay the costs of this suit.

SO ORDERED.[11]

HFC appealed to the CA which, in turn, sustained the decision of the RTC. The CA decision became final and executory.

However, on February 22, 1993, petitioner filed a Complaint[12] for Sum of Money, Damages and Attorney's Fees against respondent with the RTC, docketed as Civil Case No. 21-880-93. Petitioner alleged that the ₱320,000.00 commitment/service fee mentioned in the MOA was to be paid on a per-unit basis at

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[8] *Id.* at 189-190.

[9] CA *rollo*, pp. 58-63.

[10] *Id.* at 64-79.

[11] *Id.* at 79.

[12] Records, pp. 1-4.

₱2,000.00 per unit. Inasmuch as only 35 housing units were constructed, petitioner posited that it was only liable to pay ₱70,000.00 and not the whole amount of ₱320,000.00, which was deducted in advance from the proceeds of the loan. As such, petitioner demanded the return of ₱250,000.00, representing the commitment fee for the 125 housing units left unconstructed and unduly collected by respondent.

In its Answer,[13] respondent denied that the ₱320,000.00 commitment/service fee provided in the MOA was broken down into ₱2,000.00 per housing unit for 160 units. Moreover, respondent averred that petitioner's action was already barred by *res judicata* considering that the present controversy had already been settled in a previous judgment rendered by RTC, Branch 15, of Davao City in Civil Case No. 17048.

The RTC's Ruling

After trial on the merits, the RTC rendered a Decision[14] on August 27, 1999 in favor of petitioner. It held that the amount of ₱320,000.00, as commitment/service fee provided in the MOA, was based on the 160 proposed housing units at ₱2,000.00 per unit. Since petitioner was able to construct only 35 units, there was overpayment to respondent in the amount of ₱250,000.00. Thus, the RTC disposed of the case in this wise:

> THE FOREGOING CONSIDERED, judgment is hereby rendered for the plaintiff and against the defendant ordering the said defendant:
>
> 1. To pay the plaintiff the amount of TWO HUNDRED FIFTY THOUSAND PESOS (₱250,000.00) with interest at the legal rate reckoned from February 22, 1993, the date of the filing of the plaintiff's complaint until the same shall have been fully paid and satisfied;
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> 2. To pay the plaintiff the sum of THIRTY THOUSAND PESOS (₱30,000.00) representing litigation expenses;
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> 3. To pay the plaintiff the sum of SIXTY TWO THOUSAND FIVE HUNDRED PESOS (₱62,500.00) as and for attorney's fees; and

[13] *Id.* at 19-22.

[14] *Supra* note 3.

4. To pay the costs.

SO ORDERED.[15]

Aggrieved, respondent appealed to the CA.[16]

The CA's Ruling

On November 28, 2002, the CA reversed the ruling of the RTC. The CA held that from the literal import of the MOA, nothing was mentioned about the arrangement that the payment of the commitment/service fee of ₱320,000.00 was on a per unit basis valued at ₱2,000.00 per housing unit and dependent upon the actual construction or completion of said units. The CA opined that the MOA duly contained all the terms agreed upon by the parties.

Undaunted, petitioner filed a Motion for Reconsideration[17] which was, however, denied by the CA in its Resolution[18] dated February 13, 2004.

Hence, this Petition which raised the following issues:

1. WHETHER OR NOT THE MEMORANDU[M] OF AGREEMENT (MOA) REFLECTS THE TRUE INTENTION OF THE PARTIES[;]
2. WHETHER OR NOT HEREIN PETITIONER IS ENTITLED TO RECOVER THE AMOUNT OF TWO HUNDRED [FIFTY] THOUSAND PESOS REPRESENTING THE ONE HUNDRED TWENTY FIVE (125) UNCONSTRUCTED HOUSING UNITS AT TWO THOUSAND PESOS (PHP. 2,000.00) EACH AS AGREED [; AND]
3. WHETHER OR NOT VICTOR FACUNDO AS THE VICE PRESIDENT AND GENERAL MANAGER AT THE TIME THE AFOREMENTIONED MOAWAS EXECUTED, WAS AUTHORIZED TO ENTER INTO [AN] AGREEMENT AND

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[15] *Id.* at 231.

[16] Records, p. 232.

[17] CA *rollo*, pp. 125-129.

[18] *Id.* at 138-139.

TO NEGOTIATE THE TERMS AND CONDITIONS THEREOF TO THEIR CLIENTELE.[19]

Our Ruling

The instant Petition is bereft of merit.

Our ruling in *Benguet Corporation, et al. v. Cesar Cabildo*[20] is instructive:

> The cardinal rule in the interpretation of contracts is embodied in the first paragraph of Article 1370 of the Civil Code: "[i]f the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control." This provision is akin to the "plain meaning rule" applied by Pennsylvania courts, which assumes that the intent of the parties to an instrument is "embodied in the writing itself, and when the words are clear and unambiguous the intent is to be discovered only from the express language of the agreement." It also resembles the "four corners" rule, a principle which allows courts in some cases to search beneath the semantic surface for clues to meaning. A court's purpose in examining a contract is to interpret the intent of the contracting parties, as objectively manifested by them. The process of interpreting a contract requires the court to make a preliminary inquiry as to whether the contract before it is ambiguous. A contract provision is ambiguous if it is susceptible of two reasonable alternative interpretations. Where the written terms of the contract are not ambiguous and can only be read one way, the court will interpret the contract as a matter of law. If the contract is determined to be ambiguous, then the interpretation of the contract is left to the court, to resolve the ambiguity in the light of the intrinsic evidence.

In our jurisdiction, the rule is thoroughly discussed in *Bautista v. Court of Appeals*:

> The rule is that where the language of a contract is plain and unambiguous, its meaning should be determined without reference to extrinsic facts or aids. The intention of the parties must be gathered from that language, and from that language

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[19] *Supra* note 1, at 14.

[20] G.R. No. 151402, August 22, 2008, citing *Abad v. Goldloop Properties, Inc.*, 521 SCRA 131, 143-145 (2007).

> alone. Stated differently, where the language of a written contract is clear and unambiguous, the contract must be taken to mean that which, on its face, it purports to mean, unless some good reason can be assigned to show that the words should be understood in a different sense. Courts cannot make for the parties better or more equitable agreements than they themselves have been satisfied to make, or rewrite contracts because they operate harshly or inequitably as to one of the parties, or alter them for the benefit of one party and to the detriment of the other, or by construction, relieve one of the parties from the terms which he voluntarily consented to, or impose on him those which he did not.[21]

Moreover, Section 9, Rule 130 of the Revised Rules of Court clearly provides:

> **SEC. 9.** *Evidence of written agreements*. — When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.
>
> However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading:
>
> (a) An intrinsic ambiguity, mistake, or imperfection in the written agreement;
>
> (b) The failure of the written agreement to express the true intent and agreement of the parties thereto;
>
> (c) The validity of the written agreement; or
>
> (d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.

The "parol evidence rule" forbids any addition to or contradiction of the terms of a written instrument by testimony or other evidence purporting to show that, at or before the execution of the parties' written agreement, other or different terms were agreed upon by the parties, varying the purport of the written contract. When an agreement has been reduced to

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[21] Citations omitted.

writing, the parties cannot be permitted to adduce evidence to prove alleged practices which, to all purposes, would alter the terms of the written agreement. Whatever is not found in the writing is understood to have been waived and abandoned.[22] None of the above-cited exceptions finds application in this case, more particularly the alleged failure of the MOA to express the true intent and agreement of the parties concerning the commitment/service fee of ₱320,000.00.

In this case, paragraph 4 of the MOA plainly states:

> 4. That the CLIENT offers and agrees to pay a commitment and service fee of THREE HUNDRED TWENTY THOUSAND PESOS (₱320,000.00), which shall be paid in two (2) equal installments, on the same dates as the first and second partial releases of the proceeds of the loan.[23]

As such, we agree with the findings of the CA when it aptly and judiciously held, to wit:

> Unmistakably, the testimonies of Antonio Soriano and Victor Facundo jibed in material points especially when they testified that the ₱320,000.00 commitment/service fee mentioned in Paragraph 4 of Exhibit "B" is not to be paid in lump sum but on a per unit basis valued at ₱2,000.00 per housing unit. But a careful scrutiny of such testimonies discloses that they are not in accord with the documentary evidence on record. It must be stressed that both Antonio Soriano and Victor Facundo testified that the ₱320,000.00 commitment/ service fee was arrived at by multiplying ₱2,000.00, the cost per housing unit; by 160, the total number of housing units proposed to be constructed by the [petitioner] as evidenced by a certain subdivision survey plan of [petitioner] marked as Exhibit "C".
>
> xxx xxx xxx
>
> Looking closely at Exhibit "C", noticeable are the date of survey of the subdivision which is May 15-31, 1982 and the date of its approval which is June 25, 1982, which dates are unmistakably later than the execution of the Loan Agreement (Exhibit "A") and Exhibit

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[22] *Heirs of the Deceased Carmen Cruz-Zamora v. Multiwood International, Inc.*, G.R. No. 146428, January 19, 2009.

[23] *Supra* note 6, at 153.

"B" which was on April 13, 1982. With these dates, we cannot lose sight of the fact that it was impossible for Victor Facundo to have considered Exhibit "C" as one of the documents presented by [petitioner] to support its proposal that the commitment/service fee be paid on a per unit basis at ₱2,000.00 a unit. x x x.

xxx xxx xxx

To stress, there is not even a slim possibility that said blue print (referring to Exhibit "C") was submitted to [respondent] bank during the negotiation of the terms of Exhibit "B" and was made the basis for the computation of ₱320,000.00 commitment/service fee. As seen on its face, Exhibit "C" was approved in a much later date than the execution of Exhibit "B" which was on April 13, 1982. In addition, as viewed from the foregoing testimony, no less than Victor Facundo himself admitted that there were only 127 proposed housing units instead of 160. Considering these factual milieus, there is sufficient justification to discredit the stance of [petitioner] that Exhibit "B" was not reflective of the true intention or agreement of the parties. Paragraph 4 of Exhibit "B" is clear and explicit in its terms, leaving no room for different interpretation. Considering the absence of any credible and competent evidence of the alleged true and real intention of the parties, the terms of Paragraph 4 of Exhibit "B" remains as it was written. Therefore, the payment of ₱320,000.00 commitment/service fee mentioned in Exhibit "B" must be paid in lump sum and not on a per unit basis. Consequently, we rule that [petitioner] is not entitled to the return of ₱250,000.00.[24]

The agreement or contract between the parties is the formal expression of the parties' rights, duties and obligations. It is the best evidence of the intention of the parties. Thus, when the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be no evidence of such terms other than the contents of the written agreement between the parties and their successors in interest. [25] Time and again, we have stressed the rule that a contract is the law between the parties, and courts have no choice but to enforce such contract so long as it is not contrary

[24] *Supra* note 2, at 35-39.

[25] *Gamboa, Rodriguez, Rivera & Co., Inc. v. Court of Appeals*, G.R. No. 117456, May 6, 2005, 458 SCRA 68, 73.

to law, morals, good customs or public policy. Otherwise, courts would be interfering with the freedom of contract of the parties. Simply put, courts cannot stipulate for the parties or amend the latter's agreement, for to do so would be to alter the real intention of the contracting parties when the contrary function of courts is to give force and effect to the intention of the parties.[26]

Finally, as correctly observed by respondent, petitioner's claim that the MOA is a contract of adhesion was never raised by petitioner before the lower courts. Settled is the rule that points of law, theories, issues, and arguments not adequately brought to the attention of the trial court need not be, and ordinarily will not be, considered by a reviewing court. They cannot be raised for the first time on appeal. To allow this would be offensive to the basic rules of fair play, justice and due process.[27]

A contract of adhesion is defined as one in which one of the parties imposes a ready-made form of contract, which the other party may accept or reject, but which the latter cannot modify. One party prepares the stipulation in the contract, while the other party merely affixes his signature or his "adhesion" thereto, giving no room for negotiation and depriving the latter of the opportunity to bargain on equal footing.[28] It must be borne in mind, however, that contracts of adhesion are not invalid *per se*. Contracts of adhesion, where one party imposes a ready-made form of contract on the other, are not entirely prohibited. The one who adheres to the contract is, in reality, free to reject it entirely; if he adheres, he gives his consent.[29]

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[26] *Heirs of San Andres v. Rodriguez*, 388 Phil. 571, 586 (2000).

[27] *Stronghold Insurance Company, Inc. v. Tokyu Construction Company, Ltd.*, G.R. Nos. 158820-21, June 5, 2009, citing *Eastern Assurance and Surety Corporation v. Con-Field Construction and Development Corporation*, 552 SCRA 271, 279-280 (2008).

[28] *Radio Communications of the Philippines, Inc. v. Verchez*, G.R. No. 164349, January 31, 2006, 481 SCRA 384, 401, citing *Philippine Commercial International Bank v. Court of Appeals*, 325 Phil. 588, 597 (1996).

[29] *Premiere Development Bank v. Central Surety & Insurance Company, Inc.*, G.R. No. 176246, February 13, 2009.

All told, we find no reason to disturb, much less, to reverse the assailed CA Decision.

WHEREFORE, the instant Petition is *DENIED* and the assailed Court of Appeals Decision is *AFFIRMED*. Costs against petitioner.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 163053. November 25, 2009]

AGRIFINA PANGANIBAN, *petitioner, vs.* **SPOUSES ROMEO ROLDAN and ELIZABETH ROLDAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS AND PRACTICES; AMENDMENT; WHERE THERE IS A VARIANCE IN DEFENDANT'S PLEADING AND THE EVIDENCE ADDUCED AT THE TRIAL, THE COURT MAY TREAT THE PLEADING AS IF IT HAD BEEN AMENDED TO CONFORM TO THE EVIDENCE, SO LONG AS NO PREJUDICE IS THEREBY CAUSED TO THE ADVERSE PARTY.— We have stressed that the rule on amendment need not be applied rigidly, particularly where no surprise or prejudice is caused the objecting party. Where there is a variance in defendant's pleadings and the evidence adduced at the trial, the Court may treat the pleading as if it had been amended to conform to the evidence. In *Royal Cargo Corporation v. DFS Sports Unlimited, Inc.*, the Court stated that: The failure of a party to amend a pleading to conform to the evidence adduced

during trial does not preclude adjudication by the court on the basis of such evidence which may embody new issues not raised in the pleadings. x x x Although, the pleading may not have been amended to conform to the evidence submitted during trial, judgment may nonetheless be rendered, not simply on the basis of the issues alleged but also on the issues discussed and the assertions of fact proved in the course of the trial. **The court may treat the pleading as if it had been amended to conform to the evidence, although it had not been actually amended.** x x x Clearly, a court may rule and render judgment on the basis of the evidence before it even though the relevant pleading had not been previously amended, so long as no surprise or prejudice is thereby caused to the adverse party. Put a little differently, **so long as the basic requirements of fair play had been met, as where the litigants were given full opportunity to support their respective contentions and to object to or refute each other's evidence, the court may validly treat the pleadings as if they had been amended to conform to the evidence and proceed to adjudicate on the basis of all the evidence before it.** Thus, the CA cannot be faulted for admitting the evidence because it found them necessary to prove respondents' right of possession. A scrutiny of the records further reveals that there is no prohibition on the admission of the *Kasunduan* and the TCT. The evidence when presented and offered were not actually excluded by the lower court. In the pre-trial brief, respondents (defendants therein) reserved the right to present additional documentary exhibits in the course of the trial, considering that the evidence was not yet available at the time. For the proper disposition and resolution of the issue as to who has the right of possession of the subject land, the admission and consideration of the documents were in order.

2. ID.; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; THE ONLY ISSUE TO BE DETERMINED IS THE RIGHT OF POSSESSION.— In unlawful detainer and forcible entry cases, the only issue to be determined is who between the contending parties has the better right to possess the contested property, independent of any claim of ownership. However, where the issue of ownership is so intertwined with the issue of possession, the courts may pass upon the issue of ownership if only to determine who has the better right to possess the property.

3. ID.; ID.; ID.; WHERE TWO CERTIFICATES OF TITLE PURPORT TO INCLUDE THE SAME LAND, THE EARLIER IN DATE PREVAILS; ABSENT ANY LEGAL OR FACTUAL BASIS TO LAY CLAIM OVER THE LAND, RESPONDENTS CANNOT BE EVICTED THEREFROM.— In the instant case, petitioner's cause of action for ejectment was grounded on her alleged ownership of the property, as shown by the title registered under her name, OCT P-12388. The said title was issued on June 22, 1994 and registered on July 18, 1994. Petitioner asserted that since she had title over the land, and that respondents had none, she could rightfully order respondents to vacate. Respondents vehemently disputed this claim, knowing that the land possessed by them was titled in the name of another person, and registered under the name of Concepcion dela Paz-Lesaca under TCT No. T-14882, issued on March 1, 1972. The mother title of TCT No. T-14882 was OCT No. 39 issued in 1912 by the Register of Deeds of Zambales. Petitioner's title over the land, which was obtained at a much later date, appears to be rather specious since no two titles can be issued over the same parcel of land. Given these conflicting claims, we must abide by the rule that where two certificates of title purport to include the same land, the earlier in date prevails. Thus, without any legal or factual basis to lay claim over the land, petitioner had clearly no right to order respondents' eviction from the land.

4. ID.; ID.; ID.; CONFLICT IN OWNERSHIP SHOULD BE THRESHED OUT IN ANOTHER PROCEEDING, NOT IN THE ACTION FOR RECOVERY OF POSSESSION AND DAMAGES.— Respondents' right to occupy the land emanates from the authority given to them by the registered and rightful owner of the land, Concepcion dela Paz-Lesaca, as evidenced by the *Kasunduan* which was executed on August 8, 1973. From then on, respondents were in actual possession of the land. As against a written or documentary evidence giving respondents the authority to occupy the land, petitioner's mere claim that she merely tolerated respondents' stay on the land cannot be given weight. The *Kasunduan* executed by the rightful owner is sufficient proof that petitioner has no privity of contract with respondents and, therefore, has no right to evict them from the land. By virtue of the title and the written agreement which are prior in time, coupled with the actual possession of the subject land, respondents' right to possess the land should

enjoy greater preference under the circumstances. While it is conceded that respondents' right to possess may be temporary since they are mere caretakers of the land owned by Concepcion dela Paz-Lesaca, this possession may not be disturbed unless petitioner successfully proves that her title is superior to that of Concepcion dela Paz-Lesaca. And such conflict in ownership should be threshed out in another proceeding.

APPEARANCES OF COUNSEL

Demetrio M. Leaño for petitioner.
Public Attorney's Office for respondents.

D E C I S I O N

NACHURA, *J.*:

This is a petition for review on *certiorari* of the decision[1] of the Court of Appeals (CA) dated March 31, 2004 in CA-G.R. SP No. 67696 and its resolution denying the motion for reconsideration thereof.

The facts are as follows:

On April 7, 1998, petitioner Agrifina Panganiban filed a complaint against herein respondents, spouses Romeo Roldan and Elizabeth Roldan, for recovery of possession and damages in the Municipal Trial Court (MTC), Third Judicial Region, Subic, Zambales. She alleged that she was the registered owner of a parcel of land with an area of 271 square meters, covered by Original Certificate of Title (OCT) No. P-12388, located in Ilwas, Subic, Zambales; that sometime in 1984, respondents entered the land and built a small hut on a portion thereof without her knowledge and consent; that respondents asked permission if they could temporarily reside thereat, since they came from Bicol and had no place to stay in Zambales; that she took pity on them and agreed on the condition that they would vacate

[1] Penned by Associate Justice Romeo A. Brawner, with Associate Justices Rebecca de Guia-Salvador and Jose C. Reyes, Jr., concurring; *rollo*, pp. 35-40.

upon demand; that in 1997, petitioner asked respondents to vacate the land, as she would be putting up a fence thereon; that respondents, who were occupying an area measuring about 103 sq m, refused to vacate; that because of their obstinate refusal to vacate, she suffered mental anxiety; and that for being deprived of the use and enjoyment of the land, respondents should be required to pay a rental of ₱500.00 per month from December 1997 until they vacate.

In their defense, respondents denied that they entered into an agreement with petitioner allowing them to stay on the land. They claimed that they had been occupying the lot as caretakers of the heirs of Concepcion dela Paz-Lesaca since 1973, as evidenced by a *Kasunduan*. They alleged that the lot was part of the land covered by Transfer Certificate of Title (TCT) No. 14884 issued in 1972, registered in the name of Concepcion dela Paz-Lesaca; and that in December 1997, two (2) men who were *barangay* officials went to the premises in order to survey the lot for purposes of putting up a fence. Respondents thus objected to the intrusion knowing that petitioner had no right or personality to eject them from the land. Respondents averred that petitioner was merely a neighbor and that they were surprised to find out that she was able to secure a new title over their portion of the land.

On March 23, 2001, the MTC rendered judgment[2] in favor of petitioner. The MTC did not admit respondents' evidence presented during the trial consisting of: (1) the TCT of the subject property registered under the name of Concepcion dela Paz-Lesaca; and (2) the *Kasunduan* purportedly executed by Concepcion dela Paz-Lesaca allowing Spouses Roldan to stay on the land on the ground that these matters were not raised in their Answer or in their Pre-trial Brief. The MTC discerned a "variance of the allegation and proof," and thus considered the evidence as no proof at all.[3] The MTC stated that in such situation, the remedy was to amend the Answer to conform to the evidence, and this, respondents failed to do. The dispositive

[2] CA *rollo*, pp. 70-74.

[3] *Id.* at 73.

portion of the decision, as amended on June 1, 2001 to include payment of rentals, reads as follows:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants:
>
> 1. For the defendants to vacate the premises;
> 2. For the defendants to pay the plaintiff the amount of ₱20,000.00 as rental from the date of the filing of the complaint until March 2001 and to pay the additional amount of ₱500.00 every month thereafter until the defendants vacate and surrender the premises to the plaintiff;
> 3. To pay attorney's fees in the amount of ₱10,000.00; and
> 4. To pay the costs of the proceedings.
>
> SO ORDERED.[4]

On appeal, the Regional Trial Court of Olongapo City affirmed the MTC Decision *in toto.* It, likewise, disregarded the *Kasunduan* and the TCT, since they were not raised as a defense in respondents' answer, and the same could not be raised for the first time on appeal.[5]

Aggrieved, respondents went up to the CA.

On March 31, 2004, the CA reversed the decision and found for respondents. It admitted the document denominated as *Kasunduan*, which provided that respondents were allowed to stay on the subject land by its owners, heirs of Concepcion dela Paz-Lesaca, as well as TCT No. T-14882 issued in 1972 in the name of Concepcion dela Paz-Lesaca. The CA found that the title from which respondents derived their right of possession was an earlier title, thus, superior to petitioner's OCT P-12388, which was only issued on June 22, 1994[6] by virtue of a free patent application. Accordingly, the appellate

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[4] *Id.* at 79.

[5] *Id.* at 92.

[6] *Id.* at 21.

court ruled that respondents' right of possession must prevail. The dispositive portion of the assailed decision reads as follows:

> WHEREFORE, the Petition is hereby **GRANTED.** The Decision of the Regional Trial Court of Olongapo City, Branch 72, is hereby **ANNULED AND SET ASIDE.** Appellants[']right to possess the disputed land is hereby recognized.
>
> SO ORDERED.[7]

Thus, the instant petition where petitioner raises the following assignment of errors:

1. THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE ALLEGED TITLE OF A CERTAIN CONCEPCION DELA PAZ LESACA, NAMELY TCT NO. T-14882, AND THE DOCUMENT DENOMINATED "KASUNDUAN" SHOULD HAVE BEEN ADMITTED BY THE COURT *A QUO.*
2. THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE SAID EXCLUDED DOCUMENTS ARE FAVORABLE TO THE CAUSE OF THE RESPONDENTS AND GAVE THEM RIGHTS TO THE POSSESSION OF THE PROPERTY IN LITIGATION.
3. THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT TCT NO. T-14882 OF CONCEPCION DELA PAZ LESACA ALSO COVERS THE PROPERTY IN LITIGATION.

[4.] THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT RESPONDENTS MAY NOT BE DISTURBED IN THEIR POSSESSION AND THAT ANOTHER PROCEEDING FOR QUIETING OF TITLE IS NECESSARY IN ORDER TO PROVE THAT PETITIONER'S TITLE IS SUPERIOR TO THAT OF CONCEPCION DELA PAZ LESACA.[8]

The petition is denied.

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[7] *Rollo,* p. 39.

[8] *Id.* at 17.

The Court finds no reversible error in the ruling of the appellate court, admitting as evidence the *Kasunduan* and TCT No. T-14882. We agree with the following justification of the CA:

> Section 5, Rule 10 of the Rules of Court provides that issues not raised by the pleadings may be tried by express or implied consent of the parties, as if they had been raised in the pleadings and the court can validly resolve them. There is express consent to the evidence on an issue not raised in the pleading when the adverse party agrees to its presentation by the other party. There is implied consent when the adverse party fails to object thereto.
>
> The general rule is that a judgment must conform to the pleading and the theory of the action under which the case is tried. But court may also rule and render judgment on the basis of the evidence before it, even though the relevant pleading has not been previously amended, so long as no surprise or prejudice to the adverse party is thereby caused and there is express or implied consent to the presentation of evidence. In fact, there is no need to formally amend the pleadings to raise the issues because such issues are considered as if they have been in the pleadings.
>
> In the case at bench, since there was no dispute that no objection was interposed by appellee to the presentation of the evidence, the same should have been admitted by the court *a quo*, consonant with Section 5, Rule 10 and the rule on liberal construction under Section 2, Rule 1 of the Rules of Court.[9]

We have stressed that the rule on amendment need not be applied rigidly, particularly where no surprise or prejudice is caused the objecting party. Where there is a variance in defendant's pleadings and the evidence adduced at the trial, the Court may treat the pleading as if it had been amended to conform to the evidence.[10] In *Royal Cargo Corporation v. DFS Sports Unlimited, Inc.*,[11] the Court stated that:

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

[10] *Sy v. Court of Appeals*, G.R. No. 124518, December 27, 2007, 541 SCRA 371.

[11] G.R. No. 158621, December 10, 2008, 573 SCRA 414.

The failure of a party to amend a pleading to conform to the evidence adduced during trial does not preclude adjudication by the court on the basis of such evidence which may embody new issues not raised in the pleadings. x x x Although, the pleading may not have been amended to conform to the evidence submitted during trial, judgment may nonetheless be rendered, not simply on the basis of the issues alleged but also on the issues discussed and the assertions of fact proved in the course of the trial. **The court may treat the pleading as if it had been amended to conform to the evidence, although it had not been actually amended.** x x x Clearly, a court may rule and render judgment on the basis of the evidence before it even though the relevant pleading had not been previously amended, so long as no surprise or prejudice is thereby caused to the adverse party. Put a little differently, **so long as the basic requirements of fair play had been met, as where the litigants were given full opportunity to support their respective contentions and to object to or refute each other's evidence, the court may validly treat the pleadings as if they had been amended to conform to the evidence and proceed to adjudicate on the basis of all the evidence before it.** (Emphasis supplied)

Thus, the CA cannot be faulted for admitting the evidence because it found them necessary to prove respondents' right of possession. A scrutiny of the records further reveals that there is no prohibition on the admission of the *Kasunduan* and the TCT. The evidence when presented and offered were not actually excluded by the lower court. In the pre-trial brief, respondents (defendants therein) reserved the right to present additional documentary exhibits in the course of the trial, considering that the evidence was not yet available at the time.[12] For the proper disposition and resolution of the issue as to who has the right of possession of the subject land, the admission and consideration of the documents were in order.

In unlawful detainer and forcible entry cases, the only issue to be determined is who between the contending parties has the better right to possess the contested property, independent of any claim of ownership. However, where the issue of ownership is so intertwined with the issue of possession, the courts may

[12] CA *rollo*, p. 34.

pass upon the issue of ownership if only to determine who has the better right to possess the property.[13]

In the instant case, petitioner's cause of action for ejectment was grounded on her alleged ownership of the property, as shown by the title registered under her name, OCT P-12388. The said title was issued on June 22, 1994 and registered on July 18, 1994.[14] Petitioner asserted that since she had title over the land, and that respondents had none, she could rightfully order respondents to vacate. Respondents vehemently disputed this claim, knowing that the land possessed by them was titled in the name of another person, and registered under the name of Concepcion dela Paz-Lesaca under TCT No. T-14882, issued on March 1, 1972. The mother title of TCT No. T-14882 was OCT No. 39 issued in 1912 by the Register of Deeds of Zambales. Petitioner's title over the land, which was obtained at a much later date, appears to be rather specious since no two titles can be issued over the same parcel of land.

Given these conflicting claims, we must abide by the rule that where two certificates of title purport to include the same land, the earlier in date prevails.[15] Thus, without any legal or factual basis to lay claim over the land, petitioner had clearly no right to order respondents' eviction from the land.

Respondents' right to occupy the land emanates from the authority given to them by the registered and rightful owner of the land, Concepcion dela Paz-Lesaca, as evidenced by the *Kasunduan* which was executed on August 8, 1973. From then on, respondents were in actual possession of the land. As against a written or documentary evidence giving respondents the authority to occupy the land, petitioner's mere claim that she merely tolerated respondents' stay on the land cannot be given weight. The *Kasunduan* executed by the rightful owner is sufficient proof that petitioner has no privity of contract with respondents

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[13] *Pascual v. Coronel*, G.R. No. 159292, July 12, 2007, 527 SCRA 474.

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

[15] *Metropolitan Waterworks and Sewerage Systems v. Court of Appeals*, G.R. No. 103558, November 17, 1992, 215 SCRA 783.

and, therefore, has no right to evict them from the land. By virtue of the title and the written agreement which are prior in time, coupled with the actual possession of the subject land, respondents' right to possess the land should enjoy greater preference under the circumstances.

While it is conceded that respondents' right to possess may be temporary since they are mere caretakers of the land owned by Concepcion dela Paz-Lesaca, this possession may not be disturbed unless petitioner successfully proves that her title is superior to that of Concepcion dela Paz-Lesaca. And such conflict in ownership should be threshed out in another proceeding.

WHEREFORE, the decision of the Court of Appeals dated March 31, 2004 in CA-G.R. SP No. 67696 is *AFFIRMED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 163078. November 25, 2009]

STEPHEN CANG and GEORGE NARDO *y* JOSOL, *petitioners, vs.* **HERMINIA CULLEN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF THE COURT OF APPEALS ARE GENERALLY CONCLUSIVE; EXCEPTIONS.— We note that the present Petition raises questions of fact. Whether a person is negligent or not is a question of fact which we cannot ordinarily pass upon in a petition for review on *certiorari,* as our jurisdiction is limited

to reviewing errors of law. However, although findings of fact of the CA are generally conclusive on this Court, this rule admits of the following exceptions: (1) the factual findings of the Court of Appeals and the trial court are contradictory; (2) the findings are grounded entirely on speculation, surmises or conjectures; (3) the inference made by the Court of Appeals from its findings of fact is mainly mistaken, absurd or impossible; (4) there is grave abuse of discretion in the appreciation of facts; (5) the appellate court, in making its findings, goes beyond the issues of the case and such findings are contrary to the admissions of both appellant and appellee; (6) the judgment of the Court of Appeals is premised on a misapprehension of facts; (7) the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion; and (8) the **findings of fact of the Court of Appeals are contrary to those of the trial court** or are mere conclusions without citation of specific evidence, or where the facts set forth by the petitioner are not disputed by respondent, or where the findings of fact of the Court of Appeals are premised on the absence of evidence but are contradicted by the evidence on record. Thus, when there are conflicting findings of fact by the CA on one hand and by the trial court on the other, as in this case, the Court may give due course to petitions raising factual issues by way of exception and only in the presence of extremely meritorious circumstances.

2. ID.; ID.; CREDIBILITY OF WITNESSES; THE REGIONAL TRIAL COURTS ASSESSMENT THEREOF GIVEN GREATER WEIGHT THAN THAT OF THE COURT OF APPEALS.— Contrary to the CA's ruling, we find that the RTC correctly disregarded Aldemita's testimony. Between the RTC and the CA, it is the former's assessment of the witnesses' credibility that should control. xxx The CA failed to refute the trial court's detailed analysis of the events leading to the accident and what transpired thereafter. It merely said that the lower court should have considered Aldemita's eyewitness testimony. The CA based its findings of the accident only on Aldemita's account. It failed to consider all the other testimonial and documentary evidence analyzed by the trial court, which substantially controverted Aldemita's testimony. In contrast, the trial court found Nardo more credible on the

witness stand. xxx We are inclined to give greater weight to the trial court's assessment of the two witnesses.

3. ID.; ID.; ID.; FINDINGS OF THE TRIAL COURT WITH RESPECT THERETO ARE ACCORDED GREAT WEIGHT AND RESPECT; REASON.— The findings of the trial court on the credibility of witnesses are accorded great weight and respect – even considered as conclusive and binding on this Court – since the trial judge had the unique opportunity to observe the witness firsthand and note his demeanor, conduct and attitude under grueling examination. Only the trial judge can observe the furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh of a witness, or his scant or full realization of an oath – all of which are useful aids for an accurate determination of a witness' honesty and sincerity. He can thus be expected to determine with reasonable discretion which testimony is acceptable and which witness is worthy of belief.

4. ID.; ID.; ID.; ABSENT ANY SHOWING THAT THE TRIAL COURT'S CALIBRATION THEREOF WAS FLAWED, THE SUPREME COURT IS BOUND BY ITS ASSESSMENT.— Absent any showing that the trial court's calibration of the credibility of the witnesses was flawed, we are bound by its assessment. This Court will sustain such findings unless it can be shown that the trial court ignored, overlooked, misunderstood, misappreciated, or misapplied substantial facts and circumstances, which, if considered, would materially affect the result of the case. We find no such circumstances in this case. The trial court's meticulous and dispassionate analysis of the facts of the case is noteworthy. It succeeded in presenting a clear and logical picture of the events even as it admitted that the resolution of the case was made more difficult by the "inefficiencies, indifference, ineptitude, and dishonesty of the local law enforcers, and the litigants," which left the court without an official sketch of the accident, with no photographs or any other proof of the damage to the respondent's motorcycle, with an altered police report, and with the baffling matter of the victim's driver's license being issued two days after the accident took place – when the victim was supposed to be in the hospital. These handicaps notwithstanding, the trial court methodically related in detail all the testimonial and

documentary evidence presented, and made the most rational analysis of what truly happened on the day of the incident.

5. CIVIL LAW; OBLIGATIONS AND CONTRACTS; *QUASI-DELICTS*; NEGLIGENCE; EXPLAINED; A PERSON DRIVING A MOTOR VEHICLE IS PRESUMED NEGLIGENT IF AT THE TIME OF THE MISHAP, HE WAS VIOLATING ANY TRAFFIC REGULATION; CASE AT BAR.— Section 30 of Republic Act No. 4136, or the Land Transportation and Traffic Code, provides: Sec. 30. Student-driver's permit – xxx. A student-driver who fails in the examination on a professional or non-professional license shall continue as a student-driver and shall not be allowed to take another examination at least one month thereafter. **No student-driver shall operate a motor vehicle, unless possessed of a valid student-driver's permit and accompanied by a duly licensed driver. xxx** Saycon was in clear violation of this provision at the time of the accident. Corollarily, Article 2185 of the Civil Code states: Art. 2185. Unless there is proof to the contrary, it is presumed that a person driving a motor vehicle has been negligent if at the time of the mishap, he was violating any traffic regulation. The Civil Code characterizes negligence as the omission of that diligence required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place. Negligence, as it is commonly understood, is conduct that creates an undue risk of harm to others. It is the failure to observe that degree of care, precaution and vigilance that the circumstances justly demand. It is the omission to do something which a reasonable man, guided by considerations that ordinarily regulate the conduct of human affairs, would do, or doing something that a prudent and reasonable man would not do. To determine whether there is negligence in a given situation, this Court laid down this test: Did defendant, in doing the alleged negligent act, use that reasonable care and caution which an ordinarily prudent person would have used in the same situation? If not, the person is guilty of negligence. Based on the foregoing test, we can conclude that Saycon was negligent. In the first place, he should not have been driving alone. The law clearly requires that the holder of a student-driver's permit should be accompanied by a duly licensed driver when operating a motor vehicle. Further, there is the matter of not wearing a helmet

and the fact that he was speeding. All these prove that he was negligent.

6. ID.; ID.; ID.; ID.; NEITHER THE EMPLOYEE NOR HIS EMPLOYER CAN RECOVER DAMAGES WHERE THE INJURIES SUFFERED BY THE FORMER WERE DUE TO HIS OWN NEGLIGENCE AND RECKLESSNESS.— Under Article 2179 of the Civil Code, [w]hen the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages. But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded. The trial court gave more credence to Nardo's version of the accident that he was on his proper lane, that he was not speeding, and that it was the motorcycle that bumped into his taxi. The trial court established that the accident was caused wholly by Saycon's negligence. It held that "the injuries and damages suffered by plaintiff (respondent) and Saycon were not due to the acts of defendants (petitioners) but due to their own negligence and recklessness." Considering that Saycon was the negligent party, he would not have been entitled to recover damages from petitioners had he instituted his own action. Consequently, respondent, as his employer, would likewise not be entitled to claim for damages.

7. ID.; ID.; ID.; ID.; WHEN AN EMPLOYEE CAUSES DAMAGE DUE TO HIS OWN NEGLIGENCE WHILE PERFORMING HIS OWN DUTIES, THERE ARISES THE *JURIS TANTUM* PRESUMPTION THAT HIS EMPLOYER IS NEGLIGENCE; PRESUMPTION REBUTTABLE ONLY BY PROOF OF OBSERVANCE OF THE DILIGENCE OF A GOOD FATHER OF A FAMILY.— Further militating against respondent's claim is the fact that she herself was negligent in the selection and supervision of her employee. xxx. When an employee causes damage due to his own negligence while performing his own duties, there arises the *juris tantum* presumption that his employer is negligent, rebuttable only by proof of observance of the diligence of a good father of a family. Thus, in the selection of prospective employees, employers are required to examine them as to their qualifications, experience and service records. With respect to the supervision of employees, employers must formulate

standard operating procedures, monitor their implementation and impose disciplinary measures for breaches thereof. These facts must be shown by concrete proof, including documentary evidence. The fact that Saycon was driving alone with only a student's permit is, to our minds, proof enough that Cullen was negligent – either she did not know that he only had a student's permit or she allowed him to drive alone knowing this deficiency. Whichever way we look at it, we arrive at the same conclusion: that she failed to exercise the due diligence required of her as an employer in supervising her employee. Thus, the trial court properly denied her claim for damages. One who seeks equity and justice must come to this Court with clean hands.

APPEARANCES OF COUNSEL

Dinsay Agravante & Gocuan for petitioners.

Agapito P. Pagayanan, Jr. for respondent.

D E C I S I O N

NACHURA, *J.*:

Before this Court is a Petition for Review under Rule 45 of the Rules of Court assailing the Decision[1] dated December 2, 2002 and the Resolution[2] dated February 23, 2004 of the Court of Appeals (CA) in CA-G.R. CV No. 69841. In the assailed Decision, the CA reversed and set aside the Decision[3] of the Regional Trial Court (RTC) of Cebu, Branch 22, in Civil Case No. CEB-20504, an action for damages.

The claim for damages was precipitated by a vehicular accident involving a taxicab bearing Plate No. GVG-672, owned by petitioner Stephen Cang and driven by petitioner George Nardo, and a

[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Ruben T. Reyes (now a retired member of this Court) and Edgardo F. Sundiam, concurring; *rollo*; pp. 39-55.

[2] *Id.* at 57-59.

[3] Penned by Judge Pampio A. Abarintos; *rollo*, pp. 60-78.

motorcycle owned by respondent Herminia Cullen and driven by Guillermo Saycon.

On October 29, 1996, at about 3:10 p.m., Saycon was driving the Honda motorcycle, with Plate No. LLC-A-4589, along P. del Rosario Street, Cebu City, occupying the middle portion of the outer lane. The taxi, on the other hand, was traveling on the inner lane and slightly behind, but to the left of, the motorcycle. Respondent alleged that between Sikatuna and D. Jakosalem Streets, the taxi veered to the right and sideswiped the motorcycle, then attempted to speed away. Peace officers near the scene flagged down the taxi. As a result of the collision, Saycon was seriously injured.[4]

Petitioners, meanwhile, claimed that it was the motorcycle that bumped into the taxi. Nardo narrated that he was driving the taxi on the inner lane (near the center island) along P. del Rosario St., moving towards the intersection of D. Jakosalem St. When the "caution" signal of the traffic light flashed, he immediately slowed down. It was at that point that the motorcycle bumped into the taxi's rear.[5]

Respondent, as employer, out of compassion, paid all of Saycon's hospital and medical expenses amounting to ₱185,091.00.[6] She also alleged that due to the injuries Saycon sustained, he was unable to work. For humanitarian reasons, respondent had given Saycon an amount equivalent to his wages from October 31, 1996 to May 30, 1997. She also gave Saycon ₱2,000.00 per month from June 1997 until he was able to return to work.[7]

On July 3, 1997, respondent filed a Complaint for damages against petitioners praying that judgment be rendered ordering the latter to pay, jointly and severally, ₱205,091.00 in actual damages; ₱2,000.00 per month from June 1997 up to the time

[4] *Id.* at 60.

[5] *Id.* at 61.

[6] *Id.* at 60.

[7] *Id.* at 61.

Saycon would be able to return to work, with 6% per annum interest from the date of extrajudicial demand; ₱50,000.00 as exemplary damages; 20% of the total amount by way of attorney's fees; ₱10,000.00 as acceptance fee; ₱500.00 per court appearance, as appearance fee; ₱20,000.00 as litigation expenses; and the cost of the suit.[8]

Petitioner Cang filed a Motion to Dismiss contending that the complaint violated Presidential Decree No. 1508, or the *Katarungang Pambarangay Law*. The motion was dismissed on September 24, 1997.[9]

Subsequently, petitioners filed their Answer with Counterclaims. Cang averred that Nardo was not driving the taxi as the former's employee, but that Nardo was leasing the taxi from him.[10] Petitioners also claimed that Nardo did not sideswipe the motorcycle driven by Saycon, nor did the latter speed away after the incident. They maintained that, at the time of the impact, Nardo's taxi was on its proper lane and that it was the motorcycle that veered into Nardo's lane and bumped the taxi.[11] Further, they alleged that after the impact, Nardo drove the taxi backward to where Saycon and the motorcycle were slumped on the road. He then alighted from the taxi. Meanwhile, two traffic enforcers had crossed the street. After examining Saycon's injuries, one of the enforcers ordered Nardo to bring the former to a hospital. Nardo hesitated for a moment because he wanted the enforcers to make a sketch of the accident first, to show the exact positions of the vehicles at the time of the accident. However, he was prevailed upon by the traffic enforcers to bring Saycon to the hospital. Hence, it was not true that Nardo attempted to speed away from the scene of the accident. Petitioner Cang also claimed that Saycon was driving the motorcycle without any protective headgear and that the latter was not authorized to drive the motorcycle since he only had a student's

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[8] *Id.*

[9] *Rollo,* p. 42.

[10] *Id.* at 61.

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

permit.[12] Petitioner Cang prayed that the complaint be dismissed for lack of merit, for lack of cause of action and for lack of legal capacity. He also prayed for the award of ₱50,000.00 as moral damages, ₱20,000.00 as exemplary damages, ₱10,000.00 as acceptance fee, ₱30,000.00 as attorney's fees, ₱20,000.00 as litigation expenses, and ₱1,000.00 per court appearance.[13]

After trial, the RTC ruled in petitioners' favor. In its Decision[14] dated January 31, 2000, the trial court disposed:

> WHEREFORE, based upon the foregoing, judgment is hereby rendered in favor of the defendants. Plaintiffs (sic) complaint is hereby **dismissed**.
>
> Defendants' counterclaims are likewise denied.
>
> No pronouncement as to costs.
>
> SO ORDERED.[15]

Respondent appealed the RTC Decision to the CA. On December 2, 2002, the CA promulgated the assailed Decision,[16] reversing the RTC Decision, to wit:

> WHEREFORE, premises considered, the appealed decision dated January 31, 2000 of the Regional Trial Court of Cebu, Branch 22 is hereby **REVERSED and SET ASIDE**. Defendants-appellees are hereby ordered to pay plaintiff-appellant, jointly and severally[,] the following:
>
> 1.) The sum of ₱166,197.08 as actual damages which were incurred for the hospitalization and other medical expenses of plaintiff-appellant's driver Guillermo Saycon; and
>
> 2.) The sum of ₱20,000.00 as exemplary damages.
>
> SO ORDERED.[17]

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[12] *Id.* at 62.

[13] *Id.*

[14] *Supra* note 3.

[15] *Id.* at 78.

[16] *Supra* note 1.

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

Petitioners are now before this Court on Petition for Review seeking the reversal of the CA Decision and its Resolution denying their Motion for Reconsideration. They argue that the CA erred in reversing the judgment rendered by the trial court; in giving credence to the eyewitness' testimony of Ike Aldemita, that petitioner Nardo had overtaken the motorcycle driven by Saycon and, therefore, was the negligent party; and in awarding damages to respondent.[18]

The petition is meritorious.

We note that the present Petition raises questions of fact. Whether a person is negligent or not is a question of fact which we cannot ordinarily pass upon in a petition for review on *certiorari,* as our jurisdiction is limited to reviewing errors of law.[19]

However, although findings of fact of the CA are generally conclusive on this Court, this rule admits of the following exceptions:[20]

(1) the factual findings of the Court of Appeals and the trial court are contradictory;

(2) the findings are grounded entirely on speculation, surmises or conjectures;

(3) the inference made by the Court of Appeals from its findings of fact is mainly mistaken, absurd or impossible;

(4) there is grave abuse of discretion in the appreciation of facts;

(5) the appellate court, in making its findings, goes beyond the issues of the case and such findings are contrary to the admissions of both appellant and appellee;

(6) the judgment of the Court of Appeals is premised on a misapprehension of facts;

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[18] *Rollo,* p. 17.

[19] *Estacion v. Bernardo*, G.R. No. 144723, February 27, 2006, 483 SCRA 222, 231, citing *Yambao v. Zuñiga*, 418 SCRA 266, 271 (2003).

[20] *Palecpe, Jr. v. Davis*, G.R. No. 171048, July 31, 2007, 528 SCRA 720, 735; *Buduhan v. Pakurao*, G.R. No. 168237, February 22, 2006, 483 SCRA 116, 121; *Sarmiento v. CA*, 353 Phil. 834, 846 (1998). (Emphasis supplied.)

(7) the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion; and

(8) the **findings of fact of the Court of Appeals are contrary to those of the trial court** or are mere conclusions without citation of specific evidence, or where the facts set forth by the petitioner are not disputed by respondent, or where the findings of fact of the Court of Appeals are premised on the absence of evidence but are contradicted by the evidence on record.

Thus, when there are conflicting findings of fact by the CA on one hand and by the trial court on the other, as in this case,[21] the Court may give due course to petitions raising factual issues by way of exception and only in the presence of extremely meritorious circumstances.[22]

Contrary to the CA's ruling, we find that the RTC correctly disregarded Aldemita's testimony. Between the RTC and the CA, it is the former's assessment of the witnesses' credibility that should control.[23]

The trial court gave little credence to Aldemita's testimony, upon its finding that:

On the other hand, multicab driver Aldemita contended that he saw everything. He said that the motorcycle and the taxi overtook him. He told the court during his testimony that the motorcycle was ahead of the taxi. He further said that the motorcycle was nearer him (TSN, February 13, 1998, Savellon, p. 4). The court finds him inconsistent. If both were ahead of him and the motorcycle was ahead of the taxi, then, the motorcycle could not be nearer him. Because if the motorcycle was indeed nearer him, then, it could not have been ahead of the taxi. But rather, the taxi was ahead of the motorcycle. But in a later testimony, he said that they were beside each other (TSN, Feb. 12, 1998, Savellon, p. 17).

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[21] *Palecpec, Jr. v. Davis*, *supra* note 20, at 736, citing *Department of Agrarian Reform v. Estate of Pureza Herrera*, 463 SCRA 107, 123 (2005).

[22] *Microsoft Corp. v. Maxicorp, Inc.*, 481 Phil. 550, 563 (2004), citing *Ramos, et al. v. Pepsi-Cola Bottling Co. of the Phils., et al.*, 125 Phil. 701 (1967).

[23] *People v. Domingo*, G.R. No. 177136, June 30, 2008, 556 SCRA 788, 802; *People v. Lantano*, G.R. No. 176734, January 28, 2008, 542 SCRA 640, 651.

He also said that both tried to pass the lane which would fit only two vehicles. He told the court that both vehicles were running fast – at a speed of more than 30 kph – when the motorcycle was hit by the taxi. It would seem to the court that both vehicles were racing each other. Aldemita further said that in trying to pass the motorcycle, the taxi hit the left handle bar of the motorcycle. The handle bar was twisted and the motorcycle fell down to the left side. But if the taxi was indeed to the left of the motorcycle and if it really swerved to the right and hit the motorcycle – the law of force would tell us that the motorcycle would fall to the right after impact. It is the most logical direction for the motorcycle to fall. If the taxi was indeed traveling at a fast speed when it hit the motorcycle, the impact would not have only caused a mere twisted handle and the motorcycle would not have only fallen on its side as claimed by Aldemita. High speed impact would have caused the motorcycle and its driver greater damage and would have dislocated them much farther away than where it fell in this case.

He claimed that he was more or less ten (10) meters from the site of the accident when it happened (TSN, Feb. 12, 1998, p. 12). The court can, therefore, say that he was also quite far from the scene of the accident and could not be that certain as to what really happened.

Aldemita also said that he signaled the taxi driver to stop (TSN, Feb. 12, 1998, Savellon, p. 6). However, later when asked, he said he signaled the "policeman" to stop the taxi driver or not (sic). He also claimed that he was near (sic) the motorcyclist than the "policemen." He further claimed that he was there at the scene of the accident to help but later said he never saw the driver of the taxi (TSN, Feb. 12, 1998, Savellon, p. 17). The court finds this highly unusual for somebody who claimed to be at the scene of the accident not to see the driver who came out of his vehicle to reason out with the responding enforcers. He said he was the one who removed the motorcycle which pinned its driver and then helped carried (sic) the driver to the taxi as told by the "policeman" (TSN, Feb. 12, 1998, Savellon, p. 7). But later, he said that somebody took his place in carrying the victim because there were already many people (TSN, Feb. 12, 1998, Savellon, p. 17). x x x.

xxx xxx xxx

The court also cannot fail to notice the uncontroverted allegation of Nardo during his testimony that Aldemita was not the person (the

multicab driver) he saw during the time of the accident. He claimed that the person who testified in court last February 12, 1998, was not the driver of the multicab who was at the scene of the accident that fateful night (sic) of October 29, 1996 (TSN, Aug. 24, 1998, Pieras, p. 12). Allegations and claims like this when not countered and disproved would certainly cast doubt on the credibility of the subject person and consequently, on his testimonies, too.

Based on the points, the court cannot help but find Aldemita's testimony as uncertain and filled with so many inconsistencies. They contradicted with each other at many instances. The court believes in either of the two possibilities — Aldemita did not really actually and exactly see the whole incident or he was lying through his teeth. Thus, the court cannot give so much weight to his testimony.[24]

The CA failed to refute the trial court's detailed analysis of the events leading to the accident and what transpired thereafter. It merely said that the lower court should have considered Aldemita's eyewitness testimony.[25] The CA based its findings of the accident only on Aldemita's account. It failed to consider all the other testimonial and documentary evidence analyzed by the trial court, which substantially controverted Aldemita's testimony.

In contrast, the trial court found Nardo more credible on the witness stand. Thus:

During his testimonies, Nardo appeared to be consistent, sincere and certain in his statements. He appeared to be acknowledgeable (sic) in his work as a driver. He conveyed a definite degree of credibility when he testified. The Court has decided to give more appreciation to his testimonies.[26]

We are inclined to give greater weight to the trial court's assessment of the two witnesses.

The findings of the trial court on the credibility of witnesses are accorded great weight and respect – even considered as

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[24] *Rollo,* pp. 74-75.

[25] *Id.* at 51-52.

[26] *Id.* at 76.

conclusive and binding on this Court[27] – since the trial judge had the unique opportunity to observe the witness firsthand and note his demeanor, conduct and attitude under grueling examination.[28] Only the trial judge can observe the furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh of a witness, or his scant or full realization of an oath – all of which are useful aids for an accurate determination of a witness' honesty and sincerity.[29] He can thus be expected to determine with reasonable discretion which testimony is acceptable and which witness is worthy of belief.[30]

Absent any showing that the trial court's calibration of the credibility of the witnesses was flawed, we are bound by its assessment.[31] This Court will sustain such findings unless it can be shown that the trial court ignored,[32] overlooked, misunderstood,[33] misappreciated,[34] or misapplied[35] substantial facts and circumstances, which, if considered, would materially affect the result of the case.[36]

We find no such circumstances in this case. The trial court's meticulous and dispassionate analysis of the facts of the case is

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[27] *People v. Cañeta*, 368 Phil. 501, 510-511 (1999), citing *People v. Angeles*, 275 SCRA 19, 28-29 (1997).

[28] *People v. Banhaon*, 476 Phil. 7, 25 (2004); *People v. Awing*, 404 Phil. 815, 833-834 (2001).

[29] *Gomez v. Gomez-Samson*, G.R. No. 156284, February 6, 2007, 514 SCRA 475, 495; *People v. Francisco*, 448 Phil. 805, 816-817 (2003), citing *People v. Bertulfo*, 431 Phil. 535, 547 (2002); *People v. Abella*, 393 Phil. 513, 534 (2000).

[30] *People v. Awing*, *supra* note 28.

[31] *People v. Banhaon*, *supra* note 28; *People v. Awing*, *supra* note 28, at 834.

[32] *People v. Awing*, *supra* note 28, at 833.

[33] *Gomez v. Gomez-Samson*, *supra* note 29, at 502; *Ong v. Bogñalbal*, G.R. No. 149140, September 12, 2006, 501 SCRA 490, 505.

[34] *People v. Banhaon*, *supra* note 28, at 25.

[35] *People v. Caballes*, G.R. Nos. 102723-24, June 19, 1997, 274 SCRA 83,97, citing *People v. Atuel*, 330 Phil. 23, 35 (1996).

[36] *Gomez v. Gomez-Samson*, *supra* note 29.

noteworthy. It succeeded in presenting a clear and logical picture of the events even as it admitted that the resolution of the case was made more difficult by the "inefficiencies, indifference, ineptitude, and dishonesty of the local law enforcers, and the litigants,"[37] which left the court without an official sketch of the accident,[38] with no photographs or any other proof of the damage to the respondent's motorcycle,[39] with an altered police report,[40] and with the baffling matter of the victim's driver's license being issued two days after the accident took place – when the victim was supposed to be in the hospital.[41]

These handicaps notwithstanding, the trial court methodically related in detail all the testimonial and documentary evidence presented, and made the most rational analysis of what truly happened on the day of the incident.

The trial court categorically found that it was not the taxi that bumped the motorcycle. It concluded that based on the evidence presented before the court, it was the motorcycle that bumped the taxi.[42] It also found that at the time of the accident, Saycon, the driver of the motorcycle, did not have a license but only had a student driver's permit. Further, Saycon was not wearing the proper protective headgear and was speeding.[43] Hence, the trial court concluded:

> It was really pitiful that Saycon suffered for what he did. But then, he has only himself to blame for his sad plight. He had been careless in driving the motorcycle without a helmet. For speeding. (sic) For driving alone with only a student permit. (sic) For causing the accident. (sic) If the driver was found violating traffic rules, a legal presumption that he was negligent arises.[44]

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[37] *Id.* at 72.

[38] *Id.*

[39] *Id.* at.76.

[40] *Id.* at.73.

[41] *Id.* at 75.

[42] *Id.* at 76.

[43] *Id.*

[44] *Id.* at 77.

Section 30 of Republic Act No. 4136, or the Land Transportation and Traffic Code, provides:

> Sec. 30. Student-driver's permit – Upon proper application and the payment of the fee prescribed in accordance with law, the Director or his deputies may issue student-driver's permits, valid for one year to persons not under sixteen years of age, who desire to learn to operate motor vehicles.
>
> A student-driver who fails in the examination on a professional or non-professional license shall continue as a student-driver and shall not be allowed to take another examination at least one month thereafter. **No student-driver shall operate a motor vehicle, unless possessed of a valid student-driver's permit and accompanied by a duly licensed driver.**
>
> The licensed driver duly accredited by the Bureau, acting as instructor to the student driver, shall be equally responsible and liable as the latter for any violation of the provisions of this Act and for any injury or damage done by the motor vehicle on account or as a result of its operation by a student-driver under his direction.[45]

Saycon was in clear violation of this provision at the time of the accident. Corollarily, Article 2185 of the Civil Code states:

> Art. 2185. Unless there is proof to the contrary, it is presumed that a person driving a motor vehicle has been negligent if at the time of the mishap, he was violating any traffic regulation.

The Civil Code characterizes negligence as the omission of that diligence required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place.[46] Negligence, as it is commonly understood, is conduct that creates an undue risk of harm to others. It is the failure to observe that degree of care, precaution and vigilance that the circumstances justly demand.[47] It is the omission to do something which a reasonable man, guided by considerations

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[45] Emphasis supplied.

[46] *Añonuevo v. Court of Appeals*, 483 Phil. 756, 765 (2004).

[47] *Valenzuela v. Court of Appeals*, 323 Phil. 374, 391 (1996). (Citations omitted.)

that ordinarily regulate the conduct of human affairs, would do, or doing something that a prudent and reasonable man would not do.[48]

To determine whether there is negligence in a given situation, this Court laid down this test: Did defendant, in doing the alleged negligent act, use that reasonable care and caution which an ordinarily prudent person would have used in the same situation? If not, the person is guilty of negligence.[49]

Based on the foregoing test, we can conclude that Saycon was negligent. In the first place, he should not have been driving alone. The law clearly requires that the holder of a student-driver's permit should be accompanied by a duly licensed driver when operating a motor vehicle. Further, there is the matter of not wearing a helmet and the fact that he was speeding. All these prove that he was negligent.

Under Article 2179 of the Civil Code,

> [w]hen the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages. But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded.

The trial court gave more credence to Nardo's version of the accident that he was on his proper lane, that he was not speeding, and that it was the motorcycle that bumped into his taxi. The trial court established that the accident was caused wholly by Saycon's negligence. It held that "the injuries and damages suffered by plaintiff (respondent) and Saycon were not due to the acts of defendants (petitioners) but due to their own negligence and recklessness."[50]

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[48] *Philippine National Railways v. Brunty*, G.R. No. 169891, November 2, 2006, 506 SCRA 685, 696-697, citing *McKee v. Intermediate Appellate Court,* 211 SCRA 517, 539 (1992).

[49] *Philippine National Railways v. Brunty*, *supra* note 48, at 697, citing *Picart v. Smith,* 37 Phil. 809, 813 (1918).

[50] *Rollo,* pp. 77-78.

Considering that Saycon was the negligent party, he would not have been entitled to recover damages from petitioners had he instituted his own action. Consequently, respondent, as his employer, would likewise not be entitled to claim for damages.

Further militating against respondent's claim is the fact that she herself was negligent in the selection and supervision of her employee. Article 2180 of the Civil Code states:

> Art. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.
>
> The father and, in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company.
>
> Guardians are liable for damages caused by the minors or incapacitated persons who are under their authority and live in their company.
>
> The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions.
>
> **Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry**.
>
> The State is responsible in like manner when it acts through a special agent; but not when the damage has been caused by the official to whom the task done properly pertains, in which case what is provided in Article 2176 shall be applicable.
>
> Lastly, teachers or heads of establishments of arts and trades shall be liable for damages caused by their pupils and students or apprentices, so long as they remain in their custody.
>
> **The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage**.[51]

[51] Emphasis supplied.

When an employee causes damage due to his own negligence while performing his own duties, there arises the *juris tantum* presumption that his employer is negligent, rebuttable only by proof of observance of the diligence of a good father of a family.[52] Thus, in the selection of prospective employees, employers are required to examine them as to their qualifications, experience and service records. With respect to the supervision of employees, employers must formulate standard operating procedures, monitor their implementation and impose disciplinary measures for breaches thereof. These facts must be shown by concrete proof, including documentary evidence.[53]

The fact that Saycon was driving alone with only a student's permit is, to our minds, proof enough that Cullen was negligent – either she did not know that he only had a student's permit or she allowed him to drive alone knowing this deficiency. Whichever way we look at it, we arrive at the same conclusion: that she failed to exercise the due diligence required of her as an employer in supervising her employee. Thus, the trial court properly denied her claim for damages. One who seeks equity and justice must come to this Court with clean hands.[54]

In sum, we hold that the trial court correctly found that it was Saycon who caused the accident and, as such, he cannot recover indemnity for his injury. On the other hand, respondent, as Saycon's employer, was also negligent and failed to exercise the degree of diligence required in supervising her employee. Consequently, she cannot recover from petitioners what she had paid for the treatment of her employee's injuries.

WHEREFORE, the foregoing premises considered, the Petition is *GRANTED*. The Decision dated December 2, 2002 and the Resolution dated February 23, 2004 of the Court of Appeals in CA-G.R. CV No. 69841 are *REVERSED and SET ASIDE*. The

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[52] *Mendoza v. Soriano*, G.R. No. 164012, June 8, 2007, 524 SCRA 260, 269; *Pleyto v. Lomboy*, 476 Phil. 373, 386 (2004).

[53] *Pleyto v. Lomboy*, *supra*.

[54] *Sandejas v. Ignacio, Jr.*, G.R. No. 155033, December 19, 2007, 541 SCRA 61, 76.

Decision of the Regional Trial Court of Cebu, Branch 22, in Civil Case No. CEB-20504 is hereby *REINSTATED*. No pronouncement as to costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 165276. November 25, 2009]

JUDGE ADORACION G. ANGELES, *petitioner, vs.* **HON. MANUEL B. GAITE, Acting Deputy Executive Secretary for Legal Affairs; HON. WALDO Q. FLORES, Senior Deputy Executive Secretary, Office of the President; Former DOJ SECRETARY HERNANDO B. PEREZ (now substituted by the Incumbent DOJ Secretary RAUL GONZALES); Former PROV. PROS. AMANDO C. VICENTE (now substituted by the Incumbent PROV. PROS. ALFREDO L. GERONIMO); PROS. BENJAMIN R. CARAIG, Malolos, Bulacan; and MICHAEL T. VISTAN,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; PRESIDENT'S POWER TO DELEGATE AUTHORITY; DOCTRINE OF QUALIFIED POLITICAL AGENCY, APPLIED.— The President's act of delegating authority to the Secretary of Justice by virtue of x x x Memorandum Circular [No. 58] is well within the purview of the doctrine of qualified political agency, long been established in our jurisdiction. Under this doctrine, which primarily

recognizes the establishment of a single executive, "all executive and administrative organizations are adjuncts of the Executive Department; the heads of the various executive departments are assistants and agents of the Chief Executive; and, except in cases where the Chief Executive is required by the Constitution or law to act in person or the exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the acts of the secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive." The CA cannot be deemed to have committed any error in upholding the Office of the President's reliance on the Memorandum Circular as it merely interpreted and applied the law as it should be.

2. ID.; ID.; ID.; ID.; RESTRICTIONS ON THE PRESIDENT'S POWER TO DELEGATE.— [T]he power of the President to delegate is not without limits. No less than the Constitution provides for restrictions. Justice Jose P. Laurel, in his *ponencia* in *Villena*, makes this clear: x x x Withal, at first blush, the argument of ratification may seem plausible under the circumstances, it should be observed that there are certain prerogative acts which, by their very nature, cannot be validated by subsequent approval or ratification by the President. There are certain constitutional powers and prerogatives of the Chief Executive of the Nation which must be exercised by him in person and no amount of approval or ratification will validate the exercise of any of those powers by any other person. Such, for instance, is his power to suspend the writ of *habeas corpus* and proclaim martial law (par. 3, sec. 11, Art. VII) and the exercise by him of the benign prerogative of mercy (par. 6, Sec. 11, *idem*). These restrictions hold true to this day as they remain embodied in our fundamental law. There are certain presidential powers which arise out of exceptional circumstances, and if exercised, would involve the suspension of fundamental freedoms, or at least call for the supersedence of executive prerogatives over those exercised by co-equal branches of government. The declaration of martial law, the suspension of the writ of *habeas corpus*, and the exercise of the pardoning power, notwithstanding the judicial determination

of guilt of the accused, all fall within this special class that demands the exclusive exercise by the President of the constitutionally vested power. The list is by no means exclusive, but there must be a showing that the executive power in question is of similar *gravitas* and exceptional import.

3. ID.; ID.; ID.; ID.; THE PRESIDENT'S POWER TO REVIEW THE DECISION OF JUSTICE SECRETARY DEALING WITH PRELIMINARY INVESTIGATION OF CASES CAN BE DELEGATED.— In the case at bar, the power of the President to review the Decision of the Secretary of Justice dealing with the preliminary investigation of cases cannot be considered as falling within the same exceptional class which cannot be delegated. Besides, the President has not fully abdicated his power of control as Memorandum Circular No. 58 allows an appeal if the imposable penalty is *reclusion perpetua* or higher. Certainly, it would be unreasonable to impose upon the President the task of reviewing **all** preliminary investigations decided by the Secretary of Justice. To do so will unduly hamper the other important duties of the President by having to scrutinize each and every decision of the Secretary of Justice notwithstanding the latter's expertise in said matter.

4. ID.; ID.; ID.; ID.; VALIDITY OF MEMORANDUM CIRCULAR NO. 58, UPHELD.— Petitioner's contention that Memorandum Circular No. 58 violates both the Constitution and Section 1, Chapter 1, Book III of EO No. 292, for depriving the President of his power of control over the executive departments deserves scant consideration. In the first place, Memorandum Circular No. 58 was promulgated by the Office of the President and it is settled that the acts of the secretaries of such departments, performed and promulgated in the regular course of business are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive. Memorandum Circular No. 58 has not been reprobated by the President; therefore, it goes without saying that the said Memorandum Circular has the approval of the President.

5. CRIMINAL LAW; PRESIDENTIAL DECREE NO. 1829; FAILURE OF THE OFFICER/S TO ARREST THE ACCUSED MAKES THE LATTER A FUGITIVE FROM JUSTICE AND IS NOT EQUIVALENT TO A COMMISSION OF ANOTHER OFFENSE OF OBSTRUCTION OF

JUSTICE.— [P]etitioner contends that respondent's act of going underground obstructed the service of a court process, particularly the warrant of arrest. This Court does not agree. There is no jurisprudence that would support the stance taken by petitioner. Notwithstanding petitioner's vehement objection in the manner the CA had disposed of the said issue, this Court agrees with the same. The CA ruled that the position taken by petitioner was contrary to the spirit of the law on "obstruction of justice," x x x As correctly observed by the CA, the facts of the case, as portrayed by petitioner, do not warrant the filing of a separate information for violation of Section 1(e) of PD No. 1829. This Court agrees with the CA that based on the evidence presented by petitioner, the failure on the part of the arresting officer/s to arrest the person of the accused makes the latter a **fugitive from justice** and is not equivalent to a commission of another offense of obstruction of justice.

6. ID.; ID.; P.D. 1829, CONSTRUED; BASIC RULE ON STATUTORY CONSTRUCTION, APPLIED.— [I]t is a basic rule of statutory construction that penal statutes are to be liberally construed in favor of the accused. Courts must not bring cases within the provision of a law which are not clearly embraced by it. No act can be pronounced criminal which is not clearly made so by statute; so, too, no person who is not clearly within the terms of a statute can be brought within them. Any reasonable doubt must be resolved in favor of the accused. Indeed, if the law is not explicit that it is applicable only to another person and not the offender himself, this Court must resolve the same in favor of the accused.

7. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION, NOT A CASE OF.— [T]his Court finds that the provincial prosecutor and the Secretary of Justice did not act with grave abuse of discretion, as their conclusion of lack of probable cause was based on the affidavit of the alleged victim herself. The reasons for the cause of action were stated clearly and sufficiently. Was their reliance on the victim's affidavit constitutive of grave abuse of discretion? This Court does not think so. While petitioner would argue that the victim was "brainwashed" by respondent into executing the affidavit, this Court finds no conclusive proof thereof. Besides, even if their reliance on the victim's affidavit may be wrong, it is elementary that not every erroneous

conclusion of fact is an abuse of discretion. As such, this Court will not interfere with the said findings of the Provincial Prosecutor and the Secretary of Justice absent a clear showing of grave abuse of discretion. The determination of probable cause during a preliminary investigation is a function that belongs to the prosecutor and ultimately on the Secretary of Justice; it is an executive function, the correctness of the exercise of which is a matter that this Court will not pass upon absent a showing of grave abuse of discretion.

APPEARANCES OF COUNSEL

The Solicitor General for public respondent.
Fernandez Fernandez & Galolo Law Office for Michael Vistan.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a Petition for Review,[1] under Rule 43 of the 1997 Rules of Civil Procedure, assailing the February 13, 2004 Decision[2] and September 16, 2004 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 76019.

The facts of the case, as alleged by petitioner and likewise adopted by the CA, are as follows:

Petitioner [Judge Adoracion G. Angeles] was the foster mother of her fourteen (14) year-old grandniece Maria Mercedes Vistan who, in April 1990 was entrusted to the care of the former by the girl's grandmother and petitioner's sister Leonila Angeles *Vda. de* Vistan when the child was orphaned at the tender age of four.

Petitioner provided the child with love and care, catered to her needs, sent her to a good school and attended to her general well-

[1] *Rollo,* pp. 3-17.

[2] Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Buenaventura J. Guerrero and Regalado E. Maambong, concurring, *id.* at 31-46.

[3] *Rollo,* p. 19.

being for nine (9) memorable and happy years. The child also reciprocated the affections of her foster mother and wrote the latter letters.

Petitioner's love for the child extended to her siblings, particularly her half-brother respondent Michael Vistan, a former drug-addict, and the latter's family who were regular beneficiaries of the undersigned's generosity. Michael would frequently run to the undersigned for his variety of needs ranging from day to day subsistence to the medical and hospital expenses of his children.

In the evening of 11 April 1999, Michael Vistan had a falling out with petitioner for his failure to do a very important errand for which he was severely reprimanded over the phone. He was told that from then on, no assistance of any kind would be extended to him and that he was no longer welcome at petitioner's residence.

Feeling thwarted, he, in conspiracy with his co-horts (sic), retaliated on 12 April 1999 by inducing his half-sister, Maria Mercedes, to leave petitioner's custody. Michael used to have free access to the undersigned's house and he took the girl away while petitioner was at her office.

In the evening of that day, 12 April 1999, petitioner, accompanied by her friend Ines Francisco, sought Michael Vistan in his residence in Sta. Cruz, Guiguinto, Bulacan to confront him about the whereabouts of his half-sister. He disclosed that he brought the girl to the residence of her maternal relatives in Sta. Monica, Hagonoy, Bulacan. Petitioner then reported the matter and requested for the assistance of the 303rd Criminal Investigation and Detective Group Field Office in Malolos, Bulacan to locate the girl. Consequently, PO3 Paquito M. Guillermo and Ruben Fred Ramirez accompanied petitioner and her friend to Hagonoy, Bulacan where they coordinated with police officers from the said place. The group failed to find the girl. Instead, they were given the run-around as the spouses Ruben and Lourdes Tolentino and spouses Gabriel and Olympia Nazareno misled them with the false information that Maria Mercedes was already brought by their brother Carmelito Guevarra and the latter's wife Camilia to Casiguran, Quezon Province.

On 13 April 1999, petitioner filed a complaint for Kidnapping under Article 271 of the Revised Penal Code (Inducing a Minor to Abandon His Home) against Michael Vistan, the Tolentino spouses, the Nazareno spouses and Guevarra spouses, all maternal relatives of Maria Mercedes Vistan.

Warrants of arrest were subsequently issued against them and to evade the long arm of the law, Michael Vistan went into hiding. He dragged along with him his half-sister Maria Mercedes.

From 12 April 1999 to 16 April 1999, Michael Vistan, with his little sister in tow, shuttled back and forth from Guiguinto to Hagonoy, Bulacan as well as in Manila and Quezon City, living the life of a fugitive from justice. He eventually brought the girl to ABS-CBN in Quezon City where he made her recite a concocted tale of child abuse against herein petitioner hoping that this would compel the latter to withdraw the kidnapping charge which she earlier filed.

In the early morning of 16 April 1999, Michael Vistan brought Maria Mercedes to the DSWD after he felt himself cornered by the police dragnet laid for him.

Prompted by his overwhelming desire to retaliate against petitioner and get himself off the hook from the kidnapping charge, Michael Vistan had deliberately, maliciously, selfishly and insensitively caused undue physical, emotional and psychological sufferings to Maria Mercedes Vistan, all of which were greatly prejudicial to her well-being and development.

Thus, on 1 December 1999, petitioner filed a complaint against Michael Vistan before the Office of the Provincial Prosecutor in Malolos, Bulacan for five counts of Violation of Section 10 (a), Article VI of RA 7610, otherwise known as the Child Abuse Act, and for four counts of Violation of Sec. 1 (e) of PD 1829. She likewise filed a complaint for Libel against Maria Cristina Vistan, aunt of Michael and Maria Mercedes.

In a Resolution dated March 3, 2000, Investigating Prosecutor Benjamin R. Caraig recommended upheld (sic) the charge of Violation of RA 7160 but recommended that only one Information be filed against Michael Vistan. The charge of Violation of PD 1829 was dismissed. Nonetheless, the Resolution to uphold the petitioner's complaint against Maria Cristina Vistan must (sic) remained.

However, Provincial Prosecutor Amando C. Vicente denied the recommendation of the Investigating Prosecutor that Michael Vistan be indicted for Violation RA 7610. He also approved the recommendation for the dismissal of the charge for Violation of PD 1829.

On 14 April 2000, petitioner filed a Motion for Partial Reconsideration. This was denied in a Resolution dated 28 April 2000.

Petitioner then filed a Petition for Review before the Department of Justice on 18 May 2000. She also filed a Supplement thereto on 19 May 2000.

In a Resolution dated 5 April 2001, Undersecretary Manuel A.J. Teehankee, acting for the Secretary of Justice, denied the petition for review. The undersigned's Motion for Reconsideration filed on 25 April 2001 was likewise denied by then DOJ Secretary Hernando B. Perez in a Resolution dated 15 October 2001.

On 26 November 2001, the undersigned filed a Petition for Review before the Office of President. **The petition was dismissed and the motion for reconsideration was denied before said forum anchored on Memorandum Circular No. 58 which bars an appeal or a petition for review of decisions/orders/resolutions of the Secretary of Justice except those involving offenses punishable by *reclusion perpetua* or death**.[4]

On March 18, 2003, petitioner filed a petition for review[5] before the CA assailing the Order of the Office of President. Petitioner argued that the Office of the President erred in not addressing the merits of her petition by relying on Memorandum Circular No. 58, series of 1993. Petitioner assailed the constitutionality of the memorandum circular, specifically arguing that Memorandum Circular No. 58 is an invalid regulation because it diminishes the power of control of the President and bestows upon the Secretary of Justice, a subordinate officer, almost unfettered power.[6] Moreover, petitioner contended that the Department of Justice (DOJ) erred in dismissing the complaint against respondent Michael Vistan for violations of Presidential Decree No. 1829[7]

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[4] *Id.* at 32-36. (Emphasis supplied.)

[5] *Id.* at 47-61.

[6] *Id.* at 8.

[7] PENALIZING OBSTRUCTION OF APPREHENSION AND PROSECUTION OF CRIMINAL OFFENDERS, January 16, 1981.

(PD No. 1829) and for violation of Republic Act No. 7610[8] (RA No. 7610).[9]

On February 13, 2004, the CA rendered a Decision, dismissing the petition, the dispositive portion of which reads:

> WHEREFORE, premises considered, the instant petition is hereby DISMISSED for lack of merit.[10]

The CA affirmed the position of the Solicitor General (OSG) to apply the doctrine of qualified political agency, to wit:

> When the President herself did not revoke the order issued by respondent Acting Deputy Executive Secretary for Legal Affairs nor saw the necessity to exempt petitioner's case from the application of Memorandum Circular No. 58, the act of the latter is deemed to be an act of the President herself.[11]

Moreover, the CA ruled that the facts of the case as portrayed by petitioner do not warrant the filing of a separate Information for violation of Section 1(e) of PD No. 1829.[12] Lastly, the CA ruled that the DOJ did not err when it dismissed the complaint for violation for RA No. 7610 as the same was not attended by grave abuse of discretion.

Petitioner filed a Motion for Reconsideration,[13] which was, however, denied by the CA in a Resolution dated September 16, 2004.

Hence, herein petition, with petitioner raising the following assignment of errors, to wit:

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[8] AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES, June 17, 1992.

[9] *Rollo*, pp. 50-51.

[10] *Id.* at 46.

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

[12] *Id.* at 43.

[13] *Id.* at 20-29.

1. **THE HONORABLE COURT OF APPEALS ERRED IN UPHOLDING THE RELIANCE OF THE OFFICE OF THE PRESIDENT IN THE PROVISIONS OF MEMORANDUM CIRCULAR NO. 58.**
2. **THE HONORABLE COURT OF APPEALS ERRED IN UPHOLDING THE DISMISSAL BY THE DOJ SECRETARY OF THE COMPLAINT OF VIOLATION OF SECTION 1(E). P.D. 1829 (OBSTRUCTION OF JUSTICE) AGAINST PRIVATE RESPONDENT MICHAEL VISTAN.**
3. **THE HONORABLE COURT OF APPEALS ERRED IN UPHOLDING THE DISMISSAL OF THE COMPLAINT OF VIOLATION OF R.A. 7610 (CHILD ABUSE) AGAINST PRIVATE RESPONDENT MICHAEL VISTAN.**[14]

The petition is without merit.

Petitioner's arguments have no leg to stand on. They are mere suppositions without any basis in law. Petitioner argues in the main that Memorandum Circular No. 58 is an invalid regulation, because it diminishes the power of control of the President and bestows upon the Secretary of Justice, a subordinate officer, almost unfettered power.[15] This argument is absurd. The President's act of delegating authority to the Secretary of Justice by virtue of said Memorandum Circular is well within the purview of the doctrine of qualified political agency, long been established in our jurisdiction.

Under this doctrine, which primarily recognizes the establishment of a single executive, "all executive and administrative organizations are adjuncts of the Executive Department; the heads of the various executive departments are assistants and agents of the Chief Executive; and, except in cases where the Chief Executive is required by the Constitution or law to act in person or the exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the Chief Executive are performed by and through

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[14] *Id.* at 7.

[15] *Id.* at 8.

the executive departments, and the acts of the secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive."[16] The CA cannot be deemed to have committed any error in upholding the Office of the President's reliance on the Memorandum Circular as it merely interpreted and applied the law as it should be.

As early as 1939, in *Villena v. Secretary of Interior*,[17] this Court has recognized and adopted from American jurisprudence this doctrine of qualified political agency, to wit:

> x x x With reference to the Executive Department of the government, there is one purpose which is crystal-clear and is readily visible without the projection of judicial searchlight, and that is, the establishment of a single, not plural, Executive. The first section of Article VII of the Constitution, dealing with the Executive Department, begins with the enunciation of the principle that "The executive power shall be vested in a President of the Philippines." This means that the President of the Philippines is the Executive of the Government of the Philippines, and no other. The heads of the executive departments occupy political positions and hold office in an advisory capacity, and, in the language of Thomas Jefferson, "should be of the President's bosom confidence" (7 Writings, Ford ed., 498), and, in the language of Attorney-General Cushing (7 Op., Attorney-General, 453), "are subject to the direction of the President." Without minimizing the importance of the heads of the various departments, their personality is in reality but the projection of that of the President. Stated otherwise, and as forcibly characterized by Chief Justice Taft of the Supreme Court of the United States, "**each head of a department is, and must be, the President's alter ego in the matters of that department where the President is required by law to exercise authority**" (*Myers v. United States*, 47 Sup. Ct. Rep., 21 at 30; 272 U.S., 52 at 133; 71 Law. ed., 160).[18]

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[16] *Villena v. Secretary of Interior,* 67 Phil. 451, 463 (1939).

[17] *Id.*

[18] *Villena v. Secretary of Interior, supra* note 16, at 464. (Emphasis supplied.)

Memorandum Circular No. 58,[19] promulgated by the Office of the President on June 30, 1993 reads:

> In the interest of the speedy administration of justice, the guidelines enunciated in Memorandum Circular No. 1266 (4 November 1983) on the review by the Office of the President of resolutions/orders/ decisions issued by the Secretary of Justice concerning preliminary investigations of criminal cases are reiterated and clarified.
>
> **No appeal from or petition for review of decisions/orders/ resolutions of the Secretary of Justice on preliminary investigations of criminal cases shall be entertained by the Office of the President, except those involving offenses punishable by *reclusion perpetua* to death** x x x.
>
> Henceforth, if an appeal or petition for review does not clearly fall within the jurisdiction of the Office of the President, as set forth in the immediately preceding paragraph, it shall be dismissed outright x x x.

It is quite evident from the foregoing that the President himself set the limits of his power to review decisions/orders/resolutions of the Secretary of Justice in order to expedite the disposition of cases. Petitioner's argument that the Memorandum Circular unduly expands the power of the Secretary of Justice to the extent of rendering even the Chief Executive helpless to rectify whatever errors or abuses the former may commit in the exercise of his discretion[20] is purely speculative to say the least. Petitioner cannot second- guess the President's power and the President's own judgment to delegate whatever it is he deems necessary to delegate in order to achieve proper and speedy administration of justice, especially that such delegation is upon a cabinet secretary – his own alter ego.

Nonetheless, the power of the President to delegate is not without limits. No less than the Constitution provides for

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[19] Reiterating and Clarifying the Guidelines Set Forth in Memorandum Circular No. 1266 (4 November 1983) Concerning the Review by the Office of the President of Resolutions Issued by the Secretary of Justice Concerning Preliminary Investigations of Criminal Cases.

[20] *Rollo*, p. 8.

restrictions. Justice Jose P. Laurel, in his *ponencia* in *Villena*, makes this clear:

> x x x Withal, at first blush, the argument of ratification may seem plausible under the circumstances, it should be observed that there are certain prerogative acts which, by their very nature, cannot be validated by subsequent approval or ratification by the President. There are certain constitutional powers and prerogatives of the Chief Executive of the Nation which must be exercised by him in person and no amount of approval or ratification will validate the exercise of any of those powers by any other person. Such, for instance, is his power to suspend the writ of *habeas corpus* and proclaim martial law (par. 3, sec. 11, Art. VII) and the exercise by him of the benign prerogative of mercy (par. 6, sec. 11, *idem*).[21]

These restrictions hold true to this day as they remain embodied in our fundamental law. There are certain presidential powers which arise out of exceptional circumstances, and if exercised, would involve the suspension of fundamental freedoms, or at least call for the supersedence of executive prerogatives over those exercised by co-equal branches of government.[22] The declaration of martial law, the suspension of the writ of *habeas corpus*, and the exercise of the pardoning power, notwithstanding the judicial determination of guilt of the accused, all fall within this special class that demands the exclusive exercise by the President of the constitutionally vested power.[23] The list is by no means exclusive, but there must be a showing that the executive power in question is of similar *gravitas* and exceptional import.[24]

In the case at bar, the power of the President to review the Decision of the Secretary of Justice dealing with the preliminary investigation of cases cannot be considered as falling within the same exceptional class which cannot be delegated. Besides, the President has not fully abdicated his power of control as

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[21] *Villena v. Secretary of Interior*, *supra* note 16, at 462-463.

[22] *Constantino, Jr. v. Cuisia*, G.R. No. 106064, October 13, 2005, 472 SCRA 505, 534.

[23] *Id.*

[24] *Id.*

Memorandum Circular No. 58 allows an appeal if the imposable penalty is *reclusion perpetua* or higher. Certainly, it would be unreasonable to impose upon the President the task of reviewing **all** preliminary investigations decided by the Secretary of Justice. To do so will unduly hamper the other important duties of the President by having to scrutinize each and every decision of the Secretary of Justice notwithstanding the latter's expertise in said matter.

In *Constantino, Jr. v. Cuisia*,[25] this Court discussed the predicament of imposing upon the President duties which ordinarily should be delegated to a cabinet member, to wit:

> The evident exigency of having the Secretary of Finance implement the decision of the President to execute the debt-relief contracts is made manifest by the fact that the process of establishing and executing a strategy for managing the government's debt is deep within the realm of the expertise of the Department of Finance, primed as it is to raise the required amount of funding, achieve its risk and cost objectives, and meet any other sovereign debt management goals.
>
> If, as petitioners would have it, the President were to personally exercise every aspect of the foreign borrowing power, he/she would have to pause from running the country long enough to focus on a welter of time-consuming detailed activities–the propriety of incurring/guaranteeing loans, studying and choosing among the many methods that may be taken toward this end, meeting countless times with creditor representatives to negotiate, obtaining the concurrence of the Monetary Board, explaining and defending the negotiated deal to the public, and more often than not, flying to the agreed place of execution to sign the documents. **This sort of constitutional interpretation would negate the very existence of cabinet positions and the respective expertise which the holders thereof are accorded and would unduly hamper the President's effectivity in running the government.**[26]

Based on the foregoing considerations, this Court cannot subscribe to petitioner's position asking this Court to allow her to appeal to the Office of the President, notwithstanding that

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[25] *Id.* at 505.

[26] *Id.* at 532. (Emphasis supplied.)

the crimes for which she charges respondent are not punishable by *reclusion perpetua* to death.

It must be remembered that under the Administrative Code of 1987 (EO No. 292), the Department of Justice, under the leadership of the Secretary of Justice, is the government's principal law agency. As such, the Department serves as the government's prosecution arm and administers the government's criminal justice system by investigating crimes, prosecuting offenders and overseeing the correctional system, which are deep within the realm of its expertise.[27] These are known functions of the Department of Justice, which is under the executive branch and, thus, within the Chief Executive's power of control.

Petitioner's contention that Memorandum Circular No. 58 violates both the Constitution and Section 1, Chapter 1, Book III of EO No. 292, for depriving the President of his power of control over the executive departments deserves scant consideration. In the first place, Memorandum Circular No. 58 was promulgated by the Office of the President and it is settled that the acts of the secretaries of such departments, performed and promulgated in the regular course of business are, unless disapproved or reprobated by the Chief Executive, presumptively

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[27] Title III, Justice, Chapter 1, GENERAL PROVISIONS:

1. Section 1. *Declaration of Policy.* — It is the declared policy of the State to provide the government with a principal law agency which shall be both its legal counsel and prosecution arm; administer the criminal justice system in accordance with the accepted processes thereof consisting in the investigation of the crimes, prosecution of offenders and administration of the correctional system; implement the laws on the admission and stay of aliens, citizenship, land titling system, and settlement of land problems involving small landowners and members of indigenous cultural minorities; and provide free legal services to indigent members of the society.
2. Section 2. *Mandate.* — The Department shall carry out the policy declared in the preceding section.
3. Section 3. *Powers and Functions.* — To accomplish its mandate, the Department shall have the following powers and functions:
4. (1) Act as principal law agency of the government and as legal counsel and representative thereof, whenever so required;

the acts of the Chief Executive.[28] Memorandum Circular No. 58 has not been reprobated by the President; therefore, it goes without saying that the said Memorandum Circular has the approval of the President.

Anent the second ground raised by petitioner, the same is without merit.

Petitioner argues that the evasion of arrest constitutes a violation of Section 1(e) of PD No. 1829, the same is quoted hereunder as follows:

> (e) Delaying the prosecution of criminal case by obstructing the service of processes or court orders or disturbing proceedings in the fiscals' offices in Tanodbayan, or in the courts. x x x

Specifically, petitioner contends that respondent's act of going underground obstructed the service of a court process, particularly the warrant of arrest.[29]

This Court does not agree.

There is no jurisprudence that would support the stance taken by petitioner. Notwithstanding petitioner's vehement objection in the manner the CA had disposed of the said issue, this Court agrees with the same. The CA ruled that the position taken by petitioner was contrary to the spirit of the law on "obstruction of justice," in the wise:

> x x x It is a surprise to hear from petitioner who is a member of the bench to argue that unserved warrants are tantamount to another violation of the law re: "obstruction of justice." Petitioner is like saying that every accused in a criminal case is committing another offense of "obstruction of justice" if and when the warrant of arrest issued for the former offense/ charge is unserved during its life or returned unserved after its life – and that the accused should be charged therewith re: "obstruction of justice." What if the warrant of arrest for the latter charge ("obstruction of justice") is again unserved during its life or returned unserved? To follow the line of

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[28] *Villena v. Secretary of Interior*, *supra* note 16, at 463.

[29] *Rollo*, p. 11.

thinking of petitioner, another or a second charge of "obstruction of justice" should be filed against the accused. And if the warrant of arrest issued on this second charge is not served, again, a third charge of "obstruction of justice" is warranted or should be filed against the accused. Thus, petitioner is effectively saying that the number of charges for "obstruction of justice" is counting and/or countless, unless and until the accused is either arrested or voluntarily surrendered. We, therefore, find the position taken by petitioner as contrary to the intent and spirit of the law on "obstruction of justice." x x x[30]

As correctly observed by the CA, the facts of the case, as portrayed by petitioner, do not warrant the filing of a separate information for violation of Section 1(e) of PD No. 1829. This Court agrees with the CA that based on the evidence presented by petitioner, the failure on the part of the arresting officer/s to arrest the person of the accused makes the latter a **fugitive from justice** and is not equivalent to a commission of another offense of obstruction of justice.[31]

Petitioner, however, vehemently argues that the law does not explicitly provide that it is applicable only to another person and not to the offender himself.[32] Petitioner thus contends that where the "law does not distinguish, we should not distinguish."[33]

Again, this Court does not agree.

Petitioner conveniently forgets that it is a basic rule of statutory construction that penal statutes are to be liberally construed in favor of the accused.[34] Courts must not bring cases within the provision of a law which are not clearly embraced by it. No act can be pronounced criminal which is not clearly made so by statute; so, too, no person who is not clearly within the terms

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

[31] *Id.* at 43.

[32] *Id.* at 12.

[33] *Id.*

[34] Agpalo, *Statutory Construction*, 1990 ed., p. 208, citing *People v. Subido*, 66 SCRA 545 (1975). *People v. Yu Jai*, 99 Phil. 725 (1956); *People v. Terrado*, 125 SCRA 648 (1983), and other cases.

of a statute can be brought within them.[35] Any reasonable doubt must be resolved in favor of the accused.[36]

Indeed, if the law is not explicit that it is applicable only to another person and not the offender himself, this Court must resolve the same in favor of the accused. In any case, this Court agrees with the discussion of the CA, however sarcastic it may be, is nevertheless correct given the circumstances of the case at bar.

Lastly, petitioner argues that the CA erred in upholding the dismissal of the complaint against respondent for violation of Section 10 (a), Article VI, of RA No. 7610. Said Section reads:

> Any person who shall commit any other act of child abuse, cruelty or exploitation or responsible for other conditions prejudicial to the child's development, including those covered by Article 59 of PD No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period.

On this note, the Provincial Prosecutor in disapproving the recommendation of the Investigating Prosecutor to file the information for violation of Section 10(a), Article VI, of RA No. 7610, gave the following reasons:

> APPROVED for: (1) x x x (2) x x x The recommendation to file an information for viol. of Sec. 10 (a) RA # 7610 vs. M. Vistan is hereby denied. **The affidavit of Ma. Mercedes Vistan, the minor involved, is to the effect that she found happiness and peace of mind away from the complainant and in the company of her relatives, including her brother, respondent Michael Vistan**. How can her joining the brother be prejudicial to her with such statement?[37]

Said finding was affirmed by the Secretary of Justice.

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[35] *Id.*, citing *U.S. v. Abad Santos*, 36 Phil. 243 (1917) and *U.S. v. Madrigal*, 27 Phil. 347 (1914).

[36] *Id*.

[37] *Rollo*, pp. 83-84. (Refer to handwritten annotation.)

This Court is guided by *First Women's Credit Corporation and Shig Katamaya v. Hon. Hernando B. Perez, et al.*,[38] where this Court emphasized the executive nature of preliminary investigations, to wit:

> x x x the determination of probable cause for the filing of an information in court is an executive function, one that properly pertains at the first instance to the public prosecutor and, ultimately, to the Secretary of Justice. **For this reason, the Court considers it sound judicial policy to refrain from interfering in the conduct of preliminary investigations and to leave the Department of Justice ample latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause for the prosecution of supposed offenders. Consistent with this policy, courts do not reverse the Secretary of Justice's findings and conclusions on the matter of probable cause except in clear cases of grave abuse of discretion**. Thus, petitioners will prevail only if they can show that the CA erred in not holding that public respondent's resolutions were tainted with grave abuse of discretion.[39]

Were the acts of the Provincial Prosecutor or the Secretary of Justice tainted with grave abuse of discretion?

By grave abuse of discretion is meant such capricious and whimsical exercise of judgment which is equivalent to an excess or lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act not at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[40]

Based on the foregoing, this Court finds that the provincial prosecutor and the Secretary of Justice did not act with grave abuse of discretion, as their conclusion of lack of probable cause was based on the affidavit of the alleged victim herself. The

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[38] G.R. No. 169026, June 15, 2006, 490 SCRA 774.

[39] *Id.* at 777.

[40] *Estrada v. Desierto*, 487 Phil. 169, 182 (2004).

reasons for the cause of action were stated clearly and sufficiently. Was their reliance on the victim's affidavit constitutive of grave abuse of discretion? This Court does not think so.

While petitioner would argue that the victim was "brainwashed" by respondent into executing the affidavit,[41] this Court finds no conclusive proof thereof. Besides, even if their reliance on the victim's affidavit may be wrong, it is elementary that not every erroneous conclusion of fact is an abuse of discretion.[42] As such, this Court will not interfere with the said findings of the Provincial Prosecutor and the Secretary of Justice absent a clear showing of grave abuse of discretion. The determination of probable cause during a preliminary investigation is a function that belongs to the prosecutor and ultimately on the Secretary of Justice; it is an executive function, the correctness of the exercise of which is a matter that this Court will not pass upon absent a showing of grave abuse of discretion.

WHEREFORE, premises considered, the February 13, 2004 Decision and September 16, 2004 Resolution of the Court of Appeals in CA-G.R. SP No. 76019 are hereby *AFFIRMED*.

SO ORDERED.

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

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[41] *Rollo,* p. 13.

[42] *Estrada v. Desierto, supra* note 40, at 188.

THIRD DIVISION

[G.R. No. 165428. November 25, 2009]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **TERESITA PANLILIO LUCIANO,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; EMINENT DOMAIN; JUST COMPENSATION; DETERMINATION THEREOF SHOULD BE MADE PURSUANT TO R.A. 6657 AND THE APPLICABLE DAR REGULATIONS.— In this case, respondent voluntarily offered to sell the subject lands to the DAR pursuant to RA No. 6657; thus, we find that the CA erred in ruling that the RTC correctly took recourse under PD No. 27 in determining the just compensation of the subject lands. The valuation factors under Section 17 of RA No. 6657 and the formula under DAR AO No. 6, series of 1992, as amended by DAR AO No. 11, series of 1994, should be applied since the subject lands were acquired under RA No. 6657 and not under PD No. 27. In fact, we have repeatedly held that if the agrarian reform process under PD No. 27 is still incomplete, as the just compensation to be paid to the owners has yet to be settled; and considering the passage of RA No. 6657 before the completion of the process, the just compensation should be determined and the process concluded under the latter law. Section 75 of RA No. 6657 provides that PD No. 27 and E.O. No. 228 have only suppletory effect.

2. ID.; ID.; ID.; ID.; FACTORS TO BE CONSIDERED IN THE DETERMINATION OF JUST COMPENSATION.— Section 17 of RA No. 6657, which is specifically pertinent, enumerates the factors to be considered in the determination of just compensation, thus: Sec. 17. *Determination of Just Compensation.* – In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property, as well

as the non-payment of taxes or loans secured from any government financing institution on the said land, shall be considered as additional factors to determine its valuation. x x x and these factors have been translated into a basic formula by the DAR pursuant to its rule-making power under Section 49 of R.A. No. 6657. In this case, the basic formula applicable is DAR AO No. 6, series of 1992, the then governing regulation applicable to the lands that respondent voluntarily offered to sell under RA No. 6657.

3. ID.; ID.; ID.; ID.; PROCEDURE FOR THE DETERMINATION OF JUST COMPENSATION.— Under Section 1 of E.O. No. 405, series of 1990, the Land Bank of the Philippines is charged with the initial responsibility of determining the value of lands placed under land reform and the just compensation to be paid for their taking. Through a notice of voluntary offer to sell (VOS) submitted by the landowner, accompanied by the required documents, the DAR evaluates the application and determines the land's suitability for agriculture. The LBP likewise reviews the application and the supporting documents and determines the valuation of the land. Thereafter, the DAR issues the Notice of Land Valuation to the landowner. In both voluntary and compulsory acquisitions, wherein the landowner rejects the offer, the DAR opens an account in the name of the landowner and conducts a summary administrative proceeding. If the landowner disagrees with the valuation, the matter may be brought to the RTC, acting as a special agrarian court. This, in essence, is the procedure for the determination of just compensation.

4. ID.; ID.; ID.; ID.; SPECIAL CIRCUMSTANCES JUSTIFYING THE COMMISSION OF THE COURT OF APPEALS TO DETERMINE JUST COMPENSATION.— Considering, x x x that respondent was already 96 years old when she filed her Comment in 2006 on the instant petition for review, and that the subject lands were acquired in 1991, we find these special circumstances justifying the acceleration of the final disposition of this case, and deem it best to *pro hac vice* commission the Court of Appeals as its agent to receive and evaluate the evidence of the parties. Its mandate is to ascertain the just compensation due in accordance with this Decision, applying Section 17 of R.A. No. 6657 and DAR AO No. 6, series of 1992, as amended.

APPEARANCES OF COUNSEL

LBP Legal Department and *Government Corporate Counsel* for petitioner.

Hector Reuben D. Feliciano for respondent.

D E C I S I O N

PERALTA, *J.*:

For our resolution in the instant petition for review on *certiorari* filed by petitioner Land Bank of the Philippines are the Decision[1] dated August 3, 2004 and the Resolution[2] dated September 28, 2004 of the Court of Appeals in CA-G.R. CV No. 60263.[3]

The factual antecedents are as follows:

Respondent Teresita Panlilio Luciano is the registered owner of two parcels of agricultural lands covered by Transfer Certificate of Title (TCT) Nos. 223893 and 223894, with an area of 10.4995 hectares and 12.7526 hectares, respectively (subject lands), both situated in *Barangay* Amucao, Tarlac, Tarlac. On August 29, 1989, respondent voluntarily offered to sell the subject lands to the government under the Comprehensive Agrarian Reform Law, (CARL) or Republic Act (RA) No. 6657, as amended.[4]

On August 13, 1991, the Department of Agrarian Reform (DAR) sent Notices of Acquisition[5] to respondent as well as endorsed respondent's claim folders[6] to petitioner Land Bank

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[1] Penned by Associate Justice Renato C. Dacudao, with Associate Justices Lucas P. Bersamin (now a member of this Court) and Celia C. Librea-Leagogo; *rollo*, pp. 53-63.

[2] *Id.* at 65.

[3] Entitled "Teresita Panlilio-Luciano, petitioner-appellee v. Republic of the Philippines, represented by the Department of Agrarian Reform, headed by Secretary Ernesto D. Garilao, respondent; Land Bank of the Philippines, respondent-appellant.

[4] Records, pp. 103-104.

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

for the determination of the value of the subject lands, pursuant to Land Bank's mandate under Executive Order (EO) No. 405. Petitioner Land Bank made a total valuation of ₱425,626.67 for the subject lands applying DAR Administrative Order (AO) No. 17, series of 1989, as amended, and the applicable provisions of RA No. 6657.[7]

Respondent rejected the valuation; thus, in accordance with Section 16 (d) of RA No. 6657, the Department of Agrarian Reform Adjudication Board (DARAB) undertook a summary administrative proceeding. During the pendency of the case, DAR AO No. 6, series of 1992, was promulgated. Consequently, the DARAB issued an Order directing petitioner Land Bank to revalue the subject lands applying the pertinent provisions of DAR AO No. 6, series of 1992. Petitioner Land Bank came up with ₱643,662.54 as the total value for the subject lands.[8]

Dissatisfied with the valuation, respondent, on January 23, 1995, filed with the Special Agrarian Court (SAC) of Tarlac, Tarlac, a petition[9] for eminent domain with prayer for a writ of preliminary mandatory injunction. She alleged that petitioner Land Bank erred in applying AO No. 6, series of 1992, in computing the just compensation for the subject lands, since such AO had been illegally issued by the Secretary of Agrarian Reforms because the AO repealed Section 56 of RA No. 3844 (The Agricultural Land Reform Code), in relation to Sections 17 and 75 of RA No. 6657. Respondent likewise prayed for the issuance of a writ of preliminary mandatory injunction, which would order petitioner Land Bank to deposit the preliminary compensation required under Section 16 (e) of RA No. 6657, as the possession and titles of the subject lands were already transferred to the DAR; and that she be authorized to withdraw the amount ordered deposited, pending determination of the

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[6] *Id.* at 107-112.

[7] *Id.* at 113.

[8] *Id.* at 114.

[9] *Id.* at 1-5; Docketed as Agrarian Case No. 152.

just compensation; and she asked for damages.

DAR filed its Answer with Special and Affirmative Defenses[10] and argued that Land Bank's valuation of the subject lands bore the presumption of regularity, and that DAR could not be made to answer for damages in the performance of its public duties and responsibilities. DAR agreed to deposit the amount of ₱643,662.54, but objected to the withdrawal of the said amount until after the final determination of the just compensation.

In her Pre-Trial Brief[11] dated May 26, 1997, respondent admitted the areas acquired, as well as the average gross production per hectare, used by petitioner Land Bank in computing the just compensation, thus, limiting the issue to: "What capitalization rate should be used in determining just compensation? Will it be 6% as provided in RA No. 3844 before its amendment, or 20%, 16% or 12%, as successively provided in the different DAR administrative orders?"

On September 30, 1997, petitioner filed a Motion for Summary Judgment,[12] which was granted.

On January 6, 1998, the RTC rendered a Decision,[13] the dispositive portion of which reads:

> WHEREFORE, the Court finds that the just compensation for the land covered by TCT No. 223893, with an area of 10.4995 hectares, is ₱825,050.71; and the land covered by TCT No. 223894, with an area of 12.7526 hectares, is ₱1,002,099.30 to be paid in accordance with the mode of payment under Section 18 of R.A. 6657.[14]

In arriving at its decision, the RTC made the following disquisitions, thus:

> R.A. 6657 merely sets the criteria which [may be] used as bases

[10] Records, pp. 14-15.

[11] *Id.* at 49-51.

[12] *Id.* at 69-74.

[13] Penned by Judge Arsenio P. Adriano, *id.* at 76-77.

[14] *Id.* at 77.

in determining just compensation, such as the cost of acquisition, income, sworn statement of owners, assessments by government assessors. (Sec. 17, RA 6657). The petitioner (herein respondent) should have submitted evidence on these aspects, but also did not.

The petitioner filed a motion for summary judgment which is appropriate, considering that the answer filed by the DAR did not tender any genuine issue. Petitioner adopted, as exhibit, the Land Valuation Worksheet. The Court, based on this limited data appearing on the said valuation sheet, had to fix the just compensation. The average gross production is 78.58 canvas (sic) of *palay* per hectare.

The computed net income is fixed at 20%. The DAR, using the computed or capitalized net income divided by 16% [came] up with a value of ₱20,921.94 per hectare, pegging the selling price of *palay* at ₱4.26 per kilo. Thus, the total compensation, as per DAR's computation, is ₱192,191.98, using its formula.

By any stretch of the imagination, the Court cannot accept as just compensation the amount or value of the land per hectare at ₱20,921.94 fixed by respondents. Even raw lands or hilly lands which are offered for sale will command a higher price. That price is not even equivalent to the price of a square meter of a parcel of land in the center of Manila.

Again, petitioner rely on the provision of RA 3844, requiring the payment of five (5) times the gross average harvest as disturbance compensation to be paid to tenants ejected by a Court's decision. (Sec. 36 (1), RA 3844, as amended by RA 6389). This could not be applicable in the reverse, *i.e.*, if the land will be sold by the landowner. The only reason the landowner is required to pay five (5) times the gross average harvest as disturbance compensation is to discourage the ejectment of tenants.

This Court is of the opinion that P.D. No. 27 may still be applied in this case, even in a suppletory character. (Sections 75 and 76, RA 6657). The formula specified therein is simple and just as it is based on the average gross production for the three cropping seasons/ years prior thereto. It is also in consonance with justice that the selling price of *palay* should be the current price of ₱8.00 per kilo rather than the ₱35.00 per cavan.

The offer of the petitioner for the price of the land is ₱50,000.00 when the offer was made in 1991.

Thus, computed under P.D. No. 27, the value should be -

1. 78.58 x 400 x 2.5 x 10.4995 for the 10.4995 hectares;

2. 78.58 x 400 x 2.5 x 12.7526 for the 12.7526 hectares.[15]

Petitioner Land Bank filed a motion for reconsideration. The RTC then issued an Order which deferred the resolution on the motion for reconsideration and directed petitioner to submit the evidence it intended to present should the case be re-opened. Petitioner Land Bank complied and submitted the evidence required in the aforesaid Order.[16]

On March 4, 1998, the RTC issued a Resolution[17] denying petitioner Land Bank's motion for reconsideration.

Petitioner Land Bank filed an appeal with the CA.

On August 3, 2004, the CA issued its assailed Decision, the dispositive portion of which reads:

WHEREFORE, the Decision dated January 6, 1998 of the Special Agrarian Court of Tarlac, Tarlac, must be, as it hereby is, VACATED and SET ASIDE. Agrarian Case No. 152 is REMANDED to the Regional Trial Court of Tarlac, Tarlac, Branch 63, which is hereby directed to allow the parties to present evidence for the determination of just compensation.[18]

In so ruling, the CA averred (1) that the RTC, sitting as SAC, may suppletorily apply the formula embodied in PD No. 27 in computing the just compensation for lands pursuant to the voluntary scheme under RA No. 6657; (2) that the RTC had the discretion to choose which formula to apply in determining just compensation, having in view Section 17 of RA No. 6657; (3) that Land Bank determined only the initial valuation of lands covered by CARP, but it was the SAC that must ultimately decide; (4) that DAR Administrative Order No. 6, series of

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

[16] Records, pp. 100-114.

[17] *Id.* at 121.

[18] *Rollo*, p. 62.

1992 may only serve as a guide for the SAC in determining just compensation, but may not supplant or supersede the SAC's own judgment.

The CA found that the RTC erred in fixing at ₱8.00 a kilo, or ₱400.00 per cavan, the selling price of *palay* for the following reasons: (1) the selling price of palay should not be the current price, but the selling price at the time of the taking, which was on August 28, 1989; and (2) there was no evidence to show that indeed the amount used by the RTC was the current selling price of *palay*.

Petitioner Land Bank filed a Motion for Partial Reconsideration alleging that the remand of the case to the RTC for the determination of just compensation should not only be limited to the determination of the selling price of palay or the application of formula under PD No. 27, but it must be allowed to present evidence in accordance with the factors enumerated in Section 17 of RA No. 6657.

On September 28, 2004, the CA denied petitioner Land Bank's partial motion for reconsideration.

Hence, this petition wherein petitioner raises the lone assigned error.

THE HONORABLE COURT OF APPEALS ERRED IN LAW IN RULING THAT THE COURT *A QUO* MAY EMPLOY SUPPLETORILY THE FORMULA EMBODIED IN P.D. 27, BUT NOT THE PRESCRIBED PRICE OF PALAY UNDER E.O. 228, THUS LIMITING THE COMPUTATION OF THE JUST COMPENSATION TO THE APPLICABLE SELLING PRICE OF PALAY ONLY IN THE WOULD-BE PROCEEDINGS IN THE COURT *A QUO*.[19]

Petitioner contends that the subject lands were undisputedly acquired by the government through the DAR pursuant to RA No. 6657; thus, the determination of the just compensation must be based on several factors enumerated in Section 17 of RA No. 6657 and not PD No. 27 as found by the RTC and affirmed by the CA.

[19] *Id.* at 40.

We agree.

In *Land Bank of the Philippines v. Banal*,[20] the subject property was compulsorily acquired by the DAR pursuant to RA No. 6657. As the registered owners rejected Land Bank's valuation which applied the formula in DAR AO No. 6, series of 1992, as amended by DAR AO No. 11, series of 1994, a summary administrative proceeding was conducted before the Provincial Agrarian Reform Adjudicator (PARAD) to determine the valuation of the land. The PARAD affirmed the Land Bank's valuation. Dissatisfied, the registered owners filed a petition for the determination of just compensation with the RTC. On the same day after the pre-trial, the RTC issued an Order which dispensed with the hearing and directed the parties to submit their respective memoranda. The RTC rendered judgment, fixing the just compensation based on the facts established in another case pending before it using the formula prescribed under EO No. 228 and RA No. 3844. Land Bank filed an appeal with the CA, which affirmed the RTC decision. On Land Bank's petition for review filed with us, we found that the CA and the RTC erred in applying the formula prescribed under EO No. 228 and RA No. 3844 in determining the valuation of the subject land and ordered the remand of the case to the RTC for trial on the merits. The RTC was ordered to consider the factors provided under Section 17 of RA No. 6657 in determining the proper valuation of the subject property and the formula in DAR AO No. 6, series of 1992, as amended by DAR AO No. 11, series of 1994. In so ruling, we made the following disquisitions, to wit:

> x x x In determining just compensation, the RTC is required to consider several factors enumerated in Section 17 of R.A. 6657, as amended, thus:
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> > Sec. 17. *Determination of Just Compensation.* – In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax

[20] 478 Phil. 701 (2004).

declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property, as well as the non-payment of taxes or loans secured from any government financing institution on the said land, shall be considered as additional factors to determine its valuation.

These factors have been translated into a basic formula in DAR Administrative Order No. 6, Series of 1992, as amended by DAR Administrative Order No. 11, Series of 1994, issued pursuant to the DAR's rule-making power to carry out the object and purposes of R.A. 6657, as amended.

The formula stated in DAR Administrative Order No. 6, as amended, is as follows:

LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)

LV = Land Value
CNI = Capitalized Net Income
CS = Comparable Sales
MV = Market Value per Tax Declaration

The above formula shall be used if all the three factors are present, relevant and applicable.

A.1 When the CS factor is not present and CNI and MV are applicable, the formula shall be:

LV = (CNI x 0.9) + (MV x 0.1)

A.2 When the CNI factor is not present, and CS and MV are applicable, the formula shall be:

LV = (CS x 0.9) + (MV x 0.1)

A.3 When both the CS and CNI are not present and only MV is applicable, the formula shall be:

LV = MV x 2

Here, the RTC failed to observe the basic rules of procedure and the fundamental requirements in determining just compensation for the property. **Firstly**, it dispensed with the hearing and merely ordered the parties to submit their respective memoranda. Such action is grossly erroneous since the determination of just compensation involves

the examination of the following factors specified in Section 17 of R.A. 6657, as amended:

1. the cost of the acquisition of the land;
2. the current value of like properties;
3. its nature, actual use and income;
4. the sworn valuation by the owner; the tax declarations;
5. the assessment made by government assessors;
6. the social and economic benefits contributed by the farmers and the farmworkers and by the government to the property; and
7. the non-payment of taxes or loans secured from any government financing institution on the said land, if any.

Obviously, these factors involve **factual** matters which can be established only during a hearing wherein the contending parties present their respective evidence. In fact, to underscore the intricate nature of determining the valuation of the land, Section 58 of the same law even authorizes the Special Agrarian Courts to appoint commissioners for such purpose.[21]

The mandatory application of the above-mentioned guidelines in determining just compensation was reiterated in *Land Bank of the Philippines v. Lim*,[22] wherein we ordered the remand of the case to the RTC for the determination of just compensation strictly in accordance with DAR AO 6-92, as amended.[23]

In this case, respondent voluntarily offered to sell the subject lands to the DAR pursuant to RA No. 6657; thus, we find that the CA erred in ruling that the RTC correctly took recourse under PD No. 27 in determining the just compensation of the subject lands. The valuation factors under Section 17 of RA No. 6657 and the formula under DAR AO No. 6, series of 1992,

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[21] *Id.* at 709-711.

[22] G.R. No. 171941, August 2, 2007, 529 SCRA 129.

[23] *Land Bank of the Philippines v. Gallego*, G.R. No. 173226, January 20, 2009, 576 SCRA 680.

as amended by DAR AO No. 11, series of 1994, should be applied since the subject lands were acquired under RA No. 6657[24] and not under PD No. 27.

In fact, we have repeatedly held that if the agrarian reform process under PD No. 27 is still incomplete, as the just compensation to be paid to the owners has yet to be settled; and considering the passage of RA No. 6657 before the completion of the process, the just compensation should be determined and the process concluded under the latter law.[25] Section 75 of RA No. 6657 provides that PD No. 27 and E.O. No. 228 have only suppletory effect.[26]

In *Land Bank v. Natividad*,[27] we held that it would certainly be inequitable to determine just compensation based on the guidelines provided by PD No. 27 and EO No. 228, considering the DAR's failure to determine the just compensation for a considerable length of time; and that it is especially imperative that just compensation should be determined in accordance with RA No. 6657, and not PD No. 27 and EO 228, 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.

Consequently, if the determination of just compensation of lands brought under the Operation Land Transfer of PD No. 27 was made under RA No. 6657, the RTC should have applied the provisions of RA No. 6657 to determine the just compensation of the subject lands, as they were voluntarily offered for sale under the said law.

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[24] *Land Bank of the Philippines v. Banal*, *supra* note 20, at 715.

[25] *Land Bank of the Philippines v. Heirs of Angel T. Domingo*, G.R. No. 168533, February 4, 2008, 543 SCRA 627; *Land Bank of the Philippines v. Estanislao*, G.R. No. 166777, July 10, 2007, 527 SCRA 181; *Land Bank of the Philippines v. Natividad*, G.R. No. 127198, May 16, 2005, 458 SCRA 441, 452 citing *Paris v. Alfeche*, 416 Phil. 473 (2001).

[26] RA No. 6657, Sec. 75.

[27] *Supra* note 25, at 452.

Section 17 of RA No. 6657, which is specifically pertinent, enumerates the factors to be considered in the determination of just compensation, thus:

> Sec. 17. *Determination of Just Compensation*. – In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property, as well as the non-payment of taxes or loans secured from any government financing institution on the said land, shall be considered as additional factors to determine its valuation.

and these factors have been translated into a basic formula by the DAR pursuant to its rule-making power under Section 49 of R.A. No. 6657. In this case, the basic formula applicable is DAR AO No. 6, series of 1992, the then governing regulation applicable to the lands that respondent voluntarily offered to sell under RA No. 6657. And the factors enumerated under Section 17 of RA No. 6657 as implemented through DAR AO No. 6, series of 1992, as amended, involve factual matters that can be established only during a hearing wherein the contending parties should present their respective evidence.[28]

Petitioner Land Bank claims that while the determination of just compensation involves judicial discretion, the RTC should take into serious consideration the facts and data gathered by the Land Bank as the administrative agency mandated by law to determine the valuation of the agricultural lands covered by land reform; and that it has the expertise to do the land valuation.

Under Section 1 of E.O. No. 405, series of 1990, the Land Bank of the Philippines is charged with the initial responsibility of determining the value of lands placed under land reform and the just compensation to be paid for their taking. Through a notice of voluntary offer to sell (VOS) submitted by the landowner, accompanied by the required documents, the DAR evaluates

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[28] *Land Bank of the Philippines v. Banal, supra* note 20, at 711.

the application and determines the land's suitability for agriculture. The LBP likewise reviews the application and the supporting documents and determines the valuation of the land. Thereafter, the DAR issues the Notice of Land Valuation to the landowner. In both voluntary and compulsory acquisitions, wherein the landowner rejects the offer, the DAR opens an account in the name of the landowner and conducts a summary administrative proceeding. If the landowner disagrees with the valuation, the matter may be brought to the RTC, acting as a special agrarian court. This, in essence, is the procedure for the determination of just compensation.[29]

Clearly, Land Bank's valuation of lands covered by CARL is considered only as an initial determination, which is not conclusive, as it is the RTC, sitting as a Special Agrarian Court, that should make the final determination of just compensation, taking into consideration the factors enumerated in Section 17 of RA No. 6657 and the applicable DAR regulations. Land Bank's valuation had to be substantiated during the hearing before it could be considered sufficient in accordance with Section 17 of RA No. 6657 and DAR AO No. 6, series of 1992, as amended by DAR AO No. 11, series of 1994.

Thus, the remand of the case to the appropriate court below is necessary for the parties to present their evidence, as we are not a trier of facts. Considering, however, that respondent was already 96 years old when she filed her Comment in 2006 on the instant petition for review, and that the subject lands were acquired in 1991, we find these special circumstances justifying the acceleration of the final disposition of this case, and deem it best to *pro hac vice* commission the Court of Appeals as its agent to receive and evaluate the evidence of the parties.[30] Its mandate is to ascertain the just compensation due in accordance with this Decision, applying Section 17 of R.A. No. 6657 and DAR AO No. 6, series of 1992, as amended.

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[29] *Land Bank of the Philippines v. Wycoco,* 464 Phil. 83 (2004).

[30] *Land Bank of the Philippines v. Gallego, supra* note 23, at 693.

In *Land Bank of the Philippines v. Gallego,*[31] we held that the remand of cases before us to the Court of Appeals for the reception of further evidence is not a novel procedure. It is sanctioned by the Rules of Court, as we have availed ourselves of the procedure in quite a few cases.

WHEREFORE, the Decision of the Court of Appeals dated August 3, 2004 in CA-G.R. CV No. 60263 is *REVERSED* and *SET ASIDE*. Agrarian Case No. 152 is *REMANDED* to the Court of Appeals, which is directed to receive evidence and determine with dispatch the just compensation due respondent in accordance with Section 17 of RA No. 6657 and DAR AO No. 6, series of 1992, as amended by DAR AO No. 11, series of 1994.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 165938. November 25, 2009]

ROGELIO DIZON, *petitioner, vs.* **PHILIPPINE VETERANS BANK,** *respondent.*

SYLLABUS

1. CIVIL LAW; PRESCRIPTION; WHEN THE PRESCRIPTIVE PERIOD UNDER ARTICLE 1142 DOES NOT APPLY.— It is true that, under Article 1142 of the Civil Code, an action to enforce a right arising from a mortgage should be enforced within ten (10) years from the time the right of action accrues; otherwise, it will be barred by prescription and the mortgage

[31] *Id.*

creditor will lose his rights under the mortgage. It is clear that the actions referred to under Article 1142 of the Civil Code are those that necessarily arise from a mortgage. In the present case, however, PVB's petition for the issuance of an owner's duplicate certificate of title already arises from its right as the owner of the subject properties and no longer as a mortgagee. The mortgage contract respondent entered into with petitioner had already been foreclosed, the properties sold and the sale in favor of PVB registered with the Register of Deeds of the Province of Cagayan. Hence, since the petition filed by PVB is not a mortgage action, the provisions of Article 1142 of the Civil Code do not apply.

2. ID.; PROPERTY REGISTRATION DECREE (P.D. 1529) PROVIDES NO LIMITATION OR PERIOD TO FILE PETITION FOR REPLACEMENT OF LOST DUPLICATE CERTIFICATE OF TITLE.— Presidential Decree (PD) No. 1529, otherwise known as the Property Registration Decree, the law that specifically governs petitions for the replacement of lost duplicate certificates of title, does not provide for any limitation or period for filing the said petition. The silence of the law on this matter can only be interpreted to mean that there is no intention to provide a prescriptive period for filing this petition.

3. ID.; ESTOPPEL; ELEMENTS; APPLICATION.— Settled is the rule that a person, who by his deed or conduct has induced another to act in a particular manner, is barred from adopting an inconsistent position, attitude or course of conduct that thereby causes loss or injury to the latter. The doctrine of estoppel is based upon the grounds of public policy, fair dealing, good faith and justice, and its purpose is to forbid one to speak against his own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied thereon. x x x The essential elements of estoppel are: (1) conduct of a party amounting to false representation or concealment of material facts or at least calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intent, or at least expectation, that this conduct shall be acted upon by, or at least influence, the other party; and (3) knowledge, actual or constructive, of the real facts. In the present case, petitioner may not renege on his own acts and

representations to the prejudice of respondent bank, which has relied on them. Since petitioner entered into a binding contract on his own volition using the titles which he now assails, he is therefore estopped from questioning the authenticity of these documents which paved the way for the consummation of the contract from which he derived benefit.

4. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; HE WHO ALLEGES A FACT HAS THE BURDEN OF PROVING IT; APPLICATION.— [P]etitioner anchors his opposition to the petition filed by PVB on the contention that the titles, which he presented to the bank as evidence that the subject properties were used as security for the loan he and his wife incurred with the said bank, were genuine but were later on altered by the bank's officials and employees with whom he allegedly entered a deal in order to have his loan approved. Petitioner claims that this altered and spurious titles were the ones presented by PVB in its first petition filed with the RTC in June 1986. However, these allegations remain unsubstantiated. They are self-serving statements which are not supported by any evidence whatsoever. It is settled that one who alleges a fact has the burden of proving it and mere allegation is not evidence. The established fact remains that petitioner and his wife were the ones who submitted to PVB the authentic owner's copy of the titles over the subject properties and that these copies were lost.

5. ID.; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW MAY BE RAISED IN A RULE 45 PETITION.— Settled is the rule that a petition for review on *certiorari* filed with this Court under Rule 45 of the Revised Rules of Court shall raise only questions of law. This Court is not a trier of facts. It is not its function to analyze or weigh evidence. The jurisdiction of this Court over cases brought to it is limited to the review and rectification of errors allegedly committed by the lower courts. While there are exceptions to this rule, the Court finds that the present case does not fall under any of them.

6. ID.; COURTS; REGIONAL TRIAL COURTS; FACTUAL FINDINGS OF THE RTC GIVEN FULL FAITH AND CREDENCE.— [T]he Court gives full faith and credence to the finding of the RTC that the owner's duplicate copies in the

possession of PVB were, in fact, lost. This is consistent with the settled rule that appellate courts should not, unless for strong and cogent reasons, reverse the findings of fact of trial courts. This is so because trial judges are in a better position to examine real evidence and at a vantage point to observe the actuation and the demeanor of the witnesses. In the instant case, the Court finds no sufficient reason to depart from the above findings of the RTC.

7. CIVIL LAW; PROPERTY REGISTRATION DECREE (P.D. 1529); ISSUES TO BE RESOLVED IN A PETITION FOR ISSUANCE OF OWNER'S DUPLICATE COPY OF CERTIFICATE OF TITLE; CASE AT BAR.— It bears to emphasize that in a petition for the issuance of a second owner's duplicate copy of a certificate of title in replacement of a lost one, the only questions to be resolved are: whether or not the original owner's duplicate copy has indeed been lost and whether the petitioner seeking the issuance of a new owner's duplicate title is the registered owner or other person in interest. The first question is factual and, in the present case, the RTC had already made a finding that the original owner's duplicate copy of the subject TCTs had indeed been lost. In this respect, the Court finds no cogent reason to depart from the findings of the RTC as discussed earlier. As to the second question, there is no dispute that PVB has an interest over the subject properties having acquired the same at public auction. In sum, there is no doubt as to the identity of the subject properties. There is neither any dispute with respect to the fact that petitioner and his wife mortgaged these properties to PVB and that they subsequently failed to pay their obligations to the latter. Nor is there any issue as to the validity of the foreclosure proceedings as well as the auction sale conducted and PVB's subsequent acquisition of the subject properties. Hence, on the basis of the foregoing, the Court finds that the RTC committed no error in granting PVB's petition for the issuance of an owner's duplicate copy of certificates of title covering the subject properties.

APPEARANCES OF COUNSEL

Reydon Pangilinan Canlas for petitioner.
Rydely C. Valmores for respondent.

D E C I S I O N

PERALTA, *J.*:

Assailed in the present petition for review on *certiorari* under Rule 45 of the Rules of Court is the Resolution[1] of the Court of Appeals (CA) in CA-G.R. CV No. 72856, dated August 25, 2003, which dismissed herein petitioner's appeal, and its Resolution[2] dated November 2, 2004 denying petitioner's motion for reconsideration.

The undisputed facts are as follows:

Herein petitioner Rogelio Dizon and his wife Corazon were the owners of three parcels of land located in Angeles City, Pampanga covered by Transfer Certificate of Title (TCT) Nos. T-12567, T-35788 and T-29117-R (3793). On September 26, 1979, the Spouses Dizon mortgaged these lots to herein respondent Philippine Veterans Bank (PVB) as security for a credit accommodation which they obtained from PVB. The Spouses Dizon failed to pay their obligation. As a consequence, PVB extrajudicially foreclosed the mortgage and was able to acquire the subject properties at public auction conducted on December 8, 1983. Subsequently, a Certificate of Sale was issued in favor of PVB which was registered with the Register of Deeds of Angeles City on November 22, 1984.

Sometime in June 1986, PVB filed with the Regional Trial Court (RTC) of Angeles City a Petition for the Issuance of Owner's Duplicate Certificate of Title covering the subject lots. The case was docketed as L.R.C. CAD. CASE NO. A-124-91. Apparently, for failure of PVB to prosecute the case for an unreasonable length of time, the petition was dismissed without prejudice.

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[1] Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Eubulo G. Verzola (now deceased) and Regalado E. Maambong, concurring; *rollo*, p. 87.

[2] *Rollo*, p. 22.

On July 26, 1999, PVB filed anew with the RTC of Angeles City a Petition for Issuance of Owner's Duplicate Copy of Transfer Certificate of Title over the same parcels of land. The case was docketed as L.R.C. Case No. A-124-1024. Herein petitioner opposed the petition.

On November 16, 1999, PVB filed with the RTC of Angeles City an *ex parte* petition for the issuance of a writ of possession. The case was docketed as Cad. Case No. A-124-1057. On February 19, 2002, the RTC rendered judgment in favor of PVB. On appeal, however, the CA reversed the decision of the RTC and dismissed PVB's petition for the issuance of a writ of possession. The CA Decision became final and executory on January 14, 2004.

Meanwhile, after due proceedings in L.R.C. Case No. A-124-1024, the RTC rendered judgment granting the petition of PVB. The dispositive portion of the RTC Decision, dated August 6, 2001, reads as follows:

> WHEREFORE, the Register of Deeds of Angeles City is directed to issue another owner's duplicate copies of T.C.T. Nos. T-12567, 29117 (3793) and 35788 in favor of petitioner Philippine Veterans Bank, which shall contain a memorandum of the fact that they be issued in place of the lost ones but shall, in all respect, be entitled to like faith and credit as the original duplicates and shall thereafter be regarded as such for all purposes of Pres. Decree No. 1529, after the petitioner shall have complied with all the mandatory requirements of the law on the matter.
>
> SO ORDERED.[3]

Feeling aggrieved, Rogelio filed an appeal with the CA. On August 25, 2003, the CA issued the presently assailed Resolution dismissing Rogelio's appeal for his failure to file his appellant's brief.

Rogelio filed a motion for reconsideration, but the same was denied by the CA in a subsequent Resolution dated November 2, 2004.

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[3] *Id.* at 44.

Hence, the present petition based on the following grounds:

I. Whether or not the questioned second Petition for Issuance of Owner's Duplicate copy of Transfer Certificate of Title Nos. T-12567, 2917 (3793), 5788 in lieu of lost owner's copy filed by the Petitioner-Appellee on July 26, 1999, after more than sixteen (16) years after the Foreclosure Sale sometime in December 8, 1983 is barred by **prescription**;

II. Whether or not the three (3) defective, fictitious and/or fake Owner's duplicate certificates of title attached in the dismissed original petition filed on June 1986 when it was the Respondent Bank (petitioner therein) itself which placed the remarks on the upper right corner of the titles the phrase: **ALLEGEDLY FAKE** in our possession presented as collaterals **are similar** to the three (3) certified true copies of the original certificates of title on file at the Register of Deeds of Angeles City attached in the second Petition and marked as Annexes "A", "B" and "C" thereof respectively;

III. Whether or not Atty. Ma. Rosario A. Sabalburo, Head of Assets Recovery Department of the PVB, has committed the crime of perjury in her Sworn Affidavit of Loss that she executed on July 23, 1999, by presenting as pieces of evidence the copies of the original certificates of title secured from the Register of Deeds of Angeles City and not the machine copies of the owner's duplicate certificates of title that were found in their file as claimed or true xerox copies from RTC BR. 62;

IV. Whether or not the documentary bases (the three certified copies of title issued by the Register of Deeds of Angeles City **only last November 16, 1999** which were duly verified by Mr. Ronnie Vergara and Mr. Herminio Manalang, the records officer and Vault Keeper, respectively of the said Office, used in the Respondent Bank's second Petition **are the very same copies of the said collaterals** having the same annotations and encumbrances making them as the true and faithful reproductions of the titles used in the Bank's first Petition filed by the Petitioner on June 19, 1986. (Emphasis supplied.)[4]

The petition lacks merit.

With respect to the first issue, petitioner contends that the petition filed by respondent bank has prescribed, citing Article 1142

[4] *Id.* at 7.

of the Civil Code which states that "[a] mortgage action prescribes in ten years."

It is true that, under Article 1142 of the Civil Code, an action to enforce a right arising from a mortgage should be enforced within ten (10) years from the time the right of action accrues; otherwise, it will be barred by prescription and the mortgage creditor will lose his rights under the mortgage.[5] It is clear that the actions referred to under Article 1142 of the Civil Code are those that necessarily arise from a mortgage. In the present case, however, PVB's petition for the issuance of an owner's duplicate certificate of title already arises from its right as the owner of the subject properties and no longer as a mortgagee. The mortgage contract respondent entered into with petitioner had already been foreclosed, the properties sold and the sale in favor of PVB registered with the Register of Deeds of the Province of Cagayan. Hence, since the petition filed by PVB is not a mortgage action, the provisions of Article 1142 of the Civil Code do not apply.

In any case, Presidential Decree (PD) No. 1529, otherwise known as the Property Registration Decree, the law that specifically governs petitions for the replacement of lost duplicate certificates of title, does not provide for any limitation or period for filing the said petition. The silence of the law on this matter can only be interpreted to mean that there is no intention to provide a prescriptive period for filing this petition.

As to the second issue, petitioner anchors his opposition to the petition filed by PVB on the contention that the titles, which he presented to the bank as evidence that the subject properties were used as security for the loan he and his wife incurred with the said bank, were genuine but were later on altered by the bank's officials and employees with whom he allegedly entered a deal in order to have his loan approved. Petitioner claims that this altered and spurious titles were the ones presented by PVB in its first petition filed with the RTC in June 1986. However,

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[5] *Cando v. Spouses Olazo*, G.R. No. 160741, March 22, 2007, 518 SCRA 741; *Tambunting, Jr. v. Sumabat*, G.R. No. 144101, September 16, 2005, 470 SCRA 92, 97.

these allegations remain unsubstantiated. They are self-serving statements which are not supported by any evidence whatsoever. It is settled that one who alleges a fact has the burden of proving it and mere allegation is not evidence.[6] The established fact remains that petitioner and his wife were the ones who submitted to PVB the authentic owner's copy of the titles over the subject properties and that these copies were lost.

The Court cannot follow the logic in petitioner's arguments considering that, in the first place, he and his wife were the ones who submitted the titles to PVB. Now that PVB seeks to obtain a duplicate copy of the titles covering the subject properties which it legally acquired, petitioner has made a complete turnaround and now assails the authenticity of these titles which he and his wife used to obtain their loan. Nonetheless, petitioner is estopped from doing so.

Settled is the rule that a person, who by his deed or conduct has induced another to act in a particular manner, is barred from adopting an inconsistent position, attitude or course of conduct that thereby causes loss or injury to the latter.[7] The doctrine of estoppel is based upon the grounds of public policy, fair dealing, good faith and justice, and its purpose is to forbid one to speak against his own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied thereon.[8]

Article 1431 of the Civil Code states that "[t]hrough estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon."

The essential elements of estoppel are: (1) conduct of a party amounting to false representation or concealment of material

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[6] *Heirs of Cesar Marasigan v. Marasigan*, G.R. No. 156078, March 14, 2008, 548 SCRA 409, 440; *Amor-Catalan v. Court of Appeals*, G.R. No. 167109, February 6, 2007, 514 SCRA 607, 612.

[7] *Harold v. Aliba*, G.R. No. 130864, October 2, 2007, 534 SCRA 478, 487.

[8] *Id.*

facts or at least calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intent, or at least expectation, that this conduct shall be acted upon by, or at least influence, the other party; and (3) knowledge, actual or constructive, of the real facts.[9]

In the present case, petitioner may not renege on his own acts and representations to the prejudice of respondent bank, which has relied on them. Since petitioner entered into a binding contract on his own volition using the titles which he now assails, he is therefore estopped from questioning the authenticity of these documents which paved the way for the consummation of the contract from which he derived benefit.

Other than to harass the respondent, the Court is at a loss as to what petitioner really desires to achieve in opposing the respondent bank's petition. The Court agrees with respondent's observation that petitioner's actuations are demonstrative of his desperate attempt to cling on to the subject properties despite the fact that he has lost them by reason of foreclosure due to his failure to pay his obligations and his subsequent inability to redeem them during the period allowed by law.

Coming to the third and fourth issues, petitioner calls on the Court to resolve issues of fact. Settled is the rule that a petition for review on *certiorari* filed with this Court under Rule 45 of the Revised Rules of Court shall raise only questions of law.[10] This Court is not a trier of facts. It is not its function to analyze or weigh evidence. The jurisdiction of this Court over cases brought to it is limited to the review and rectification of errors allegedly committed by the lower courts.[11] While there are

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[9] *Lim v. Queensland Tokyo Commodities, Inc.*, 424 Phil. 35, 43-44 (2002).

[10] *Marcelo v. Bungubung*, G.R. No. 175201, April 23, 2008, 552 SCRA 589, 605.

[11] *Quitoriano v. Department of Agrarian Reform Adjudication Board*, G.R. No. 171184, March 4, 2008, 547 SCRA 617, 627.

exceptions to this rule,[12] the Court finds that the present case does not fall under any of them.

In any case, what petitioner is trying to impress upon the Court in the third and fourth issues is that PVB is concealing the fact that the alleged spurious copies of the subject TCTs were not actually lost. However, the Court gives full faith and credence to the finding of the RTC that the owner's duplicate copies in the possession of PVB were, in fact, lost. This is consistent with the settled rule that appellate courts should not, unless for strong and cogent reasons, reverse the findings of fact of trial courts.[13] This is so because trial judges are in a better position to examine real evidence and at a vantage point to observe the actuation and the demeanor of the witnesses.[14] In the instant case, the Court finds no sufficient reason to depart from the above findings of the RTC.

Petitioner further questions PVB's submission of the certified true copies of the TCTs covering the subject properties, which

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[12] 1. When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;

2. When the inference made is manifestly mistaken, absurd or impossible;

3. Where there is a grave abuse of discretion;

4. When the judgment is based on a misapprehension of facts;

5. When the findings of fact are conflicting;

6. When the Court of Appeals, in making its findings, went beyond the issues of the case, and the same is contrary to the admissions of both appellant and appellee;

7. When the findings are contrary to those of the trial court;

8. When the findings of fact are conclusions without citation of specific evidence on which they are based;

9. When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and

10.When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record. (*Samaniego-Celada v. Abena,* G.R. No. 145545, June 30, 2008, 556 SCRA 569, 576-577)

[13] *United Airlines v. Court of Appeals*, 409 Phil. 88, 101 (2001).

[14] *Id.*

were taken from the files of the Register of Deeds of Angeles City. However, PVB has sufficiently explained that it is only submitting evidence to prove that it complied with the jurisdictional requirement under Section 109[15] of PD No. 1529, which directs a person applying for the issuance of another duplicate certificate of title to file a sworn statement with the concerned Register of Deeds of the fact of loss or destruction of the original owner's duplicate copy of the subject TCT.

It bears to emphasize that in a petition for the issuance of a second owner's duplicate copy of a certificate of title in replacement of a lost one, the only questions to be resolved are: whether or not the original owner's duplicate copy has indeed been lost and whether the petitioner seeking the issuance of a new owner's duplicate title is the registered owner or other person in interest.[16]

The first question is factual and, in the present case, the RTC had already made a finding that the original owner's duplicate copy of the subject TCTs had indeed been lost. In this respect, the Court finds no cogent reason to depart from the findings of the RTC as discussed earlier.

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[15] SEC. 109. *Notice and replacement of lost duplicate certificate.* – In case of loss or theft of an owner's duplicate certificate of title, due notice under oath shall be sent by the owner or by someone in his behalf to the Register of Deeds of the province or city where the land lies as soon as the loss or theft is discovered. If a duplicate certificate is lost or destroyed, or cannot be produced by a person applying for the entry of a new certificate to him or for the registration of any new instrument, a sworn statement of the fact of such loss or destruction may be filed by the registered owner or other person in interest and registered.

Upon the petition of the registered owner or other person in interest, the court may, after notice and due hearing, direct the issuance of a new duplicate certificate, which shall contain a memorandum of the fact that it is issued in place of the lost duplicate certificate, but shall in all respects be entitled to like faith and credit as the original duplicate, and shall thereafter be regarded as such for all purposes of this decree.

[16] *Macabalo-Bravo v. Macabalo*, G.R. No. 144099, September 26, 2005, 471 SCRA 60, 67 citing *New Durawood Co., Inc. v. Court of Appeals*, 324 Phil. 109, 123 (1996).

As to the second question, there is no dispute that PVB has an interest over the subject properties having acquired the same at public auction.

In sum, there is no doubt as to the identity of the subject properties. There is neither any dispute with respect to the fact that petitioner and his wife mortgaged these properties to PVB and that they subsequently failed to pay their obligations to the latter. Nor is there any issue as to the validity of the foreclosure proceedings as well as the auction sale conducted and PVB's subsequent acquisition of the subject properties.

Hence, on the basis of the foregoing, the Court finds that the RTC committed no error in granting PVB's petition for the issuance of an owner's duplicate copy of certificates of title covering the subject properties.

WHEREFORE, the petition is *DENIED*. The Resolutions dated August 25, 2003 and November 2, 2004, respectively, of the Court of Appeals in CA-G.R. CV No. 72856, are *AFFIRMED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 166759. November 25, 2009]

SOFIA TORRES, FRUCTOSA TORRES, HEIRS OF MARIO TORRES and SOLAR RESOURCES, INC., *petitioners, vs.* **NICANOR SATSATIN, EMILINDA AUSTRIA SATSATIN, NIKKI NORMEL SATSATIN and NIKKI NORLIN SATSATIN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY ATTACHMENT; DEFINED.— A writ of preliminary attachment is defined as a provisional remedy issued upon order of the court where an action is pending to be levied upon the property or properties of the defendant therein, the same to be held thereafter by the sheriff as security for the satisfaction of whatever judgment that might be secured in the said action by the attaching creditor against the defendant.

2. ID.; ID.; ID.; REQUISITE FOR APPROVAL OF BOND, NOT MET.— In accepting a surety bond, it is necessary that all the requisites for its approval are met; otherwise, the bond should be rejected. Every bond should be accompanied by a clearance from the Supreme Court showing that the company concerned is qualified to transact business which is valid only for thirty (30) days from the date of its issuance. However, it is apparent that the Certification issued by the Office of the Court Administrator (OCA) at the time the bond was issued would clearly show that the bonds offered by Western Guaranty Corporation may be accepted only in the RTCs of the cities of Makati, Pasay, and Pasig. Therefore, the surety bond issued by the bonding company should not have been accepted by the RTC of Dasmariñas, Branch 90, since the certification secured by the bonding company from the OCA at the time of the issuance of the bond certified that it may only be accepted in the above-mentioned cities.

3. ID.; ID.; ID.; DISTINCTION BETWEEN ISSUANCE AND IMPLEMENTATION OF A WRIT OF ATTACHMENT, WHEN NECESSARY.— [I]n provisional remedies, particularly that of preliminary attachment, the distinction between the issuance and the implementation of the writ of attachment is of utmost importance to the validity of the writ. The distinction is indispensably necessary to determine when jurisdiction over the person of the defendant should be acquired in order to validly implement the writ of attachment upon his person.

4. ID.; ID.; ID.; ONCE THE IMPLEMENTATION OF THE ATTACHMENT WRIT COMMENCES, COURT'S JURISDICTION OVER THE DEFENDANT MUST HAVE

BEEN ACQUIRED.— This Court has long put to rest the issue of when jurisdiction over the person of the defendant should be acquired in cases where a party resorts to provisional remedies. A party to a suit may, at any time after filing the complaint, avail of the provisional remedies under the Rules of Court. Specifically, Rule 57 on preliminary attachment speaks of the grant of the remedy "*at the commencement of the action or at any time before entry of judgment.*" This phrase refers to the date of the filing of the complaint, which is the moment that marks "the commencement of the action." The reference plainly is to a time before summons is served on the defendant, or even before summons issues. x x x. In *Cuartero v. Court of Appeals*, this Court held that x x x once the implementation of the writ commences, the court must have acquired jurisdiction over the defendant, for without such jurisdiction, the court has no power and authority to act in any manner against the defendant. Any order issuing from the Court will not bind the defendant.

5. ID.; ID.; ID.; ID.; EFFECT OF IRREGULARLY ENFORCED WRIT OF ATTACHMENT; CASE AT BAR.— In the instant case, assuming *arguendo* that the trial court validly issued the writ of attachment on November 15, 2002, which was implemented on November 19, 2002, it is to be noted that the summons, together with a copy of the complaint, was served only on November 21, 2002. At the time the trial court issued the writ of attachment on November 15, 2002, it can validly to do so since the motion for its issuance can be filed "at the commencement of the action or at any time before entry of judgment." However, at the time the writ was implemented, the trial court has not acquired jurisdiction over the persons of the respondent since no summons was yet served upon them. The proper officer should have previously or simultaneously with the implementation of the writ of attachment, served a copy of the summons upon the respondents in order for the trial court to have acquired jurisdiction upon them and for the writ to have binding effect. Consequently, even if the writ of attachment was validly issued, it was improperly or irregularly enforced and, therefore, cannot bind and affect the respondents.

6. ID.; ID.; ID.; TWO WAYS OF DISCHARGING THE ATTACHMENT WRIT.— There are two ways of discharging

the attachment. First, to file a counter-bond in accordance with Section 12 of Rule 57. Second[,] [t]o quash the attachment on the ground that it was irregularly or improvidently issued, as provided for in Section 13 of the same rule. Whether the attachment was discharged by either of the two ways indicated in the law, the attachment debtor cannot be deemed to have waived any defect in the issuance of the attachment writ by simply availing himself of one way of discharging the attachment writ, instead of the other. The filing of a counter-bond is merely a speedier way of discharging the attachment writ instead of the other way.

7. ID.; ID.; ID.; BELATED SERVICE OF SUMMONS CANNOT CURE THE DEFECT IN THE ENFORCEMENT OF A WRIT OF ATTACHMENT.— [A]ssuming *arguendo* that the writ of attachment was validly issued, although the trial court later acquired jurisdiction over the respondents by service of the summons upon them, such belated service of summons on respondents cannot be deemed to have cured the fatal defect in the enforcement of the writ. The trial court cannot enforce such a coercive process on respondents without first obtaining jurisdiction over their person. The preliminary writ of attachment must be served after or simultaneous with the service of summons on the defendant whether by personal service, substituted service or by publication as warranted by the circumstances of the case. The subsequent service of summons does not confer a retroactive acquisition of jurisdiction over her person because the law does not allow for retroactivity of a belated service.

APPEARANCES OF COUNSEL

David Tamayo & Cui-David Law Offices for petitioners.
Teresita R. Paglinawan for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* assailing the Decision[1] dated November 23, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 83595, and its Resolution[2] dated January 18, 2005, denying petitioners' motion for reconsideration.

The factual and procedural antecedents are as follows:

The siblings Sofia Torres (Sofia), Fructosa Torres (Fructosa), and Mario Torres (Mario) each own adjacent 20,000 square meters track of land situated at Barrio Lankaan, Dasmariñas, Cavite, covered by Transfer Certificate of Title (TCT) Nos. 251267,[3] 251266,[4] and 251265,[5] respectively.

Sometime in 1997, Nicanor Satsatin (Nicanor) asked petitioners' mother, Agripina Aledia, if she wanted to sell their lands. After consultation with her daughters, daughter-in-law, and grandchildren, Agripina agreed to sell the properties. Petitioners, thus, authorized Nicanor, through a Special Power of Attorney, to negotiate for the sale of the properties.[6]

Sometime in 1999, Nicanor offered to sell the properties to Solar Resources, Inc. (Solar). Solar allegedly agreed to purchase the three parcels of land, together with the 10,000-square-meter property owned by a certain Rustica Aledia, for ₱35,000,000.00. Petitioners alleged that Nicanor was supposed to remit to them the total amount of ₱28,000,000.00 or ₱9,333,333.00 each to Sofia, Fructosa, and the heirs of Mario.

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[1] Penned by Associate Justice Mariano C. Del Castillo (now a member of this Court), with Associate Justices Romeo A. Brawner (now deceased) and Magdangal M. De Leon, concurring; *rollo*, pp. 41-59.

[2] *Rollo*, p. 39.

[3] CA *rollo*, pp. 54-55.

[4] *Id.* at 56-57.

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

[6] *Id.* at 60-65.

Petitioners claimed that Solar has already paid the entire purchase price of ₱35,000,000.00 to Nicanor in Thirty-Two (32) post-dated checks which the latter encashed/deposited on their respective due dates. Petitioners added that they also learned that during the period from January 2000 to April 2002, Nicanor allegedly acquired a house and lot at Vista Grande BF Resort Village, Las Piñas City and a car, which he registered in the names of his unemployed children, Nikki Normel Satsatin and Nikki Norlin Satsatin. However, notwithstanding the receipt of the entire payment for the subject property, Nicanor only remitted the total amount of ₱9,000,000.00, leaving an unremitted balance of ₱19,000,000.00. Despite repeated verbal and written demands, Nicanor failed to remit to them the balance of ₱19,000,000.00.

Consequently, on October 25, 2002, petitioners filed before the regional trial court (RTC) a Complaint[7] for sum of money and damages, against Nicanor, Ermilinda Satsatin, Nikki Normel Satsatin, and Nikki Norlin Satsatin. The case was docketed as Civil Case No. 2694-02, and raffled to RTC, Branch 90, Dasmariñas, Cavite.

On October 30, 2002, petitioners filed an *Ex-Parte* Motion for the Issuance of a Writ of Attachment,[8] alleging among other things: that respondents are about to depart the Philippines; that they have properties, real and personal in Metro Manila and in the nearby provinces; that the amount due them is ₱19,000,000.00 above all other claims; that there is no other sufficient security for the claim sought to be enforced; and that they are willing to post a bond fixed by the court to answer for all costs which may be adjudged to the respondents and all damages which respondents may sustain by reason of the attachment prayed for, if it shall be finally adjudged that petitioners are not entitled thereto.

On October 30, 2002, the trial court issued an Order[9] directing the petitioners to post a bond in the amount of ₱7,000,000.00

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[7] Records, pp. 1-14.

[8] CA *rollo*, pp. 79-83.

[9] *Id.* at 110-112.

before the court issues the writ of attachment, the dispositive portion of which reads as follows:

> WHEREFORE, premises considered, and finding the present complaint and motion sufficient in form and substance, this Court hereby directs the herein plaintiffs to post a bond, pursuant to Section 3, Rule 57 of the 1997 Rules of Civil Procedure, in the amount of Seven Million Pesos (P7,000,000.00), before the Writ of Attachment issues.[10]

On November 15, 2002, petitioners filed a Motion for Deputation of Sheriff,[11] informing the court that they have already filed an attachment bond. They also prayed that a sheriff be deputized to serve the writ of attachment that would be issued by the court.

In the Order[12] dated November 15, 2002, the RTC granted the above motion and deputized the sheriff, together with police security assistance, to serve the writ of attachment.

Thereafter, the RTC issued a Writ of Attachment[13] dated November 15, 2002, directing the sheriff to attach the estate, real or personal, of the respondents, the decretal portion of which reads:

> WE, THEREFORE, command you to attach the estate, real or personal, not exempt from execution, of the said defendants, in your province, to the value of said demands, and that you safely keep the same according to the said Rule, unless the defendants give security to pay such judgment as may be recovered on the said action, in the manner provided by the said Rule, provided that your legal fees and all necessary expenses are fully paid.
>
> You shall return this writ with your proceedings indorsed hereon within twenty (20) days from the date of receipt hereof.

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[10] *Id.* at 112.

[11] *Id.* at 127.

[12] *Id.* at 128.

[13] *Id.* at 129-130.

GIVEN UNDER MY HAND AND SEAL of this Court, this 15th day of November, 2002, at Imus for Dasmariñas, Cavite, Philippines.[14]

On November 19, 2002, a copy of the writ of attachment was served upon the respondents. On the same date, the sheriff levied the real and personal properties of the respondent, including household appliances, cars, and a parcel of land located at Las Piñas, Manila.[15]

On November 21, 2002, summons, together with a copy of the complaint, was served upon the respondents.[16]

On November 29, 2002, respondents filed their Answer.[17]

On the same day respondents filed their answer, they also filed a Motion to Discharge Writ of Attachment[18] anchored on the following grounds: the bond was issued before the issuance of the writ of attachment; the writ of attachment was issued before the summons was received by the respondents; the sheriff did not serve copies of the application for attachment, order of attachment, plaintiffs' affidavit, and attachment bond, to the respondents; the sheriff did not submit a sheriff's return in violation of the Rules; and the grounds cited for the issuance of the writ are baseless and devoid of merit. In the alternative, respondents offered to post a counter-bond for the lifting of the writ of attachment.[19]

On March 11, 2003, after the parties filed their respective pleadings, the RTC issued an Order[20] denying the motion, but at the same time, directing the respondents to file a counter-bond, to wit:

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[14] *Id.* at 130.

[15] *Id.* at 154-156.

[16] *Id.* at 131-132.

[17] *Id.* at 133-145.

[18] *Id.* at 146-153.

[19] *Id.* at 146-149.

[20] *Id.* at 169-170.

WHEREFORE, premises considered, after the pertinent pleadings of the parties have been taken into account, the herein defendants are hereby directed to file a counter-bond executed to the attaching party, in the amount of Seven Million Pesos (₱7,000,000.00), to secure the payment of any judgment that the attaching party may recover in the action, with notice on the attaching party, whereas, the Motion to Discharge Writ of Attachment is DENIED.

SO ORDERED.[21]

Thereafter, respondents filed a motion for reconsideration and/or motion for clarification of the above order. On April 3, 2003, the RTC issued another Order[22] which reads:

In view of the Urgent Motion For Reconsideration And/Or Motion For Clarification of the Order of this Court dated March 11, 2003, denying their Motion to Discharge Writ of Attachment filed by the defendants through counsel Atty. Franco L. Loyola, the Motion to Discharge Writ of Attachment is denied until after the defendants have posted the counter-bond in the amount of Seven Million Pesos (₱7,000,000.00).

The defendants, once again, is directed to file their counter-bond of Seven Million Pesos (₱7,000,000.00), if it so desires, in order to discharge the Writ of Attachment.

SO ORDERED.

On December 15, 2003, respondents filed an Urgent Motion to Lift/Set Aside Order Dated March [11], 2003,[23] which the RTC denied in an Order[24] of even date, the dispositive portion of which reads:

WHEREFORE, premises considered, defendants' Urgent Motion to Lift/Set Aside Order Dated March 23, 2003 (With Manifestation to Dissolve Writ of Attachment) is hereby DENIED for lack of Merit.

SO ORDERED.

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[21] *Id.* at 170.

[22] *Id.* at 171.

[23] *Id.* at 171-178.

[24] *Id.* at 39.

Respondents filed an Urgent Motion for Reconsideration,[25] but it was denied in the Order[26] dated March 3, 2004.

Aggrieved, respondents filed before the CA a Petition for *Certiorari*, *Mandamus* and Prohibition with Preliminary Injunction and Temporary Restraining Order[27] under Rule 65 of the Rules of Court, docketed as CA-G.R. SP No. 83595, anchored on the following grounds:

(1) public respondents committed grave abuse of discretion amounting to lack of or in excess of jurisdiction in failing to notice that the lower court has no jurisdiction over the person and subject matter of the complaint when the subject Writ of Attachment was issued;

(2) public respondents committed grave abuse of discretion amounting to lack of or in excess of jurisdiction in granting the issuance of the Writ of Attachment despite non-compliance with the formal requisites for the issuance of the bond and the Writ of Attachment.[28]

Respondents argued that the subject writ was improper and irregular having been issued and enforced without the lower court acquiring jurisdiction over the persons of the respondents. They maintained that the writ of attachment was implemented without serving upon them the summons together with the complaint. They also argued that the bond issued in favor of the petitioners was defective, because the bonding company failed to obtain the proper clearance that it can transact business with the RTC of Dasmariñas, Cavite. They added that the various clearances which were issued in favor of the bonding company were applicable only in the courts of the cities of Pasay, Pasig, Manila, and Makati, but not in the RTC, Imus, Cavite.[29]

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[25] *Id.* at 184-189.

[26] *Id.* at 36-38.

[27] *Id.* at 2-35.

[28] *Rollo*, p. 52.

[29] *Id.* at 53.

On November 23, 2003, the CA rendered the assailed Decision in favor of the respondents, finding grave abuse of discretion amounting to lack of or in excess of jurisdiction on the part of the RTC in issuing the Orders dated December 15, 2003 and March 3, 2004. The decretal portion of the Decision reads:

> WHEREFORE, the instant petition is hereby ***GRANTED***. Accordingly, the assailed Orders are hereby nullified and set aside. The levy on the properties of the petitioners pursuant to the Writ of Attachment issued by the lower court is hereby ***LIFTED***.
>
> SO ORDERED.[30]

Petitioners filed a Motion for Reconsideration,[31] but it was denied in the Resolution[32] dated January 18, 2005.

Hence, this petition assigning the following errors:

I.

THE HONORABLE COURT OF APPEALS ERRED IN ORDERING THE LIFTING OF THE WRIT OF ATTACHMENT PURSUANT TO SECTION 13, RULE 57 OF THE REVISED RULES OF CIVIL PROCEDURE.

II.

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION IN GRANTING THE WRIT OF ATTACHMENT DESPITE THE BOND BEING INSUFFICIENT AND HAVING BEEN IMPROPERLY ISSUED.

III.

THE HONORABLE COURT OF APPEALS ERRED IN NOT DISMISSING THE PETITION BY REASON OF ESTOPPEL, LACHES AND PRESCRIPTION AND IN HOLDING THAT THE WRIT OF ATTACHMENT WAS IMPROPERLY AND IRREGULARLY

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[30] *Id.* at 58.

[31] *Id.* at 60-69.

[32] *Id.* at 38-39.

ENFORCED IN VIOLATION OF SECTION 5, RULE 57 OF THE REVISED RULES OF COURT.

IV.

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE PRINCIPLE OF ESTOPPEL WILL NOT LIE AGAINST RESPONDENTS.

Petitioners maintain that in the case at bar, as in the case of *FCY Construction Group, Inc. v. Court of Appeals*,[33] the only way the subject writ of attachment can be dissolved is by a counter-bond. They claim that the respondents are not allowed to file a motion to dissolve the attachment under Section 13, Rule 57 of the Rules of Court. Otherwise, the hearing on the motion for the dissolution of the writ would be tantamount to a trial on the merits, considering that the writ of preliminary attachment was issued upon a ground which is, at the same time, the applicant's cause of action.

Petitioners insist that the determination of the existence of grounds to discharge a writ of attachment rests in the sound discretion of the lower court. They argue that the Certification[34] issued by the Office of the Administrator and the Certifications[35] issued by the clerks of court of the RTCs of Dasmariñas and Imus, Cavite, would show that the bonds offered by Western Guaranty Corporation, the bonding company which issued the bond, may be accepted by the RTCs of Dasmariñas and Imus, Cavite, and that the said bonding company has no pending liability with the government.

Petitioners contend that respondents are barred by estoppel, laches, and prescription from questioning the orders of the RTC issuing the writ of attachment. They also maintain that the issue whether there was impropriety or irregularity in the issuance of the orders is moot and academic, considering that the attachment bond questioned by the respondent had already expired on

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[33] G.R. No. 123358, February 1, 2000, 324 SCRA 270.

[34] *CA rollo*, p. 354.

[35] *Id.* at 356-365.

November 14, 2003 and petitioners have renewed the attachment bond covering the period from November 14, 2003 to November 14, 2004, and further renewed to cover the period of November 14, 2004 to November 14, 2005.

The petition is bereft of merit.

A writ of preliminary attachment is defined as a provisional remedy issued upon order of the court where an action is pending to be levied upon the property or properties of the defendant therein, the same to be held thereafter by the sheriff as security for the satisfaction of whatever judgment that might be secured in the said action by the attaching creditor against the defendant.[36]

In the case at bar, the CA correctly found that there was grave abuse of discretion amounting to lack of or in excess of jurisdiction on the part of the trial court in approving the bond posted by petitioners despite the fact that not all the requisites for its approval were complied with. In accepting a surety bond, it is necessary that all the requisites for its approval are met; otherwise, the bond should be rejected.[37]

Every bond should be accompanied by a clearance from the Supreme Court showing that the company concerned is qualified to transact business which is valid only for thirty (30) days from the date of its issuance.[38] However, it is apparent that the Certification[39] issued by the Office of the Court Administrator (OCA) at the time the bond was issued would clearly show that the bonds offered by Western Guaranty Corporation may be accepted only in the RTCs of the cities of Makati, Pasay, and Pasig. Therefore, the surety bond issued by the bonding company should not have been accepted by the RTC of Dasmariñas, Branch 90, since the certification secured by the bonding company

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[36] *Cuartero v. Court of Appeals*, G.R. No. 102448, August 5, 1992, 212 SCRA 260.

[37] *Judicial Audit and Physical Inventory of Confiscated Cash, Surety and Property Bonds at RTC, Tarlac City, Brs. 63, 64 & 65*, A.M. No. 04-7-358-RTC, July 22, 2005, 464 SCRA 21, 28.

[38] *Id*.

[39] CA *rollo*, p. 119.

from the OCA at the time of the issuance of the bond certified that it may only be accepted in the above-mentioned cities. Thus, the trial court acted with grave abuse of discretion amounting to lack of or in excess of jurisdiction when it issued the writ of attachment founded on the said bond.

Moreover, in provisional remedies, particularly that of preliminary attachment, the distinction between the issuance and the implementation of the writ of attachment is of utmost importance to the validity of the writ. The distinction is indispensably necessary to determine when jurisdiction over the person of the defendant should be acquired in order to validly implement the writ of attachment upon his person.

This Court has long put to rest the issue of when jurisdiction over the person of the defendant should be acquired in cases where a party resorts to provisional remedies. A party to a suit may, at any time after filing the complaint, avail of the provisional remedies under the Rules of Court. Specifically, Rule 57 on preliminary attachment speaks of the grant of the remedy "*at the commencement of the action or at any time before entry of judgment.*"[40] This phrase refers to the date of the filing of the complaint, which is the moment that marks "the commencement of the action." The reference plainly is to a time before summons is served on the defendant, or even before summons issues.[41]

In *Davao Light & Power Co., Inc. v. Court of Appeals*,[42] this Court clarified the actual time when jurisdiction should be had:

> It goes without saying that whatever be the acts done by the Court prior to the acquisition of jurisdiction over the person of defendant x x x issuance of summons, **order of attachment and writ of attachment** x x x these ***do not and cannot bind and affect the defendant until and unless jurisdiction over his person is eventually obtained by the court,*** either by service on him of summons or other coercive process or his voluntary submission to the court's authority. Hence, when the sheriff or other proper officer commences

[40] Rules of Court, Rule 57, Sec. 1.

[41] *Mangila v. Court of Appeals* , 435 Phil. 870, 880 (2002).

[42] G.R. No. 93262, November 29, 1991, 204 SCRA 343, 355-356.

implementation of the writ of attachment, *it is essential that he serve on the defendant not only a copy of the applicant's affidavit and attachment bond, and of the order of attachment, as explicitly required by Section 5 of Rule 57,* but also the **summons** addressed to said defendant as well as a copy of the complaint x x x. (Emphasis supplied.)

In *Cuartero v. Court of Appeals*,[43] this Court held that the grant of the provisional remedy of attachment involves three stages: first, the court issues the order granting the application; second, the writ of attachment issues pursuant to the order granting the writ; and third, the writ is implemented. For the initial two stages, it is not necessary that jurisdiction over the person of the defendant be first obtained. However, once the implementation of the writ commences, the court must have acquired jurisdiction over the defendant, for without such jurisdiction, the court has no power and authority to act in any manner against the defendant. Any order issuing from the Court will not bind the defendant.[44]

Thus, it is indispensable not only for the acquisition of jurisdiction over the person of the defendant, but also upon consideration of fairness, to apprise the defendant of the complaint against him and the issuance of a writ of preliminary attachment and the grounds therefor that prior or contemporaneously to the serving of the writ of attachment, service of summons, together with a copy of the complaint, the application for attachment, the applicant's affidavit and bond, and the order must be served upon him.

In the instant case, assuming *arguendo* that the trial court validly issued the writ of attachment on November 15, 2002, which was implemented on November 19, 2002, it is to be noted that the summons, together with a copy of the complaint, was served only on November 21, 2002.

At the time the trial court issued the writ of attachment on November 15, 2002, it can validly to do so since the motion for

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[43] *Supra* note 36.

[44] *Id.* at 266.

its issuance can be filed "at the commencement of the action or at any time before entry of judgment." However, at the time the writ was implemented, the trial court has not acquired jurisdiction over the persons of the respondent since no summons was yet served upon them. The proper officer should have previously or simultaneously with the implementation of the writ of attachment, served a copy of the summons upon the respondents in order for the trial court to have acquired jurisdiction upon them and for the writ to have binding effect. Consequently, even if the writ of attachment was validly issued, it was improperly or irregularly enforced and, therefore, cannot bind and affect the respondents.

Moreover, although there is truth in the petitioners' contention that an attachment may not be dissolved by a showing of its irregular or improper issuance if it is upon a ground which is at the same time the applicant's cause of action in the main case, since an anomalous situation would result if the issues of the main case would be ventilated and resolved in a mere hearing of a motion. However, the same is not applicable in the case bar. It is clear from the respondents' pleadings that the grounds on which they base the lifting of the writ of attachment are the irregularities in its issuance and in the service of the writ; not petitioners' cause of action.

Further, petitioners' contention that respondents are barred by estoppel, laches, and prescription from questioning the orders of the RTC issuing the writ of attachment and that the issue has become moot and academic by the renewal of the attachment bond covering after its expiration, is devoid of merit. As correctly held by the CA:

> There are two ways of discharging the attachment. First, to file a counter-bond in accordance with Section 12 of Rule 57. Second[,] [t]o quash the attachment on the ground that it was irregularly or improvidently issued, as provided for in Section 13 of the same rule. Whether the attachment was discharged by either of the two ways indicated in the law, the attachment debtor cannot be deemed to have waived any defect in the issuance of the attachment writ by simply availing himself of one way of discharging the attachment

writ, instead of the other. The filing of a counter-bond is merely a speedier way of discharging the attachment writ instead of the other way.[45]

Moreover, again assuming *arguendo* that the writ of attachment was validly issued, although the trial court later acquired jurisdiction over the respondents by service of the summons upon them, such belated service of summons on respondents cannot be deemed to have cured the fatal defect in the enforcement of the writ. The trial court cannot enforce such a coercive process on respondents without first obtaining jurisdiction over their person. The preliminary writ of attachment must be served after or simultaneous with the service of summons on the defendant whether by personal service, substituted service or by publication as warranted by the circumstances of the case. The subsequent service of summons does not confer a retroactive acquisition of jurisdiction over her person because the law does not allow for retroactivity of a belated service.[46]

WHEREFORE, premises considered, the petition is *DENIED*. The Decision and Resolution of the Court of Appeals dated November 23, 2004 and January 18, 2005, respectively, in CA-G.R. SP No. 83595 are *AFFIRMED*.

SO ORDERED.

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

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[45] *Rollo,* pp. 57-58.

[46] *Supra* note 41, at 883.

THIRD DIVISION

[G.R. No. 173146. November 25, 2009]

AGUSAN DEL NORTE ELECTRIC COOPERATIVE, INC. (ANECO), represented by its Manager ROMEO O. DAGANI, *petitioner, vs.* **ANGELITA BALEN and SPOUSES HERCULES and RHEA LARIOSA,** *respondents.*

SYLLABUS

1. CIVIL LAW; *QUASI DELICT*; NEGLIGENCE; DEFINED.— Negligence is defined as the failure to observe for the protection of the interests of another person that degree of care, precaution, and vigilance which the circumstances justly demand, by reason of which such other person suffers injury.

2. ID.; ID.; ID.; TEST TO DETERMINE EXISTENCE OF NEGLIGENCE.— The test to determine the existence of negligence in a particular case may be stated as follows: Did the defendant in the performance of the alleged negligent act use reasonable care and caution which an ordinary person would have used in the same situation? If not, then he is guilty of negligence. The existence of negligence in a given case is not determined by reference to the personal judgment of the actor in the situation before him. The law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability by that norm.

3. ID.; ID.; ID.; WHEN A PARTY'S NEGLIGENCE WAS THE PROXIMATE CAUSE OF THE INJURIES.— That ANECO's negligence was the proximate cause of the injuries sustained by respondents was aptly discussed by the CA. x x x Although ANECO followed said clearance requirement, the installed lines were high voltage, consisting of open wires, *i.e.*, not covered with insulators, like rubber, and charged with 13, 200 volts. Knowing that it was installing a main distribution line of high voltage over a populated area, ANECO should have practiced caution, care and prudence by installing insulated wires, or else found an unpopulated area for the said line to traverse. The court *a quo* correctly observed that ANECO failed to show

any compelling reason for the installation of the questioned wires over MIGUEL BALEN's house. That the clearance requirements for the installation of said line were met by ANECO does not suffice to exonerate it from liability. Besides, there is scarcity of evidence in the records showing that ANECO put up the precautionary sign: "WARNING-HIGH VOLTAGE-KEEP OUT" at or near the house of MIGUEL BALEN as required by the Philippine Electrical Code for installation of wires over 600 volts.

4. ID.; ID.; ID.; ID.; FORESEEABILITY TEST FOR DETERMINING THE EXISTENCE OF PROXIMATE CAUSE, APPLIED.— One of the tests for determining the existence of proximate cause is the foreseeability test, *viz.*: x x x – Where the particular harm was reasonably foreseeable at the time of the defendant's misconduct, his act or omission is the legal cause thereof. Foreseeability is the fundamental test of the law of negligence. To be negligent, the defendant must have acted or failed to act in such a way that an ordinary reasonable man would have realized that certain interests of certain persons were unreasonably subjected to a general but definite class of risk which made the actor's conduct negligent, it is obviously the consequence for the actor must be held legally responsible. Otherwise, the legal duty is entirely defeated. Accordingly, the generalization may be formulated that all particular consequences, that is, consequences which occur in a manner which was reasonably foreseeable by the defendant at the time of his misconduct are legally caused by his breach of duty x x x. Thus applying aforecited test, x x x ANECO's act of leaving unprotected and uninsulated the main distribution line over Balen's residence was the proximate cause of the incident which claimed Exclamado's life and injured respondents Balen and Lariosa. Proximate cause is defined as any cause that produces injury in a natural and continuous sequence, unbroken by any efficient intervening cause, such that the result would not have occurred otherwise.

5. ID.; ID.; ID.; PASSAGE OF TIME WILL NOT ABSOLVE OR MITIGATE THE PARTY'S LIABILITY FOR NEGLIGENCE.— ANECO's contention that the accident happened only eleven (11) years after the installation of the high-voltage wire cannot serve to absolve or mitigate ANECO's liability. As we held in *Benguet Electric Cooperative, Inc. v. Court of Appeals*: xxx

BENECO's contention that the accident happened only on January 14, 1985, around seven (7) years after the open wire was found existing in 1978, far from mitigating its culpability, betrays its gross neglect in performing its duty to the public.

APPEARANCES OF COUNSEL

Rodolfo B. Ato for petitioner.

Bernabe Doyon Bringas & Partners Law Office for respondents.

D E C I S I O N

NACHURA, *J.*:

On appeal is the February 21, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 66153, affirming the December 2, 1999 Decision[2] of the Regional Trial Court (RTC) of Butuan City, Branch 2, as well as its subsequent Resolution,[3] denying petitioner's motion for reconsideration.

Petitioner Agusan del Norte Electric Cooperative, Inc. (ANECO) is a duly organized and registered consumers cooperative, engaged in supplying electricity in the province of Agusan del Norte and in Butuan City. In 1981, ANECO installed an electric post in Purok 4, Ata-atahon, Nasipit, Agusan del Norte, with its main distribution line of 13,000 kilovolts traversing Angelita Balen's (Balen's) residence. Balen's father, Miguel, protested the installation with the District Engineer's Office and with ANECO, but his protest just fell on deaf ears.

On July 25, 1992, Balen, Hercules Lariosa (Lariosa) and Celestino Exclamado (Exclamado) were electrocuted while removing the television antenna (TV antenna) from Balen's

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[1] Penned by Associate Justice Myrna Dimaranan-Vidal, with Associate Justices Romulo V. Borja and Ricardo R. Rosario, concurring; *rollo*, pp. 43-56.

[2] Records, pp. 341-367.

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

residence. The antenna pole touched ANECO's main distribution line which resulted in their electrocution. Exclamado died instantly, while Balen and Lariosa suffered extensive third degree burns.

Balen and Lariosa (respondents) then lodged a complaint[4] for damages against ANECO with the RTC of Butuan City.

ANECO filed its answer[5] denying the material averments in the complaint, and raising lack of cause of action as a defense. It posited that the complaint did not allege any wrongful act on the part of ANECO, and that respondents acted with gross negligence and evident bad faith. ANECO, thus, prayed for the dismissal of the complaint.

After trial, the RTC rendered a Decision,[6] disposing that:

> WHEREFORE, judgment is hereby rendered in favor of [respondents] and against [ANECO], directing, ordaining and ordering–
>
> a) That [ANECO] pay [respondent] Angelita E. Balen the sum of One Hundred Thousand Pesos (PHP100,000.00) and [respondent] Hercules A. Lariosa the sum of Seventy Thousand Pesos (PHP70,000.00) as reimbursement of their expenses for hospitalization, medicines, doctor's professional fees, transportation and miscellaneous expenses;
>
> b) That [ANECO] pay [respondent] Angelita E. Balen the sum of Seventy Two Thousand Pesos (PHP72,000.00) for loss of income for three (3) years;
>
> c) That [ANECO] pay [respondent] Angelita E. Balen the sum of Fifteen Thousand Pesos (PHP15,000.00) and another Fifteen Thousand Pesos (PHP15,000.00) to [respondent] Hercules A. Lariosa as moral damages, or a total of Thirty Thousand Pesos (PHP30,000.00);
>
> d) That [ANECO] pay [respondents] Angelita E. Balen and Hercules A. Lariosa Two Thousand Pesos (PHP2,000.00) each or a total of Four Thousand Pesos (PHP4,000.00) as exemplary damages;

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[4] Records, pp. 1-6.

[5] *Id.* at 26-28.

[6] *Id.* at 341-367.

e) That [ANECO] pay [respondents] Angelita E. Balen and Hercules A. Lariosa Eight Thousand Pesos (PHP8,000.00) each or a total of Sixteen Thousand Pesos [(PHP 16,000.00)] as attorney's fees and the sum of Two Thousand Pesos (PHP2,000.00) each or a total of Four Thousand Pesos (PHP4,000.00) for expense of litigation;

f) That [ANECO] pay the costs of this suit;

g) The dismissal of [ANECO's] counterclaim; [and]

h) That the amount of Thirteen Thousand Pesos (PHP13,000.00) given by ANECO to [respondent] Angelita E. Balen and acknowledged by the latter to have been received (pre-trial order, record[s,] pp. 36-37) must be deducted from the herein judgment debt.

SO ORDERED.[7]

On appeal, the CA affirmed *in toto* the RTC ruling. It declared that the proximate cause of the accident could not have been the act or omission of respondents, who were not negligent in taking down the antenna. The proximate cause of the injury sustained by respondents was ANECO's negligence in installing its main distribution line over Balen's residence. ANECO should have exercised caution, care and prudence in installing a high-voltage line over a populated area, or it should have sought an unpopulated area for the said line to traverse. The CA further noted that ANECO failed to put a precautionary sign for installation of wires over 600 volts, which is required by the Philippine Electrical Code.[8]

The CA disposed, thus:

WHEREFORE, premises considered, the assailed Decision is hereby **AFFIRMED** *in toto*.

SO ORDERED.[9]

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[7] *Id.* at 365-367.

[8] *Supra* note 1, at 52.

[9] *Id.* at 56.

ANECO filed a motion for reconsideration, but the CA denied it on May 26, 2006.[10]

Hence, this appeal.

Indisputably, Exclamado died and respondents sustained injuries from being electrocuted by ANECO's high-tension wire. These facts are borne out by the records and conceded by the parties.

ANECO, however, denied liability, arguing that the mere presence of the high-tension wires over Balen's residence did not cause respondents' injuries. The proximate cause of the accident, it claims, was respondents' negligence in removing the TV antenna and in allowing the pole to touch the high-tension wires. The findings of the RTC, it argues, patently run counter to the facts clearly established by the records. ANECO, thus, contends that the CA committed reversible error in sustaining the findings of the RTC.

The argument lacks merit.

Negligence is defined as the failure to observe for the protection of the interests of another person that degree of care, precaution, and vigilance which the circumstances justly demand, by reason of which such other person suffers injury. The test to determine the existence of negligence in a particular case may be stated as follows: Did the defendant in the performance of the alleged negligent act use reasonable care and caution which an ordinary person would have used in the same situation? If not, then he is guilty of negligence. The existence of negligence in a given case is not determined by reference to the personal judgment of the actor in the situation before him. The law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability by that norm.[11]

The issue of who, between the parties, was negligent is a factual issue that this Court cannot pass upon, absent any whimsical

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[10] *Supra* note 3.

[11] See *Dy Teban Trading, Inc. v. Ching*, G.R. No. 161803, February 4, 2008, 543 SCRA 560.

or capricious exercise of judgment by the lower courts or an ample showing that they lacked any basis for their conclusions.[12] The unanimity of the CA and the trial court in their factual ascertainment that ANECO's negligence was the proximate cause of the injuries sustained by respondents bars us from supplanting their findings and substituting them with our own. The function of this Court is limited to the review of the appellate court's alleged errors of law. We are not required to weigh all over again the factual evidence already considered in the proceedings below.[13] ANECO has not shown that it is entitled to be excepted from this rule. It has not sufficiently demonstrated any special circumstances to justify a factual review.

That ANECO's negligence was the proximate cause of the injuries sustained by respondents was aptly discussed by the CA, which we quote:

> The evidence extant in the record shows that the house of MIGUEL BALEN already existed before the high voltage wires were installed by ANECO above it. ANECO had to follow the minimum clearance requirement of 3,050 under Part II of the Philippine Electrical Code for the installation of its main distribution lines above the roofs of buildings or houses. Although ANECO followed said clearance requirement, the installed lines were high voltage, consisting of open wires, *i.e.*, not covered with insulators, like rubber, and charged with 13, 200 volts. Knowing that it was installing a main distribution line of high voltage over a populated area, ANECO should have practiced caution, care and prudence by installing insulated wires, or else found an unpopulated area for the said line to traverse. The court *a quo* correctly observed that ANECO failed to show any compelling reason for the installation of the questioned wires over MIGUEL BALEN's house. That the clearance requirements for the installation of said line were met by ANECO does not suffice to exonerate it from liability. Besides, there is scarcity of evidence in the records showing that ANECO put up the precautionary sign: "WARNING-HIGH VOLTAGE-KEEP OUT" at or near the house of

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[12] *Philippine National Railways v. Brunty*, G.R. No. 169891, November 2, 2006, 506 SCRA 685.

[13] *Quezon City Government v. Dacara*, G.R. No. 150304, June 15, 2005, 460 SCRA 243.

MIGUEL BALEN as required by the Philippine Electrical Code for installation of wires over 600 volts.

Contrary to its stance, it is in fact ANECO which provided the proximate cause of the injuries of [respondents].

One of the tests for determining the existence of proximate cause is the foreseeability test, *viz.*:

> x x x – Where the particular harm was reasonably foreseeable at the time of the defendant's misconduct, his act or omission is the legal cause thereof. Foreseeability is the fundamental test of the law of negligence. To be negligent, the defendant must have acted or failed to act in such a way that an ordinary reasonable man would have realized that certain interests of certain persons were unreasonably subjected to a general but definite class of risk which made the actor's conduct negligent, it is obviously the consequence for the actor must be held legally responsible. Otherwise, the legal duty is entirely defeated. Accordingly, the generalization may be formulated that all particular consequences, that is, consequences which occur in a manner which was reasonably foreseeable by the defendant at the time of his misconduct are legally caused by his breach of duty x x x.

Thus applying aforecited test, ANECO should have reasonably foreseen that, even if it complied with the clearance requirements under the Philippine Electrical Code in installing the subject high tension wires above MIGUEL BALEN's house, still a potential risk existed that people would get electrocuted, considering that the wires were not insulated.

Above conclusion is further strengthened by the verity that MIGUEL BALEN had complained about the installation of said line, but ANECO did not do anything about it. Moreover, there is scant evidence showing that [respondents] knew beforehand that the lines installed by ANECO were live wires.

Otherwise stated, the proximate cause of the electrocution of [respondents] was ANECO's installation of its main distribution line of high voltage over the house of MIGUEL BALEN, without which the accident would not have occurred.

xxx xxx xxx

x x x the taking down by [respondents] of the antenna in MIGUEL BALEN's house would not have caused their electrocution were it not for the negligence of ANECO in installing live wires over the roof of the said house.[14]

Clearly, ANECO's act of leaving unprotected and uninsulated the main distribution line over Balen's residence was the proximate cause of the incident which claimed Exclamado's life and injured respondents Balen and Lariosa. Proximate cause is defined as any cause that produces injury in a natural and continuous sequence, unbroken by any efficient intervening cause, such that the result would not have occurred otherwise.[15]

ANECO's contention that the accident happened only eleven (11) years after the installation of the high-voltage wire cannot serve to absolve or mitigate ANECO's liability. As we held in *Benguet Electric Cooperative, Inc. v. Court of Appeals*:[16]

[A]s an electric cooperative holding the exclusive franchise in supplying electric power to the towns of Benguet province, its primordial concern is not only to distribute electricity to its subscribers but also to ensure the safety of the public by the proper maintenance and upkeep of its facilities. It is clear to us then that BENECO was grossly negligent in leaving unprotected and uninsulated the splicing point between the service drop line and the service entrance conductor, which connection was only eight (8) feet from the ground level, in violation of the Philippine Electrical Code. BENECO's contention that the accident happened only on January 14, 1985, around seven (7) years after the open wire was found existing in 1978, far from mitigating its culpability, betrays its gross neglect in performing its duty to the public. By leaving an open live wire unattended for years, BENECO demonstrated its utter disregard for the safety of the public. Indeed, Jose Bernardo's death was an accident that was bound to happen in view of the gross negligence of BENECO.

Indeed, both the trial and the appellate courts' findings, which are amply substantiated by the evidence on record, clearly point

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[14] *Rollo*, pp. 52-55.

[15] *Quezon City Government v. Dacara*, *supra* note 13.

[16] 378 Phil. 1137 (1999).

to ANECO's negligence as the proximate cause of the damages suffered by respondents Balen and Lariosa. No adequate reason has been given to overturn this factual conclusion. In fine, the CA committed no reversible error in sustaining the RTC.

WHEREFORE, the petition is *DENIED*. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 66153 are *AFFIRMED*. Costs against petitioner.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 176413. November 25, 2009]

SPOUSES DANILO T. SAMONTE and ROSALINDA N. SAMONTE, *petitioners, vs.* **CENTURY SAVINGS BANK,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY AND UNLAWFUL DETAINER; AN EJECTMENT SUIT MAY NOT BE ABATED OR SUSPENDED BY FILING ANOTHER ACTION RAISING OWNERSHIP OF THE PROPERTY; EXCEPTION THERETO, NOT APPLICABLE.— As a general rule, an ejectment suit cannot be abated or suspended by the mere filing of another action raising ownership of the property as an issue. x x x Only in rare instances is suspension allowed to await the outcome of a pending civil action. In *Vda. de Legaspi v. Avendaño,* and *Amagan v. Marayag,* we ordered the suspension of the ejectment proceedings on considerations of equity. We explained that

the ejectment of petitioners therein would mean a demolition of their house and would create confusion, disturbance, inconvenience, and expense. Needlessly, the court would be wasting much time and effort by proceeding to a stage wherein the outcome would at best be temporary but the result of enforcement would be permanent, unjust and probably irreparable. x x x [T]he instant case hardly falls within the exception cited in *Vda. de Legaspi* and *Amagan* as the resolution of the ejectment suit will not result in the demolition of the leased premises. Verily, petitioners failed to show "strong reasons of equity" to sustain the suspension or dismissal of the ejectment case. Faced with the same scenario on which the general rule is founded, and finding no reason to deviate therefrom, the Court adheres to settled jurisprudence that suits involving ownership may not be successfully pleaded in abatement of an action for ejectment. This rule is not without good reason. If the rule were otherwise, ejectment cases could easily be frustrated through the simple expedient of filing an action contesting the ownership over the property subject of the controversy. This would render nugatory the underlying philosophy of the summary remedy of ejectment which is to prevent criminal disorder and breaches of the peace and to discourage those who, believing themselves entitled to the possession of the property, resort to force rather than to some appropriate action in court to assert their claims. We are not unmindful of the afflictive consequences that will be suffered by petitioners if the ejectment is ordered, only to be reinstated later if they eventually win the nullification of the foreclosure case. However, respondent will also suffer an injustice if denied the remedy of ejectment, resort to which is not only allowed but, in fact, encouraged by law.

2. ID.; ID.; ID.; PURPOSE OF RULE 70 OF THE RULES OF COURT.— We would like to stress that unlawful detainer and forcible entry suits under Rule 70 of the Rules of Court are designed to summarily restore physical possession of a piece of land or building to one who has been illegally or forcibly deprived thereof, without prejudice to the settlement of the parties' opposing claims of juridical possession in appropriate proceedings. These actions are intended to avoid disruption of public order by those who would take the law in their hands purportedly to enforce their claimed right of possession. In these cases, the issue is pure physical or *de facto* possession,

and pronouncements made on questions of ownership are provisional in nature. The provisional determination of ownership in the ejectment case cannot be clothed with finality.

3. CIVIL LAW; LEASE; RIGHT OF THE LESSOR IN CASE OF BREACH OF LEASE CONTRACT.— [W]e sustain the finding that respondent has the better right to possess the subject property. The Contract of Lease executed by petitioners and respondent remains valid. It is undisputed that petitioners failed to comply with the terms thereof by their failure to pay the stipulated rent. As lessor of the subject property, respondent has the right to demand that petitioners pay their unpaid obligations and, in case of their failure, that they vacate the premises.

4. ID.; DAMAGES; LESSOR IS ENTITLED TO DAMAGES CAUSED BY THE LOSS OF USE AND POSSESSION OF THE PREMISES.— There is also no doubt that the plaintiff in the ejectment case (respondent herein) is entitled to damages caused by the loss of the use and possession of the premises. We quote with approval the appellate court's findings, *viz.*: x x x The award of back rentals amounting to Php80,000.00 and Php10,000.00 as reasonable compensation for the continued use and occupation of the property is proper.

APPEARANCES OF COUNSEL

Galarrita & Arboleda for petitioners.

Corpuz Ejercito Macasaet & Rivera Law Offices for respondent.

D E C I S I O N

NACHURA, *J.*:

This is a petition for review on *certiorari* of the Court of Appeals (CA) Decision[1] dated September 27, 2006 and Resolution[2] dated January 24, 2007 in CA-G.R. SP No. 86875.

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[1] Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Vicente Q. Roxas and Apolinario D. Bruselas, Jr., concurring; *rollo*, pp. 226-238.

[2] *Id.* at 262-263.

The assailed decision affirmed *in toto* the Regional Trial Court (RTC)[3] Decision[4] dated September 17, 2004 in Civil Case No. 04-913, which in turn affirmed the Metropolitan Trial Court (MeTC)[5] Decision[6] dated May 6, 2004 in Civil Case No. 79002 for *Ejectment*.

The facts are as follows:

Petitioners Danilo T. Samonte and Rosalinda N. Samonte obtained a loan amounting to ₱1,500,000.00 from respondent Century Savings Bank secured by a Real Estate Mortgage[7] over a property located at 7142 M. Ocampo Street, Pio del Pilar, Makati City. For petitioners' failure to pay the obligation, the mortgage was extrajudicially foreclosed on December 9, 1999 and the property was sold at public auction and was eventually awarded to respondent as the highest bidder.[8]

Having failed to redeem the property, petitioners entered into a Contract of Lease[9] with respondent, wherein the former agreed to pay the latter a monthly rental of ₱10,000.00 for and in consideration of their continuing occupation of the subject property from January 16, 2001-January 16, 2002. Petitioners further acknowledged respondent's valid and legal title to enter into the contract as absolute owner of the property in question.[10]

On March 28, 2001, respondent consolidated its ownership over the property, which led to the cancellation of petitioners' title and the issuance of a new one in respondent's name.[11]

Of the agreed monthly rentals, petitioners only paid a total amount of ₱40,000.00. On April 4, 2002, respondent sent a

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[3] Branch CXXXIX (139), Makati City.

[4] Penned by Presiding Judge Benjamin T. Pozon; *rollo*, pp. 132-139.

[5] Branch 67, Makati City.

[6] Penned by Pairing Judge Evelyn S. Arcaya-Chua; *rollo*, pp. 127-131.

[7] *Rollo*, pp. 37-40.

[8] *Id.* at 227.

[9] *Id.* at 99-102.

[10] *Id.* at 99.

[11] *Id.* at 227.

letter[12] to petitioners demanding that the latter pay their unpaid rentals and vacate the leased premises. Petitioners, however, refused to heed the demand. Hence, the complaint for ejectment docketed as Civil Case No. 79002.

In their Answer,[13] petitioners admitted having entered into the contract of lease but claimed that it was void, since their consent was vitiated by mistake and they were made to believe that it was a requirement for the loan-restructuring agreement with the bank. To justify their failure to pay the rents and to vacate the premises, petitioners insisted on the nullity of the foreclosure proceedings.

Petitioners had, in fact, commenced an action for the nullification of the foreclosure proceedings docketed as Civil Case No. 01-1564.[14]

On May 6, 2004, the MeTC rendered a decision in favor of respondent, the dispositive portion of which reads:

> WHEREFORE, judgment is rendered in favor of plaintiff **Century Savings Bank Corporation**. Defendants spouses **Danilo T. Samonte and Rosalinda N. Samonte and all persons unlawfully withholding subject property located at 7142 M. Ocampo Street, Pio Del Pilar, Makati City, and/or claiming rights under them** are directed, as follows:
>
> 1. To immediately vacate subject property and peacefully surrender possession thereof to plaintiff;
> 2. To pay plaintiff, jointly and severally, ₱80,000.00 as monthly rental in arrears plus ₱10,000.00 per month as reasonable compensation for their continued use and occupancy of subject premises starting 16 January 2002 until they actually vacate and surrender possession to it;
> 3. To pay plaintiff, jointly and severally, ₱10,000.00 as Attorney's fees; and

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[12] *Id.* at 49.

[13] *Id.* at 50-53.

[14] The case is now the subject of review by the Court in G.R. No. 176212.

4. To pay plaintiff, jointly and severally, the cost of suits.

SO ORDERED.[15]

On appeal, the RTC affirmed the MeTC decision, thus:

WHEREFORE, premises considered, the decision of the Metropolitan Trial Court, Branch 67, Makati City in Civil Case No. 79002 dated May 6, 2004 is hereby AFFIRMED *IN TOTO* with costs against the defendants-appellants.

SO ORDERED.[16]

Aggrieved, petitioners elevated the matter to the CA. They insisted that the ejectment case should await the result of the separate action they instituted for the nullification of the foreclosure proceedings. They likewise contended that should the court declare respondent entitled to the possession of the subject property, the same should be provisional and subject to the court's decision in the nullification case. Lastly, they questioned the award of back rentals as they were allegedly awarded based on incorrect computation.[17]

On September 27, 2006, the CA rendered the assailed decision affirming the RTC decision. The appellate court concluded that the nullification of foreclosure proceedings is not a valid reason to frustrate the summary remedy of ejectment. The CA also refused to make a declaration that respondent's right to possess the subject property would depend on the outcome of the nullification case as it would be in the nature of a conditional judgment which is void. The CA thus upheld respondent's better right to possess the property subject matter of this controversy.

Hence, the instant petition.

The only issue for determination is whether the instant ejectment case should be suspended pending the resolution of the action for nullity of foreclosure.

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[15] *Rollo*, p. 131.

[16] *Id.* at 139.

[17] CA *rollo*, pp. 008-022.

We answer in the negative.

As a general rule, an ejectment suit cannot be abated or suspended by the mere filing of another action raising ownership of the property as an issue.[18] The Court has, in fact, affirmed this rule in the following precedents:

1. Injunction suits instituted in the RTC by defendants in ejectment actions in the municipal trial courts or other courts of the first level (*Nacorda v. Yatco*, 17 SCRA 920 [1966]) do not abate the latter; and neither do proceedings on consignation of rentals (*Lim Si v. Lim*, 98 Phil. 868 [1956], citing *Pue, et al. v. Gonzales*, 87 Phil. 81 [1950]).

2. An "*accion publiciana*" does not suspend an ejectment suit against the plaintiff in the former (*Ramirez v. Bleza*, 106 SCRA 187 [1981]).

3. A "writ of possession case" where ownership is concededly the principal issue before the Regional Trial Court does not preclude nor bar the execution of the judgment in an unlawful detainer suit where the only issue involved is the material possession or possession *de facto* of the premises (*Heirs of F. Guballa, Sr. v. C.A., et al.; etc*., 168 SCRA 518 [1988]).

4. An action for quieting of title to property is not a bar to an ejectment suit involving the same property (*Quimpo v. de la Victoria*, 46 SCRA 139 [1972]).

5. Suits for specific performance with damages do not affect ejectment actions (*e.g*., to compel renewal of a lease contract) (*Desamito v. Cuyegkeng*, 18 SCRA 1184 [1966]; *Rosales v. CFI*, 154 SCRA 153 [1987]; *Commander Realty, Inc. v. C.A.*, 161 SCRA 264 [1988]).

6. An action for reformation of instrument (*e.g*., from deed of absolute sale to one of sale with *pacto de retro*) does not suspend an ejectment suit between the same parties (*Judith v. Abragan*, 66 SCRA 600 [1975]).

7. An action for reconveyance of property or "*accion reivindicatoria*" also has no effect on ejectment suits

[18] *Amagan v. Marayag*, 383 Phil. 486, 489 (2000).

regarding the same property (*Del Rosario v. Jimenez*, 8 SCRA 549 [1963]; *Salinas v. Navarro*, 126 SCRA 167; *De la Cruz v. C.A.*, 133 SCRA 520 [1984]); *Drilon v. Gaurana*, 149 SCRA 352 [1987]; *Ching v. Malaya*, 153 SCRA 412 [1987]; *Philippine Feeds Milling Co., Inc. v. C.A.*, 174 SCRA 108; *Dante v. Sison*, 174 SCRA 517 [1989]; *Guzman v. C.A.* [annulment of sale and reconveyance], 177 SCRA 604 [1989]; *Demamay v. C.A.*, 186 SCRA 608 [1990]; *Leopoldo Sy v. C.A., et al.*, [annulment of sale and reconveyance], G.R. No. 95818, Aug. 2, 1991).

8. Neither do suits for annulment of sale, or title, or document affecting property operate to abate ejectment actions respecting the same property (*Salinas v. Navarro* [annulment of deed of sale with assumption of mortgage and/or to declare the same an equitable mortgage], 126 SCRA 167 [1983]; *Ang Ping v. RTC* [annulment of sale and title], 154 SCRA 153 [1987]; *Caparros v. C.A.* [annulment of title], 170 SCRA 758 [1989]; *Dante v. Sison* [annulment of sale with damages], 174 SCRA 517; *Galgala v. Benguet Consolidated, Inc.* [annulment of document], 177 SCRA 288 [1989]).[19]

Only in rare instances is suspension allowed to await the outcome of a pending civil action. In *Vda. de Legaspi v. Avendaño*,[20] and *Amagan v. Marayag*,[21] we ordered the suspension of the ejectment proceedings on considerations of equity. We explained that the ejectment of petitioners therein would mean a demolition of their house and would create confusion, disturbance, inconvenience, and expense.[22] Needlessly, the court would be wasting much time and effort by proceeding to a stage wherein the outcome would at best be temporary but the result of enforcement would be permanent, unjust and probably irreparable.[23]

In the present case, petitioners were the previous owners of the subject property. However, they lost their right over the

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[19] *Palattao v. Court of Appeals*, 431 Phil. 438, 447-448 (2002).

[20] G.R. No. L-40437, September 27, 1977, 79 SCRA 135.

[21] *Supra* note 18.

[22] *Amagan v. Marayag*, *id.*, at 499.

[23] *Id.*

property in an extrajudicial foreclosure of mortgage wherein respondent emerged as the highest bidder. Petitioners, however, remained in possession thereof as lessees in a contract of lease executed after the expiration of the redemption period. For failure to pay the stipulated rents, respondent commenced an action for ejectment. Petitioners, in turn, instituted a case for the nullification of the foreclosure proceedings involving the same property. When the ejectment case reached the CA, petitioners sought the suspension of the proceedings solely by reason of the pendency of the nullification case.

Given these factual antecedents, the instant case hardly falls within the exception cited in *Vda. de Legaspi* and *Amagan* as the resolution of the ejectment suit will not result in the demolition of the leased premises.[24] Verily, petitioners failed to show "strong reasons of equity" to sustain the suspension or dismissal of the ejectment case. Faced with the same scenario on which the general rule is founded, and finding no reason to deviate therefrom, the Court adheres to settled jurisprudence that suits involving ownership may not be successfully pleaded in abatement of an action for ejectment.[25] This rule is not without good reason. If the rule were otherwise, ejectment cases could easily be frustrated through the simple expedient of filing an action contesting the ownership over the property subject of the controversy. This would render nugatory the underlying philosophy of the summary remedy of ejectment which is to prevent criminal disorder and breaches of the peace and to discourage those who, believing themselves entitled to the possession of the property, resort to force rather than to some appropriate action in court to assert their claims.[26]

We are not unmindful of the afflictive consequences that will be suffered by petitioners if the ejectment is ordered, only to be reinstated later if they eventually win the nullification of the foreclosure case. However, respondent will also suffer an

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[24] *Palattao v. Court of Appeals*, *supra* note 19, at 449.

[25] *Id.* at 449.

[26] *Feliciano v. CA*, 350 Phil. 499, 507 (1998).

injustice if denied the remedy of ejectment, resort to which is not only allowed but, in fact, encouraged by law.[27]

We would like to stress that unlawful detainer and forcible entry suits under Rule 70 of the Rules of Court are designed to summarily restore physical possession of a piece of land or building to one who has been illegally or forcibly deprived thereof, without prejudice to the settlement of the parties' opposing claims of juridical possession in appropriate proceedings.[28] These actions are intended to avoid disruption of public order by those who would take the law in their hands purportedly to enforce their claimed right of possession.[29] In these cases, the issue is pure physical or *de facto* possession, and pronouncements made on questions of ownership are provisional in nature.[30] The provisional determination of ownership in the ejectment case cannot be clothed with finality.[31]

In any case, we sustain the finding that respondent has the better right to possess the subject property. The Contract of Lease executed by petitioners and respondent remains valid. It is undisputed that petitioners failed to comply with the terms thereof by their failure to pay the stipulated rent. As lessor of the subject property, respondent has the right to demand that petitioners pay their unpaid obligations and, in case of their failure, that they vacate the premises. Considering that the lease contract has long expired, with more reason should respondent be allowed to recover the subject property.

There is also no doubt that the plaintiff in the ejectment case (respondent herein) is entitled to damages caused by the loss of

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[27] *Id.* at 508-509.

[28] *Palattao v. Court of Appeals*, *supra* note 19, at 446-447; *Amagan v. Marayag*, *supra* note 18, at 495.

[29] *Palattao v. Court of Appeals*, *supra*, at 447; *Amagan v. Marayag*, *supra*, at 495.

[30] *Palattao v. Court of Appeals*, *supra*, at 447; *Amagan v. Marayag*, *supra*, at 495.

[31] *Samuel Malabanan v. Rural Bank of Cabuyao, Inc.*, G.R. No. 163495, May 8, 2009.

the use and possession of the premises.[32] We quote with approval the appellate court's findings, *viz.*:

> On the matter of whether the court *a quo* erred in the computation of the amounts awarded, representing back rentals and reasonable value for the use and occupation of the premises, We rule in the negative.
>
> The award of back rentals amounting to Php80,000.00 and Php10,000.00 as reasonable compensation for the continued use and occupation of the property is proper.
>
> As stated in the decision of the court *a quo*, to which We agree, the monthly rentals in arrears amounted to Php80,000.00 as of 16 January 2002, the date of expiration of the contract of lease. Petitioners were only able to pay Php40,000.00, equivalent to four-month rentals at the rate of Php10,000.00 per month. It would not be in accord with the law if petitioners are not also made to pay Php10,000.00 commencing 16 January 2002 until they finally vacate and surrender possession of the property to respondent. The latter amount represents the reasonable value for the continued use and occupancy of the property after the lease contract has expired.
>
> Inevitably, no error can be imputed to the court *a quo* when it ordered petitioners to pay respondent jointly and severally the amount of Php80,000.00 as monthly rental in arrears plus Php10,000.00 per month as reasonable compensation for the continued use and occupancy of the property starting January 16, 2002 until they actually vacate and surrender possession of the property to respondent.[33]

WHEREFORE, premises considered, the petition is *DENIED* for lack of merit. The Court of Appeals Decision dated September 27, 2006 and Resolution dated January 24, 2007 in CA-G.R. SP No. 86875 are *AFFIRMED*.

SO ORDERED.

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

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[32] *Id.*

[33] *Rollo,* p. 237.

THIRD DIVISION

[G.R. No. 176506. November 25, 2009]

MERCK SHARP AND DOHME (PHILIPPINES) and PETER S. CARBONELL, *petitioners, vs.* **JONAR P. ROBLES, GEORGE G. GONITO and CHRISTIAN ALDRIN S. CRISTOBAL,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WHEN *CERTIORARI* LIES ALTHOUGH NO MOTION FOR RECONSIDERATION HAS BEEN FILED.— While MSD is correct in stating that, generally, *certiorari*, as a special civil action, will not lie unless a motion for reconsideration is filed before the respondent tribunal to allow it an opportunity to correct its imputed errors, the rule admits of the following exceptions: x x x (b) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (d) where, under the circumstances, a motion for reconsideration would be useless; x x x The second and fourth exceptions are applicable in this case. As pointed out by respondent Cristobal, Jean Sarmiento, one of the complainants in NLRC-NCR Case No. 00-12-13804-2003 before the Labor Arbiter who was similarly situated as Cristobal and had likewise claimed constructive dismissal by MSD, filed a motion for reconsideration which was perfunctorily denied by the NLRC. At that moment, respondent Cristobal was justified in directly filing a petition for *certiorari* with the CA to annul the NLRC resolution.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; IN CONSTRUCTIVE DISMISSAL CASES, THE EMPLOYER HAS THE BURDEN OF PROVING THAT THE TRANSFER OF AN EMPLOYEE IS FOR JUST AND VALID GROUNDS.— Time and again we have ruled that in constructive dismissal cases, the employer has the burden of proving that the transfer of an employee is for just and valid grounds, such as genuine business necessity. The employer must demonstrate that the transfer is not

unreasonable, inconvenient, or prejudicial to the employee and that the transfer does not involve a demotion in rank or a diminution of salary and other benefits. If the employer fails to overcome this burden of proof, the employee's transfer is tantamount to unlawful constructive dismissal.

3. ID.; ID.; ID.; ID.; CIRCUMSTANCES NEGATING THE CLAIM THAT EMPLOYEE'S TRANSFER WAS DONE IN GOOD FAITH AND BASED ON JUST AND VALID GROUNDS.— MSD failed to discharge the required burden of proof. The following circumstances negate MSD's claim that, on the whole, the transfer of Cristobal was done in good faith and based on just and valid grounds: 1. Although MSD was unable to prove the initial charge against Cristobal, the threat of an investigation remained like a Damocles sword looming over him. Eventually, Cristobal's preventive suspension was lifted, and he was reassigned subsequently to a different district. In the meantime, Cristobal was again asked to explain a similar charge of dishonesty and acting against the interest of MSD, likewise based on an expense report supported by a receipt from Lorna Food Services. We note that MSD claims that it commissioned an investigation agency to ascertain the veracity of some reports of employees' fraudulent transactions. The second charge against Cristobal was ostensibly based on an expense report for a different date. However, this expense report was likewise supported by a receipt issued by Lorna Food Services, which should have been within the knowledge of MSD. And as the first charge did not stick, the second, yet identical, charge of dishonesty—coupled with a very far reassignment—undoubtedly, created an oppressive atmosphere for Cristobal. 2. Cristobal's request for reassignment was not acted upon and was, ultimately, denied. In fact, no business reason whatsoever was stated in the electronic mail to justify the necessity of transferring Cristobal. Curiously, the list of district assignments in 2003 and 2004 submitted by MSD in evidence clearly shows that only Cristobal was reassigned, and to a station infinitely distant from where he lived. To make matters worse, upon denial of the request for transfer, Cristobal was ordered to report for work in the new assignment the very next day. This clearly demonstrates an insensitivity to the welfare of Cristobal and his family given that he lives in Marikina and was now required to report immediately for work in the Baguio

and San Fernando areas. 3. Lastly, MSD did not give any reason why Cristobal's request for a five-day sick leave was denied.

APPEARANCES OF COUNSEL

*Ponce Enrile Reyes & Manalast*as for petitioners.

Fabros-Bercasio Law Offices for respondents.

D E C I S I O N

NACHURA, *J.*:

Assailed in this petition for review on *certiorari* under Rule 45 of the Rules of Court is the Court of Appeals (CA) Decision[1] in CA-G.R. SP No. 94265 which partially granted the petition for *certiorari* filed by respondents Jonar P. Robles, George G. Gonito and Christian Aldrin S. Cristobal and reversed the National Labor Relations Commission's (NLRC's) finding of illegal dismissal as regards Cristobal in NLRC CA No. 043454-2005. In turn, the NLRC affirmed the Labor Arbiter's dismissal of respondents' complaint against petitioner Merck Sharp and Dohme (Philippines) (MSD) for illegal dismissal.[2]

The facts, fairly summarized by the CA, follow.

[Respondents] Jonar P. Robles, George G. Gonito, and Christian Aldrin S. Cristobal (hereafter Jonar, George, and Christian, respectively and [respondents] collectively) are former health care representatives assigned at the District V-MSD Cardiovascular Unit, Region I (hereafter MSD –V) of [petitioner corporation] Merck Sharp and Dohme x x x, a pharmaceutical corporation organized under Philippine law.

[Respondents] alleged that on November 28, 2003, they were summoned together with the other health care representatives in MSD-V by their Regional Sales Manager, Peter S. Carbonell [petitioner

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[1] Penned by Associate Justice Juan Q. Enriquez, Jr., with Presiding Justice Ruben T. Reyes (now a retired member of this Court) and Associate Justice Vicente S.E. Veloso, concurring, *rollo* pp. 43-54.

[2] *Rollo*, pp. 471-488.

Carbonell] to a meeting. [Respondents] claim that no meeting took place. Instead, the other health care representatives were directed to leave while [respondents] were told to stay behind.

Thereafter, the director of Human Resources, General and Legal, Jerome Sarte, came and distributed to [respondents], Employees' Notice to Explain (hereafter ENTE) dated November 27, 2003. [Respondents] were told that they were being preventively suspended based on an evidence gathered through an informer-witness. [Respondents] alleged that the ENTE was read aloud to them. A sample of an ENTE reads as follows:

> Gonito, George
>
> "It has come to the attention of management, through a signed document submitted by a source we cannot reveal at this point, that you may have been involved in several questionable transactions deemed contrary to company and corporate values. The seriousness of accusations contained therein prompted management to conduct an initial investigation of facts, which involved a re-review of the Expense Reports you have submitted beginning at the start of this year. Preliminary findings showed that there is cause for citing you under several provisions of the Company's Code of Conduct, herein enumerated:
>
> Facts of the case:
>
> 1. EXPENSE REPORT for January 16-31
>
> • Event : PR Campaign for VMMC Supply Department
>
> • Receipt: Lorna's Food Services – 6 February 2003, Php 2,500.
>
> o Receipt appeared old and yellowish x x x
>
> o When double checked x x x the person talked to said that they are not engaged in Catering Services
>
> o An independent private investigation agency commissioned by the company, x x x was able to locate said Lorna's Food Services x x x she denied having validly issued the said receipt and that the signature in the said receipt was not her hand nor any other authorized signatory of her business. In other words, the transaction covered by the said receipt is fictitious.

xxx xxx xxx

2. EXPENSE REPORT for April 16-30 x x x

- Event: Journal Club Meeting
- Receipt: Lorna's Food Services – 23 April 2003, Php 3,500.
  - o Same comments as above on phone double checking and proprietor declaration.
  - o Receipt[,] however[,] had a Control Number (397), which according to private investigation agency appeared to be manually stamped and therefore spurious. x x x

POSSIBLE DISCIPLINARY INFRACTION/S

1. DISHONESTY: Misrepresentation, forging, or falsifying personal or company records. (1st Offense – Termination)
2. OFFENSES AGAINST COMPANY INTEREST: Submitting false, misleading, or inaccurate data about the work of other employees.

   a) willful (1st Offense – Termination)

   b) Due to negligence (1st Offense – Written Reprimand)

3. LOSS OF TRUST AND CONFIDENCE

You are hereby required to explain in writing your side on the facts above mentioned, within seventy-two (72) hours upon receipt of this notice (Tuesday, 2 December 2003). Kindly state in clear terms your reasons behind this issue and explain why no corrective action, including termination of employment should be taken against you for above alleged actions. Please take note also that your written response will be taken without prejudice to other incriminatory findings which may be discovered in the course of formal investigation and hearing of this case.

xxx xxx xxx

In the meantime, pending completion of formal investigation and hearing of this case, and in view of the seriousness of the charges raised in the light of the sensitivity of the position

> you presently occupy, management is putting you under PREVENTIVE SUSPENSION effective immediately upon receipt of this notice. You shall be notified in due course of the scheduled administrative investigation to be conducted by the Company. Please make the necessary turn over of your Company Car to the Admin. Officer within twenty-four (24) hours, as well as other company properties in your possession before going on preventive suspension. The company will allow you to further use your company issued cell phone while on Preventive Suspension to allow open communication lines when this case is on-going. However, billing for your calls during said period will be fully charged to your personal account."

[Respondents] were directed to submit a written explanation within 72 hours from receipt and their salaries and benefits will be withheld indefinitely. [Respondents] assert that the ENTEs were general and the documents [referred] to were not attached.

On December 1, 2003, [respondents] filed with the Labor Arbiter a complaint for illegal suspension. On December 4, 2003, [petitioners] summoned [respondents] for a hearing. During the said hearing, [respondents] reiterated their request that they be furnished a copy of the alleged primary findings against them. [Petitioners] refused stating that the investigation is not a formal hearing thus, a trial type proceeding was inapplicable.

On December 22, 2003, [respondents] Jonar and George received a Notice of Corrective Action (hereafter NOCA) informing them that management has decided to terminate their services effective immediately. Christian, however, was informed that his suspension was lifted. Jonar and George filed a supplemental complaint affidavit for illegal termination.

Christian, on the other hand, reported back for work. He was shocked, however, when he discovered that he was reassigned to District I of Baguio City and La Union as his new area of responsibility. Christian requested for a transfer. His request was not favorably acted upon, instead, he received his second ENTE dated January 19, 2004, for dishonesty and offenses against company interest. [Respondent] Christian answered the ENTE stressing that although he was previously exonerated, he is again being charged for the same offense. To support his case, Christian secured a certification from the Chief Resident of the Department of Family Medicine FEU-

NRMF with regard [to] his sponsoring [a] lecture in the said department on May 7, 2003. Thereafter, Christian got sick due to the stress brought about by his receiving several ENTEs. As such, he was compelled to apply for a sick leave. Christian stated that his sick leave application was not acted upon and instead he received his third ENTE dated February 4, 2004, for insubordination, serious misconduct or willful disobedience. Christian, thereafter, resigned citing oppression and utter unbearability of the work atmosphere. Christian then amended his complaint for constructive dismissal.

On November 15, 2004, the Labor Arbiter rendered a decision dismissing [respondents'] complaint for utter lack of merit. Upon appeal to the NLRC, the latter affirmed the Labor Arbiter.[3]

Undaunted, respondents filed a petition for *certiorari* before the CA alleging grave abuse of discretion in the NLRC's dismissal of their complaint.

As previously adverted to, the CA partially granted the petition for *certiorari* and declared that respondent Cristobal was constructively dismissed by petitioner MSD.

Hence, this petition for review on *certiorari* raising the following issues:

1. [WHETHER THE] COURT OF APPEALS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT GAVE DUE COURSE TO PRIVATE RESPONDENT'S (CRISTOBAL'S) PETITION FOR *CERTIORARI*.

2. [WHETHER] THE COURT OF APPEALS GRAVELY ERRED WHEN IT REVERSED THE NLRC DECISION.

3. [WHETHER THE] HONORABLE COURT MAY REVIEW FACTUAL CONCLUSION[S] OF THE COURT OF APPEALS WHEN CONTRARY TO THOSE OF THE NLRC OR THE LABOR ARBITER.[4]

We first dispose of the procedural issues.

The issue of whether we can review factual conclusions of the CA, when contrary to those of the administrative tribunal,

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[3] *Id.* at 44-49.

[4] Petitioner's Memorandum. (*Rollo*, p. 974.)

need not detain us unnecessarily. We have long held in a number of cases that factual findings of administrative or quasi-judicial bodies, which are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality, and bind the Court when supported by substantial evidence.[5] Corollary thereto is our well-entrenched holding that this Court is not a trier of facts; this is strictly adhered to in labor cases.[6] However, the rule admits of exceptions when: (1) the findings are grounded entirely on speculation, surmises or conjectures; (2) the inference made is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) in making its findings, the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both appellant and appellee; (7) the findings are contrary to those of the trial court; (8) the findings are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition, as well as in petitioner's main and reply briefs, are not disputed by respondent; (10) the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[7] In the case at bar, we gave due course to MSD's petition as the findings of fact and the conclusions of law of the Labor Arbiter and the NLRC differ from those of the CA.

MSD next contends that the CA gravely erred when it did not dismiss outright respondent Cristobal's petition for *certiorari* for the latter's failure to first file a motion for reconsideration of the NLRC's resolution.

While MSD is correct in stating that, generally, *certiorari*, as a special civil action, will not lie unless a motion for

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[5] *Dealco Farms, Inc. v. National Labor Relations Commission (5th Division)*, G.R. No. 153192, January 30, 2009, 577 SCRA 280.

[6] *Id.*

[7] *Id.*

reconsideration is filed before the respondent tribunal to allow it an opportunity to correct its imputed errors,[8] the rule admits of the following exceptions:

(a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction;

(b) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;

(c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable;

(d) where, under the circumstances, a motion for reconsideration would be useless;

(e) where petitioner was deprived of due process and there is extreme urgency for relief;

(f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;

(g) where the proceedings in the lower court are a nullity for lack of due process;

(h) where the proceedings was *ex parte* or in which the petitioner had no opportunity to object; and

(i) where the issue raised is one purely of law or where public interest is involved.[9]

The second and fourth exceptions are applicable in this case. As pointed out by respondent Cristobal, Jean Sarmiento, one of the complainants in NLRC-NCR Case No. 00-12-13804-2003 before the Labor Arbiter who was similarly situated as Cristobal and had likewise claimed constructive dismissal by MSD, filed a motion for reconsideration which was perfunctorily denied

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[8] *Abraham v. National Labor Relations Commission,* G.R. No. 143823, March 6, 2001, 353 SCRA 739.

[9] *Id.* at 744-745.

by the NLRC. At that moment, respondent Cristobal was justified in directly filing a petition for *certiorari* with the CA to annul the NLRC resolution. In point is *Abraham v. National Labor Relations Commission*:[10]

> The rationale for the requirement of first filing a motion for reconsideration before the filing of a petition for *certiorari* is that the law intends to afford the tribunal, board, or office an opportunity to rectify the errors and mistakes it may have lapsed into before resort to the courts of justice can be had. In the present case, the NLRC was already given the opportunity to review its ruling and correct itself when the respondent filed its motion for reconsideration of the NLRC's initial ruling in favor of petitioner. In fact, it granted the motion for reconsideration filed by the respondent and reversed its previous ruling and reinstated the decision of the Labor Arbiter dismissing the complaint of the petitioner. It would be an exercise in futility to require the petitioner to file a motion for reconsideration since the very issues raised in the petition for *certiorari, i.e.* whether or not the petitioner was constructively dismissed by the respondent and whether or not she was entitled to her money claims, were already duly passed upon and resolved by the NLRC. Thus the NLRC had more than one opportunity to resolve the issues of the case and in fact reversed itself upon a reconsideration. It is highly improbable or unlikely under the circumstances that the Commission would reverse or set aside its resolution granting a reconsideration.[11]

We now come to the pivotal issue for our resolution: whether respondent Cristobal was constructively dismissed by petitioner MSD.

MSD is adamant that the CA erred in not characterizing the work reassignment of respondent Cristobal as falling within the ambit of management prerogative and, thus, beyond challenge. In addition, MSD postulates that the work reassignment of medical representatives, such as respondent Cristobal, is not only dictated by the nature of the work, but is, more importantly, written in the employment contract.

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[10] *Supra* note 8.

[11] *Id.* at 745.

Once more, we agree with MSD's statement of the general rule that the work reassignment of an employee is a management prerogative. Indeed, even the Constitution recognizes "the right of enterprises to reasonable returns on investments, and to expansion and growth."[12] Yet, we are quick to point out that the invocation of management prerogative carries the corresponding burden of proving such contention. We reiterated as much in the recent case of *Norkis Trading Co., Inc. v. Gnilo*:[13]

> Well-settled is the rule that it is the prerogative of the employer to transfer and reassign employees for valid reasons and according to the requirement of its business. An owner of a business enterprise is given considerable leeway in managing his business. Our law recognizes certain rights, collectively called management prerogative as inherent in the management of business enterprises. We have consistently recognized and upheld the prerogative of management to transfer an employee from one office to another within the business establishment, provided that there is no demotion in rank or diminution of his salary, benefits and other privileges and the action is not motivated by discrimination, made in bad faith, or effected as a form of punishment or demotion without sufficient cause. This privilege is inherent in the right of employers to control and manage their enterprises effectively.
>
> The right of employees to security of tenure does not give them vested rights to their positions to the extent of depriving management of its prerogative to change their assignments or to transfer them. Managerial prerogatives, however, are subject to limitations provided by law, collective bargaining agreements, and general principles of fair play and justice.
>
> The employer bears the burden of showing that the transfer is not unreasonable, inconvenient or prejudicial to the employee; and does not involve a demotion in rank or a diminution of his salaries, privileges and other benefits. Should the employer fail to overcome this burden of proof, the employee's transfer shall be tantamount to constructive dismissal.[14]

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[12] See 1987 CONSTITUTION, Art. XIII, Sec. 3.

[13] G.R. No. 159730, February 11, 2008, 544 SCRA 279.

[14] *Id.* at 289-290. (Citations omitted.)

In the case at bar, specifically in the matter of respondent Cristobal's transfer, the Labor Arbiter and the NLRC promptly dismissed Cristobal's charge of constructive dismissal. Both labor tribunals relied heavily on the stipulation in the employment contract which reads:

> 9. You agree to be assigned to any work for such period as may be determined by [MSD] whenever the operations thereof require such assignment. It is also understood that, depending upon the operational requirements of [MSD], you may be assigned to any location in the Philippines. These assignments are subject to change any time whenever necessary in the interest of [MSD].

This provision, coupled with their finding that the new assignment did not involve a demotion in rank and/or a diminution in pay, led to the labor tribunals' uniform conclusion that Cristobal unjustly refused to comply with his new work assignment, and was, therefore, not constructively dismissed.

In marked contrast, the CA, in ruling that Cristobal was constructively dismissed, had this to say:

> This Court, however, takes exception to the ruling of the NLRC as regards the case of Christian. The pertinent portion of the NLRC's ruling reads as follows:
>
> > "x x x. It is undisputed that complainants Sarmiento, Cristobal and Tomeldan were merely transferred to their new assignments as a result of an annual implementation of the new Territorial configuration/PHR Assignments usually done by the Company at the start of every year. x x x The records of the case are bereft of any evidence showing that their resignation was an involuntary one; and it was resorted to because their continued employment has become impossible, unreasonable or unlikely. It is worthy to note that said transfers affect not only the [respondents] but some other co-employees as well, which included three (3) other District Managers."

The facts of the case at bar show that after Christian's suspension was lifted, he was given a new assignment. Christian requested for a transfer which was not granted. Thereafter, Christian received a new ENTE containing the charges similar to the ones for which he

was already exonerated. Moreover, [petitioners] failed to explain why they did not act on Christian's application for sick leave and instead gave him another ENTE. The events that thereafter transpired lead to the conclusion that Christian's continued employment with [petitioner MSD] has become unbearable. It is settled that constructive dismissal exists when an act of clear discrimination, insensibility or disdain on the part of the employer has become so unbearable as to leave an employee with no choice but to forego continued employment.

Indeed it is settled that "the objection to the transfer being grounded on solely upon the personal inconvenience or hardship that will be caused to the employee by reason of the transfer is not a valid reason to disobey an order of transfer." A scrutiny of the facts of the case at bar, however, shows that the transfer of Christian reeks with bad faith as to consider his case one of constructive dismissal. Under the law, Christian has to be reinstated to his former position with full backwages from the time he was dismissed up to his actual reinstatement.[15]

We are in accord with the appellate court's ruling that respondent Cristobal was constructively dismissed by MSD.

Time and again we have ruled that in constructive dismissal cases, the employer has the burden of proving that the transfer of an employee is for just and valid grounds, such as genuine business necessity.[16] The employer must demonstrate that the transfer is not unreasonable, inconvenient, or prejudicial to the employee and that the transfer does not involve a demotion in rank or a diminution of salary and other benefits. If the employer fails to overcome this burden of proof, the employee's transfer is tantamount to unlawful constructive dismissal.

Our holding in *Westmont Pharmaceuticals, Inc. v. Samaniego*[17] is instructive, to wit:

Westmont and Unilab failed to discharge this burden. Samaniego

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[15] *Rollo*, pp. 52-53. (Citations omitted.)

[16] *Westmont Pharmaceuticals, Inc. v. Samaniego*, G.R. Nos. 146653-54 and 147407-08, February 20, 2006, 482 SCRA 611.

[17] *Id*.

was unceremoniously transferred from Isabela to Metro Manila. We hold that such transfer is economically and emotionally burdensome on his part. He was constrained to maintain two residences – one for himself in Metro Manila, and the other for his family in Tuguegarao City, Cagayan. Worse, immediately after his transfer to Metro Manila, he was placed "on floating status" and was demoted in rank, performing functions no longer supervisory in nature.

There may also be constructive dismissal if an act of clear insensibility or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment. This was what happened to Samaniego. x x x.[18]

As with Westmont and Unilab in the cited case, MSD failed to discharge the required burden of proof. The following circumstances negate MSD's claim that, on the whole, the transfer of Cristobal was done in good faith and based on just and valid grounds:

1. Although MSD was unable to prove the initial charge against Cristobal, the threat of an investigation remained like a Damocles sword looming over him. Eventually, Cristobal's preventive suspension was lifted, and he was reassigned subsequently to a different district. In the meantime, Cristobal was again asked to explain a similar charge of dishonesty and acting against the interest of MSD, likewise based on an expense report supported by a receipt from Lorna Food Services. We note that MSD claims that it commissioned an investigation agency to ascertain the veracity of some reports of employees' fraudulent transactions. The second charge against Cristobal was ostensibly based on an expense report for a different date. However, this expense report was likewise supported by a receipt issued by Lorna Food Services, which should have been within the knowledge of MSD. And as the first charge did not stick, the second, yet identical, charge of dishonesty—coupled with a very far reassignment— undoubtedly, created an oppressive atmosphere for Cristobal.

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[18] *Id.* at 620-621.

2. Cristobal's request for reassignment was not acted upon and was, ultimately, denied. In fact, no business reason whatsoever was stated in the electronic mail to justify the necessity of transferring Cristobal. Curiously, the list of district assignments in 2003 and 2004 submitted by MSD in evidence clearly shows that only Cristobal was reassigned, and to a station infinitely distant from where he lived. To make matters worse, upon denial of the request for transfer, Cristobal was ordered to report for work in the new assignment the very next day. This clearly demonstrates an insensitivity to the welfare of Cristobal and his family given that he lives in Marikina and was now required to report immediately for work in the Baguio and San Fernando areas.

3. Lastly, MSD did not give any reason why Cristobal's request for a five-day sick leave was denied.

WHEREFORE, premises considered, the petition is *DENIED*. The Decision of the Court of Appeals in CA-G.R. SP No. 94265 is *AFFIRMED*. Petitioner Merck Sharp and Dohme (Philippines) is ordered to *REINSTATE* respondent Christian Aldrin S. Cristobal and to pay him full backwages. No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 178768. November 25, 2009]

PACIFIC WIDE REALTY AND DEVELOPMENT CORPORATION, *petitioner, vs.* **PUERTO AZUL LAND, INC.,** *respondent.*

[G.R. No. 180893. November 25, 2009]

PACIFIC WIDE REALTY AND DEVELOPMENT CORPORATION, *petitioner, vs.* **PUERTO AZUL LAND, INC.,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATIONS; REHABILITATION; DEFINED AND EXPLAINED.— Rehabilitation contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency. The purpose of rehabilitation proceedings is to enable the company to gain a new lease on life and thereby allow creditors to be paid their claims from its earnings. The rehabilitation of a financially distressed corporation benefits its employees, creditors, stockholders and, in a larger sense, the general public. Under the Rules of Procedure on Corporate Rehabilitation, "rehabilitation" is defined as the restoration of the debtor to a position of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan, more if the corporation continues as a going concern than if it is immediately liquidated.

2. ID.; ID.; ID.; INDISPENSABLE REQUIREMENT IN REHABILITATION; CASE AT BAR.— An indispensable requirement in the rehabilitation of a distressed corporation is the rehabilitation plan and Section 5 of the Interim Rules of Procedure on Corporate Rehabilitation provides the requisites thereof: x x x We find nothing onerous in the terms of PALI's rehabilitation plan. The Interim Rules on Corporate

Rehabilitation provides for means of execution of the rehabilitation plan, which may include, among others, the conversion of the debts or any portion thereof to equity, restructuring of the debts, *dacion en pago*, or sale of assets or of the controlling interest. The restructuring of the debts of PALI is part and parcel of its rehabilitation. Moreover, per findings of fact of the RTC and as affirmed by the CA, the restructuring of the debts of PALI would not be prejudicial to the interest of PWRDC as a secured creditor.

3. ID.; ID.; ID.; EFFECTS OF A SUCCESSFUL REHABILITATION.— Successful rehabilitation of a distressed corporation will benefit its debtors, creditors, employees, and the economy in general. The court may approve a rehabilitation plan even over the opposition of creditors holding a majority of the total liabilities of the debtor if, in its judgment, the rehabilitation of the debtor is feasible and the opposition of the creditors is manifestly unreasonable. The rehabilitation plan, once approved, is binding upon the debtor and all persons who may be affected by it, including the creditors, whether or not such persons have participated in the proceedings or have opposed the plan or whether or not their claims have been scheduled.

4. ID.; ID.; ID.; JUSTIFICATION FOR THE SUSPENSION OF ACTIONS OR CLAIMS PENDING REHABILITATION PROCEEDINGS.— The justification for the suspension of actions or claims pending rehabilitation proceedings is to enable the management committee or rehabilitation receiver to effectively exercise its/his powers free from any judicial or extrajudicial interference that might unduly hinder or prevent the "rescue" of the debtor company. To allow such other action to continue would only add to the burden of the management committee or rehabilitation receiver, whose time, effort and resources would be wasted in defending claims against the corporation instead of being directed toward its restructuring and rehabilitation.

5. ID.; ID.; ID.; FORECLOSURE OF THE ACCOMODATION MORTGAGOR'S PROPERTY NOT BELONGING TO A DEBTOR UNDER CORPORATE REHABILITATION IS ALLOWED.— The Interim Rules of Procedure on Corporate Rehabilitation is silent on the enforcement of claims specifically against the properties of accommodation mortgagors. It only covers the suspension, during the pendency

of the rehabilitation, of the enforcement of all claims against the debtor, its guarantors and sureties not solidarily liable with the mortgagor. Furthermore, the newly adopted Rules of Procedure on Corporate Rehabilitation has a specific provision for this special arrangement among a debtor, its creditor and its accommodation mortgagor. Section 7(b), Rule 3 of the said Rules explicitly allows the foreclosure by a creditor of a property not belonging to a debtor under corporate rehabilitation.

APPEARANCES OF COUNSEL

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Arreza & Associates and *Soo Gutierrez Leogardo & Lee* for Puerto Azul Land, Inc.

D E C I S I O N

NACHURA, *J.*:

Before the Court are the consolidated petitions for review on *certiorari* under Rule 45 of the Rules of Court: (1) G.R. No. 180893, assailing the Decision[1] dated May 17, 2007 and the Resolution[2] dated October 30, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 92695, entitled "*Export and Industry Bank v. Puerto Azul Land, Inc.*"; and (2) G.R. No. 178768, assailing the Decision[3] dated March 16, 2007 and the Resolution[4] dated June 29, 2007 of the CA in CA-G.R. SP No. 91996, entitled "*Puerto Azul Land, Inc. v. The Regional Trial Court of Manila, Br. 24; Sheriff IV of Pasay City Virgilio F. Villar;*

[1] Penned by Associate Justice Lucenito N. Tagle, with Associate Justices Amelita G. Tolentino and Mariflor Punzalan-Castillo, concurring; *rollo* (G.R. No. 180893), pp. 53-65.

[2] *Id.* at 67-72.

[3] Penned by Associate Justice Normandie B. Pizarro, with Associate Justices Edgardo P. Cruz and Fernanda Lampas Peralta, concurring; *rollo* (G.R. No. 178768), pp. 51-64.

[4] *Id.* at 66-68.

and Pacific Wide Realty & Development Corporation (as substitute for Export and Industry Bank, Inc.)."

The Facts

In G.R. No. 180893

Puerto Azul Land, Inc. (PALI) is the owner and developer of the Puerto Azul Complex situated in Ternate, Cavite. Its business involves the development of Puerto Azul into a satellite city with residential areas, resort, tourism and retail commercial centers with recreational areas.[5] In order to finance its operations, it obtained loans from various banks, the principal amount of which amounted to Six Hundred Forty Million Two Hundred Twenty-Five Thousand Three Hundred Twenty-Four Pesos (₱640,225,324.00). PALI and its accommodation mortgagors, *i.e.*, Ternate Development Corporation (TDC), Ternate Utilities, Inc. (TUI), and Mrs. Trinidad Diaz-Enriquez, secured the loans.[6]

In the beginning, PALI's business did very well. However, it started encountering problems when the Philippine Stock Exchange rejected the listing of its shares in its initial public offering which sent a bad signal to the real estate market. This resulted in potential investors and real estate buyers shying away from the business venture. The situation was aggravated by the 1997 Asian financial crisis and the decline of the real estate market. Consequently, PALI was unable to keep up with the payment of its obligations, both current and those that were about to fall due. One of its creditors, the Export and Industry Bank[7] (EIB), later substituted by Pacific Wide Realty and Development Corporation (PWRDC), filed foreclosure proceedings on PALI's mortgaged properties. Thrust to a corner, PALI filed a petition for suspension of payments and rehabilitation,[8] accompanied by a proposed rehabilitation plan

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[5] *Rollo* (G.R. No. 180893), p. 54.

[6] *Rollo* (G.R. No. 178768), p. 52.

[7] Formerly known as Urban Bank.

[8] The case filed by PALI was entitled "In the Matter of the Corporate Rehabilitation/Suspension of Payments of Puerto Azul Land, Inc.; pursuant

and three (3) nominees for the appointment of a rehabilitation receiver.[9]

On September 17, 2004, after finding that the petition was sufficient in form and substance, the Regional Trial Court (RTC) issued a Stay Order[10] and appointed Patrick V. Caoile as rehabilitation receiver.[11] Dissatisfied, EIB filed a motion to replace the appointed rehabilitation receiver. On January 25, 2005, the RTC denied the motion.[12]

On April, 20, 2005, the rehabilitation receiver filed his rehabilitation report and recommendation, wherein he proposed that PALI should be rehabilitated rather than be dissolved and liquidated. On June 9, 2005, PALI filed a revised rehabilitation plan.[13]

EIB and the other creditors of PALI filed their respective comments/opposition to the report/recommendations of the rehabilitation receiver. On November 2, 2005, EIB, together with another creditor of PALI, Tranche I (SPV-MC), Inc., filed an urgent motion to disqualify the appointed rehabilitation receiver. The RTC denied the motion in an Order[14] dated December 9, 2005.[15]

On December 13, 2005, the RTC rendered a Decision[16] approving PALI's petition for suspension of payments and rehabilitation. The pertinent portions of the decision read:

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to the Interim Rules of Procedure on Corporate Rehabilitation (A.M. No. 009-10-SC)," and docketed as Civil Case No. 04-110914.

[9] *Rollo* (G.R. No. 180893), p. 54.

[10] CA *rollo* (CA-G.R. SP No. 92695), pp. 110-113.

[11] *Rollo* (G.R. No. 180893), pp. 53-55.

[12] CA *rollo* (CA-G.R. SP No. 92695), pp. 140-141.

[13] *Rollo* (G.R. No. 180893), p. 55.

[14] CA *rollo* (CA-G.R. SP No. 92695), pp. 352-354.

[15] *Rollo* (G.R. No. 180893), p. 55.

[16] Penned by Judge Antonio M. Eugenio, Jr., Regional Trial Court of Manila, Branch 24; CA *rollo* (CA-G.R. SP No. 92695), pp. 9-22.

The rehabilitation of the petitioner, therefore, shall proceed as follows:

1. The creditors shall have, as first option, the right to be paid with real estate properties being offered by the petitioner in *dacion en pago*, which shall be implemented under the following terms and conditions:

a. The properties offered by the petitioner shall be appraised by three appraisers, one to be chosen by the petitioner, a second to be chosen by the bank creditors and the third to be chosen by the Receiver. The average of the appraisals of the three (3) chosen appraisers shall be the value to be applied in arriving at the *dacion* value of the properties. In case the dacion amount is less than the total of the secured creditor's principal obligation, the balance shall be restructured in accordance with the schedule of payments under option 2, paragraph (a). In case of excess, the same shall [be] applied in full or partial payment of the accrued interest on the obligations. The balance of the accrued interest, if any, together with the penalties shall [be] condoned.

2. Creditors who will not opt for dacion shall be paid in accordance with the restructuring of the obligations as recommended by the Receiver as follows:

a) The obligations to secured creditors will be subject to a 50% haircut of the principal, and repayment shall be semi-annually over a period of 10 years, with 3-year grace period. Accrued interests and penalties shall be condoned. Interest shall be paid at the rate of 2% p.a. for the first 5 years and 5% p.a. thereafter until the obligations are fully paid. The petitioner shall allot 50% of its cash flow available for debt service for secured creditors. Upon completion of payments to government and employee accounts, the petitioner's cash flow available for debt service shall be used until the obligations are fully paid.

b) One half (1/2) of the principal of the petitioner's unsecured loan obligations to other creditors shall be settled through non-cash offsetting arrangements, with the balance payable semi-annually over a period of 10 years, with 3-year grace period, with interest at the rate of 2% p.a. for the first 5 years and 5% p.a. from the 6th year onwards until the obligations are settled in full. Accrued interest and penalties shall be condoned.

c) Similarly, one half (½) of the petitioner's obligations to trade creditors shall be settled through non-cash offsetting arrangements. The cash payments shall be made semi-annually over a period of 10 years on a pari passu basis with the bank creditors, without interest, penalties and other charges of similar kind.

WHEREFORE, the rehabilitation of petitioner Puerto Azul Land, Inc. is hereby approved in accordance with the foregoing pronouncements by the Court. Subject to the following terms and conditions:

1. Immediately upon the implementation of the rehabilitation of the petitioner, the Rehabilitation Receiver shall inform the Court thereof;

2. The Rehabilitation Receiver, creditors, and the petitioner shall submit to the Court at the end of the first year of the petitioner's rehabilitation, and annually thereafter until the termination of the rehabilitation, their respective reports on the progress of the petitioner's rehabilitation, specially the petitioner's compliance with the provisions of the plan as modified by the Rehabilitation Receiver;

3. The Rehabilitation Receiver shall report to the Court any change in the assumptions used in the Rehabilitation Plan, its projections, and forecasts, that may be brought about by the settlement through dacion en pago of any of the obligations and to recommend corresponding changes, if any, in such assumptions, projections, and forecasts;

4. The rehabilitation of the petitioner is binding upon the creditors and all persons who may be affected by it, including the creditors, whether or not they have participated in the proceedings or opposed the plan or whether or not their claims have been scheduled.

The petitioner is hereby strictly enjoined to abide by the terms and conditions set forth in this Order and the provisions of the Interim Rules on Corporate Rehabilitation.

The Rehabilitation Receiver is hereby directed to perform his functions and responsibilities pursuant to Section 14 of the Interim Rules, with particular emphasis on the following:

"u) To be notified of, and to attend all meetings of the board of directors and stockholders of the debtors";

"v) To recommend any modification of an approved rehabilitation plan as he may deem appropriate";

"w) To bring to the attention of the court any material change affecting the debtor's ability to meet the obligations under the rehabilitation plan";

[x x x]

"y) To recommend the termination of the proceedings and the dissolution of the debtor if he determines that the continuance in business of such entity is no longer feasible or profitable or no longer works to the best interest of the stockholders, parties-litigants, creditors, or the general public."

SO ORDERED.[17]

Finding the terms of the rehabilitation plan and the qualifications of the appointed rehabilitation receiver unacceptable, EIB filed with the CA a petition for review under Rule 42 of the Rules of Court. The case was entitled, "*Export and Industry Bank v. Puerto Azul Land, Inc.*"

On May 17, 2007, the CA rendered a Decision,[18] the *fallo* of which reads:

WHEREFORE, in view of the forgoing, the petition for review is hereby **DISMISSED**. The assailed December 13, 2005 decision of the court *a quo* is hereby **AFFIRMED** *in toto.*[19]

EIB filed a motion for reconsideration. However, the same was denied in a Resolution[20] dated October 30, 2007.

In G.R. No. 178768

On September 21, 2004, EIB entered its appearance before the rehabilitation court and moved for the clarification of the stay order dated September 17, 2004 and/or leave to continue the extrajudicial foreclosure of the real estates owned by PALI's

[17] *Id.* at 19-22.

[18] *Supra* note 1.

[19] *Id.* at 65.

[20] *Supra* note 2.

accommodation mortgagors. In opposition, PALI argued that the foreclosure sought would preempt the rehabilitation proceedings and would give EIB undue preference over PALI's other creditors. On November 10, 2004, the RTC issued an Order,[21] denying EIB's motion.[22]

On March 3, 2005, EIB filed an urgent motion to order PALI and/or the mortgagor TUI/rehabilitation receiver to pay all the taxes due on Transfer Certificate of Title (TCT) No. 133164. EIB claimed that the property covered by TCT No. 133164, registered in the name of TUI, was one of the properties used to secure PALI's loan from EIB. The said property was subject to a public auction by the Treasurer's Office of Pasay City for non-payment of realty taxes. Hence, EIB prayed that PALI or TUI be ordered to pay the realty taxes due on TCT No. 133164.[23]

PALI opposed the motion, arguing that the rehabilitation court's stay order stopped the enforcement of all claims, whether for money or otherwise, against a debtor, its guarantors, and its sureties not solidarily liable to the debtor; thus, TCT No. 133164 was covered by the stay order.[24]

On March 31, 2005, the RTC issued an Order,[25] the dispositive portion of which reads:

> Accordingly, and as being invoked by the creditor movant, this Court hereby modifies the Stay Order of September 17, 2004, in such a manner that TCT No. 133614 which is mortgaged with creditor movant Export and Industry Bank, Inc. is now excluded from the Stay Order. As such, Export and Industry Bank, Inc. may settle the above-stated realty taxes of third party mortgagor with the local government of Pasay City. In return, and to adequately protect the creditor movant Export and Industry Bank, Inc., the latter may foreclose on TCT No. 133614.

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[21] CA *rollo* (CA-G.R. SP No. 91996), pp. 64-67.

[22] *Rollo* (G.R. No. 178768), p. 53.

[23] *Id.*

[24] *Id.*

[25] CA *rollo* (CA-G.R. SP No. 91996), pp. 82-84.

SO ORDERED.[26]

On April 12, 2005, PALI filed an urgent motion for a status quo order, praying that the stay order be maintained and that the enforcement of the claim of Pasay City be held in abeyance pending the hearing of its motion.[27] On April 13, 2005, the RTC, so as not to render moot PALI's motion, issued an Order,[28] directing EIB to refrain from taking any steps to implement the March 31, 2005 Order. The City Treasurer of Pasay City was, likewise, directed to respect the stay order dated September 17, 2004 insofar as TCT No. 133164 was concerned, until further orders from the court.[29]

On August 16, 2005, the RTC issued an Order[30] addressing the April 12, 2005 urgent motion of PALI. In the said order, the rehabilitation court maintained its March 31, 2005 Order. The court reiterated that TCT No. 133164, under the name of TUI, was excluded from the stay order. In order to protect the interest of EIB as creditor of PALI, it may foreclose TCT No. 133164 and settle the delinquency taxes of third-party mortgagor TUI with the local government of Pasay City.

PALI filed an urgent motion to modify the Order dated August 16, 2005. The same was denied by the RTC in an Order[31] dated October 19, 2005. Aggrieved, PALI filed with the CA a petition for *certiorari* under Rule 65 of the Rules of Court, ascribing grave abuse of discretion on the part of the rehabilitation court in allowing the foreclosure of a mortgage constituted over the property of an accommodation mortgagor, to secure the loan obligations of a corporation seeking relief in a rehabilitation proceeding. The case was entitled, "*Puerto Azul Land, Inc. v. The Regional Trial Court of Manila, Br. 24; Sheriff IV of*

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[26] *Id.* at 84.

[27] *Rollo* (G.R. No. 178768), p. 54.

[28] *Id.* at 93.

[29] *Id.*

[30] *Id.* at 94-96.

[31] CA *rollo* (CA-G.R. SP No. 91996), pp. 25-27.

Pasay City Virgilio F. Villar; and Export and Industry Bank, Inc."

On March 16, 2007, the CA rendered a Decision,[32] the *fallo* of which reads:

> WHEREFORE, above premises considered, the instant Petition is **GRANTED**. The October 19, 2005 *Order* of the Regional Trial Court of Manila, Br. 24, in Civil Case No. 04-110914 is hereby declared **NULL** and **VOID** and the properties covered by TCT No. 133164 are hereby **DECLARED** subject to and covered by the September 17, 2004 stay order. Accordingly, Public Respondent Sheriff Virgilio F. Villar, or his substitute or equivalent, is **ORDERED** to immediately cease and desist from enforcing the Amended Notice of Sheriff's Sale, dated February 8, 2007, and from conducting the sale at public auction of the parcels of land covered by TCT No. 133164 on March 20, 2007 or at anytime thereafter. No costs.
>
> SO ORDERED.[33]

EIB filed a motion for reconsideration. The CA denied the same in a Resolution[34] dated June 29, 2007.

Hence, this petition for review on *certiorari* under Rule 45 of the Rules of Court.

On July 27, 2009, the Court ordered the consolidation of the two petitions.

The Issues

The issues for resolution are the following: (1) whether the terms of the rehabilitation plan are unreasonable and in violation of the non-impairment clause; and (2) whether the rehabilitation court erred when it allowed the foreclosure of the accommodation mortgagee's property and excluded the same from the coverage of the stay order.

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[32] *Supra* note 3.

[33] *Id.* at 63.

[34] *Supra* note 4.

The Ruling of the Court

I

Rehabilitation[35] contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency. The purpose of rehabilitation proceedings is to enable the company to gain a new lease on life and thereby allow creditors to be paid their claims from its earnings. The rehabilitation of a financially distressed corporation benefits its employees, creditors, stockholders and, in a larger sense, the general public.[36]

Under the Rules of Procedure on Corporate Rehabilitation,[37] "rehabilitation" is defined as the restoration of the debtor to a position of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan, more if the corporation continues as a going concern than if it is immediately liquidated.

An indispensable requirement in the rehabilitation of a distressed corporation is the rehabilitation plan, and Section 5 of the Interim Rules of Procedure on Corporate Rehabilitation provides the requisites thereof:

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[35] The applicable rule of procedure in the instant consolidated petitions is the Interim Rules of Procedure on Corporate Rehabilitation which was adopted by the Court on December 15, 2000. However, effective January 16, 2009, unless the court orders otherwise to prevent manifest injustice, new petitions and any pending petition for rehabilitation that have not undergone the initial hearing prescribed under the Interim Rules of Procedure for Corporate Rehabilitation shall be governed by the Rules of Procedure on Corporate Rehabilitation (2008).

[36] *Negros Navigation Co., Inc. v. Court of Appeals, Special Twelfth Division*, G.R. Nos. 163156 & 166845, December 10, 2008, 573 SCRA 434, 450, citing *New Frontier Sugar Corporation v. Regional Trial Court, Branch 39, Iloilo City*, 513 SCRA 601 (2007); *Rubberworld (Phils.), Inc. v. NLRC*, 305 SCRA 721 (1999); *Ruby Industrial Corporation v. Court of Appeals*, 284 SCRA 445 (1998).

[37] A.M. NO. 00-8-10-SC.

SEC. 5. Rehabilitation Plan. — The rehabilitation plan shall include (a) the desired business targets or goals and the duration and coverage of the rehabilitation; (b) the terms and conditions of such rehabilitation which shall include the manner of its implementation, giving due regard to the interests of secured creditors; (c) the material financial commitments to support the rehabilitation plan; (d) the means for the execution of the rehabilitation plan, which may include conversion of the debts or any portion thereof to equity, restructuring of the debts, *dacion en pago*, or sale of assets or of the controlling interest; (e) a liquidation analysis that estimates the proportion of the claims that the creditors and shareholders would receive if the debtor's properties were liquidated; and (f) such other relevant information to enable a reasonable investor to make an informed decision on the feasibility of the rehabilitation plan.

In G.R. No. 180893, the rehabilitation plan is contested on the ground that the same is unreasonable and results in the impairment of the obligations of contract. PWRDC contests the following stipulations in PALI's rehabilitation plan: fifty percent (50%) reduction of the principal obligation; condonation of the accrued and substantial interests and penalty charges; repayment over a period of ten years, with minimal interest of two percent (2%) for the first five years and five percent (5%) for the next five years until fully paid, and only upon availability of cash flow for debt service.

We find nothing onerous in the terms of PALI's rehabilitation plan. The Interim Rules on Corporate Rehabilitation provides for means of execution of the rehabilitation plan, which may include, among others, the conversion of the debts or any portion thereof to equity, restructuring of the debts, *dacion en pago*, or sale of assets or of the controlling interest.

The restructuring of the debts of PALI is part and parcel of its rehabilitation. Moreover, per findings of fact of the RTC and as affirmed by the CA, the restructuring of the debts of PALI would not be prejudicial to the interest of PWRDC as a secured creditor. Enlightening is the observation of the CA in this regard, *viz.*:

There is nothing unreasonable or onerous about the 50% reduction of the principal amount when, as found by the court *a quo*, a Special

Purpose Vehicle (SPV) acquired the credits of PALI from its creditors at deep discounts of as much as 85%. Meaning, PALI's creditors accepted only 15% of their credit's value. Stated otherwise, if PALI's creditors are in a position to accept 15% of their credit's value, with more reason that they should be able to accept 50% thereof as full settlement by their debtor. x x x. [38]

We also find no merit in PWRDC's contention that there is a violation of the impairment clause. Section 10, Article III of the Constitution mandates that no law impairing the obligations of contract shall be passed. This case does not involve a law or an executive issuance declaring the modification of the contract among debtor PALI, its creditors and its accommodation mortgagors. Thus, the non-impairment clause may not be invoked. Furthermore, as held in *Oposa v. Factoran, Jr.*[39] even assuming that the same may be invoked, the non-impairment clause must yield to the police power of the State. Property rights and contractual rights are not absolute. The constitutional guaranty of non-impairment of obligations is limited by the exercise of the police power of the State for the common good of the general public.

Successful rehabilitation of a distressed corporation will benefit its debtors, creditors, employees, and the economy in general. The court may approve a rehabilitation plan even over the opposition of creditors holding a majority of the total liabilities of the debtor if, in its judgment, the rehabilitation of the debtor is feasible and the opposition of the creditors is manifestly unreasonable.[40] The rehabilitation plan, once approved, is binding upon the debtor and all persons who may be affected by it, including the creditors, whether or not such persons have participated in the proceedings or have opposed the plan or whether or not their claims have been scheduled.[41]

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[38] *Rollo* (G.R. No. 180893), p. 61.

[39] G.R. No. 101083, July 30, 1993, 224 SCRA 792.

[40] Interim Rules of Procedure on Corporate Rehabilitation, Rule 4, Sec. 23.

[41] Interim Rules of Procedure on Corporate Rehabilitation, Rule 4, Sec. 24.

II

On the issue of whether the rehabilitation court erred when it allowed the foreclosure by PWRDC of the property of the accommodation mortgagor and excluded the same from the coverage of the stay order, we rule in the negative.

The governing law concerning rehabilitation and suspension of actions for claims against corporations is Presidential Decree (P.D.) No. 902-A, as amended (P.D. No. 902-A). Section 6(c) of P.D. No. 902-A mandates that, upon appointment of a management committee, rehabilitation receiver, board, or body, all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board, or body shall be suspended. Stated differently, all actions for claims against a corporation pending before any court, tribunal or board shall *ipso jure* be suspended in whatever stage such actions may be found.[42]

The justification for the suspension of actions or claims pending rehabilitation proceedings is to enable the management committee or rehabilitation receiver to effectively exercise its/his powers free from any judicial or extrajudicial interference that might unduly hinder or prevent the "rescue" of the debtor company. To allow such other action to continue would only add to the burden of the management committee or rehabilitation receiver, whose time, effort and resources would be wasted in defending claims against the corporation instead of being directed toward its restructuring and rehabilitation.[43]

In G.R. No. 178768, the rehabilitation court, in its Orders dated March 31, 2005 and August 16, 2005, removed TCT No. 133164 from the coverage of the stay order. The property covered by TCT No. 133164 is owned by TUI. TCT No. 133164 was mortgaged to PWRDC by TUI as an accommodation

[42] *Philippine Airlines, Incorporated v. Zamora*, G.R. No. 166996, February 6, 2007, 514 SCRA 585.

[43] *Negros Navigation Co., Inc. v. Court of Appeals, Special Twelfth Division*, *supra* note 36, at 451-452.

mortgagor of PALI by virtue of the Mortgage Trust Indenture (MTI) dated February 1995.

The MTI was executed among TDC, TUI and Mrs. Trinidad Diaz- Enriquez, as mortgagors; PALI, as borrower; and Urban Bank, as trustee. Under Section 4.04 thereof, the mortgagors and the borrower guaranteed to pay and discharge on time all taxes, assessments and governmental charges levied or assessed on the collateral and immediately surrender to the trustee copies of the official receipts for such payments. It was also agreed therein that should the borrower fail to pay such uncontested taxes, assessments and charges within sixty (60) calendar days from due date thereof, the trustee, at its option, shall declare the mortgagors and the borrower in default under Section 6.01(d) of the MTI, or notify all the lenders of such failure.[44]

In excluding the property from the coverage of the stay order and allow PWRDC to foreclose on the mortgage and settle the realty tax delinquency of the property with Pasay City, the rehabilitation court used as justification Section 12, Rule 4 of the Interim Rules on Corporate Rehabilitation. The said section provides:

SEC. 12. Relief from, Modification, or Termination of Stay Order. — The court may, on motion or *motu proprio*, terminate, modify, or set conditions for the continuance of the stay order, or relieve a claim from the coverage thereof upon showing that (a) any of the allegations in the petition, or any of the contents of any attachment, or the verification thereof has ceased to be true; (b) a creditor does not have adequate protection over property securing its claim; or (c) the debtor's secured obligation is more than the fair market value of the property subject of the stay and such property is not necessary for the rehabilitation of the debtor.

For purposes of this section, the creditor shall lack adequate protection if it can be shown that:

a. the debtor fails or refuses to honor a pre-existing agreement with the creditor to keep the property insured;

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[44] CA *rollo* (CA-G.R. SP No. 91996), p. 76.

b. the debtor fails or refuses to take commercially reasonable steps to maintain the property; or

c. the property has depreciated to an extent that the creditor is undersecured.

Upon showing of a lack of adequate protection, the court shall order the rehabilitation receiver to (a) make arrangements to provide for the insurance or maintenance of the property, or (b) to make payments or otherwise provide additional or replacement security such that the obligation is fully secured. If such arrangements are not feasible, the court shall modify the stay order to allow the secured creditor lacking adequate protection to enforce its claim against the debtor; Provided, however, that the court may deny the creditor the remedies in this paragraph if such remedies would prevent the continuation of the debtor as a going concern or otherwise prevent the approval and implementation of a rehabilitation plan.

In its March 31, 2005 Order, the rehabilitation court ratiocinated that PALI violated the terms of the MTI by failing to take reasonable steps to protect the security given to PWRDC, *viz*.:

It is crystal clear that Ternate Utilities, Inc. being the owner of TCT No. 133614 is the one liable to pay the realty taxes to the local government of Pasay City. The petitioner [PALI], not being the owner of the subject land does not owe the local government of Pasay City in the same way [as] the local government of Pasay City is not a creditor of petitioner [PALI]. The local government of Pasay City is pursuing directly the tax obligation of Ternate Utilities, Inc. which company is not the petitioner [PALI] in this case. Hence, for all intents and purposes, the Stay Order does not cover the tax obligations of Ternate Utilities, Inc. to the local government of Pasay City.

In [petitioner PALI's] Comment, it can be gleaned that neither Ternate Utilities, Inc. nor the petitioner [PALI] has the intention of paying the real property taxes on TCT No. 133614, which inaction will naturally result in the auctioning of [the] subject land to the prejudice and damage of creditor movant being the mortgagee thereof. Likewise, it is uncontested that the failure of the petitioner or Ternate Utilities, Inc. to pay the realty property taxes violate[d] the pre-existing agreement of the petitioner [PALI] and Ternate Utilities, Inc. to the creditor movant.[45]

[45] *Rollo* (G.R. No. 178768), pp. 91-92.

In the August 16, 2005 Order, the rehabilitation court reaffirmed its decision to remove TCT No. 133164 from the coverage of the stay order in order to protect the secured claim of PWRDC, *viz*.:

> Considering that the auction sale of TCT No. 133614 by the local government of Pasay City without the Ternate Utilities, Inc., or the petitioner [PALI] redeeming or paying the corresponding due taxes and penalties totaling to ₱7,523,257.50 as indicated in the aforesaid Certificate of Sale of Delinquent Real Property, the interest of creditor EIB is greatly prejudiced.
>
> Lastly, even assuming that the value of the PALI property covered by the MTI [Mortgage Trust Indenture] is indeed ₱1.877 Billion, however, the total claim of EIB against the petitioner [PALI] is more than ₱1.4 Billion Pesos (By statement of Asset attached by EIB in its Comment/Opposition to the petition for rehabilitation dated November 10, 2004) as of October 31, 2004 which total obligation is still counting as to date. Hence, not redeeming the auctioned TCT No. 133614 from the Pasay City Government definitely renders creditor EIB not possessing adequate protection over [the] property securing its claim against petitioner [PALI].[46]

Accordingly, the rehabilitation court committed no reversible error when it removed TCT No. 133164 from the coverage of the stay order. The Interim Rules of Procedure on Corporate Rehabilitation is silent on the enforcement of claims specifically against the properties of accommodation mortgagors. It only covers the suspension, during the pendency of the rehabilitation, of the enforcement of all claims against the debtor, its guarantors and sureties not solidarily liable with the mortgagor.

Furthermore, the newly adopted Rules of Procedure on Corporate Rehabilitation has a specific provision for this special arrangement among a debtor, its creditor and its accommodation mortgagor. Section 7(b), Rule 3 of the said Rules explicitly allows the foreclosure by a creditor of a property not belonging to a debtor under corporate rehabilitation, as it provides:

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[46] *Id.* at 95-96.

SEC. 7. Stay Order.— x x x (b) staying enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the debtor, its guarantors and persons not solidarily liable with the debtor; provided, that the stay order shall not cover claims against letters of credit and similar security arrangements issued by a third party to secure the payment of the debtor's obligations; *provided, further, that the stay order shall not cover foreclosure by a creditor of property not belonging to a debtor under corporate rehabilitation*; provided, however, that where the owner of such property sought to be foreclosed is also a guarantor or one who is not solidarily liable, said owner shall be entitled to the benefit of excussion as such guarantor[.][47]

Thus, there is no question that the action of the rehabilitation court in G.R. No. 178768 was justified.

WHEREFORE, in view of the foregoing, (1) the Decision dated May 17, 2007 and the Resolution dated October 30, 2007 of the Court of Appeals in CA-G.R. SP No. 92695 are hereby *AFFIRMED*; and (2) the Decision dated March 16, 2007 and the Resolution dated June 29, 2007 of the Court of Appeals in CA-G.R. SP No. 91996 are hereby *SET ASIDE*. The October 19, 2005 Order of the Regional Trial Court of Manila in Civil Case No. 04-110914 is hereby *AFFIRMED*. The property covered by TCT No. 133164 is hereby declared excluded from the coverage of the September 17, 2004 Stay Order.

No costs.

SO ORDERED.

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

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[47] Italics supplied.

[*] Additional member in lieu of Associate Justice Presbitero J. Velasco, Jr. per Raffle dated July 22, 2009.

THIRD DIVISION

[G.R. No. 180073. November 25, 2009]

PROSOURCE INTERNATIONAL, INC., *petitioner, vs.* **HORPHAG RESEARCH MANAGEMENT SA,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; R.A. NO. 8293 (INTELLECTUAL PROPERTY CODE); TRADEMARK; DEFINED.— A trademark is any distinctive word, name, symbol, emblem, sign, or device, or any combination thereof, adopted and used by a manufacturer or merchant on his goods to identify and distinguish them from those manufactured, sold, or dealt by others. Inarguably, a trademark deserves protection.

2. ID.; ID.; ID.; TRADEMARK INFRINGEMENT; WHAT CONSTITUTES TRADEMARK INFRINGEMENT.— Section 22 of R.A. No. 166, as amended, and Section 155 of R.A. No. 8293 define what constitutes trademark infringement, as follows: Sec. 22. *Infringement, what constitutes.* – Any person who shall use, without the consent of the registrant, any reproduction, counterfeit, copy or colorable imitation of any registered mark or tradename in connection with the sale, offering for sale, or advertising of any goods, business or services on or in connection with which such use is likely to cause confusion or mistake or to deceive purchasers or others as to the source or origin of such goods or services, or identity of such business; or reproduce, counterfeit, copy of colorably imitate any such mark or tradename and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used upon or in connection with such goods, business, or services, shall be liable to a civil action by the registrant for any or all of the remedies herein provided. Sec. 155. *Remedies; Infringement.* – Any person who shall, without the consent of the owner of the registered mark: 155.1. Use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark or the same container or a dominant

feature thereof in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or 155.2. Reproduce, counterfeit, copy or colorably imitate a registered mark or a dominant feature thereof and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive, shall be liable in a civil action for infringement by the registrant for the remedies hereinafter set forth: *Provided*, That infringement takes place at the moment any of the acts stated in Subsection 155.1 or this subsection are committed regardless of whether there is actual sale of goods or services using the infringing material.

3. ID.; ID.; ID.; ELEMENTS OF TRADEMARK INFRINGEMENT.— In accordance with Section 22 of R.A. No. 166, as well as Sections 2, 2-A, 9-A, and 20 thereof, the following constitute the elements of trademark infringement: (a) A trademark actually used in commerce in the Philippines and registered in the principal register of the Philippine Patent Office[;] (b) [It] is used by another person in connection with the sale, offering for sale, or advertising of any goods, business or services or in connection with which such use is likely to cause confusion or mistake or to deceive purchasers or others as to the source or origin of such goods or services, or identity of such business; or such trademark is reproduced, counterfeited, copied or colorably imitated by another person and such reproduction, counterfeit, copy or colorable imitation is applied to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used upon or in connection with such goods, business or services as to likely cause confusion or mistake or to deceive purchasers[;] (c) [T]he trademark is used for identical or similar goods[;] and (d) [S]uch act is done without the consent of the trademark registrant or assignee.

4. ID.; ID.; ID.; ELEMENTS OF INFRINGEMENT UNDER R.A. NO. 8293; ELEMENT OF "LIKELIHOOD OF

CONFUSION" IS THE GRAVAMEN OF TRADEMARK INFRINGEMENT.— The elements of infringement under R.A. No. 8293 are as follows: (1) The trademark being infringed is registered in the Intellectual Property Office; however, in infringement of trade name, the same need not be registered; (2) The trademark or trade name is reproduced, counterfeited, copied, or colorably imitated by the infringer; (3) The infringing mark or trade name is used in connection with the sale, offering for sale, or advertising of any goods, business or services; or the infringing mark or trade name is applied to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used upon or in connection with such goods, business or services; (4) The use or application of the infringing mark or trade name is likely to cause confusion or mistake or to deceive purchasers or others as to the goods or services themselves or as to the source or origin of such goods or services or the identity of such business; and (5) It is without the consent of the trademark or trade name owner or the assignee thereof. In the foregoing enumeration, it is the element of "likelihood of confusion" that is the gravamen of trademark infringement. But "likelihood of confusion" is a relative concept. The particular, and sometimes peculiar, circumstances of each case are determinative of its existence. Thus, in trademark infringement cases, precedents must be evaluated in the light of each particular case.

5. ID.; ID.; ID.; TWO TESTS IN DETERMINING SIMILARITY AND LIKELIHOOD OF CONFUSION; DOMINANCY TEST; FOCUSES ON THE SIMILARITY OF THE PREVALENT FEATURES OF THE COMPETING TRADEMARKS THAT MIGHT CAUSE CONFUSION AND DECEPTION.— In determining similarity and likelihood of confusion, jurisprudence has developed two tests: the Dominancy Test and the Holistic or Totality Test. The Dominancy Test focuses on the similarity of the prevalent features of the competing trademarks that might cause confusion and deception, thus constituting infringement. If the competing trademark contains the main, essential and dominant features of another, and confusion or deception is likely to result, infringement takes place. Duplication or imitation is not necessary; nor is it necessary that the infringing label should suggest an effort to imitate. The question is whether the use of the marks involved

is likely to cause confusion or mistake in the mind of the public or to deceive purchasers. Courts will consider more the aural and visual impressions created by the marks in the public mind, giving little weight to factors like prices, quality, sales outlets, and market segments.

6. ID.; ID.; ID.; HOLISTIC TEST; ENTAILS A CONSIDERATION OF THE ENTIRETY OF THE MARKS AS APPLIED TO THE PRODUCTS, INCLUDING THE LABELS AND PACKAGING, IN DETERMINING CONFUSING SIMILARITY.— The Holistic Test entails a consideration of the entirety of the marks as applied to the products, including the labels and packaging, in determining confusing similarity. The discerning eye of the observer must focus not only on the predominant words but also on the other features appearing on both labels in order that the observer may draw his conclusion whether one is confusingly similar to the other.

7. ID.; ID.; ID.; THE TRIAL AND APPELLATE COURT PROPERLY APPLIED THE DOMINANCY TEST IN DETERMINING WHETHER THERE WAS CONFUSING SIMILARITY BETWEEN THE MARKS "PYCNOGENOL AND PCO-GENOL"; NO COGENT REASON TO DEPART FROM THE CONCLUSION OF THE TWO COURTS.— The trial and appellate courts applied the Dominancy Test in determining whether there was a confusing similarity between the marks PYCNOGENOL and PCO-GENOL. Applying the test, the trial court found, and the CA affirmed, that: Both the word[s] PYCNOGENOL and PCO-GENOLS have the same suffix "GENOL" which on evidence, appears to be merely descriptive and furnish no indication of the origin of the article and hence, open for trademark registration by the plaintiff thru combination with another word or phrase such as PYCNOGENOL, Exhibits "A" to "A-3". Furthermore, although the letters "Y" between P and C, "N" between O and C and "S" after L are missing in the [petitioner's] mark PCO-GENOLS, nevertheless, when the two words are pronounced, the sound effects are confusingly similar not to mention that they are both described by their manufacturers as a food supplement and thus, identified as such by their public consumers. And although there were dissimilarities in the trademark due to the type of letters used as well as the size, color and design employed on their individual

packages/bottles, still the close relationship of the competing products' name in sounds as they were pronounced, clearly indicates that purchasers could be misled into believing that they are the same and/or originates from a common source and manufacturer. We find no cogent reason to depart from such conclusion.

8. ID.; ID.; ID.; ISSUE OF TRADEMARK INFRINGEMENT IS FACTUAL; DETERMINATIONS OF THE TRIAL COURT WHICH WAS CONCURRED IN BY THE COURT OF APPEALS ARE FINAL AND BINDING ON THE COURT.— We reiterate that the issue of trademark infringement is factual, with both the trial and appellate courts finding the allegations of infringement to be meritorious. As we have consistently held, factual determinations of the trial court, concurred in by the CA, are final and binding on this Court. Hence, petitioner is liable for trademark infringement.

9. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; NO REVERSIBLE ERROR IN THE GRANT THEREOF BY THE COURT OF APPEALS.— We sustain the award of attorney's fees in favor of respondent. Article 2208 of the Civil Code enumerates the instances when attorney's fees are awarded. As a rule, an award of attorney's fees should be deleted where the award of moral and exemplary damages is not granted. Nonetheless, attorney's fees may be awarded where the court deems it just and equitable even if moral and exemplary damages are unavailing. In the instant case, we find no reversible error in the grant of attorney's fees by the CA.

APPEARANCES OF COUNSEL

Reynaldo Z. Calabio for petitioner.

Emeterio V. Soliven & Associates for respondent.

D E C I S I O N

NACHURA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Court

of Appeals (CA) Decision[1] dated July 27, 2007 and Resolution[2] dated October 15, 2007 in CA-G.R. CV No. 87556. The assailed decision affirmed the Regional Trial Court (RTC)[3] Decision[4] dated January 16, 2006 and Order[5] dated May 3, 2006 in Civil Case No. 68048; while the assailed resolution denied petitioner's motion for reconsideration.

The facts are as follows:

Respondent Horphag Research Management SA is a corporation duly organized and existing under the laws of Switzerland and the owner[6] of trademark PYCNOGENOL, a food supplement sold and distributed by Zuellig Pharma Corporation. Respondent later discovered that petitioner Prosource International, Inc. was also distributing a similar food supplement using the mark PCO-GENOLS since 1996.[7] This prompted respondent to demand that petitioner cease and desist from using the aforesaid mark.[8]

Without notifying respondent, petitioner discontinued the use of, and withdrew from the market, the products under the name PCO-GENOLS as of June 19, 2000. It, likewise, changed its mark from PCO-GENOLS to PCO-PLUS.[9]

On August 22, 2000, respondent filed a Complaint[10] for Infringement of Trademark with Prayer for Preliminary Injunction against petitioner, praying that the latter cease and desist from

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[1] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Juan Q. Enriquez, Jr. and Marlene Gonzales-Sison, concurring; *rollo*, pp. 38-47.

[2] *Id.* at 48.

[3] Branch 167, Pasig City.

[4] Penned by Judge Alfredo C. Flores; *rollo*, pp. 230-234.

[5] *Id.* at 248-250.

[6] Evidenced by Registration No. 62413 issued by the Bureau of Patents, Trademarks and Technology Transfer.

[7] *Rollo*, p. 39.

[8] *Id.* at 163-164.

[9] *Id.* at 68.

[10] *Id.* at 49-54.

using the brand PCO-GENOLS for being confusingly similar with respondent's trademark PYCNOGENOL. It, likewise, prayed for actual and nominal damages, as well as attorney's fees.[11]

In its Answer,[12] petitioner contended that respondent could not file the infringement case considering that the latter is not the registered owner of the trademark PYCNOGENOL, but one Horphag Research Limited. It, likewise, claimed that the two marks were not confusingly similar. Finally, it denied liability, since it discontinued the use of the mark prior to the institution of the infringement case. Petitioner thus prayed for the dismissal of the complaint. By way of counterclaim, petitioner prayed that respondent be directed to pay exemplary damages and attorney's fees.[13]

During the pre-trial, the parties admitted the following:

1. Defendant [petitioner] is a corporation duly organized and existing under the laws of the Republic of the Philippines with business address at No. 7 Annapolis Street, Greenhills, San Juan, Metro Manila;

2. The trademark PYCNOGENOL of the plaintiff is duly registered with the Intellectual Property Office but not with the Bureau of Food and Drug (BFAD).

3. The defendant's product PCO-GENOLS is duly registered with the BFAD but not with the Intellectual Property Office (IPO).

4. The defendant corporation discontinued the use of and had withdrawn from the market the products under the name of PCO-GENOLS as of June 19, 2000, with its trademark changed from PCO-GENOLS to PCO-PLUS.

5. Plaintiff corporation sent a demand letter to the defendant dated 02 June 2000.[14]

On January 16, 2006, the RTC decided in favor of respondent. It observed that PYCNOGENOL and PCO-GENOLS have the

[11] *Id.* at 50-51.

[12] *Id.* at 57-61.

[13] *Id.* at 60.

[14] *Id.* at 68-69.

same suffix "GENOL" which appears to be merely descriptive and thus open for trademark registration by combining it with other words. The trial court, likewise, concluded that the marks, when read, sound similar, and thus confusingly similar especially since they both refer to food supplements. The court added that petitioner's liability was not negated by its act of pulling out of the market the products bearing the questioned mark since the fact remains that from 1996 until June 2000, petitioner had infringed respondent's product by using the trademark PCO-GENOLS. As respondent manifested that it was no longer interested in recovering actual damages, petitioner was made to answer only for attorney's fees amounting to ₱50,000.00.[15] For lack of sufficient factual and legal basis, the court dismissed petitioner's counterclaim. Petitioner's motion for reconsideration was likewise denied.

On appeal to the CA, petitioner failed to obtain a favorable decision. The appellate court explained that under the Dominancy or the Holistic Test, PCO-GENOLS is deceptively similar to PYCNOGENOL. It also found just and equitable the award of attorney's fees especially since respondent was compelled to litigate.[16]

Hence, this petition, assigning the following errors:

I. THAT THE COURT OF APPEALS ERRED IN AFFRIMING THE RULING OF THE LOWER [COURT] THAT RESPONDENT'S TRADEMARK P[YC]NOGENOLS (SIC) WAS INFRINGED BY PETITIONER'S PCO-GENOLS.

II. THAT THE COURT OF APPEALS ERRED IN AFFIRMING THE AWARD OF ATTORNEY'S FEES IN FAVOR OF RESPONDENT HORPHAG RESEARCH MANAGEMENT S.A. IN THE AMOUNT OF Php50,000.00.[17]

The petition is without merit.

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[15] *Id.* at 233-234.

[16] *Id.* at 44-46.

[17] *Id.* at 26.

It must be recalled that respondent filed a complaint for trademark infringement against petitioner for the latter's use of the mark PCO-GENOLS which the former claimed to be confusingly similar to its trademark PYCNOGENOL. Petitioner's use of the questioned mark started in 1996 and ended in June 2000. The instant case should thus be decided in light of the provisions of Republic Act (R.A.) No. 166[18] for the acts committed until December 31, 1997, and R.A. No. 8293[19] for those committed from January 1, 1998 until June 19, 2000.

A trademark is any distinctive word, name, symbol, emblem, sign, or device, or any combination thereof, adopted and used by a manufacturer or merchant on his goods to identify and distinguish them from those manufactured, sold, or dealt by others. Inarguably, a trademark deserves protection.[20]

Section 22 of R.A. No. 166, as amended, and Section 155 of R.A. No. 8293 define what constitutes trademark infringement, as follows:

Sec. 22. *Infringement, what constitutes.* – Any person who shall use, without the consent of the registrant, any reproduction, counterfeit, copy or colorable imitation of any registered mark or tradename in connection with the sale, offering for sale, or advertising of any goods, business or services on or in connection with which such use is likely to cause confusion or mistake or to deceive purchasers or others as to the source or origin of such goods or services, or identity of such business; or reproduce, counterfeit, copy of colorably imitate any such mark or tradename and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used upon or in connection with such goods, business, or services, shall be liable to a civil action by the registrant for any or all of the remedies herein provided.

Sec. 155. *Remedies; Infringement.* – Any person who shall, without the consent of the owner of the registered mark:

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[18] Trademark Law.

[19] Intellectual Property Code.

[20] *Philip Morris, Inc. v. Fortune Tobacco Corporation*, G.R. No. 158589, June 27, 2006, 493 SCRA 333, 345.

155.1. Use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark or the same container or a dominant feature thereof in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or

155.2. Reproduce, counterfeit, copy or colorably imitate a registered mark or a dominant feature thereof and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive, shall be liable in a civil action for infringement by the registrant for the remedies hereinafter set forth: *Provided*, That infringement takes place at the moment any of the acts stated in Subsection 155.1 or this subsection are committed regardless of whether there is actual sale of goods or services using the infringing material.

In accordance with Section 22 of R.A. No. 166, as well as Sections 2, 2-A, 9-A, and 20 thereof, the following constitute the elements of trademark infringement:

(a) A trademark actually used in commerce in the Philippines and registered in the principal register of the Philippine Patent Office[;]

(b) [It] is used by another person in connection with the sale, offering for sale, or advertising of any goods, business or services or in connection with which such use is likely to cause confusion or mistake or to deceive purchasers or others as to the source or origin of such goods or services, or identity of such business; or such trademark is reproduced, counterfeited, copied or colorably imitated by another person and such reproduction, counterfeit, copy or colorable imitation is applied to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used upon or in connection with such goods, business or services as to likely cause confusion or mistake or to deceive purchasers[;]

(c) [T]he trademark is used for identical or similar goods[;] and

(d) [S]uch act is done without the consent of the trademark registrant or assignee.[21]

On the other hand, the elements of infringement under R.A. No. 8293 are as follows:

(1) The trademark being infringed is registered in the Intellectual Property Office; however, in infringement of trade name, the same need not be registered;

(2) The trademark or trade name is reproduced, counterfeited, copied, or colorably imitated by the infringer;

(3) The infringing mark or trade name is used in connection with the sale, offering for sale, or advertising of any goods, business or services; or the infringing mark or trade name is applied to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used upon or in connection with such goods, business or services;

(4) The use or application of the infringing mark or trade name is likely to cause confusion or mistake or to deceive purchasers or others as to the goods or services themselves or as to the source or origin of such goods or services or the identity of such business; and

(5) It is without the consent of the trademark or trade name owner or the assignee thereof.[22]

In the foregoing enumeration, it is the element of "likelihood of confusion" that is the gravamen of trademark infringement. But "likelihood of confusion" is a relative concept. The particular, and sometimes peculiar, circumstances of each case are determinative of its existence. Thus, in trademark infringement cases, precedents must be evaluated in the light of each particular case.[23]

In determining similarity and likelihood of confusion, jurisprudence has developed two tests: the Dominancy Test

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[21] *Id.* at 360.

[22] Ruben E. Agpalo, *The Law on Trademark, Infringement and Unfair Competition* (2000), pp. 142-143.

[23] *Philip Morris, Inc. v. Fortune Tobacco Corporation*, *supra* note 20, at 356.

and the Holistic or Totality Test. The Dominancy Test focuses on the similarity of the prevalent features of the competing trademarks that might cause confusion and deception, thus constituting infringement.[24] If the competing trademark contains the main, essential and dominant features of another, and confusion or deception is likely to result, infringement takes place. Duplication or imitation is not necessary; nor is it necessary that the infringing label should suggest an effort to imitate. The question is whether the use of the marks involved is likely to cause confusion or mistake in the mind of the public or to deceive purchasers.[25] Courts will consider more the aural and visual impressions created by the marks in the public mind, giving little weight to factors like prices, quality, sales outlets, and market segments.[26]

In contrast, the Holistic Test entails a consideration of the entirety of the marks as applied to the products, including the labels and packaging, in determining confusing similarity.[27] The discerning eye of the observer must focus not only on the predominant words but also on the other features appearing on both labels in order that the observer may draw his conclusion whether one is confusingly similar to the other.[28]

The trial and appellate courts applied the Dominancy Test in determining whether there was a confusing similarity between the marks PYCNOGENOL and PCO-GENOL. Applying the test, the trial court found, and the CA affirmed, that:

Both the word[s] PYCNOGENOL and PCO-GENOLS have the same suffix "GENOL" which on evidence, appears to be merely descriptive

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[24] *Philip Morris, Inc. v. Fortune Tobacco Corporation, id*; *Mighty Corporation v. E. & J. Gallo Winery*, G.R. No. 154342, July 14, 2004, 434 SCRA 473, 506.

[25] *Mighty Corporation v. E. & J. Gallo Winery*, *supra* note 24, at 506-507.

[26] *McDonald's Corporation v. L.C. Big Mak Burger, Inc.*, G.R. No. 143993, August 18, 2004, 437 SCRA 10, 32.

[27] *Philip Morris, Inc. v. Fortune Tobacco Corporation*, *supra* note 20, at 356-357.

[28] *Mighty Corporation v. E. & J. Gallo Winery*, *supra* note 24, at 507.

and furnish no indication of the origin of the article and hence, open for trademark registration by the plaintiff thru combination with another word or phrase such as PYCNOGENOL, Exhibits "A" to "A-3". Furthermore, although the letters "Y" between P and C, "N" between O and C and "S" after L are missing in the [petitioner's] mark PCO-GENOLS, nevertheless, when the two words are pronounced, the sound effects are confusingly similar not to mention that they are both described by their manufacturers as a food supplement and thus, identified as such by their public consumers. And although there were dissimilarities in the trademark due to the type of letters used as well as the size, color and design employed on their individual packages/bottles, still the close relationship of the competing products' name in sounds as they were pronounced, clearly indicates that purchasers could be misled into believing that they are the same and/or originates from a common source and manufacturer.[29]

We find no cogent reason to depart from such conclusion.

This is not the first time that the Court takes into account the aural effects of the words and letters contained in the marks in determining the issue of confusing similarity. In *Marvex Commercial Co., Inc. v. Petra Hawpia & Co., et al.*,[30] cited in *McDonald's Corporation v. L.C. Big Mak Burger, Inc.*,[31] the Court held:

The following random list of confusingly **similar sounds** in the matter of trademarks, culled from Nims, Unfair Competition and Trade Marks, 1947, Vol. 1, will reinforce our view that "SALONPAS" and "LIONPAS" are confusingly similar in sound: "Gold Dust" and "Gold Drop"; "Jantzen" and "Jass-Sea"; "Silver Flash" and "Supper Flash"; "Cascarete" and "Celborite"; "Celluloid" and "Cellonite"; "Chartreuse" and "Charseurs"; "Cutex" and "Cuticlean"; "Hebe" and "Meje"; "Kotex" and "Femetex"; "Zuso" and "Hoo Hoo." Leon Amdur, in his book "Trade-Mark Law and Practice," pp. 419-421, cities (sic), as coming *within* the purview of the *idem sonans* rule, "Yusea" and "U-C-A," "Steinway Pianos" and "Steinberg Pianos," and "Seven-Up" and "Lemon-Up." In *Co Tiong vs. Director of Patents*, this Court

[29] *Rollo*, p. 45.

[30] 125 Phil. 295 (1966).

[31] *Supra* note 26.

unequivocally said that "Celdura" and "Cordura" are confusingly similar in sound; this Court held in *Sapolin Co. vs. Balmaceda*, 67 Phil. 795 that the name "Lusolin" is an infringement of the trademark "Sapolin," as the sound of the two names is almost the same.[32]

Finally, we reiterate that the issue of trademark infringement is factual, with both the trial and appellate courts finding the allegations of infringement to be meritorious. As we have consistently held, factual determinations of the trial court, concurred in by the CA, are final and binding on this Court.[33] Hence, petitioner is liable for trademark infringement.

We, likewise, sustain the award of attorney's fees in favor of respondent. Article 2208 of the Civil Code enumerates the instances when attorney's fees are awarded, *viz.*:

Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

1. When exemplary damages are awarded;
2. When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
3. In criminal cases of malicious prosecution against the plaintiff;
4. In case of a clearly unfounded civil action or proceeding against the plaintiff;
5. Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff"s plainly valid, just and demandable claim;
6. In actions for legal support;
7. In actions for the recovery of wages of household helpers, laborers and skilled workers;

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[32] *McDonald's Corporation v. L.C. Big Mak Burger, Inc.*, *supra* note 26, at 34.

[33] *Philip Morris, Inc. v. Fortune Tobacco Corporation, supra* note 20, at 361-362.

8. In actions for indemnity under workmen's compensation and employer's liability laws;
9. In a separate civil action to recover civil liability arising from a crime;
10. When at least double judicial costs are awarded;
11. In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

As a rule, an award of attorney's fees should be deleted where the award of moral and exemplary damages is not granted.[34] Nonetheless, attorney's fees may be awarded where the court deems it just and equitable even if moral and exemplary damages are unavailing.[35] In the instant case, we find no reversible error in the grant of attorney's fees by the CA.

WHEREFORE, premises considered, the petition is *DENIED* for lack of merit. The Court of Appeals Decision dated July 27, 2007 and its Resolution dated October 15, 2007 in CA-G.R. CV No. 87556 are *AFFIRMED*.

SO ORDERED.

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

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[34] *Francisco v. Co*, G.R. No. 151339, January 31, 2006, 481 SCRA 241; *Ibaan Rural Bank, Inc. v. Court of Appeals*, 378 Phil. 707 (1999).

[35] *Villanueva v. Court of Appeals*, G.R. No. 132955, October 27, 2006, 505 SCRA 564; *Carlos v. Sandoval*, G.R. Nos. 135830, 136035 and 137743, September 30, 2005, 471 SCRA 266.

THIRD DIVISION

[G.R. No. 180345. November 25, 2009]

SAN ROQUE POWER CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); REFUNDS OR TAX CREDITS OF INPUT TAX; CRITERIA THAT MUST BE COMPLIED WITH TO CLAIM REFUND OR TAX CREDIT UNDER SECTION 112(A) OF THE CODE.— After reviewing the records, this Court finds that petitioner's claim for refund or credit is justified under Section 112(A) of the NIRC. To claim refund or tax credit under Section 112(A), petitioner must comply with the following criteria: (1) the taxpayer is VAT registered; (2) the taxpayer is engaged in zero-rated or effectively zero-rated sales; (3) the input taxes are due or paid; (4) the input taxes are not transitional input taxes; (5) the input taxes have not been applied against output taxes during and in the succeeding quarters; (6) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales; (7) for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations; (8) where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and (9) the claim is filed within two years after the close of the taxable quarter when such sales were made.

2. ID.; ID.; ID.; REQUIREMENTS OF THE LAW COMPLIED WITH IN CASE AT BAR.— Based on the evidence presented, petitioner complied with the requirements. Firstly, petitioner had adequately proved that it is a VAT registered taxpayer when it presented Certificate of Registration No. OCN-98-006-007394, which it attached to its Petition for Review dated 29 March 2004 filed before the CTA in Division. Secondly, it is

unquestioned that petitioner is engaged in providing electricity for NPC, an activity which is subject to zero rate, under Section 108(B)(3) of the NIRC. Thirdly, petitioner offered as evidence suppliers' VAT invoices or official receipts, as well as Import Entries and Internal Revenue Declarations (Exhibits "J-4-A1" to "J-4-L265"), which were examined in the audit conducted by Aguilar, the Court-commissioned Independent CPA. Significantly, Aguilar noted in his audit report (Exhibit "J-2") that of the ₱249,397,620.18 claimed by petitioner, he identified items with incomplete documentation and errors in computation with a total amount of ₱3,266,009.78. Based on these findings, the remaining input VAT of ₱246,131,610.40 was properly documented and recorded in the books. Fourthly, the input taxes claimed, which consisted of local purchases and importations made in 2002, are not transitional input taxes, which Section 111 of the NIRC defines as input taxes allowed on the beginning inventory of goods, materials and supplies. Fifthly, the audit report of Aguilar affirms that the input VAT being claimed for tax refund or credit is net of the input VAT that was already offset against output VAT amounting to ₱26,247.27 for the first quarter of 2002 and ₱34,996.36 for the fourth quarter of 2002, as reflected in the Quarterly VAT Returns.

3. ID.; ID.; ID.; THE TAX BENEFIT TO VAT REGISTERED ZERO-RATED OR EFFECTIVELY ZERO RATED TAXPAYERS UNDER SECTION 112(A) OF THE NIRC DOES NOT LIMIT THE DEFINITION OF "SALE" TO COMMERCIAL TRANSACTIONS IN THE NORMAL COURSE OF BUSINESS.— The Court is not unmindful of the fact that the transaction described hereinabove was not a commercial sale. In granting the tax benefit to VAT-registered zero-rated or effectively zero-rated taxpayers, Section 112(A) of the NIRC does not limit the definition of "sale" to commercial transactions in the normal course of business. Conspicuously, Section 106(B) of the NIRC, which deals with the imposition of the VAT, does not limit the term "sale" to commercial sales, rather it extends the term to transactions that are "**deemed**" sale, which are thus enumerated: SEC 106. **Value-Added Tax on Sale of Goods or Properties**. x x x (B) *Transactions Deemed Sale*.—The following transactions shall be deemed sale: **(1) Transfer, use or consumption not**

in the course of business of goods or properties originally intended for sale or for use in the course of business; xxx After carefully examining this provision, this Court finds it an equitable construction of the law that when the term "sale" is made to include certain transactions for the purpose of imposing a tax, these same transactions should be included in the term "sale" when considering the availability of an exemption or tax benefit from the same revenue measures. It is undisputed that during the fourth quarter of 2002, petitioner transferred to NPC all the electricity that was produced during the trial period. The fact that it was not transferred through a commercial sale or in the normal course of business does not deflect from the fact that such transaction is deemed as a sale under the law.

4. ID.; ID.; ID.; THE SEVENTH AND EIGHT REQUIREMENTS ARE INAPPLICABLE IN CASE AT BAR.— The seventh requirement regarding foreign currency exchange proceeds is inapplicable where petitioner's zero-rated sale of electricity to NPC did not involve foreign exchange and consisted only of a single transaction wherein NPC paid petitioner ₱42,500,000.00 in exchange for the electricity transferred to it by petitioner. Similarly, the eighth requirement is inapplicable to this case, where the only sale transaction consisted of an effectively zero-rated sale and there are no exempt or taxable sales that transpired, which will require the proportionate allocation of the creditable input tax paid.

5. ID.; ID.; ID.; DESPITE THE LAPSE IN PROCEDURE AND THE FACT THAT THE CLAIM WAS FILED PREMATURELY, SUBSTANTIAL JUSTICE, EQUITY, AND FAIR PLAY DICTATE THAT TECHNICALITIES AND LEGALISMS SHOULD NOT BE MISUSED BY THE GOVERNMENT TO KEEP MONEY NOT BELONGING TO IT, THEREBY ENRICHING ITSELF AT THE EXPENSE OF ITS LAW ABIDING CITIZENS.— The last requirement determines that the claim should be filed within two years after the close of the taxable quarter when such sales were made. The sale of electricity to NPC was reported at the fourth quarter of 2002, which closed on 31 December 2002. Petitioner had until 30 December 2004 to file its claim for refund or credit. For the period January to March 2002, petitioner filed an amended request for refund or tax credit on 30 May 2003; for

the period July 2002 to September 2002, on 27 February 2003; and for the period October 2002 to December 2002, on 31 July 2003. In these three quarters, petitioners seasonably filed its requests for refund and tax credit. However, for the period April 2002 to May 2002, the claim was filed prematurely on 25 October 2002, before the last quarter had closed on 31 December 2002. Despite this lapse in procedure, this Court notes that petitioner was able to positively show that it was able to accumulate excess input taxes on various importations and local purchases in the amount of ₱246,131,610.40, which were attributable to a transfer of electricity in favor of NPC. The fact that it had filed its claim for refund or credit during the quarter when the transfer of electricity had taken place, instead of at the close of the said quarter does not make petitioner any less entitled to its claim. Given the special circumstances of this case, wherein petitioner was incorporated for the sole purpose of constructing or operating a power plant that will transfer all the electricity it generates to NPC, there is no danger that petitioner would try to fraudulently claim input tax paid on purchases that will be attributed to sale transactions that are not zero-rated. Substantial justice, equity and fair play are on the side of the petitioner. Technicalities and legalisms, however, exalted, should not be misused by the government to keep money not belonging to it, thereby enriching itself at the expense of its law abiding citizens.

6. ID.; ID.; ID.; EFFECTIVE ZERO-RATING IS NOT INTENDED AS A BENEFIT TO THE PERSON LEGALLY LIABLE TO PAY THE TAX, SUCH AS PETITIONER, BUT TO RELIEVE CERTAIN EXEMPT ENTITIES, SUCH AS THE NATIONAL POWER CORPORATION, FROM THE BURDEN OF INDIRECT TAX SO AS TO ENCOURAGE THE DEVELOPMENT OF CERTAIN INDUSTRIES.— It bears emphasis that effective zero-rating is not intended as a benefit to the person legally liable to pay the tax, such as petitioner, but to relieve certain exempt entities, such as the NPC, from the burden of indirect tax so as to encourage the development of particular industries. Before, as well as after, the adoption of the VAT, certain special laws were enacted for the benefit of various entities and international agreements were entered into by the Philippines with foreign governments and institutions exempting sale of goods or supply of services from indirect

taxes at the level of their suppliers. Effective zero-rating was intended to relieve the exempt entity from being burdened with the indirect tax which is or which will be shifted to it had there been no exemption. In this case, petitioner is being exempted from paying VAT on its purchases to relieve NPC of the burden of additional costs that petitioner may shift to NPC by adding to the cost of the electricity sold to the latter.

7. ID.; ID.; ID.; TO LIMIT THE EXEMPTION GRANTED TO THE NATIONAL POWER CORPORATION TO DIRECT TAXES, NOTWITHSTANDING THE GENERAL AND BROAD LANGUAGE OF THE STATUTE WILL BE TO THWART THE LEGISLATIVE INTENTION IN GIVING EXEMPTION FROM ALL FORMS OF TAXES AND IMPOSITIONS, WITHOUT DISTINGUISHING THOSE THAT ARE DIRECT AND THOSE THAT ARE NOT.— Section 13 of Republic Act No. 6395, otherwise known as the NPC Charter, further clarifies that it is the lawmakers' intention that NPC be made completely exempt from all taxes, both direct and indirect: Sec. 13. *Non-profit Character of the Corporation; Exemption from all Taxes, Duties, Fees, Imposts and Other Charges by Government and Governmental Instrumentalities*. — The corporation shall be non-profit and shall devote all its returns from its capital investment, as well as excess revenues from its operation, for expansion. To enable the corporation to pay its indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in Section 1 of this Act, the corporation is hereby declared exempt: (a) From the payment of all taxes, duties, fees, imposts, charges, costs and service fees in any court or administrative proceedings in which it may be a party, restrictions and duties to the Republic of the Philippines, its provinces, cities, municipalities, and other government agencies and instrumentalities; (b) From all income taxes, franchise taxes, and realty taxes to be paid to the National Government, its provinces, cities, municipalities and other government agencies and instrumentalities; (c) From all import duties, compensating taxes and advanced sales tax and wharfage fees on import of foreign goods, required for its operations and projects; and (d) From all taxes, duties, fees, imposts, and all other charges imposed by the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and

instrumentalities, on all petroleum products used by the corporation in the generation, transmission, utilization, and sale of electric power. To limit the exemption granted to the NPC to direct taxes, notwithstanding the general and broad language of the statute will be to thwart the legislative intention in giving exemption from all forms of taxes and impositions, without distinguishing between those that are direct and those that are not.

8. ID.; ID.; ID.; CONGRESS GRANTED THE NATIONAL POWER CORPORATION A COMPREHENSIVE TAX EXEMPTION BECAUSE OF THE SIGNIFICANT PUBLIC INTEREST INVOLVED; TO ERRONEOUSLY AND UNJUSTLY DEPRIVE INDUSTRIES THAT GENERATE ELECTRICAL POWER OF TAX BENEFITS THAT THE LAW CLEARLY GRANTS WILL HAVE AN IMMEDIATE EFFECT ON CONSUMERS OF ELECTRICITY AND LONG TERM EFFECTS ON OUR ECONOMY.— Congress granted NPC a comprehensive tax exemption because of the significant public interest involved. This is enunciated in Section 1 of Republic Act No. 6395: Section 1. *Declaration of Policy*. Congress hereby declares that (1) the comprehensive development, utilization and conservation of Philippine water resources for all beneficial uses, including power generation, and (2) the total electrification of the Philippines through the development of power from all sources to meet the needs of industrial development and dispersal and the needs of rural electrification are primary objectives of the nation which shall be pursued coordinately and supported by all instrumentalities and agencies of government, including its financial institutions. The ability of the NPC to provide sufficient and affordable electricity throughout the country greatly affects our industrial and rural development. Erroneously and unjustly depriving industries that generate electrical power of tax benefits that the law clearly grants will have an immediate effect on consumers of electricity and long term effects on our economy.

9. ID.; ID.; ID.; REPUBLIC ACT 9136, OR THE ELECTRIC POWER INDUSTRY REFORM ACT OF 2001 (EPIRA): THE OBJECTIVES SET FORTH IN THE EPIRA LAW CAN ONLY BE ACHIEVED IF GOVERNMENT WERE TO ALLOW PETITIONER AND OTHERS SIMILARLY SITUATED TO OBTAIN THE INPUT TAX CREDITS

AVAILABLE UNDER THE LAW; DENYING PETITIONER SUCH CREDITS WOULD GO AGAINST THE DECLARED POLICIES OF THE EPIRA LAW.— We cannot lose sight of the fact that it is the declared policy of the State, expressed in Section 2 of Republic Act No. 9136, otherwise known as the EPIRA Law, "*to ensure and accelerate the total electrification of the country*"; "*to enhance the inflow of private capital and broaden the ownership base of the power generation, transmission and distribution sectors*"; and "*to promote the utilization of indigenous and new and renewable energy resources in power generation in order to reduce dependence on imported energy*." Further, Section 6 provides that "*pursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation companies shall be value-added tax zero-rated*. Section 75 of said law succinctly declares that "*this Act shall, unless the context indicates otherwise, be construed in favor of the establishment, promotion, preservation of competition and power empowerment so that the widest participation of the people, whether directly or indirectly is ensured*." The objectives as set forth in the EPIRA Law can only be achieved if government were to allow petitioner and others similarly situated to obtain the input tax credits available under the law. Denying petitioner such credits would go against the declared policies of the EPIRA Law.

10. ID.; ID.; ID.; THE LEGISLATIVE GRANT OF TAX RELIEF CONSTITUTES A SOVEREIGN COMMITMMENT OF GOVERNMENT TO TAXPAYERS THAT THE LATTER CAN AVAIL THEMSELVES OF CERTAIN TAX RELIEFS AND INCENTIVES IN THE COURSE OF THEIR BUSINESS ACTIVITIES HERE.— The legislative grant of tax relief (whether in the EPIRA Law or the Tax Code) constitutes a sovereign commitment of Government to taxpayers that the latter can avail themselves of certain tax reliefs and incentives in the course of their business activities here. Such a commitment is particularly vital to foreign investors who have been enticed to invest heavily in our country's infrastructure, and who have done so on the firm assurance that certain tax reliefs and incentives can be availed of in order to enable them to achieve their projected returns on these very long-term and heavily funded investments. While the government's ability to keep its commitment is put in doubt, credit rating turns to

worse; the costs of borrowing becomes higher and the harder it will be to attract foreign investors. The country's earnest efforts to move forward will all be put to naught.

APPEARANCES OF COUNSEL

Ilao & Ilao Law Offices for petitioner.

The Solicitor General for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

In this Petition for Review on *Certiorari*, under Rule 45 of the Revised Rules of Court, petitioner San Roque Power Corporation assails the Decision[1] of the Court of Tax Appeals (CTA) *En Banc* dated 20 September 2007 in CTA EB No. 248, affirming the Decision[2] dated 23 March 2006 of the CTA Second Division in CTA Case No. 6916, which dismissed the claim of petitioner for the refund and/or issuance of a tax credit certificate in the amount of Two Hundred Forty-Nine Million Three Hundred Ninety-Seven Thousand Six Hundred Twenty Pesos and 18/100 (₱249,397,620.18) allegedly representing unutilized input Value Added Tax (VAT) for the period covering January to December 2002.

Respondent, as the Commissioner of the Bureau of Internal Revenue (BIR), is responsible for the assessment and collection of all national internal revenue taxes, fees, and charges, including the Value Added Tax (VAT), imposed by Section 108[3] of the National Internal Revenue Code (NIRC) of 1997. Moreover,

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[1] Penned by Associate Justice Lovell R. Baustista with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova and Olga Palanca-Enriquez, concurring; *rollo*, pp. 39-60.

[2] Penned by Associate Justice Juanito Castañeda, Jr. with Associate Justices Erlinda P. Uy and Olga Palanca-Enriquez; *id.* at 85-100.

[3] Section 108. **Value-Added Tax on Sale of Services and Use or Lease of Properties**.

it is empowered to grant refunds or issue tax credit certificates in accordance with Section 112 of the NIRC of 1997 for unutilized input VAT paid on zero-rated or effectively zero-rated sales and purchases of capital goods, to wit:

SEC. 112. **Refunds or Tax Credits of Input Tax**.—

(A) *Zero-rated or Effectively Zero-rated Sales*—Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

(B) *Capital Goods*—A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent the such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.

On the other hand, petitioner is a domestic corporation organized under the corporate laws of the Republic of the Philippines. On 14 October 1997, it was incorporated for the sole purpose of building and operating the San Roque Multipurpose Project in San Manuel, Pangasinan, which is an indivisible project consisting of the power station, the dam,

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(A) *Rate and Base of Tax*.—There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.

spillway, and other related facilities.[4] It is registered with the Board of Investments (BOI) on a preferred pioneer status to engage in the design, construction, erection, assembly, as well as own, commission, and operate electric power-generating plants and related activities, for which it was issued the Certificate of Registration No. 97-356 dated 11 February 1998.[5] As a seller of services, petitioner is registered with the BIR as a VAT taxpayer under Certificate of Registration No. OCN-98-006-007394.[6]

On 11 October 1997, petitioner entered into a Power Purchase Agreement (PPA) with the National Power Corporation (NPC) to develop the hydro potential of the Lower Agno River, and to be able to generate additional power and energy for the Luzon Power Grid, by developing and operating the San Roque Multipurpose Project. The PPA provides that petitioner shall be responsible for the design, construction, installation, completion and testing and commissioning of the Power Station and it shall operate and maintain the same, subject to the instructions of the NPC. During the cooperation period of 25 years commencing from the completion date of the Power Station, the NPC shall purchase all the electricity generated by the Power Plant.[7]

Because of the exclusive nature of the PPA between petitioner and the NPC, petitioner applied for and was granted five Certificates of Zero Rate by the BIR, through the Chief Regulatory Operations Monitoring Division, now the Audit Information, Tax Exemption & Incentive Division. Based on these certificates, the zero-rated status of petitioner commenced on 27 September 1998 and continued throughout the year 2002.[8]

For the period January to December 2002, petitioner filed with the respondent its Monthly VAT Declarations and Quarterly VAT Returns. Its Quarterly VAT Returns showed excess input

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[4] *Rollo*, p. 40.

[5] Records, p. 22.

[6] Annex "B" of Petition for Review dated 29 March 2004; *id.* at 21.

[7] *Rollo*, p. 41.

[8] *Id.* at 41 and 320.

VAT payments on account of its importation and domestic purchases of goods and services, as follows:[9]

Period Covered	Date Filed	Particulars	Amount
1st Quarter (January 1, 2002 to March 31, 2002)	April 20, 2002	Tax Due for the Quarter (Box 13C)	₱ 26,247.27
		Input Tax carried over from previous qtr (22B)	296,124,429.21
		Input VAT on Domestic Purchases for the Qtr (22D)	95,003,348.91
		Input VAT on Importation of Goods for the Qtr (22F)	20,758,668.00
		Total Available Input tax (23)	411,886,446.12
		VAT Refund/TCC Claimed (24A)	173,909,435.66
		Net Creditable Input Tax (25)	237,977,010.46
		VAT payable (Excess Input Tax) (26)	(237,950,763.19)
		Tax Payable (overpayment) (28)	(237,950,763.19)
2nd Quarter (April 1, 2002 to June 30, 2002)	July 24, 2002	Tax Due for the Quarter (Box 13C)	₱ blank
		Input Tax carried over from previous qtr (22B)	237,950,763.19
		Input VAT on Domestic Purchases for the Qtr (22D)	65,206,499.83
		Input VAT on Importation of Goods for the Qtr (22F)	18,485,758.00
		Total Available Input tax (23)	321,643,021.02
		VAT Refund/TCC Claimed (24A)	237,950,763.19
		Net Creditable Input Tax (25)	83,692,257.83
		VAT payable (Excess Input Tax) (26)	(83,692,257.83)

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

		Tax Payable (overpayment) (28)	(83,692,257.83)

3rd Quarter (July 1, 2002 to September 30, 2002)	October 25, 2002	Tax Due for the Quarter (Box 13C)	₱ blank
		Input Tax carried over from previous qtr (22B)	199,428,027.47
		Input VAT on Domestic Purchases for the Qtr (22D)	28,924,020.79
		Input VAT on Importation of Goods for the Qtr (22F)	1,465,875.00
		Total Available Input tax (23)	229,817,923.26
		VAT Refund/TCC Claimed (24A)	Blank
		Net Creditable Input Tax (25)	229,817,923.26
		VAT payable (Excess Input Tax) (26)	(229,817,923.26)
		Tax Payable (overpayment) (28)	(229,817,923.26)

4th Quarter (October 1, 2002 to December 31, 2002)	January 23, 2003	Tax Due for the Quarter (Box 13C)	₱ 34,996.36
		Input Tax carried over from previous qtr (22B)	114,082,153.62
		Input VAT on Domestic Purchases for the Qtr (22D)	18,166,330.54
		Input VAT on Importation of Goods for the Qtr (22F)	2,308,837.00
		Total Available Input tax (23)	134,557,321.16
		VAT Refund/TCC Claimed (24A)	83,692,257.83
		Net Creditable Input Tax (25)	50,865,063.33

		VAT payable (Excess Input Tax) (26)	(50,830,066.97)
		Tax Payable (overpayment) (28)	(50,830,066.97)

On 19 June 2002, 25 October 2002, 27 February 2003, and 29 May 2003, petitioner filed with the BIR four separate administrative claims for refund of Unutilized Input VAT paid for the period January to March 2002, April to June 2002, July to September 2002, and October to December 2002, respectively. In these letters addressed to the BIR, Carlos Echevarria (Echevarria), the Vice President and Director of Finance of petitioner, explained that petitioner's sale of power to NPC are subject to VAT at zero percent rate, in accordance with Section 108(B)(3) of the NIRC.[10] Petitioner sought to recover the total amount of ₱250,258,094.25, representing its unutilized excess VAT on its importation of capital and other taxable goods and services for the year 2002, broken down as follows:[11]

Qtr Involved	Output Tax	Input Tax		
		Domestic Purchases	Importations	Excess Input Tax
	(A)	(B)	(C)	(D)=(B)+(C)–(A)
1st	₱ 26,247.27	₱95,003,348.91	₱20,758,668.00	₱115,735,769.84
2nd	-	65,206,499.83	18,485,758.00	83,692,257.83

[10] Section 108 (B) of the NIRC reads:

Section 108. **Value-added Tax on Sale of Services and Use or Lease of Properties.—**

x x x

(B) *Transactions Subject to Zero Percent (0%) Rate*.—The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

x x x

(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate.

[11] *Id.* at 42.

3rd	-	28,924,020.79	1,465,875.00	30,389,895.79
4th	34,996.36	18,166,330.54	2,308,837.00	20,440,171.18
	₱61,243.63	₱207,300,200.07	₱43,019,138.00	₱250,258,094.44

Petitioner amended its Quarterly VAT Returns, particularly the items on (1) Input VAT on Domestic Purchases during the first quarter of 2002; (2) Input VAT on Domestic Purchases for the fourth quarter of 2002; and (3) Input VAT on Importation of Goods for the fourth quarter of 2002. The amendments read as follows:[12]

Period Covered	Date Filed	Particulars	Amount
1st Quarter (January 1, 2002 to March 31, 2002)	April 24, 2003	Tax Due for the Quarter (Box 13C)	₱ 26,247.27
		Input Tax carried over from previous qtr (22B)	297,719,296.25
		Input VAT on Domestic Purchases for the Qtr (22D)	95,126,981.69
		Input VAT on Importation of Goods for the Qtr (22F)	20,758,668.00
		Total Available Input tax (23)	413,604,945.94
		VAT Refund/TCC Claimed (24A)	175,544,002.27
		Net Creditable Input Tax (25)	175,544,002.27
		VAT payable (Excess Input Tax) (26)	(238,060,943.67)
		Tax Payable (overpayment) (28)	(238,034,696.40)
2nd Quarter (April 1, 2002 to June 30, 2002)	April 24, 2003	Tax Due for the Quarter (Box 13C)	₱ blank
		Input Tax carried over from previous qtr (22B)	238,034,696.40

[12] *Id.* at 43.

		Input VAT on Domestic Purchases for the Qtr (22D)	65,206,499.83
		Input VAT on Importation of Goods for the Qtr (22F)	18,485,758.00
		Total Available Input tax (23)	321,643,021.02
		VAT Refund/TCC Claimed (24A)	237,950,763.19
		Net Creditable Input Tax (25)	83,692,257.83
		VAT payable (Excess Input Tax) (26)	(83,692,257.83)
		Tax Payable (overpayment) (28)	(83,692,257.83)
3rd Quarter (July 1, 2002 to September 30, 2002)	October 25, 2002	Tax Due for the Quarter (Box 13C)	₱ blank
		Input Tax carried over from previous qtr (22B)	83,692,257.83
		Input VAT on Domestic Purchases for the Qtr (22D)	28,924,020.79
		Input VAT on Importation of Goods for the Qtr (22F)	1,465,875.00
		Total Available Input tax (23)	114,082,153.62
		VAT Refund/TCC Claimed (24A)	Blank
		Net Creditable Input Tax (25)	114,082,153.62
		VAT payable (Excess Input Tax) (26)	(114,082,153.62)
		Tax Payable (overpayment) (28)	(114,082,153.62)
4th Quarter (October 1, 2002 to December 31, 2002)	January 23, 2003	Tax Due for the Quarter (Box 13C)	₱ 34,996.36
		Input Tax carried over from previous qtr (22B)	114,082,153.62
		Input VAT on Domestic Purchases for the Qtr (22D)	17,918,056.50

		Input VAT on Importation of Goods for the Qtr(22F)	1,573,004.00
		Total Available Input tax (23)	133,573,214.12
		VAT Refund/TCC Claimed (24A)	83,692,257.83
		Net Creditable Input Tax (25)	49,880,956.29
		VAT payable (Excess Input Tax) (26)	(49,845,959.93)
		Tax Payable (overpayment) (28)	(49,845,959.93)

On 30 May 2003 and 31 July 2003, petitioner filed two letters with the BIR to amend its claims for tax refund or credit for the first and fourth quarter of 2002, respectively. Petitioner sought to recover a total amount of ₱249,397,620.18 representing its unutilized excess VAT on its importation and domestic purchases of goods and services for the year 2002, broken down as follows:[13]

Qtr Involved	Date Filed	Output Tax	Input Tax		
			Domestic Purchases	Importations	Excess Input Tax
		(A)	(B)	(C)	(D)=(B)+(C)–(A)
1st	30-May-03	₱ 26,247.27	₱95,126,981.69	₱20,758,668.00	₱115,859,402.42
2nd	25-Oct-02	-	65,206,499.83	18,185,758.00	83,692,257.83
3rd	27-Feb-03	-	28,924,920.79	1,465,875,00	30,389,895.79
4th	31-Jul-03	34,996.36	17,918,056.50	1,573,004.00	19,456,064.14
		₱61,243.63	₱207,175,558.81	₱42,283,305.00	₱249,397,620.18

Respondent failed to act on the request for tax refund or credit of petitioner, which prompted the latter to file on 5 April 2004, with the CTA in Division, a Petition for Review, docketed as CTA Case No. 6916 before it could be barred by the two-year prescriptive period within which to file its claim. Petitioner sought the refund of the amount of ₱249,397,620.18 representing

[13] *Id.* at 43-44.

its unutilized excess VAT on its importation and local purchases of various goods and services for the year 2002.[14]

During the proceedings before the CTA Second Division, petitioner presented the following documents, among other pieces of evidence: (1) Petitioner's Amended Quarterly VAT return for the 4th Quarter of 2002 marked as Exhibit "A", showing the amount of ₱42,500,000.00 paid by NTC to petitioner for all the electricity produced during test runs; (2) the special audit report, prepared by the CPA firm of Punongbayan and Araullo through a partner, Angel A. Aguilar (Aguilar), and the attached schedules, marked as Exhibits "J-2" to "J-21"; (3) Sales Invoices and Official Receipts and related documents issued to petitioner for the year 2002, marked as Exhibits "J-4-A1" to "J-4-L265"; (4) Audited Financial Statements of Petitioner for the year 2002, with comparative figures for 2001, marked as Exhibit "K"; and (5) the Affidavit of Echevarria dated 9 February 2005, marked as Exhibit "L".[15]

During the hearings, the parties jointly stipulated on the issues involved:

1. Whether or not petitioner's sales are subject to value-added taxes at effectively zero percent (0%) rate;

2. Whether or not petitioner incurred input taxes which are attributable to its effectively zero-rated transactions;

3. Whether or not petitioner's importation and purchases of capital goods and related services are within the scope and meaning of "capital goods" under Revenue Regulations No. 7-95;

4. Whether or not petitioner's input taxes are sufficiently substantiated with VAT invoices or official receipts;

5. Whether or not the VAT input taxes being claimed for refund/tax credit by petitioner (had) been credited or utilized against any output taxes or (had) been carried forward to the succeeding quarter or quarters; and

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[14] *Id.* at 44.

[15] Records, pp. 274-285.

6. Whether or not petitioner is entitled to a refund of VAT input taxes it paid from January 1, 2002 to December 31, 2002 in the total amount of Two Hundred Forty Nine Million Three Hundred Ninety Seven Thousand Six Hundred Twenty and 18/100 Pesos (₱249,397,620.18).

Simply put, the issue is: whether or not petitioner is entitled to refund or tax credit in the amount of ₱249,397,620.18 representing its unutilized input VAT paid on importation and purchases of capital and other taxable goods and services from January 1 to December 31, 2002.

After a hearing on the merits, the CTA Second Division rendered a Decision[16] dated 23 March 2006 denying petitioner's claim for tax refund or credit. The CTA noted that petitioner based its claim on creditable input VAT paid, which is attributable to (1) zero-rated or effectively zero-rated sale, as provided under Section 112(A) of the NIRC, and (2) purchases of capital goods, in accordance with Section 112(B) of the NIRC. The court ruled that in order for petitioner to be entitled to the refund or issuance of a tax credit certificate on the basis of Section 112(A) of the NIRC, it must establish that it had incurred zero-rated sales or effectively zero-rated sales for the taxable year 2002. Since records show that petitioner did not make any zero-rated or effectively-zero rated sales for the taxable year 2002, the CTA reasoned that petitioner's claim must be denied. Parenthetically, the court declared that the claim for tax refund or credit based on Section 112(B) of the NIRC requires petitioner to prove that it paid input VAT on capital goods purchased, based on the definition of capital goods provided under Section 4.112-1(b) of Revenue Regulations No. 7-95—*i.e.*, goods or properties which have an estimated useful life of greater than one year, are treated as depreciable assets under Section 34(F) of the NIRC, and are used directly or indirectly in the production or sale of taxable goods and services. The CTA found that the evidence offered by petitioner—the suppliers' invoices and official receipts and Import Entries and Internal Revenue Declarations and the audit report of the Court-

[16] *Rollo*, pp. 85-101.

commissioned Independent Certified Public Accountant (CPA) are insufficient to prove that the importations and domestic purchases were classified as capital goods and properties entered as part of the "Property, Plant and Equipment" account of the petitioner. The dispositive part of the said Decision reads:

> WHEREFORE, the instant Petition for Review is **DENIED** for lack of merit.[17]

Not satisfied with the foregoing Decision dated 23 March 2006, petitioner filed a Motion for Reconsideration which was denied by the CTA Second Division in a Resolution dated 4 January 2007.[18]

Petitioner filed an appeal with the CTA *En Banc*, docketed as CTA EB No. 248. The CTA *En Banc* promulgated its Decision[19] on 20 September 2007 denying petitioner's appeal. The CTA *En Banc* reiterated the ruling of the Division that petitioner's claim based on Section 112(A) of the NIRC should be denied since it did not present any records of any zero-rated or effectively zero-rated transactions. It clarified that since petitioner failed to prove that any sale of its electricity had transpired, petitioner may base its claim only on Section 112(B) of the NIRC, the provision governing the purchase of capital goods. The court noted that the report of the Court-commissioned auditing firm, Punongbayan & Araullo, dealt specifically with the unutilized input taxes paid or incurred by petitioner on its local and foreign purchases of goods and services attributable to its zero-rated sales, and not to purchases of capital goods. It decided that petitioner failed to prove that the purchases evidenced by the invoices and receipts, which petitioner presented, were classified as capital goods which formed part of its "Property, Plant and Equipment," especially since petitioner failed to present its books of account. The dispositive part of the said Decision reads:

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[17] *Id.* at 100.

[18] *Id.* at 115-122.

[19] *Id.* at 39-60.

WHEREFORE, premises considered, the instant petition is hereby **DISMISSED**. Accordingly, the assailed Decision and Resolution are hereby **AFFIRMED**.[20]

The CTA *En Banc* denied petitioner's Motion for Reconsideration in a Resolution dated 22 October 2007.[21]

Hence, the present Petition for Review where the petitioner raises the following errors allegedly committed by the CTA *En banc*:

I

THE COURT OF TAX APPEALS *EN BANC* COMMITTED SERIOUS ERROR AND ACTED WITH GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION IN FAILING OR REFUSING TO APPRECIATE THE OVERWHELMING AND UNCONTROVERTED EVIDENCE SUBMITTED BY THE PETITIONER, THUS DEPRIVING PETITIONER OF ITS PROPERTY WITHOUT DUE PROCESS; AND

II

THE COURT OF TAX APPEALS COMMITTED SERIOUS ERROR AND ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RULING THAT THE ABSENCE OF ZERO-RATED SALES BY PETITIONER DURING THE YEAR COVERED BY THE CLAIM FOR REFUND DOES NOT ENTITLE PETITIONER TO A REFUND OF ITS EXCESS VAT INPUT TAXES ATTRIBUTABLE TO ZERO-RATED SALES, CONTRARY TO PROVISIONS OF LAW.[22]

The present Petition is meritorious.

The main issue in this case is whether or not petitioner may claim a tax refund or credit in the amount of ₱249,397,620.18 for creditable input tax attributable to zero-rated or effectively zero-rated sales pursuant to Section 112(A) of the NIRC or for

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[20] *Id.* at 60.

[21] *Id.* 63-65.

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

input taxes paid on capital goods as provided under Section 112(B) of the NIRC.

To resolve the issue, this Court must re-examine the facts and the evidence offered by the parties. It is an accepted doctrine that this Court is not a trier of facts. It is not its function to review, examine and evaluate or weigh the probative value of the evidence presented. However, this rule does not apply where the judgment is premised on a misapprehension of facts, or when the appellate court failed to notice certain relevant facts which if considered would justify a different conclusion.[23]

After reviewing the records, this Court finds that petitioner's claim for refund or credit is justified under Section 112(A) of the NIRC which states that:

SEC. 112. **Refunds or Tax Credits of Input Tax**.—

(A) *Zero-rated or Effectively Zero-rated Sales*—Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

To claim refund or tax credit under Section 112(A), petitioner must comply with the following criteria: (1) the taxpayer is

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[23] *State Land Investment Corporation v. Commissioner of Internal Revenue*, G.R. No. 171956, 18 January 2008, 542 SCRA 114, 120-121; *Tio v. Abayata*, G.R. No. 160898, 27 June 2008, 556 SCRA 175, 184-185; *Tin v. People*, 415 Phil. 1, 7 (2001).

VAT registered; (2) the taxpayer is engaged in zero-rated or effectively zero-rated sales; (3) the input taxes are due or paid; (4) the input taxes are not transitional input taxes; (5) the input taxes have not been applied against output taxes during and in the succeeding quarters; (6) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales; (7) for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations; (8) where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and (9) the claim is filed within two years after the close of the taxable quarter when such sales were made.[24]

Based on the evidence presented, petitioner complied with the abovementioned requirements. Firstly, petitioner had adequately proved that it is a VAT registered taxpayer when it presented Certificate of Registration No. OCN-98-006-007394, which it attached to its Petition for Review dated 29 March 2004 filed before the CTA in Division. Secondly, it is unquestioned that petitioner is engaged in providing electricity for NPC, an activity which is subject to zero rate, under Section 108(B)(3) of the NIRC. Thirdly, petitioner offered as evidence suppliers' VAT invoices or official receipts, as well as Import Entries and Internal Revenue Declarations (Exhibits "J-4-A1" to "J-4-L265"), which were examined in the audit conducted by Aguilar, the Court-commissioned Independent CPA. Significantly, Aguilar noted in his audit report (Exhibit "J-2") that of the ₱249,397,620.18 claimed by petitioner, he identified items with incomplete documentation and errors in computation with a total amount of ₱3,266,009.78. Based on these findings, the remaining input VAT of ₱246,131,610.40 was properly documented and recorded in the books. The said report reads:

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[24] *Intel Technology of the Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, 27 April 2007, 522 SCRA 657, 685.

In performing the procedures referred under the Procedures Performed section of this report, no matters came to our attention that cause us to believe that the amount of input VAT applied for as tax credit certificate/refund of ₱249,397,620.18 for the period January 1, 2002 to December 31, 2002 should be adjusted except for input VAT claimed with incomplete documentation, those with various and other exceptions on the supporting documents and those with errors in computation totaling ₱3,266,009.78, as discussed in the Findings and Results of the Agreed-Upon Audit Procedures Performed sections of this report. We have also ascertained that the input VAT claimed are properly recorded in the books and, except as specifically identified in the Findings and Results of the Agreed-Upon Audit Procedures Performed sections of this report, are properly supported by original and appropriate suppliers' VAT invoices and/or official receipts.[25]

Fourthly, the input taxes claimed, which consisted of local purchases and importations made in 2002, are not transitional input taxes, which Section 111 of the NIRC defines as input taxes allowed on the beginning inventory of goods, materials and supplies.[26] Fifthly, the audit report of Aguilar affirms that the input VAT being claimed for tax refund or credit is net of the input VAT that was already offset against output VAT amounting to ₱26,247.27 for the first quarter of 2002 and ₱34,996.36 for the fourth quarter of 2002,[27] as reflected in the Quarterly VAT Returns.[28]

The main dispute in this case is whether or not petitioner's claim complied with the sixth requirement—the existence of

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[25] *Rollo*, p. 214.

[26] Section 111. **Transitional/Presumptive Input Tax Credits**.—

(A) A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory according to rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to eight percent (8%) of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax.

[27] *Rollo*, p. 212.

[28] *Id.* at 43.

zero-rated or effectively zero-rated sales, to which creditable input taxes may be attributed. The CTA in Division and *en banc* denied petitioner's claim solely on this ground. The tax courts based this conclusion on the audited report, marked as Exhibit "J-2", stating that petitioner made no sale of electricity to NPC in 2002.[29] Moreover, the affidavit of Echevarria (Exhibit "L"), petitioner's Vice President and Director for Finance, contained an admission that no commercial sale of electricity had been made in favor of NPC in 2002 since the project was still under construction at that time.[30]

However, upon closer examination of the records, it appears that on 2002, petitioner carried out a "sale" of electricity to NPC. The fourth quarter return for the year 2002, which petitioner filed, reported a zero-rated sale in the amount of ₱42,500,000.00.[31] In the Affidavit of Echevarria dated 9 February 2005 (Exhibit "L"), which was uncontroverted by respondent, the affiant stated that although no commercial sale was made in 2002, petitioner produced and transferred electricity to NPC during the testing period in exchange for the amount of ₱42,500,000.00, to wit:[32]

> A: San Roque Power Corporation has had no sale yet during 2002. The ₱42,500,000.00 which was paid to us by Napocor was something similar to a more cost recovery scheme. The pre-agreed amount would be about equal to our costs for producing the electricity during the testing period and we just reflected this in our 4th quarter return as a zero-rated sale. x x x.

The Court is not unmindful of the fact that the transaction described hereinabove was not a commercial sale. In granting the tax benefit to VAT-registered zero-rated or effectively zero-rated taxpayers, Section 112(A) of the NIRC does not limit the definition of "sale" to commercial transactions in the normal course of business. Conspicuously, Section 106(B) of the NIRC, which deals with the imposition of the VAT, does not limit the

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[29] *Id.* at 212.

[30] *Id.* at 326.

[31] Records, p. 30.

[32] *Rollo*, p. 326.

term "sale" to commercial sales, rather it extends the term to transactions that are "**deemed**" sale, which are thus enumerated:

> SEC 106. **Value-Added Tax on Sale of Goods or Properties**.
>
> x x x
>
> (B) *Transactions Deemed Sale*.—The following transactions shall be deemed sale:
>
> **(1) Transfer, use or consumption not in the course of business of goods or properties originally intended for sale or for use in the course of business;**
>
> (2) Distribution or transfer to:
>
> (a) Shareholders or investors as share in the profits of the VAT-registered persons; or
>
> (b) Creditors in payment of debt;
>
> (3) Consignment of goods if actual sale is not made within sixty (60) days following the date such goods were consigned; and
>
> (4) Retirement from or cessation of business, with respect to inventories of taxable goods existing as of such retirement or cessation. (Our emphasis.)

After carefully examining this provision, this Court finds it an equitable construction of the law that when the term "sale" is made to include certain transactions for the purpose of imposing a tax, these same transactions should be included in the term "sale" when considering the availability of an exemption or tax benefit from the same revenue measures. It is undisputed that during the fourth quarter of 2002, petitioner transferred to NPC all the electricity that was produced during the trial period. The fact that it was not transferred through a commercial sale or in the normal course of business does not deflect from the fact that such transaction is deemed as a sale under the law.

The seventh requirement regarding foreign currency exchange proceeds is inapplicable where petitioner's zero-rated sale of electricity to NPC did not involve foreign exchange and consisted only of a single transaction wherein NPC paid petitioner

₱42,500,000.00 in exchange for the electricity transferred to it by petitioner. Similarly, the eighth requirement is inapplicable to this case, where the only sale transaction consisted of an effectively zero-rated sale and there are no exempt or taxable sales that transpired, which will require the proportionate allocation of the creditable input tax paid.

The last requirement determines that the claim should be filed within two years after the close of the taxable quarter when such sales were made. The sale of electricity to NPC was reported at the fourth quarter of 2002, which closed on 31 December 2002. Petitioner had until 30 December 2004 to file its claim for refund or credit. For the period January to March 2002, petitioner filed an amended request for refund or tax credit on 30 May 2003; for the period July 2002 to September 2002, on 27 February 2003; and for the period October 2002 to December 2002, on 31 July 2003.[33] In these three quarters, petitioners seasonably filed its requests for refund and tax credit. However, for the period April 2002 to May 2002, the claim was filed prematurely on 25 October 2002, before the last quarter had closed on 31 December 2002.[34]

Despite this lapse in procedure, this Court notes that petitioner was able to positively show that it was able to accumulate excess input taxes on various importations and local purchases in the amount of ₱246,131,610.40, which were attributable to a transfer of electricity in favor of NPC. The fact that it had filed its claim for refund or credit during the quarter when the transfer of electricity had taken place, instead of at the close of the said quarter does not make petitioner any less entitled to its claim. Given the special circumstances of this case, wherein petitioner was incorporated for the sole purpose of constructing or operating a power plant that will transfer all the electricity it generates to NPC, there is no danger that petitioner would try to fraudulently claim input tax paid on purchases that will be attributed to sale transactions that are not zero-rated. Substantial justice, equity and fair play are on the side of the petitioner. Technicalities

[33] Records, pp. 277-278.

[34] *Id.* at 278.

and legalisms, however, exalted, should not be misused by the government to keep money not belonging to it, thereby enriching itself at the expense of its law abiding citizens.

> Substantial justice, equity and fair play are on the side of petitioner. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it, thereby enriching itself at the expense of its law-abiding citizens. Under the principle of *solutio indebiti* provided in Art. 2154, Civil Code, the BIR received something "when there [was] no right to demand it," and thus, it has the obligation to return it. Heavily militating against respondent Commissioner is the ancient principle that no one, not even the State, shall enrich oneself at the expense of another. Indeed, simple justice requires the speedy refund of the wrongly held taxes.[35]

It bears emphasis that effective zero-rating is not intended as a benefit to the person legally liable to pay the tax, such as petitioner, but to relieve certain exempt entities, such as the NPC, from the burden of indirect tax so as to encourage the development of particular industries. Before, as well as after, the adoption of the VAT, certain special laws were enacted for the benefit of various entities and international agreements were entered into by the Philippines with foreign governments and institutions exempting sale of goods or supply of services from indirect taxes at the level of their suppliers. Effective zero-rating was intended to relieve the exempt entity from being burdened with the indirect tax which is or which will be shifted to it had there been no exemption. In this case, petitioner is being exempted from paying VAT on its purchases to relieve NPC of the burden of additional costs that petitioner may shift to NPC by adding to the cost of the electricity sold to the latter.[36]

Section 13 of Republic Act No. 6395, otherwise known as the NPC Charter, further clarifies that it is the lawmakers' intention

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[35] *State Land Investment Corporation v. Commissioner of Internal Revenue*, *supra* note 23 at 123-124.

[36] Deoferio, Victor and Victorino Mamalateo, *THE VALUE ADDED TAX IN THE PHILIPPINES*, (First Edition). Diliman: Info Solutions Research Center, 2000.

that NPC be made completely exempt from all taxes, both direct and indirect:

> Sec. 13. *Non-profit Character of the Corporation; Exemption from all Taxes, Duties, Fees, Imposts and Other Charges by Government and Governmental Instrumentalities*.— The corporation shall be non-profit and shall devote all its returns from its capital investment, as well as excess revenues from its operation, for expansion. To enable the corporation to pay its indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in Section 1 of this Act, the corporation is hereby declared exempt:
>
> (a) From the payment of all taxes, duties, fees, imposts, charges, costs and service fees in any court or administrative proceedings in which it may be a party, restrictions and duties to the Republic of the Philippines, its provinces, cities, municipalities, and other government agencies and instrumentalities;
>
> (b) From all income taxes, franchise taxes, and realty taxes to be paid to the National Government, its provinces, cities, municipalities and other government agencies and instrumentalities;
>
> (c) From all import duties, compensating taxes and advanced sales tax and wharfage fees on import of foreign goods, required for its operations and projects; and
>
> (d) From all taxes, duties, fees, imposts, and all other charges imposed by the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities, on all petroleum products used by the corporation in the generation, transmission, utilization, and sale of electric power.

To limit the exemption granted to the NPC to direct taxes, notwithstanding the general and broad language of the statute will be to thwart the legislative intention in giving exemption from all forms of taxes and impositions, without distinguishing between those that are direct and those that are not.[37]

Congress granted NPC a comprehensive tax exemption because of the significant public interest involved. This is enunciated in Section 1 of Republic Act No. 6395:

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[37] *Philippine Geothermal, Inc. v. Commissioner of Internal Revenue*, G.R. No. 154028, 29 July 2005, 456 SCRA 308, 314.

> Section 1. *Declaration of Policy*. Congress hereby declares that (1) the comprehensive development, utilization and conservation of Philippine water resources for all beneficial uses, including power generation, and (2) the total electrification of the Philippines through the development of power from all sources to meet the needs of industrial development and dispersal and the needs of rural electrification are primary objectives of the nation which shall be pursued coordinately and supported by all instrumentalities and agencies of government, including its financial institutions.

The ability of the NPC to provide sufficient and affordable electricity throughout the country greatly affects our industrial and rural development. Erroneously and unjustly depriving industries that generate electrical power of tax benefits that the law clearly grants will have an immediate effect on consumers of electricity and long term effects on our economy.

In the same breath, we cannot lose sight of the fact that it is the declared policy of the State, expressed in Section 2 of Republic Act No. 9136, otherwise known as the EPIRA Law, "*to ensure and accelerate the total electrification of the country*"; "*to enhance the inflow of private capital and broaden the ownership base of the power generation, transmission and distribution sectors*"; and "*to promote the utilization of indigenous and new and renewable energy resources in power generation in order to reduce dependence on imported energy*." Further, Section 6 provides that "*pursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation companies shall be value-added tax zero-rated.*

Section 75 of said law succinctly declares that "*this Act shall, unless the context indicates otherwise, be construed in favor of the establishment, promotion, preservation of competition and power empowerment so that the widest participation of the people, whether directly or indirectly is ensured*."

The objectives as set forth in the EPIRA Law can only be achieved if government were to allow petitioner and others similarly situated to obtain the input tax credits available under the law. Denying petitioner such credits would go against the declared policies of the EPIRA Law.

The legislative grant of tax relief (whether in the EPIRA Law or the Tax Code) constitutes a sovereign commitment of Government to taxpayers that the latter can avail themselves of certain tax reliefs and incentives in the course of their business activities here. Such a commitment is particularly vital to foreign investors who have been enticed to invest heavily in our country's infrastructure, and who have done so on the firm assurance that certain tax reliefs and incentives can be availed of in order to enable them to achieve their projected returns on these very long-term and heavily funded investments. While the government's ability to keep its commitment is put in doubt, credit rating turns to worse; the costs of borrowing becomes higher and the harder it will be to attract foreign investors. The country's earnest efforts to move forward will all be put to naught.

Having decided that petitioner is entitled to claim refund or tax credit under Section 112(A) of the NIRC or on the basis of effectively zero-rated sales in the amount of ₱246,131,610.40, there is no more need to establish its right to make the same claim under Section 112(B) of the NIRC or on the basis of purchase of capital goods.

Finally, respondent contends that according to well-established doctrine, a tax refund, which is in the nature of a tax exemption, should be construed *strictissimi juris* against the taxpayer.[38] However, when the claim for refund has clear legal basis and is sufficiently supported by evidence, as in the present case, then the Court shall not hesitate to grant the same.[39]

WHEREFORE, the instant Petition for Review is *GRANTED*. The Decision of the Court of Tax Appeals *En Banc* dated 20 September 2007 in CTA EB Case No. 248, affirming the Decision dated 23 March 2006 of the CTA Second Division in CTA Case No. 6916, is *REVERSED*. Respondent Commissioner of Internal Revenue is ordered to refund, or in the alternative, to

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[38] *Far East Bank & Trust Company v. Commissioner of Internal Revenue*, G.R. No. 149589, 15 September 2006, 502 SCRA 87, 91; *Insular Lumber Co. v. Court of Tax Appeals*, 192 Phil. 221, 232-233 (1981).

[39] *Philippine Airlines v. Commissioner of Internal Revenue*, G.R. No. 180043, 14 August 2009.

issue a tax credit certificate to petitioner San Roque Power Corporation in the amount of Two Hundred Forty-Six Million One Hundred Thirty-One Thousand Six Hundred Ten Pesos and 40/100 (₱246,131,610.40), representing unutilized input VAT for the period 1 January 2002 to 31 December 2002. No costs.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

THIRD DIVISION

[G.R. No. 181020. November 25, 2009]

JAZMIN L. ESPIRITU and PORFIRIO LAZARO, JR., *petitioners, vs.* **VLADIMIR G. LAZARO, MA. CORAZON S. LAZARO, MA. ESPERENZA S. LAZARO, VLADI MIGUEL S. LAZARO, CHINA BANKING CORPORATION, and WINIFRIDA B. SISON,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PRE-TRIAL; PLAINTIFF HAS THE DUTY TO SET THE CASE FOR PRE-TRIAL AFTER THE LAST PLEADING IS SERVED AND FILED; FAILURE TO COMPLY MAKES THE CASE SUSCEPTIBLE TO DISMISSAL FOR FAILURE TO PROSECUTE FOR AN UNREASONABLE LENGTH OF TIME OR FAILURE TO COMPLY WITH THE RULES.— In every action, the plaintiffs are duty-bound to prosecute their

case with utmost diligence and with reasonable dispatch to enable them to obtain the relief prayed for and, at the same time, to minimize the clogging of the court dockets. Parallel to this is the defendants' right to have a speedy disposition of the case filed against them, essentially, to prevent their defenses from being impaired. Since the incidents occurred prior to the effectivity of A.M. No. 03-1-09-SC on August 16, 2004, the guidelines stated therein should not be made applicable to this case. Instead, the prevailing rule and jurisprudence at that time should be utilized in resolving the case. Section 1 of Rule 18 of the Rules of Court imposes upon the plaintiff the duty to set the case for pre-trial after the last pleading is served and filed. Under Section 3 of Rule 17, failure to comply with the said duty makes the case susceptible to dismissal for failure to prosecute for an unreasonable length of time or failure to comply with the rules.

2. ID.; ID.; ID.; PETITIONERS SHOULD NOT HAVE WAITED FOR THE COURT TO ACT ON THE MOTION TO FILE A SUPPLEMENTAL ANSWER OF FOR DEFENDANTS TO FILE A SUPPLEMENTAL ANSWER; SINCE RESPONDENTS ALREADY FILED A CAUTIONARY ANSWER, THE CASE WAS ALREADY RIPE FOR PRE-TRIAL.— The rule clearly states that the case must be set for pre-trial after the last pleading is *served* and *filed*. Since respondents already filed a cautionary answer and [petitioners did not file any reply to it] the case was already ripe for pre-trial.

3. ID.; ID.; ID.; ID.; NO JUSTIFIABLE REASON FOR PETITIONERS' FAILURE TO FILE A MOTION TO SET THE CASE FOR PRE-TRIAL; NOR ARE THERE STRONG AND COMPELLING REASONS JUSTIFYING LIBERAL APPLICATION OF THE RULES.— It bears stressing that the sanction of dismissal may be imposed even absent any allegation and proof of the plaintiff's lack of interest to prosecute the action, or of any prejudice to the defendant resulting from the failure of the plaintiff to comply with the rules. The failure of the plaintiff to prosecute the action without any justifiable cause within a reasonable period of time will give rise to the presumption that he is no longer interested in obtaining the relief prayed for. In this case, there was no justifiable reason for petitioners' failure to file a motion to set the case for

pre-trial. Petitioners' stubborn insistence that the case was not yet ripe for pre-trial is erroneous. Although petitioners state that there are strong and compelling reasons justifying a liberal application of the rule, the Court finds none in this case. The burden to show that there are compelling reasons that would make a dismissal of the case unjustified is on petitioners, and they have not adduced any such compelling reason.

APPEARANCES OF COUNSEL

Gepty & Jose Law Offices for petitioners.

Lim Vigilia Alcala Dumlao Alameda & Casiding for China Banking Corporation.

D E C I S I O N

NACHURA, *J.*:

This petition for review on *certiorari* assails the June 29, 2007 Decision[1] of the Court of Appeals (CA), which affirmed the dismissal of the case for failure to prosecute. Likewise assailed in this petition is its Resolution dated December 19, 2007, which denied the motion for reconsideration of the said decision.

On June 29, 1998, petitioners Jazmin L. Espiritu and Porfirio Lazaro, Jr., together with a certain Mariquit Lazaro, filed a complaint for recovery of personal property with damages and preliminary attachment against respondents, Vladimir G. Lazaro, Ma. Corazon S. Lazaro, Ma. Esperanza S. Lazaro, Vladi Miguel S. Lazaro, China Banking Corporation, and Winifrida B. Sison. Petitioners, Mariquit Lazaro and respondent Vladimir Lazaro are the legitimate children and only surviving heirs of the late Porfirio Lazaro, Sr. who died on March 13, 1998. Respondent Ma. Corazon Lazaro is the wife of Vladimir Lazaro, while

[1] Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Rodrigo V. Cosico and Arturo G. Tayag, concurring; *rollo*, pp. 35-43.

respondents Ma. Esperanza Lazaro and Vladi Miguel Lazaro are their children.

The complaint alleged that (1) the deceased had two dollar time deposit accounts with respondent China Banking Corporation in the amounts of US$117,859.99 and US$163,492.32; (2) petitioners demanded from respondents Vladimir and Ma. Corazon Lazaro their share in the said amounts but the latter told them that the deposits had already been transferred to their children; (3) they requested respondent Winifrida Sison, branch manager of the bank, to freeze the time deposit accounts in the names of said children; (4) respondent Sison subsequently replied that there were no existing accounts under the children's names; (5) petitioners then requested respondent Sison to apprise them of the status of the two dollar time deposit accounts; and (6) respondent Sison refused to comply, saying that, unless there is a court order, she may not give out the details of the time deposit accounts because of the Bank Secrecy Law. Petitioners prayed that respondents be ordered to pay them their three-fourths share in the time deposit accounts or US$211,014.23, with interest, ₱1,000,000.00 as moral damages, ₱1,000,000.00 as exemplary damages, ₱300,000.00 as attorney's fees and costs of the suit.[2]

The trial court granted the prayer for preliminary attachment and the corresponding writ was subsequently issued after petitioners posted a bond. Five real properties were levied upon.[3] Respondents Lazaro filed an urgent motion to set aside and discharge the attachment,[4] which was opposed by petitioners. They, likewise, filed a motion to dismiss[5] the complaint for failure to state a cause of action. Respondent Sison also filed a motion to dismiss[6] on the same ground.

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[2] *Rollo,* pp. 51-59

[3] *Id.* at 196.

[4] *Id.* at 61-79.

[5] *Id.* at 81-85.

[6] *Id.* at 107-115.

On February 12, 1999, the trial court denied the motion to discharge the attachment and the two motions to dismiss and directed respondents to file their answer. Respondents Lazaro and Sison filed their respective motions for reconsideration,[7] which were again opposed by petitioners.[8] In an Omnibus Order dated January 20, 2000, the trial court partially granted respondents Lazaro's prayer for a partial discharge of their attached properties.

On **March 31, 2000**, respondent Sison filed her Answer with Counterclaim and Crossclaim.[9]

Respondents Lazaro questioned the February 12, 1999 Order in a petition for *certiorari* filed with the CA. When the latter did not rule favorably, they elevated the case to this Court. In a Resolution dated January 21, 2002, this Court denied the petition. The Resolution became final and executory on July 17, 2002.[10]

On **July 19, 2002**, respondents Lazaro filed a Cautionary Answer with Manifestation and a Motion to File a Supplemental/ Amended Answer. On August 5, 2002, petitioners received a copy of the cautionary answer, pertinent portions of which are quoted as follows —

> 3. Undersigned counsel, on account of his heavy workload in equally important cases, would be needing more time to file herein defendants' Answer. In the meantime however, **by way of a Cautionary Answer**, herein defendants hereby manifest that they are adopting **subject to further qualification** part of co-defendant Sison's Answer dated March 29, 2000, more particularly, **portions** of sub-headings **I. Denials and Admissions, II. Special and Affirmative Defenses and III. Counterclaim** which are personal, relevant and pertinent to their defense.

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[7] *Id.* at 123-141.

[8] *Id.* at 150-160.

[9] *Id.* at 162-172.

[10] *Id.* at 206.

4. Nonetheless, herein defendants reserve their right to file a Supplemental/Amended Answer in due time;

WHEREFORE, in view of the foregoing, it is respectfully prayed that the instant Cautionary Answer with Manifestation be admitted and herein defendants given a twenty (20)-day period within which to file a Supplemental/Amended Answer.[11]

On **July 24, 2003,** the trial court dismissed the complaint due to petitioners' failure to prosecute for an unreasonable length of time. The court noted that despite the lapse of time since respondents filed a cautionary answer, petitioners failed to file a motion to set the case for pre-trial, which under Section 1, Rule 18 of the 1997 Rules of Civil Procedure is petitioners' duty as plaintiffs.[12] The trial court denied petitioners' Motion for Reconsideration of the said order.[13]

On June 29, 2007, the CA affirmed the dismissal of the case.[14] Citing *Olave v. Mistas*,[15] the CA stressed that it is plaintiff's duty to promptly set the case for pre-trial, and that failure to do so may result in the dismissal of the case. According to the CA, petitioners should not have waited for a supplemental answer or an order by the trial court and done nothing for more than 11 months from the receipt of the last pleading.

The CA also denied petitioners' motion for reconsideration of the said decision;[16] hence, this petition.

Petitioners assign the following errors to the CA:

A. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN APPLYING THE RULING OF THE SUPREME COURT IN *OLAVE vs. MISTAS* [TO THE] CASE.

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[11] *Id.* at 207.

[12] *Id.* at 248-249.

[13] *Id.* at 251-252.

[14] *Id.* at 41.

[15] G.R. No. 155193, November 26, 2004, 444 SCRA 479.

[16] *Rollo*, pp. 44-45.

B. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT RULING THAT THE CASE WAS NOT YET RIPE FOR PRE-TRIAL.

C. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN DISMISSING THE APPEAL BASED ON SECTION 3, RULE 17 OF THE RULES OF COURT.

D. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT TAKING COGNIZANCE OF SECTION 1.2 OF A.M. NO. 03-1-09-SC, IN EFFECT SINCE AUGUST 16, 2004.[17]

On the grounds of equity, due process and fair play, petitioners urge the Court to set aside technicalities and to allow the case to proceed and be resolved on the merits. They, likewise, point out that, in accordance with the Court's pronouncement in *Olave v. Mistas*,[18] dismissal of their case is not warranted since no substantial prejudice was caused to respondents, and strong and compelling reasons justify a liberal application of the rule. They explain that the reason why they did not move to set the case for pre-trial was that the case was not yet ripe for it. They point out that the trial court had not yet resolved respondents' motion for extension to file a supplemental answer and respondents had not yet filed their supplemental answer. Petitioners stress that the delay was, therefore, not due to their inaction; hence, the dismissal of their case was not justified.

Further, petitioners cite A.M. No. 03-1-09-SC (Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures) which allegedly provides that it is not solely the duty of the plaintiff to set the case for pre-trial as the Clerk of Court is likewise directed to issue the notice of pre-trial should the plaintiff fail to do so.

The petition has no merit.

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[17] *Id.* at 22.

[18] *Supra* note 15.

In every action, the plaintiffs are duty-bound to prosecute their case with utmost diligence and with reasonable dispatch to enable them to obtain the relief prayed for and, at the same time, to minimize the clogging of the court dockets.[19] Parallel to this is the defendants' right to have a speedy disposition of the case filed against them, essentially, to prevent their defenses from being impaired.

Since the incidents occurred prior to the effectivity of A.M. No. 03-1-09-SC on August 16, 2004, the guidelines stated therein should not be made applicable to this case. Instead, the prevailing rule and jurisprudence at that time should be utilized in resolving the case.

Section 1 of Rule 18 of the Rules of Court imposes upon the plaintiff the duty to set the case for pre-trial after the last pleading is served and filed. Under Section 3 of Rule 17, failure to comply with the said duty makes the case susceptible to dismissal for failure to prosecute for an unreasonable length of time or failure to comply with the rules.

Respondents Lazaro filed the Cautionary Answer with Manifestation and Motion to File a Supplemental/Amended Answer on July 19, 2002, a copy of which was received by petitioners on August 5, 2002. Believing that the pending motion had to be resolved first, petitioners waited for the court to act on the motion to file a supplemental answer. Despite the lapse of almost one year, petitioners kept on waiting, without doing anything to stir the court into action.

In any case, petitioners should not have waited for the court to act on the motion to file a supplemental answer or for the defendants to file a supplemental answer. As previously stated, the rule clearly states that the case must be set for pre-trial after the last pleading is *served* and *filed*. Since respondents already filed a cautionary answer and [petitioners did not file any reply to it] the case was already ripe for pre-trial.

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[19] *Olave v. Mistas, id.* at 493.

It bears stressing that the sanction of dismissal may be imposed even absent any allegation and proof of the plaintiff's lack of interest to prosecute the action, or of any prejudice to the defendant resulting from the failure of the plaintiff to comply with the rules.[20] The failure of the plaintiff to prosecute the action without any justifiable cause within a reasonable period of time will give rise to the presumption that he is no longer interested in obtaining the relief prayed for.[21]

In this case, there was no justifiable reason for petitioners' failure to file a motion to set the case for pre-trial. Petitioners' stubborn insistence that the case was not yet ripe for pre-trial is erroneous. Although petitioners state that there are strong and compelling reasons justifying a liberal application of the rule, the Court finds none in this case. The burden to show that there are compelling reasons that would make a dismissal of the case unjustified is on petitioners, and they have not adduced any such compelling reason.

WHEREFORE, the petition is *DENIED DUE COURSE*. The Court of Appeals Decision dated June 29, 2007 and Resolution dated December 19, 2007 are *AFFIRMED*.

SO ORDERED.

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

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[20] *Id*.

[21] *Id.* at 494.

EN BANC

[G.R. No. 181613. November 25, 2009]

ROSALINDA A. PENERA, *petitioner, vs.* **COMMISSION ON ELECTIONS and EDGAR T. ANDANAR,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ELECTION LAWS; OMNIBUS ELECTION CODE; PREMATURE CAMPAIGNING; THE ASSAILED DECISION CONSIDERS A PERSON WHO FILES A CERTIFICATE OF CANDIDACY ALREADY A *"CANDIDATE"* EVEN BEFORE THE START OF THE CAMPAIGN PERIOD; THE DECISION IS CONTRARY TO THE CLEAR INTENT AND LETTER OF THE LAW.— Section 79(a) of the Omnibus Election Code defines a "candidate" as "any person aspiring for or seeking an elective public office, who has filed a certificate of candidacy x x x." The second sentence, third paragraph, Section 15 of RA 8436, as amended by Section 13 of RA 9369, provides that "**[a]ny person who files his certificate of candidacy within [the period for filing] shall *only* be considered as a candidate at the start of the campaign period for which he filed his certificate of candidacy.**" The immediately succeeding *proviso* in the same third paragraph states that "**unlawful acts or omissions applicable to a candidate shall take effect *only* upon the start of the aforesaid campaign period.**" These two provisions determine the resolution of this case. The Decision states that "[w]hen the campaign period starts and [the person who filed his certificate of candidacy] proceeds with his/her candidacy, his/her intent turning into actuality, **we can already consider his/her acts, after the filing of his/her COC and prior to the campaign period, as the promotion of his/her election as a candidate, hence, constituting premature campaigning, for which he/she may be disqualified.**" Under the Decision, a candidate may already be liable for premature campaigning after the filing of the certificate of candidacy but **even before the start of the campaign period**. From the filing of the certificate of

candidacy, even long before the start of the campaign period, the Decision considers the partisan political acts of a person so filing a certificate of candidacy **"as the promotion of his/her election as a candidate."** Thus, such person can be disqualified for premature campaigning for acts done before the start of the campaign period. **In short, the Decision considers a person who files a certificate of candidacy already a "*candidate*" even before the start of the campaign period.** The assailed Decision is contrary to the clear **intent and letter** of the law.

2. ID.; ID.; ID.; ID.; *LANOT V. COMELEC DOCTRINE*; "ANY PERSON WHO FILES HIS CERTIFICATE OF CANDIDACY SHALL ONLY BE CONSIDERED AS A CANDIDATE AT THE START OF THE CAMPAIGN PERIOD FOR WHICH HE FILED HIS CERTIFICATE OF CANDIDACY"; CONGRESS EXPRESSLY INCORPORATED THE DOCTRINE INTO LAW WHEN IT ENACTED RA 9369 AMENDING CERTAIN PROVISIONS OF RA 8436.— *Lanot* was decided on the ground that one who files a certificate of candidacy is not a candidate until the start of the campaign period. This ground was based on the deliberations of the legislators who explained the intent of the provisions of RA 8436, which laid the legal framework for an automated election system. There was no express provision in the original RA 8436 stating that one who files a certificate of candidacy is not a candidate until the start of the campaign period. When Congress amended RA 8436, Congress decided to expressly incorporate the *Lanot* doctrine into law, realizing that *Lanot* merely relied on the deliberations of Congress in holding that — The clear intention of Congress was to preserve the "**election periods as x x x fixed by existing law**" prior to RA 8436 and that one who files to meet the early deadline "**will still not be considered as a candidate.**" Congress wanted to insure that no person filing a certificate of candidacy under the early deadline required by the automated election system would be disqualified or penalized for any partisan political act done before the start of the campaign period. Thus, in enacting RA 9369, Congress expressly wrote the *Lanot* doctrine into the **second sentence**, third paragraph of the amended Section 15 of RA 8436, thus: x x x For this purpose, the Commission shall set the deadline for the filing of certificate of candidacy/petition for registration/manifestation to participate in the

election. **Any person who files his certificate of candidacy within this period shall only be considered as a candidate at the start of the campaign period for which he filed his certificate of candidacy:** *Provided,* That, unlawful acts or omissions applicable to a candidate shall take effect only upon the start of the aforesaid campaign period: *Provided, finally,* That any person holding a public appointive office or position, including active members of the armed forces, and officers and employees in government-owned or -controlled corporations, shall be considered *ipso facto* resigned from his/her office and must vacate the same at the start of the day of the filing of his/her certificate of candidacy.

3. ID.; ID.; ID.; ID.; THE ASSAILED DECISION IS SELF-CONTRADICTORY REVERSING *LANOT V. COMELEC* BUT MAINTAINING THE CONSTITUTIONALITY OF THE SECOND SENTENCE OF SECTION 15 OF RA 8436 WHICH EMBODIES THE *LANOT* DOCTRINE; THE DECISION CANNOT REVERSE *LANOT* WITHOUT REPEALING THE SECOND SENTENCE, BECAUSE TO REVERSE *LANOT* WOULD MEAN REPEALING THE SECOND SENTENCE.— Congress elevated the *Lanot* doctrine into a statute by specifically inserting it as the **second sentence** of the third paragraph of the amended Section 15 of RA 8436, which cannot be annulled by this Court except on the sole ground of its unconstitutionality. The Decision cannot reverse *Lanot* without repealing this **second sentence**, because to reverse *Lanot* would mean repealing this **second sentence**. The assailed Decision, however, in reversing *Lanot* does not claim that this **second sentence** or any portion of Section 15 of RA 8436, as amended by RA 9369, is unconstitutional. In fact, the Decision considers the entire Section 15 good law. Thus, the Decision is self-contradictory — reversing *Lanot* but maintaining the constitutionality of the **second sentence**, which embodies the *Lanot* doctrine. In so doing, the Decision is irreconcilably in conflict with the clear intent and letter of the **second sentence**, third paragraph, Section 15 of RA 8436, as amended by RA 9369.

4. ID.; ID.; ID.; ID.; CONGRESS THROUGH RA 9369 NOT ONLY REITERATED BUT ALSO STRENGTHENED ITS MANDATORY DIRECTIVE THAT ELECTION OFFENSES CAN BE COMMITTED BY A CANDIDATE "ONLY" UPON THE START OF THE CAMPAIGN PERIOD; IT CLEARLY

MEANS THAT BEFORE THE START OF THE CAMPAIGN PERIOD, SUCH ELECTION OFFENSES CANNOT BE COMMITTED.— In enacting RA 9369, Congress even further clarified the first *proviso* in the third paragraph of Section 15 of RA 8436. The original provision in RA 8436 states — x x x Provided, further, That, unlawful acts or omissions applicable to a candidate shall take effect upon the start of the aforesaid campaign period, x x x. In RA 9369, Congress inserted the word "**only**" so that the first *proviso* now reads — x x x Provided, That, unlawful acts or omissions applicable to a candidate shall take effect **only** upon the start of the aforesaid campaign period x x x. Thus, Congress not only reiterated but also strengthened its mandatory directive that election offenses can be committed by a candidate "**only**" upon the start of the campaign period. This clearly means that before the start of the campaign period, such election offenses cannot be so committed.

5. ID.; ID.; ID.; ID.; WHEN THE APPLICABLE PROVISIONS OF RA 8436, AS AMENDED BY RA 9369, ARE READ TOGETHER, SAID PROVISIONS OF LAW DO NOT CONSIDER PETITIONER A CANDIDATE OTHER THAN THE PRINTING OF BALLOTS, UNTIL THE START OF THE CAMPAIGN PERIOD; THERE IS ABSOLUTELY NO ROOM FOR ANY OTHER INTERPRETATION.— When the applicable provisions of RA 8436, as amended by RA 9369, are read together, these provisions of law do not consider Penera a candidate for purposes other than the printing of ballots, until the start of the campaign period. There is absolutely no room for any other interpretation. We quote with approval the Dissenting Opinion of Justice Antonio T. Carpio: x x x The definition of a "candidate" in Section 79(a) of the Omnibus Election Code should be read together with the amended Section 15 of RA 8436. A "'candidate' refers to any person aspiring for or seeking an elective public office, who has filed a certificate of candidacy by himself or through an accredited political party, aggroupment or coalition of parties." However, it is no longer enough to merely file a certificate of candidacy for a person to be considered a candidate because "**any person who files his certificate of candidacy within [the filing] period shall *only be considered a candidate at the start of the campaign period* for which he filed his certificate of**

candidacy." Any person may thus file a certificate of candidacy on any day within the prescribed period for filing a certificate of candidacy yet that person shall be considered a candidate, for purposes of determining one's possible violations of election laws, **only during the campaign period**. Indeed, there is no "election campaign" or "partisan political activity" designed to promote the election or defeat of a particular candidate or candidates to public office simply because there is no "candidate" to speak of prior to the start of the campaign period. Therefore, despite the filing of her certificate of candidacy, the law does not consider Penera a candidate at the time of the questioned motorcade which was conducted a day before the start of the campaign period. x x x The campaign period for local officials began on 30 March 2007 and ended on 12 May 2007. Penera filed her certificate of candidacy on 29 March 2007. Penera was thus a candidate on 29 March 2009 only for purposes of printing the ballots. **On 29 March 2007, the law still did not consider Penera a candidate for purposes other than the printing of ballots.** Acts committed by Penera prior to 30 March 2007, the date when she became a "candidate," even if constituting election campaigning or partisan political activities, are not punishable under Section 80 of the Omnibus Election Code. Such acts are within the realm of a citizen's protected freedom of expression. Acts committed by Penera within the campaign period are not covered by Section 80 as Section 80 punishes only acts outside the campaign period.

6. ID.; ID.; ID.; ID.; THE ASSAILED DECISION GIVES A SPECIOUS REASON IN EXPLAINING AWAY THE FIRST *PROVISO* IN THE THIRD PARAGRAPH, THE AMENDED SECTION 15 OF RA 8436 THAT ELECTION OFFENSES APPLICABLE TO CANDIDATES TAKE EFFECT ONLY UPON THE START OF THE CAMPAIGN PERIOD.— The assailed Decision gives a specious reason in explaining away the first *proviso* in the third paragraph, the amended Section 15 of RA 8436 that **election offenses applicable to candidates take effect only upon the start of the campaign period.** The Decision states that: x x x [T]he line in Section 15 of Republic Act No. 8436, as amended, which provides that "any unlawful act or omission applicable to a candidate shall **take effect** only upon the start of the campaign period," does not mean that the

acts constituting premature campaigning can only be committed, for which the offender may be disqualified, during the campaign period. **Contrary to the pronouncement in the dissent, nowhere in said *proviso* was it stated that campaigning before the start of the campaign period is lawful,** such that the offender may freely carry out the same with impunity. As previously established, a person, after filing his/her COC but prior to his/her becoming a candidate (thus, prior to the start of the campaign period), can already commit the acts described under Section 79(b) of the Omnibus Election Code as election campaign or partisan political activity. However, only after said person officially becomes a candidate, at the beginning of the campaign period, can said acts be given effect as premature campaigning under Section 80 of the Omnibus Election Code. **Only after said person officially becomes a candidate, at the start of the campaign period, can his/her disqualification be sought for acts constituting premature campaigning**. Obviously, it is only at the start of the campaign period, when the person officially becomes a candidate, that the undue and iniquitous advantages of his/her prior acts, constituting premature campaigning, shall accrue to his/her benefit. Compared to the other candidates who are only about to begin their election campaign, a candidate who had previously engaged in premature campaigning already enjoys an unfair headstart in promoting his/her candidacy.

7. ID.; ID.; ID.; ID.; IT IS A BASIC PRINCIPLE OF LAW THAT ANY ACT IS LAWFUL UNLESS EXPRESSLY DECLARED UNLAWFUL BY LAW.— It is a basic principle of law t*hat any act is lawful unless expressly declared unlawful by law*. This is specially true to expression or speech, which Congress cannot outlaw except on very narrow grounds involving clear, present and imminent danger to the State. The mere fact that the law does not declare an act unlawful *ipso facto* means that the act is lawful. Thus, there is no need for Congress to declare in Section 15 of RA 8436, as amended by RA 9369, that political partisan activities before the start of the campaign period are lawful. It is sufficient for Congress to state that "**any unlawful act or omission applicable to a candidate shall take effect only upon the start of the campaign period**." The only inescapable and logical result is that the same acts, if done before the start of the campaign period, are lawful. In

layman's language, this means that a candidate is liable for an election offense only for acts done during the campaign period, not before. The law is clear as daylight — any election offense that may be committed by a candidate under any election law cannot be committed before the start of the campaign period. In ruling that Penera is liable for premature campaigning for partisan political acts before the start of the campaigning, the assailed Decision ignores the clear and express provision of the law.

8. ID.; ID.; ID.; ID.; CONGRESS HAS LAID DOWN THE LAW THAT A CANDIDATE IS LIABLE FOR ELECTION OFFENSES ONLY UPON THE START OF THE CAMPAIGN PERIOD; THE COURT HAS NO POWER TO IGNORE ITS CLEAR AND EXPRESS MANDATE.— The Decision rationalizes that a candidate who commits premature campaigning can be disqualified or prosecuted only after the start of the campaign period. This is not what the law says. What the law says is "**any unlawful act or omission applicable to a candidate shall take effect only upon the start of the campaign period**." The plain meaning of this provision is that the effective date when partisan political acts become unlawful as to a candidate is when the campaign period starts. Before the start of the campaign period, the same partisan political acts are lawful. The law does not state, as the assailed Decision asserts, that partisan political acts done by a candidate before the campaign period are unlawful, but may be prosecuted only upon the start of the campaign period. Neither does the law state that partisan political acts done by a candidate before the campaign period are temporarily lawful, but becomes unlawful upon the start of the campaign period. This is clearly not the language of the law. Besides, such a law as envisioned in the Decision, which defines a criminal act and curtails freedom of expression and speech, would be void for vagueness. Congress has laid down the law — a candidate is liable for election offenses only upon the start of the campaign period. This Court has no power to ignore the clear and express mandate of the law that "**any person who files his certificate of candidacy within [the filing] period shall only be considered a candidate at the start of the campaign period for which he filed his certificate of candidacy**." Neither can this Court turn a blind eye to the express and clear language

of the law that "**any unlawful act or omission applicable to a candidate shall take effect only upon the start of the campaign period**." The forum for examining the wisdom of the law, and enacting remedial measures, is not this Court but the Legislature. This Court has no recourse but to apply a law that is as clear, concise and express as the **second sentence**, and its immediately succeeding *proviso*, as written in the third paragraph of Section 15 of RA 8436, as amended by RA 9369.

CHICO-NAZARIO, *J., dissenting opinion:*

1. POLITICAL LAW; ELECTION LAWS; OMNIBUS ELECTION CODE; PREMATURE CAMPAIGNING; THE MAJORITY OPINION ARRIVES AT AN ERRONEOUS CONCLUSION BASED ON A FAULTY PREMISE.— The majority opinion arrives at an erroneous conclusion based on a faulty premise. *Lanot* was decided on the basis of the requirement therein that there must be first a **candidate** before the prohibited act of premature campaigning may be committed. In *Lanot v. Commission on Elections*, Lanot, *et al.*, filed a petition for disqualification against the then Pasig City mayoralty candidate Vicente P. Eusebio for engaging in various forms of election campaign on different occasions outside of the designated campaign period after he filed his COC during the 2004 local elections. The Commission on Elections (COMELEC) Law Department recommended the disqualification of Eusebio for violation of Section 80 of the Omnibus Election Code, which recommendation was approved by the COMELEC First Division. The COMELEC *en banc* referred the case back to the COMELEC Law Department to determine whether Eusebio actually committed the acts subject of the petition for disqualification. The Court, speaking through Justice Carpio, adjudged that Eusebio was not liable for premature campaigning given that the latter committed partisan political acts **before he became a candidate**. The Court construed the application of Section 11 of Republic Act No. 8463 *vis-à-vis* the provisions of Sections 80 and 79(a) of the Omnibus Election Code. Section 11 of Republic Act No. 8436 moved the deadline for the filing of certificates of candidacy to 120 days before election day. The Court ruled that the only purpose for the early filing of COCs was to give ample time for the printing of official ballots. Congress, however, never intended the early

filing of a COC to make the person filing to become immediately a "candidate" for purposes other than the printing of ballots. This legislative intent prevented the immediate application of Section 80 of the Omnibus Election Code to those filing to meet the early deadline. The clear intention of Congress was to preserve the "election periods as x x x fixed by existing law" prior to Republic Act No. 8436 and that **one who files to meet the early deadline** "**will still not be considered as a candidate**." Simply stated, the Court adjudged in *Lanot* that when Eusebio filed his COC to meet the early deadline set by COMELEC, he did not thereby immediately become a candidate. Thus, there was no premature campaigning since there was no candidate to begin with. It is on this ground that the majority reversed *Lanot*.

2. ID.; ID.; ID.; ID.; VERY SPECIFIC ARE THE WORDINGS OF THE LAW THAT THE INDIVIDUAL WHO MAY BE HELD LIABLE TO COMMIT THE UNLAWFUL ACT OF PREMATURE CAMPAIGNING CAN BE ANY PERSON, A VOTER OR NON-VOTER, A CANDIDATE OR A NON-CANDIDATE.— The *ponente* reiterates that the existence of a candidate is not necessary before premature campaigning may be committed. Section 80 of the Omnibus Election Code unequivocally provides that "[i]t shall be unlawful for **any person**, **whether or not a voter or candidate,** or for any party, or association of persons, to engage in an election campaign or partisan political activity, except during the campaign period." Very specific are the wordings of the law that the individual who may be held liable to commit the unlawful act of premature campaigning can be any person: a voter or non-voter, a candidate or a non-candidate.

3. ID.; ID.; ID.; ID.; CONTRARY TO THE MAJORITY OPINION, THE ASSAILED DECISION IS NOT SELF-CONTRADICTORY.— As already previously discussed, Section 80 of the Omnibus Election Code was not repealed by Section 15 of RA 8436, as amended by RA 9369. In construing the said provisions, as well as that of Section 79(a) of the Omnibus Election Code, which defines the meaning of the term candidate, the majority has settled that, after the filing of the COC but before the start of the campaign period, a person is yet to be considered a formal candidate. Nonetheless, by filing the COC, the person categorically and explicitly declares his/her

intention to run as a candidate. Thereafter, if such person commits the acts enumerated under Section 79(b) of the Omnibus Election Code, said acts can already be construed as for the purpose of promoting his/her intended candidacy. Thus, contrary to the majority opinion, the Decision dated 11 September 2009 is not self-contradictory. The *ponente* can reverse *Lanot* and still uphold the second sentence, third paragraph of Section 15 of Republic Act No. 8436, as amended.

4. ID.; ID.; ID.; ID.; NOT ALL ELECTION OFFENSES ARE REQUIRED TO BE COMMITTED BY A CANDIDATE AND, LIKE THE PROHIBITED ACT OF PREMATURE CAMPAIGNING, NOT ALL ELECTION OFFENSES ARE REQUIRED TO BE COMMITTED AFTER THE START OF THE CAMPAIGN PERIOD; THE CONDUCT OF ELECTION CAMPAIGN OR PARTISAN POLITICAL ACTIVITY BEFORE THE CAMPAIGN PERIOD IS THE VERY EVIL THAT SECTION 80 SEEKS TO PREVENT.— The *ponente* takes exception to the above sweeping and unwarranted reasoning. Not all election offenses are required to be committed by a candidate and, like the prohibited act of premature campaigning, not all election offenses are required to be committed after the start of the campaign period. To reiterate, Section 80 of the Omnibus Election Code, which defines the prohibited act of premature campaigning is still good law despite the passage of Section 15 of Republic Act No. 8436, as amended. Precisely, the conduct of election campaign or partisan political activity before the campaign period is the very evil that Section 80 seeks to prevent.

5. ID.; ID.; ID.; ID.; WHETHER THE ELECTION WOULD BE HELD UNDER THE MANUAL OR AUTOMATED SYSTEM, THE NEED FOR PROHIBITING PREMATURE CAMPAIGNING TO LEVEL THE PLAYING FIELD BETWEEN THE POPULAR OR RICH CANDIDATES, ON ONE HAND, AND THE LESSER-KNOWN OR POORER CANDIDATES, ON THE OTHER, BY ALLOWING THEM TO CAMPAIGN ONLY WITHIN SAME LIMITED PERIOD REMAINS.— As the majority repeatedly pointed out, Section 15 of Republic Act No. 8436, as amended by Republic Act No. 9369, was enacted merely to give the COMELEC ample time for the printing of ballots. Section 80 of the Omnibus Election Code, on the other hand, is a substantive law which

defines the prohibited act of premature campaigning, an election offense punishable with the gravest of penalties that can be imposed on a candidate, *i.e.*, disqualification or, if elected, removal from office. If the majority opinion indignantly rejects the attempts of the *ponente* to reconcile the provisions of Section 80 of the Omnibus Election Code and Section 15 of Republic Act No. 8436, as amended, then why should they insist on repealing the former provision and not the latter? The *ponente* emphasizes that **whether the election would be held under the manual or the automated system, the need for prohibiting premature campaigning – to level the playing field between the popular or rich candidates, on one hand, and the lesser-known or poorer candidates, on the other, by allowing them to campaign only within the same limited period – remains.** Again, the choice as to who among the candidates will the voting public bestow the privilege of holding public office should not be swayed by the shrewd conduct, verging on bad faith, of some individuals who are able to spend resources to promote their candidacies in advance of the period slated for campaign activities.

6. ID.; ID.; ID.; ID.; PREMATURE CAMPAIGNING IS NOW OFFICIALLY DECRIMINALIZED AND, AS A CONSEQUENCE, THE VALUE AND SIGNIFICANCE OF HAVING A CAMPAIGN PERIOD WILL NOW BE UTTERLY NEGATED.— By virtue of the Resolution of the majority, premature campaigning will now be officially decriminalized and, as a consequence, the value and significance of having a campaign period will now be utterly negated. Thus, one year, five years or even ten years prior to the day of the elections, a person aspiring for public office may now engage in election campaign or partisan political activities to promote his candidacy, with impunity. All he needs to have is a very deep campaign war chest to be able to carry out this shrewd activity. Indeed, while fair elections has been dealt a fatal blow by the Resolution of the majority, it is fervently hoped that the writing of the Decision dated 11 September 2009 and this Dissenting Opinion will not be viewed as an effort made in vain if in the future the said Resolution can be revisited and somehow rectified. Premises considered, there is no reason to reverse and set aside the earlier ruling of the Court rendered in this case.

ABAD*, J., dissenting opinion:*

1. POLITICAL LAW; ELECTION LAWS; OMNIBUS ELECTION CODE; PREMATURE CAMPAIGNING; THE LAW MAKES THE PROHIBITION AGAINST PREMATURE CAMPAIGNING APPLY TO "ANY PERSON" AND "ANY PARTY, OR ASSOCIATION OF PERSONS" WHICH MEANS THAT NO ONE IS EXEMPT FROM THE BAN.— The law makes the prohibition against premature campaigning apply to "any person" and "any party, or association of persons." This means that no one is exempt from the ban. The mention of the word "candidate" in the first grouping, *i.e.*, "any person, whether or not a voter or **candidate**," merely stresses the point that even those with direct interest in a political campaign are not exempt from the ban. Consequently, even if Penera had not yet filed her certificate of candidacy, Section 80 covered her because she fell in the category of **"any person."** The provision of Section 15 of R.A. 8436, as amended, that regards Penera as a "candidate" only at the start of the campaign period on March 30, 2007 did not, therefore, exempt her from liability as a non-candidate engaging in premature election campaign. Here, candidate Penera has been found by the COMELEC to have violated Section 80 when, even before she was a candidate, she prematurely campaigned for votes for herself. The ground for her consequent disqualification—premature campaigning—already accrued by the time she filed her certificate of candidacy or when the official campaign period began. Consequently, she is disqualified under Section 68 from continuing as a candidate or, since she has been elected, from holding on to that office.

2. ID.; ID.; ID.; ID.; THE MAJORITY OPINION'S INTERPRETATION OF THE TERM "ELECTION CAMPAIGN" UNDER SECTION 79 OF THE OMNIBUS ELECTION CODE IS TOO LITERAL; LITERALNESS MUST YIELD TO EVIDENT LEGISLATIVE INTENT.— Does this position contravene Section 15 of R.A. 8436, as amended, that regards Penera as a "candidate" only at the start of the campaign period on March 30, 2007? It does not because Section 80, which the Court seeks to enforce, is essentially intended as a ground for sanctioning **"any person,"** not necessarily a candidate, who engages in premature election

campaign. The real challenge to the current minority position, however, is the meaning that the Omnibus Election Code places on the term "election campaign." "The term 'election campaign' or 'partisan political activity,' says Section 79, "refers to an act designed to promote the election or defeat of **a particular candidate** or candidates to a public office." The object of the election campaign activity must be the "election or defeat of a particular candidate." When petitioner Penera practically said "vote for me" during the March 29 motorcade that she led around Sta. Monica, did she solicit votes for a "particular candidate?" The current majority holds that since, according to Section 79, a "candidate refers to any person aspiring for or seeking an elective public office, **who has filed a certificate of candidacy**" and since Penera held her vote-solicitation motorcade **before** she filed her certificate of candidacy, she did not engage during the town motorcade in a campaign for the election of any "particular candidate." But this is being too literal. It is like saying that a woman cannot be held liable for parricide since the penal code uses the male pronoun in ascribing to the offender the acts that constitute the crime. Thus, the penal code says: **Art. 246. *Parricide*. — Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of *reclusion perpetua* to death.** Yet, parricide, as everyone knows, can also be committed by a woman who shall kill **her** father, mother, or child, or **her** spouse. The spirit of the law intends to punish any person, male or female, who kills his or her ascendants, descendants, or spouse. Literalness must yield to evident legislative intent.

3. ID.; ID.; ID.; ID.; UNDER THE MAJORITY VIEW, A CANDIDATE CAN FREELY COMMIT A LITANY OF OTHER CRIMES RELATING TO THE ELECTION SO LONG AS HE COMMITS THEM BEFORE THE START OF THE CAMPAIGN PERIOD.— Did Congress in enacting R.A. 9369 intend to abolish or repeal Section 80 of the Omnibus Election Code that prohibits election campaigns before the start of the campaign period? It did not. Section 80 remains in the statute books and R.A. 9369 did not, directly or indirectly, touch it. The current majority of course claims, citing Section 15

of R.A. 8436, as amended, that "the effective date when partisan political acts become unlawful as to a candidate is when the campaign period starts. The pertinent portion of Section 15 says: ***Provided,*** **That, unlawful acts or omissions applicable to a candidate shall take effect only upon the start of the aforesaid campaign period; x x x.** If we were to abide by the view of the current majority, Congress ordained when it passed the above provision that it is only for unlawful acts or omissions committed during the campaign period that candidates could be punished. Consequently, if candidates take campaign funds from a foreign government or conspire with others to bribe voters just one day before the start of the campaign period, they cannot be prosecuted. A candidate under the theory of the current majority can freely commit a litany of other crimes relating to the election so long as he commits them before the start of the campaign period. Surely, R.A. 9369 did not intend to grant him immunity from prosecution for these crimes.

4. ID.; ID.; ID.; ID.; CONGRESS COULD NOT BE PRESUMED TO HAVE WRITTEN A RIDICULOUS RULE AND IT IS SAFE TO ASSUME THAT IN ENACTING RA 9369 IT DID NOT INTEND TO DECRIMINALIZE ILLEGAL ACTS THAT CANDIDATES AND NON-CANDIDATES ALIKE COULD COMMIT PRIOR TO THE CAMPAIGN PERIOD.— The more reasonable reading of the provision—that unlawful acts or omissions applicable to a candidate shall take effect only upon the start of the campaign period—is that Congress referred only to unlawful acts or omissions that could essentially be committed only during the campaign period. For how could a candidate commit **unlawful "pre-campaign" acts** during the campaign period? The unlawful act of engaging in premature election campaign under Section 80, in relation to Section 79 which defines the terms "candidate" and "election campaign," may be regarded as consisting of three elements: 1. A person acts to promote the election or defeat of another to a public office; 2. He commits the act before the start of the campaign period; and 3. The person whose election or defeat the offender seeks has filed a certificate of candidacy for the office. The first two elements could take place when the offender engages in premature election campaign for the person whose election or defeat he seeks to promote but who has not as yet filed his certificate of candidacy.Whereas, the third element—

consisting in the latter person's filing his certificate of candidacy—could take place later, close to the campaign period. The elements of a crime need not be present on a single occasion. In B.P. 22 cases, the issuer of the check may have knowingly issued a perfectly worthless check to apply on account. But, until the check is dishonoured by the drawee bank, the crime of issuing a bouncing check is not deemed committed. The analogy is far from perfect but the point is that the offender under Section 80 knew fully when she shouted on the top of her voice, "vote for me as your mayor!" before she filed her certificate of candidacy that she was running for mayor. If she says she is not liable because she is technically not yet a candidate, the people should say, "Let us not kid each other!" Congress could not be presumed to have written a ridiculous rule. It is safe to assume that, in enacting R.A. 9369, Congress did not intend to **decriminalize** illegal acts that candidates and non-candidates alike could commit prior to the campaign period.

5. ID.; ID.; ID.; ID.; THE MAJORITY VIEW MAY DOOM THE NEXT GENERATIONS; PREMATURE CAMPAIGNING PRECIPITATE VIOLENCE, CORRUPT THE ELECTORATE, AND DIVERT PUBLIC ATTENTION FROM THE MORE VITAL NEEDS OF THE COUNTRY.— Current majority's view may doom the next generations. Congress enacted Section 80 because, historically, premature election campaigns begun even years before the election saps the resources of the candidates and their financial backers, ensuring considerable pay-back activities when the candidates are elected. Such lengthy campaigns also precipitate violence, corrupt the electorate, and divert public attention from the more vital needs of the country. Actually, practically all the principal stakeholders in the election, namely, the voters, the candidates, and the COMELEC, have since 1969 assumed that premature election campaign is not allowed. People generally wait for the campaign period to start before engaging in election campaign. Even today, after the passage of R.A. 9369, those aspiring to national offices have resorted to the so-called "infomercials" that attempt to enhance their popularities by showing their philosophies in life, what they have accomplished, and the affection with which ordinary people hold them. No one has really come out with ads soliciting votes for any particular

candidate or person aspiring for a particular public office. They are all aware of Section 80. Parenthetically, the Supreme Court declared the law banning premature election campaign constitutional in *Gonzales v. Commission on Elections* only because the majority in the Court were unable to muster two-thirds votes to declare it unconstitutional. The freedom of expression has always loomed large in the mind of the Court. It would not be likely, therefore, for the Court to hastily declare every expression tending to promote a person's chances in the elections as prohibited election campaigning.

APPEARANCES OF COUNSEL

Eduardo M. Arriba and *Sardillo and Fong Law Office* for petitioner.

The Solicitor General for public respondent.

Fernando S. Almeda III for private respondent.

R E S O L U T I O N

CARPIO, *J.*:

We grant Rosalinda A. Penera's (Penera) motion for reconsideration of this Court's Decision of 11 September 2009 (Decision).

The assailed Decision dismissed Penera's petition and affirmed the Resolution dated 30 July 2008 of the COMELEC *En Banc* as well as the Resolution dated 24 July 2007 of the COMELEC Second Division. The Decision disqualified Penera from running for the office of Mayor in Sta. Monica, Surigao del Norte and declared that the Vice-Mayor should succeed Penera.

In support of her motion for reconsideration, Penera submits the following arguments:

1. Penera was not yet a candidate at the time of the incident under Section 11 of RA 8436 as amended by Section 13 of RA 9369.

2. The petition for disqualification failed to submit convincing and substantial evidence against Penera for violation of Section 80 of the Omnibus Election Code.

3. Penera never admitted the allegations of the petition for disqualification and has consistently disputed the charge of premature campaigning.

4. The admission that Penera participated in a motorcade is not the same as admitting she engaged in premature election campaigning.

Section 79(a) of the Omnibus Election Code defines a "candidate" as "any person aspiring for or seeking an elective public office, who has filed a certificate of candidacy x x x." The second sentence, third paragraph, Section 15 of RA 8436, as amended by Section 13 of RA 9369, provides that "**[a]ny person who files his certificate of candidacy within [the period for filing] shall *only* be considered as a candidate at the start of the campaign period for which he filed his certificate of candidacy.**" The immediately succeeding *proviso* in the same third paragraph states that "**unlawful acts or omissions applicable to a candidate shall take effect *only* upon the start of the aforesaid campaign period.**" These two provisions determine the resolution of this case.

The Decision states that "[w]hen the campaign period starts and [the person who filed his certificate of candidacy] proceeds with his/her candidacy, his/her intent turning into actuality, **we can already consider his/her acts, after the filing of his/her COC and prior to the campaign period, as the promotion of his/her election as a candidate, hence, constituting premature campaigning, for which he/she may be disqualified**."[1]

Under the Decision, a candidate may already be liable for premature campaigning after the filing of the certificate of candidacy but **even before the start of the campaign period**. From the filing of the certificate of candidacy, even long before the start of the campaign period, the Decision considers the partisan

[1] Decision, p. 23 (Boldfacing and underscoring supplied).

political acts of a person so filing a certificate of candidacy **"as the promotion of his/her election as a candidate."** Thus, such person can be disqualified for premature campaigning for acts done before the start of the campaign period. **In short, the Decision considers a person who files a certificate of candidacy already a "*candidate*" even before the start of the campaign period.**

The assailed Decision is contrary to the clear **intent and letter** of the law.

The Decision reverses *Lanot v. COMELEC*,[2] which held that **a person who files a certificate of candidacy is not a candidate until the start of the campaign period**. In *Lanot*, this Court explained:

> Thus, the essential elements for violation of Section 80 of the Omnibus Election Code are: (1) a person engages in an election campaign or partisan political activity; (2) the act is designed to promote the election or defeat of a particular candidate or candidates; (3) the act is done outside the campaign period.
>
> The second element requires the existence of a "candidate." Under Section 79(a), a candidate is one who "has filed a certificate of candidacy" to an elective public office. Unless one has filed his certificate of candidacy, he is not a "candidate." The third element requires that the campaign period has not started when the election campaign or partisan political activity is committed.
>
> Assuming that all candidates to a public office file their certificates of candidacy on the last day, which under Section 75 of the Omnibus Election Code is the day before the start of the campaign period, then no one can be prosecuted for violation of Section 80 for acts done prior to such last day. Before such last day, there is no "particular candidate or candidates" to campaign for or against. On the day immediately after the last day of filing, the campaign period starts and Section 80 ceases to apply since Section 80 covers only acts done "outside" the campaign period.
>
> Thus, if all candidates file their certificates of candidacy on the last day, Section 80 may only apply to acts done on such last day, which is before the start of the campaign period and after at least

[2] G.R. No. 164858, 16 November 2006, 507 SCRA 114.

one candidate has filed his certificate of candidacy. This is perhaps the reason why those running for elective public office usually file their certificates of candidacy on the last day or close to the last day.

There is no dispute that Eusebio's acts of election campaigning or partisan political activities were committed outside of the campaign period. The only question is whether Eusebio, who filed his certificate of candidacy on 29 December 2003, was a "candidate" when he committed those acts before the start of the campaign period on 24 March 2004.

Section 11 of Republic Act No. 8436 ("RA 8436") moved the deadline for the filing of certificates of candidacy to 120 days before election day. Thus, the original deadline was moved from 23 March 2004 to 2 January 2004, or 81 days earlier. The crucial question is: did this change in the deadline for filing the certificate of candidacy make one who filed his certificate of candidacy before 2 January 2004 immediately liable for violation of Section 80 if he engaged in election campaign or partisan political activities prior to the start of the campaign period on 24 March 2004?

Section 11 of RA 8436 provides:

> SECTION 11. Official Ballot. – The Commission shall prescribe the size and form of the official ballot which shall contain the titles of the positions to be filled and/or the propositions to be voted upon in an initiative, referendum or plebiscite. Under each position, the names of candidates shall be arranged alphabetically by surname and uniformly printed using the same type size. A fixed space where the chairman of the Board of Election Inspectors shall affix his/her signature to authenticate the official ballot shall be provided.
>
> Both sides of the ballots may be used when necessary.
>
> **For this purpose, the deadline for the filing of certificate of candidacy/petition for registration/ manifestation to participate in the election shall not be later than one hundred twenty (120) days before the elections:** Provided, That, any elective official, whether national or local, running for any office other than the one which he/she is holding in a permanent capacity, except for president and vice-president, shall be deemed resigned only upon the start of the campaign period corresponding to the position for which he/she is

running: Provided, further, That, unlawful acts or omissions applicable to a candidate shall take effect upon the start of the aforesaid campaign period: Provided, finally, That, for purposes of the May 11, 1998 elections, the deadline for filing of the certificate of candidacy for the positions of President, Vice-President, Senators and candidates under the party-list system as well as petitions for registration and/or manifestation to participate in the party-list system shall be on February 9, 1998 while the deadline for the filing of certificate of candidacy for other positions shall be on March 27, 1998.

The official ballots shall be printed by the National Printing Office and/or the Bangko Sentral ng Pilipinas at the price comparable with that of private printers under proper security measures which the Commission shall adopt.The Commission may contract the services of private printers upon certification by the National Printing Office/*Bangko Sentral ng Pilipinas* that it cannot meet the printing requirements. Accredited political parties and deputized citizens' arms of the Commission may assign watchers in the printing, storage and distribution of official ballots.

To prevent the use of fake ballots, the Commission through the Committee shall ensure that the serial number on the ballot stub shall be printed in magnetic ink that shall be easily detectable by inexpensive hardware and shall be impossible to reproduce on a photocopying machine, and that identification marks, magnetic strips, bar codes and other technical and security markings, are provided on the ballot.

The official ballots shall be printed and distributed to each city/municipality at the rate of one (1) ballot for every registered voter with a provision of additional four (4) ballots per precinct.

Under Section 11 of RA 8436, the only purpose for the early filing of certificates of candidacy is to give ample time for the printing of official ballots. This is clear from the following deliberations of the Bicameral Conference Committee:

SENATOR GONZALES. Okay. Then, how about the campaign period, would it be the same[,] uniform for local and national officials?

THE CHAIRMAN (REP. TANJUATCO). Personally, I would agree to retaining it at the present periods.

SENATOR GONZALES. But the moment one files a certificate of candidacy, he's already a candidate, and there are many prohibited acts on the part of candidate.

THE CHAIRMAN (REP. TANJUATCO). Unless we. . . .

SENATOR GONZALES. And you cannot say that the campaign period has not yet began (sic).

THE CHAIRMAN (REP. TANJUATCO). If we don't provide that the filing of the certificate will not bring about one's being a candidate.

SENATOR GONZALES. If that's a fact, the law cannot change a fact.

THE CHAIRMAN (REP. TANJUATCO). **No, but if we can provide that the filing of the certificate of candidacy will not result in that official vacating his position, we can also provide that insofar he is concerned, election period or his being a candidate will not yet commence. Because here, the reason why we are doing an early filing is to afford enough time to prepare this machine readable ballots.**

So, with the manifestations from the Commission on Elections, Mr. Chairman, the House Panel will withdraw its proposal and will agree to the 120-day period provided in the Senate version.

THE CHAIRMAN (SENATOR FERNAN). Thank you, Mr. Chairman.

xxx xxx xxx

SENATOR GONZALES. How about prohibition against campaigning or doing partisan acts which apply immediately upon being a candidate?

THE CHAIRMAN (REP. TANJUATCO). **Again, since the intention of this provision is just to afford the Comelec enough time to print the ballots, this provision does not intend to change the campaign periods as presently, or rather election periods as presently fixed by existing law.**

THE ACTING CHAIRMAN (SEN. FERNAN). So, it should be subject to the other prohibition.

THE CHAIRMAN (REP. TANJUATCO). That's right.

> THE ACTING CHAIRMAN (SEN. FERNAN). Okay.
>
> THE CHAIRMAN (REP. TANJUATCO). In other words, actually, there would be no conflict anymore because we are talking about the 120-day period before election as the last day of filing a certificate of candidacy, election period starts 120 days also. So that is election period already. But he will still not be considered as a candidate.

Thus, because of the early deadline of 2 January 2004 for purposes of printing of official ballots, Eusebio filed his certificate of candidacy on 29 December 2003. Congress, however, never intended the filing of a certificate of candidacy before 2 January 2004 to make the person filing to become immediately a "candidate" for purposes other than the printing of ballots. This legislative intent prevents the immediate application of Section 80 of the Omnibus Election Code to those filing to meet the early deadline. The clear intention of Congress was to preserve the "**election periods as x x x fixed by existing law**" prior to RA 8436 and that one who files to meet the early deadline "**will still not be considered as a candidate**."[3] (Emphasis in the original)

Lanot was decided on the ground that one who files a certificate of candidacy is not a candidate until the start of the campaign period. This ground was based on the deliberations of the legislators who explained the intent of the provisions of RA 8436, which laid the legal framework for an automated election system. There was no express provision in the original RA 8436 stating that one who files a certificate of candidacy is not a candidate until the start of the campaign period.

When Congress amended RA 8436, Congress decided to expressly incorporate the *Lanot* doctrine into law, realizing that *Lanot* merely relied on the deliberations of Congress in holding that —

> The clear intention of Congress was to preserve the "**election periods as x x x fixed by existing law**" prior to RA 8436 and that one who files to meet the early deadline "**will still not be considered as a candidate.**"[4] (Emphasis supplied)

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[3] *Id*. at 147-152.

[4] *Id.* at 152.

Congress wanted to insure that no person filing a certificate of candidacy under the early deadline required by the automated election system would be disqualified or penalized for any partisan political act done before the start of the campaign period. Thus, in enacting RA 9369, Congress expressly wrote the *Lanot* doctrine into the **second sentence**, third paragraph of the amended Section 15 of RA 8436, thus:

xxx xxx xxx

For this purpose, the Commission shall set the deadline for the filing of certificate of candidacy/petition for registration/ manifestation to participate in the election. **Any person who files his certificate of candidacy within this period shall only be considered as a candidate at the start of the campaign period for which he filed his certificate of candidacy:** *Provided,* That, unlawful acts or omissions applicable to a candidate shall take effect only upon the start of the aforesaid campaign period: *Provided, finally,* That any person holding a public appointive office or position, including active members of the armed forces, and officers and employees in government-owned or -controlled corporations, shall be considered *ipso facto* resigned from his/her office and must vacate the same at the start of the day of the filing of his/her certificate of candidacy. (Boldfacing and underlining supplied)

Congress elevated the *Lanot* doctrine into a statute by specifically inserting it as the **second sentence** of the third paragraph of the amended Section 15 of RA 8436, which cannot be annulled by this Court except on the sole ground of its unconstitutionality. The Decision cannot reverse *Lanot* without repealing this **second sentence**, because to reverse *Lanot* would mean repealing this **second sentence**.

The assailed Decision, however, in reversing *Lanot* does not claim that this **second sentence** or any portion of Section 15 of RA 8436, as amended by RA 9369, is unconstitutional. In fact, the Decision considers the entire Section 15 good law. Thus, the Decision is self-contradictory — reversing *Lanot* but maintaining the constitutionality of the **second sentence**, which embodies the *Lanot* doctrine. In so doing, the Decision is irreconcilably in conflict with the clear intent and letter of the

second sentence, third paragraph, Section 15 of RA 8436, as amended by RA 9369.

In enacting RA 9369, Congress even further clarified the first *proviso* in the third paragraph of Section 15 of RA 8436. The original provision in RA 8436 states —

x x x Provided, further, That, unlawful acts or omissions applicable to a candidate shall take effect upon the start of the aforesaid campaign period, x x x.

In RA 9369, Congress inserted the word "**only**" so that the first *proviso* now reads —

x x x Provided, That, unlawful acts or omissions applicable to a candidate shall take effect **only** upon the start of the aforesaid campaign period x x x. (Emphasis supplied)

Thus, Congress not only reiterated but also strengthened its mandatory directive that election offenses can be committed by a candidate "**only**" upon the start of the campaign period. This clearly means that before the start of the campaign period, such election offenses cannot be so committed.

When the applicable provisions of RA 8436, as amended by RA 9369, are read together, these provisions of law do not consider Penera a candidate for purposes other than the printing of ballots, until the start of the campaign period. There is absolutely no room for any other interpretation.

We quote with approval the Dissenting Opinion of Justice Antonio T. Carpio:

x x x The definition of a "candidate" in Section 79(a) of the Omnibus Election Code should be read together with the amended Section 15 of RA 8436. A "'candidate' refers to any person aspiring for or seeking an elective public office, who has filed a certificate of candidacy by himself or through an accredited political party, aggroupment or coalition of parties." However, it is no longer enough to merely file a certificate of candidacy for a person to be considered a candidate because "**any person who files his certificate of candidacy within [the filing] period shall *only be considered a candidate at the start of the campaign period* for which he filed his certificate**

of candidacy." Any person may thus file a certificate of candidacy on any day within the prescribed period for filing a certificate of candidacy yet that person shall be considered a candidate, for purposes of determining one's possible violations of election laws, **only during the campaign period**. Indeed, there is no "election campaign" or "partisan political activity" designed to promote the election or defeat of a particular candidate or candidates to public office simply because there is no "candidate" to speak of prior to the start of the campaign period. Therefore, despite the filing of her certificate of candidacy, the law does not consider Penera a candidate at the time of the questioned motorcade which was conducted a day before the start of the campaign period. x x x

The campaign period for local officials began on 30 March 2007 and ended on 12 May 2007. Penera filed her certificate of candidacy on 29 March 2007. Penera was thus a candidate on 29 March 2009 only for purposes of printing the ballots. **On 29 March 2007, the law still did not consider Penera a candidate for purposes other than the printing of ballots.** Acts committed by Penera prior to 30 March 2007, the date when she became a "candidate," even if constituting election campaigning or partisan political activities, are not punishable under Section 80 of the Omnibus Election Code. Such acts are within the realm of a citizen's protected freedom of expression. Acts committed by Penera within the campaign period are not covered by Section 80 as Section 80 punishes only acts outside the campaign period.[5]

The assailed Decision gives a specious reason in explaining away the first *proviso* in the third paragraph, the amended Section 15 of RA 8436 that **election offenses applicable to candidates take effect only upon the start of the campaign period**. The Decision states that:

x x x [T]he line in Section 15 of Republic Act No. 8436, as amended, which provides that "any unlawful act or omission applicable to a candidate shall **take effect** only upon the start of the campaign period," does not mean that the acts constituting premature campaigning can only be committed, for which the offender may be disqualified, during the campaign period. **Contrary to the pronouncement in the dissent, nowhere in said *proviso* was it stated that campaigning before the start of the campaign period**

[5] Dissenting Opinion of Justice Antonio T. Carpio, pp. 4-6.

is lawful, such that the offender may freely carry out the same with impunity.

As previously established, a person, after filing his/her COC but prior to his/her becoming a candidate (thus, prior to the start of the campaign period), can already commit the acts described under Section 79(b) of the Omnibus Election Code as election campaign or partisan political activity. However, only after said person officially becomes a candidate, at the beginning of the campaign period, can said acts be given effect as premature campaigning under Section 80 of the Omnibus Election Code. **Only after said person officially becomes a candidate, at the start of the campaign period, can his/her disqualification be sought for acts constituting premature campaigning**. Obviously, it is only at the start of the campaign period, when the person officially becomes a candidate, that the undue and iniquitous advantages of his/her prior acts, constituting premature campaigning, shall accrue to his/her benefit. Compared to the other candidates who are only about to begin their election campaign, a candidate who had previously engaged in premature campaigning already enjoys an unfair headstart in promoting his/her candidacy.[6] (Emphasis supplied)

It is a basic principle of law that any act is lawful unless expressly declared unlawful by law. This is specially true to expression or speech, which Congress cannot outlaw except on very narrow grounds involving clear, present and imminent danger to the State. The mere fact that the law does not declare an act unlawful *ipso facto* means that the act is lawful. Thus, there is no need for Congress to declare in Section 15 of RA 8436, as amended by RA 9369, that political partisan activities before the start of the campaign period are lawful. It is sufficient for Congress to state that "**any unlawful act or omission applicable to a candidate shall take effect only upon the start of the campaign period**." The only inescapable and logical result is that the same acts, if done before the start of the campaign period, are lawful.

In layman's language, this means that a candidate is liable for an election offense only for acts done during the campaign period, not before. The law is clear as daylight — any election

[6] Decision, p. 24.

offense that may be committed by a candidate under any election law cannot be committed before the start of the campaign period. In ruling that Penera is liable for premature campaigning for partisan political acts before the start of the campaigning, the assailed Decision ignores the clear and express provision of the law.

The Decision rationalizes that a candidate who commits premature campaigning can be disqualified or prosecuted only after the start of the campaign period. This is not what the law says. What the law says is "**any unlawful act or omission applicable to a candidate shall take effect only upon the start of the campaign period**." The plain meaning of this provision is that the effective date when partisan political acts become unlawful as to a candidate is when the campaign period starts. Before the start of the campaign period, the same partisan political acts are lawful.

The law does not state, as the assailed Decision asserts, that partisan political acts done by a candidate before the campaign period are unlawful, but may be prosecuted only upon the start of the campaign period. Neither does the law state that partisan political acts done by a candidate before the campaign period are temporarily lawful, but becomes unlawful upon the start of the campaign period. This is clearly not the language of the law. Besides, such a law as envisioned in the Decision, which defines a criminal act and curtails freedom of expression and speech, would be void for vagueness.

Congress has laid down the law — a candidate is liable for election offenses only upon the start of the campaign period. This Court has no power to ignore the clear and express mandate of the law that "**any person who files his certificate of candidacy within [the filing] period shall only be considered a candidate at the start of the campaign period for which he filed his certificate of candidacy**." Neither can this Court turn a blind eye to the express and clear language of the law that "**any unlawful act or omission applicable to a candidate shall take effect only upon the start of the campaign period**."

The forum for examining the wisdom of the law, and enacting remedial measures, is not this Court but the Legislature. This Court has no recourse but to apply a law that is as clear, concise and express as the **second sentence**, and its immediately succeeding *proviso,* as written in the third paragraph of Section 15 of RA 8436, as amended by RA 9369.

WHEREFORE, we *GRANT* petitioner Rosalinda A. Penera's Motion for Reconsideration. We *SET ASIDE* the Decision of this Court in G.R. No. 181613 promulgated on 11 September 2009, as well as the Resolutions dated 24 July 2007 and 30 January 2008 of the COMELEC Second Division and the COMELEC *En Banc*, respectively, in SPA No. 07-224. Rosalinda A. Penera shall continue as Mayor of Sta. Monica, Surigao del Norte.

SO ORDERED.

Puno, C.J., Corona, Carpio Morales, Velasco, Jr., Brion, Peralta, Bersamin, and *Villarama, Jr., JJ.,* concur.

Chico-Nazario, J., see dissenting opinion.

Nachura, Leonardo-de Castro, and *Del Castillo, JJ.,* join the dissent of *J.* Nazario.

Abad, J., see dissenting opinion.

DISSENTING OPINION

CHICO-NAZARIO, *J.*:

On 11 September 2009, the Court rendered a Decision in the instant case disqualifying Rosalinda A. Penera from running as Mayor of Sta. Monica, Surigao Del Norte for engaging in the prohibited act of premature campaigning.

Penera forthwith filed a Motion for Reconsideration[1] of the above Decision, invoking the following arguments, to wit:

[1] *Rollo,* pp. 439-469.

1) Penera was not yet a candidate at the time of the incident under Section 11 of Republic Act No. 8436, as amended by Section 13 of Republic Act No. 9369.[2]

2) Section 80 of the Omnibus Election Code was expressly repealed by Republic Act No. 9369.[3]

3) The petition for disqualification failed to submit convincing and substantial evidence against Penera for violation of Section 80 of the Omnibus Election Code.[4]

4) Penera never admitted the allegations of the petition for disqualification and has consistently disputed the charge of premature campaigning.[5]

5) The admission that Penera participated in a motorcade is not the same as admitting she engaged in premature election campaigning.[6]

I vote to deny the Motion for Reconsideration.

Penera's Motion for Reconsideration

The basic issues in the Motion for Reconsideration were already passed upon in the Decision dated 11 September 2009 and no substantial arguments were raised.

The grounds that: (1) Penera was not yet a candidate at the time of the incident under Section 11 of Republic Act No. 8436, as amended by Section 13 of Republic Act No. 9369; (2) Section 80 of the Omnibus Election Code was expressly repealed by Republic Act No. 9369; and (3) the petition for disqualification failed to submit convincing and substantial evidence against Penera for violation of Section 80 of the Omnibus Election Code are all reiterations of her previous arguments before the Court and the same had already been adequately addressed in the Decision dated 11 September 2009.

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[2] *Rollo*, p. 441.

[3] *Rollo*, p. 452.

[4] *Rollo*, p. 455.

[5] *Rollo*, p. 459.

[6] *Rollo*, p. 465.

Incidentally, Penera herself disclosed in her Motion for Reconsideration that she is the respondent in a criminal case filed by Edgar T. Andanar for the commission of election offenses in violation of the Omnibus Election Code, which is docketed as EO Case No. 08-99.[7] Thus, the pronouncement in the Decision dated 11 September 2009 that the instant case should concern only the electoral aspect of the disqualification case finds more reason. As noted in the Decision, any discussion on the matter of Penera's criminal liability for premature campaigning would have been preemptive and nothing more than *obiter dictum*.

With respect to the assertion that Penera never admitted the allegations of the petition for disqualification and has consistently disputed the charge of premature campaigning, the same is utterly without merit. Penera admitted participating in the motorcade after filing her COC. What she merely denied and/or refuted were the minor details concerning the conduct of said motorcade.

Likewise, Penera's contention that her admission of participating in the motorcade in this case is not the same as admitting that she engaged in premature campaigning deserves scant consideration. Logically, to admit to the elements constituting the offense of premature campaigning is to admit to the commission of the said offense. Precisely, it is the act of participating in the motorcade after the filing of her COC that constituted the prohibited act of premature campaigning in the instant case.

Finally, the claim of Penera that not all motorcades are designed to promote the election of a candidate is unimpressive. Clearly, the context of the discussion on motorcades in the Decision dated 11 September 2009 was disregarded. The discussion pertained to motorcades conducted during election periods by candidates and their supporters. In such an instance, a motorcade assumes an entirely different significance and that is to promote a candidate.

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[7] *Rollo*, p. 455. Under Section 7, Rule 4 of the Commission on Elections Rules of Procedure, EO stands for Election Offenses.

As held in the Decision dated 11 September 2009, the conduct of a motorcade during election periods is a form of election campaign or partisan political activity, falling squarely within the ambit of Section 79(b)(2) of the Omnibus Election Code, on "[h]olding political caucuses, conferences, meetings, rallies, **parades, or other similar assemblies**, for the purpose of soliciting votes and/or undertaking any campaign or propaganda for or against a candidate[.]" The obvious purpose of the conduct of motorcades during election periods is to introduce the candidates and the positions to which they seek to be elected to the voting public; or to make them more visible so as to facilitate the recognition and recollection of their names in the minds of the voters come election time.

The pretense that the motorcade was only a convoy of vehicles, which was entirely an unplanned event that dispersed eventually, does not hold water. After filing their certificates of candidacy, Rosalinda Penera and the other members of her political party conducted a motorcade and went around the different *barangays* in the municipality of Sta. Monica, Surigao Del Norte. The motorcade consisted of two (2) jeepneys and ten (10) motorcycles, which were all festooned with multi-colored balloons. There was marching music being played on the background and the individuals onboard the vehicles threw candies to the people they passed by along the streets. With the number of vehicles, the balloons, the background marching music, the candies on hand and the route that took them to the different *barangays*, the motorcade could hardly be considered as spontaneous and unplanned.

Majority Opinion

Although the majority opinion initially mentions the above-stated grounds of Penera's Motion for Reconsideration, the same were not at all discussed. The Resolution of the majority purely involves an exposition of the grounds set forth in the Dissenting Opinion of Justice Antonio T. Carpio to the Decision dated 11 September 2009.

At the outset, the majority opinion highlights the relevant provisions of law defining the meaning of a candidate.

Under Section 79(a) of the Omnibus Election Code, a **candidate** is "**any person aspiring for or seeking an elective public office, who has filed a certificate of candidacy by himself or through an accredited political party, aggroupment, or coalition of parties**." On the other hand, the second sentence in the third paragraph of Section 15 of Republic Act No. 8436, as amended by Republic Act No. 9369, states that "**[a]ny person who files his certificate of candidacy within this period shall only be considered as a candidate at the start of the campaign period for which he filed his certificate of candidacy**." The first *proviso* in the same paragraph provides that "**unlawful acts or omissions applicable to a candidate shall take effect only upon the start of the aforesaid campaign period**."

The majority opinion goes on to quote a paragraph in the Decision dated 11 September 2009, underscoring a portion of the same as follows:

> When the campaign period starts and said person proceeds with his/her candidacy, his/her intent turning into actuality, **we can already consider his/her acts, after the filing of his/her [certificate of candidacy (COC)] and prior to the campaign period, as the promotion of his/her election as a candidate, hence, constituting premature campaigning, for which he/she may be disqualified**.

According to the interpretation of the majority of the above pronouncement, the Decision dated 11 September 2009 already considers a person who filed a COC a "candidate" even before the start of the campaign period. From the filing of the COC, even before the start of the campaign period, the *ponente* allegedly considers the partisan political acts of a person filing a COC "**as the promotion of his/her election as a candidate**."

The majority clearly mistook the import of the above-quoted portion and read the same out of context. Absolutely nowhere in the Decision dated 11 September 2009 was it stated that a person who filed a COC is **already deemed a candidate** even before the start of the campaign period.

To recall, the Court held in its Decision that Section 80 of the Omnibus Election Code, which defines the prohibited act

of premature campaigning, was not repealed, expressly or impliedly, by Section 15 of Republic Act No. 8436, as amended.

Section 80 of the Omnibus Election Code reads:

SECTION 80. *Election campaign or partisan political activity outside campaign period.* — **It shall be unlawful for any person, whether or not a voter or candidate, or for any party, or association of persons, to engage in an election campaign or partisan political activity except during the campaign period**: x x x.

While relevant portions of Section 15 of Republic Act No. 8436, as amended by Republic Act No. 9369, provide:

SECTION.15. *Official Ballot*. – x x x

xxx xxx xxx

For this purpose, the Commission shall set the deadline for the filing of certificate of candidacy/petition of registration/manifestation to participate in the election. **Any person who files his certificate of candidacy within this period shall only be considered as a candidate at the start of the campaign period for which he filed his certificate of candidacy**: *Provided*, **That, unlawful acts or omissions applicable to a candidate shall take effect only upon the start of the aforesaid campaign period**[.]

The Court harmonized and reconciled the above provisions in this wise:

The following points are explanatory:

First, Section 80 of the Omnibus Election Code, on premature campaigning, explicitly provides that "[i]t shall be unlawful for **any person, whether or not a voter or candidate,** or for any party, or association of persons, to engage in an election campaign or partisan political activity, **except during the campaign period.**" Very simply, premature campaigning may be committed even by a person who is **not a candidate**.

For this reason, the plain declaration in *Lanot* that "[w]hat Section 80 of the Omnibus Election Code prohibits is 'an election campaign or partisan political activity' **by a 'candidate'** 'outside' of the campaign period," is clearly erroneous.

Second, Section 79(b) of the Omnibus Election Code defines election campaign or partisan political activity in the following manner:

SECTION 79. *Definitions*. — As used in this Code:

xxx xxx xxx

(b) The term "**election campaign**" or "**partisan political activity**" refers to an act designed to promote the election or defeat of a particular candidate or candidates to a public office which shall include:

(1) Forming organizations, associations, clubs, committees or other groups of persons for the purpose of soliciting votes and/or undertaking any campaign for or against a candidate;

(2) Holding political caucuses, conferences, meetings, rallies, parades, or other similar assemblies, for the purpose of soliciting votes and/or undertaking any campaign or propaganda for or against a candidate;

(3) Making speeches, announcements or commentaries, or holding interviews for or against the election of any candidate for public office;

(4) Publishing or distributing campaign literature or materials designed to support or oppose the election of any candidate; or

(5) Directly or indirectly soliciting votes, pledges or support for or against a candidate.

True, that pursuant to Section 15 of Republic Act No. 8436, as amended, even after the filing of the COC but before the start of the campaign period, a person is **not yet officially considered a *candidate***. Nevertheless, a person, **upon the filing of his/her COC,** already **explicitly declares his/her intention** to run as a candidate in the coming elections. The commission by such a person of any of the acts enumerated under Section 79(b) of the Omnibus Election Code (*i.e.*, holding rallies or parades, making speeches, *etc*.) can, thus, be logically and reasonably construed as for the purpose of promoting his/her intended candidacy.

When the campaign period starts and said person proceeds with his/her candidacy, **his/her intent turning into actuality**, we can

already consider his/her acts, after the filing of his/her COC and prior to the campaign period, as the promotion of his/her election **as a candidate**, hence, constituting premature campaigning, for which he/she may be disqualified. x x x (Underscoring supplied.)

The last paragraph of the aforequoted portion of the Decision dated 11 September 2009 should be read together with, and qualified by, the paragraph immediately preceding it. Clearly, the *ponente* was quite explicit in stating that, after the filing of the COC but before the start of the campaign period, a person is **not yet considered a candidate**. After filing the COC, however, the commission by such person of the acts enumerated under Section 79(b) of the Omnibus Election Code can already be construed as being for the purpose of promoting his/her **intended candidacy**.

Thereafter, it is only at the start of the campaign period, when said person is already a formal candidate, that the partisan political acts that he/she committed after the filing of the COC can already be considered as being for the promotion of his/her election as a candidate; hence, constituting premature campaigning.

Reversal of Lanot v. Commission on Elections

The majority likewise ascribes error on the part of the *ponente* for reversing *Lanot*, which held that a person should be a candidate before premature campaigning may be committed. Resolved under the auspices of Republic Act No. 8436,[8] the previous automation law, *Lanot* was allegedly decided on the ground

[8] The relevant provision in Republic Act No. 8436 is Section 11, which pertinently provides:

SECTION 11. *Official ballot*. – x x x

xxx xxx xxx

For this purpose, **the deadline for the filing of certificate of candidacy/petition for registration/manifestation to participate in the election shall not be later than one hundred twenty (120) days before the elections**: x x x: Provided, further, That, **unlawful acts or omissions applicable to a candidate shall take effect upon the start of the aforesaid campaign period**[.]

that one who files a COC is not a candidate until the start of the campaign period.

Supposably, Congress wanted to ensure that any person filing a COC under the early deadline required by the automated election system would not be disqualified for any partisan political act done prior to the start of the campaign period. In enacting Republic Act No. 9369, Congress expressly wrote the *Lanot* doctrine into the second sentence, third paragraph, Sec. 15 of Republic Act No. 8436, which states that "**[a]ny person who files his certificate of candidacy within [the period for filing COCs] shall only be considered as a candidate at the start of the campaign period for which he filed his certificate of candidacy**."

The majority, therefore, concludes that the *ponente* cannot reverse *Lanot* without repealing the above sentence, since to reverse *Lanot* would mean repealing the said sentence. The *ponente*, however, in reversing *Lanot* does not claim that the second sentence or any portion of Section 15 of RA 8436, as amended by RA 9369, is unconstitutional. Thus, the Decision dated 11 September 2009 is supposedly self-contradictory – reversing *Lanot* but maintaining the constitutionality of the second sentence, which embodies the *Lanot* doctrine. In so doing, the majority avers that the majority decision is irreconcilably in conflict with the clear intent and letter of the second sentence, third paragraph of Section 15 of Republic Act No. 8436, as amended by Republic Act No. 9369.

The majority opinion arrives at an erroneous conclusion based on a faulty premise.

Lanot was decided on the basis of the requirement therein that there must be first a **candidate** before the prohibited act of premature campaigning may be committed.

In *Lanot v. Commission on Elections*,[9] Lanot, *et al.*, filed a petition for disqualification against the then Pasig City mayoralty candidate Vicente P. Eusebio for engaging in various forms of

[9] G.R. No. 164858, 16 November 2006.

election campaign on different occasions outside of the designated campaign period after he filed his COC during the 2004 local elections. The Commission on Elections (COMELEC) Law Department recommended the disqualification of Eusebio for violation of Section 80 of the Omnibus Election Code, which recommendation was approved by the COMELEC First Division. The COMELEC *en banc* referred the case back to the COMELEC Law Department to determine whether Eusebio actually committed the acts subject of the petition for disqualification.

The Court, speaking through Justice Carpio, adjudged that Eusebio was not liable for premature campaigning given that the latter committed partisan political acts **before he became a candidate**. The Court construed the application of Section 11 of Republic Act No. 8463 *vis-à-vis* the provisions of Sections 80 and 79(a) of the Omnibus Election Code. Section 11 of Republic Act No. 8436 moved the deadline for the filing of certificates of candidacy to 120 days before election day. The Court ruled that the only purpose for the early filing of COCs was to give ample time for the printing of official ballots. Congress, however, never intended the early filing of a COC to make the person filing to become immediately a "candidate" for purposes other than the printing of ballots. This legislative intent prevented the immediate application of Section 80 of the Omnibus Election Code to those filing to meet the early deadline. The clear intention of Congress was to preserve the "election periods as x x x fixed by existing law" prior to Republic Act No. 8436 and that **one who files to meet the early deadline "will still not be considered as a candidate**."[10]

Simply stated, the Court adjudged in *Lanot* that when Eusebio filed his COC to meet the early deadline set by COMELEC, he did not thereby immediately become a candidate. Thus, there was no premature campaigning since there was no candidate to begin with. It is on this ground that the majority reversed *Lanot*.

The *ponente* reiterates that the existence of a candidate is not necessary before premature campaigning may be committed.

[10] *Lanot v. Commission on Elections*, G.R. No. 164858, 16 November 2006, 507 SCRA 114, 152.

Section 80 of the Omnibus Election Code unequivocally provides that "[i]t shall be unlawful for **any person, whether or not a voter or candidate,** or for any party, or association of persons, to engage in an election campaign or partisan political activity, except during the campaign period." Very specific are the wordings of the law that the individual who may be held liable to commit the unlawful act of premature campaigning can be any person: a voter or non-voter, a candidate or a non-candidate.

Furthermore, as already previously discussed, Section 80 of the Omnibus Election Code was not repealed by Section 15 of RA 8436, as amended by RA 9369. In construing the said provisions, as well as that of Section 79(a) of the Omnibus Election Code, which defines the meaning of the term candidate, the majority has settled that, after the filing of the COC but before the start of the campaign period, a person is yet to be considered a formal candidate. Nonetheless, by filing the COC, the person categorically and explicitly declares his/her intention to run as a candidate. Thereafter, if such person commits the acts enumerated under Section 79(b) of the Omnibus Election Code, said acts can already be construed as for the purpose of promoting his/her intended candidacy.

Thus, contrary to the majority opinion, the Decision dated 11 September 2009 is not self-contradictory. The *ponente* can reverse *Lanot* and still uphold the second sentence, third paragraph of Section 15 of Republic Act No. 8436, as amended.

The majority also stresses that in the enactment of Republic Act No. 9369, Congress inserted the word "**only**" to the first *proviso* in the third paragraph of Section 11 of Republic Act No. 8436 so that the same now reads:

> *Provided*, That, unlawful acts or omissions applicable to a candidate shall take effect **only** upon the start of the aforesaid campaign period.

Thus, Congress even strengthened its mandatory directive that election offenses can be committed by a candidate "only" upon the start of the campaign period. Accusing the *ponente* of giving a specious reasoning in explaining the above *proviso*, the majority points out to the basic principle of law that any act

is lawful, unless expressly declared as unlawful. Therefore, the majority claims that there was no need for Congress to declare in Section 15 of Republic Act No. 8436, as amended, that partisan political activities before the start of the campaign period are lawful. The logical conclusion is that partisan political acts, if done before the start of the campaign period, are lawful. According to the majority, *any election offense* that may be committed by a candidate under *any election law* cannot be committed before the start of the campaign period.

The *ponente* takes exception to the above sweeping and unwarranted reasoning. Not all election offenses are required to be committed by a candidate and, like the prohibited act of premature campaigning, not all election offenses are required to be committed after the start of the campaign period. To reiterate, Section 80 of the Omnibus Election Code, which defines the prohibited act of premature campaigning is still good law despite the passage of Section 15 of Republic Act No. 8436, as amended. Precisely, the conduct of election campaign or partisan political activity before the campaign period is the very evil that Section 80 seeks to prevent.

The majority opinion maintains its objection to the allegedly strained construction and/or interpretation of the *ponente* of the particular provisions involved in this case. With equal vehemence, however, the *ponente* adamantly rejects the majority's absurd and unwarranted theory of repeal of Section 80 of the Omnibus Election Code put forth in both the Dissenting Opinion to the Decision dated 11 September 2009 and the Resolution of the majority.

As the majority repeatedly pointed out, Section 15 of Republic Act No. 8436, as amended by Republic Act No. 9369, was enacted merely to give the COMELEC ample time for the printing of ballots. Section 80 of the Omnibus Election Code, on the other hand, is a substantive law which defines the prohibited act of premature campaigning, an election offense punishable with the gravest of penalties that can be imposed on a candidate, *i.e.*, disqualification or, if elected, removal from office. If the majority opinion indignantly rejects the attempts of the *ponente*

to reconcile the provisions of Section 80 of the Omnibus Election Code and Section 15 of Republic Act No. 8436, as amended, then why should they insist on repealing the former provision and not the latter?

The *ponente* emphasizes that **whether the election would be held under the manual or the automated system, the need for prohibiting premature campaigning – to level the playing field between the popular or rich candidates, on one hand, and the lesser-known or poorer candidates, on the other, by allowing them to campaign only within the same limited period – remains.** Again, the choice as to who among the candidates will the voting public bestow the privilege of holding public office should not be swayed by the shrewd conduct, verging on bad faith, of some individuals who are able to spend resources to promote their candidacies in advance of the period slated for campaign activities.

However, by virtue of the Resolution of the majority, premature campaigning will now be officially decriminalized and, as a consequence, the value and significance of having a campaign period will now be utterly negated. Thus, one year, five years or even ten years prior to the day of the elections, a person aspiring for public office may now engage in election campaign or partisan political activities to promote his candidacy, with impunity. All he needs to have is a very deep campaign war chest to be able to carry out this shrewd activity.

Indeed, while fair elections has been dealt a fatal blow by the Resolution of the majority, it is fervently hoped that the writing of the Decision dated 11 September 2009 and this Dissenting Opinion will not be viewed as an effort made in vain if in the future the said Resolution can be revisited and somehow rectified.

Premises considered, there is no reason to reverse and set aside the earlier ruling of the Court rendered in this case.

I, therefore, vote to **DENY WITH FINALITY** the Motion for Reconsideration filed by Rosalinda A. Penera on the Decision dated 11 September 2009.

DISSENTING OPINION

ABAD, *J.*:

The Facts and the Case

Petitioner Rosalinda Penera and respondent Edgar Andanar ran for mayor of Sta. Monica, Surigao Del Norte, during the May 14, 2007 elections.

On March 29, 2007 a motorcade by petitioner Penera's political party preceded the filing of her certificate of candidacy before the Municipal Election Officer of Sta. Monica. Because of this, on April 2, 2007 Andanar filed with the Regional Election Director for Region 13 in SPA 07-224 a petition to disqualify[1] Penera, among others,[2] for engaging in election campaign before the start of the campaign period.

Andanar claimed that Penera and her partymates went around Sta. Monica on March 29, announcing their candidacies and asking the people to vote for them in the coming elections. Answering the petition, Penera claimed that although a motorcade preceded the filing of her certificate of candidacy, she merely observed the usual practice of holding a motorcade on such momentous occasion, but which celebration ended soon after she filed her certificate. Penera claimed that no one made a speech during the event. All they had were lively background music and "a grand standing for the purpose of raising the hands of the candidates in the motorcade."

The parties presented their position papers and other evidence in the case.[3] Afterwards, the regional office forwarded its record to the Commission on Elections (COMELEC) in Manila where the case was raffled to the Second Division for resolution. But the elections of May 14, 2007 overtook it, with petitioner Penera

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[1] *Rollo,* pp. 53-54.

[2] Arcelito Petallo, Renato Virtudazo, Glorina Aparente, Silverio Tajos, Jose Platil, Medardo Sunico, Edelito Lerio and Sensualito Febra.

[3] *Rollo,* p. 127.

winning the election for Mayor of Sta. Monica. She assumed office on July 2, 2007.

On July 24, 2007 the COMELEC's Second Division issued a resolution, disqualifying petitioner Penera from continuing as a mayoralty candidate in Sta. Monica on the ground that she engaged in premature campaigning in violation of Sections 80 and 68 of the Omnibus Election Code. The Second Division found that she, her partymates, and a bevy of supporters held a motorcade of two trucks and numerous motorcycles laden with balloons, banners, and posters that showed the names of their candidates and the positions they sought. One of the trucks had a public speaker that announced Penera's candidacy for mayor.

Petitioner Penera filed before the COMELEC *en banc* a motion for reconsideration[4] of the Second Division's July 24, 2007 resolution. The *En Banc* denied her motion on January 30, 2008.[5] Still undeterred, Penera came up to this Court. On September 11, 2009 an almost evenly divided Court affirmed the ruling of the COMELEC. On motion for reconsideration, however, the number of votes shifted in favor of granting the petition and reversing the ruling of the COMELEC.

The Issue

The core issue that divided the Court is whether or not petitioner Penera's act of campaigning for votes immediately preceding the filing of her certificate of candidacy on March 29, 2007 violates the prohibition in Section 80 of the Omnibus Election Code against premature campaigning, with the result that she is disqualified from holding office in accordance with Section 68 of the Code.

Discussion

Section 80 of the Omnibus Election Code prohibits any person, whether a candidate or not, from engaging in election campaign

[4] *Id.* at 97-108.

[5] *Id.* at 48.

or partisan political activity except during the campaign period fixed by law.

Apart from its penal consequence, the law disqualifies any candidate who engages in premature campaigning from holding the office to which he was elected. Section 68 of the Code reads:

SECTION. 68. *Disqualifications*. — Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having x x x (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, subparagraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office; x x x. (Underscoring supplied.)

Since the COMELEC found petitioner Penera guilty of having led on March 29, 2007 a colorful and noisy motorcade that openly publicized her candidacy for mayor of Sta. Monica, this Court held in its original decision that the COMELEC correctly disqualified her from holding the office to which she was elected.

The current majority of the Court claims, however, that with the passage of Republic Act (R.A.) 9369, a candidate who campaigns before the official campaign period may no longer be regarded as having committed an unlawful act that constitutes ground for disqualification. The majority's reasoning is as follows:

a. Section 79 (a) of the Omnibus Election Code states that a *candidate* is "any person aspiring for or seeking an elective public office, who has filed a certificate of candidacy by himself or through an accredited political party, aggroupment, or coalition of parties."

b. It is a person's **filing of a certificate of candidacy**, therefore, that marks the beginning of his being a *candidate*. It is also such filing that marks his assumption of the responsibilities that goes with being a candidate. Before Penera filed her certificate of candidacy on March 29, 2007, she could not be regarded as having assumed the responsibilities of a "candidate."

c. One of these responsibilities is the duty not to commit acts that are forbidden a *candidate* such as campaigning for votes before

the start of the prescribed period for election campaigns. Premature campaigning is a crime and constitutes a ground for disqualification from the office that the candidate seeks.

d. But, with the amendment of Section 15 of R.A. 8436 by Section 13 of R.A. 9369, a person's filing of a certificate of candidacy does not now automatically mark him as a "candidate." He shall be regarded a "candidate," says Section 15, only at the start of the campaign period. Further, the "unlawful acts or omissions applicable to a candidate shall take effect only upon the start of the aforesaid campaign period."

It is significant that before the passage of R.A. 9369 a candidate for a local office had up to the day before the start of the campaign period (which in the case of a local election consists of 45 days before the eve of election day) within which to file his certificate of candidacy and, thus, be regarded as a "candidate." But the need for time to print the ballots with the names of the candidates on them under the automated election system prompted Congress to authorize the COMELEC to set a deadline for the filing of the certificates of candidacy long before the start of the campaign period. Thus, the pertinent portion of Section 15 of R.A. 8436, as amended, provides:

SECTION 15. ***Official ballot.*** **–**

xxx xxx xxx

For this purpose [the printing of ballots], the Commission shall set the deadline for the filing of certificate of candidacy/ petition for registration/ manifestation to participate in the election. x x x

xxx xxx xxx

Evidently, while Congress was willing to provide for advance filing of certificates of candidacy, it did not want to impose on those who file early certificates the responsibilities of being already regarded as "candidates" even before the start of the campaign period. Thus, the same Section 15 provides further on:

Any person who files his certificate of candidacy within this period shall only be considered as a candidate at the start of the campaign period for which he filed his certificate of candidacy; x x x.

In Penera's case, she filed her certificate of candidacy on March 29, 2007. Section 15 does not yet treat her as "candidate" then. Only at the start of the official campaign period on March 30, 2007 was she to be considered as such "candidate." To emphasize this, Congress provided further on in Section 15 that an early filer's responsibility as a *candidate* begins only when the campaign period begins. Thus –

***Provided*, That, unlawful acts or omissions applicable to a candidate shall take effect only upon the start of the aforesaid campaign period; x x x.**

The current majority concludes from the above that from the time R.A. 9369 took effect on February 10, 2007 a person like petitioner Penera cannot be held liable as a "candidate" for engaging in premature election campaign before she filed her certificate of candidacy or even after she filed one since she may be regarded as a "candidate" only at the start of the campaign period on March 30, 2007. Consequently, since she was not yet a "candidate" on March 29, 2007 when she went around Sta. Monica campaigning for votes on her way to appearing before the election registrar to file her certificate of candidacy, she cannot be held liable for premature campaigning.

But the fact that Penera was not yet a candidate before she actually handed in her certificate of candidacy to the designated COMELEC official does not exempt her from the prohibition against engaging in premature election campaign. Section 80 which imposes the ban ensnares **"any person,"** even a non-candidate. Thus:

SECTION 80. *Election campaign or partisan political activity outside campaign period.* — It shall be unlawful for <u>any person</u>, whether or not a voter or candidate, or for any party, or association of persons, to engage in an election campaign or

partisan political activity except during the campaign period: x x x (Emphasis ours.)

Essentially, the law makes the prohibition against premature campaigning apply to "any person" and "any party, or association of persons." This means that no one is exempt from the ban. The mention of the word "candidate" in the first grouping, *i.e.*, "any person, whether or not a voter or **candidate**," merely stresses the point that even those with direct interest in a political campaign are not exempt from the ban. Consequently, even if Penera had not yet filed her certificate of candidacy, Section 80 covered her because she fell in the category of **"any person."**

The provision of Section 15 of R.A. 8436, as amended, that regards Penera as a "candidate" only at the start of the campaign period on March 30, 2007 did not, therefore, exempt her from liability as a non-candidate engaging in premature election campaign.

Here, candidate Penera has been found by the COMELEC to have violated Section 80 when, even before she was a candidate, she prematurely campaigned for votes for herself. The ground for her consequent disqualification—premature campaigning—already accrued by the time she filed her certificate of candidacy or when the official campaign period began. Consequently, she is disqualified under Section 68 from continuing as a candidate or, since she has been elected, from holding on to that office. Thus:

SECTION 68. *Disqualifications*. — Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having x x x (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, subparagraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office; x x x (Underscoring supplied.)

Does this position contravene Section 15 of R.A. 8436, as amended, that regards Penera as a "candidate" only at the start of the campaign period on March 30, 2007? It does not because

Section 80, which the Court seeks to enforce, is essentially intended as a ground for sanctioning **"any person,"** not necessarily a candidate, who engages in premature election campaign.

The real challenge to the current minority position, however, is the meaning that the Omnibus Election Code places on the term "election campaign." "The term 'election campaign' or 'partisan political activity,' says Section 79, "refers to an act designed to promote the election or defeat of **a particular candidate** or candidates to a public office." The object of the election campaign activity must be the "election or defeat of a particular candidate."

When petitioner Penera practically said "vote for me" during the March 29 motorcade that she led around Sta. Monica, did she solicit votes for a "particular candidate?" The current majority holds that since, according to Section 79, a "candidate refers to any person aspiring for or seeking an elective public office, **who has filed a certificate of candidacy**" and since Penera held her vote-solicitation motorcade **before** she filed her certificate of candidacy, she did not engage during the town motorcade in a campaign for the election of any "particular candidate."

But this is being too literal. It is like saying that a woman cannot be held liable for parricide since the penal code uses the male pronoun in ascribing to the offender the acts that constitute the crime. Thus, the penal code says:

Art. 246. *Parricide*. — Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of *reclusion perpetua* to death.

Yet, parricide, as everyone knows, can also be committed by a woman who shall kill **her** father, mother, or child, or **her** spouse. The spirit of the law intends to punish any person, male or female, who kills his or her ascendants, descendants, or spouse. Literalness must yield to evident legislative intent.

Here, did Congress in enacting R.A. 9369 intend to abolish or repeal Section 80 of the Omnibus Election Code that prohibits election campaigns before the start of the campaign period? It did not. Section 80 remains in the statute books and R.A. 9369 did not, directly or indirectly, touch it.

The current majority of course claims, citing Section 15 of R.A. 8436, as amended, that "the effective date when partisan political acts become unlawful as to a candidate is when the campaign period starts. The pertinent portion of Section 15 says:

> ***Provided*, That, unlawful acts or omissions applicable to a candidate shall take effect only upon the start of the aforesaid campaign period; x x x.**

If we were to abide by the view of the current majority, Congress ordained when it passed the above provision that it is only for unlawful acts or omissions committed during the campaign period that candidates could be punished. Consequently, if candidates take campaign funds from a foreign government[6] or conspire with others to bribe voters[7] just one day before the start of the campaign period, they cannot be prosecuted. A candidate under the theory of the current majority can freely commit a litany of other crimes relating to the election so long as he commits them before the start of the campaign period. Surely, R.A. 9369 did not intend to grant him immunity from prosecution for these crimes.

The more reasonable reading of the provision—that unlawful acts or omissions applicable to a candidate shall take effect only upon the start of the campaign period—is that Congress referred only to unlawful acts or omissions that could essentially be committed only during the campaign period. For how could a candidate commit **unlawful "pre-campaign" acts** during the campaign period?

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[6] Section 96, Omnibus Election Code.

[7] Section 261 (b), Omnibus Election Code.

The unlawful act of engaging in premature election campaign under Section 80, in relation to Section 79 which defines the terms "candidate" and "election campaign," may be regarded as consisting of three elements:

1. A person acts to promote the election or defeat of another to a public office;

2. He commits the act before the start of the campaign period; and

3. The person whose election or defeat the offender seeks has filed a certificate of candidacy for the office.

The first two elements could take place when the offender engages in premature election campaign for the person whose election or defeat he seeks to promote but who has not as yet filed his certificate of candidacy. Whereas, the third element—consisting in the latter person's filing his certificate of candidacy—could take place later, close to the campaign period.

The elements of a crime need not be present on a single occasion. In B.P. 22 cases, the issuer of the check may have knowingly issued a perfectly worthless check to apply on account. But, until the check is dishonoured by the drawee bank, the crime of issuing a bouncing check is not deemed committed. The analogy is far from perfect but the point is that the offender under Section 80 knew fully when she shouted on the top of her voice, "vote for me as your mayor!" before she filed her certificate of candidacy that she was running for mayor. If she says she is not liable because she is technically not yet a candidate, the people should say, "Let us not kid each other!"

Congress could not be presumed to have written a ridiculous rule. It is safe to assume that, in enacting R.A. 9369, Congress did not intend to **decriminalize** illegal acts that candidates and non-candidates alike could commit prior to the campaign period.

Further, current majority's view may doom the next generations. Congress enacted Section 80 because, historically, premature election campaigns begun even years before the election saps the resources of the candidates and their financial backers,

ensuring considerable pay-back activities when the candidates are elected. Such lengthy campaigns also precipitate violence, corrupt the electorate, and divert public attention from the more vital needs of the country.[8]

Actually, practically all the principal stakeholders in the election, namely, the voters, the candidates, and the COMELEC, have since 1969 assumed that premature election campaign is not allowed. People generally wait for the campaign period to start before engaging in election campaign. Even today, after the passage of R.A. 9369, those aspiring to national offices have resorted to the so-called "infomercials" that attempt to enhance their popularities by showing their philosophies in life, what they have accomplished, and the affection with which ordinary people hold them. No one has really come out with ads soliciting votes for any particular candidate or person aspiring for a particular public office. They are all aware of Section 80.

Parenthetically, the Supreme Court declared the law banning premature election campaign constitutional in *Gonzales v. Commission on Elections*[9] only because the majority in the Court were unable to muster two-thirds votes to declare it unconstitutional. The freedom of expression has always loomed large in the mind of the Court. It would not be likely, therefore, for the Court to hastily declare every expression tending to promote a person's chances in the elections as prohibited election campaigning.

I vote to deny the motion for reconsideration.

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[8] *Gonzales v. Commission on Elections*, 137 Phil. 471, 490-491 (1969).

[9] *Id*.

THIRD DIVISION

[G.R. No. 182156. November 25, 2009]

REY A. VILLAMOR, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; HOMICIDE; ELEMENTS.— The elements of homicide are as follows: 1) a person was killed; 2) the accused killed him without any justifying circumstance; 3) the accused had the intention to kill, which is presumed; and 4) the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide.

2. ID.; ID.; ID.; PROSECUTION HAS DISCHARGED ITS BURDEN OF PROVING GUILT OF PETITIONER WITH MORAL CERTAINTY.— It bears stressing that in criminal cases such as this, the prosecution is not required to show the guilt of the accused with absolute certainty. Only moral certainty is demanded, or that degree of proof which, to an unprejudiced mind, produces conviction. In this case, we find that the prosecution has discharged its burden of proving the guilt of petitioner with moral certainty. *First.* As correctly invoked by the CA, our ruling in *People v. Buban* clearly teaches that family relationship does not by itself render an eyewitness' testimony inadmissible, less credible or devoid of probative value. Verily, to discredit Rosario's testimony just because she is Manuel's mother is unfair. On the contrary, Rosario would have no reason to simply and indiscriminately impute the crime to anybody, especially to petitioner who is a cousin of Manuel. However, it is necessary that Rosario should have positively identified the malefactor properly in order to secure the conviction of the real culprit and obtain justice. *Second.* Nothing is more settled in criminal law jurisprudence than that denial and alibi cannot prevail over the positive and categorical testimony of the witness. Denial is an intrinsically weak defense, which must be buttressed with strong evidence of non-culpability to merit credibility. Similarly, alibi is an inherently weak defense, which is viewed with suspicion and

received with caution because it can easily be fabricated. For alibi to prosper, the accused must prove not only that he was at some other place when the crime was committed, but that it was physically impossible for him to be at the *locus criminis* at the time of its commission. In this case, petitioner was positively identified by Rosario as the one who mauled her son — a witness who was characterized by both the RTC and the CA as credible and who had no ill motive to implicate petitioner in this dastardly crime. Likewise, petitioner's own evidence shows that, in fact, he met Manuel and, thereafter, was in the immediate environs when the incident occurred, as the ricemill was located in a *barangay* adjacent to Barangay Bagong Bayan. We take note of the CA's keen observation that, at some point, petitioner was left alone by the two other defense witnesses who never saw where petitioner went after they saw him with Manuel.

3. ID.; ID.; CIVIL LIABILITY; MORAL DAMAGES; MANDATORY IN CASES OF MURDER AND HOMICIDE, WITHOUT NEED OF ANY ALLEGATION OR PROOF OTHER THAN THE DEATH OF THE VICTIM.— We also uphold the position of the OSG that the heirs of Manuel are entitled to moral damages. Moral damages are mandatory in cases of murder and homicide, without need of any allegation or proof other than the death of the victim. Moral damages are awarded despite the absence of proof of mental and emotional sufferings of the victim's heirs because, as borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. Consistent with this rule, we award the amount of ₱50,000.00 as moral damages in accordance with prevailing jurisprudence.

4. REMEDIAL LAW; APPEALS; NO VALID JUSTIFICATION TO DEVIATE FROM BOTH THE FINDINGS OF THE TRIAL AND APPELLATE COURT AND THEIR UNIFORM CONCLUSION THAT APPELLANT IS INDEED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF HOMICIDE.—The cardinal rule applies that factual findings of the trial court, its calibration of the testimonies of the witnesses and its conclusions anchored on its findings are accorded high respect, if not conclusive effect, particularly when affirmed by the CA. The recognized exception to this

rule is when it is established that the trial court ignored, overlooked, misconstrued, or misinterpreted cogent facts and circumstances which, if considered, would change the outcome of the case. We have reviewed the records of the RTC and of the CA, and we find no valid justification to deviate from both courts' findings and their uniform conclusion that appellant is indeed guilty beyond reasonable doubt of the crime of Homicide.

APPEARANCES OF COUNSEL

Arthem Maceda Potian for petitioner.
The Solicitor General for respondent.

R E S O L U T I O N

NACHURA, *J.*:

Before this Court is a Petition[1] for Review on *Certiorari* under Rule 45 of the Rules of Civil Procedure seeking the reversal of the Court of Appeals (CA) Decision[2] dated August 31, 2007 which affirmed the Decision[3] of the Regional Trial Court (RTC) of Virac, Catanduanes, Branch 42, dated September 21, 2005, convicting petitioner Rey A. Villamor *alias* "Ikoy" (petitioner) of the crime of Homicide, with modification as to the damages awarded.

The Facts

On January 11, 1995, petitioner was charged with Homicide in an Information[4] which reads:

That on or about the 13th day of July 1994 [in] [B]arangay Bagong Bayan, [M]unicipality of Panganiban, [P]rovince of Catanduanes, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there, willfully, unlawfully

[1] *Rollo*, pp. 9-23.

[2] Particularly docketed as CA-G.R. CR. No. 29768, penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Jose C. Mendoza and Ramon M. Bato, Jr., concurring; *id.* at 32-40.

[3] Records, pp. 382-387.

[4] *Id.* at 45.

and feloniously with intent to kill attack and assault one Manuel Cabrera by boxing and kicking him on the head and in different parts of his body which directly caused his death to the damage and prejudice of his heirs.

ALL ACTS CONTRARY TO LAW.

The RTC issued a warrant of arrest with a bail recommendation of ₱20,000.00.[5] Petitioner posted bail for his provisional liberty.[6] Upon arraignment on May 15, 1995, petitioner pleaded not guilty to the offense charged.[7] During the pretrial, it was stipulated that the victim, Manuel Cabrera (Manuel), died on July 25, 1994 in the house of his sister, Helen Cabrera, in Quezon City; and that prior to his death, he worked as a welder in an iron workshop. Thereafter, trial on the merits ensued. In the course of the trial, two varying versions arose.

Version of the Prosecution

The prosecution established that Manuel was mauled on July 13, 1994 based on the testimonies of Lolito Cabrera,[8] *Barangay* Chairman of Barangay Bagong Bayan, Panganiban, Catanduanes (Barangay Bagong Bayan), and Senior Police Officer 4 Roberto Reyes.[9] The latter also testified that he was the one who investigated the case and that affidavits sworn before him pointed to petitioner as the culprit.

The prosecution also relied on the testimony of Manuel's mother, Rosario Cabrera (Rosario), a Grade IV teacher assigned in Cahan, Bagamanoc, Catanduanes. Rosario testified that, in the early afternoon of July 13, 1994, she went home early from work as she would attend a conference the following day; that she hiked towards Barangay Hinipaan to wait for a ride home

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[5] *Id.* at 47.

[6] *Id.* at 49.

[7] *Id.* at 68.

[8] TSN, February 24, 2000, pp. 3-8.

[9] TSN, October 18, 2000, pp. 2-4.

towards Panganiban, Catanduanes, where she resides; that, since there was no other available means of transportation at that time, she decided to just hitch a ride on a hemp-loaded truck *en route* to Virac, Catanduanes; and that being a hitchhiker, she stood at the back of the truck and held on to its ropes to maintain her balance.

She went on to narrate that when the truck passed by Barangay Bagong Bayan, she saw petitioner mauling and beating someone in front of the house of one Crispin Oliveros, Sr. (Crispin). She saw the victim fall to the ground bleeding, as petitioner kicked and boxed him on the stomach and on the head while the latter was sprawled on the ground. At that moment, Rosario did not pay much attention to the incident because she thought all along that Manuel was still in Manila. Her suspicion that Manuel was the victim of the mauling incident was confirmed only when she reached home and was informed that Manuel had already arrived. Rosario then wanted to go to the Viga District Hospital thinking that Manuel would be brought there, but was prevailed upon by her husband to go instead to the police station to have the incident blottered.

After attending her scheduled seminar the next day, Rosario went to the Viga District Hospital to visit Manuel. When they met, Manuel complained of physical pain and requested Rosario that he be brought immediately to Manila. She brought him to Virac on board a passenger jeepney to prepare for his flight to Manila. But since there was a storm at that time and all flights from Catanduanes were cancelled, Rosario was compelled to momentarily confine Manuel at the Eastern Bicol Medical Center (EMBC). At the EMBC, Manuel continued to complain of abdominal pains and had difficulty urinating.

When he was finally airlifted to Manila, Manuel still complained of abdominal pains and his nose bled. He was brought to the Tondo General Hospital where he was confined for four (4) days. Manuel was then brought to his house in Manila where he requested to see his family, as he could no longer bear the pain. He was then brought to his sister Helen Cabrera's house

in Quezon City where he eventually died on July 25, 1994 because of *cerebral edema*.[10]

Version of the Defense

The defense denied the prosecution's claims. Petitioner testified that while he was drinking *tuba* with his friends, Milo Lara[11] and Igmedio Torio Villamor,[12] in front of Crispin's house at about 3:00 p.m. of July 13, 1994, Manuel passed by and shoved petitioner's baseball cap; that at around 3:20 p.m., he left the drinking session and went to work at the Sumalde ricemill located in the adjoining *barangay*, Barangay Sta. Maria; and that he stayed in the ricemill until 8:00 p.m. He claimed that he had no grudge against Manuel who was his cousin and that he learned of Manuel's death only when he received a subpoena.[13] To corroborate petitioner's story, the defense presented Milo Lara[14] and Igmedio Torio Villamor.[15]

The RTC's Ruling

On September 21, 2005, the RTC rendered its decision, finding petitioner guilty as charged. It lent credence to Rosario's testimony, finding the same to be credible, categorical and free from any ill motive. Thus, the RTC disposed:

> WHEREFORE, the Court finds the accused Rey Villamor guilty beyond reasonable doubt of the crime of homicide and hereby sentences him to suffer the indeterminate penalty of imprisonment ranging from 6 years and 1 day of *prision mayor* as minimum to 14 years, 8 months and 1 day of *reclusion temporal* as maximum and to pay the heirs of Manuel Cabrera ₱50,000.00 as civil indemnity.
>
> SO ORDERED.

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[10] TSN, August 10, 1999, pp. 2-11.

[11] Also referred to as "Nilo Lara" in other pleadings and documents.

[12] Also referred to as "Cabon Villamor" in other pleadings and documents.

[13] TSN, September 19, 2002, pp. 2-6.

[14] TSN, November 5, 2002, pp. 3-15.

[15] TSN, July 10, 2003, pp. 3-6.

Aggrieved, petitioner appealed to the CA.[16]

The CA's Ruling

On August 31, 2007, the CA affirmed the findings of the RTC, giving full respect to the trial court's calibration of witnesses. However, the CA held that the RTC disregarded the testimony of Julieta Cabrera, Manuel's widow, on the award of compensation for the alleged lost income of Manuel. Thus, the CA ruled in this wise:

> WHEREFORE, the 21 September 2005 Decision of Branch 42, Virac, Catanduanes assailed herein is **AFFIRMED** with **MODIFICATION** to the effect that petitioner is ordered to pay the heirs of Manuel Cabrera the amount of ₱50,000.00 as civil indemnity, and in addition ₱25,000.00 as temperate damages.
>
> SO ORDERED.

Petitioner filed a Motion for Reconsideration[17] which was, however, denied by the CA in its Resolution[18] dated November 9, 2007. Undaunted, petitioner filed a Second Motion for Reconsideration[19] which the CA, in its Resolution[20] dated December 18, 2007, denied for lack of merit and for being a prohibited pleading.

Hence, this Petition based on the following grounds:

> [A] THE CHALLENGED DECISION/S (RESOLUTIONS) OF THE RESPONDENT/S [CA AND RTC] WERE RENDERED NOT IN ACCORDANCE WITH THE LAW AND APPLICABLE DECISION/S OF THE HONORABLE SUPREME COURT, AND IT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION[; AND]

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[16] Records, p. 389.

[17] *Rollo*, pp. 41-44.

[18] *Id.* at 48.

[19] *Id.* at 49-57.

[20] *Id.* at 59-60.

[B] THE PUBLIC RESPONDENT[S] COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN [THEIR] DECISION/S WHICH IS CONTRARY TO LAW AND JURISPRUDENCE.[21]

Petitioner claims that Rosario's detailed testimony that she saw him boxing and kicking Manuel while she was on board a speeding truck is highly unbelievable, considering the distance of Crispin's house from the gutter of Barangay Bagong Bayan; that Rosario was obviously a coached witness; that Rosario's lone testimony, in the absence of other prosecution witnesses, which was made after the lapse of almost six (6) years from the incident, cannot support petitioner's conviction; that Rosario did not execute any affidavit during the police investigation, preliminary examination and preliminary investigation; and that petitioner had no ill motive against Manuel.[22]

On the other hand, respondent People of the Philippines, through the Office of the Solicitor General (OSG), asseverates that the instant Petition raises purely factual issues which are outside the office of a Petition for Review on *certiorari* under Rule 45; that Rosario is a credible witness who positively identified petitioner as the one who beat Manuel; that Rosario was able to see the mauling incident as the truck reduced speed due to the presence of people around the scene of the incident; and that moral damages should be awarded in favor of Manuel's heirs since his death resulted from petitioner's criminal act.[23]

The threshold issue in this case, therefore, is whether or not the prosecution was able to prove the guilt of petitioner beyond reasonable doubt on the basis of the testimonies of the prosecution witnesses and the documentary evidence presented.

Our Ruling

The instant Petition is bereft of merit.

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[21] *Supra* note 1, at 16.

[22] *Id*.

[23] *Rollo*, pp. 82-96.

Article 249 of the Revised Penal Code (RPC) defines and punishes the crime of homicide, *viz.*:

> Art. 249. *Homicide*. — Any person who, not falling within the provisions of Article 246,[24] shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by *reclusion temporal*.

The elements of homicide are as follows: 1) a person was killed; 2) the accused killed him without any justifying circumstance; 3) the accused had the intention to kill, which is presumed; and 4) the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide.[25]

It bears stressing that in criminal cases such as this, the prosecution is not required to show the guilt of the accused with absolute certainty. Only moral certainty is demanded, or that degree of proof which, to an unprejudiced mind, produces conviction.[26] In this case, we find that the prosecution has discharged its burden of proving the guilt of petitioner with moral certainty.

First. As correctly invoked by the CA, our ruling in *People v. Buban*[27] clearly teaches that family relationship does not by itself render an eyewitness' testimony inadmissible, less credible or devoid of probative value. Verily, to discredit Rosario's testimony just because she is Manuel's mother is unfair. On the contrary, Rosario would have no reason to simply and indiscriminately impute the crime to anybody, especially to petitioner who is a cousin of Manuel. However, it is necessary

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[24] The article in the RPC defining and punishing the crime of parricide.

[25] *Yadao v. People*, G.R. No. 150917, September 27, 2006, 503 SCRA 496, 507, citing L. Reyes, *THE REVISED PENAL CODE*, Book Two, p. 470 (15th ed., 2001).

[26] *People of the Philippines v. Jessie Malate y Cañete*, G.R. No. 185724, June 5, 2009.

[27] G.R. No. 170471, May 11, 2007, 523 SCRA 118, 131-132, citing *People v. Tulop*, 289 SCRA 316, 331 (1998).

that Rosario should have positively identified the malefactor properly in order to secure the conviction of the real culprit and obtain justice.

Second. Nothing is more settled in criminal law jurisprudence than that denial and alibi cannot prevail over the positive and categorical testimony of the witness. Denial is an intrinsically weak defense, which must be buttressed with strong evidence of non-culpability to merit credibility. Similarly, alibi is an inherently weak defense, which is viewed with suspicion and received with caution because it can easily be fabricated. For alibi to prosper, the accused must prove not only that he was at some other place when the crime was committed, but that it was physically impossible for him to be at the *locus criminis* at the time of its commission.[28] In this case, petitioner was positively identified by Rosario as the one who mauled her son – a witness who was characterized by both the RTC and the CA as credible and who had no ill motive to implicate petitioner in this dastardly crime. Likewise, petitioner's own evidence shows that, in fact, he met Manuel and, thereafter, was in the immediate environs when the incident occurred, as the ricemill was located in a *barangay* adjacent to Barangay Bagong Bayan. We take note of the CA's keen observation that, at some point, petitioner was left alone by the two other defense witnesses who never saw where petitioner went after they saw him with Manuel.[29]

Lastly, the cardinal rule applies that factual findings of the trial court, its calibration of the testimonies of the witnesses and its conclusions anchored on its findings are accorded high respect, if not conclusive effect, particularly when affirmed by the CA. The recognized exception to this rule is when it is established that the trial court ignored, overlooked, misconstrued, or misinterpreted cogent facts and circumstances which, if considered, would change the outcome of the case. We have

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[28] *People v. Bulasag*, G.R. No. 172869, July 28, 2008, 560 SCRA 245, 253.

[29] *Supra* note 2, at 37-38.

reviewed the records of the RTC and of the CA, and we find no valid justification to deviate from both courts' findings and their uniform conclusion that appellant is indeed guilty beyond reasonable doubt of the crime of Homicide.[30]

Thus, we are in full agreement with the CA, when it aptly and judiciously held, to wit:

> As to the assigned error claimed by the accused-appellant, we do not see the improbabilities being alleged by the defense as to the testimony of the victim's mother that she saw the mauling incident while standing on board a truck. We are more inclined to agree with the OSG that the mother was actually in the best position to witness the incident in that elevation. Furthermore, the defense was not able to prove any ill-motive on the part of the victim's mother to testify against her son's own cousin. On the contrary, she has all the reasons to punish the culprit and make sure that the one who would be punished is the one who killed her child.[31]

We also uphold the position of the OSG that the heirs of Manuel are entitled to moral damages. Moral damages are mandatory in cases of murder and homicide, without need of any allegation or proof other than the death of the victim. Moral damages are awarded despite the absence of proof of mental and emotional sufferings of the victim's heirs because, as borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family.[32] Consistent with this rule, we award the amount of ₱50,000.00 as moral damages in accordance with prevailing jurisprudence.[33]

WHEREFORE, the instant Petition is *DENIED* and the assailed Decision of the Court of Appeals in CA-G.R. C.R. No. 29768, dated August 31, 2007, finding petitioner Rey A. Villamor guilty

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[30] *Casitas v. People*, G.R. No. 152358, February 5, 2004, 422 SCRA 242, 248.

[31] *Supra* note 2, at 38.

[32] *People v. Opuran,* 469 Phil. 698, 720-721 (2004). (Citations omitted.)

[33] *People of the Philippines v. Samuel Algarme y Bonda and Rizaldy Gelle y Biscocho*, G.R. No. 175978, February 12, 2009, citing *People v. Eling*, 553 SCRA 724, 739 (2008).

beyond reasonable doubt of the crime of Homicide, is hereby *AFFIRMED* with *MODIFICATION* that said petitioner is further *ORDERED* to pay the heirs of Manuel Cabrera the amount of Fifty Thousand Pesos (₱50,000.00) as moral damages. No costs.

SO ORDERED.

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

EN BANC

[G.R. No. 182165. November 25, 2009]

P/SUPT. FELIXBERTO CASTILLO, POLICE OFFICERS ROMEO BAGTAS, RUPERTO BORLONGAN, EDMUNDO DIONISIO, RONNIE MORALES, ARNOLD TRIA, and GILBERTO PUNZALAN, ENGR. RICASOL P. MILLAN, ENGR. REDENTOR S. DELA CRUZ, MR. ANASTACIO L. BORLONGAN, MR. ARTEMIO ESGUERRA, "TISOY", and JOHN DOES, *petitioners, vs.* **DR. AMANDA T. CRUZ, NIXON T. CRUZ, and FERDINAND T. CRUZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; WRIT OF *AMPARO* AND WRIT OF *HABEAS DATA*; LIMITED TO THE PROTECTION OF LIFE, LIBERTY AND SECURITY AND COVERS NOT ONLY ACTUAL BUT ALSO THREATS OF UNLAWFUL ACTS OR OMISSIONS.—The Court is, under the Constitution, empowered to promulgate rules for the protection and enforcement of constitutional rights. In view of the heightening prevalence of extrajudicial killings and enforced disappearances,

the Rule on the Writ of *Amparo* was issued and took effect on October 24, 2007 which coincided with the celebration of United Nations Day and affirmed the Court's commitment towards internationalization of human rights. More than three months later or on February 2, 2008, the Rule on the Writ of *Habeas Data* was promulgated. Section 1 of the Rule on the Writ of *Amparo* provides: Section 1. *Petition*.— The petition for a writ of *amparo* is a remedy available to **any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission** of a public official or employee, or of a private individual or entity. The writ shall cover extralegal killings and enforced disappearances or threats thereof. Section 1 of the Rule on the Writ of *Habeas Data* provides: Section 1. *Habeas Data*.— The writ of *habeas data* is a remedy available to any person whose **right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission** of a public official or employee or of a private individual or entity **engaged in the gathering, collecting or storing of data or information** regarding the person, family, home and correspondence of the aggrieved party. From the above-quoted provisions, the coverage of the writs is limited to the protection of rights to **life**, **liberty** and **security**. And the writs cover not only actual but also threats of unlawful acts or omissions. *Secretary of National Defense v. Manalo* teaches: As the Amparo Rule was intended to address the intractable problem of "extralegal killings" and "enforced disappearances," its coverage, in its present form, is confined to these two instances or to threats thereof. "Extralegal killings" are "killings committed without due process of law, *i.e.*, without legal safeguards or judicial proceedings." On the other hand, "enforced disappearances" are "attended by the following characteristics: an arrest, detention or abduction of a person by a government official or organized groups or private individuals acting with the direct or indirect acquiescence of the government; the refusal of the State to disclose the fate or whereabouts of the person concerned or a refusal to acknowledge the deprivation of liberty which places such persons outside the protection of law.

2. ID.; ID.; ID.; TO BE COVERED BY THE PRIVILEGE OF THE WRITS, RESPONDENT MUST MEET THE THRESHOLD REQUIREMENT THAT THEIR RIGHT TO

LIFE, LIBERTY AND SECURITY IS VIOLATED OR THREATENED WITH AN UNLAWFUL ACT OR OMISSION.— To thus be covered by the privilege of the writs, respondents must meet the threshold requirement that their right to life, liberty and security is violated or threatened with an unlawful act or omission. Evidently, the present controversy arose out of *a property* dispute between the Provincial Government and respondents. Absent any considerable nexus between the acts complained of and its effect on respondents' right to life, liberty and security, the Court will not delve on the propriety of petitioners' entry into the property.

3. ID.; ID.; ID.; RESPONDENT'S PETITION DID NOT SHOW ANY ACTUAL VIOLATION, IMMINENT OR CONTINUING THREAT TO THEIR LIFE, LIBERTY AND SECURITY; IT IS NOT EVEN ALLEGED THAT PETITIONERS ARE GATHERING, COLLECTING OR STORING DATA OR INFORMATION REGARDING THEIR PERSON, FAMILY, HOME AND CORRESPONDENCE TO JUSTIFY ISSUANCE OF A WRIT OF *HABEAS DATA*.— It bears emphasis that respondents' petition did not show any actual violation, imminent or continuing threat to their life, liberty and security. Bare allegations that petitioners "in unison, conspiracy and in contempt of court, there and then willfully, forcibly and feloniously with the use of force and intimidation entered and forcibly, physically manhandled the petitioners (respondents) and arrested the herein petitioners (respondents)" will not suffice to prove entitlement to the remedy of the writ of *amparo*. No undue confinement or detention was present. In fact, respondents were even able to post bail for the offenses a day after their arrest. Although respondents' release from confinement does not necessarily hinder supplication for the writ of *amparo*, absent any evidence or even an allegation in the petition that there is undue and continuing restraint on their liberty, and/or that there exists threat or intimidation that destroys the efficacy of their right to be secure in their persons, the issuance of the writ cannot be justified. That respondents are merely seeking the protection of their property rights is gathered from their Joint Affidavit, *viz*: xxx 11. *Kami ay humarang at humiga sa harap ng mga heavy equipment na hawak hawak ang nasabing kautusan ng* RTC Branch 10

(PERMANENT INJUNCTION at RTC ORDERS DATED February 12, 17 at 19 2008) *upang ipaglaban ang dignidad ng kautusan ng korte, ipaglaban ang prinsipyo ng* "SELF-HELP" at batas ukol sa "PROPERTY RIGHTS", *Wala kaming nagawa ipagtanggol ang aming karapatan sa lupa na 45 years naming "IN POSSESSION."* Oddly, respondents also seek the issuance of a writ of *habeas data* when it is not even alleged that petitioners are gathering, collecting or storing data or information regarding their person, family, home and correspondence.

APPEARANCES OF COUNSEL

Jeffrey C. Cruz for petitioners.

Francisco Galman Cruz for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Petitioners[1], employees and members of the local police force of the City Government of Malolos, challenge the March 28, 2008 Decision of the Regional Trial Court (RTC) of Malolos, Branch 10 in a petition for issuance of writs of *amparo* and *habeas data* instituted by respondents.

The factual antecedents.

Respondent Amanda Cruz (Amanda) who, along with her husband Francisco G. Cruz (Spouses Cruz), leased a parcel of land situated at Barrio Guinhawa, Malolos (the property), refused to vacate the property, despite demands by the lessor Provincial Government of Bulacan (the Province) which intended to utilize it for local projects.

[1] P/Supt. Felixberto Castillo (Chief of Police), SPO1 Romeo Bagtas, SPO3 Ruperto Borlongan, PO Edmundo Dionisio, PO Ronnie Morales, PO Arnold Tria and PO Gilberto Punzalan (police officers), Engineer Ricasol Millan (Chief, City Engineer's Office) Engineer Redentor S. dela Cruz (City Engineer's Office), Anastacio Borlongan (City Administrator), Artemio Esguerra and Rolando "Tisoy" Cruz.

The Province thus filed a complaint for unlawful detainer against the Spouses Cruz before the then Municipal Trial Court (MTC) of Bulacan, Bulacan.

By Decision of September 5, 1997, the MTC rendered judgment against the Spouses Cruz, which judgment, following its affirmance by the RTC, became final and executory.

The finality of the decision in the ejectment case notwithstanding, the spouses Cruz refused to vacate the property. They thereupon filed cases against the Province[2] and the judges who presided over the case.[3] Those cases were dismissed *except* their petition for annulment of judgment lodged before Branch 18 of the RTC of Malolos, and a civil case for **injunction** 833-M-2004 lodged before Branch 10 of the same RTC Malolos.

The Spouses Cruz sought in the case for injunction the issuance of a permanent writ of injunction to prevent the execution of the final and executory judgment against them.

By Order of July 19, 2005, the RTC, finding merit in the Spouses Cruzes' allegation that subsequent events changed the situation of the parties to justify a suspension of the execution of the final and executory judgment, issued a permanent writ of injunction, the dispositive portion of which reads:

WHEREFORE, the foregoing petitioners' Motion for Reconsideration of the Order dated August 10, 2004 is hereby **GRANTED**. Order dated August 10, 2004 is hereby **RECONSIDERED** and **SET ASIDE**.

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[2] Petition for Annulment of Judgment with prayer for Writ of Preliminary Injunction before RTC-Malolos; Petition for *Certiorari* before the Court of Appeals, questioning the denial of Spouses Cruzes' motion for inhibition against the Presiding Judge of Branch 18, RTC-Malolos; Complaint for Damages before RTC-Quezon City, Civil Case for Injunction before RTC-Malolos.

[3] Criminal Complaint against Presiding Judge of Branch 18 RTC-Malolos, dismissed by Resolution of May 3, 2004; Administrative Complaint docketed as A.M. No. CA-04-38 against Court of Appeals Justice Portia A. Hormachuelos, RTC Judges Victoria C. Fernandez-Bernardo, Renato C. Francisco, Manuel DJ Siayngco, Caesar A. Casanova and MTC Judge Ester R. Chua-Yu. The complaint was dismissed by Resolution of March 31, 2004. Cruz was found guilty of contempt of court and consequently fined in the amount of ₱20,000.00.

Further, the verified petition dated November 05, 2002 are hereby **REINSTATED** and **MADE PERMANENT** until the MTC-Bulacan, Bulacan finally resolves the pending motions of petitioners with the same determines the metes and bounds of 400 sq. meters leased premises subject matter of this case with immediate dispatch. Accordingly, **REMAND** the determination of the issues raised by the petitioners on the issued writ of demolition to the MTC of Bulacan, Bulacan.

SO ORDERED.[4] (Emphasis in the original; underscoring supplied)

Finding that the *fallo* of the RTC July 19, 2005 Order treats, as a suspensive condition for the lifting of the permanent injunction, the determination of the boundaries of the property, the Province returned the issue for the consideration of the MTC. In a Geodetic Engineer's Report submitted to the MTC on August 31, 2007, the metes and bounds of the property were indicated.

The MTC, by Order of January 2, 2008, approved the Report and ruled that the permanent injunction which the RTC issued is ineffective. On motion of the Province, the MTC, by Order of January 21, 2008, thus issued a Second Alias Writ of Demolition.

On receiving notice of the January 2, 2008 MTC Order, the Spouses Cruz filed a motion before Branch 10 of the RTC for the issuance of a temporary restraining order (TRO) which it set for hearing on January 25, 2008 on which date, however, the demolition had, earlier in the day, been implemented. Such notwithstanding, the RTC issued a TRO.[5] The Spouses Cruz, along with their sons-respondents Nixon and Ferdinand, thereupon entered the property, placed several container vans and purportedly represented themselves as owners of the property which was for lease.

On February 21, 2008, petitioners Police Superintendent Felixberto Castillo, *et al.*, who were deployed by the City Mayor in compliance with a memorandum issued by Governor Joselito

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[4] *Rollo,* p. 171.

[5] *Id.* at 151-153.

R. Mendoza instructing him to "protect, secure and maintain the **possession of the property**," entered the property.

Amanda and her co-respondents refused to turn over the property, however. Insisting that the RTC July 19, 2005 Order of Permanent Injunction enjoined the Province from repossessing it, they shoved petitioners, forcing the latter to arrest them and cause their indictment for direct assault, trespassing and other forms of light threats.

Respondents later filed on March 3, 2008 a "Respectful Motion-Petition for Writ of *Amparo* and *Habeas Data*," docketed as **Special Civil Action No. 53-M-2008**, which was coincidentally raffled to Branch 10 of the RTC Malolos.

Respondents averred that despite the Permanent Injunction, petitioners unlawfully entered the property with the use of heavy equipment, tore down the barbed wire fences and tents,[6] and arrested them when they resisted petitioners' entry; and that as early as in the evening of February 20, 2008, members of the Philippine National Police had already camped in front of the property.

On the basis of respondents' allegations in their petition and the supporting affidavits, the RTC, by Order of March 4, 2008, issued writs of *amparo* and *habeas data*.[7]

The RTC, crediting respondents' version in this wise:

> Petitioners have shown by preponderant evidence that the facts and circumstances of the alleged offenses examined into on Writs of *Amparo* and *Habeas Data* that there have been an on-going hearings on the verified Petition for Contempt, docketed as Special Proceedings No. 306-M-2006, before this Court for alleged violation by the respondents of the Preliminary Injunction Order dated July 16, 2005 [*sic*] in Sp. Civil Action No. 833-M-2002, hearings were held on January 25, 2008, February 12 and 19, 2008, where the respondents prayed for an April 22, 2008 continuance, however, in the pitch darkness of February 20, 2008, police officers, some personnel

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[6] *Id.* at 173, *"Sama-Samang Sinumpaang Salaysay."*

[7] *Id.* at 178-180.

from the Engineering department, and some civilians proceeded purposely to the Pinoy Compound, converged therein and with continuing threats of bodily harm and danger and stone-throwing of the roofs of the homes thereat from voices around its premises, on a pretext of an ordinary police operation when enterviewed [*sic*] by the media then present, but at 8:00 a.m. to late in the afternoon of February 21, 2008, zoomed in on the petitioners, subjecting them to bodily harm, mental torture, degradation, and the debasement of a human being, reminiscent of the martial law police brutality, sending chill in any ordinary citizen,[8]

rendered judgment, by Decision of March 28, 2008, in favor of respondents, disposing as follows:

"WHEREFORE, premises considered, the Commitment Orders and waivers in Crim. Cases Nos. 08-77 for Direct assault; Crim. Case No. 08-77 for Other Forms of Trespass; and Crim. Case No. 08-78 for Light Threats are hereby **DECLARED** illegal, null and void, as petitioners were deprived of their substantial rights, induced by duress or a well-founded fear of personal violence. Accordingly, the commitment orders and waivers are hereby **SET ASIDE**. The temporary release of the petitioners is declared **ABSOLUTE**.

Without any pronouncement as to costs.

SO ORDERED."[9] (Emphasis in the original; underscoring supplied)

Hence, the present petition for review on *certiorari*, pursuant to Section 19[10] of The Rule on the Writ of *Amparo* (A.M. No. 07-9-12-SC),[11] which is essentially reproduced in the Rule on the Writ of *Habeas Data* (A.M. No. 08-1-16-SC).[12]

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[8] *Id.* at 127-128.

[9] *Id.* at 131.

[10] Sec. 19. *Appeal*. – Any party may appeal from the final judgment or order to the Supreme Court under Rule 45. The appeal may raise questions of facts or law or both. The period of appeal shall be five (5) working days from the date of notice of the adverse judgment. The appeal shall be given the same priority as *habeas corpus* cases.

[11] Took effect on October 24, 2007.

[12] Took effect on February 2, 2008.

In the main, petitioners fault the RTC for

> … giving due course and issuing writs of *amparo* and *habeas data* when from the allegations of the petition, the same ought not to have been issued as (1) the petition in [*sic*] insufficient in substance as the same involves property rights; and (2) criminal cases had already been filed and pending with the Municipal Trial Court in Cities, Branch 1, City of Malolos. (Underscoring supplied)

The petition is impressed with merit.

The Court is, under the Constitution, empowered to promulgate rules for the protection and enforcement of constitutional rights.[13] In view of the heightening prevalence of extrajudicial killings and enforced disappearances, the Rule on the Writ of *Amparo* was issued and took effect on October 24, 2007 which coincided with the celebration of United Nations Day and affirmed the Court's commitment towards internationalization of human rights. More than three months later or on February 2, 2008, the Rule on the Writ of *Habeas Data* was promulgated.

Section 1 of the Rule on the Writ of *Amparo* provides:

> Section 1. *Petition*. – The petition for a writ of *amparo* is a remedy available to **any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission** of a public official or employee, or of a private individual or entity. The writ shall cover extralegal killings and enforced disappearances or threats thereof. (Emphasis and underscoring supplied)

Section 1 of the Rule on the Writ of *Habeas Data* provides:

> Section 1. *Habeas Data*. – The writ of *habeas data* is a remedy available to any person whose **right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission** of a public official or employee or of a private individual or entity **engaged in the gathering, collecting or storing of data or information** regarding the person, family, home and correspondence of the aggrieved party. (Emphasis and underscoring supplied)

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[13] Article VIII, Section 5 (5).

From the above-quoted provisions, the coverage of the writs is limited to the protection of rights to **life, liberty** and **security**. And the writs cover not only actual but also threats of unlawful acts or omissions.

Secretary of National Defense v. Manalo[14] teaches:

> As the Amparo Rule was intended to address the intractable problem of "extralegal killings" and "enforced disappearances," its coverage, in its present form, is confined to these two instances or to threats thereof. "Extralegal killings" are "killings committed without due process of law, *i.e.*, without legal safeguards or judicial proceedings." On the other hand, "enforced disappearances" are "attended by the following characteristics: an arrest, detention or abduction of a person by a government official or organized groups or private individuals acting with the direct or indirect acquiescence of the government; the refusal of the State to disclose the fate or whereabouts of the person concerned or a refusal to acknowledge the deprivation of liberty which places such persons outside the protection of law.[15] (Underscoring supplied, citations omitted)

To thus be covered by the privilege of the writs, respondents must meet the threshold requirement that their right to life, liberty and security is violated or threatened with an unlawful act or omission. Evidently, the present controversy arose out of *a property* dispute between the Provincial Government and respondents. Absent any considerable nexus between the acts complained of and its effect on respondents' right to life, liberty and security, the Court will not delve on the propriety of petitioners' entry into the property.

Apropos is the Court's ruling in *Tapuz v. Del Rosario:*[16]

> To start off with the basics, the writ of *amparo* was originally conceived as a response to the extraordinary rise in the number of killings and enforced disappearances, and to the perceived lack of available and effective remedies to address these extraordinary concerns. It is intended to address violations of or threats to the

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[14] G.R. No. 180906, October 7, 2008, 568 SCRA 1.

[15] *Id.* at 38–39.

[16] G.R. No. 182484, June 17, 2008, 554 SCRA 768.

rights to life, liberty or security, as an extraordinary and independent remedy beyond those available under the prevailing Rules, or as a remedy supplemental to these Rules. **What it is not, is a writ to protect concerns that are purely property or commercial. Neither is it a writ that we shall issue on amorphous and uncertain grounds.** Consequently, the Rule on the Writ of *Amparo* – in line with the extraordinary character of the writ and the reasonable certainty that its issuance demands – requires that every petition for the issuance of the writ must be supported by justifying allegations of fact, to wit:

xxx xxx xxx

The writ shall issue if the Court is preliminarily satisfied with the *prima facie* existence of the ultimate facts determinable from the supporting affidavits that detail the circumstances of how and to what extent a threat to or violation of the rights to life, liberty and security of the aggrieved party was or is being committed.[17] (Emphasis and italics in the original, citation omitted)

Tapuz also arose out of a property dispute, albeit between private individuals, with the petitioners therein branding as "acts of terrorism" the therein respondents' alleged entry into the disputed land with armed men in tow. The Court therein held:

On the whole, what is clear from these statements – both sworn and unsworn – is the overriding involvement of property issues as the petition traces its roots to questions of physical possession of the property disputed by the private parties. If at all, issues relating to the right to life or to liberty can hardly be discerned except to the extent that the occurrence of past violence has been alleged. The right to security, on the other hand, is alleged only to the extent of the treats and harassments implied from the presence of "armed men bare to the waist" and the alleged pointing and firing of weapons. **Notably, none of the supporting affidavits compellingly show that the threat to the rights to life, liberty and security of the petitioners is imminent or continuing.**[18] (Emphasis in the original; underscoring supplied)

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[17] *Id.* at 784-785.

[18] *Id.* at 786.

It bears emphasis that respondents' petition did not show any actual violation, imminent or continuing threat to their life, liberty and security. Bare allegations that petitioners "in unison, conspiracy and in contempt of court, there and then willfully, forcibly and feloniously with the use of force and intimidation entered and forcibly, physically manhandled the petitioners (respondents) and arrested the herein petitioners (respondents)"[19] will not suffice to prove entitlement to the remedy of the writ of *amparo*. No undue confinement or detention was present. In fact, respondents were even able to post bail for the offenses a day after their arrest.[20]

Although respondents' release from confinement does not necessarily hinder supplication for the writ of *amparo*, absent any evidence or even an allegation in the petition that there is undue and continuing restraint on their liberty, and/or that there exists threat or intimidation that destroys the efficacy of their right to be secure in their persons, the issuance of the writ cannot be justified.

That respondents are merely seeking the protection of their property rights is gathered from their Joint Affidavit, *viz*:

xxx xxx xxx

11. Kami ay humarang at humiga sa harap ng mga heavy equipment na hawak hawak ang nasabing kautusan ng RTC Branch 10 (PERMANENT INJUNCTION at RTC ORDERS DATED February 12, 17 at 19 2008) upang ipaglaban ang dignidad ng kautusan ng korte, ipaglaban ang prinsipyo ng "SELF-HELP" at batas ukol sa "PROPERTY RIGHTS", Wala kaming nagawa ipagtanggol ang aming karapatan sa lupa na 45 years naming "IN POSSESSION." (Underscoring supplied)

Oddly, respondents also seek the issuance of a writ of *habeas data* when it is not even alleged that petitioners are gathering, collecting or storing data or information regarding their person, family, home and correspondence.

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[19] *Rollo,* p. 94.

[20] *Ibid.*

As for respondents' assertion of past incidents[21] wherein the Province allegedly violated the Permanent Injunction order, these incidents were already raised in the injunction proceedings on account of which respondents filed a case for criminal contempt against petitioners.[22]

Before the filing of the petition for writs of *amparo* and *habeas data,* or on February 22, 2008, petitioners even instituted a petition for *habeas corpus* which was considered moot and academic by Branch 14 of the Malolos RTC and was accordingly denied by Order of April 8, 2008.

More. Respondent Amanda and one of her sons, Francisco Jr., likewise filed a petition for writs of *amparo* and *habeas data* before the Sandiganbayan, they alleging the commission of continuing threats by petitioners after the issuance of the writs by the RTC, which petition was **dismissed** for insufficiency and forum shopping.

It thus appears that respondents are not without recourse and have in fact taken full advantage of the legal system with the filing of civil, criminal and administrative charges.[23]

It need not be underlined that respondents' petitions for writs of *amparo* and *habeas data* are extraordinary remedies which cannot be used as tools to stall the execution of a final and executory decision in a property dispute.

AT ALL EVENTS, respondents' filing of the petitions for writs of *amparo* and *habeas data* should have been barred, for criminal proceedings against them had commenced after they were arrested in *flagrante delicto* and proceeded against in accordance with Section 6, Rule 112[24] of the Rules of Court.

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[21] *Id.* at 95.

[22] Docketed as Sp. Civil Action No. 306-M-2006, *id.* at 409-411.

[23] *Vide* Notes 2 and 3.

[24] When a person is lawfully arrested without a warrant involving an offense, which requires a preliminary investigation, the complaint or information may be filed by a prosecutor without need of such investigation provided an

Validity of the arrest or the proceedings conducted thereafter is a defense that may be set up by respondents during trial and not before a petition for writs of *amparo* and *habeas data*. The reliefs afforded by the writs may, however, be made available to the aggrieved party by motion in the criminal proceedings.[25]

WHEREFORE, the petition is *GRANTED*. The challenged March 4, 2008 Order of Branch 10 of the Regional Trial Court of Malolos is *DECLARED NULL AND VOID*, and its March 28, 2008 Decision is ***REVERSED* and *SET ASIDE***. Special Civil Action No. 53-M-2008 is *DISMISSED*.

SO ORDERED.

Puno, C.J., Carpio, Chico-Nazario, Nachura, Leonardo-de Castro, Brion, Bersamin, Del Castillo, Abad, and *Villarama, Jr., JJ.,* concur.

Corona, Velasco, Jr., and *Peralta, JJ.*, on official leave.

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inquest has been conducted in accordance with existing Rules. In the absence or unavailability of an inquest prosecutor, the complaint may be filed by the offended party or a peace officer directly with the proper court on the basis of the affidavit of the offended party or arresting officer or person. x x x

[25] Section 22. *Effect of Filing of a Criminal Action*. – When a criminal action has been commenced, no separate petition for the writ shall be filed. The reliefs under the writ shall be made available by motion in the criminal case. x x x (The same section is reproduced in the Rules on the Writ of *Habeas Data*, also at Section 22).

THIRD DIVISION

[G.R. No. 183198. November 25, 2009]

LUZ PALANCA TAN, *petitioner, vs.* **JAM TRANSIT, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; DAMAGES; ACTUAL OR COMPENSATORY; DOCTRINE OF *RES IPSA LOQUITOR*; ELUCIDATED; REQUISITES THAT MUST BE SATISFACTORILY SHOWN.—*Res ipsa loquitor* is a Latin phrase that literally means "the thing or the transaction speaks for itself." It is a maxim for the rule that the fact of the occurrence of an injury, taken with the surrounding circumstances, may permit an inference or raise a presumption of negligence, or make out a plaintiff's *prima facie* case, and present a question of fact for defendant to meet with an explanation. Where the thing that caused the injury complained of is shown to be under the management of the defendant or his servants; and the accident, in the ordinary course of things, would not happen if those who had management or control used proper care, it affords reasonable evidence — in the absence of a sufficient, reasonable and logical explanation by defendant — that the accident arose from or was caused by the defendant's want of care. This rule is grounded on the superior logic of ordinary human experience, and it is on the basis of such experience or common knowledge that negligence may be deduced from the mere occurrence of the accident itself. Hence, the rule is applied in conjunction with the doctrine of common knowledge. However, *res ipsa loquitor* is not a rule of substantive law and does not constitute an independent or separate ground for liability. Instead, it is considered as merely evidentiary, a mode of proof, or a mere procedural convenience, since it furnishes a substitute for, and relieves a plaintiff of, the burden of producing a specific proof of negligence. In other words, mere invocation and application of the doctrine do not dispense with the requirement of proof of negligence. It is simply a step in the process of such proof, permitting plaintiff to present, along with the proof

of the accident, enough of the attending circumstances to invoke the doctrine, creating an inference or presumption of negligence, and thereby placing on defendant the burden of going forward with the proof. Still, before resort to the doctrine may be allowed, the following requisites must be satisfactorily shown: 1. The accident is of a kind which ordinarily does not occur in the absence of someone's negligence; 2. It is caused by an instrumentality within the exclusive control of the defendant or defendants; and 3. The possibility of contributing conduct which would make the plaintiff responsible is eliminated.

2. ID.; ID.; ID.; ID.; REQUISITES ESTABLISHED IN CASE AT BAR.— Was petitioner able to establish the above requisites? We answer in the affirmative. We do not subscribe to the finding of the CA that petitioner had direct access to the evidence surrounding the accident, but since she failed to present it, the doctrine would not operate to apply. While Ramirez took the witness stand, he was only able to testify that he drove along Maharlika Highway in San Isidro, Barangay Bangyas, Calauan, Laguna, Tan's passenger jitney loaded with salted eggs, *balot* and quail eggs for delivery at around 5:00 a.m. when he met an accident, causing the vehicle to turn turtle. Obviously, Ramirez had no vivid recollection of how the passenger jitney was actually hit by the JAM passenger bus. Further, for some unknown reasons, the other possible eyewitnesses to the mishap were not available to testify. With the dearth of testimonial or direct evidence, should petitioner now be left without remedy? The answer is NO.

3. ID.; ID.; ID.; ID.; PHOTOGRAPHS PRESENTED AS EVIDENCE DEPICTED WHO WAS AT FAULT WHEN THE COLLISION TOOK PLACE.— It is worth noting that photographs are in the nature of physical evidence — a mute but eloquent manifestation of truth ranking high in the hierarchy of trustworthy evidence. When duly verified and shown by extrinsic evidence to be faithful representations of the subject as of the time in question, they are, in the discretion of the trial court, admissible in evidence as aids in arriving at an understanding of the evidence, the situation or condition of objects or premises, or the circumstances of an accident. The photographs proffered by petitioner indeed depicted the relative

positions of her jitney and of the JAM passenger bus immediately after the accident took place. An examination of the photographs would readily show that the highway where the accident occurred was marked by two yellow continuous parallel lines at the center, separating the right lane from the left. Based on evidence, the JAM passenger bus was moving along the highway towards Manila, and the jitney was going along the same route, until it was about to turn left to the *barangay* road towards the *Poblacion*. After the incident, the photographs would show that both vehicles were found on the opposite lane of the highway. The front right portion of the bus was shown to have collided with or hit the left portion of the jitney with such an impact, causing the latter to turn turtle with extensive damage, injuring its driver and his companion, and completely destroying its cargo. Although the person who took the pictures was not able to testify because he predeceased the trial, Senior Police Officer II Daniel Escares (Escares) was recalled to the witness stand to authenticate the said pictures. He testified that the pictures were faithful representations of the circumstances immediately after the accident. Escares also made an appropriately labeled sketch of the situation after the collision, and testified as to the physical circumstances thereof, including the width of the road and the road shoulder, especially the double yellow lines at the center of the highway.

4. ID.; ID.; ID.; ID.; THE POLICE BLOTTER AND THE PHOTOGRAPHS, TAKEN TOGETHER, NEGATE THE POSSIBILITY OF CONTRIBUTORY CONDUCT OR NEGLIGENCE ON THE PART OF THE PLAINTIFF; DOCTRINE OF *RES IPSA LOQUITOR* THEN APPLIES.— As regards police blotters, it should be remembered that although they are of little probative value, they are nevertheless admitted and considered in the absence of competent evidence to refute the facts stated therein. Entries in police records made by a police officer in the performance of a duty especially enjoined by law are *prima facie* evidence of the facts therein stated, and their probative value may be either substantiated or nullified by other competent evidence. In this case, the Certification, whose entries were adopted from the police blotter of the Calauan Municipal Police Station, the sketch prepared by Escares, and the photographs, taken together would prove that

the jitney and the bus were going along the same way; that the jitney was about to negotiate the intersection going to the left towards the feeder road in the direction of the *Poblacion*; and that the bus hit the left-turning jitney causing the smaller vehicle to turn turtle. Indeed, no two motor vehicles traversing the same lane of a highway with double yellow center lines will collide as a matter of course, both ending up on the opposite lane, unless someone is negligent. Dimayuga was driving the JAM passenger bus which, from the evidence adduced, appears to have precipitated the collision with petitioner's jitney. Driving the bus gave Dimayuga exclusive management and control over it. Despite the claim of JAM to the incident on the basis of the available evidence inevitably, the requisites being present, the doctrine of *res ipsa loquitor* applies.

5. ID.; ID.; ID.; ID.; *PRIMA FACIE* FINDING OF NEGLIGENCE WAS NOT SUFFICIENTLY REBUTTED.— Although there was no direct evidence that the JAM passenger bus was overtaking the vehicles running along the right lane of the highway from the left lane, the available evidence readily points to such fact. There were two continuous yellow lines at the center of the highway, which meant that no vehicle in the said area should overtake another on either side of the road. The "double yellow center lines" regulation, which this Court takes judicial notice of as an internationally recognized pavement regulation, was precisely intended to avoid accidents along highways, such as what happened in this case. This prohibition finds support in Republic Act (R.A.) No. 4136 (Land Transportation and Traffic Code), Section 41 (e). Furthermore, it is observed that the area of collision was an intersection. Section 41 (c) of R.A. No. 4136, likewise, prohibits overtaking or passing any other vehicle proceeding in the same direction at any intersection of highways, among others. Thus, by overtaking on the left lane, Dimayuga was not only violating the "double yellow center lines" regulation, but also the prohibition on overtaking at highway intersections. Consequently, negligence can be attributed only to him, which negligence was the proximate cause of the injury sustained by petitioner. This *prima facie* finding of negligence was not sufficiently rebutted or contradicted by Dimayuga. Therefore, a finding that he is liable for damages to petitioner is warranted.

6. ID.; ID.; ID.; ID.; LIABILITY OF DRIVER AT FAULT IS SOLIDARY WITH HIS EMPLOYER.— The liability of Dimayuga is solidary with JAM, pursuant to Article 2176, in relation to Article 2180 of the Civil Code of the Philippines. Whenever an employee's negligence causes damage or injury to another, there instantly arises a presumption *juris tantum* that the employer failed to exercise *diligentissimi patris families* in the section *(culpa in eligiendo)* or supervision *(culpa in vigilando)* of its employees. To avoid liability for a quasi-delict committed by its employee, an employer must overcome the presumption, by presenting convincing proof that he exercised the care and diligence of a good father of a family in the selection and supervision of his employee. In this case, aside from the testimony of Dimayuga, JAM did not present any other evidence, whether documentary or testimonial, in its favor. Inevitably, the presumption of its negligence as Dimayuga's employer stands and it is, thus, solidarily liable for the damages sustained by petitioner.

7. ID.; ID.; ID.; ID.; TO WARRANT AN AWARD OF ACTUAL OR COMPENSATORY DAMAGES FOR REPAIR TO DAMAGED SUSTAINED, THE BEST EVIDENCE SHOULD BE THE RECEIPTS OR OTHER DOCUMENTARY PROOFS OF THE ACTUAL AMOUNT EXPENDED.— As regards the award for actual damages, we, however, concur with respondent that the award of ₱400,000.00 for the damage to the jitney is not warranted, considering that the evidence submitted to support this claim was merely an estimate made by A. Plantilla Motors. The same reason holds true with respect to the amount of damages for the destroyed cargo of eggs, considering that the document submitted by petitioner to support the claim of ₱142,210.00 was merely a Certification, as the information found thereon was supplied by petitioner herself per the number of pieces of the different eggs and the corresponding price per piece. To warrant an award of actual or compensatory damages for repair to damage sustained, the best evidence should be the receipts or other documentary proofs of the actual amount expended. However, considering that it was duly proven that the jitney was damaged and had to be repaired, as it was repaired, and that the cargo of eggs was indeed destroyed, but the actual amounts expended or lost were not proven, we deem it appropriate to award ₱250,000.00 by

way of temperate damages. Under Article 2224 of the Civil Code, temperate damages may be recovered when pecuniary loss has been suffered but its amount cannot be proved with certainty. We, however, sustain the trial court's award of ₱1,327.00 as regards the medical expenses incurred by petitioner, the same being duly supported by receipts.

8. ID.; ID.; ID.; ID.; AWARD OF MORAL DAMAGES AND ATTORNEY'S FEES, JUSTIFIED.— The award of ₱10,000.00 as moral damages, ₱10,000.00 as attorney's fees, and the costs of suit are sustained, the same being in order and authorized by law. Although the basis for the award of attorney's fees was not indicated in the trial court's Decision, we deem it justified as petitioner was compelled to litigate before the courts and incur expenses in order to vindicate her rights under the premises.

APPEARANCES OF COUNSEL

Eudivigio G. Roxas for petitioner.

Almoro Law Office for respondent.

D E C I S I O N

NACHURA, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, seeking the reversal of the Decision[2] dated June 2, 2008 of the Court of Appeals (CA) in CA-G.R. CV No. 89046 and the reinstatement of the Decision[3] dated December 20, 2006 of the Regional Trial Court (RTC), Branch 27, Santa Cruz, Laguna in Civil Case No. SC-3838.

The antecedents are as follows—

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[1] *Rollo*, pp. 8-14.

[2] Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Regalado E. Maambong and Agustin S. Dizon, concurring.

[3] *Rollo*, pp. 17-24.

In her Complaint, petitioner Luz Palanca Tan (Tan) alleged that she was the owner of a passenger-type jitney with plate number DKF-168. On March 14, 1997, at around 5:00 a.m., the said jitney figured in an accident at an intersection along Maharlika Highway, Barangay Bangyas, Calauan, Laguna, as it collided with a JAM Transit passenger bus bound for Manila, bearing plate number DVG-557 and body number 8030. The bus was driven by Eddie Dimayuga (Dimayuga).

At the time of the collision, Tan's jitney was loaded with quail eggs and duck eggs (*balot* and salted eggs). It was driven by Alexander M. Ramirez (Ramirez). Tan alleged that Dimayuga was reckless, negligent, imprudent, and not observing traffic rules and regulations, causing the bus to collide with the jitney which was then, with care and proper light direction signals, about to negotiate a left turn towards the feeder or *barangay* road of Barangay Bangyas, Calauan, Laguna going to the *Poblacion*. The jitney turned turtle along the shoulder of the road and the cargo of eggs was destroyed. Ramirez and his helper were injured and hospitalized, incurring expenses for medical treatment at the *Pagamutang Pangmasa* in Bay, Laguna. Tan prayed for damages in the amount of ₱400,000.00 for the damaged jitney, ₱142,210.00 for the destroyed shipment, ₱20,000.00 for moral damages, attorney's fees of ₱20,000.00 plus ₱1,000.00 per court appearance of counsel, and other reliefs warranted under the premises.

In its Answer with Counterclaim, respondent JAM Transit, Inc. (JAM) admitted ownership of the subject passenger bus and that Dimayuga was under its employ. However, it denied the allegations in the Complaint, and claimed that the accident occurred due to the gross negligence of Ramirez. As counterclaim, JAM sought payment of ₱100,000.00 for the damages sustained by the bus, ₱100,000.00 for loss of income, and ₱50,000.00 as attorney's fees plus ₱3,000.00 per court appearance of counsel.

After pretrial, trial on the merits ensued.

Tan proffered testimonial evidence, summarized by the RTC, and quoted by the CA, as follows:

LUZ PALANCA TAN, 47 years old, married, a resident of Sta. Cruz, Laguna and a businesswoman, testified to the facts stated in the complaint that: She is engaged in the business of nets and ropes, and egg dealership based [in] Santa Cruz, Laguna. She supplies her products to her customers [in] San Pablo and Lucena. On March 14, 1997, while at home, she was informed by her husband that one of their *jeepneys*, which was loaded with eggs, was bumped by a JAM Transit bus when the latter overtook the *jeepney*. The vehicle was driven by one Alexander Ramirez, who has one "Monching" as a companion. As a result of the accident, she incurred damages in the amount of ₱650,000.00 based on the following computation: ₱400,000.00 as actual damage sustained by the *jeepney*, from an estimate (Exhibit "D") furnished by Plantilla Motors; ₱142,000.00 for the lost value of the egg shipment, based on a certification issued by the Calauan Police Station; and ₱15,000.00, for the hospitalization and treatment of the driver and his companion. The *jeepney* is duly registered as evidenced by its registration receipt (Exhibit "G"). On cross examination, she testified that Ramirez, the *jeepney* driver when the accident occurred, was under her employ since 1993 and is still working for her.

On redirect, the plaintiff testified that prior to March 13, 1997, the day the accident happened, Ramirez has not met any vehicular accident and that it was only in the aforestated date when he figured in one. On re-cross, she testified that she has no knowledge of Ramirez' prior experience as a driver. She did not ask Ramirez for his NBI or police clearance prior to her hiring the said driver. On additional redirect, the plaintiff testified that she is satisfied with the performance of Ramirez as a driver as he is kind.

ALEXANDER RAMIREZ, 35 years old, married, resident of Sta. Cruz, Laguna, and a driver testified that: He knows the plaintiff Luz Palanca Tan because she is his manager. He worked for her as a driver sometime in 1993. He sometimes drove a *jeepney* or a truck.

On March 13, 1997, at around 4:00 o'clock in the morning, he reported for work at his employer's warehouse located [in] Pagsawitan, Sta. Cruz. He got the passenger jeep loaded with salted eggs, "*balot*" and quail eggs for delivery to Lucena City upon instruction of Tan. In going to Lucena City, he chose to drive on the Maharlika Road at San Isidro, Brgy. Bangyas, Calauan, Laguna because it is better than the road along Brgy. Dayap of the same municipality. However,

while at the Maharlika Road, he met an accident at around 5:00 a.m. The jitney turned turtle.

PO3 DANIEL C. ESCARES, 37 years old, married, resident of Calauan, Laguna, and a member of PNP-Calauan, Laguna, testified that: He was on police duty as of March 14, 1997. On that day, he issued a certification (Exhibit "B") pertaining to a vehicular accident which occurred earlier. He came to know of the accident as relayed to their office by a concerned citizen. He proceeded to the place of the accident, which was at Maharlika Highway, in an intersection at Brgy. Bangyas, Calauan, Laguna for an investigation. Upon reaching the place, as a rule followed by police officers, he inquired from some of the residents about the incident. As relayed to him, the *jeepney* with Plate No. 168 was going towards the direction of San Isidro, followed by another *jeepney*, a truck and then by a JAM Transit bus. The bus overtook the *jeepney* it was following then side swept the *jeepney* (which figured in the accident) dragging it along ("*nakaladkad*") towards the sampaguita gardens. **[NOTE: The testimony of the witness regarding the information gathered was ordered by the Court to be deleted.]** Then, he went personally to the place where the incident happened.

He stated it was cloudy that day. He described the highway where the incident happened as having a double straight yellow line which prohibits overtaking on both sides of the road. The said place is near the intersection of Maharlika Highway and the *barangay* road leading to Brgy. San Isidro.

On cross examination, he stated he cannot remember if he was with other police officers during the investigation of the incident but he can recall having interviewed a certain Mercy Ponteiros and one Rodel, who are both residents of the place.

On redirect, he stated that the witness Mercy Ponteiros is still residing at Brgy. Bangyas[.]

On additional direct examination, he stated that the accident site is still fresh in his mind and he drew a sketch (Exhibit "F" to "F-7") of the said place. He identified in the sketch the direction of the highway which leads to Manila and to Sta. Cruz, Laguna. The road, per his approximation, was about 10 meters wide, with the shoulder about 5 meters except that it was diminished to about 2 meters on account of some encroachment. The highway has a painted crosswalk.

It also has a yellow line without any cut which means no vehicle could overtake from both sides of the road. He showed in the sketch the spot where the jitney and the bus were at the time of the incident. Shown the photographs (Exhibits "E" to "E-6"), he stated that they are truly reflective of the scene of the incident, the damages in both the *jeepney* and the bus, as of March 13, 1997.

On cross, he stated that what he saw was the situation after the incident. He came to learn of the accident at around 5:10 in the morning from a report received by their office, as relayed by a concerned citizen. He remembers that SPO4 Rogelio Medina, now retired, as one of his companions at the accident site. The site is about a kilometer away from their police station. He can recall the scene of the incident because of the photographs. The persons he investigated were the jitney driver, his "*pahinante*" (helper) and some people in the vicinity. He could not remember the names of those persons but they were listed in the police blotter.

RODRIGO CONDINO, 38 years old, married, resident of Victoria, Laguna and a mechanic, testified that: He is a mechanic of Plantilla Motors at Bubucal, Sta. Cruz, Laguna. He knows the plaintiff Luz Tan as he and his chief (mechanic) repaired the *jeepney* owned by the latter after it figured in an accident on March 13, 1997. He came to know of the accident when the said vehicle was brought to their motor shop. They made an estimate (Exhibit "D") of the damage sustained by the said vehicle, which amounted to ₱450,000.00.[4]

Tan also formally offered as exhibits the following documents:

Exhibit "A" - Articles of Incorporation of JAM Transit, Inc.;

Exhibit "B" - Certification issued by the Calauan Municipal Police Station regarding the vehicular accident;

Exhibit "C" - PNP-Calauan Police Report regarding the jitney shipment;

Exhibit "D" - Estimate of damages sustained by the jitney, from A. Plantilla Motors Repair Shop;

Exhibit "E" - Six (6) photographs depicting the site of the vehicular accident;

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[4] *Id.* at 19-21.

Exhibit "F" - Four (4) pages of receipts representing hospital and medical expenses paid by the plaintiff for injuries sustained by her driver and helper in the accident;

Exhibit "G" - Certificate of Registration of plaintiff's jitney;

Exhibit "H" - Driver's license of Eddie Dimayuga, defendant's bus driver;

Exhibit "I" - Sketch of the site where the vehicular accident occurred.[5]

On the other hand, JAM offered the following testimonial evidence –

EDGARDO DIMAYUGA, 49 years old, married, resident of Sta. Cruz, Laguna and bus driver of JAM Transit Inc., testified that: He has been a passenger bus driver since 1983. He was previously employed with the Batangas Laguna Tayabas Bus Company (BLTB). He was employed with JAM Transit since 1992. He has a professional driver's license, D-12-78-008462562.

On March 14, 1997, he reported for work. He met an accident while driving a bus. The other vehicle involved, a jitney, belongs to Luz Palanca Tan and driven by Alexander Ramirez. The accident happened along the intersection of Maharlika Highway, Brgy. Bangyas at around 5:00 o'clock in the morning. He was driving the bus with a speed of 40 km/h when suddenly, a vehicle overtook the bus from the right side going to Calauan. He was not able to evade the vehicle as there was no way for him to do so. The front portion of the bus and the mirror were destroyed.

On cross examination, he stated that his route as of March 14, 1997 was Sta. Cruz-Lawton. He cannot recall the bus conductor who was on Bangyas, Calauan. He stated he was not able to evade the jitney as there was no way for him to avoid the situation, causing the jitney to be dragged to the side. Nothing else happened after the bus hit the *jeepney*. He and other persons took the driver from the *jeepney* and brought him to a hospital.

On redirect, he stated that bus conductors change duties every two or three days.[6]

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

[6] *Id.* at 21.

JAM did not offer any documentary counter-evidence.

Applying the doctrine of *res ipsa loquitor*, the RTC found the JAM passenger bus driver at fault as he was then violating a traffic regulation when the collision took place. Thus, the RTC ruled in favor of Tan and disposed as follows—

> WHEREFORE, judgment is hereby rendered against the defendants who are hereby adjudged to pay the plaintiff jointly and solidarily, the following:
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> 1. actual damages of ₱142,210.00 for the lost and damaged cargoes; ₱400,000.00 for the destroyed jitney; ₱1,327.00 medical expenses of the jitney driver and his companion, for a total amount of [₱543,537.00];
> 2. ₱10,000.00 as moral damages;
> 3. ₱10,000.00 as attorney's fees[;]
> 4. Costs of suit[.]
>
> SO ORDERED.[7]

Aggrieved, JAM appealed to the CA. The CA granted the appeal and dismissed the complaint on the ground that there was nothing on record that supported the RTC's finding that the JAM passenger bus was overtaking Tan's jitney. The CA noted that Ramirez only testified that, on March 14, 1997, he met an accident at around 5:00 a.m., while transporting eggs along Maharlika Road in San Isidro, Barangay Bangyas, Calauan, Laguna, causing the jitney he was driving to turn turtle. The CA also observed that the Certification (Exhibit "B") made no mention that the JAM passenger bus was overspeeding or that it was overtaking the jitney; and, thus, there was no evidence as to who between Ramirez and Dimayuga was negligent in connection with the vehicular accident. The CA held that the doctrine of *res ipsa loquitor* can only be invoked when direct evidence is nonexistent or not accessible. It further said that Tan had access to direct evidence as to the precise cause of the mishap, such that the circumstances of the vehicular accident

[7] *Id.* at 24.

or the specific act constituting the supposed negligence of Dimayuga could have been testified to by Ramirez or by the latter's companion. The CA concluded that *res ipsa loquitor* could not apply in this case because the doctrine does not dispense with the requirement of establishing proof of negligence.

Hence, this petition, with petitioner positing that the doctrine of *res ipsa loquitor* is applicable given the circumstances of the case.

Res ipsa loquitor is a Latin phrase that literally means "the thing or the transaction speaks for itself." It is a maxim for the rule that the fact of the occurrence of an injury, taken with the surrounding circumstances, may permit an inference or raise a presumption of negligence, or make out a plaintiff's *prima facie* case, and present a question of fact for defendant to meet with an explanation. Where the thing that caused the injury complained of is shown to be under the management of the defendant or his servants; and the accident, in the ordinary course of things, would not happen if those who had management or control used proper care, it affords reasonable evidence — in the absence of a sufficient, reasonable and logical explanation by defendant — that the accident arose from or was caused by the defendant's want of care. This rule is grounded on the superior logic of ordinary human experience, and it is on the basis of such experience or common knowledge that negligence may be deduced from the mere occurrence of the accident itself. Hence, the rule is applied in conjunction with the doctrine of common knowledge.[8]

However, *res ipsa loquitor* is not a rule of substantive law and does not constitute an independent or separate ground for liability. Instead, it is considered as merely evidentiary, a mode of proof, or a mere procedural convenience, since it furnishes a substitute for, and relieves a plaintiff of, the burden of producing a specific proof of negligence. In other words, mere invocation and application of the doctrine do not dispense with the

[8] *Ramos v. Court of Appeals*, G.R. No. 124354, December 29, 1999, 321 SCRA 584.

requirement of proof of negligence. It is simply a step in the process of such proof, permitting plaintiff to present, along with the proof of the accident, enough of the attending circumstances to invoke the doctrine, creating an inference or presumption of negligence, and thereby placing on defendant the burden of going forward with the proof.[9] Still, before resort to the doctrine may be allowed, the following requisites must be satisfactorily shown:

1. The accident is of a kind which ordinarily does not occur in the absence of someone's negligence;
2. It is caused by an instrumentality within the exclusive control of the defendant or defendants; and
3. The possibility of contributing conduct which would make the plaintiff responsible is eliminated.[10]

Was petitioner able to establish the above requisites? We answer in the affirmative. We do not subscribe to the finding of the CA that petitioner had direct access to the evidence surrounding the accident, but since she failed to present it, the doctrine would not operate to apply. While Ramirez took the witness stand, he was only able to testify that he drove along Maharlika Highway in San Isidro, Barangay Bangyas, Calauan, Laguna, Tan's passenger jitney loaded with salted eggs, *balot* and quail eggs for delivery at around 5:00 a.m. when he met an accident, causing the vehicle to turn turtle. Obviously, Ramirez had no vivid recollection of how the passenger jitney was actually hit by the JAM passenger bus. Further, for some unknown reasons, the other possible eyewitnesses to the mishap were not available to testify. With the dearth of testimonial or direct evidence, should petitioner now be left without remedy? The answer is NO.

We cannot agree with the CA when it said that how the incident happened could not be established, neither from the

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[9] *Id*.

[10] *Macalinao v. Ong*, G.R. No. 146635, December 14, 2005, 477 SCRA 740, 755.

photographs offered in evidence in favor of petitioner, nor from the Certification[11] that quoted an excerpt from the records on the Police Blotter of the Calauan Municipal Police Station. The CA, likewise, discounted the probative value of the Police Blotter because, although prepared in the regular performance of official duty, it was not conclusive proof of the truth of its entries, since police blotters are usually incomplete and inaccurate; and sometimes based on partial suggestion, inaccurate reporting and hearsay.[12]

It is worth noting, however, that photographs are in the nature of physical evidence[13] — a mute but eloquent manifestation of truth ranking high in the hierarchy of trustworthy evidence.[14] When duly verified and shown by extrinsic evidence to be faithful representations of the subject as of the time in question, they are, in the discretion of the trial court, admissible in evidence as aids in arriving at an understanding of the evidence, the situation or condition of objects or premises, or the circumstances of an accident.[15]

The photographs[16] proffered by petitioner indeed depicted the relative positions of her jitney and of the JAM passenger bus immediately after the accident took place. An examination of the photographs would readily show that the highway where the accident occurred was marked by two yellow continuous parallel lines at the center, separating the right lane from the

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[11] Exhibit "B".

[12] CA Decision, pp. 15-16.

[13] *Jose v. Court of Appeals*, 379 Phil. 30 (2000).

[14] See *Aradillos v. Court of Appeals*, G.R. No. 135619, January 15, 2004, 419 SCRA 514; *People v. Bonifacio*, 426 Phil. 511 (2002); *People v. Marquina*, 426 Phil. 46 (2002); *Tangan v. Court of Appeals*, 424 Phil. 139 (2002); *People v. Whisenhunt*, 420 Phil. 677 (2001); *People v. Ubaldo*, 419 Phil. 718 (2001); *People v. Palijon*, 397 Phil. 545 (2000); *People v. Carillo*, 388 Phil. 1010 (2000); *People v. Roche*, 386 Phil. 287 (2000); *id.*

[15] VICENTE J. FRANCISCO, *THE REVISED RULES OF COURT IN THE PHILIPPINES*, Vol. VII, citing *Aldanese v. Salutillo*, 47 Phil. 548 (1925).

[16] Exhibits "E", and "E-1 to E-6".

left. Based on evidence, the JAM passenger bus was moving along the highway towards Manila, and the jitney was going along the same route, until it was about to turn left to the *barangay* road towards the *Poblacion*. After the incident, the photographs would show that both vehicles were found on the opposite lane of the highway. The front right portion of the bus was shown to have collided with or hit the left portion of the jitney with such an impact, causing the latter to turn turtle with extensive damage, injuring its driver and his companion, and completely destroying its cargo.[17]

Although the person who took the pictures was not able to testify because he predeceased the trial, Senior Police Officer II Daniel Escares (Escares) was recalled to the witness stand to authenticate the said pictures. He testified that the pictures were faithful representations of the circumstances immediately after the accident.[18] Escares also made an appropriately labeled sketch[19] of the situation after the collision, and testified as to the physical circumstances thereof, including the width of the road and the road shoulder, especially the double yellow lines at the center of the highway.[20]

As regards police blotters, it should be remembered that although they are of little probative value, they are nevertheless admitted and considered in the absence of competent evidence to refute the facts stated therein. Entries in police records made by a police officer in the performance of a duty especially enjoined by law are *prima facie* evidence of the facts therein stated, and their probative value may be either substantiated or nullified by other competent evidence.[21] In this case, the Certification,[22] whose entries were adopted from the police blotter of the Calauan Municipal

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[17] Exhibits "E-2", "E-3", "E-5", and "E-6".

[18] TSN, April 2, 2004; *rollo*, pp. 167-168.

[19] Exhibit "F"; *id.* at 53.

[20] *Id.* at 161-166.

[21] *Macalinao v. Ong*, *supra* note 10.

[22] Exhibit "B".

Police Station, the sketch[23] prepared by Escares, and the photographs, taken together would prove that the jitney and the bus were going along the same way; that the jitney was about to negotiate the intersection going to the left towards the feeder road in the direction of the *Poblacion*; and that the bus hit the left-turning jitney causing the smaller vehicle to turn turtle.

Indeed, no two motor vehicles traversing the same lane of a highway with double yellow center lines will collide as a matter of course, both ending up on the opposite lane, unless someone is negligent. Dimayuga was driving the JAM passenger bus which, from the evidence adduced, appears to have precipitated the collision with petitioner's jitney. Driving the bus gave Dimayuga exclusive management and control over it. Despite the claim of JAM to the contrary, no contributory negligence could be attributed to Ramirez relative to the incident on the basis of the available evidence. Inevitably, the requisites being present, the doctrine of *res ipsa loquitor* applies.

We, thus, quote with concurrence the findings of the RTC—

> As both parties are asserting claim for the damages each has respectively sustained from the subject collision, the negligence of either driver of the bus or of the jitney must be shown, and the burden to prove the negligence, by preponderance of evidence, lies upon both who are alleging the other's negligence. Preponderance of evidence is *"evidence as a whole which is superior to that of the defendant {or the other}"* [*Pacific Banking Employees Organization vs. CA*, 286 SCRA 495].
>
> To prove negligence of the bus driver, plaintiff relies heavily upon the testimony of PO3 DANIEL C. ESCARES, who identified the police report of the incident [Exhibit "B"] as well as the sketch of the site [Exhibit "I"] and the pictures taken as reflective of the scene of the incident [Exhibits "E" with sub-markings], invoking [in plaintiff's memorandum] the application of the doctrine of ***"res ipsa loquitor."***
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> From the said exhibits, the plaintiff postulates that her jitney then being driven by Alexander Ramirez, as well as the bus driven by defendant Dimayuga were heading the same direction towards Manila,

[23] Exhibit "F".

but when the jitney was about to negotiate the left side road intersection towards the feeder/*Barangay* road of Brgy. Bangyas, Calauan, Laguna, it was bumped by the oncoming/overtaking bus driven by Dimayuga, that caused the jitney to turn turtle at the road shoulder causing damages on the jitney, the cargoes and injuries to the jitney driver and his companion. It was allegedly improper for the bus to overtake as the road bears a double yellow line at the middle which prohibits overtaking.

On the other hand, the bus driver who is the lone witness/evidence for the defendant testified he was driving at the Maharlika Highway at 40 km/hr when the jitney "overtook" from the right and that there was no way for him to evade the latter so it was dragged to the side [TSN, May 18, 2006, p. 13]. In its memorandum, defendants postulate that it was the jitney driver who was negligent as it overtook the bus from the right which is not proper. Plaintiff allegedly could not claim damages for its failure to prove the bus driver's negligence, and it was the jitney's own negligence that is the proximate cause of his injury.

No direct evidence was presented with respect to the exact road position of the bus and the jitney at the time of the collision such that the same can only be inferred from the pictures of the colliding vehicles taken immediately after the incident [Exhibits "E"].

At this juncture, it was established from exhibits "E-5" and "E-6" that the jitney's left side portion was directly hit by the front-right portion of the bus. This is consistent with the plaintiff's theory that the jitney was then negotiating the left portion of the road when it was hit by the oncoming bus causing the jitney to have a 90-degree turn around. The bus and the jitney were almost perpendicular to each other when the collision took place, with the bus directly hitting the jitney head on.

The statement of the bus driver that the jitney "overtook" from the right only presumes that at the point of collision, the bus was at the left lane of the road overtaking the vehicle/s at the right. This scenario, in fact, was affirmed by the police report of the incident [Exhibit "B"]. It is not quite logical that the jitney, in allegedly overtaking the bus from the right came from the right shoulder of the road, a rough road merely 5 meters in width [Exhibit "F"] and even diminished by two (2) meters because of the encroachment at the sides [TSN, 11-6-02]. No evidence was shown that the jitney

came from the right shoulder. The jitney then loaded with eggs for delivery, was about to negotiate the left lane towards the feeder/ *barangay* road intersection, and it would be illogical in such a situation that the jitney driver would take the right shoulder. The foregoing suggest the fact that the bus overtook the passing vehicles at the right lane and in the course thereof, the jitney in front that was about to negotiate the left lane, was hit.[24]

Verily, although there was no direct evidence that the JAM passenger bus was overtaking the vehicles running along the right lane of the highway from the left lane, the available evidence readily points to such fact. There were two continuous yellow lines at the center of the highway, which meant that no vehicle in the said area should overtake another on either side of the road. The "double yellow center lines" regulation, which this Court takes judicial notice of as an internationally recognized pavement regulation, was precisely intended to avoid accidents along highways, such as what happened in this case. This prohibition finds support in Republic Act (R.A.) No. 4136 (Land Transportation and Traffic Code), Section 41(e).[25] Furthermore, it is observed that the area of collision was an intersection. Section 41(c)[26] of R.A. No. 4136, likewise, prohibits overtaking or passing any other vehicle proceeding in the same direction at any intersection of highways, among others. Thus, by overtaking on the left lane, Dimayuga was not only violating the "double

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[24] *Rollo,* pp. 22-23.

[25] Section 41. Restriction on overtaking and passing.—

xxx xxx xxx

(e) The driver of a vehicle shall not overtake or pass, or attempt to overtake or pass, any other vehicle proceeding in the same direction in any "no passing or overtaking zone." x x x.

[26] (c) The driver of a vehicle shall not overtake or pass any other vehicle proceeding in the same direction, at any railway grade crossing, **not at any intersection of highways unless such intersection or crossing is controlled by traffic signal, or unless permitted to do so by a watchman or a peace officer,** except on a highway having two or more lanes for movement of traffic in one direction where the driver of a vehicle may overtake or pass another vehicle on the right. Nothing in this section shall be constrained to prohibit a driver overtaking or passing upon the right another vehicle which is making or about to make a left turn. (Emphasis and underscoring supplied.)

yellow center lines" regulation, but also the prohibition on overtaking at highway intersections. Consequently, negligence can be attributed only to him, which negligence was the proximate cause of the injury sustained by petitioner. This *prima facie* finding of negligence was not sufficiently rebutted or contradicted by Dimayuga. Therefore, a finding that he is liable for damages to petitioner is warranted.

The liability of Dimayuga is solidary with JAM, pursuant to Article 2176, in relation to Article 2180 of the Civil Code of the Philippines, which provides—

> Art. 2176. **Whoever by act or omission causes damage to another, there being fault or negligence is obliged to pay for the damage done.** Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.
>
> Art. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.
>
> xxx xxx xxx
>
> Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.
>
> xxx xxx xxx
>
> The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.

Whenever an employee's negligence causes damage or injury to another, there instantly arises a presumption *juris tantum* that the employer failed to exercise *diligentissimi patris families* in the section *(culpa in eligiendo)* or supervision *(culpa in vigilando)* of its employees.[27] To avoid liability for a quasi-delict committed by its employee, an employer must overcome

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[27] *Delsan Transport Lines, Inc. v. C & A Construction, Inc.*, G.R. No.156034, October 1, 2003, 412 SCRA 524.

the presumption, by presenting convincing proof that he exercised the care and diligence of a good father of a family in the selection and supervision of his employee.[28]

In this case, aside from the testimony of Dimayuga, JAM did not present any other evidence, whether documentary or testimonial, in its favor. Inevitably, the presumption of its negligence as Dimayuga's employer stands and it is, thus, solidarily liable for the damages sustained by petitioner.

As regards the award for actual damages, we, however, concur with respondent that the award of ₱400,000.00 for the damage to the jitney is not warranted, considering that the evidence submitted to support this claim was merely an estimate made by A. Plantilla Motors. The same reason holds true with respect to the amount of damages for the destroyed cargo of eggs, considering that the document submitted by petitioner to support the claim of ₱142,210.00 was merely a Certification,[29] as the information found thereon was supplied by petitioner herself per the number of pieces of the different eggs and the corresponding price per piece.

To warrant an award of actual or compensatory damages for repair to damage sustained, the best evidence should be the receipts or other documentary proofs of the actual amount expended.[30] However, considering that it was duly proven that the jitney was damaged and had to be repaired, as it was repaired, and that the cargo of eggs was indeed destroyed, but the actual amounts expended or lost were not proven, we deem it appropriate to award ₱250,000.00 by way of temperate damages. Under Article 2224 of the Civil Code, temperate damages may be recovered when pecuniary loss has been suffered but its amount

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[28] *Light Rail Transit Authority v. Navidad*, 445 Phil. 31 (2003); *Metro Manila Transit Corp. v. Court of Appeals*, 435 Phil. 129 (2002).

[29] Exhibit "C".

[30] *G.Q. Garments, Inc. v. Miranda*, G.R. No. 161722, July 20, 2006, 495 SCRA 741.

cannot be proved with certainty.[31] We, however, sustain the trial court's award of ₱1,327.00 as regards the medical expenses incurred by petitioner, the same being duly supported by receipts.[32]

The award of ₱10,000.00 as moral damages, ₱10,000.00 as attorney's fees, and the costs of suit are sustained, the same being in order and authorized by law. Although the basis for the award of attorney's fees was not indicated in the trial court's Decision, we deem it justified as petitioner was compelled to litigate before the courts and incur expenses in order to vindicate her rights under the premises.[33]

WHEREFORE, the petition is *GRANTED*. The Decision dated June 2, 2008 of the Court of Appeals in CA-G.R. CV No. 89046 is *REVERSED* and *SET ASIDE*. The Decision dated December 20, 2006 of the Regional Trial Court, Branch 27, Sta. Cruz, Laguna in Civil Case No. SC-3838 is *REINSTATED* with the *MODIFICATION* that the award of actual damages is reduced to ₱1,327.00, and, in lieu of actual damages with respect to the damage or loss sustained with respect to the passenger jitney and the cargo of eggs, the amount of ₱250,000.00 is awarded by way of temperate damages.

SO ORDERED.

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

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[31] *People of the Philippines v. Anselmo Berondo, Jr. y Pateres*, G.R. No. 177827, March 30, 2009; *Republic v. Tuvera*, G.R. No. 148246, February 16, 2007, 516 SCRA 113.

[32] Exhibit "F".

[33] CIVIL CODE, Art. 2208(2).

THIRD DIVISION

[G.R. No. 183834. November 25, 2009]

JIMMY R. NAPOLES, *petitioner, vs.* **OFFICE OF THE OMBUDSMAN (VISAYAS), NATIONAL BUREAU OF INVESTIGATION (NBI) REGIONAL OFFICE NO. 7 and ANTONIO G. RUIZ, JR.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACT; RULE AND EXCEPTIONS; NOT APPLICABLE IN CASE AT BAR.— It has been repeatedly held that, as a rule, the findings of fact of the CA are final and conclusive and cannot be reviewed on appeal by this Court if they are borne out by the records or are based on substantial evidence. The factual issues raised by Napoles in this petition, specifically the failure of the NBI to recover the marked money from his possession, the presence of fluorescent powder on his hands, and the alleged violation of his constitutional right when he was arrested by the NBI have all been squarely discussed and fairly settled in the appellate court's decision. More importantly, Napoles failed to show any of the exceptional circumstances enumerated in the rules and jurisprudence whereby a review is permitted, namely: (1) when the conclusion is a finding grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly absurd, mistaken or impossible; (3) when there is grave abuse of discretion in the appreciation of facts; (4) when the judgment is premised on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the CA, in making its findings, went beyond the issues of the case, and the same are contrary to the admissions of both appellants and appellees; (7) when the findings of fact of the CA are at variance with those of the trial court, in which case this Court has to review the evidence in order to arrive at the correct findings based on the record; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by respondents; (10) when the findings of fact of the CA are

premised on the supposed absence of evidence and are contradicted by the evidence on record; and (11) when the trial court has overlooked certain material facts and circumstances which, if taken into account, would alter the result of the case in that they would introduce an element of reasonable doubt entitling the accused to acquittal.

2. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; GRAVE MISCONDUCT; PETITIONER UTTERLY FAILED TO PROVIDE ANY LEGITIMATE EXPLANATION AS TO WHY HE WAS MEETING WITH PRIVATE RESPONDENT OUTSIDE HIS OFFICE DURING OFFICE HOURS AND UNDER SURREPTITIOUS CIRCUMSTANCES.— Napoles also utterly failed to provide any legitimate explanation as to why he was meeting with Ruiz outside his office during office hours and under surreptitious circumstances. Thus, the Office of the Ombudsman (Visayas) could not have been more correct when it ratiocinated that: [R]egardless of the dispute involving the valuation of the property under consideration, the act of [Napoles] in receiving money from the complainant under surreptitious circumstances is plain and simple Misconduct. When considered together with the intention of causing the undervaluation of property for purposes of lowering the tax due to the detriment of the government, then the misconduct takes on a grave and serious character. When Napoles agreed to meet with Ruiz under such circumstances, he deliberately violated his fundamental and constitutional duty as a public employee, *i.e.*, he must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice and lead a modest life.

APPEARANCES OF COUNSEL

Mercado Cordero Bael Acuña & Sepulveda for petitioner.

The Solicitor General for public respondent.

Joel Enolpe for private respondent.

D E C I S I O N

NACHURA, *J.*:

This is an appeal by way of a petition for review under Rule 45 of the Rules of Court assailing the August 28, 2007 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 01873 as well as its Resolution[2] dated July 9, 2008 upholding the guilty findings of the Office of the Ombudsman against petitioner Jimmy R. Napoles for grave misconduct and dismissing him from the service.

The factual antecedents follow.

On June 21, 2001, private respondent Antonio G. Ruiz, Jr. (Ruiz) went to the Bureau of Internal Revenue (BIR)-VII South District Office for computation of the capital gains tax due him in connection with the sale of his 525-square-meter property in Sitio Antuanga, Quiot, in Pardo, Cebu. Revenue District Officer Estrella Lopez (Lopez) assigned Jimmy Napoles (Napoles), BIR Examiner I, to determine the zonal valuation of the property as basis for the payment of capital gains tax. Using as reference Department Order No. 18-97, Napoles informed Ruiz that the zonal valuation of the property was ₱4,325.00 per square meter as of 1996 subject to 10% increase per annum. Ruiz disagreed and said that the valuation should only be ₱3,100.00 per square meter. Ruiz proposed that an ocular inspection be made at his expense. Napoles agreed.[3]

After the ocular inspection, Napoles insisted on the higher zonal valuation, reasoning that the property is situated in an industrial zone. Napoles assessed the capital gains tax due at ₱136,237.50. Again, Ruiz objected and argued that the tax should only be ₱97,650.00.[4]

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[1] Penned by Associate Justice Francisco P. Acosta, with Associate Justices Agustin S. Dizon and Stephen C. Cruz, concurring; *rollo*, 36-50.

[2] *Rollo*, pp. 51-53.

[3] *Id.* at 37.

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

According to Napoles, he advised Ruiz to talk to Lopez, who, in turn, instructed him to accommodate Ruiz' demand to reduce the zonal value to ₱3,100.00 per square meter on the condition that it shall be subject to the approval of the BIR's Legal Division, and that if the same should be denied, Ruiz must pay the appropriate amount of tax.[5]

Napoles returned to his table and computed the capital gains tax based on the ₱3,100.00 per square meter zonal value. According to Ruiz, Napoles handed him a written computation of the tax assessment,[6] but demanded, in addition, the amount of ₱10,000.00.[7] When Ruiz asked what the ₱10,000.00 was for, Napoles allegedly replied that it was to be used as "grease money" to speed up the processing of the documents and the approval by the BIR Regional Office.[8] Since then, Napoles kept reminding Ruiz about the ₱10,000.00 grease money.[9]

Irate, Ruiz reported the matter to the National Bureau of Investigation (NBI) Regional Office. An entrapment operation was set, with Ruiz agreeing to a meeting with Napoles.[10]

Ruiz arranged to meet with Napoles inside a fastfood restaurant in Raintree Mall in Cebu City where Ruiz was to hand to Napoles the ₱10,000.00. The NBI formed a team composed of Supervising Agent Atty. Jose Ermie Santos and Agents Arnel Pura and Teodoro Saavedra. The team immediately coordinated with the bureau's laboratory department for the purpose of dusting the marked money with ultraviolet powder. The serial numbers of the bills were also duly recorded.[11]

On July 4, 2001, at around 3:30 in the afternoon, Ruiz met with Napoles inside the designated restaurant with NBI agents

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[5] *Id.* at 38.

[6] *Id.* at 95.

[7] *Id.* at 38.

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

close by. Ruiz handed the white envelope containing the marked money to Napoles, and the latter placed the envelope inside his pocket. At this juncture, the NBI team arrested Napoles and brought him to the NBI office.[12]

While inside the NBI office, Napoles was subjected to ultraviolet light examination and was found to have yellow fluorescent smudges and specks on the dorsal and palmar aspect of his left and right hands.[13] However, the marked money and the white envelope were not recovered from Napoles. According to the NBI, Napoles threw the money and the envelope out of the window of the car after he was arrested. An hour after the arrest, four (4) ₱100.00 bills matching the serial numbers of the marked money were recovered from a security guard manning the shopping mall.[14]

The following day, July 5, 2001, the NBI filed a complaint for grave misconduct against Napoles before the Office of the Ombudsman (Visayas).[15] A criminal case was also filed against Napoles for violation of Section 3(b) of Republic Act (R.A.) No. 3019 before the Regional Trial Court of Cebu.[16]

On February 19, 2004, the Office of the Ombudsman (Visayas) rendered a Decision finding Napoles guilty of grave misconduct, and imposed upon him the penalty of dismissal from the service, including all its accessory penalties. Napoles moved for reconsideration, but the same was denied.

Napoles appealed the case to the CA. The appeal was denied, and his subsequent motion for reconsideration was, likewise, denied.

Napoles now comes to this Court maintaining his innocence and raising the following issues:

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[12] *Id.* at 38-39.

[13] *Id.* at 39, 97 and 98.

[14] *Id.* at 39.

[15] Docketed as OMB-VIS-ADM-2001-0292.

[16] Docketed as CBU-64256.

I. WHETHER OR NOT THE COURT OF APPEALS HAD DISREGARDED MATTERS OF VALUE AND SUBSTANCE WHICH[,] IF CONSIDERED[,] WILL CERTAINLY CAUSE THE REVERSAL OF THE DECISION OF THE OFFICE OF THE OMBUDSMAN (VISAYAS)[; AND]

II. WHETHER OR NOT, ASSUMING *ARGUENDO* THAT PETITIONER IS GUILTY OF THE CHARGES HURLED AGAINST HIM, [THE PENALTY IMPOSED UPON HIM] IS TOO HARSH UNDER THE ATTENDANT CIRCUMSTANCES.[17]

The petition is devoid of merit.

It has been repeatedly held that, as a rule, the findings of fact of the CA are final and conclusive and cannot be reviewed on appeal by this Court[18] if they are borne out by the records or are based on substantial evidence.[19] The factual issues raised by Napoles in this petition, specifically the failure of the NBI to recover the marked money from his possession,[20] the presence of fluorescent powder on his hands,[21] and the alleged violation of his constitutional right when he was arrested by the NBI[22] have all been squarely discussed and fairly settled in the appellate court's decision.

More importantly, Napoles failed to show any of the exceptional circumstances enumerated in the rules and jurisprudence whereby a review is permitted, namely: (1) when the conclusion is a finding grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly absurd, mistaken or impossible; (3) when there is grave abuse of discretion in the appreciation of facts; (4) when the judgment is premised on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the CA, in making its findings, went beyond

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[17] *Rollo*, p. 18.

[18] *Amigo v. Teves*, 96 Phil. 252 (1954).

[19] *Nombrefia v. People*, G.R. No. 157919, January 30, 2007, 513 SCRA 369, 375.

[20] *Rollo*, p. 44.

[21] *Id.* at 44-45.

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

the issues of the case, and the same are contrary to the admissions of both appellants and appellees; (7) when the findings of fact of the CA are at variance with those of the trial court, in which case this Court has to review the evidence in order to arrive at the correct findings based on the record; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by respondents; (10) when the findings of fact of the CA are premised on the supposed absence of evidence and are contradicted by the evidence on record; and (11) when the trial court has overlooked certain material facts and circumstances which, if taken into account, would alter the result of the case in that they would introduce an element of reasonable doubt entitling the accused to acquittal.[23]

Interestingly, Napoles also utterly failed to provide any legitimate explanation as to why he was meeting with Ruiz outside his office during office hours and under surreptitious circumstances. Thus, the Office of the Ombudsman (Visayas) could not have been more correct when it ratiocinated that:

> [R]egardless of the dispute involving the valuation of the property under consideration, the act of [Napoles] in receiving money from the complainant under surreptitious circumstances is plain and simple Misconduct. When considered together with the intention of causing the undervaluation of property for purposes of lowering the tax due to the detriment of the government, then the misconduct takes on a grave and serious character.[24]

When Napoles agreed to meet with Ruiz under such circumstances, he deliberately violated his fundamental and constitutional duty as a public employee, *i.e.*, he must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice and lead a modest life.[25]

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[23] *Nombrefia v. People, supra* note 19, at 375-376.

[24] *Rollo*, p. 92.

[25] 1987 Constitution, Art. XI, Sec. 1.

WHEREFORE, premises considered, the instant petition is *DENIED* for lack of merit.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 184315. November 25, 2009]

ALFONSO T. YUCHENGCO, *petitioner, vs.* **THE MANILA CHRONICLE PUBLISHING CORPORATION, ROBERTO COYIUTO, JR., NOEL CABRERA, GERRY ZARAGOZA, DONNA GATDULA, RODNEY P. DIOLA, RAUL VALINO and THELMA SAN JUAN,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; CRIMES AGAINST HONOR; LIBEL; DEFINED; ELEMENTS.— Libel is defined in Article 353 of the Revised Penal Code, which provides: Art. 353. *Definition of Libel*. – A libel is a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead. Based on this definition, this Court has held that four elements constitute the crime of libel, namely (a) defamatory imputation tending to cause dishonor, discredit or contempt; (b) malice, either in law or in fact; (c) publication; and (d) identifiability of the person defamed.

2. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; CAUSE OF ACTION IN LIBEL.— Despite being defined in the Revised Penal Code, libel can also be instituted, like in the case at bar, as a purely civil action, the cause of action for which is provided by Article 33 of the Civil Code, which provides: Article 33. In cases of defamation, fraud, and physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.

3. CIVIL LAW; DAMAGES; LIBEL AS A PURELY CIVIL ACTION FOR DAMAGES; ELEMENTS.— The above elements of libel were adopted as well in a purely civil action for damages. As held by this Court in *GMA Network, Inc. v. Bustos*: An award of damages under the premises presupposes the commission of an act amounting to defamatory imputation or libel, which, in turn, presupposes malice. Libel is the public and malicious imputation to another of a discreditable act or condition tending to cause the dishonor, discredit, or contempt of a natural or juridical person. Liability for libel attaches present the following elements: (a) an allegation or imputation of a discreditable act or condition concerning another; (b) publication of the imputation; (c) identity of the person defamed; and (d) existence of malice.

4. CRIMINAL LAW; LIBEL; PUBLICATION; DEFINED.— Of these four elements, the most apparent in the case at bar would be the publication of the alleged imputation. Libel is published not only when it is widely circulated, but also when it is made known or brought to the attention or notice of another person other than its author and the offended party. The circulation of an allegedly libelous matter in a newspaper is certainly sufficient publication.

5. ID.; ID.; DEFAMATORY IMPUTATION; ELUCIDATED.— Defamation, which includes libel and slander, means the offense of injuring a person's character, fame or reputation through false and malicious statements. It is that which tends to injure reputation or to diminish esteem, respect, goodwill or confidence in the plaintiff, or to excite derogatory feelings or opinions about the plaintiff. It is the publication of anything that is injurious to the good name or reputation of another or

tends to bring him into disrepute. In determining whether certain utterances are defamatory, the words used are to be construed in their entirety and taken in their plain, natural and ordinary meaning, as they would naturally be understood by persons hearing (or reading, as in libel) them, unless it appears that they were used and understood in another sense.

6. ID.; ID.; ID.; ID.; IN DETERMINING THE DEFAMATORY CHARACTER OF WORDS USED, THE EXPLANATION OF THE RESPONDENT SHOULD NOT PREVAIL OVER WHAT THE UTTERANCES (OR WRITING) CONVEY TO AN ORDINARY LISTENER (OR READER); RELEVANT RULING, CITED.— x x x In determining the defamatory character of words used, the explanation of the respondent should not prevail over what the utterances (or writing) convey to an ordinary listener (or reader). Furthermore, as held by this Court in *United States v. Sotto*: [F]or the purpose of determining the meaning of any publication alleged to be libelous "that construction must be adopted which will give to the matter such a meaning as is natural and obvious in the plain and ordinary sense in which the public would naturally understand what was uttered. The published matter alleged to be libelous must be construed as a whole. In applying these rules to the language of an alleged libel, **the court will disregard any subtle or ingenious explanation offered by the publisher on being called to account. The whole question being the effect the publication had upon the minds of the readers, and they not having been assisted by the offered explanation in reading the article, it comes too late to have the effect of removing the sting, if any there be, from the word used in the publication.**"

7. ID.; ID.; ID.; ID.; ID.; PHRASE "MARCOS CRONY" FOUND TO BE DEROGATORY; EXPLAINED.— In finding that the phrase "Marcos crony" is derogatory, the trial court took judicial notice of the fact that the said phrase, as understood in Philippine context, refers to an individual who was the recipient of special and/or undeserved favors from the late President Marcos due to a special closeness to the latter. This finding, which was upheld by the Court of Appeals in its original Decision and was not tackled in the Amended Decision, is even supported by one of the subject articles. In particular, the 10 November

1993 article marked as Exhibit A mentioned that Benguet's former president, Jaime Ongpin, committed suicide after being accused of being a Marcos-Romualdez crony. This statement highlights the disgrace respondents wanted to associate with the term "crony," which was used to describe Yuchengco in the very same article. Even a cursory reading of the subject articles would show the intention of the writers to injure the reputation, credit and virtue of Yuchengco and expose him to public hatred, discredit, contempt and ridicule. The indirect manner in which the articles attributed the insults to Yuchengco (*e.g.*, "the money involved came from depositors, and not from Yuchengco") does not lessen the culpability of the writers and publishers thereof, but instead makes the defamatory imputations even more effective. Words calculated to induce suspicion are sometimes more effective to destroy reputation than false charges directly made. Ironical and metaphorical language is a favored vehicle for slander.

8. ID.; ID.; ID.; ID.; RULING OF THE TRIAL COURT AND THE COURT OF APPEALS THAT THE SUBJECT ARTICLES CONTAIN DEFAMATORY IMPUTATIONS, UPHELD; DEFAMATORY IMPUTATIONS, ENUMERATED.— In sum, this Court upholds the ruling of the trial court and the Court of Appeals that the subject articles contain defamatory imputations. All of the following imputations: (1) the labeling of Yuchengco as a Marcos crony, who took advantage of his relationship with the former President to gain unwarranted benefits; (2) the insinuations that Yuchengco induced others to disobey the lawful orders of SEC; (3) the portrayal of Yuchengco as an unfair and uncaring employer due to the strike staged by the employees of Grepalife; (4) the accusation that he induced RCBC to violate the provisions of the General Banking Act on DOSRI loans; and (5) the tagging of Yuchengco as a "corporate raider" seeking to profit from something he did not work for, all exposed Yuchengco to public contempt and ridicule, for they imputed to him a condition that was dishonorable.

9. ID.; ID.; ID.; IDENTITY OF THE PERSON DEFAMED, ESTABLISHED IN CASE AT BAR.— Defamatory words must refer to an ascertained or ascertainable person, and that person must be the plaintiff. Statements are not libelous unless they

refer to an ascertained or ascertainable person. However, the obnoxious writing need not mention the libeled party by name. It is sufficient if it is shown that the offended party is the person meant or alluded to. In the case at bar, all but one of the subject articles explicitly mention the name of petitioner Yuchengco. The lone article, which does not mention Yuchengco at all, "Bank runs & RCBC free loans," nevertheless chided the owners of RCBC: The owners or RCBC, therefore, should not be too liberal with their depositors' money. They should also consider what fatal effects such a practice could inflict on the very system where RCBC operates. The country, at this time, cannot afford another series of bank runs, nor a run at RCBC. Identifying Yuchengco in said article by name was, however, not necessary, since the other subject articles, published a few days before and after this one, had already referred to Yuchengco as *the* owner of RCBC, sometimes explicitly ("Benguet started to bleed in 1989, the year Yuchengco, who owns Rizal Commercial Banking Corp. [RCBC], took over as chairman of the company"), and sometimes implicitly ("the money involved came from depositors, and not from Yuchengco"). While the defamation of a large group does not give rise to a cause of action on the part of an individual, this is subject to exception when it can be shown that he is the target of the defamatory matter. This Court therefore finds that Yuchengco was clearly identified as the libeled party in the subject defamatory imputations.

10. ID.; ID.; ID.; MALICED; DEFINED.— Malice connotes ill will or spite and speaks not in response to duty but merely to injure the reputation of the person defamed, and implies an intention to do ulterior and unjustifiable harm. It is present when it is shown that the author of the libelous remarks made such remarks with knowledge that it was false or with reckless disregard as to the truth or falsity thereof.

11. ID.; ID.; ID.; ID.; TWO TYPES OF MALICE; DEFINED.— Malice, however, does not necessarily have to be proven. There are two types of malice – malice in law and malice in fact. ***Malice in law*** is a presumption of law. It dispenses with the proof of malice when words that raise the presumption are shown to have been uttered. It is also known as constructive malice, legal malice, or implied malice. On the other hand,

malice in fact is a positive desire and intention to annoy and injure. It may denote that the defendant was actuated by ill will or personal spite. It is also called express malice, actual malice, real malice, true malice, or particular malice.

12. ID.; ID.; ID.; ID.; ID.; MALICE IN LAW; QUALIFIEDLY PRIVILEGED COMMUNICATIONS; TYPES.— There is, x x x a presumption of malice in the case of every defamatory imputation, where there is no showing of a good intention or justifiable motive for making such imputation. The exceptions provided in Article 354 are also known as **qualifiedly privileged communications**. The enumeration under said article is, however, not an exclusive list of qualifiedly privileged communications since *fair commentaries on matters of public interest* are likewise privileged. They are known as qualifiedly privileged communications, since they are merely exceptions to the general rule requiring proof of actual malice in order that a defamatory imputation may be held actionable. In other words, defamatory imputations written or uttered during any of the three classes of qualifiedly privileged communications enumerated above – (1) a private communication made by any person to another in the performance of any legal, moral or social duty; (2) a fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative or other official proceedings which are not of confidential nature, or of any statement, report or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions; and (3) fair commentaries on matters of public interest – may **still be considered actionable if actual malice is proven**.

13. ID.; ID.; ID.; ID.; ID.; ID.; ID.; DISTINGUISHED FROM ABSOLUTELY PRIVILEGED COMMUNICATIONS.— x x x This is in contrast with **absolutely privileged communications**, wherein the imputations are not actionable, even if attended by actual malice: A communication is said to be absolutely privileged when it is not actionable, even if its author has acted in bad faith. This class includes statements made by members of Congress in the discharge of their functions as such, official communications made by public officers in the performance of their duties, and allegations or statements made by the parties or their counsel in their pleadings or motions

or during the hearing of judicial proceedings, as well as the answers given by witnesses in reply to questions propounded to them, in the course of said proceedings, provided that said allegations or statements are relevant to the issues, and the answers are responsive or pertinent to the questions propounded to said witnesses. Upon the other hand, conditionally or qualifiedly privileged communications are those which, although containing defamatory imputations, would not be actionable unless made with malice or bad faith.

14. ID.; ID.; ID.; ID.; ID.; ACTUAL MALICE; ESTABLISHED IN CASE AT BAR.— Neither is there any reason for this Court to reverse the findings of the trial court and the Court of Appeals that there was actual malice on the part of the respondents. As held by the courts *a quo*, Yuchengco was able to show by the attendant circumstances that respondents were animated by a desire to inflict unjustifiable harm on his reputation, as shown by the timing and frequency of the publication of the defamatory articles. The portrayal of then Chronicle Publishing Chairman Coyiuto as an underdog and his rival Yuchengco as the greedy Goliath in their battle for control over Oriental Corporation, taken with the timing of the publication of these subject articles a couple of months prior to the January stockholders' meeting of Oriental Corporation, clearly indicate that the articles constituted an orchestrated attack to undermine the reputation of Yuchengco. Furthermore, respondents were shown to have acted with reckless disregard as to the truth or falsity of the articles they published, when they were unable to rebut the categorical denial by Yuchengco of the accusations made against him, and his allegation that he was not approached by respondents for his side of the stories before the publication thereof. Respondents' failure to present evidence showing that they verified the truth of any of the subject articles is fatal to their cause. In *In re: Emil P. Jurado*, this Court ruled that **categorical denials of the truth of allegations in a publication place the burden upon the party publishing it, either of proving the truth of the imputations or of showing that the same was an honest mistake or error committed despite good efforts to arrive at the truth.** There is actual malice when there is either (1) knowledge of the publication's falsity; or (2) reckless disregard of whether the contents of the publication were false or not. Failure to even

get the side of Yuchengco in the published articles clearly constituted reckless disregard of the truth or falsity of said articles.

15. ID.; ID.; ID.; ID.; ID.; MALICE IN LAW; QUALIFIEDLY PRIVILEGED COMMUNICATIONS; FAIR COMMENTARIES ON MATTERS OF PUBLIC INTEREST; NOT A CASE OF; EXPLAINED.— x x x [E]ven if we assume for the sake of argument that actual malice was not proven in the case at bar, we nevertheless cannot adhere to the finding of the Court of Appeals in the Amended Decision that the subject articles were fair commentaries on matters of public interest, and thus fell within the scope of the third type of qualifiedly privileged communications. In *Philippine Journalists, Inc. (People's Journal) v. Theonen*, this Court adopted the pronouncement in the United States Decision in *Gertz v. Robert Welsch, Inc*, that, in order to be considered as fair commentaries on matters of public interest, the individual to whom the defamatory articles were imputed should either be a public officer or a public figure: In *Borjal v. Court of Appeals*, we stated that "the enumeration under Art. 354 is not an exclusive list of qualifiedly privileged communications since fair commentaries on matters of public interest are likewise privileged. We stated that the doctrine of fair commentaries means "that while in general every discreditable imputation publicly made is deemed false, because every man is presumed innocent until his guilt is judicially proved, and every false imputation is deemed malicious, nevertheless, when the discreditable imputation is directed against a public person in his public capacity, it is not necessarily actionable. In order that such discreditable imputation to a public official may be actionable, it must either be a false allegation of fact or a comment based on a false supposition." Again, this argument is unavailing to the petitioners. As we said, the respondent is a private individual, and not a public official or public figure. We are persuaded by the reasoning of the *United States Supreme Court in Gertz v. Robert Welch, Inc.,* [418 U. S. 323 (1974)] that **a newspaper or broadcaster publishing defamatory falsehoods about an individual who is neither a public official nor a public figure may not claim a constitutional privilege against liability, for injury inflicted, even if the falsehood arose in a discussion of public**

> **interest**. (Emphasis supplied.) Thus, in trying to prove that the subject articles delved on matters concerning public interest, the Court of Appeals insisted that Yuchengco was a public official or public figure, who "must not be too thin-skinned with reference to comment upon his official acts." The Court of Appeals then noted that Yuchengco was, at the time of the Amended Decision, appointed as a Presidential Adviser on Foreign Affairs with Cabinet rank, and proceeded to enumerate the public positions held by Yuchengco through the years. However, an examination of the subject articles reveals that the allegations therein pertain to Yuchengco's private business endeavors and do not refer to his duties, functions and responsibilities as a Philippine Ambassador to China and Japan, or to any of the other public positions he occupied. A topic or story should not be considered a matter of public interest by the mere fact that the person involved is a public officer, unless the said topic or story relates to his functions as such. Assuming a public office is not tantamount to completely abdicating one's right to privacy. Therefore, for the purpose of determining whether or not a topic is a matter of public interest, Yuchengco cannot be considered a public officer. Neither is Yuchengco a public figure. x x x The records in the case at bar do not disclose any instance wherein Yuchengco had voluntarily thrust himself to the forefront of particular public controversies in order to influence the resolution of the issues involved. He cannot, therefore, be considered a public figure. Since Yuchengco, the person defamed in the subject articles, is neither as public officer nor a public figure, said articles cannot be considered as qualifiedly privileged communications even if they deal with matters of public concern.

APPEARANCES OF COUNSEL

Belo Gozon Elma Parel Asuncion & Lucila for petitioner.
Ethelwoldo E. Fernandez for respondents.
Tricia A. Santos for Cruz and Tolentino.

D E C I S I O N

CHICO-NAZARIO, *J.*:

When *malice in fact* is proven, assertions and proofs that the libelous articles are qualifiedly privileged communications are futile, since being qualifiedly privileged communications merely prevents the presumption of malice from attaching in a defamatory imputation.

This is a Petition for Review on *Certiorari* assailing the Amended Decision[1] of the Court of Appeals in CA-G.R. CV No. 76995 dated 28 August 2008. The Amended Decision reversed on Motion for Reconsideration the 18 March 2008 Decision[2] of the same court, which in turn affirmed *in toto* the Decision of the Regional Trial Court (RTC) of Makati City in Civil Case No. 94-1114 dated 8 November 2002 finding herein respondents liable for damages.

The facts of the case, as summarized by the RTC, are as follows:

> In his Complaint, plaintiff Alfonso T. Yuchengco alleges that in the last quarter of 1994, Chronicle Publishing Corporation ("Chronicle Publishing" for brevity) published in the Manila Chronicle a series of defamatory articles against him. In two of the subject articles (November 10 and 12, 1993 issues), he was imputed to be a "Marcos crony" or a "Marcos-Romualdez crony," which term according to him is commonly used and understood in Philippine media to describe an individual who was a recipient of special and underserving favors from former President Ferdinand E. Marcos and/or his brother-in-law Benjamin "Kokoy" Romualdez due to special and extra-ordinary closeness to either or both, and which favors allowed an individual to engage in illegal and dishonorable business activities.

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[1] Penned by Associate Justice Amelita G. Tolentino with Associate Justices Isaias P. Dicdican and Japar B. Dimaampao, concurring; *rollo,* pp. 53-62.

[2] Penned by Associate Justice Agustin S. Dizon with Associate Justices Amelita G. Tolentino and Lucenito N. Tagle, concurring; *rollo,* pp. 195-248.

The plaintiff claims that the said articles further branded him as a mere front or dummy for the Marcos and Romualdez clans in Benguet Corporation, which company sought to take-over the management of Oriental Petroleum Mineral Corporation ("Oriental" for brevity). He contends that such an imputation is untrue since his holdings in Benguet Corporation were legally acquired by him.

Also, he was likewise accused of unsound and immoral business practices by insinuating that he wanted to take control of Oriental in order to divert its resources to rescue the debt-ridden Benguet Corporation. He claims that the accusation is untrue since he was merely interested in being represented in the board thereof so as to protect his and his companies' interest therein as shareholders.

The subject articles insinuated that he personally and intentionally caused the failure of Benguet Corporation and that if even if he ever assumed control of Oriental, it would suffer the same fate as the former. According to him, at the time he assumed chairmanship of Benguet Corporation, it was already experiencing financial downturns caused by plummeting world prices of gold and unprofitable investments it ventured into.

Moreover, one of the articles portrayed him as being an unfair and uncaring employer when the employees of Grepalife Corporation, of which he is the Chairman, staged a strike, when the truth being that he had nothing to do with it. And that if his group takes over Oriental, it will experience the same labor problems as in Grepalife.

Furthermore, the subject articles accused him of inducing Rizal Commercial Banking Corporation ("RCBC" for brevity) to violate the provisions of the General Banking Act on DOSRI loans. He denies the imputations believing that there is nothing irregular in the RCBC-Piedras transaction for the acquisition of shares of Oriental.

Also, the plaintiff claims that the subject articles insinuated that he induced others to disobey lawful orders of the Securities and Exchange Commission ("SEC" for brevity) when the truth is that the officials of RCBC and Alcorn never defied any SEC order, and that if ever they did, he never induced them to do so.

Finally, the plaintiff asserts that the subject articles imputed to him the derogatory tag of "corporate raider," implying that he was seeking to profit for something he did not work for. He denies the imputation since he acquired his stake in Oriental for adequate and

valuable consideration at the time when no one was willing to bailout the government from its difficult and losing position thereto.

In their Answer, the defendants deny liability claiming that the subject articles were not defamatory since they were composed and published in good faith and only after having ascertained their contents. In any event, they claim that these articles are privileged and/or constitute reasonable and balance[d] comments on matters of legitimate public interest which cannot serve as basis for the finding of libel against them. They likewise alleged that they were acting within the bounds of constitutionally guaranteed freedom of speech and of the press.

Furthermore, they contend that since plaintiff is a public figure, and assuming that the articles were indeed defamatory, they cannot be held liable for damages since they were not impelled by actual malice in the composition thereof. They did not compose and/or publish said articles with the knowledge that they contained falsehoods, or with reckless disregard on whether or not they contained falsehood.

As to defendant Coyiuto, he claims that he had no participation in the publication of the subject articles nor consented or approved their publication.

PLAINTIFF'S EVIDENCE

During the trial, the plaintiff himself, ALFONSO T. YUCHENGCO, testified that prior to his appointment as Ambassador to Japan, he was the chairman of various business organizations notably: Benguet Corporation ("Benguet"), Philippine Long Distance Telephone Company, Rizal Commercial Banking Corporation ("RCBC"), Bank of America Savings Bank, House of Investments, Inc., Dole Philippines and Philippine Fuji Xerox Corporation. He was also the President of the Philippine Ambassadors; chairman or vice president of Bantayog ng Bayan; and chairman of AY Foundation, Inc. He was appointed Philippine Ambassador to People's Republic of China after the EDSA Revolution.

As regards the article referring to the November 10, 1993 issue of the Manila Chronicle (Exh. A), he stated that he had never been a Marcos crony nor had been a business partner of the Romualdezes or had personal dealings with them; that during the shareholders' meeting, the two (2) sons of Benjamin "Kokoy" Romualdez were elected as directors of Benguet Corporation pursuant to a Court order; that he had no personal dealings with them; that he had no

intention of taking over Oriental and that Benguet Corporation did not lose the amount as stated in the article; that Benguet Corporation experienced liquidity problems, and that before he joined the corporation, it had already diversified into many other financial ventures; that he denied having any business partnership with the Romualdezes at that time.

Regarding the November 12, 1993 issue of the Manila Chronicle (Exh. B), he denied having any partnership with the Marcos family; that he denied responsibility for the losses incurred by Benguet Corporation, as the losses were due to the drop of the commodity market, and for having diversified into other non-profitable ventures; that he had no intention whatsoever of taking over Oriental; that although the Yuchengco family owns a substantial block of shares of RCBC, Sanwa Bank actually owns twenty-five percent (25%) thereof; that RCBC did not finance his fund but it extended a loan to Piedras Petroleum, a subsidiary of the Presidential Commission of Good Government ("PCGG" for brevity); admitted that Traders Royal Bank also granted a loan to PCGG but such was an independent transaction of RCBC.

About the November 15, 1993 issue of the Manila Chronicle (Exh. C), he denied any knowledge of what transpired at the Trust Department of RCBC because as Chairman he was not involved in many of the bank's transactions.

Referring to November 16, 1993 issue of the Manila Chronicle (Exh. D), he considered the attacks against him to be malicious considering that he does not see any connection between the labor strike at Grepalife with the case of Alcorn and RCBC; that the article would like to show that he was the reason for the huge losses incurred by Benguet Corporation.

As regards the November 22, 1993 issue of the Manila Chronicle (Exh. E), he denied giving any interest free loan, the fact that they gave a loan to PCGG does not mean that they gave a loan to Benedicto since the latter had already turned over the shares of Piedras to PCGG at that time.

Regarding the November 23, 1993 issue of the Manila Chronicle (Exh. F), he denied extending an interest free loan considering that he is not the only owner of RCBC; that these series of attacks against him and RCBC were intended to cause a "bank run"; that the article imputes that he was responsible for giving an interest free loan.

About the December 5, 1993 issue of the Manila Chronicle (Exh. G), he said the article was intended to humiliate and embarrass him since he really had no intention of taking over Oriental; that the reason for the attack against his person was because he and defendant Coyiuto, Jr. were both rivals in the insurance business and that the latter has always been envious of his position for having owned Malayan Insurance Company.

On cross-examination, plaintiff Yuchengco testified that he does not consider himself a public figure; and that he felt maligned by the references to him as a "Marcos crony". [TSN, 07 February 1997; 10 February 1997; 12 February 1997]

ROSAURO ZARAGOZA testified that he is the Executive Vice-President of RCBC; that the statement in Exhibits "D", "E" and "F" with regard to the interest free loan allegedly granted to Piedras Petroleum Company, Inc. ("Piedras") are false because the Piedras deal was a trust transaction which involved an advance in exchange for shares of stock; that plaintiff Yuchengco did not have a personal interest in the Piedras deal; that Piedras or Oriental Petroleum Mineral Corporation ("Oriental Petroleum") shares were not transferred to plaintiff Yuchengco's name by virtue of the transaction; and that the defendants did not approach him or RCBC to check the veracity of the subject articles. The affidavit of Mr. Zaragoza (Exhibit "H") was adopted as part of his testimony.

On cross-examination, Mr. Zaragoza testified that he volunteered to testify in the instant case because he was the most knowledgeable about the Piedras deal; that plaintiff Yuchengco was aggrieved upon reading the subject articles; that under the Memorandum of Agreement ("MOA") between RCBC and Piedras, should the latter fail to comply with its obligations under the MOA, it will pay interest at the prevailing market interest rate from the date of advance until full payment; and that there was a complaint filed with the Bangko Sentral ng Pilipinas against RCBC by Mr. Felipe Remollo questioning the Piedras deal. [TSN 28 February 1997; 26 June 1997; 27 June 1997; 04 July 1997]

JOSE REVILLA testified that he and Amb. Yuchengco were long time friends, where he (Revilla) worked for him (Yuchengco) for thirty-two (32) years in his (Yuchengco) credit card company – Industrial Finance Corporation Credit Cards; that knowing Amb. Yuchengco for a considerable period of time, he does not believe the truth of the contents of the subject articles; that plaintiff

Yuchengco appeared distressed when he joked about the subject articles; that other people approached him to ask whether the subject articles are true [TSN 25 August 1997].

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DEFENDANTS' EVIDENCE

On the other hand, defendants Zaragoza, Gatdula, Cabrera and Valino substantially testified on the following matters:

GERRY ZARAGOZA testified that he was the Managing Editor of Manila Chronicle in charge of the national and political news; that defendant San Juan was the other Managing Editor in charge of the lifestyle section; that a story conference is conducted everyday where the articles, including the pages where they will appear, are discussed; that the editor-in-chief (defendant Cruz), executive editor (defendant Tolentino) and deputy editor (defendant Cabrera) were the ones responsible for the decisions of the story conference relative to the printing of the newspaper; that he was not involved in the writing and editing of the subject articles; that Exhibits "A" to "D" are classified as business news; that columns, specifically Exhibits "E" and "F" are not discussed during story conferences; and that Exhibit "G", which appeared in the "Money Section" did not pass thru him.

On cross-examination, defendant Zaragoza testified that except for the columns, Exhibits "A" to "D" and Exhibit "G" are considered hard news; that he handled the hard news, while defendant San Juan handled the soft news; and that defendant Valino was the business editor in charge of the business section (TSN 22 July 1998; 23 September 1998]

DONNABELLE GATDULA claimed that she was a correspondent for Manila Chronicle assigned to the Securities and Exchange Commission ("SEC") beat; that she had no participation in the writing or publication of Exhibits "A" to "C" and "G" to "E"; that she attended the hearing conducted by the SEC and interviewed the two lawyers of RCBC and SEC Chairman Rosario Lopez regarding the Oriental Petroleum case; that her name appears as a tag line in Exhibit "D", because she only wrote part of the story; and that she did not write the entire article (Exhibit "D") as some of the statements therein were added by the editor/s; and that she did not discuss Exhibit "D" with any of the editors.

On cross-examination, defendant Gatdula testified that she does not have a copy of the original article which she wrote; that she read Exhibit "D" after it was published; that she did not compare her original story with Exhibit "D" nor question the authority of the editor to edit her story; and that she agreed to put her name on Exhibit "D". (TSN 23 September 1998; 05 October 1998).

NOEL CABRERA contended that after having gone through the subject articles, he believes that the news stories and commentaries were fair and that those who wrote the same followed the proper standards; that as regard the contents of Exhibits "E" and "F", the opinion of Mr. Raul Valino, as written in the said articles, were valid and based on documentary facts; as to Exhibit "D", pertaining to the article of Ms. Donnabelle Gatdula, she based her article on documents pertaining to the Oriental transaction, other documents, as well as interviews; that at the time the subject articles were written, Amb. Yuchengco was a public figure, being a very prominent businessman with vast interest in banks and other businesses; that during the year 1993, the word "crony" was more or less accepted to mean as a big businessman or close associate of the late President Marcos, and its use in the column was meant only to supply the perspective as to the figure or subject involved in the news story, and there is thus no malice or derogatory intent when the same was used.

On cross-examination, defendant Cabrera testified that defendant Coyiuto is one of the owners of Manila Chronicle; and that he only saw the records of Exhibits "8" to "10" and "16" to "20" after the publication of Exhibits "A" to "G" (TSN 21 April 1999; 28 April 1999 05 May 1999; 10 May 1999).

RAUL VALINO stated that he was the Acting Business Manager and later Managing Editor and Business Editor-in-Chief of Manila Chronicle; that after having consulted several dictionaries as to the meaning of the word "crony", he did not come across a definition describing the word to mean someone who is a recipient of any undeserving or special favor from anyone, that it merely refers to someone who is a friend or a special friend; there was no mention whatsoever in the subject article that Amb. Yuchengco was being accused of fronting for the late President Marcos (referring to par. 2.3.2 of the complaint); that nowhere in the said paragraph was Amb. Yuchengco accused of having acted as a front to facilitate the acquisition of a prohibited interest in a private corporation by a

public official while occupying a public office; that nowhere in the article was Amb. Yuchengco accused of being directly or indirectly involved in unsound business practices (referring to par. 2.4 of the complaint); that whatever imputation of ill-will in par. 2.4.1 of the complaint was only in plaintiff's mind; and as regards par. 2.6 of the complaint, that he was merely reporting on what transpired at the picket line and what the striking employees answered to him; and that he did not state in his columns (Exhibits "E" and "F") that plaintiff Yuchengco violated banking laws. [TSN 23 February 2000][3]

On 8 November 2002, the RTC rendered its Decision in favor of herein petitioner Alfonso T. Yuchengco, disposing of the case as follows:

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

1. On the First Cause of Action, ordering defendants Chronicle Publishing, Neil H. Cruz, Ernesto Tolentino, Noel Cabrera, Thelma San Juan, Gerry Zaragoza, Donna Gatdula, Raul Valino and Rodney Diola to pay plaintiff Yuchengco, jointly and severally:

a. the amount of Ten Million Pesos (₱10,000,000.00) as moral damages; and

b. the amount of Ten Million Pesos (₱10,000,000.00) as exemplary damages;

2. On the Second Cause of Action, ordering defendants Roberto Coyiuto, Jr. and Chronicle Publishing to pay plaintiff Yuchengco, jointly and severally:

a. the amount of Fifty Million Pesos (₱50,000,000.00) as moral damages; and

b. the amount of Thirty Million Pesos (₱30,000,000.00) as exemplary damages;

3. On the Third Cause of Action, ordering all defendants to pay plaintiff Yuchengco, jointly and severally, the amount of One Million Pesos (₱1,000,000.00) as attorney's fee and legal costs.[4]

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[3] *Rollo,* pp. 114-121.

[4] *Id.* at 160.

The respondents, namely the Manila Chronicle Publishing Corporation, Neal H. Cruz, Ernesto Tolentino, Noel Cabrera, Thelma San Juan, Gerry Zaragoza, Donna Gatdula, Raul Valino, Rodney P. Diola, and Roberto Coyiuto, Jr. appealed to the Court of Appeals. The appeal was docketed as CA-G.R. CV No. 76995 and was raffled to the Fifth Division.

On 18 March 2008, the Court of Appeals promulgated its Decision affirming the RTC Decision:

> WHEREFORE, in consideration of the foregoing premises, judgment is hereby rendered **DISMISSING** the appeals of defendants-appellants and **AFFIRMING** the decision dated November 8, 2002 of the trial court ***IN TOTO***.[5]

Respondents filed a Motion for Reconsideration. On 28 August 2008, the Court of Appeals reversed itself in an Amended Decision:

> WHEREFORE, the appeal is ***GRANTED***. The Decision of this Court dated March 18, 2008 is ***RECONSIDERED*** and ***SET ASIDE***. The decision of the court *a quo* dated November 8, 2002 is ***REVERSED*** and ***SET ASIDE***. The Amended Complaint for Damages against the defendants-appellants is ***DISMISSED***. No pronouncement as to costs.

Hence, this Petition for Review on *Certiorari*, where petitioner puts forth the following Assignments of Error:

A. THE HONORABLE COURT OF APPEALS COMMITTED GRAVE REVERSIBLE ERROR IN RULING THAT THE CASE OF *ARTURO BORJAL, ET AL. V. COURT OF APPEALS, ET AL*. CITED BY RESPONDENTS IN THEIR MOTION FOR RECONSIDERATION WARRANTED THE REVERSAL OF THE CA DECISION DATED MARCH 18, 2008.

B. THE HONORABLE COURT OF APPEALS COMMITTED GRAVE REVERSIBLE ERROR IN RULING THAT THE SUBJECT ARTICLES IN THE COMPLAINT FALL WITHIN THE CONCEPT OF PRIVILEGED COMMUNICATION.

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[5] *Id.* at 247.

C. THE HONORABLE COURT OF APPEALS COMMITTED GRAVE REVERSIBLE ERROR IN RULING THAT PETITIONER IS A PUBLIC OFFICIAL OR PUBLIC FIGURE.[6]

Libel is defined in Article 353 of the Revised Penal Code, which provides:

> Art. 353. *Definition of Libel*. – A libel is a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead.

Based on this definition, this Court has held that four elements constitute the crime of libel, namely (a) defamatory imputation tending to cause dishonor, discredit or contempt; (b) malice, either in law or in fact; (c) publication; and (d) identifiability of the person defamed.[7]

Despite being defined in the Revised Penal Code, libel can also be instituted, like in the case at bar, as a purely civil action, the cause of action for which is provided by Article 33 of the Civil Code, which provides:

> Article 33. In cases of defamation, fraud, and physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.

The above elements of libel were adopted as well in a purely civil action for damages. As held by this Court in *GMA Network, Inc. v. Bustos:*[8]

> An award of damages under the premises presupposes the commission of an act amounting to defamatory imputation or libel, which, in turn, presupposes malice. Libel is the public and malicious

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[6] *Id.* at 348-349.

[7] *People v. Monton*, 116 Phil. 1116, 1120-1121 (1962).

[8] G.R. No. 146848, 17 October 2006, 504 SCRA 638, 650-651.

imputation to another of a discreditable act or condition tending to cause the dishonor, discredit, or contempt of a natural or juridical person. Liability for libel attaches present the following elements: (a) an allegation or imputation of a discreditable act or condition concerning another; (b) publication of the imputation; (c) identity of the person defamed; and (d) existence of malice.

Of these four elements, the most apparent in the case at bar would be the publication of the alleged imputation. Libel is published not only when it is widely circulated, but also when it is made known or brought to the attention or notice of another person other than its author and the offended party.[9] The circulation of an allegedly libelous matter in a newspaper is certainly sufficient publication. We are thus left with the determination of the existence of the three remaining elements of libel, namely: (1) the defamatory imputation; (2) the identity of the person defamed; and (3) the existence of malice.

Defamatory Imputation

Defamation, which includes libel and slander, means the offense of injuring a person's character, fame or reputation through false and malicious statements. It is that which tends to injure reputation or to diminish esteem, respect, goodwill or confidence in the plaintiff, or to excite derogatory feelings or opinions about the plaintiff. It is the publication of anything that is injurious to the good name or reputation of another or tends to bring him into disrepute.[10] In determining whether certain utterances are defamatory, the words used are to be construed in their entirety and taken in their plain, natural and ordinary meaning, as they would naturally be understood by persons hearing (or reading, as in libel) them, unless it appears that they were used and understood in another sense.[11]

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[9] *United States v. Ubiñana*, 1 Phil. 471, 473 (1902).

[10] *MVRS Publications, Inc., v. Islamic Da'wah Council of the Philippines, Inc*., 444 Phil. 230, 241 (2004).

[11] *Lacsa v. Intermediate Appellate Court*, G.R. No. 74907, 23 May 1988, 161 SCRA 427, 432.

In order to fully appreciate whether the subject articles are, in fact, defamatory, an analysis thereof is in order. The following are what have been referred to as the subject articles:

Manila Chronicle Issue Date (Author)	Title	Exhibit
10 November 1993 (no by-line)	"Yuchengco joins forces with Kokoy"	A, A-1 to A-5
12 November 1993 (no by-line)	"RCBC probed for violating CB rules"	B, B-1 to B-2
15 November 1993 (no by-line)	"RCBC called to SEC"; subtitled "Yuchengco Bank defies government order"	C, C-1 to C-3
16 November 1993 (Donna Gatdula)	"Alcorn, RCBC execs own guilt"	D, D-1 to D-4
22 November 1993 (Raul Valino)	"Bank runs and RCBC free loans"	E, E-1 to E-2
23 November 1993 (Raul Valino)	"RCBC case bugs Bangko Sentral"	F, F-1 to F-3
5 December 1993 (Rodney P. Diola)	"The Battle for Oriental"	G, G-1 to G-4

In two of the subject articles, respondents allegedly accused and labeled Yuchengco as a Marcos crony, who took advantage of his relationship with the former President to gain unwarranted benefits:

Yuchengco joins forces with Kokoy[12]

Alfonso Yuchengco, a Marcos crony who wants to takeover the ownership and management of the highly profitable Oriental Petroleum Minerals Corp. (OMPC), has tied up with Marcos brother-in-law Benjamin "Kokoy" Romualdez through two of his sons, records at the Securities and Exchange Commission (SEC) showed yesterday.

Kokoy's two sons, Benjamin Philip Gomez Romualdez, 32, and Ferdinand Martin G. Romualdez, 29, are now members of the board

[12] Manila Chronicle, 10 November 1993, Exhibit A; *rollo*, p. 63.

of the debt-ridden and heavily losing Benguet Corp., a company taken over by Marcos during his dictatorship, but which was sequestered at the start of President Aquino's term.

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Observers said they believed the elections of the Romualdez sons officially confirmed suspicions that the Marcos and Romualdez clans really owned Benguet.

Benguet's former president, Jaime Ongpin, employed by the company for 10 years before he was named finance secretary by then President Aquino, committed suicide after being accused of being a Marcos-Romualdez crony.

Yuchengco Bank under CB probe[13]

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The official said the case was recently brought to Bangko Sentral's attention by an RCBC creditor who felt he was being cheated by the bank through interest-free loans granted to related interests.

Under the interest-free loan scheme, Yuchengco was able to own OMPC shares of Piedras since they were the same shares RCBC financed and which were turned over to the bank as payment for the loan.

The Central Bank official said that Bangko Sentral is now determining whether RCBC violated the rule on loans to directors, officers, stockholders and related interests (DOSRI).

Yuchengco is both a director (chairman) officer, stockholder, and a related interest of RCBC.

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Violating the DOSRI rule is a criminal offense. The Bangko Sentral official stressed. "I believe that that is tantamount, not only to cheating the depositor, but also robbing the bank of its clients' money."

"If Bangko Sentral does not act decisively on this matter," the official asked "what will prevent the other banks from resorting to this kind of transactions to enrich their owners and enable them to acquire shares of stock from other companies?"

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[13] Manila Chronicle, 12 November 1993, Exhibit B; *rollo*, p. 64.

The interest-free loan controversy also involves Traders Royal Bank (TRB), a sequestered bank, owned by Roberto Benedicto, a Marcos crony.

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The deal could be from one crony to another since Yuchengco is very much associated with the Marcoses and the Romualdezes, a source opined.

Yuchengco owns Benguet Corp., which is heavily losing since he joined the Company as Chairman in 1989.

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Since Benguet is encountering all kinds of financial problems, losses and overdue debts, observers say they fear that Oriental may also suffer the same fate when and should Yuchengco and his partners assume management of OMPC.

Already, it was noted the Oriental shares sold on the stock market are weakening, and stock observers say this could be attributed to the planned entry into the company of Yuchengco, Leonardo Siguion-Reyna and their minority partners.

In another of the subject articles, respondents allegedly insinuated that Yuchengco induced others to disobey the lawful orders of the Securities and Exchange Commission (SEC):

Alcorn, RCBC execs own guilt[14]

Two officials of Alcorn Petroleum and Minerals Corporation (AMPC) and Rizal Commercial Banking Corporation (RCBC) admitted before the Securities and Exchange Commission (SEC) yesterday that they ignored the SEC order commanding them to process all Alcorn shares in the name of R. Coyiuto Securities Inc. and its investor clients such as Oriental Petroleum and Minerals Corporation (OMPC).

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RCBC is owned by Alfonso Yuchengco, chairman of the debt-ridden and heavily-losing Benguet Corp. He also owns Great Pacific Life Insurance Co., whose employees are on strike because of the company's refusal to grant them better salaries and benefits.

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[14] Manila Chronicle, 12 November 1993, Exhibit D; *rollo*, p. 66.

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SEC insiders said that while Monreal and Ricalde should be punished for disobeying a lawful order from the SEC, people who masterminded the APMC order should also be penalized once proven guilty.

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Some observers said the APMC order to RCBC could be a ploy to prevent Robert Coyiuto, Jr., chairman and president of OPMC, from retaining his majority control of Oriental, and a scheme to put on the board members of the Yuchengco company.

In fact, when Yuchengco created his own OPMC "board of directors," he appointed Ricalde as corporate secretary, OPMC officials pointed out.

"In our opinion," observers following the OPMC developments stated, 'this is a clear and simple case of criminal conspiracy whose perpetrators must be meted the harshest punishment to prevent corporate thieves from making a mockery of the law and from illegally taking over corporations which they do not own in the first place."

Yuchengco further presented the following articles which allegedly accused him of inducing Rizal Commercial Banking Corporation (RCBC) to violate the provisions of the General Banking Act on Directors, Officers, stockholders, and Related Interest (DOSRI) loans:

Bank runs and RCBC free loans[15]

The Bank runs that devastated the economy in the recent past were, first and foremost, instigated by rumors that bank owners were, themselves, using the public's money to promote their own businesses and interests in violation of Central Bank rules and regulations.

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Now here comes Rizal Commercial Banking Corporation (RCBC) being charged with engaging in unsound banking by lending an interest-free loan of ₱101 million to one company, Piedras Petroleum Corporation, which Marcos crony Roberto Benedicto had surrendered to the Presidential Commission on Good Government (PCGG).

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[15] Manila Chronicle, 22 November 1993, Exhibit E; *rollo*, p. 67.

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What would happen if all the other banks resort to this kind of lending activity, giving away loans without interest? The entire banking system would certainly be compromised.

The owners or RCBC, therefore, should not be too liberal with their depositors' money. They should also consider what fatal effects such a practice could inflict on the very system where RCBC operates. The country, at this time, cannot afford another series of bank runs, nor a run at RCBC.

RCBC case bugs Bangko Sentral[16]

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The ₱101 million interest-free loan to Piedras is of national interest for not just one reason alone.

First, the money involved came from the depositors, and not from the pockets of Yuchengco.

Second, banking rules dictate that a bank must be prudent in lending out its clients' money, so that its financial viability must never be put in question.

Third, the money lent to a borrower must never end up in the pocket of the owner of the bank.

Fourth, such a practice could lead to a bank run, which the economy cannot afford at this time, even if the run is confined to just one bank.

Yuchengco further claims that the following article, in labeling him as a "corporate raider", implies that he is seeking to profit from something he did not work for:

The Battle for Oriental[17]

Ledesma says Coyiuto will not wilt from Yuchengco's fabled financial power. 'Robert has a lot of friends that will help him fend off a raider like Yuchengco', says Ledesma.

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[16] Manila Chronicle, 23 November 1993, Exhibit F; *rollo,* p. 68.

[17] Manila Chronicle, 23 November 1993, Exhibit G, *rollo,* p. 69.

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Ledesma of OPMC says that even if Coyiuto loses in the bid, he'll still remain a very significant player in OPMC given his substantial personal holdings and proxies in the company. Coyiuto's investment in OPMC is now valued at more than a billion pesos compared to the Yuchengco block which, the Coyiuto group points out, has only minimal investments.

That's our moral ascendancy over their group. Coyiuto virtually made Oriental what it is today unlike Yuchengco who is just getting into the act now because Oriental has become an attractive cash cow' says Ledesma.

War of Families

The fight for control of Oriental Petroleum gains particular poignancy given the long history of feuding between the families of Yuchengco and Coyiuto. Their families were bitter rivals in the insurance business way back in the seventies. The Yuchengcos own the Malayan Group of Insurance Companies while the Coyiutos used to control Pioneer Insurance. That rivalry seems to have come full circle with their battle in Oriental Petroleum.

Pomento says the best arrangement would have been a *modus vivendi* between the two groups to stop their quarrel and work instead for the interest of the company. But given the bad blood that exists between the two families, that might be a difficult proposition, he says.

The trial court and the Court of Appeals are in agreement that the above articles contain defamatory imputations. Even the Amended Decision of the Court of Appeals, wherein the appellate court reversed itself and held that respondents were not liable for damages, did not modify its earlier ruling affirming the defamatory character of the imputations in the above articles. The Court of Appeals merely reversed itself on account of the allegedly privileged nature of the articles, which goes into the element of malice. Malice, as an element of libel, and the defenses affecting the existence of the same shall be discussed later.

In arguing that the subject articles are not really derogatory, respondent Cabrera explains that the word "crony" was more

or less accepted to describe a big businessman or close associate of the late President Marcos, and its use in the column was meant only to supply the perspective as to the figure or subject involved in the news story. Respondent Valino further claimed that after consulting several dictionaries as to the meaning of the word "crony," he did not come across a definition describing the word to mean someone who is a recipient of any undeserving or special favor from anyone.

We are not swayed by the explanations of respondents Cabrera and Valino. In determining the defamatory character of words used, the explanation of the respondent should not prevail over what the utterances (or writing) convey to an ordinary listener (or reader).[18] Furthermore, as held by this Court in *United States v. Sotto*:[19]

> [F]or the purpose of determining the meaning of any publication alleged to be libelous "that construction must be adopted which will give to the matter such a meaning as is natural and obvious in the plain and ordinary sense in which the public would naturally understand what was uttered. The published matter alleged to be libelous must be construed as a whole. In applying these rules to the language of an alleged libel, **the court will disregard any subtle or ingenious explanation offered by the publisher on being called to account. The whole question being the effect the publication had upon the minds of the readers, and they not having been assisted by the offered explanation in reading the article, it comes too late to have the effect of removing the sting, if any there be, from the word used in the publication.**" (Emphasis supplied.)

In finding that the phrase "Marcos crony" is derogatory, the trial court took judicial notice of the fact that the said phrase, as understood in Philippine context, refers to an individual who was the recipient of special and/or undeserved favors from the late President Marcos due to a special closeness to the latter. This finding, which was upheld by the Court of Appeals in its

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[18] *Madrona, Sr. v. Rosal*, G.R. No. L-39120, 21 November 1991, 204 SCRA 1, 8.

[19] 38 Phil. 666, 672-673 (1918).

original Decision and was not tackled in the Amended Decision, is even supported by one of the subject articles. In particular, the 10 November 1993 article marked as Exhibit A mentioned that Benguet's former president, Jaime Ongpin, committed suicide after being accused of being a Marcos-Romualdez crony.[20] This statement highlights the disgrace respondents wanted to associate with the term "crony", which was used to describe Yuchengco in the very same article.

Even a cursory reading of the subject articles would show the intention of the writers to injure the reputation, credit and virtue of Yuchengco and expose him to public hatred, discredit, contempt and ridicule. The indirect manner in which the articles attributed the insults to Yuchengco (*e.g.*, "the money involved came from depositors, and not from Yuchengco") does not lessen the culpability of the writers and publishers thereof, but instead makes the defamatory imputations even more effective. Words calculated to induce suspicion are sometimes more effective to destroy reputation than false charges directly made. Ironical and metaphorical language is a favored vehicle for slander.[21]

In sum, this Court upholds the ruling of the trial court and the Court of Appeals that the subject articles contain defamatory imputations. All of the following imputations: (1) the labeling of Yuchengco as a Marcos crony, who took advantage of his relationship with the former President to gain unwarranted benefits; (2) the insinuations that Yuchengco induced others to disobey the lawful orders of SEC; (3) the portrayal of Yuchengco as an unfair and uncaring employer due to the strike staged by the employees of Grepalife; (4) the accusation that he induced RCBC to violate the provisions of the General Banking Act on DOSRI loans; and (5) the tagging of Yuchengco as a "corporate raider" seeking to profit from something he did not work for, all exposed Yuchengco to public contempt and ridicule, for they imputed to him a condition that was dishonorable.

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[20] *Rollo*, p. 63.

[21] *United States v. O'Connell*, 37 Phil. 767, 773 (1918).

Identification

Defamatory words must refer to an ascertained or ascertainable person, and that person must be the plaintiff. Statements are not libelous unless they refer to an ascertained or ascertainable person.[22] However, the obnoxious writing need not mention the libeled party by name. It is sufficient if it is shown that the offended party is the person meant or alluded to.[23]

In the case at bar, all but one of the subject articles explicitly mention the name of petitioner Yuchengco. The lone article, which does not mention Yuchengco at all, "Bank runs & RCBC free loans,"[24] nevertheless chided the owners of RCBC:

> The owners or RCBC, therefore, should not be too liberal with their depositors' money. They should also consider what fatal effects such a practice could inflict on the very system where RCBC operates. The country, at this time, cannot afford another series of bank runs, nor a run at RCBC.[25]

Identifying Yuchengco in said article by name was, however, not necessary, since the other subject articles, published a few days before and after this one, had already referred to Yuchengco as *the* owner of RCBC, sometimes explicitly ("Benguet started to bleed in 1989, the year Yuchengco, who owns Rizal Commercial Banking Corp. [RCBC], took over as chairman of the company"[26]), and sometimes implicitly ("the money involved came from depositors, and not from Yuchengco"). While the defamation of a large group does not give rise to a cause of action on the part of an individual, this is subject to exception when it can be shown that he is the target of the defamatory matter.[27]

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[22] *Corpus v. Cuaderno, Sr.*, G.R. No. L-16969, 30 April 1966, 16 SCRA 807, 816.

[23] *Quisumbing v. Lopez*, 96 Phil. 510, 513 (1955).

[24] Exhibit D; *rollo*, p. 67.

[25] *Id.*

[26] Exhibit A; *rollo*, p. 63.

[27] *MVRS Publications, Inc., v. Islamic Da'wah Council of the Philippines, Inc.*, *supra* note 10.

This Court therefore finds that Yuchengco was clearly identified as the libeled party in the subject defamatory imputations.

Malice

Malice connotes ill will or spite and speaks not in response to duty but merely to injure the reputation of the person defamed, and implies an intention to do ulterior and unjustifiable harm.[28] It is present when it is shown that the author of the libelous remarks made such remarks with knowledge that it was false or with reckless disregard as to the truth or falsity thereof.[29]

Malice, however, does not necessarily have to be proven. There are two types of malice – malice in law and malice in fact.[30] ***Malice in law*** is a presumption of law. It dispenses with the proof of malice when words that raise the presumption are shown to have been uttered. It is also known as constructive malice, legal malice, or implied malice.[31] On the other hand, ***malice in fact*** is a positive desire and intention to annoy and injure. It may denote that the defendant was actuated by ill will or personal spite. It is also called express malice, actual malice, real malice, true malice, or particular malice.[32]

In this jurisdiction, malice in law is provided in Article 354 of the Revised Penal Code, which also enumerates exceptions thereto:

Art. 354. *Requirement of publicity*.— Every defamatory imputation is presumed to be malicious, even if it be true, if no good intention

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[28] *United States v. Cañete*, 38 Phil. 253, 264 (1918).

[29] *Vasquez v. Court of Appeals*, 373 Phil. 238, 254 (1999).

[30] *Lawson v. Hicks*, 38, Ala. 279.

[31] Leonardo P. Reyes, *FUNDAMENTALS OF LIBEL LAW*, p. 15 (2007), citing *William v. Hicks Printing Co*., 150 N.W. 183, 159 Wis. 90, *Ajouelo v. Auto-Soler Co*., 6 S.E.2d 415, 61 Ga App. 216, *Astruc v. Star Co., C.C.N.Y.* 182 F. 705.

[32] *Id.*, citing *Cook v. East Shore Newspapers*, 327 Ill. App. 559, 64 N.E.2d 751; *Freeman v. Mills*, 97 Cal. App.2d 161, 217 P.2d 687; *Scott-Burr Stores Corporation v. Edgar*, 177 So. 766, 18 Miss. 486; *Davis v. Hearst*, 116 P. 530, 160 Cal. 143; *Id.*; *Swain v. Oakey*, 129 S.E. 151, 190 N.C. 133.

and justifiable motive for making it is shown, except in the following cases:

1. A private communication made by any person to another in the performance of any legal, moral or social duty; and

2. A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative or other official proceedings which are not of confidential nature, or of any statement, report or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions.

There is, thus, a presumption of malice in the case of every defamatory imputation, where there is no showing of a good intention or justifiable motive for making such imputation.

The exceptions provided in Article 354 are also known as **qualifiedly privileged communications**. The enumeration under said article is, however, not an exclusive list of qualifiedly privileged communications since *fair commentaries on matters of public interest* are likewise privileged.[33] They are known as qualifiedly privileged communications, since they are merely exceptions to the general rule requiring proof of actual malice in order that a defamatory imputation may be held actionable. In other words, defamatory imputations written or uttered during any of the three classes of qualifiedly privileged communications enumerated above – (1) a private communication made by any person to another in the performance of any legal, moral or social duty; (2) a fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative or other official proceedings which are not of confidential nature, or of any statement, report or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions; and (3) fair commentaries on matters of public interest – may **still be considered actionable if actual malice is proven**. This is in contrast with **absolutely privileged communications**, wherein the imputations are not actionable, even if attended by actual malice:

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[33] *Borjal v. Court of Appeals*, 361 Phil. 1, 19 (1999).

A communication is said to be absolutely privileged when it is not actionable, even if its author has acted in bad faith. This class includes statements made by members of Congress in the discharge of their functions as such, official communications made by public officers in the performance of their duties, and allegations or statements made by the parties or their counsel in their pleadings or motions or during the hearing of judicial proceedings, as well as the answers given by witnesses in reply to questions propounded to them, in the course of said proceedings, provided that said allegations or statements are relevant to the issues, and the answers are responsive or pertinent to the questions propounded to said witnesses. Upon the other hand, conditionally or qualifiedly privileged communications are those which, although containing defamatory imputations, would not be actionable unless made with malice or bad faith.[34]

In the case at bar, both the trial court and the Court of Appeals found that the publication of the subject articles was attended by actual malice:

In the instant case, there is preponderance of evidence showing that there exists *malice in fact* in the writing and publication of the subject libelous articles.

As correctly found by the trial court, **[petitioner] was able to show that [respondents] were animated by a desire to inflict unjustifiable harm on his reputation as shown by the timing and frequency of the publication of the defamatory articles.** Further, as previously stated, [respondents] failed to show that they had any good intention and justifiable motive for composing and publishing the vicious and malicious accusations against [petitioner].

Moreover, [respondents] published or caused the publication of the subject defamatory articles with reckless disregard as to the truth or falsity thereof. As previously stated, there is no proof that the contents of the subject articles are true or that the respondents exercised a reasonable degree of care before publishing the same. **[Respondents] failed to present evidence showing that they verified the truth of any of the subject articles, especially in light of the categorical denial by [petitioner] of the accusations made against him.**

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[34] *Orfanel v. People*, 141 Phil. 519, 523-524 (1969).

[Respondents] did not exercise reasonable degree of care or good faith efforts to arrive at the truth before publishing the subject defamatory articles. [Respondents] did not present any competent evidence to establish the truth of their allegations against [petitioner]. **There was no showing that [respondents] made any attempt to talk to [petitioner] to verify the statements contained in the defamatory articles, especially considering the gravity of the accusations made against [petitioner].** At the very least, [respondents] should have exercised efforts to talk to [petitioner] to clarify the issues and get his side. [Respondents'] failure to verify the truth of the information from [petitioner] himself is in itself an evidence of their lack of *bona fide* efforts to verify the accuracy of her information.

The incessant publication of the defamatory articles attacking the honor and reputation of [petitioner] is also proof of [respondents'] malicious scheme to malign and defame the name, honor and reputation of [petitioner]. As earlier pointed out, **in a span of one (1) month, [respondents] wrote and published and/or caused the publication of seven (7) libelous articles against [petitioner] attacking his honor and reputation as a distinguished businessman, philanthropist, his political inclination, and as an employer in his insurance company.** In fact, the presence of malice is made more evident by [respondents'] baseless and uncalled for attack on the person of [petitioner] as an employer. As aptly noted by the trial court in the assailed Decision:

> "Also in one of the articles, herein plaintiff was portrayed as an unfair and uncaring employer due to the strike staged by the employees of Grepalife suggesting that it was the [petitioner] who was the cause, and of insinuating that if [petitioner's] group takes over control of Oriental, it would experience the same labor problem as in Grepalife. The Court finds that [respondents] failed to render an unbiased and fair report as to the real cause of the strike except to lay the blame to [petitioner], without stating, much less describing, his participation thereon, knowing fully well that Grepalife is an entity distinct from the plaintiff. In other words, the labor policies implemented by Grepalife as regards its employees are obviously not that of Yuchengco."

Such baseless and malicious accusation of [respondents] on [petitioner] only proves the intention of the [respondents] in publishing the defamatory articles was not to present an unbiased

report on current issues but to launch a personal attack on the very person of [petitioner].

As earlier explained, as correctly found by the trial court, **even the timing of the publication of these subject articles is highly suspicious inasmuch as the subject libelous articles came out in the Manila Chronicle, a newspaper owned and under the control of [respondent] Coyiuto, around November to December of 1993, a couple of months prior to the January stockholders meeting of Oriental Corporation.** From this, it is logical to conclude that the publication of the subject defamatory articles defaming the good name and reputation of [petitioner] is but a part of [a] grand scheme to create a negative image of [petitioner] so as to negatively affect [petitioner's] credibility to the public, more particularly, to the then stockholders of Oriental Corporation. Worth noting also is the fact that the subject articles did not only portray [petitioner] in a bad light. **Curiously, in these articles, [respondent] Coyiuto, a known rival of [petitioner], was portrayed as the underdog, the "David" and [petitioner] as the "Goliath" in their battle for control over Oriental Corporation. This does not escape the Court's attention.**

These circumstances clearly indicate the presence of actual malice on the part of [respondents] in the publication of the subject libelous articles.[35] (Emphases supplied.)

When the Court of Appeals granted the Motion for Reconsideration, it did not touch upon its earlier finding of actual malice on the part of respondents in publishing the subject articles. Instead, the Court of Appeals merely held that the subject articles were fair commentaries on matters of public interest, and thus fell within the scope of the third type of qualifiedly privileged communications.

This was a glaring error on the part of the Court of Appeals. As discussed above, whereas there is an absolute bar to an action in the case of absolutely privileged communication, the same is not true with respect to qualifiedly privileged communication, wherein the law merely raises a *prima facie* presumption in favor of the occasion. In the former, the freedom

[35] *Rollo*, pp. 234-236.

from liability is absolute, regardless of the existence of actual malice, as contrasted with the freedom in the latter, where it is conditioned on the want or absence of actual malice. Conditionally or qualifiedly privileged communications are actionable when made with actual malice.[36]

When *malice in fact* is proven, assertions and proofs that the libelous articles are qualifiedly privileged communications are futile, since being qualifiedly privileged communications merely prevents the presumption of malice from attaching to a defamatory imputation.

Neither is there any reason for this Court to reverse the findings of the trial court and the Court of Appeals that there was actual malice on the part of the respondents. As held by the courts *a quo*, Yuchengco was able to show by the attendant circumstances that respondents were animated by a desire to inflict unjustifiable harm on his reputation, as shown by the timing and frequency of the publication of the defamatory articles. The portrayal of then Chronicle Publishing Chairman Coyiuto as an underdog and his rival Yuchengco as the greedy Goliath in their battle for control over Oriental Corporation, taken with the timing of the publication of these subject articles a couple of months prior to the January stockholders' meeting of Oriental Corporation, clearly indicate that the articles constituted an orchestrated attack to undermine the reputation of Yuchengco. Furthermore, respondents were shown to have acted with reckless disregard as to the truth or falsity of the articles they published, when they were unable to rebut the categorical denial by Yuchengco of the accusations made against him, and his allegation that he was not approached by respondents for his side of the stories before the publication thereof. Respondents' failure to present evidence showing that they verified the truth of any of the subject articles is fatal to their cause. In *In re: Emil P. Jurado*,[37] this Court ruled that **categorical denials of the truth of allegations in a publication place the burden upon the party publishing**

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[36] *Orfanel v. People*, *supra* note 34.

[37] 313 Phil. 119, 169 (1995).

it, either of proving the truth of the imputations or of showing that the same was an honest mistake or error committed despite good efforts to arrive at the truth. There is actual malice when there is either (1) knowledge of the publication's falsity; or (2) reckless disregard of whether the contents of the publication were false or not.[38] Failure to even get the side of Yuchengco in the published articles clearly constituted reckless disregard of the truth or falsity of said articles.

Finally, even if we assume for the sake of argument that actual malice was not proven in the case at bar, we nevertheless cannot adhere to the finding of the Court of Appeals in the Amended Decision that the subject articles were fair commentaries on matters of public interest, and thus fell within the scope of the third type of qualifiedly privileged communications.

In *Philippine Journalists, Inc. (People's Journal) v. Theonen*,[39] this Court adopted the pronouncement in the United States Decision in *Gertz v. Robert Welsch, Inc.*[40] that, in order to be considered as fair commentaries on matters of public interest, the individual to whom the defamatory articles were imputed should either be a public officer or a public figure:

> In *Borjal v. Court of Appeals*, we stated that "the enumeration under Art. 354 is not an exclusive list of qualifiedly privileged communications since fair commentaries on matters of public interest are likewise privileged. We stated that the doctrine of fair commentaries means "that while in general every discreditable imputation publicly made is deemed false, because every man is presumed innocent until his guilt is judicially proved, and every false imputation is deemed malicious, nevertheless, when the discreditable imputation is directed against a public person in his public capacity, it is not necessarily actionable. In order that such discreditable imputation to a public official may be actionable, it must either be a false allegation of fact or a comment based on a false supposition."

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[38] *Villanueva v. Philippine Daily Inquirer*, G.R. No. 164437, 15 May 2009.

[39] G.R. No. 143372, 13 December 2005, 477 SCRA 482.

[40] 418 U.S. 323 (1974).

Again, this argument is unavailing to the petitioners. As we said, the respondent is a private individual, and not a public official or public figure. We are persuaded by the reasoning of the United States Supreme Court in *Gertz v. Robert Welch, Inc.*, [418 U. S. 323 (1974)] that **a newspaper or broadcaster publishing defamatory falsehoods about an individual who is neither a public official nor a public figure may not claim a constitutional privilege against liability, for injury inflicted, even if the falsehood arose in a discussion of public interest**. (Emphasis supplied.)

Thus, in trying to prove that the subject articles delved on matters concerning public interest, the Court of Appeals insisted that Yuchengco was a public official or public figure, who "must not be too thin-skinned with reference to comment upon his official acts."[41] The Court of Appeals then noted that Yuchengco was, at the time of the Amended Decision, appointed as a Presidential Adviser on Foreign Affairs with Cabinet rank, and proceeded to enumerate[42] the public positions held by Yuchengco through the years.

However, an examination of the subject articles reveals that the allegations therein pertain to Yuchengco's private business endeavors and do not refer to his duties, functions and responsibilities as a Philippine Ambassador to China and Japan, or to any of the other public positions he occupied. A topic or

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[41] *Rollo*, p. 55.

[42] 1. Presidential Adviser on Foreign Affairs with Cabinet Rank (January 30, 2004-present)

2. Philippine Permanent Representative to the United Nations with the rank of Ambassador (November 2001-December 2002);

3. Presidential Special Envoy to China, Japan and Korea (2001);

4. Presidential Assistant on APEC Matters with Cabinet Rank (1998-2000);

5. Ambassador Extraordinary and Plenipotentiary of the Republic of the Philippines to the People's Republic of China (PROC) (1986-1988); and

6. Chairman, Council of Private Sector Advisors to the Philippine Government on the Spratlys Issue (Marine and Archipelagic Development Policy Group (1995-1998). (*Rollo*, p. 56.)

story should not be considered a matter of public interest by the mere fact that the person involved is a public officer, unless the said topic or story relates to his functions as such. Assuming a public office is not tantamount to completely abdicating one's right to privacy. Therefore, for the purpose of determining whether or not a topic is a matter of public interest, Yuchengco cannot be considered a public officer.

Neither is Yuchengco a public figure. The above case *Philippine Journalists* continues to cite the US case *Gertz* in describing who is a public figure:

> More commonly, **those classed as public figures have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved. In either event, they invite attention and comment.** Third, this would impose an additional difficulty on trial court judges to decide which publications address issues of "general interest" and which do not. Even if the foregoing generalities do not obtain in every instance, the communications media are entitled to act on the assumption that public officials and public figures have voluntarily exposed themselves to increased risk of injury from defamatory falsehood concerning them. No such assumption is justified with respect to a private individual. He has not accepted public office or assumed an "influential role in ordering society." (*Curtis Publishing Co. v. Butts*, 388 U.S., at 164) He has relinquished no part of his interest in the protection of his own good name, and consequently he has a more compelling call on the courts for redress of injury inflicted by defamatory falsehood. Thus, private individuals are not only more vulnerable to injury than public officials and public figures; they are also more deserving of recovery.[43] (Emphasis supplied.)

The records in the case at bar do not disclose any instance wherein Yuchengco had voluntarily thrust himself to the forefront of particular public controversies in order to influence the resolution of the issues involved. He cannot, therefore, be considered a public figure. Since Yuchengco, the person defamed in the subject articles, is neither as public officer nor a public

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[43] *Philippine Journalists, Inc. (People's Journal) v. Theonen, supra* note 38 at 497.

figure, said articles cannot be considered as qualifiedly privileged communications even if they deal with matters of public concern.

In view of the foregoing, this Court is constrained to grant the instant Petition and reinstate the Decision of the trial court, as previously affirmed by the Court of Appeals in its original Decision. This Court, however, finds the award of damages in the total amount of One Hundred Million Pesos by the trial court to be rather excessive given the circumstances. This Court, thus, further resolves to reduce the award of damages, as follows:

1. The damages for which Chronicle Publishing, Neil H. Cruz, Ernesto Tolentino, Noel Cabrera, Thelma San Juan, Gerry Zaragoza, Donna Gatdula, Raul Valino and Rodney Diola shall be jointly and severally liable under the first cause of action shall be reduced as follows:

a. The amount of moral damages shall be reduced from Ten Million Pesos (₱10,000,000.00) to Two Million Pesos (₱2,000,000.00); and

b. The amount of exemplary damages shall be reduced from Ten Million Pesos (₱10,000,000.00) to Five Hundred Thousand Pesos (₱500,000.00);

2. The damages for which Roberto Coyiuto, Jr. and Chronicle Publishing shall be jointly and severally liable under the second cause of action shall be reduced as follows:

a. The amount of moral damages shall be reduced from Fifty Million Pesos (₱50,000,000.00) to Twenty-Five Million Pesos (₱25,000,000.00); and

b. The amount of exemplary damages shall be reduced from Thirty Million Pesos (P30,000,000.00) Ten Million Pesos (₱10,000,000.00).

WHEREFORE, the Petition is *PARTIALLY GRANTED.* The Amended Decision of the Court of Appeals in CA-G.R. CV No. 76995 dated 28 August 2008, which reversed on Motion for Reconsideration the 18 March 2008 Decision of the same Court is hereby *REVERSED* and *SET ASIDE*. The Decision of

the Regional Trial Court of Makati City in Civil Case No. 94-1114 dated 8 November 2002 finding herein respondents liable for damages, is hereby *REINSTATED*, but shall be *MODIFIED* to read as follows:

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

1. On the First Cause of Action, ordering defendants Chronicle Publishing, Neil H. Cruz, Ernesto Tolentino, Noel Cabrera, Thelma San Juan, Gerry Zaragoza, Donna Gatdula, Raul Valino and Rodney Diola to pay plaintiff Yuchengco, jointly and severally:

a. the amount of Two Million Pesos (₱2,000,000.00) as moral damages; and

b. the amount of Five Hundred Thousand Pesos (₱500,000.00) as exemplary damages;

2. On the Second Cause of Action, ordering defendants Roberto Coyiuto, Jr. and Chronicle Publishing to pay plaintiff Yuchengco, jointly and severally:

a. the amount of Twenty-Five Million Pesos (₱25,000,000.00) as moral damages; and

b. the amount of Ten Million Pesos (₱10,000,000.00) as exemplary damages;

3. On the Third Cause of Action, ordering all defendants to pay plaintiff Yuchengco, jointly and severally, the amount of One Million Pesos (₱1,000,000.00) as attorney's fee and legal costs.

Costs against respondents.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

THIRD DIVISION

[G.R. No. 185094. November 25, 2009]

MASONIC CONTRACTOR, INC. and MELVIN BALAIS/ AVELINO REYES, *petitioners, vs.* **MAGDALENA MADJOS, ZENAIDA TIAMZON, and CARMELITA RAPADAS,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; EMPLOYER-EMPLOYEE RELATIONSHIP; ELEMENTS; EXISTENCE THEREOF IS A QUESTION OF FACT WHICH SHOULD BE SUPPORTED BY SUBSTANTIAL EVIDENCE.—** In "*Brotherhood" Labor Unity Movement of the Philippines v. Hon. Zamora*, the Court explained: In determining the existence of an employer-employee relationship, the elements that are generally considered are the following: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee with respect to the means and methods by which the work is to be accomplished. It is the so-called "control test" that is the most important element. The existence of an employer-employee relationship is a question of fact which should be supported by substantial evidence.

2. **ID.; ID.; ID.; ID.; ESTABLISHED IN CASE AT BAR.—** Petitioners' defense that they merely contracted the services of respondents through Malibiran fails to persuade us. The facts of this case show that respondents have been under the employ of MCI as early as 1991. They were hired not to perform a specific job or undertaking. Instead, they were employed as all-around laborers doing varied and intermittent jobs, such as those of drivers, sweepers, gardeners, and even undertakers or *tagalibing*, until they were arbitrarily terminated by MCI in 2004. Their wages were paid directly by MCI, as evidenced by the latter's payroll summary, belying its self-serving and unsupported contention that it paid directly to Malibiran for respondents' services. Respondents had identification cards

or gate passes issued not by Malibiran, but by MCI, and were required to wear uniforms bearing MCI's emblem or logo when they reported for work. It is common practice for companies to provide identification cards to individuals not only as a security measure, but more importantly to identify the bearers thereof as *bona fide* employees of the firm or institution that issued them. The provision of company-issued identification cards and uniforms to respondents, aside from their inclusion in MCI's summary payroll, indubitably constitutes substantial evidence sufficient to support only one conclusion: that respondents were indeed employees of MCI.

3. ID.; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; TERMINATION BY EMPLOYER; ILLEGAL DISMISSAL; A CASE OF.— With the issue of respondents' employment resolved, we then declare that respondents were illegally terminated when petitioners summarily dismissed them from work without any valid reason for doing so and without observing procedural due process. We thus affirm the CA's finding that petitioners are liable for their unwarranted action against respondents.

4. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; MANNER OF MAKING ALLEGATIONS IN PLEADINGS; ALLEGATIONS NOT SPECIFICALLY DENIED IS DEEMED ADMITTED.— x x x [P]etitioners did not even make an effort to deny or refute respondents' claim that they were not paid their overtime pay, holiday pay and 13th month pay. By their silence, petitioners are deemed to have admitted the same. Section 11 of Rule 8 of the Rules of Court, which supplements the NLRC Rules, provides that an allegation not specifically denied is deemed admitted. Accordingly, petitioners should comply with their statutory obligations to respondents.

APPEARANCES OF COUNSEL

Dolendo & Associates for petitioners.

Public Attorney's Office for respondents.

D E C I S I O N

NACHURA, *J.*:

This is a petition for review on *certiorari* assailing the July 18, 2008 Decision[1] of the Court of Appeals (CA), as well as its October 23, 2008 Resolution,[2] in CA-G.R. SP No. 101023. The CA, in its assailed decision and resolution, reversed and set aside the Decision[3] promulgated by the National Labor Relations Commission (NLRC) on February 6, 2007, as well as the December 16, 2004 Decision[4] of the Labor Arbiter (LA), rendered in favor of herein petitioners.

First, the facts:

Respondents Magdalena Madjos, Zenaida Tiamzon and Carmelita Rapadas were employed sometime in 1991 as all-around laborers (driver/sweeper/ "*taga-libing*"/grass-cutter) by Masonic Contractor, Inc. (MCI). Each of them received an initial daily wage of ₱165.00 and were required to report for work from 7:00 a.m. to 4:00 p.m. Three years thereafter, MCI increased their wages by ₱15.00 per day[5] but not without earning the ire of Melvin Balais, president of MCI.[6]

Sometime in 2004, Balais told Madjos, Tiamzon and Rapadas, along with nine (9) other employees, to take a two-day leave. When they reported for work two days thereafter, they were barred from entering the work premises and were informed that they had already been replaced by other workers.[7] This prompted Madjos and her co-workers to file a complaint against

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[1] Penned by Associate Justice Normandie B. Pizarro, with Associate Justices Edgardo P. Cruz and Fernanda Lampas Peralta, concurring; *rollo*, pp. 33-46.

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

[3] *Rollo*, pp. 205-217.

[4] *Id.* at 182-192.

[5] *Id.* at 34.

[6] *Id.* at 6, 94.

[7] *Id.* at 34-35.

herein petitioners for illegal dismissal and for non-payment of overtime pay, holiday pay, 13th month pay, and damages.

In their Position Paper dated April 12, 2004,[8] respondents averred that they were regular employees of MCI who were summarily dismissed from their jobs contrary to the substantive and procedural requirements of law.

Petitioners, for their part, denied being the direct employer of respondents.[9] Essentially, they argued that MCI had maintenance contracts with different memorial park companies and that, over the years, they had engaged the services of a certain Luz Malibiran to provide them with the necessary manpower depending on MCI's volume of work.[10]

On December 16, 2004, LA Aliman Mangandog rendered a Decision,[11] dismissing the complaint for lack of merit. The LA ratiocinated that Madjos, Tiamzon and Rapadas failed to present any evidence to prove that MCI had control over the means and methods in the performance of their work. The LA gave more credence to Malibiran's affidavit,[12] pertinent portions of which read:

> *1. Ako at ang mga nagsumbong sa SSS laban sa Masonic Contractor's, Inc., komokontrata lamang ng mga gawaing (sic) ng nasabing kompanya sa loob ng Loyola Memorial Park at ang aming mga ginawa ay binabayaran ng buo na siya naman naming pinagpaparti-partihan.*
>
> *2. Ako at ang mga nagsumbong sa SSS, sa kadahilanang alam naming na (sic) hindi kami empleyado ng kahit sinumang kompanya o pagawaan ay nag-usap-usap at nagkasundo na kami na mismo sa aming sarili ang magpalista sa SSS at magbayad ng kontribusyon kung gusto naming na (sic) magkaroon ng benepisyo pagdating ng panahon.*

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[8] *Id.* at 94-101.

[9] *Id.* at 105.

[10] *Id.* at 103.

[11] *Supra* note 4.

[12] *Id.* at 188.

3. *Alam naming lahat na kami ay hindi empleyado ng Masonic Contractor's[,] Inc., kung kaya alam naming (sic) na ang nasabing kompanya ay walang pananagutan na kami ay ipalista sa SSS bilang empleyado.*

4. *Ang mga nagsumbong sa SSS ay umalis at umayaw na lang ng walang paalam kung kaya kaming mga natira ay napilitang maghanap ng ibang makakasama sa pangongontrata. Ang aming pangongontrata sa Masonic Contractor's[,] Inc. ay isang pakiusap lamang sa nasabing kompanya upang kami ay magkaroon ng sariling pinagkakakitaan upang matugunan ang aming pang-araw-araw na pangangailangan.*

5. *Ang salaysay na ito ay aking ginawa para patunayan ang mga nakasaaad dito ay pawang totoo at upang malaman ng tang[g]apan ng SSS na walang pagkukulang ang Masonic Contractor's[,] Inc.*[13]

On appeal, the NLRC affirmed the LA's ruling. Respondents' motion for reconsideration was, likewise, denied.

On review, the CA reversed the findings of the NLRC and the LA. The CA reasoned that the NLRC erroneously imposed upon the three complainants the burden of proving that they were employees, when it was the employer and/or the contractor which should have been tasked with the onus to prove that it had substantial capital, investment, tools, *etc*. to disprove the allegation that it was engaged in labor-only contracting.[14] In contrast to the NLRC's ruling, the CA found that an employer-employee relationship existed between herein petitioners and respondents, and that the latter were illegally terminated from their work.

The dispositive portion of the July 18, 2008 Decision of the CA states:

WHEREFORE, the petition is GRANTED. The assailed dispositions are ANNULLED and SET ASIDE. Masonic Contractor, Inc. is ORDERED to reinstate Petitioners Magdalena Madjos,

[13] *Rollo*, p. 110.

[14] *Id.* at 38.

Carmelita Rapadas, and Zenaida Tiamzon or, in the event that reinstatement is no longer feasible, to pay each of them separation pay. Masonic Contractor, Inc. is also DIRECTED to pay the Petitioners full backwages and other monetary benefits computed from the time of their dismissal up to the time of actual reinstatement or up to the finality of this decision, if reinstatement is not possible. No costs.

SO ORDERED.[15]

Petitioners now come to this Court *via* a Rule 45 petition, contending that the CA committed a reversible error in finding that they were engaged in labor-only contracting and for holding them liable for respondents' dismissal.

Central to the disposition of the case is a determination of whether respondents are employees of MCI.

We answer in the affirmative.

In "*Brotherhood" Labor Unity Movement of the Philippines v. Hon. Zamora*, the Court explained:

> In determining the existence of an employer-employee relationship, the elements that are generally considered are the following: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee with respect to the means and methods by which the work is to be accomplished. It is the so-called "control test" that is the most important element.[16]

The existence of an employer-employee relationship is a question of fact which should be supported by substantial evidence.[17]

Petitioners' defense that they merely contracted the services of respondents through Malibiran fails to persuade us. The facts of this case show that respondents have been under the employ of MCI as early as 1991. They were hired not to perform a specific job or undertaking. Instead, they were employed as all-around laborers doing varied and intermittent jobs, such as

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[15] *Id.* at 45.

[16] 231 Phil. 53, 59 (1987).

[17] *Traders Royal Bank v. NLRC*, 378 Phil. 1081, 1085-1086 (1999).

those of drivers, sweepers, gardeners, and even undertakers or *tagalibing,* until they were arbitrarily terminated by MCI in 2004. Their wages were paid directly by MCI, as evidenced by the latter's payroll summary,[18] belying its self-serving and unsupported contention that it paid directly to Malibiran for respondents' services. Respondents had identification cards or gate passes issued not by Malibiran, but by MCI,[19] and were required to wear uniforms bearing MCI's emblem or logo when they reported for work.[20]

It is common practice for companies to provide identification cards to individuals not only as a security measure, but more importantly to identify the bearers thereof as *bona fide* employees of the firm or institution that issued them.[21] The provision of company-issued identification cards and uniforms to respondents, aside from their inclusion in MCI's summary payroll, indubitably constitutes substantial evidence sufficient to support only one conclusion: that respondents were indeed employees of MCI.

Moreover, as correctly observed by the CA, petitioners failed to show that it was Malibiran who exercised control over the means and methods of the work assigned to respondents. Interestingly, Malibiran's affidavit is silent on the aspect of control over respondents' means and methods of work. Rather than categorically stating that she was the one who directly employed respondents to render work for MCI, Malibiran merely implies that, like respondents, she was just a co-worker. Malibiran's statement that the work for MCI was merely in the nature of accommodation to help respondents earn a living, in effect, impliedly admits the fact that she did not have the capacity to engage in the independent job-contracting business, and that, therefore, she was not respondents' employer.

With the issue of respondents' employment resolved, we then declare that respondents were illegally terminated when petitioners

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[18] *Rollo,* p. 132.

[19] *Id.* at 123, 129, 131.

[20] *Id.* at 141-142.

[21] *Domasig v. NLRC*, 330 Phil. 518, 524 (1996).

summarily dismissed them from work without any valid reason for doing so and without observing procedural due process. We thus affirm the CA's finding that petitioners are liable for their unwarranted action against respondents.

Lastly, petitioners did not even make an effort to deny or refute respondents' claim that they were not paid their overtime pay, holiday pay and 13th month pay. By their silence, petitioners are deemed to have admitted the same.[22] Section 11 of Rule 8 of the Rules of Court, which supplements the NLRC Rules, provides that an allegation not specifically denied is deemed admitted.[23] Accordingly, petitioners should comply with their statutory obligations to respondents.

WHEREFORE, premises considered, the instant petition is *DENIED* for lack of merit. The assailed July 18, 2008 Decision of the Court of Appeals in CA-G.R. SP No. 101023 and its October 23, 2008 Resolution are hereby *AFFIRMED*. Petitioners are further ordered to pay respondents their unpaid overtime pay, holiday pay and 13th month pay to be computed by the Labor Arbiter, and to bear the costs of this suit.

SO ORDERED.

Corona (Chairperson), Chico-Nazario, Velasco, Jr., and *Bersamin,*[*] *JJ.,* concur.

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[22] *Traders Royal Bank v. NLRC, supra* note 17, at 1087.

[23] RULES OF COURT, Rule 8, Sec. 11 provides in full:

SEC. 11. *Allegations not specifically denied deemed admitted.* – Material averment in the complaint, other than those as to the amount of unliquidated damages, shall be deemed admitted when not specifically denied. Allegations of usury in a complaint to recover usurious interests are deemed admitted if not denied under oath.

[*] Additional member in lieu of Associate Justice Diosdado M. Peralta per Raffle dated July 1, 2009.

THIRD DIVISION

[G.R. No. 185933. November 25, 2009]

ST. LUKE'S MEDICAL CENTER, INCORPORATED, *petitioner, vs.* **JENNIFER LYNNE C. FADRIGO,**[*] *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; TERMINATION BY EMPLOYER; JUST CAUSES; NEGLECT OF DUTIES; MUST NOT ONLY BE GROSS BUT ALSO HABITUAL; NOT ESTABLISHED IN CASE AT BAR.— *Gross inefficiency* is closely related to *gross neglect*, for both involve specific acts of omission on the part of the employee resulting in damage to the employer or to his business. As a just cause for an employee's dismissal, inefficiency or neglect of duty must not only be *gross* but also *habitual*. Thus, a single or isolated act of negligence does not constitute a just cause for the dismissal of the employee. We reviewed the records before us and we did not see any gross and habitual neglect or gross inefficiency on the part of respondent that would justify her termination from employment. As aptly pointed out by the Labor Arbiter: [SLMC] has not cited any specific policy prohibiting such assignment of casuals and trainees under pain of dismissal from employment. On the other hand, we find [respondent's] explanation for such a situation reasonable, *i.e.*, it is a practice resorted to due to lack of manpower and management's reluctance to hire regular employees. Furthermore, as explained by [respondent], there was in fact a senior staff (regular employee) in the person of Ms. Gail Manalastas assigned to the 7 a.m. to 4 p.m. shift on that particular day. Neither can SLMC validate respondent's termination on the ground of gross inefficiency for her alleged failure *to document WPO policies, to orient new staff, and to act on the incident of April 6,*

[*] The present petition impleaded the Court of Appeals as respondent. However, Section 4, Rule 45 of the Revised Rules of Court provides that the petition shall not implead lower courts and judges thereof as petitioners or respondents. Hence, the deletion of the Court of Appeals from the title.

2005, for no convincing evidence was offered to prove the allegation. Likewise, the alleged failure was never included in the show cause memorandum given to respondent, which strengthens our belief that this allegation was a mere afterthought to try to justify the illegal dismissal. Furthermore, respondent's alleged inefficiency or neglect of duty, assuming this to be true, does not appear to be habitual that would constitute a just cause for the termination of her employment. In her five-year stay with SLMC, respondent had shown exemplary performance, evidenced by the testimonials and commendations given to her. Clearly, SLMC cannot justify respondent's termination on the ground of gross inefficiency or gross neglect of duty.

2. ID.; ID.; ID.; ID.; ID.; WILLFUL DISOBEDIENCE; REQUISITES; FIRST REQUISITE IS ABSENT IN CASE AT BAR.— Willful disobedience or insubordination, as alleged in this case, necessitates the concurrence of at least two requisites: (1) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which he had been engaged to discharge. The facts of this case do not show the presence of the first requisite. [Respondent] committed no insubordination of such willful and intentional character amounting to a wrongful and perverse attitude as would warrant the penalty of dismissal. The order coming from management to pull out the casual and trainee staff came through sometime after five o'clock in the afternoon of April 22, 2006 (sic) when said staff had already left the office. Even then, [respondent] tried to call up the two (2) on their mobile phones as well as send text messages to them but to no avail. In the end, [respondent] left instructions with two (2) of her senior associates at the WPO who would be present at the office the following day not to allow the casual and trainee staff to work anymore but to just let them wait for her in her office so that she could personally inform them of management's decision to pull them out. Under the circumstances, we find that [respondent] did the best that she could possibly do to comply with management's orders. Furthermore, it appears from the records that although the casual and trainee staff(s) were indeed present the following day, they were in fact no longer allowed to handle any work at the WPO. They merely waited for [respondent] to arrive. Management appears to have concluded

that just because the two (2) were at the WPO, they were still allowed to work, which was not the case. Being their immediate supervisor, [respondent's] act of making them wait for her in her office so she could personally inform them of their dismissal is understandable. We see nothing wrong with that – it is even humane, to say the least. Undoubtedly, respondent cannot be dismissed for loss of confidence arising from alleged gross inefficiency and insubordination.

3. ID.; ID.; ID.; ID.; ID.; LOSS OF CONFIDENCE; MUST BE BASED ON A WILLFUL BREACH OF TRUST; WILLFUL BREACH, DEFINED.— We are not unmindful of the employer's right to dismiss an employee based on fraud or willful breach of trust. However, the loss of confidence must be based not on an ordinary breach by the employee of the trust reposed in him by the employer, but, in the language of Article 282(c) of the Labor Code, on a willful breach. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently. It must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion; otherwise, the employee would eternally remain at the mercy of the employer. It should be genuine and not simulated; nor should it appear as a mere afterthought to justify an earlier action taken in bad faith or as a subterfuge for causes that are improper, illegal or unjustified. It has never been intended to afford an occasion for abuse because of its subjective nature. There must, therefore, be an actual breach of duty committed by the employee, which must be established by substantial evidence. In this case, SLMC utterly failed to establish the requirements prescribed by law and jurisprudence for a valid dismissal on the ground of breach of trust and confidence.

4. ID.; ID.; ID.; ID.; *ONUS* OF PROVING THAT THE EMPLOYEE WAS DISMISSED FOR A JUST CAUSE RESTS ON THE EMPLOYER.— The principle echoed and reechoed in jurisprudence is that the *onus* of proving that the employee was dismissed for a just cause rests on the employer, and the latter's failure to discharge that burden would result in a finding that the dismissal is unjustified. The CA, therefore, committed no reversible error in not sustaining the legality of respondent's dismissal.

5. ID.; ID.; ID.; SECURITY OF TENURE; ILLEGALLY DISMISSED EMPLOYEE, RIGHTS OF.— Article 279 of the Labor Code mandates that an employee who was 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, as well as to other benefits or their monetary equivalent, computed from the time her compensation was withheld up to the time of her actual reinstatement. Since the circumstances obtaining in this case do not warrant respondent's reinstatement due to her strained relations with SLMC, the award by the CA of separation pay, in lieu of reinstatement, in addition to full backwages, is in order.

APPEARANCES OF COUNSEL

Quasha Ancheta Peña & Nolasco for petitioner.

Malaya Sanchez Añover Añover and Simpao Law Offices for respondent.

R E S O L U T I O N

NACHURA, *J.*:

Petitioner St. Luke's Medical Center, Incorporated (SLMC) appeals by *certiorari* the August 15, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP. No. 98959 and the January 7, 2009 Resolution[2] denying its reconsideration.

Respondent Jennifer Lynne C. Fadrigo (respondent) was the Customer Affairs Department Manager of petitioner SLMC. As such, respondent supervised the Wellness Program Office (WPO), which administers SLMC's check up packages.

On April 23, 2005, Dr. Charity Gorospe called up the WPO to refer a patient for immediate check up. The call was answered

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[1] Penned by Associate Justice Rebecca de Guia-Salvador, with Associate Justices Vicente S.E. Veloso and Ricardo R. Rosario, concurring; *rollo*, pp. 84-105.

[2] *Id.* at 107-108.

by Michelle Rillo (Rillo), a trainee at the front desk, who transferred the call to Hazel Tingzon (Tingzon), a casual employee. Tingzon explained to Dr. Gorospe the mechanics of undergoing a check up, which could not be administered immediately as Dr. Gorospe wanted.

Dr. Gorospe informed SLMC's Corporate President, Jose Ledesma (Ledesma), of the incident. Ledesma then called the WPO to inquire if it was its policy to reject patients, like what it did to Dr. Gorospe's referral. The WPO staff denied that they declined Dr. Gorospe's request for immediate admission of her patient, and added that the request for check up was already being processed for scheduling.

At around 5 o'clock in the afternoon of the same day, respondent, who was then at home enjoying her rest day, received a phone call from SLMC's Associate Director for Corporate Affairs, Marilen Lagniton (Lagniton), informing her what had transpired at the WPO on that day; and directing respondent to instruct Tingzon and Rillo not to report for duty the following day. Respondent immediately called the WPO. She was able to talk to Gail Manalastas (Manalastas), a senior associate, who also relayed to her what had happened in the office. Respondent, however, was not able to talk to Tingzon and Rillo because the two already went home. She tried to reach them through their cellular phones to inform them of Lagniton's instruction not to report for work, but respondent's efforts proved futile. Thus, respondent instructed Manalastas to tell Tingzon and Rillo not to work the following day and to wait for her at her office.

In the morning of April 24, 2005, Lagniton called the WPO and found out that Tingzon and Rillo were in the office. She talked to the two and instructed them to go home. Thus, when respondent arrived in the office, Tingzon and Rillo had already gone home.[3]

On April 27, 2005, respondent received a memorandum[4] from Lagniton requiring her to show cause why no disciplinary action

[3] *Id.* at 120.

[4] *Id.* at 118.

should be taken against her for insubordination, gross inefficiency and incompetence due to the April 23 incident. The memorandum stated that respondent allowed a trainee and a casual employee, Rillo and Tingzon, to man the WPO during official business hours. Likewise, respondent allegedly failed to comply with the management order to immediately pull out Rillo and Tingzon.

In her letter-reply, respondent denied the charges against her. She explained that Manalastas, a senior associate, was present at WPO at the time of the incident. She also denied that she ignored the management directive to instruct Rillo and Tingzon not to report for work the following day. Respondent further requested for a bill of particulars, since the memorandum did not state the specific acts or omissions that amounted to insubordination and gross inefficiency leveled against her.[5]

On May 4, 2005, Fe Corazon B. Ramos-Muit (Muit), Chairman of SLMC's Committee on Values Ethics and Discipline (COVED), issued a memorandum requiring respondent to explain in writing why no disciplinary action should be imposed on the latter for alleged insubordination, gross inefficiency and incompetence; and further informing respondent of the COVED conference set for May 6, 2005.[6]

During the COVED conference, respondent reiterated her request for a bill of particulars, but it was denied. The Committee, likewise, denied respondent's request to summon Dr. Gorospe.

On May 16, 2005, respondent received a memorandum[7] from Muit advising the former of the COVED decision to terminate her employment effective May 18, 2005. In the presence of several employees, respondent was subjected to a thorough search by security officers, pursuant to SLMC's directive.[8]

Claiming termination without cause, respondent filed with the Labor Arbiter a complaint for illegal dismissal with prayer

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[5] *Id.* at 119-120.

[6] *Id.* at 126.

[7] *Id.* at 130.

[8] *See* Position Paper, *id.* at 167.

for reinstatement, and for payment of full backwages, moral damages, as well as attorney's fees, against SLMC and COVED members, namely: Editha M. Simeon, Fe Corazon R. Muit, Araceli E. Ona, Marilen T. Lagniton, Jovie Anne M. Monsalud, and Atty. Conrado Dar Santos.

SLMC and the COVED members responded that there was a valid termination. They asserted that respondent was dismissed for a just cause and with due process. Respondent willfully breached her duty when she allowed a trainee and a casual employee to man the WPO during official business hours; and when she ignored the management directive to immediately pull out the personnel involved in the incident, justifying the termination of her employment.

After due proceedings, the Labor Arbiter rendered a decision[9] finding respondent's dismissal illegal. According to the Arbiter, SLMC utterly failed to substantiate the charges of insubordination, gross inefficiency and incompetence against respondent. Her termination from employment was, therefore, without just cause. The Arbiter also found respondent's dismissal without due process and attended by malice and bad faith, justifying the awards of ₱1,000,000.00 as moral damages, and ₱163,051.72 as attorney's fees.

The Labor Arbiter disposed, thus:

> WHEREFORE, in view of all the foregoing, [SLMC] is hereby ordered to reinstate [respondent] to her former position without loss of seniority rights and other privileges and benefits with full backwages computed from the time of [respondent's] illegal dismissal up her actual reinstatement, which up to this promulgation already amounted to THREE HUNDRED FIFTEEN THOUSAND TWO HUNDRED FIFTY-EIGHT PESOS and 66/100 (₱315,258.66). FURTHERMORE, [SLMC] is hereby ordered to pay [respondent] the sum of ONE MILLION ONE [HUNDRED] SIXTY-THREE THOUSAND FIFTY-ONE PESOS and 70/100 (₱1,163,051.70) as discussed above.

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[9] *Rollo*, pp. 187-210.

The reinstatement aspect of this decision is immediately executory and [SLMC] is hereby directed to submit report of compliance within ten (10) calendar days from receipt hereof.

SO ORDERED.[10]

On appeal, the National Labor Relations Commission (NLRC) reversed the Labor Arbiter.[11] It found that respondent was remiss in her duties as Department Manager for Customer Affairs, particularly in handling the WPO. The April 23, 2005 incident proved that respondent had not put in place, or at the very least had not made clear, the office policy on admission of clients which resulted in the fiasco. SLMC, thus, lost its trust and confidence in respondent to head a critical and significant department. The operation of a hospital, the NLRC explained, is service oriented, as it provides the public with medical services. Thus, when an employee is guilty of breach of trust or his employer has ample reason to distrust him, the employee's dismissal is justified. Accordingly, the NLRC granted the appeal and dismissed respondent's complaint for illegal dismissal. However, it awarded separation pay, after considering respondent's exemplary performance in her five years' stay with SLMC. Thus:

WHEREFORE, the decision appealed from is hereby REVERSED and SET ASIDE, and correspondingly, the complaint for illegal dismissal is dismissed for lack of merit. However, consistent with our adherence to the principles of social justice, the payment of separation pay equivalent to one-half (1/2) month salary per every year of service is awarded to [respondent].

SO ORDERED.[12]

Respondent filed a motion for reconsideration, but the NLRC denied it.

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[10] *Id.* at 210.

[11] *Id.* at 315-335.

[12] *Id.* at 334-335.

Respondent then elevated the NLRC ruling via *certiorari* to the CA, which rendered the now assailed Decision[13] reversing the NLRC and reinstating, but with modification, the Labor Arbiter's decision. The CA sustained the Arbiter's finding that respondent committed no insubordination of such willful and intentional character amounting to a wrongful and perverse attitude as would warrant her dismissal. It also failed to perceive any gross inefficiency on the part of respondent. The assignment of a casual employee and a trainee to the WPO, it held, could hardly constitute gross inefficiency. It added that the April 23, 2005 incident was either a misunderstanding or a case of someone wanting to have something done without following hospital procedure. The CA, therefore, held that no just cause exists to warrant respondent's dismissal. Respondent is, thus, entitled to reinstatement with backwages. The CA, however, ruled that reinstatement is no longer viable considering that respondent no longer enjoys SLMC's full trust and confidence; thus, in lieu of reinstatement, the CA ordered the payment of separation pay equivalent to at least one month pay, or one month pay for every year of service, whichever is higher. Both backwages and separation pay should be computed from the date of illegal dismissal until the finality of the decision. The CA further reduced the award of moral damages from ₱1,000,000.00 to ₱100,000.00.

The dispositive portion of the CA Decision reads:

> WHEREFORE, premises considered, the petition is GRANTED and the assailed October 31, 2006 Decision is, accordingly, NULLIFIED and SET ASIDE. In lieu thereof, the Labor Arbiter's Decision is REINSTATED with MODIFICATIONS, *viz*: awarding [respondent], in lieu of reinstatement, separation pay equivalent to one month salary for every year of service; and reducing the award of moral damages from ₱1,000,000.00 to ₱100,000.00.
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> SO ORDERED.[14]

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[13] *Supra* note 1.

[14] *Id.* at 104.

SLMC filed a motion for reconsideration, but the CA denied the same in its January 7, 2009 Resolution.[15]

Before us, SLMC insists that respondent was validly dismissed. It argues that respondent was a managerial employee and, as such, the mere existence of a basis for believing that respondent has breached the trust of her employer would suffice for her dismissal. SLMC asserts that the CA committed reversible error in reversing the NLRC decision.

The petition is devoid of merit.

SLMC attributes loss of confidence to respondent's alleged gross inefficiency, incompetence and insubordination. The termination letter reads:

> You are charged with allowing a casual reliever and a student trainee to man a frontline desk unsupervised by a senior staff, failing to document Wellness Program Office operations policies and procedures as guides for staff to implement, failing to orient new staff, failing to implement corrective and preventive actions on the most recent previous related incident that occurred on April 6, 2005, failing to personally report to Management the details of the incident and follow-up reports thereafter, failing to ensure Management directive is carried out and failure to inform Management of any changes by you to their directive.
>
> Therefore, it is with deep regret that we find Gross Inefficiency, Incompetence and Insubordination in the discharge of your duties and responsibilities as Department Manager. Furthermore, you have made false and inconsistent claims in your letters of explanation dated April 28 and May 5, 2005 as well as during the May 6, 2005 COVED conference. It would be inadvisable to consider retaining you as a Department Manager of the Medical Center as there is no reason for the Management to further provide you with the trust and confidence that your position entails. In considering the pertinent facts of the case, the COVED is constrained to decide against your favor.

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[15] *Supra* note 2.

We regret to inform you that your services are Terminated effective May 18, 2005. x x x.[16]

Gross inefficiency is closely related to *gross neglect*, for both involve specific acts of omission on the part of the employee resulting in damage to the employer or to his business.[17] As a just cause for an employee's dismissal, inefficiency or neglect of duty must not only be *gross* but also *habitual*. Thus, a single or isolated act of negligence does not constitute a just cause for the dismissal of the employee.[18]

We reviewed the records before us and we did not see any gross and habitual neglect or gross inefficiency on the part of respondent that would justify her termination from employment. As aptly pointed out by the Labor Arbiter:

> [SLMC] has not cited any specific policy prohibiting such assignment of casuals and trainees under pain of dismissal from employment. On the other hand, we find [respondent's] explanation for such a situation reasonable, *i.e.*, it is a practice resorted to due to lack of manpower and management's reluctance to hire regular employees. Furthermore, as explained by [respondent], there was in fact a senior staff (regular employee) in the person of Ms. Gail Manalastas assigned to the 7 a.m. to 4 p.m. shift on that particular day.[19]

Neither can SLMC validate respondent's termination on the ground of gross inefficiency for her alleged failure *to document WPO policies, to orient new staff, and to act on the incident of April 6, 2005*, for no convincing evidence was offered to prove the allegation. Likewise, the alleged failure was never included in the show cause memorandum given to respondent, which strengthens our belief that this allegation was a mere afterthought to try to justify the illegal dismissal.

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[16] *Supra* note 7.

[17] *Lim v. NLRC*, 328 Phil. 843 (1996).

[18] *Bienvenido C. Gilles v. CA, Schema Konsult and Edgardo Abores*, G.R. 149273, June 5, 2009.

[19] *Rollo*, p. 206.

Furthermore, respondent's alleged inefficiency or neglect of duty, assuming this to be true, does not appear to be habitual that would constitute a just cause for the termination of her employment. In her five-year stay with SLMC, respondent had shown exemplary performance, evidenced by the testimonials and commendations given to her.[20] Clearly, SLMC cannot justify respondent's termination on the ground of gross inefficiency or gross neglect of duty.

SLMC also attributes loss of confidence to respondent's alleged insubordination.

Willful disobedience or insubordination, as alleged in this case, necessitates the concurrence of at least two requisites: (1) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which he had been engaged to discharge.[21] The facts of this case do not show the presence of the first requisite.

As the CA had taken pains to explain:

> [Respondent] committed no insubordination of such willful and intentional character amounting to a wrongful and perverse attitude as would warrant the penalty of dismissal. The order coming from management to pull out the casual and trainee staff came through sometime after five o'clock in the afternoon of April 22, 2006 (sic) when said staff had already left the office. Even then, [respondent] tried to call up the two (2) on their mobile phones as well as send text messages to them but to no avail. In the end, [respondent] left instructions with two (2) of her senior associates at the WPO who would be present at the office the following day not to allow the casual and trainee staff to work anymore but to just let them wait for her in her office so that she could personally inform them of management's decision to pull them out.

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[20] *Id.* at 433-439.

[21] *Bienvenido C. Gilles v. CA, Schema Konsult and Edgardo Abores, supra* note 18.

Under the circumstances, we find that [respondent] did the best that she could possibly do to comply with management's orders. Furthermore, it appears from the records that although the casual and trainee staff(s) were indeed present the following day, they were in fact no longer allowed to handle any work at the WPO. They merely waited for [respondent] to arrive. Management appears to have concluded that just because the two (2) were at the WPO, they were still allowed to work, which was not the case. Being their immediate supervisor, [respondent's] act of making them wait for her in her office so she could personally inform them of their dismissal is understandable. We see nothing wrong with that – it is even humane, to say the least.[22]

Undoubtedly, respondent cannot be dismissed for loss of confidence arising from alleged gross inefficiency and insubordination.

We are not unmindful of the employer's right to dismiss an employee based on fraud or willful breach of trust. However, the loss of confidence must be based not on an ordinary breach by the employee of the trust reposed in him by the employer, but, in the language of Article 282(c) of the Labor Code, on a willful breach. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently. It must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion; otherwise, the employee would eternally remain at the mercy of the employer. It should be genuine and not simulated; nor should it appear as a mere afterthought to justify an earlier action taken in bad faith or as a subterfuge for causes that are improper, illegal or unjustified. It has never been intended to afford an occasion for abuse because of its subjective nature. There must, therefore, be an actual breach of duty committed by the employee, which must be established by substantial evidence.[23] In this case, SLMC utterly failed to establish the

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[22] *Rollo*, pp. 100-101.

[23] *Manila Memorial Park Cemetery, Inc. v. Panado*, G.R. No. 167118, June 15, 2006, 490 SCRA 751, 767-768.

requirements prescribed by law and jurisprudence for a valid dismissal on the ground of breach of trust and confidence.

The principle echoed and reechoed in jurisprudence is that the *onus* of proving that the employee was dismissed for a just cause rests on the employer,[24] and the latter's failure to discharge that burden would result in a finding that the dismissal is unjustified.[25] The CA, therefore, committed no reversible error in not sustaining the legality of respondent's dismissal.

Article 279 of the Labor Code mandates that an employee who was 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, as well as to other benefits or their monetary equivalent, computed from the time her compensation was withheld up to the time of her actual reinstatement.[26] Since the circumstances obtaining in this case do not warrant respondent's reinstatement due to her strained relations with SLMC, the award by the CA of separation pay, in lieu of reinstatement, in addition to full backwages, is in order.

WHEREFORE, the petition is *DENIED*. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. No. 98959 are *AFFIRMED*.

Costs against petitioner.

SO ORDERED.

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

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[24] See *De Jesus v. National Labor Relations Commission*, G.R. No. 151158, August 17, 2007, 530 SCRA 489, 498.

[25] *AFI International Trading Corporation (Zamboanga Buying Station) v. Lorenzo*, G.R. No. 173256, October 9, 2007, 535 SCRA 347.

[26] *Bienvenido C. Gilles v. CA, Schema Konsult and Edgardo Abores*, *supra* note 18.

THIRD DIVISION

[G.R. No. 186493. November 25, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **REYNALDO HERNANDO *y* AQUINO,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; OUT-OF-COURT IDENTIFICATION; TOTALITY OF CIRCUMSTANCES TEST; APPLIED IN CASE AT BAR.— In *People v. Teehankee, Jr.*, we explained the procedure for out-of-court identification and the test to determine its admissibility: Out-of-court identification is conducted by the police in various ways. It is done thru **show-ups** where the suspect alone is brought face to face with the witness for identification. It is done thru **mug shots** where photographs are shown to the witness to identify the suspect. It is also done thru **line-ups** where a witness identifies the suspect from a group of persons lined up for the purpose. x x x. In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the **totality of circumstances test** where they consider the following factors, *viz.*: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure. Applying the totality-of-circumstances test, we find the eyewitnesses' out-of-court identification to be reliable.

2. ID.; ID.; ID.; ID.; DID NOT FORECLOSE THE ADMISSIBILITY OF THE INDEPENDENT EYEWITNESSES' IN-COURT IDENTIFICATION.— Even assuming *arguendo* that appellant's out-of-court identification was irregular as appellant claims, this identification did not foreclose the admissibility of the independent eyewitnesses' in-court identification. It must be stressed that in convicting appellant of the crime charged, the courts *a quo* did not rely solely on the out-of-court identification. Dirige's August 18, 2004 testimony and David's

September 13, 2004 testimony clearly show that they positively identified appellant independently of the previous identification they made at the police station. Their testimonies, including their identification of appellant, were positive, straightforward, and categorical. In *People v. Rivera*, this Court, in rejecting a similar contention, held: Even assuming *arguendo* that the appellant Alfonso Rivera's out-of-court identification was tainted with irregularity, his subsequent identification in court cured any flaw that may have attended it.

3. ID.; ID.; ALIBI; CANNOT PREVAIL OVER THE POSITIVE IDENTIFICATION OF THE ACCUSED AS THE PERPETRATOR OF THE CRIME; WHEN TO PROSPER AS A DEFENSE.— In the face of the credible and reliable positive identification made by Dirige and David, appellant's defense of alibi is absolutely unavailing. The defense of alibi, being inherently weak, cannot prevail over the clear and positive identification of the accused as the perpetrator of the crime. Appellant's assertion that he arrived in Baguio City only on April 13, 2004 at 7:00 p.m. cannot be given much credence since there was no evidence presented showing that appellant was still in Dagupan City at the time of the commission of the crime. The witnesses presented by appellant only proved that appellant and his father left Sual, Pangasinan at 1:30 p.m. on August 13, 2004; and arrived home at 7:00 p.m. Appellant's witnesses, however, were unanimous in saying that the travel time by public transportation from Sual, Pangasinan to Baguio City takes about four hours. Hence, it was physically possible for appellant to have been in Baguio City between 5:00 p.m. and 6:00 p.m. when the shooting incident took place. It is settled that for the defense of alibi to prosper, the accused 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. The RTC and the CA, therefore, rightly rejected appellant's alibi.

4. CRIMINAL LAW; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; QUALIFYING CIRCUMSTANCES; TREACHERY; ELEMENTS; PROPERLY APPRECIATED AS A CIRCUMSTANCE TO QUALIFY THE CRIME TO MURDER.— This Court also agrees with the trial court in appreciating treachery as a qualifying circumstance. As we have

consistently ruled, there is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof, which tend directly and specially to ensure their execution without risk to himself arising from the defense that the offended party might make. Two conditions must concur for treachery to exist, namely: (a) the employment of means of execution gave the person attacked no opportunity to defend himself or to retaliate; and (b) the means or method of execution was deliberately and consciously adopted. As explained by the RTC: The treacherous attack was deliberately adopted. The accused shot the victim from behind. The victim has just hailed a taxi and was about to board the taxi when the accused sneaked from behind her and poked the gun just below the left ear and fired, hitting the victim at close range to be sure she was hit fatally. In that kind of situation, the victim was defenseless and could not retaliate and there was no danger or risk to the life of the accused as he was pointing the gun from behind the victim. All these indicate that appellant employed means and methods that tended directly and specially to ensure the execution of the offense without risk to himself arising from the defense that the victim might make. Thus, treachery was correctly appreciated as a circumstance to qualify the crime to murder.

5. ID.; CRIMES AGAINST PERSONS; MURDER; PENALTY.— Under Article 248 of the Revised Penal Code (RPC), as amended, the penalty imposed for the crime of murder is *reclusion perpetua* to death. There being no aggravating or mitigating circumstance, the penalty imposed on appellant is *reclusion perpetua*, pursuant to Article 63, paragraph 2, of the RPC. The prison term imposed by the trial court and affirmed by the CA for the death of Atty. Sturch is, therefore, correct.

6. CIVIL LAW; DAMAGES; DAMAGES THAT MAY BE AWARDED WHEN DEATH OCCURS DUE TO A CRIME.— When death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases.

7. ID.; ID.; ID.; GRANT OF CIVIL INDEMNITY AND MORAL DAMAGES, PROPER IN CASE AT BAR.— In murder, the grant of civil indemnity, which has been fixed by jurisprudence

at ₱50,000.00, requires no proof other than the fact of death as a result of the crime and proof of an accused's responsibility therefor. Similarly, moral damages are awarded in view of the violent death of a victim, and these do not require any allegation or proof of the emotional sufferings of the heirs. We, therefore, sustain the awards of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages to the heirs of Atty. Sturch.

8. ID.; ID.; ID.; ACTUAL DAMAGES; ONLY EXPENSES SUPPORTED BY RECEIPTS AND WHICH APPEAR TO HAVE ACTUALLY BEEN EXPENDED IN CONNECTION WITH THE DEATH OF THE VICTIM SHOULD BE ALLOWED; REDUCTION OF THE AWARD THEREOF IS PROPER IN CASE AT BAR.— There is, however, a need to modify the award of ₱208,000.00 as actual damages. Ver Espino testified that he spent ₱30,000.00 for the services rendered by the Baguio Memorial Chapel and ₱70,000.00 for the services rendered by Rosenda's Memorial and Casket Distributor when they brought the remains of the victim from Baguio City to Ilocos Norte. He also paid ₱20,000.00 for the musical performance of a band, ₱8,000.00 for the construction of the tomb, and ₱15,000.00 as daily food expenses for the six-day wake. However, only the amounts of ₱70,000.00 and ₱30,000.00, or a total of ₱100,000.00, were duly receipted. It is well settled that only expenses supported by receipts and which appear to have actually been expended in connection with the death of the victim should be allowed for actual damages. The award made by the court *a quo* must, thus, be reduced correspondingly.

9. ID.; ID.; ID.; EXEMPLARY DAMAGES; PROPER WHEN THE CRIME WAS ATTENDED BY THE QUALIFYING CIRCUMSTANCE OF TREACHERY AS IN CASE AT BAR.— x x x [T]he heirs of Atty. Sturch are entitled to recover exemplary damages amounting to ₱30,000.00, considering that the crime was attended by the qualifying circumstance of treachery.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Vicente Sol Cuenca for appellant.

R E S O L U T I O N

NACHURA, *J.*:

On appeal is the August 22, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02375 which affirmed the decision[2] rendered by Branch 6 of the Regional Trial Court (RTC) of Baguio City, finding appellant Reynaldo Hernando *y* Aquino (appellant) guilty beyond reasonable doubt of murder.

The facts, summarized by the trial court and borne out by the records, are as follows:

On April 13, 2004 at about 5:45 p.m., Alain James Dirige (Dirige) was driving his sedan type taxi along Harrison Road, Baguio City. At the intersection of Harrison Road and Claudio Street, his taxi was flagged down by a woman. Dirige, thus, veered his taxi towards the side of the road. When he looked at his rear to see if the woman would board his taxi, he saw a long-haired man wearing a black shirt, standing behind the woman with a gun pointed at the latter's head, near the left ear. Suddenly, Dirige heard a gunshot and saw a burst of gunfire. The woman fell to the pavement face down with blood oozing from her head. The gunman, on the other hand, immediately left the crime scene.[3]

Dirige was momentarily stunned by the shooting incident he saw. When he recovered from shock, he drove his taxi away from the scene of the crime, and went home.[4]

Police officers arrived at the crime scene after a few minutes and found the lifeless body of the woman, who was identified as Atty. Victoria Mangapit Sturch (Atty. Sturch). They conducted an on-the-spot investigation and an inquiry of the shooting

[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Rosalinda Asuncion-Vicente and Ramon M. Bato, Jr., concurring; *rollo*, pp. 2-35.

[2] CA *rollo*, pp. 87-101.

[3] TSN, August 18, 2004, pp. 1-6.

[4] *Id.* at 6, 8.

incident.[5] They interviewed Rhea David (David), another eyewitness, who was in a store, located only 3 meters away from the crime scene.[6] David gave her description of the gunman, and a cartographic sketch was made based on her description.[7]

The following day, April 14, 2004, police officers went to David and showed her pictures. She pointed to one of the pictures as that of the gunman.[8] The person in the picture turned out to be appellant.

On April 17, 2004, Dirige finally went to the police station to give his account of the shooting incident. The police officers showed him mug shots and a video footage. From these mug shots and video footage, Dirige identified the gunman,[9] who was named by the police officers as herein appellant.

Hence, on April 20, 2004, appellant was charged with murder in an Information[10] which reads:

> That on or about the 13th day of April, 2004, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then armed with a gun and with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and shoot VICTORIA STURCH *Y* MANGAPIT, thereby inflicting upon the latter a gunshot wound of (sic) the head, which injury directly caused her death.
>
> That the qualifying circumstances attended the commission of the crime, to wit: (1) treachery as the shooting of the victim by the accused was sudden and unexpected and the victim was not in a position to defend herself (2) evident premeditation and (3) taking advantage of superior strength as the attack was made by the accused who was armed with a handgun upon the victim, a woman, who was merely standing at the time of attack.

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[5] TSN, September 13, 2004, p. 8.

[6] *Id.* at 5.

[7] *Id.* at 11.

[8] *Id.* at 12.

[9] TSN, August 18, 2004, pp. 10-13.

[10] Records, p. 1.

CONTRARY TO LAW.

When arraigned on May 5, 2004, appellant, with the assistance of counsel *de parte*, entered a plea of not guilty. Trial on the merits then ensued.

The prosecution presented Dr. John Tinoyan,[11] who had autopsied Atty. Sturch, and the police officers who conducted the investigation, namely: Police Officer (PO) 2 Daniel Bandoc,[12] Police Senior Inspector Lorenzo Sabug,[13] Police Inspector Disosdado Danglose,[14] Senior Police Officer 4 Bernard Carabacan,[15] and PO2 Rico Saro.[16] The two eyewitnesses – Dirige[17] and David[18] – also took the witness stand, positively identifying appellant as the gunman. Ver Espino,[19] son of Atty. Sturch, likewise, testified to prove the damages incurred by reason of the death of his mother.

Appellant's defense consists of denial and alibi. He averred that on April 9, 2004, he went to Sual, Pangasinan for a vacation. He intended to stay in Sual for only two days, but because his friend died, he extended his stay until noon of April 13, 2004. He, along with his father, left Sual, Pangasinan at 1:30 p.m. and reached their home in Hamada Subdivision, Baguio City at around 7:00 p.m. At around 7:30 p.m., appellant left home and reported for work at Nikki's Bar.[20]

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[11] TSN, July 6, 2004.

[12] TSN, July 13, 2004.

[13] *Id.* at 50-54.

[14] TSN, July 27, 2007.

[15] TSN, July 29, 2004.

[16] *Id.* at 13-18.

[17] TSN, August 18, 2004.

[18] TSN, September 13, 2004.

[19] TSN, October 18, 2004.

[20] TSN, June 21, 2005, pp. 7-8.

Appellant's testimony was corroborated by his father, Ernesto Hernando,[21] and by his friends – George Tormento,[22] Jomar Haligao,[23] Bobby Orqueza,[24] and Edlen Abarra.[25]

Appellant also presented Jennifer Gabaen[26] and Meriam Pacdayan[27] (Pacdayan) to prove his innocence. Pacdayan's testimony tended to establish that Atty. Sturch was shot by Eddie Boy Padilla, upon the order of Robbie Imperial.[28]

The trial court, however, disbelieved appellant's defense and rendered judgment convicting him. According to the trial court, the narrations of the eyewitnesses were vivid, spontaneous and credible, and were in harmony with the autopsy report submitted by Dr. Tinoyan. It also found no bias or ill motive on the part of Dirige and David to falsely testify against appellant. The trial court further held that there was no physical impossibility for appellant to be present at the scene of the crime. Thus, appellant's defense of alibi could not prevail over the positive identification by Dirige and David.

The decretal portion of the RTC decision reads:

WHEREFORE, the Court finds the accused Reynaldo Hernando *y* Aquino **guilty** beyond reasonable doubt of the offense of Murder, defined and penalized under Article 248 of the Revised Penal Code as charged in the information and hereby sentences him to suffer the penalty of ***Reclusion Perpetua***, to indemnify the heirs of the deceased Victoria Sturch the sum of ₱50,000.00 as civil indemnity for her death; ₱208,000.00 as actual damages; and ₱50,000.00 as moral damages for the pain and anguish suffered by the heirs for

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[21] TSN, February 21, 2005.

[22] TSN, November 23, 2004.

[23] TSN, December 13, 2004.

[24] TSN, January 11, 2005.

[25] TSN, June 7, 2005.

[26] TSN, March 9, 2005.

[27] TSN, November 8, 2005.

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

her death; all indemnifications are without subsidiary imprisonment in case of insolvency, and to pay the costs [of suit].

The accused Reynaldo Hernando, being a detention prisoner, is entitled to be credited 4/5 of his preventive imprisonment in the service of his sentence in accordance with Article 29 of the [R]evised Penal Code.

SO ORDERED.[29]

The appellant filed an appeal before the CA, arguing that the court *a quo* erred:

1. In convicting the accused-appellant notwithstanding the fact that his guilt was not established beyond reasonable doubt;
2. In dismissing the defense of the accused-appellant despite having been established by clear and convincing evidence; and
3. In sentencing him to suffer the penalty of *Reclusion Perpetua*, to indemnify the heirs of the deceased the sum of ₱50,000.00 as civil indemnity, ₱208,000.00 as actual damages, and ₱50,000.00 as moral damages and to pay the costs.[30]

On August 22, 2008, the CA rendered the assailed Decision,[31] affirming appellant's conviction, *viz.*:

WHEREFORE, premises considered, the appealed decision dated June 13, 2006 of the RTC, Branch 6, Baguio City in Criminal Case No. 22987-R is hereby AFFIRMED.

SO ORDERED.[32]

Appellant is now before us, questioning his conviction. On April 13, 2009,[33] this Court required the parties to submit

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[29] *Supra* note 2, at 101.

[30] CA *rollo*, p. 66.

[31] *Supra* note 1.

[32] *Id.* at 34.

[33] *Rollo*, p. 40.

supplemental briefs within thirty (30) days. On June 5, 2009, the *People*, through the Office of the Solicitor General, manifested that it would no longer file a supplemental brief.[34] On the other hand, appellant, to this date, has not yet filed his supplemental brief. Thus, for failure to comply with the April 13, 2009 Resolution, the Court deems as waived the filing of appellant's supplemental brief and considers this case submitted for resolution.

Appellant insists that both the trial court and the CA erred in convicting him of the crime charged. Essentially, he claims that the prosecution's evidence does not satisfy the quantum of proof necessary for conviction. He vigorously assails his out-of-court identification by the eyewitnesses.

It is understandable for appellant to assail his out-of-court identification by the prosecution witnesses. This is so because the eyewitness identification is vital evidence and, in most cases, decisive of the success or failure of the prosecution.[35]

In *People v. Teehankee, Jr.*,[36] we explained the procedure for out-of-court identification and the test to determine its admissibility:

> Out-of-court identification is conducted by the police in various ways. It is done thru **show-ups** where the suspect alone is brought face to face with the witness for identification. It is done thru **mug shots** where photographs are shown to the witness to identify the suspect. It is also done thru **line-ups** where a witness identifies the suspect from a group of persons lined up for the purpose. x x x. In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the **totality of circumstances test** where they consider the following factors, *viz*.: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty

[34] *Id.* at 42-45.

[35] *People v. Meneses*, 351 Phil. 331, 344 (1998).

[36] 319 Phil. 128, 180 (1995).

demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure.

Applying the totality-of-circumstances test, we find the eyewitnesses' out-of-court identification to be reliable. *First*, Dirige and David were very near the place where Atty. Sturch was shot; thus, they had a good view of the gunman. *Second*, no competing event took place to draw their attention from the incident. Nothing in the records shows the presence of any distraction that could have disrupted the witnesses' attention at the time of the shooting incident, or that could have prevented them from having a clear view of the face of the gunman. *Third*, David immediately gave the description of the gunman, while Dirige gave his description four days after the shooting incident, giving sufficient explanation why it took him four days to go to the police station. *Finally*, there was no evidence that the police had supplied or even suggested to Dirige and David that appellant was the suspected gunman.

We, therefore, fail to see any flaw that would invalidate the eyewitnesses' identification. We entertain no doubt as to the positive identification made by these two prosecution witnesses, who had the opportunity to vividly see the physical features of appellant. As aptly observed by the CA:

> Dirige and David were able to positively and categorically identify accused-appellant Hernando as the one responsible for the fatal shooting of victim Sturch along Harrisom Road, Baguio City on that tragic day of April 13, 2004. Dirige and David corroborated each other on the claim that the victim was taller than accused-appellant Hernando and accused-appellant Hernando stood behind the victim while the latter was waiting for a taxicab when accused-appellant Hernando pointed and fired a gun almost below her left ear. Dirige further recalled that accused–appellant Hernando had high eyebrows, wore a black shirt and ran towards the side walk in front of BPI.[37]

Even assuming *arguendo* that appellant's out-of-court identification was irregular as appellant claims, this identification

[37] *Rollo*, p. 31.

did not foreclose the admissibility of the independent eyewitnesses' in-court identification. It must be stressed that in convicting appellant of the crime charged, the courts *a quo* did not rely solely on the out-of-court identification. Dirige's August 18, 2004 testimony[38] and David's September 13, 2004 testimony[39] clearly show that they positively identified appellant independently of the previous identification they made at the police station. Their testimonies, including their identification of appellant, were positive, straightforward, and categorical.

In *People v. Rivera*,[40] this Court, in rejecting a similar contention, held:

> Even assuming *arguendo* that the appellant Alfonso Rivera's out-of-court identification was tainted with irregularity, his subsequent identification in court cured any flaw that may have attended it. Without hesitation, the two prosecution witnesses, Renato Losaria and Juanito Baylon identified the appellant as one of the assailants. In *People v. Timon*, the accused were identified through a show-up. The accused assailed the process of identification because no other suspect was presented in a police line-up. We ruled that a police line-up is not essential in identification and upheld the identification of the accused through a show-up. We also held that even assuming *arguendo* that the out-of-court identification was defective, the defect was cured by the subsequent positive identification in court for the "inadmissibility of a police line-up identification x x x should not necessarily foreclose the admissibility of an independent in-court identification."[41]

In the face of the credible and reliable positive identification made by Dirige and David, appellant's defense of alibi is absolutely unavailing. The defense of alibi, being inherently weak, cannot prevail over the clear and positive identification of the accused as the perpetrator of the crime.[42]

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[38] TSN, August 18, 2004, p. 5.

[39] TSN, September 13, 2004, p. 7.

[40] 458 Phil. 856 (2003).

[41] *Id.* at 876-877. (Citations omitted.)

[42] *Edgar Mercado v. People of the Philippines*, G.R. No. 161902, September 11, 2009.

Appellant's assertion that he arrived in Baguio City only on April 13, 2004 at 7:00 p.m. cannot be given much credence since there was no evidence presented showing that appellant was still in Dagupan City at the time of the commission of the crime. The witnesses presented by appellant only proved that appellant and his father left Sual, Pangasinan at 1:30 p.m. on August 13, 2004; and arrived home at 7:00 p.m. Appellant's witnesses, however, were unanimous in saying that the travel time by public transportation from Sual, Pangasinan to Baguio City takes about four hours. Hence, it was physically possible for appellant to have been in Baguio City between 5:00 p.m. and 6:00 p.m. when the shooting incident took place.

It is settled that for the defense of alibi to prosper, the accused 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.[43] The RTC and the CA, therefore, rightly rejected appellant's alibi.

Appellant also attempts to pin the crime on a certain Robbie Imperial and on Eddie Boy Padilla. He presented Pacdayan to substantiate his claim. However, we agree with the CA in rejecting Pacdayan's fiction, holding that:

> Pacdayan's testimony that Padilla intimated to her that Robbie asked him to kill the victim and that Robbie hugged her aunt Pacio and told the latter that the victim is already dead, are insufficient to establish the authorship of the crime by Robbie as the principal by inducement and Padilla as the gunman, and to exonerate accused-appellant Hernando of the crime charged for being merely circumstantial in nature.[44]

In fine, we affirm the RTC and the CA in giving full faith and credence to the testimonies of the prosecution witnesses, and in rejecting appellant's lackluster defenses.

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[43] *People v. Manchu,* G.R. No. 181901, November 28, 2008, 572 SCRA 752, 763-764.

[44] *Rollo,* p. 33.

This Court also agrees with the trial court in appreciating treachery as a qualifying circumstance. As we have consistently ruled, there is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof, which tend directly and specially to ensure their execution without risk to himself arising from the defense that the offended party might make. Two conditions must concur for treachery to exist, namely: (a) the employment of means of execution gave the person attacked no opportunity to defend himself or to retaliate; and (b) the means or method of execution was deliberately and consciously adopted.[45]

As explained by the RTC:

> The treacherous attack was deliberately adopted. The accused shot the victim from behind. The victim has just hailed a taxi and was about to board the taxi when the accused sneaked from behind her and poked the gun just below the left ear and fired, hitting the victim at close range to be sure she was hit fatally. In that kind of situation, the victim was defenseless and could not retaliate and there was no danger or risk to the life of the accused as he was pointing the gun from behind the victim.[46]

All these indicate that appellant employed means and methods that tended directly and specially to ensure the execution of the offense without risk to himself arising from the defense that the victim might make. Thus, treachery was correctly appreciated as a circumstance to qualify the crime to murder.

Under Article 248[47] of the Revised Penal Code (RPC), as amended, the penalty imposed for the crime of murder is *reclusion perpetua* to death. There being no aggravating or mitigating circumstance, the penalty imposed on appellant is

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[45] *People v. Ducabo*, G.R. No. 175594, September 28, 2007, 534 SCRA 458, 474.

[46] CA *rollo*, p. 99.

[47] 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, x x x.

reclusion perpetua, pursuant to Article 63, paragraph 2,[48] of the RPC. The prison term imposed by the trial court and affirmed by the CA for the death of Atty. Sturch is, therefore, correct.

And now, the award of damages. The RTC awarded, and the CA affirmed, the award of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱208,000.00 as actual damages to the heirs of Atty. Sturch.

When death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases.[49]

In murder, the grant of civil indemnity, which has been fixed by jurisprudence at ₱50,000.00, requires no proof other than the fact of death as a result of the crime and proof of an accused's responsibility therefor.[50] Similarly, moral damages are awarded in view of the violent death of a victim, and these do not require any allegation or proof of the emotional sufferings of the heirs. We, therefore, sustain the awards of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages to the heirs of Atty. Sturch.

There is, however, a need to modify the award of ₱208,000.00 as actual damages. Ver Espino testified that he spent ₱30,000.00 for the services rendered by the Baguio Memorial Chapel and ₱70,000.00 for the services rendered by Rosenda's Memorial and Casket Distributor when they brought the remains of the victim from Baguio City to Ilocos Norte. He also paid ₱20,000.00 for the musical performance of a band, ₱8,000.00 for the construction of the tomb, and ₱15,000.00 as daily food expenses

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[48] ART. 63. *Rules for the application of indivisible penalties.* — x x x.

xxx xxx xxx

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

[49] *People v. Tolentino*, G.R. No. 176385, February 26, 2008, 546 SCRA 671, 699.

[50] *People v. Manchu, supra* note 43, at 765.

for the six-day wake.[51] However, only the amounts of ₱70,000.00 and ₱30,000.00, or a total of ₱100,000.00, were duly receipted. It is well settled that only expenses supported by receipts and which appear to have actually been expended in connection with the death of the victim should be allowed for actual damages.[52] The award made by the court *a quo* must, thus, be reduced correspondingly.

Finally, the heirs of Atty. Sturch are entitled to recover exemplary damages amounting to ₱30,000.00, considering that the crime was attended by the qualifying circumstance of treachery.[53]

WHEREFORE, the appeal is *DISMISSED*. The assailed Decision of the Court of Appeals in CA-G.R. CR-HC No. 02375 is *AFFIRMED* with *MODIFICATIONS*. Appellant Reynaldo Hernando is found *GUILTY* beyond reasonable doubt of *MURDER* and is hereby sentenced to suffer the penalty of *reclusion perpetua*. Appellant is also ordered to pay the heirs of Atty. Victoria M. Sturch the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱100,000.00 as actual damages, and ₱30,000.00 as exemplary damages.

SO ORDERED.

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

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[51] TSN, October 18, 2004, pp. 3-5.

[52] *People v. Mallari*, 452 Phil. 210, 224 (2003).

[53] See *Edgar Esqueda v. People of the Philippines*, G.R. No. 170222, June 18, 2009.

THIRD DIVISION

[G.R. No. 186538. November 25, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **AUSENCIO COMILLO, JR., LUTGARDO COMILLO and ROMULO ALTAR,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; ALIBI; WHEN TO PROSPER AS A DEFENSE.— Alibi is the weakest of all defenses, for it is facile to contrive and difficult to prove. The defense of alibi must be proved by the accused with clear and convincing evidence. For alibi to prosper, it is not enough for the accused to prove that he was somewhere else when the crime was committed. He must likewise prove that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission.

2. ID.; ID.; ID.; TESTIMONIES OF RELATIVES AND FRIENDS OF THE ACCUSED WHICH CORROBORATE THE ACCUSED'S ALIBI ARE SUSPECT AND SHOULD BE RECEIVED WITH CAUTION BECAUSE OF PERCEIVED BIAS.— It is true that Irene Torilio corroborated the foregoing testimony of appellant Ausencio. However, it should be noted that she is the *comadre* and close friend of appellants Ausencio and Lutgardo's mother. We have held that testimonies of relatives and friends of the accused which corroborate the accused's alibi are suspect and should be received with caution because of perceived bias.

3. ID.; ID.; ID.; CANNOT PREVAIL OVER THE POSITIVE AND CATEGORICAL IDENTIFICATION OF THE ACCUSED ABSENT ANY SHOWING OF ILL MOTIVE ON THE PART OF THE EYEWITNESSES TESTIFYING ON THE CRIME.— x x x [T]he RTC, the Court of Appeals, and this Court found the testimonies of Joselito and Marcos identifying appellants as the authors of the crime to be more credible than those of appellant Ausencio and Irene. Joselito and Marcos were disinterested witnesses, and no ill motive on their part was shown when they testified against appellants. It is settled

that the positive and categorical identification of the accused, without any showing of ill motive on the part of the eyewitnesses testifying on the crime, prevails over alibi.

4. CRIMINAL LAW; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS.— Regarding appellant Lutgardo's plea of self-defense, it is axiomatic that when an accused pleads self-defense, he thereby admits authorship of the crime. Accordingly, the burden of evidence is shifted to the accused who must then prove with clear and convincing proof the following elements of self-defense: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel the attack; and (3) lack of sufficient provocation on the part of the person defending himself.

5. ID.; ID.; ID.; ID.; ID.; UNLAWFUL AGGRESSION; A CONDITION *SINE QUA NON;* ELUCIDATED.— x x x Although all three elements must concur, self-defense must firstly rest on proof of unlawful aggression on the part of the victim. If no unlawful aggression attributed to the victim is established, there can be no self-defense, whether complete or incomplete. Unlawful aggression is a condition *sine qua non* for the justifying circumstance of self-defense to apply. As an element of self-defense, unlawful aggression refers to an assault or attack, or a threat thereof in an imminent and immediate manner, which places the defendant's life in actual peril. There is an unlawful aggression on the part of the victim when he puts in actual or imminent danger the life, limb, or right of the person invoking self-defense. There must be actual physical force or actual use of a weapon. To constitute unlawful aggression, the person attacked must be confronted by a real threat on his life and limb; and the peril sought to be avoided must be imminent and actual, not merely imaginary. In the instant case, there was no unlawful aggression on the part of Pedro that justified appellant Lutgardo's act of stabbing him. There was no actual or imminent danger on appellant Lutgardo's life when he came face to face with Pedro. As narrated by eyewitnesses Joselito and Marcos, Pedro was just walking on the road to buy cigarettes and was not provoking appellant Lutgardo into a fight. It was appellant Lutgardo who approached

and stabbed Pedro even when the latter was already held around the shoulders by appellant Ausencio and hit with a *ukulele* by appellant Romulo. In short, appellant Lutgardo, as well as appellants Ausencio and Romulo, were the unlawful aggressors. As earlier stated, we have found the testimonies of Joselito and Marcos to be credible, as they testified in a clear and consistent manner during the trial despite grueling cross-examination of the defense.

6. ID.; ID.; ID.; ID.; ID.; ID.; WHEN UNLAWFUL AGGRESSION CEASES TO EXIST, THE PERSON DEFENDING HAS NO MORE RIGHT TO KILL OR EVEN INJURE THE AGGRESSOR; CASE AT BAR.— Appellant Lutgardo testified that he and Pedro grappled for possession of the knife during the incident. He shouted for help to appellant Romulo, who then came to his aid by hitting Pedro with a *ukulele*. This enabled appellant Lutgardo to snatch the knife from Pedro and to eventually stab the latter with it. It appears from the foregoing that the alleged unlawful aggression on the part of Pedro ceased to exist when appellant Lutgardo seized the knife from the former, as there was no more actual danger on appellant Lutgardo's life. The latter then had no justifiable reason to stab Pedro in the stomach. In valid self-defense, the aggression still exists when the aggressor is killed or injured by the person making a defense. Thus, when the unlawful aggression ceases to exist, the person defending has no more right to kill or even injure the aggressor.

7. ID.; ID.; ID.; ID.; ID.; REASONABLENESS OF THE MEANS EMPLOYED MAY TAKE INTO ACCOUNT THE WEAPONS, THE PHYSICAL CONDITION OF THE PARTIES AND OTHER CIRCUMSTANCES SHOWING THAT THERE IS A RATIONAL EQUIVALENCE BETWEEN THE MEANS OF ATTACK AND THE DEFENSE; CASE AT BAR.— The second element of self-defense requires that the means employed by the person defending himself must be reasonably necessary to prevent or repel the unlawful aggression of the victim. The reasonableness of the means employed may take into account the weapons, the physical condition of the parties and other circumstances showing that there is a rational equivalence between the means of attack and the defense. In the case at bar, there was no reason or necessity for appellant

Lutgardo to stab Pedro with a knife. Pedro was merely walking on the road and did not attack or place in danger the life of appellant Lutgardo during the incident. Granting, *arguendo*, that appellant Lutgardo's version of the incident was true, his act of stabbing Pedro would not also be a reasonable and necessary means of repelling the aggression allegedly initiated by Pedro. Appellant Lutgardo stated that he wrested the knife from Pedro during the incident. Hence, there was no more reason or necessity for him to subsequently stab Pedro, as there was no more peril to his life. Further, he could have simply disabled Pedro with the help of appellant Romulo by pinning Pedro on the ground, or he could have run away and called the police or neighbors for help. In short, appellant Lutgardo had other less harmful options than to stab Pedro in the stomach. The stab wound proved to be fatal, as it penetrated the intestine and large blood vessel of Pedro. Indeed, appellant Lutgardo's act failed to pass the test of reasonableness of the means employed in preventing or repelling an unlawful aggression.

8. ID.; ID.; ID.; ID.; ID.; LACK OF SUFFICIENT PROVOCATION ON THE PART OF THE PERSON MAKING THE DEFENSE; ABSENT IN CASE AT BAR.— As we earlier found, appellant Lutgardo stabbed Pedro without any prior provocation from the latter. Hence, the element of lack of sufficient provocation on the part of the person making the defense is also wanting in the present case.

9. ID.; ID.; ID.; ID.; ID.; NOT PROVEN WITH CLEAR AND CONVINCING EVIDENCE.— Self-defense is a weak defense because, as experience has demonstrated, it is easy to fabricate and difficult to prove. Thus, for this defense to prosper, the accused must prove with clear and convincing evidence the elements of self-defense. He must rely on the strength of his own evidence and not on the weakness of that of the prosecution. Even if the evidence of the prosecution is weak, it cannot be disbelieved if the accused admitted responsibility for the crime charged. In the case before us, appellant Lutgardo failed to prove with plausible evidence all the elements of self-defense. Hence, his plea of self-defense must fail.

10. ID.; ID.; ID.; DEFENSE OF A STRANGER; ELEMENTS; UNLAWFUL AGGRESSION IS ALSO AN INDISPENSABLE ELEMENT.— With respect to appellant Romulo's invocation

of defense of a stranger, three elements must be established: (1) there was unlawful aggression on the part of the victim; (2) there was reasonable necessity of the means employed to prevent or repel it; and (3) the person defending was not induced by revenge, resentment or other evil motive. As in the case of self-defense, unlawful aggression is also a primordial and indispensable element in defense of a stranger. Since we have earlier discerned no unlawful aggression on the part of Pedro, appellant Romulo's reliance on defense of a stranger is unavailing.

11. ID.; ID.; CONSPIRACY; ESTABLISHED IN CASE AT BAR.— Under Article 8 of the Revised Penal Code, there is conspiracy when two or more persons agree to commit a felony and decided to commit it. Conspiracy exists where the participants perform specific acts that indicate unity of purpose in accomplishing the same unlawful object. The presence of conspiracy is implied where the separate acts committed, taken collectively, emanate from a concerted and associated action. It is clear from the testimonies of Joselito and Marcos that appellants were of one mind in killing Pedro, as shown by their well-connected overt acts during the incident, to wit: (1) appellants altogether approached Pedro; (2) appellant Ausencio suddenly embraced and held the shoulders of Pedro; (3) appellants Romulo and Lutgardo went in front of Pedro; (3) appellant Romulo hit Pedro on the forehead with a *ukulele*; (4) appellant Lutgardo stabbed Pedro in the left part of the stomach; (5) appellant Ausencio pushed Pedro to the ground and told the latter, *"You can go home now as you have already been stabbed";* and (6) appellants altogether fled the scene. No other logical conclusion would follow from appellants' concerted action, except that they had a common purpose in accomplishing the same felonious act. Conspiracy having been established, appellants are liable as co-principals regardless of their participation.

12. ID.; AGGRAVATING CIRCUMSTANCES; TREACHERY; DEFINED; ELEMENTS; ESTABLISHED IN CASE AT BAR.— There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from any defensive or retaliatory act which the victim might

make. The essence of treachery is a deliberate and sudden attack that renders the victim unable and unprepared to defend himself by reason of the suddenness and severity of the attack. Two essential elements are required in order that treachery can be appreciated: (1) The employment of means, methods or manner of execution that would ensure the offender's safety from any retaliatory act on the part of the offended party who has, thus, no opportunity for self-defense or retaliation; and (2) deliberate or conscious choice of means, methods or manner of execution. Further, this aggravating circumstance must be alleged in the information and duly proven. In the case at bar, treachery was alleged in the information and all its elements were duly established by the prosecution.

13. ID.; ID.; EVIDENT PREMEDITATION; ELEMENTS; NOT PROVEN IN CASE AT BAR.— We have observed that the aggravating circumstances of evident premeditation and abuse of superior strength were also alleged in the information. It is a rule of evidence that an aggravating circumstance must be proven as clearly as the crime itself. For evident premeditation to be appreciated as an aggravating circumstance, the following elements must be present: (1) the time when the offender was determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to his resolve; and (3) a sufficient interval of time between the determination or conception and the execution of the crime to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of the will if he desired to hearken to its warning. In the instant case, no proof was adduced to prove the foregoing elements. Thus, the RTC and the Court of Appeals were correct in disregarding evident premeditation.

14. ID.; ID.; ABUSE OF SUPERIOR STRENGTH; CANNOT BE SEPARATELY APPRECIATED BECAUSE IT IS ABSORBED AND INHERENT IN TREACHERY.— The RTC and the Court of Appeals also properly disregarded the aggravating circumstance of abuse of superior strength because it is absorbed and inherent in treachery. As such, it cannot be separately appreciated as an independent aggravating circumstance.

15. ID.; MITIGATING CIRCUMSTANCES; LACK OF INTENT TO COMMIT SO GRAVE A WRONG; CANNOT BE

CONSIDERED IN FAVOR OF APPELLANTS; EXPLAINED.— Under Article 13(3) of the Revised Penal Code, a person's criminal liability may be mitigated if the offender had no intention to commit so grave a wrong as that committed. This mitigating circumstance is obtaining when there is a notable disparity between the means employed by the accused to commit a wrong and the resulting crime committed. The intention of the accused at the time of the commission of the crime is manifested from the weapon used, the mode of attack employed and the injury sustained by the victim. Appellant Lutgardo used a 12-inch knife, which is a lethal weapon, in stabbing Pedro. He directed the knife at and landed it on Pedro's stomach, which proved to be fatal, as it seriously damaged Pedro's intestine and blood vessel and eventually led to his death. Appellant Ausencio held the shoulders of Pedro, while appellant Romulo hit the victim with a *ukulele* to neutralize his resistance and to facilitate the fatal stabbing. Appellants' attack on Pedro was sudden and deliberate. These concerted acts of appellants eloquently demonstrated their intent to kill him. Thus, the mitigating circumstance of lack of intent to commit so grave a wrong as that committed cannot be considered in favor of appellants.

16. ID.; ID.; SUFFICIENT PROVOCATION OR THREAT ON THE PART OF THE OFFENDED PARTY; ELEMENTS; ABSENT IN CASE AT BAR.— Likewise, appellants are not entitled to the mitigating circumstance of sufficient provocation or threat on the part of the offended party, which must have immediately preceded the crime as provided in Article 13(4) of the Revised Penal Code. Before the same can be appreciated, the following elements must concur: (1) that the provocation or threat must be sufficient or proportionate to the crime committed and adequate to arouse one to its commission; (2) that the provocation or threat must originate from the offended party; and (3) that the provocation must be immediate to the commission of the crime by the person provoked. Pedro did not in any way provoke appellants into a fight on that fateful night. There was no argument or physical struggle that ensued between them shortly before appellants helped one another in killing Pedro. Pedro, in fact, tried to avoid a fight or misunderstanding with appellants by agreeing to buy them cigarettes at his own expense. Unfortunately, when Pedro was

on his way to buy cigarettes for appellants, the latter suddenly assaulted him. Clearly, the mitigating circumstance of sufficient provocation or threat on the part of the offended party which immediately preceded the crime, is lacking in the present case.

17. ID.; ID.; PASSION OR OBFUSCATION; UNAVAILING IN CASE AT BAR.— Appellants cannot also avail themselves of the mitigating circumstance of having acted upon an impulse so powerful as naturally to have produced passion or obfuscation stated in Article 13(6) of the Revised Penal Code. The following essential requirements must be present: (1) there was an act that was both unlawful and sufficient to produce such condition (passion or obfuscation) of the mind; and (2) such act was not far removed from the commission of the crime by a considerable length of time, during which the perpetrator might have recovered his normal equanimity. In the case at bar, there was no unlawful and sufficient act on Pedro's part which sufficiently provoked passion or obfuscation on appellants' side. As repeatedly stated, Pedro was innocently walking on the road to buy cigarettes for appellants when the latter viciously attacked him for no reason at all. Thus, the mitigating circumstance of passion or obfuscation is unavailing.

18. ID.; CRIMES AGAINST PERSONS; MURDER; PENALTY IN CASE AT BAR.— Article 248 of the Revised Penal Code states that murder is punishable by *reclusion perpetua* to death. Article 63 of the same Code provides that if the penalty is composed of two indivisible penalties, as in the instant case, and there are no aggravating or mitigating circumstances, the lesser penalty shall be applied. Since there is no mitigating or aggravating circumstance in the present case, and treachery cannot be considered as an aggravating circumstance as it is already considered a qualifying circumstance, the lesser penalty of *reclusion perpetua* should be imposed. Hence, the Court of Appeals acted accordingly in sentencing each of the appellants to *reclusion perpetua*.

19. CIVIL LAW; DAMAGES; AWARD OF CIVIL INDEMNITY AND MORAL DAMAGES; MANDATORY IN MURDER CASES.— The award of civil indemnity for the death of Pedro in the amount of ₱50,000.00 and moral damages amounting to ₱50,000.00 was proper, since they are mandatory in murder

cases without need of proof and allegation other than the death of the victim.

20. ID.; ID.; EXEMPLARY DAMAGES; AWARD THEREOF IS PROPER IN CASE AT BAR.— The Court of Appeals awarded to the heirs of Pedro Barbo the amount of ₱25,000.00 as exemplary damages, since the qualifying circumstance of treachery was firmly established. We agree with the award, except that we increase the same to ₱30,000.00 pursuant to current jurisprudence.

21. ID.; ID.; ACTUAL DAMAGES; NOT RECOVERABLE IN CASE AT BAR; EXPLAINED.— The Court of Appeals was correct in refusing to award actual damages in favor of Pedro's heirs. To be entitled to actual damages, the amount of loss must not only be capable of proof but must actually be proven with a reasonable degree of certainty, premised upon competent proof or the best evidence obtainable of the actual amount thereof, such as receipts or other documents to support the claim. In the case before us, no receipt or supporting document pertaining to the amount of hospital, funeral and burial expenses for Pedro was submitted. Hence, actual damages are not recoverable.

22. ID.; ID.; TEMPERATE DAMAGES; AWARD THEREOF IS PROPER IN CASE AT BAR.— x x x [U]nder Article 2224 of the Civil Code, temperate damages "may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty." It cannot be denied that the heirs of Pedro suffered pecuniary loss due to Pedro's hospital, funeral and burial expenses, although the amount thereof was not determined with certitude. Accordingly, in lieu of actual damages, the heirs of Pedro are entitled to temperate damages in the amount of ₱25,000.00.

23. ID.; ID.; INDEMNIFICATION FOR LOSS OR EARNING CAPACITY; DOCUMENTARY EVIDENCE SHOULD BE PRESENTED TO SUBSTANTIATE A CLAIM FOR DAMAGES FOR LOSS OF EARNING CAPACITY; EXCEPTIONS; CASE AT BAR.— x x x [I]ndemnification for Pedro's loss of earning capacity cannot be awarded. The general rule is that documentary evidence should be presented

to substantiate a claim for damages for loss of earning capacity. As an exception, damages may be awarded in the absence of documentary evidence, provided there is testimony that the victim was either (1) self-employed and earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the victim's line of work, no documentary evidence is available; or (2) employed as a daily wage worker earning less than the minimum wage under current labor laws. In the instant case, neither of the two exceptions applied. Luz testified that Pedro was earning an amount of not less than ₱350.00 per day as a carpenter. The earning of Pedro was above the minimum wage set by labor laws in his workplace at the time of his death. This being the case, the general rule of requiring documentary evidence of his earning capacity finds application. Unfortunately for Pedro's heirs, no such proof was presented at all. The non-awarding of damages for loss of earning capacity by the Court of Appeals is therefore proper.

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, dated 24 June 2008, of the Court of Appeals in CA-G.R. CEB CR-HC No. 00503,[1] which affirmed with modification the Decision dated 6 August 2004, and Resolution dated 7 November 2005, of the Regional Trial Court (RTC), Branch 2, Eastern Samar, in Criminal Case No. 11111[2] finding accused-appellants Ausencio Comillo Jr., Lutgardo Comillo and Romulo Altar guilty of the crime of murder.

The facts borne by the records are as follows:

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[1] Penned by Associate Justice Amy C. Lazaro-Javier with Associate Justices Francisco P. Acosta and Florito S. Macalino, concurring; *rollo*, pp. 2-14.

[2] Penned by Presiding Judge Arnulfo O. Bugtas; CA *rollo*, pp. 32-51.

On 14 March 2000, an information[3] was filed with the RTC charging appellants with murder. The accusatory portion of the information reads:

> The undersigned accuses AUSENCIO COMILLO JR., ROMULO ALTAR and LUTGARDO COMILLO of Barangay 11, Llorente, Eastern Samar of the crime of MURDER committed as follows:
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> That on December 18, 1999, at about 8:30 o'clock in the evening at Escalo Street, Barangay 11, Llorente, Eastern Samar, Philippines and within the jurisdiction of this Honorable Court, the above-named accused armed with bladed weapons conspiring, confederating, and mutually helping one another and taking advantage of superior strength with intent to kill and with evident premeditation and treachery did then and there willfully, unlawfully and feloniously attack, assault, stab and wound PEDRO BARBO, which caused the direct death of said PEDRO BARBO, to the damage and prejudice of the heirs of the victim.

When arraigned on 13 December 2001, each of the appellants pleaded "Not guilty" to the charge.[4] Trial on the merits thereafter followed.

The prosecution presented as witnesses Joselito Bojocan, Marcos Borac, Luz Barbo, and Dr. Roy C. Cayago. Their testimonies, woven together, bare the following:

On 18 December 1999, at about 8:30 p.m., herein victim Pedro C. Barbo (Pedro) bought cigarettes from a store located on Escalo Street, Barangay 11, Llorente, Eastern Samar. While Pedro was walking on the said street on his way home, appellant Ausencio Comillo Jr. (Ausencio), the former's elder brother, appellant Lutgardo Comillo (Lutgardo), and Romulo Altar (Romulo) approached Pedro and asked the latter for cigarettes. Pedro gave all his cigarettes to appellants Ausencio and Lutgardo. As regards appellant Romulo, Pedro told him to wait as he would buy cigarettes in the nearby store. While Pedro was walking towards the store, appellant Ausencio suddenly embraced and held the shoulders of Pedro. At this juncture, appellants Romulo

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[3] Records, p. 5.

[4] *Id.* at 64-67.

and Lutgardo went infront of Pedro. Appellant Romulo then hit Pedro on the forehead with a *ukulele* (small guitar). Afterwards, appellant Lutgardo stabbed Pedro on the left part of the stomach. Appellant Ausencio pushed Pedro to the ground and told the latter, *"You can go home now as you have already been stabbed."* Appellants then immediately fled the scene.[5]

Subsequently, several persons rushed Pedro to a hospital where he was examined and treated by Dr. Roy C. Cayago (Dr. Cayago). While in the hospital, Pedro mentioned to his wife, Luz, the names Molong, Seksek and Lote as his assailants. Later, Pedro died due to the stab wound, which penetrated his intestine and blood vessel. Appellants were then charged with and arrested for the killing of Pedro.[6]

Joselito Bojocan (Joselito) and Marcos Borac (Marcos) witnessed the stabbing incident. Joselito was standing near a barbecue stall along Escola Street when he saw the gruesome act. He was six meters away from Pedro and appellants when the incident occurred. He was one of those who rushed Pedro to the hospital after the incident. On the other hand, Marcos was walking along Escalo Street when he witnessed the felony. He was ten meters away from Pedro and appellants when the crime transpired. Joselito and Marcos recognized Pedro and appellants on that tragic night, as the scene was well-lighted.[7]

The prosecution also submitted documentary and object evidence to bolster the testimonies of its witnesses, to wit: (1) affidavit of Joselito Bojocan (Exhibit A);[8] (2) affidavit of Marcos Borac (Exhibit B);[9] (3) affidavit of Luz Barbo (Exhibit C);[10] (4) supplemental affidavit of Luz Barbo (Exhibit D);[11] (5) death

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[5] TSN, 8 August 2001 and 4 September 2001.

[6] TSN, 5 September 2001 and 28 November 2001.

[7] TSN, 8 August 2001.

[8] Records, pp. 21-23.

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

[10] *Id.* at 14-16.

[11] *Id.* at 24-26.

certificate of Pedro Barbo (Exhibit E);[12] (6) medical certificate of Pedro issued by Dr. Roy Cayago (Exhibit F);[13] and (7) anatomical sketch pertaining to the location of the stab wound in Pedro's body (Exhibit G).[14]

For its part, the defense adduced the testimonies of appellants and Irene Torilio to refute the foregoing accusation. No documentary or object evidence was proffered. In denying any liability, appellant Ausencio interposed alibi, while appellants Lutgardo and Romulo invoked self-defense and defense of a stranger, respectively.

Appellant Ausencio testified that on 18 December 1999, at about 8:30 p.m., he was resting in bed inside his family's house located at Escalo Street, Barangay 11, Llorente, Eastern Samar, as he was then suffering from fever. Later that evening, appellant Romulo arrived at the house and picked up some clothes. Romulo disclosed to him that the former had injured a person, and, thereafter, left the house. Subsequently, on that same night, appellant Romulo returned to the house with appellant Ausencio (his elder brother), appellant Lutgardo, and Juaning Comillo (mother of appellants Ausencio and Lutgardo). Juaning told him that Pedro had made a commotion on Escalo Street and brandished a weapon.[15]

Appellant Lutgardo narrated that on the evening of 18 December 1999, he and appellant Romulo strolled along Escola Street, searching for houses at which to render Christmas carols. Appellant Romulo had a *ukulele* to be used in rendering carols. Pedro appeared from nowhere and tried to stab appellant Lutgardo with a knife, which the latter eluded. He and Pedro wrestled for possession of the knife. He shouted for help to appellant Romulo, who then responded by hitting Pedro with a *ukulele*. Appellant Lutgardo then got hold of the knife from Pedro and

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[12] *Id.* at 18.

[13] *Id.* at 19.

[14] *Id.* at 109.

[15] TSN, 17 April 2002.

stabbed the latter. Later, he threw the knife in a nearby school campus.[16]

Appellant Romulo narrated that on the evening of 18 December 1999, he and appellant Lutgardo walked along Escola Street to look for houses where they could render Christmas carols. Pedro suddenly approached them and drew a knife. Pedro tried to stab appellant Lutgardo, but the latter evaded it. Pedro and appellant Lutgardo grappled for possession of the knife. At this point, appellant Lutgardo shouted to appellant Romulo for help. He responded by hitting Pedro with a *ukulele* on the right shoulder, which caused the latter to lose grip on the knife. Appellant Lutgardo then picked up the knife and stabbed Pedro on the body. Thereafter, he ran away from the scene.[17]

Irene Torilio (Irene), friend of Juaning, stated that on 18 December 1999, at about 8:30 p.m., she went to Juaning's house on Escalo Street, to invite her for Christmas carols. Irene saw appellant Ausencio inside the said house. While she and Juaning were about to leave the house, they saw Pedro on Escalo Street wielding a weapon and harassing appellants Romulo and Lutgardo. Juaning immediately approached appellant Lutgardo and escorted the latter inside the house. Appellant Romulo then hit Pedro with a *ukulele*.[18]

After trial, the RTC rendered a Decision convicting appellants of murder and imposing on each of them the death penalty. The trial court also ordered appellants to jointly pay the heirs of Pedro civil indemnity in the amount of ₱50,000.00.[19] Appellants filed a motion for reconsideration but this was denied.[20] The case was elevated to the Court of Appeals.

On 24 June 2008, the Court of Appeals promulgated its Decision affirming with modification the RTC Decision. The appellate

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[16] TSN, 13 January 2004.

[17] TSN, 14 May 2004.

[18] TSN, 7 March 2002.

[19] *Rollo,* p. 51.

[20] Records, pp. 376-394.

court downgraded the penalty from death to *reclusion perpetua*. Further, in addition to the civil indemnity of ₱50,000.00, the appellate court also ordered appellants to jointly pay the heirs of Pedro moral damages amounting to ₱50,000.00 and exemplary damages in the amount of ₱25,000.00.[21] Appellants filed a Notice of Appeal on 7 July 2008.[22]

In their Brief,[23] appellants assigned the following errors:

I.

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF THE CRIME OF MURDER DESPITE THE FACT THAT THEIR INDIVIDUAL GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

II.

ASSUMING *ARGUENDO* THAT ACCUSED-APPELLANTS COULD BE LIABLE FOR THE DEATH OF PEDRO BARBO, THE COURT *A QUO* ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY WHEN THE SAME WAS NOT PROVEN BEYOND REASONABLE DOUBT.[24]

In the main, appellants put in issue the credibility of Joselito and Marcos' testimonies. They contend that the testimonies of said witnesses did not establish their guilt for murder.[25]

In resolving issues pertaining to the credibility of the witnesses, this Court is guided by the following well-settled principles: (1) the reviewing court will not disturb the findings of the lower court, unless there is a showing that it overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that may affect the result of the case; (2) the findings of the trial court on the credibility of witnesses are entitled to great respect and even finality, as it had the opportunity to examine

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[21] *Rollo,* p. 13.

[22] *Id.* at 15.

[23] CA *rollo,* pp. 17-31.

[24] *Id.* at 19.

[25] *Id.* at 26.

their demeanor when they testified on the witness stand; and (3) a witness who testifies in a clear, positive and convincing manner is a credible witness.[26]

After carefully reviewing the evidence on record and applying the foregoing parameters to this case, we found no cogent reason to overturn the RTC's ruling finding the testimonies of Joselito and Marcos credible. As an eyewitness to the incident, Joselito positively identified appellant Ausencio as the one who embraced and held the shoulders of Pedro, and appellant Romulo as the person who hit Pedro with a *ukulele*. He also recognized appellant Lutgardo as the one who stabbed Pedro. He was merely six meters away from appellants and Pedro during the incident. In addition, the crime scene was well-lighted by lamp posts, which enabled him to recognize appellants and Pedro. Further, he was familiar with the faces of appellants because they were his acquaintances.[27] Joselito's direct account of how appellants helped one another in killing Pedro is candid and convincing, thus:

Q: Where were you on December 18, 1999, at around 8:30 o'clock in the evening?

A: I was at the barbecue stand of Mano Alex, sir.

Q: Where is that barbecue stand of certain Alex located?

A: At Llorente, sir.

Q: Can you please specify the *barangay* including the street where it is located?

A: Barangay 11, sir.

Q: Do you know the street?

A: Reverse street, if one is from the direction of Borongan, the first street, sir.

Q: Now, why were you at the barbecue stand of Alex?

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[26] *People v. Goleas*, G.R. No. 181467, 6 August 2008, 561 SCRA 380, 387; *People v. Guevarra*, G.R. No. 182192, 29 October 2008, 570 SCRA 288, 302; *People v. Galido*, G.R. Nos. 148689-92, 30 March 2004, 426 SCRA 502, 513.

[27] TSN, 8 August 2001.

A: Because I serve as an errand boy of Mano Alex whenever there is a customer, sir.

Q: And at that precise time 8:30 o'clock in the evening on December 18, 1999, will you please tell this Honorable Court, what have you observed while you were at the barbecue stand of Alex?

A: What I observe was Pedro Barbo bought cigarettes from the store just across the barbecue stand, sir.

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Q: After that what happened, if any?

A: He was already on his way home, sir.

Q: While he was already on his way home, can you tell before this Honorable Court what happened next?

A: He was met along the way by Ausencio Comillo, Romulo Altar and Lutgardo Comillo, sir.

Q: After the three met Pedro Barbo, what happened?

A: The trio asked for cigarettes from Pedro Barbo, sir.

Q: Then, what happened there after Pedro Barbo was asked for a cigarette?

A: Since at the time when Pedro Barbo was asked for cigarette by the three, he only had two cigarettes, Romulo Altar said that "where is my cigarette? Where is the cigarette for me?" sir.

Q: Immediately after those exchange of words, what untoward incident, if any, had happened?

A: Pedro Barbo asked permission saying "just calm [down], I will buy more cigarettes," sir.

Q: While Pedro was going to buy cigarettes, x x x what happened thereafter?

A: He was embraced by Ausencio Comillo, sir.

Q: Who was embraced by Ausencio Comillo, if you know?

A: Pedro Barbo, sir.

Q: Do you mean to say this Pedring Barbo refers to Pedro Barbo?

A: Yes, sir.

Q: Will you, please, with our interpreter how Pedro was held or embraced by Ausencio Comillo?

A: Yes, sir. (Witness demonstrating that Ausencio Comillo embraced Pedro Barbo from behind with his two arms).

Q: Now, when Pedro Barbo was in that position being embraced or held by Ausencio Comillo, will you please tell this Honorable Court what happened thereafter?

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A: He was hit with a ukulili by Romulo Altar, sir.

Q: Can you tell before this Honorable Court, whether he was hit?

A: Yes sir. He was hit.

Q: Will you please tell before this Honorable Court what part of his body was hit by this smashing blow?

A: (Witness demonstrating and indicating his forehead).

Q: After Pedro Barbo was hit by a ukulele by Romulo Altar, what happened thereafter?

A: He was stabbed by Lutgardo Comillo, sir.

Q: You said he was stabbed, what part of the body was stabbed of Pedro Barbo?

A: On the right side part of his body, sir.

Q: Will you please demonstrate before this honorable Court what do you mean by the right side part of his body?

A: (Witness demonstrating that the victim was hit on the left, witness indicating on his left part of his abdomen).

Q: Now, after Pedro Barbo was stabbed by Lutgardo Comillo, what happened to Pedro Barbo?

A: He was pushed by Ausencio Comillo and the latter uttering the words, "now you can go home as you have already been stabbed," sir.

Q: Now, after Pedro Barbo was pushed, what happened to said Pedro Barbo?

A: The trio ran towards the direction of the river of Llorente, sir.[28]

Marcos's testimony, corroborating the foregoing testimony of Joselito, was also clear and reliable. Being an eyewitness to the incident, he pointed to appellant Ausencio as the one who held the shoulders of Pedro, and appellant Romulo as the person who hit Pedro on the head with a *ukulele*. He also identified appellant Lutgardo as the one who stabbed Pedro. His narration of the incident is truthful, to wit:

Q: Mr. Borac, where were you on December 18, 1999, at around 8:30 o'clock in the evening?

A: I was on Escalo Street, Llorente, Eastern Samar.

Q: What were you then doing at Escalo Street, Llorente, Eastern Samar?

A: I was walking, sir.

Q: While you were walking, can you still recall any untoward incident that happened at that time?

A: Yes sir, there was.

Q: Will you please tell this Honorable Court, what was that untoward incident that you have witnessed?

A: What I saw that night a person was being embraced by Pedro Barbo.

Q: And who was that person that was being embraced?

A: It was Ausencio Comillo holding or embracing Pedro Barbo.

Q: Now, while Ausencio Comillo was holding Pedro Barbo, what other incident transpired at that time?

A: I saw Romulo Altar got near the two and he smashed his ukulele on Pedro Barbo.

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[28] TSN, 8 August 2001, pp. 3-7.

Q: What part of the body of Pedro Barbo was smashed by the ukulele of Romulo Altar?

A: On the left side of his forehead.

Q: Aside from that incident what happened next if you know?

A: This Lutgardo Comillo stabbed Pedro Barbo.

Q: What kind of instrument if you know that was used by Lutgardo Comillo in stabbing the late Pedro Barbo?

A: It was a bladed weapon locally called *depang*.

Q: What happened after the stabbing of Pedro Barbo?

A: I saw Pedro Barbo was pushed.

Q: Then what happened after Pedro Barbo was pushed by Ausencio Comillo?

A: When Ausencio Comillo pushed the late Pedro Barbo, the latter fell and after Pedro Barbo fell to the ground, they ran away.[29]

The foregoing testimonies are consistent with the undisputed medical findings of Dr. Cayago. In his medical certificate for Pedro and in his court testimony, Dr. Cayago verified that Pedro died due to a stab wound in the stomach, which penetrated his intestine and blood vessel.[30]

Further, the said testimonies and medical findings jibe with the documentary evidence submitted by the prosecution. The RTC and the Court of Appeals found the testimonies of Joselito and Marcos to be credible. Both courts also found no ill motive on their part.

To rebut the overwhelming evidence for the prosecution, appellants interposed alibi, self-defense and defense of a stranger. Appellant Ausencio claimed he was lying in bed inside the house and was suffering from fever when the incident occurred. On the other hand, appellant Lutgardo alleged that he merely protected his life when he stabbed Pedro. For his part, appellant Romulo

[29] TSN, 4 September 2001, pp. 2-4.

[30] TSN, 28 November 2001.

explained that he hit Pedro with a *ukulele* to help his friend, appellant Lutgardo, who was then being attacked by Pedro with a knife.

Alibi is the weakest of all defenses, for it is facile to contrive and difficult to prove. The defense of alibi must be proved by the accused with clear and convincing evidence. For alibi to prosper, it is not enough for the accused to prove that he was somewhere else when the crime was committed. He must likewise prove that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission.[31]

Appellant Ausencio claimed he was inside his house located at Escalo St. when the incident occurred in front of his house.[32] Being very near the crime scene, it was not physically impossible for him to be there during the incident. He also averred that he had a fever during the incident. Nonetheless, aside from this self-serving assertion, no medical certificate or other plausible proof was adduced to bolster such allegation.

It is true that Irene Torilio corroborated the foregoing testimony of appellant Ausencio. However, it should be noted that she is the *comadre* and close friend of appellants Ausencio and Lutgardo's mother.[33] We have held that testimonies of relatives and friends of the accused which corroborate the accused's alibi are suspect and should be received with caution because of perceived bias.[34] In addition, the RTC, the Court of Appeals, and this Court found the testimonies of Joselito and Marcos identifying appellants as the authors of the crime to be more credible than those of appellant Ausencio and Irene. Joselito

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[31] *People v. Guevarra*, *supra* note 26; *Mendoza v. People*, G.R. No. 173551, 4 October 2007, 534 SCRA 668, 693.

[32] TSN, 17 April 2002, pp. 12-13.

[33] *Id.* at 8.

[34] *People v. De Guzman*, G.R. No. 173197, 24 April 2007, 522 SCRA 207, 217; *People v. Barcenal*, G.R. No. 175925, 17 August 2007, 530 SCRA 706, 724; *Tadeja v. People*, G.R. No. 145336, 21 July 2006, 496 SCRA 157, 167.

and Marcos were disinterested witnesses, and no ill motive on their part was shown when they testified against appellants. It is settled that the positive and categorical identification of the accused, without any showing of ill motive on the part of the eyewitnesses testifying on the crime, prevails over alibi.[35]

Regarding appellant Lutgardo's plea of self-defense, it is axiomatic that when an accused pleads self-defense, he thereby admits authorship of the crime. Accordingly, the burden of evidence is shifted to the accused who must then prove with clear and convincing proof the following elements of self-defense: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel the attack; and (3) lack of sufficient provocation on the part of the person defending himself. Although all three elements must concur, self-defense must firstly rest on proof of unlawful aggression on the part of the victim. If no unlawful aggression attributed to the victim is established, there can be no self-defense, whether complete or incomplete. Unlawful aggression is a condition *sine qua non* for the justifying circumstance of self-defense to apply.[36]

As an element of self-defense, unlawful aggression refers to an assault or attack, or a threat thereof in an imminent and immediate manner, which places the defendant's life in actual peril. There is an unlawful aggression on the part of the victim when he puts in actual or imminent danger the life, limb, or right of the person invoking self-defense. There must be actual physical force or actual use of a weapon. To constitute unlawful aggression, the person attacked must be confronted by a real threat on his life and limb; and the peril sought to be avoided must be imminent and actual, not merely imaginary.[37]

In the instant case, there was no unlawful aggression on the part of Pedro that justified appellant Lutgardo's act of stabbing

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[35] *People v. Bon*, G.R. No. 166401, 30 October 2006, 506 SCRA 168, 186.

[36] *Mahawan v. People*, G.R. No. 176609, 18 December 2008, 574 SCRA 737, 746.

[37] *Id*.

him. There was no actual or imminent danger on appellant Lutgardo's life when he came face to face with Pedro. As narrated by eyewitnesses Joselito and Marcos, Pedro was just walking on the road to buy cigarettes and was not provoking appellant Lutgardo into a fight. It was appellant Lutgardo who approached and stabbed Pedro even when the latter was already held around the shoulders by appellant Ausencio and hit with a *ukulele* by appellant Romulo. In short, appellant Lutgardo, as well as appellants Ausencio and Romulo, were the unlawful aggressors. As earlier stated, we have found the testimonies of Joselito and Marcos to be credible, as they testified in a clear and consistent manner during the trial despite grueling cross-examination of the defense.

Even if this Court were to adopt appellant Lutgardo's version of the incident, the result or conclusion would be the same.

Appellant Lutgardo testified that he and Pedro grappled for possession of the knife during the incident. He shouted for help to appellant Romulo, who then came to his aid by hitting Pedro with a *ukulele*. This enabled appellant Lutgardo to snatch the knife from Pedro and to eventually stab the latter with it.[38] It appears from the foregoing that the alleged unlawful aggression on the part of Pedro ceased to exist when appellant Lutgardo seized the knife from the former, as there was no more actual danger on appellant Lutgardo's life. The latter then had no justifiable reason to stab Pedro in the stomach. In valid self-defense, the aggression still exists when the aggressor is killed or injured by the person making a defense. Thus, when the unlawful aggression ceases to exist, the person defending has no more right to kill or even injure the aggressor.[39]

The second element of self-defense requires that the means employed by the person defending himself must be reasonably necessary to prevent or repel the unlawful aggression of the victim. The reasonableness of the means employed may take into account the weapons, the physical condition of the parties

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[38] TSN, 13 January 2004.

[39] *People v. Annibong*, 451 Phil. 117, 127 (2003).

and other circumstances showing that there is a rational equivalence between the means of attack and the defense.[40]

In the case at bar, there was no reason or necessity for appellant Lutgardo to stab Pedro with a knife. Pedro was merely walking on the road and did not attack or place in danger the life of appellant Lutgardo during the incident. Granting, *arguendo*, that appellant Lutgardo's version of the incident was true, his act of stabbing Pedro would not also be a reasonable and necessary means of repelling the aggression allegedly initiated by Pedro. Appellant Lutgardo stated that he wrested the knife from Pedro during the incident. Hence, there was no more reason or necessity for him to subsequently stab Pedro, as there was no more peril to his life. Further, he could have simply disabled Pedro with the help of appellant Romulo by pinning Pedro on the ground, or he could have run away and called the police or neighbors for help. In short, appellant Lutgardo had other less harmful options than to stab Pedro in the stomach. The stab wound proved to be fatal, as it penetrated the intestine and large blood vessel of Pedro. Indeed, appellant Lutgardo's act failed to pass the test of reasonableness of the means employed in preventing or repelling an unlawful aggression.

As we earlier found, appellant Lutgardo stabbed Pedro without any prior provocation from the latter. Hence, the element of lack of sufficient provocation on the part of the person making the defense is also wanting in the present case.

Self-defense is a weak defense because, as experience has demonstrated, it is easy to fabricate and difficult to prove. Thus, for this defense to prosper, the accused must prove with clear and convincing evidence the elements of self-defense. He must rely on the strength of his own evidence and not on the weakness of that of the prosecution. Even if the evidence of the prosecution is weak, it cannot be disbelieved if the accused admitted responsibility for the crime charged.[41] In the case before us,

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[40] *People v. De Guzman*, *supra* note 34; *People v. Barcenal*, *supra* note 34; *Tadeja v. People*, *supra* note 34.

[41] *Id*.

appellant Lutgardo failed to prove with plausible evidence all the elements of self-defense. Hence, his plea of self-defense must fail.

With respect to appellant Romulo's invocation of defense of a stranger, three elements must be established: (1) there was unlawful aggression on the part of the victim; (2) there was reasonable necessity of the means employed to prevent or repel it; and (3) the person defending was not induced by revenge, resentment or other evil motive.[42] As in the case of self-defense, unlawful aggression is also a primordial and indispensable element in defense of a stranger.[43] Since we have earlier discerned no unlawful aggression on the part of Pedro, appellant Romulo's reliance on defense of a stranger is unavailing.

Appellants, nonetheless, maintain that the prosecution failed to prove conspiracy among them in killing Pedro.[44]

Under Article 8 of the Revised Penal Code, there is conspiracy when two or more persons agree to commit a felony and decided to commit it. Conspiracy exists where the participants perform specific acts that indicate unity of purpose in accomplishing the same unlawful object.[45] The presence of conspiracy is implied where the separate acts committed, taken collectively, emanate from a concerted and associated action.[46]

It is clear from the testimonies of Joselito and Marcos that appellants were of one mind in killing Pedro, as shown by their well-connected overt acts during the incident, to wit: (1) appellants altogether approached Pedro; (2) appellant Ausencio suddenly embraced and held the shoulders of Pedro; (3) appellants Romulo and Lutgardo went in front of Pedro; (3) appellant Romulo hit Pedro on the forehead with a *ukulele*; (4) appellant Lutgardo

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[42] *People v. Diego*, 424 Phil. 743, 751 (2002).

[43] *Id.*

[44] CA *rollo*, p. 29.

[45] *Acejas III v. People*, G.R. No. 156643, 27 June 2006, 493 SCRA 292, 322.

[46] *Nierva v. People*, G.R. No. 153133, 26 September 2006, 503 SCRA 114, 127.

stabbed Pedro in the left part of the stomach; (5) appellant Ausencio pushed Pedro to the ground and told the latter, *"You can go home now as you have already been stabbed"*; and (6) appellants altogether fled the scene. No other logical conclusion would follow from appellants' concerted action, except that they had a common purpose in accomplishing the same felonious act. Conspiracy having been established, appellants are liable as co-principals regardless of their participation.[47]

Appellants assert there was no treachery in the killing of Pedro which would qualify the crime as murder.[48]

There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from any defensive or retaliatory act which the victim might make.[49] The essence of treachery is a deliberate and sudden attack that renders the victim unable and unprepared to defend himself by reason of the suddenness and severity of the attack. Two essential elements are required in order that treachery can be appreciated: (1) The employment of means, methods or manner of execution that would ensure the offender's safety from any retaliatory act on the part of the offended party who has, thus, no opportunity for self-defense or retaliation; and (2) deliberate or conscious choice of means, methods or manner of execution.[50] Further, this aggravating circumstance must be alleged in the information and duly proven.[51]

In the case at bar, treachery was alleged in the information and all its elements were duly established by the prosecution.

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[47] *People v. Rodas*, G.R. No. 175881, 28 August 2007, 531 SCRA 554, 567.

[48] CA *rollo*, pp. 27-29.

[49] Paragraph 16, Article 14 of the Revised Penal Code.

[50] *Velasco v. People*, G.R. No. 166479, 28 February 2006, 483 SCRA 649, 669-670.

[51] RULES OF COURT, Rule 110, Sections 8 and 9.

While Pedro was walking on the road, appellants approached Pedro and asked the latter for cigarettes. Pedro gave all his cigarettes to appellants Ausencio and Lutgardo. Appellant Romulo inquired from Pedro as to his cigarettes. Pedro told appellant Romulo to wait as he would buy cigarettes in the nearby store. When Pedro turned his back on appellants and walked towards the store, appellant Ausencio suddenly approached, embraced and held the shoulders of Pedro. At this point, appellants Romulo and Lutgardo went in front of Pedro. Appellant Romulo then hit Pedro on the forehead with a *ukulele*. Afterwards, appellant Lutgardo stabbed Pedro in the left part of the stomach. Appellant Ausencio pushed Pedro to the ground and told the latter, *"You can go home now as you have already been stabbed."*[52] Appellants then immediately fled the scene. It is evident that appellants' attack on Pedro was sudden and unexpected. Pedro had no idea that appellants would attack him, as all he knew was that the latter only wanted him to buy cigarettes for them. The suddenness and unexpectedness of appellants' assault rendered Pedro defenseless and without means of escape. Pedro was also unarmed, alone, and outnumbered during the incident. In such a helpless situation, it was absolutely impossible for Pedro to defend himself against the onslaught of appellants. Further, appellants deliberately adopted means and methods in exacting Pedro's death. Pedro's shoulders were restrained by appellant Ausencio. Then, he was hit by appellant Romulo with a *ukulele*. These acts facilitated the stabbing of Pedro by appellant Lutgardo. Verily, the manner in which Pedro was restrained and assaulted was deliberately and consciously adopted by appellants to prevent him from retaliating or escaping and, ultimately, to ensure his death.

We have observed that the aggravating circumstances of evident premeditation and abuse of superior strength were also alleged in the information. It is a rule of evidence that an aggravating circumstance must be proven as clearly as the crime itself.[53]

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[52] TSN, 8 August 2001, p. 7.

[53] *People v. Discalsota*, 430 Phil. 406, 416 (2002).

For evident premeditation to be appreciated as an aggravating circumstance, the following elements must be present: (1) the time when the offender was determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to his resolve; and (3) a sufficient interval of time between the determination or conception and the execution of the crime to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of the will if he desired to hearken to its warning.[54]

In the instant case, no proof was adduced to prove the foregoing elements. Thus, the RTC and the Court of Appeals were correct in disregarding evident premeditation.

The RTC and the Court of Appeals also properly disregarded the aggravating circumstance of abuse of superior strength because it is absorbed and inherent in treachery.[55] As such, it cannot be separately appreciated as an independent aggravating circumstance.[56]

Appellants argue that if their respective defenses cannot be considered, they are still entitled to the following mitigating circumstances: (1) no intention to commit so grave a wrong as that committed; (2) sufficient provocation on the part of the offended party; and (3) having acted upon an impulse so powerful as naturally to have produced passion or obfuscation.[57]

Under Article 13(3) of the Revised Penal Code, a person's criminal liability may be mitigated if the offender had no intention to commit so grave a wrong as that committed. This mitigating circumstance is obtaining when there is a notable disparity between the means employed by the accused to commit a wrong and the resulting crime committed. The intention of the accused at the time of the commission of the crime is manifested from the weapon used, the mode of attack employed and the injury

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[54] *People v. Goleas, supra* note 26.

[55] *People v. Pirame*, 384 Phil. 286, 300 (2000).

[56] *Id.*

[57] CA *rollo*, pp. 29-30.

sustained by the victim.[58] Appellant Lutgardo used a 12-inch knife, which is a lethal weapon, in stabbing Pedro.[59] He directed the knife at and landed it on Pedro's stomach, which proved to be fatal, as it seriously damaged Pedro's intestine and blood vessel and eventually led to his death. Appellant Ausencio held the shoulders of Pedro, while appellant Romulo hit the victim with a *ukulele* to neutralize his resistance and to facilitate the fatal stabbing. Appellants' attack on Pedro was sudden and deliberate. These concerted acts of appellants eloquently demonstrated their intent to kill him. Thus, the mitigating circumstance of lack of intent to commit so grave a wrong as that committed cannot be considered in favor of appellants.

Likewise, appellants are not entitled to the mitigating circumstance of sufficient provocation or threat on the part of the offended party, which must have immediately preceded the crime as provided in Article 13(4) of the Revised Penal Code. Before the same can be appreciated, the following elements must concur: (1) that the provocation or threat must be sufficient or proportionate to the crime committed and adequate to arouse one to its commission; (2) that the provocation or threat must originate from the offended party; and (3) that the provocation must be immediate to the commission of the crime by the person provoked.[60]

Pedro did not in any way provoke appellants into a fight on that fateful night. There was no argument or physical struggle that ensued between them shortly before appellants helped one another in killing Pedro. Pedro, in fact, tried to avoid a fight or misunderstanding with appellants by agreeing to buy them cigarettes at his own expense. Unfortunately, when Pedro was on his way to buy cigarettes for appellants, the latter suddenly assaulted him. Clearly, the mitigating circumstance of sufficient provocation or threat on the part of the offended party which immediately preceded the crime, is lacking in the present case.

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[58] *People v. Gonzales, Jr.*, 411 Phil. 893, 922 (2001).

[59] TSN, 14 May 2004, p. 4.

[60] *People v. Beltran, Jr.*, G.R. No. 168051, 27 September 2006, 503 SCRA 715, 738.

Appellants cannot also avail themselves of the mitigating circumstance of having acted upon an impulse so powerful as naturally to have produced passion or obfuscation stated in Article 13(6) of the Revised Penal Code. The following essential requirements must be present: (1) there was an act that was both unlawful and sufficient to produce such condition (passion or obfuscation) of the mind; and (2) such act was not far removed from the commission of the crime by a considerable length of time, during which the perpetrator might have recovered his normal equanimity.[61]

In the case at bar, there was no unlawful and sufficient act on Pedro's part which sufficiently provoked passion or obfuscation on appellants' side. As repeatedly stated, Pedro was innocently walking on the road to buy cigarettes for appellants when the latter viciously attacked him for no reason at all. Thus, the mitigating circumstance of passion or obfuscation is unavailing.

We shall now determine the propriety of the penalties imposed by the Court of Appeals on appellants.

Article 248 of the Revised Penal Code states that murder is punishable by *reclusion perpetua* to death. Article 63 of the same Code provides that if the penalty is composed of two indivisible penalties, as in the instant case, and there are no aggravating or mitigating circumstances, the lesser penalty shall be applied. Since there is no mitigating or aggravating circumstance in the present case, and treachery cannot be considered as an aggravating circumstance as it is already considered a qualifying circumstance, the lesser penalty of *reclusion perpetua* should be imposed.[62] Hence, the Court of Appeals acted accordingly in sentencing each of the appellants to *reclusion perpetua*.

The award of civil indemnity for the death of Pedro in the amount of ₱50,000.00 and moral damages amounting to

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[61] LUIS B. REYES, *THE REVISED PENAL CODE*, BOOK ONE, p. 276, citing *People v. Alanguilang*, 52 Phil. 663, 665 (1929); *People v. Ulita*, 108 Phil. 730, 743 (1960); *People v. Gravino*, 207 Phil. 107, 118 (1983).

[62] *People v. Guzman*, G.R. No. 169246, 26 January 2007, 513 SCRA 156, 178.

₱50,000.00 was proper, since they are mandatory in murder cases without need of proof and allegation other than the death of the victim.[63]

The Court of Appeals awarded to the heirs of Pedro Barbo the amount of ₱25,000.00 as exemplary damages, since the qualifying circumstance of treachery was firmly established.[64] We agree with the award, except that we increase the same to ₱30,000.00 pursuant to current jurisprudence.[65]

The Court of Appeals was correct in refusing to award actual damages in favor of Pedro's heirs. To be entitled to actual damages, the amount of loss must not only be capable of proof but must actually be proven with a reasonable degree of certainty, premised upon competent proof or the best evidence obtainable of the actual amount thereof, such as receipts or other documents to support the claim.[66] In the case before us, no receipt or supporting document pertaining to the amount of hospital, funeral and burial expenses for Pedro was submitted. Hence, actual damages are not recoverable. Nonetheless, under Article 2224 of the Civil Code, temperate damages "may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty." It cannot be denied that the heirs of Pedro suffered pecuniary loss due to Pedro's hospital, funeral and burial expenses, although the amount thereof was not determined with certitude. Accordingly, in lieu of actual damages, the heirs of Pedro are entitled to temperate damages in the amount of ₱25,000.00.[67]

Similarly, indemnification for Pedro's loss of earning capacity cannot be awarded. The general rule is that documentary evidence

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[63] *People v. Ducabo*, G.R. No. 175594, 28 September 2007, 534 SCRA 458, 473.

[64] *Id.* at 476-477.

[65] *People v. Gidoc*, G.R. No. 185162, 24 April 2009.

[66] *People v. Jakosalem*, 428 Phil. 299, 311 (2002).

[67] *People v. Oco*, 458 Phil. 815, 855 (2003); *People v. Solamillo*, 452 Phil. 261, 281 (2003).

should be presented to substantiate a claim for damages for loss of earning capacity. As an exception, damages may be awarded in the absence of documentary evidence, provided there is testimony that the victim was either (1) self-employed and earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the victim's line of work, no documentary evidence is available; or (2) employed as a daily wage worker earning less than the minimum wage under current labor laws.[68] In the instant case, neither of the two exceptions applied. Luz testified that Pedro was earning an amount of not less than ₱350.00 per day as a carpenter. The earning of Pedro was above the minimum wage set by labor laws in his workplace at the time of his death.[69] This being the case, the general rule of requiring documentary evidence of his earning capacity finds application. Unfortunately for Pedro's heirs, no such proof was presented at all. The non-awarding of damages for loss of earning capacity by the Court of Appeals is therefore proper.

The penalty of *reclusion perpetua* is imposed on each of the appellants and they are jointly and severally liable for the aforementioned damages.

WHEREFORE, after due deliberation, the Decision of the Court of Appeals, dated 24 June 2008, in CA-G.R. CEB CR-HC No. 00503, is hereby *AFFIRMED* with the following *MODIFICATIONS*: (1) the award of exemplary damages is increased to ₱30,000.00; and (2) temperate damages in the amount of ₱25,000.00, in lieu of actual damages, is hereby awarded to the heirs of Pedro.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

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[68] *People v. Mallari,* 452 Phil. 210, 225 (2003).

[69] Under Wage Order No. RB VIII-07 which took effect on 1 January 1998, the minimum wage at the time of the incident was ₱149.00 per day.

THIRD DIVISION

[G.R. No. 187682. November 25, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROMAN LACADEN *y* PARINAS,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; QUALIFYING CIRCUMSTANCES; TREACHERY; DEFINED; ELEMENTS; ESTABLISHED IN CASE AT BAR.— Treachery qualifies the killing to murder. There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and especially to ensure its execution, without risk to himself arising from any defense which the offended party might make. The elements of treachery are: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) the means of execution was deliberate or consciously adopted. A review of the evidence on record established these elements. On the evening of 18 May 2005, Jay and Danny were walking home pushing their motorbike with an empty fuel tank, unarmed and unaware of the danger hiding behind the thick shrubs in the banana plantation. All of a sudden, accused-appellant, coming from the middle of the field, launched his attack, shooting at his victims with a .38 caliber pistol. Jay was hit on the chest, but was able to run for his life and seek help. Had he not sought medical attention, he would have bled to death. When Jay was about four meters away, he saw accused-appellant shoot Danny, who fell on the ground and died. Clearly, the manner of attack employed by accused-appellant on the two victims was deliberate and unexpected. There was no opportunity for Jay and Danny to defend themselves. Accused-appellant surreptitiously and unexpectedly emerged from the fields and came out in the middle of the road, armed with a .38 caliber gun and shot his two victims. The suddenness of the attack by accused-appellant, and without any provocation on the part of Danny, who was on his way home with his cousin Jay, and the fact that they were unarmed, left them with no

option but to run for their lives. This is the essence of treachery — a deliberate and sudden attack, affording the hapless, unarmed and unsuspecting victim no chance to resist or to escape. In treachery, what is decisive is that the attack was executed in such a manner as to make it impossible for the victim to retaliate. Accused-appellant consciously and deliberately adopted his mode of attack, making sure that Jay and the deceased Danny would have no chance to defend themselves by reason of the surprise attack. Danny died on the spot. The *Post-Mortem* Autopsy Report reveals that he was shot twice, once in the mouth, and once in the back.

2. ID.; ID.; ID.; ID.; THERE MAY STILL BE TREACHERY EVEN IF, BEFORE THE ASSAULT, THE ASSAILANT AND THE VICTIM HAD AN ALTERCATION AND A FISTICUFFS AND AFTER THE LAPSE OF SOME TIME FROM THE SAID ALTERCATION, THE ASSAILANT ATTACKS THE UNSUSPECTING VICTIM WITHOUT AFFORDING THE LATTER ANY REAL CHANCE TO DEFEND HIMSELF; CASE AT BAR.— Accused-appellant's contention that treachery cannot be appreciated, on the ground that an altercation between Pinoy and Danny preceded the shooting, is of no merit. As a rule, there can be no treachery when an altercation ensued between the appellant and the victim. However, the evidence on record shows that after the altercation, accused-appellant and Pinoy went ahead in their motorbike. There may still be treachery even if, before the assault, the assailant and the victim had an altercation and a fisticuffs and, after the lapse of some time from the said altercation, the assailant attacks the unsuspecting victim without affording the latter any real chance to defend himself. In this case, a considerable amount of time had lapsed prior to the attack. We agree with the trial court's observation that there was no fight. Jay Valencia never said in his testimony that there was a fight. He did say in his sworn statement that Danny was kicked by Pinoy, which was ignored because both he (Jay) and Danny just walked away. Jay and Danny, from their actions, were keeping the peace and avoiding a fight by ignoring the taunting by Pinoy and accused-appellant. Pinoy and accused-appellant then sped off in their motorcycle. As Danny and Jay were pushing their own motorbike, they were left walking on their way home. The two victims were unaware that accused-appellant had waited somewhere along the same

direction they were heading and was armed with a deadly weapon. That the victim was shot facing the appellant, as contended by the latter, does not negate treachery. The settled rule is that treachery can exist even if the attack is frontal, as long as the attack is sudden and unexpected, giving the victim no opportunity to repel it or to defend himself. What is decisive is that the execution of the attack, without the slightest provocation from an unarmed victim, made it impossible for the victim to defend himself or to retaliate.

3. ID.; FELONIES; ATTEMPTED FELONIES; ATTEMPTED MURDER; CASE AT BAR.— With respect to the crime committed against Jay, accused-appellant is charged with Frustrated Murder. For failure of the prosecution to present the testimony of the doctor who treated him to testify regarding the nature of the injury sustained by the latter, the Court cannot determine whether the injury would have produced death if not for the timely medical attention. However, accused-appellant is responsible for committing Attempted Murder. Having commenced the criminal act by overt acts but failing to perform all acts of execution as to produce the felony by reason of some cause other than his own desistance, accused-appellant committed an attempted felony. Accused-appellant commenced his attack with a manifest intent to kill by shooting Jay, but failed to perform all the acts of execution by reason of causes independent of the former's will, that is, poor aim and the swiftness of the latter in escaping. The bullet wound inflicted on Jay's chest was not sufficient to cause his death. The settled rule is that where the wound inflicted on the victim is not sufficient to cause his death, the crime is only attempted murder, since the accused did not perform all the acts of execution that would have brought about death.

4. REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; CANNOT PREVAIL OVER POSITIVE TESTIMONY; CASE AT BAR.— The twin defenses of denial and alibi raised by accused-appellant must fail in light of the positive identification made by one of his victims, Jay. Alibi and denial are inherently weak defenses and must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused. It is only axiomatic that positive testimony prevails over negative testimony. Accused-appellant and his two victims reside in the same *barangay* and are therefore familiar with

one another. Thus, Jay could not have been mistaken on accused-appellant's identity. For alibi to prosper, it must be established by positive, clear and satisfactory proof that it was physically impossible for the accused to have been at the scene of the crime at the time of its commission, and not merely that accused was somewhere else. Accused-appellant's alibi that he was at his sister's house at the time of the shooting, and that his cousin Pinoy later went to him and told him that he had shot the Valencias was disproved by Cristina, accused-appellant's sister and witness. Cristina testified that her brother, accused-appellant, did not visit her on the night of the incident. Moreover, where the defense of denial remains unsubstantiated by clear and convincing evidence, it becomes negative and self-serving, and must not be given more evidentiary value *vis-à-vis* the affirmative testimony of a credible witness. Finally, the defense failed to show any ill motive on the part of the prosecution's witnesses to discredit their testimonies. Absent any reason or motive for a prosecution witness to perjure, the logical conclusion is that no such motive exists, and his testimony is thus worthy of full faith and credit.

5. CRIMINAL LAW; CRIMES AGAINST PERSONS; MURDER; PENALTY.— With respect to the appropriate penalty, the prosecution successfully established the presence of the qualifying circumstance of treachery in the killing of Danny Valencia. The presence of treachery qualified the killing to Murder in accordance with Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659. The penalty for Murder is *reclusion perpetua* to death. Although alleged in the information, the aggravating circumstances of use of an unlicensed firearm and nocturnity were not proven during trial. There being no aggravating or mitigating circumstance, the penalty to be imposed, as properly applied by the trial court, is *reclusion perpetua*.

6. CIVIL LAW; DAMAGES THAT MAY BE RECOVERED WHEN DEATH OCCURS DUE TO A CRIME.— As to damages, when death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases.

7. ID.; ID.; TEMPERATE DAMAGES; AWARD THEREOF PROPER IN CASE AT BAR; EXPLAINED.— x x x As to actual damages, the widow of the deceased presented a list of expenses. The only official receipts that may be considered are the ones issued by Carbonel Funeral Homes (₱15,000.00) and Isidro Meat Dealer (₱7,360.00) totaling ₱22,360.00. However, we have held that when actual damages proven by receipts amount to less than ₱25,000.00, the award of temperate damages amounting to ₱25,000.00 is justified in lieu of actual damages for a lesser amount. This is based on the sound reasoning that it would be anomalous and unfair to the victim who tried but succeeded in proving actual damages of less than ₱25,000.00. He would be in a worse situation than another who might have presented no receipts at all, but is entitled to ₱25,000.00 temperate damages. Thus, considering that funeral expenses in the amount of ₱22,360.00 were proven by Danny's heirs, an award of ₱25,000.00 as temperate damages, in lieu of this lesser amount of actual damages, is proper.

8. ID.; ID.; MORAL DAMAGES; AWARDED IN CASE AT BAR.— x x x The widow is also entitled to ₱50,000.00 moral damages, in view of the violent death of the victim, which does not require allegation and proof of the emotional suffering of the heirs.

9. ID.; ID.; EXEMPLARY DAMAGES; PROPERLY AWARDED IN CASE AT BAR.— With the finding of the qualifying circumstance of treachery, exemplary damages in the amount of ₱30,000.00 is properly awarded.

10. CRIMINAL LAW; CRIMES AGAINST PERSONS; ATTEMPTED MURDER; PENALTY.— In Criminal Case No. 21-4986, where accused-appellant was found guilty only of Attempted Murder, the RTC sentenced him to six (6) months of *arresto mayor*, as minimum, to four (4) years of *prision correccional*, as maximum. This is erroneous. Under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, the penalty for murder is *reclusion perpetua* to death. Considering the accused-appellant is only guilty of attempted murder, the penalty should be lowered by two degrees, following Article 51 of the Revised Penal Code. Under paragraph 2 of Article 61, in relation to Article 71 of the Revised Penal Code, the penalty two degrees lower is *prision mayor*. In the absence of any modifying circumstance in the commission of the crime,

other than the qualifying circumstance of treachery, the maximum of the indeterminate penalty shall be taken from the medium period of *prision mayor*, which has a range of from eight (8) years and one (1) day to ten (10) years. To determine the minimum of the indeterminate penalty, the penalty of *prision mayor* should be reduced by one degree, *prision correccional*, which has a range of six (6) months and one (1) day to six (6) years. Applying the foregoing, accused-appellant should be sentenced to suffer an indeterminate penalty of from six (6) years of *prision correccional*, as minimum, to ten (10) years of *prision mayor*, as maximum. As correctly awarded by the trial court, the offended party is entitled to the sum of ₱10,000.00 as moral damages.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

CHICO-NAZARIO, *J.*:

For Review under Rule 45 of the Revised Rules of Court is the Decision[1] dated 30 September 2008 of the Court of Appeals in CA-G.R. CR-HC No. 02848, entitled, *People of the Philippines v. Roman Lacaden y Parinas* affirming the Decision[2] rendered by the Regional Trial Court (RTC), Second Judicial Region, Branch 21, Santiago City in Criminal Case No. 21-4985 for Murder and in Criminal Case No. 21-4986 for Frustrated Murder, convicting Roman Lacaden *y* Parinas (accused-appellant) guilty beyond reasonable doubt of committing the crime of Murder against victim Danny Valencia (Danny) and for Attempted Murder against victim Jay Valencia (Jay).

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[1] Penned by Associate Justice Myrna Dimaranan Vidal with Associate Justices Jose C. Reyes, Jr. and Fernanda Lampas Peralta, concurring; *rollo*, pp. 2-22.

[2] Penned by Judge Fe Albano Madrid; CA *rollo*, pp. 13-19.

On 16 August 2004, the First Assistant City Prosecutor of Santiago City, Isabela, filed two separate Informations against accused-appellant charging him with Murder and Frustrated Murder before the RTC of Santiago City. The cases were docketed as Criminal Case No. 4985 (Murder) and Criminal Case No. 4986 (Frustrated Murder) and raffled off to Branch 21. The accusatory portion of the two Informations read:

Criminal Case No. 21-4985

That on or about May 18, 2005 at Balintocatoc, Santiago City, Philippines, and within the jurisdiction of the this Honorable Court, the above-named accused, armed with a handgun but not having been issued a license thereof, with malice afterthought and with deliberate intent to take the life of DANNY VALENCIA, did then and there, willfully, unlawfully and feloniously, and treacherously shoot therewith said DANNY VALENCIA thereby causing the direct and instantaneous death of said DANNY VALENCIA.

All contrary to law with the generic aggravating circumstance of nocturnity.[3]

Criminal Case No. 21-4986

That on or about May 18, 2005 at Balintocatoc, Santiago City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, armed with a handgun but not having been issued a license thereof (sic) and with evident premeditation and treachery did then and there willfully, unlawfully and feloniously shoot and hit one Jay Valencia, who as a result thereof, suffered GSW, PO ENTRY 4th ICS LEFT PARASTERNAL AREA, PO EXIT; 5th RIB LEFT AREA, thus performing all the acts of execution which would have produce (sic) the crime of Murder as a consequence but nevertheless did not produce it by reason of causes independent of his will, that the said JAY VALENCIA was able to run away from the accused and because the timely medical assistance rendered unto the said JAY VALENCIA which prevented his death.

All contrary to law with the generic aggravating circumstance of nocturnity.[4]

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[3] Criminal Case No. 21-4985; records, p. 1.

[4] Criminal Case No. 21-4986; records, p. 1.

On arraignment, accused-appellant, who was assisted by counsel, entered "NOT GUILTY" pleas to the charges. In a joint pre-trial conference conducted on 20 January 2006, the following facts were stipulated:

1. Accused was arrested in the afternoon of 19 May 2005 at the Royal Eagle Station in Santiago City;
2. The existence of *Post Mortem* Autopsy Report of Dr. Romanchito Bayong; and
3. Deceased Danny Valencia was treated at the Southern Isabela Cathedral Hospital by Dr. Mabbayad.

The two cases were tried jointly.

The prosecution presented two witnesses: (a) the victim Jay Valencia; and (b) Eleonor Valencia, the widow of the deceased victim Danny Valencia. The witnesses for the defense were the following: (a) accused-appellant Roman Lacaden; and (b) his sister Cristina Lapiceros (Cristina).

From the records of the two cases, the following version of the prosecution is culled:

On the evening of 18 May 2005, Jay Valencia and Danny Valencia were at the community center in Bannawag Norte, Santiago City, Isabela. On their way home to Balintocatoc, they rode on a motorbike driven by Danny with Jay as the back rider. Upon reaching Malasin, their motorbike ran out of gas, so they alighted and walked while pushing their motorbike. As they were continuing their trip home, accused-appellant Roman Lacaden and his cousin Pinoy Lacaden, who were also riding a motorcycle, came along and asked them if they stole the motorcycle they were pushing. The two replied in the negative and told accused-appellant that the motorbike was owned by Danny Valencia. Jay and Danny continued walking home while accused-appellant and his cousin went ahead and overtook them.

The trip remained uneventful until after some time, when Jay and Danny were caught by surprise when accused-appellant suddenly emerged in the middle of the road near the banana plantation and shot them. Jay was the first one hit on the chest

by a bullet shot from accused-appellant's pistol. As Jay was trying to escape, he saw accused-appellant shoot his cousin Danny. Danny fell to the ground and died on the spot. Jay was able to run home and seek help from his father, and was taken to the hospital for immediate medical assistance. He survived.

In the *Post Mortem* Autopsy Report[5] released by the City Health Office of Santiago on 19 May 2005, the stated cause of death of Danny was Intracranial Hemorrhage/Bleeding Secondary to Gun Shooting.

Eleanor Valencia, the wife of deceased victim Danny, was presented in court to testify on the actual damages. She presented receipts showing funeral expenses.

For its part, the defense narrates its version of the incident as follows:

Accused-appellant denied authorship of the killing of the victim. He accused Pinoy's father of conniving with the *barangay* chairman in implicating him as the killer. The *barangay* chairman was apparently harboring ill feelings toward Pinoys' family.

At around 9:00 o'clock in the evening of 18 May 2005, accused-appellant Roman Lacaden and Pinoy Lacaden were at a birthday party in Malasin. By 9:30 o'clock in the evening, the two decided to go home. Riding a motorcycle on their way home, they passed by Jay Valencia and a companion who were then pushing a motorbike. On seeing that they were pushing the motorbike, Pinoy inquired why they were pushing it, to which the two men replied that the motorbike was out of gas. It was then that Pinoy commented in the Ilocano dialect, "*Okinnayo baka tinakaw yo met*" (vulva of your mother, maybe you stole it). Angered by Pinoy's comment, Jay's companion retorted, "*Ukinnayo met, agtatakaw kayo met*" (vulva of your mother also, you are also thieves). Pinoy alighted from the motorcycle and kicked Jay's companion several times. The latter retaliated. While the two men were engaged in a brawl, accused-appellant and Jay Valencia were attempting to pacify them. When the two men were pacified,

[5] Criminal Case No. 2-4985, p. 7.

accused-appellant found out the name of Jay's companion as one Danny Valencia residing in the same *barangay*. Immediately thereafter, they proceeded home, with accused-appellant driving the motorcycle.

Nearing the outpost, Pinoy alighted from the motorcycle. Accused-appellant then went to the house of his sister. At around 9:30 o'clock in the evening, Pinoy arrived and said to accused-appellant, "*napatay ko sila*." Pinoy then handed to accused-appellant the .38 caliber gun he used in shooting the victims. Inquiring as to whom Pinoy had killed, the latter answered that he killed the Valencias. Noticing the anxious look on Pinoy's face, accused-appellant took him to the poultry area where Pinoy's father was. Accused-appellant then handed the gun over to Pinoy's father and said that Pinoy killed someone. Pinoy's father became angry at accused-appellant, saying that the incident would not have occurred if accused-appellant had not taken Pinoy with him. Pinoy's father warned them of the possibility of being jailed, considering that accused-appellant was an ex-convict. He then advised the two to go to Manila and hide as he tried to settle the case.

Because there was no longer any transportation available at that time, accused-appellant spent the night at the house of his sister. The next day, or on 19 May 2005, accused-appellant went to the Royal Eagle Bus terminal in order to leave for Manila, but he was arrested by the police.

The defense thereafter presented accused-appellant's sister Cristina Lapiceros to testify that he stayed at her house the evening of 18 May 2005. The witness, however, said she was already sleeping at around 9:30 o'clock in the evening. According to her, her brother did not go to her house that night.

Pinoy did not testify on the witness stand.

On 23 March 2007, the RTC rendered a Joint Decision convicting accused-appellant of Murder in Criminal Case No. 21-4985 and of Attempted Murder in Criminal Case No. 21-4986, disposing as follows:

WHEREFORE, in the light of the foregoing considerations the Court finds the accused Roman Lacaden *y* Parinas GUILTY beyond

reasonable doubt of murder in Crim. Case No. 21-4985 and hereby sentences him to the penalty of *reclusion perpetua*. He is also ORDERED to pay the heirs of the deceased Danny Lacaden the sums of ₱22,360.00 as actual damages, ₱75,000.00 as death indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages.

In Crim. Case No. 21-4986, the Court also finds the accused Roman Lacaden *y* Parinas GUILTY beyond reasonable doubt of attempted murder and hereby sentences him to an indeterminate penalty of six (6) months of *arresto mayor* as minimum to four (4) years of *prision correccional*, as maximum. He is also ORDERED to pay the offended party Jay Valencia the sum of ₱10,000.00 as moral damages.[6]

The RTC accorded full faith and credence to the testimonies of the prosecution witnesses. It held that the defense of denial and alibi cannot prevail over the positive identification of Jay that accused-appellant was the assailant. Ruling that the qualifying circumstance of treachery was present, the trial court found that the means of execution employed by accused-appellant was deliberately or consciously adopted by them and did not give the victims any opportunity to defend themselves against the attack. It was not proven that the firearm used was unlicensed. The trial court also did not discuss the allegation of the generic aggravating circumstance of nocturnity.

Via Notice of Appeal, accused-appellant appealed the RTC ruling with the Court of Appeals, where the case was docketed as CA-GR HC No. 02848.

The Court of Appeals was convinced that the trial court correctly found that the prosecution discharged the quantum of evidence needed to prove the guilt of accused-appellant. By its Decision promulgated on 30 September 2008, the Court of Appeals concurred in the factual findings of the trial court, and affirmed the conviction of accused-appellant for Murder and Attempted Murder, decreeing:

In fine, taking into consideration the factual and legal circumstances of this case, We are convinced that all the elements of murder and attempted murder are present in the case at bar and

[6] CA *rollo*, p. 19.

the Appellant's guilt was aptly proven by the prosecution beyond an *iota* of doubt.

WHEREFORE, premises considered, herein appeal is hereby DENIED for evident lack of merit. The challenged Decision, *supra*, is AFFIRMED *in toto*.[7]

This case is now with us in view of the Notice of Appeal interposed by accused-appellant from the Court of Appeals Decision.

In its Resolution of 20 July 2009, the Court accepted the appeal and required the parties to submit their supplemental briefs, if they so desire. The parties waived the filing of supplemental briefs and adopted the Briefs earlier filed with the Court of Appeals.

Accused-appellant prays for his acquittal and the reversal of the judgment of conviction in the two criminal cases, on the following assignment of errors:

I.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II.

ASSUMING *ARGUENDO* THAT THE ACCUSED-APPELLANT IS CULPABLE, THE TRIAL COURT GRAVELY ERRED IN APPRECIATING TREACHERY AS QUALIFYING CIRCUMSTANCE IN CRIMINAL CASE NO. 21-4985.

The appeal fails.

Accused-appellant attacks the trial court's verdict convicting him of Murder and Attempted Murder, claiming that the prosecution failed to discharge its function of proving his guilt beyond reasonable doubt. The defense argues that the eyewitness Jay could not have possibly seen who shot Danny, because Jay was about four meters away from where the assailant was.

[7] *Rollo*, p. 21.

Because of the distance, it was possible that Jay mistook the gun-wielding man for accused-appellant when it could have also been Pinoy. In a nutshell, the defense raises the issue of reasonable doubt. It also questions the trial court's appreciation of the qualifying circumstance of treachery on the contention that there is no treachery when the attack is preceded by an argument or altercation.

The issues raised by accused-appellant hinge on the credibility of the prosecution witnesses.

The age-old rule is that the task of assigning values to the testimonies of witnesses on the witness stand and weighing their credibility is best left to the trial court which forms its first-hand impressions as a witness testifies before it. It is thus no surprise that findings and conclusions of trial courts on the credibility of witnesses enjoy, as a rule, a badge of respect, for trial courts have the advantage of observing the demeanor of witnesses as they testify.[8]

As borne out by the records of this case, the RTC did not err in giving credence to the testimonies of the prosecution witnesses, particularly of Jay, who was an eyewitness to the crime and was himself a victim of the shooting. There is neither any showing of a fact of substance or value which has been overlooked and, if considered, might affect the result of the case.

Jay's testimony does not suffer from any serious and material inconsistency that could possibly detract from his credibility. Accused-appellant was directly identified by Jay as the perpetrator of the two crimes. Not only was accused-appellant shown to have been at the scene of the crime, but as the one who shot Jay, and as the one who shot and killed the latter's cousin Danny.[9] Jay saw the shooting of Danny, and was categorical and frank in his testimony. From his direct and straightforward testimony, there is no doubt as to the identity of the culprit, (accused-appellant) who suddenly emerged in the middle of the road near the banana plantation at Balintocatoc, Santiago City,

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[8] *People v. Malolot*, G.R. No. 174063, 14 August 2008, 548 SCRA 676, 688.

[9] TSN, 8 June 2006, p. 5.

Isabela, and shot Jay on the chest, and thereafter shot the now deceased Danny. As confirmed by Jay on the witness stand:

A: Roman Lacaden shot me, sir.

Q: Will you tell us the circumstances on how you were shot by Lacaden?

A: When we came from Bannawag, the driver is Danny Valencia and I am his back rider, when we reached Malasin, sir, our gasoline was consumed. Since we have no gasoline I pushed the motorcycle while Danny Valencia is walking until we reached Balintocatoc, sir.

Q: When you reached Balintocatoc what, if anything, happened?

A: Roman Lacaden followed and accosted us, sir.

Q: You said that the accused was following you, was the accused on board any transportation?

A: Yes, sir, there was.

Q: What kind of transportation was he riding on?

A: Motorcycle, sir.

Q: You said Lacaden was following you with a motorcycle, was he alone or did he have a companion?

A: There was, sir.

Q: So there were two of them is that what you mean?

A: Yes, sir.

Q: Now, you said he accosted you, will you tell us how Lacaden accosted you?

A: He accosted us by telling us that we stole the motorcycle, sir.

Q: And what, if anything, did you or your companion tell him?

A: We told him that we did not steal the motorcycle because it is owned by Danny Valencia, sir.

Q: You are referring to your companion Danny Valencia?

A: Yes, sir.

Q: After telling Lacaden that the motorcycle that your rode (sic) on is owned by Danny Valencia, what happened next?

A: We left them and we proceeded to Balintocatoc and then they followed, sir.

Q: What happened when they are (sic) following you when you were proceeding towards Balintocatoc?

A: They overtook us, sir, and they went ahead of us.

Q: You said that the accused Lacaden riding on a motorcycle with a companion overtook you. What happened when they overtook you towards Balintocatoc?

A: When we already reached the Iglesia Ni Cristo near the banana plantation a man came out and met us and there he shoot (sic) us, sir.

Q: Did you recognize that person who met you along the road?

A: Yes, sir.

Q: Who was that person who met you and shot you?

A: Roman Lacaden, sir.

Q: You mentioned Roman Lacaden who shot you, if he is in Court, can you point him to us?

A: Yes, sir. He is that one. (Witness stood up and pointed to a man inside the Courtroom and that man pointed to stood up and when asked he gave his name as Roman Lacaden.)

Q: Will you tell us the circumstances on how Lacaden while standing at the middle of the road fired shots towards you and Danny Valencia?

A: I was the first who was shot and when I fell he shoot (sic) Danny Valencia, sir.

Q: By the way when the initial firing occurred how far were you from the accused Lacaden?

A: Quite far, sir, maybe from here to that chair. (Witness pointed to a distance which is about four (4) meters).

Q: You said when you were shot by Lacaden you fled and he shot your companion Danny Valencia, what happened to Danny Valencia?

A: He died, sir.

Q: You were by (sic) bullet coming from Lacaden, where were you hit Mr. Witness?

A: On my chest, sir.

Q: You said that when you were shot on the chest you fled, towards what direction did you flee?

A: Going west, sir.

Q: Now, where did you go while fleeing towards the west?

A: I went home, sir, to ask for help.

Q: And to whom did you ask for help in your house?

A: From my father, sir.[10]

Upon reaching home, Jay was able to seek aid from his father. After telling his father that they were shot, Jay then told him that it was accused-appellant who shot them, thus:

Q: What did you tell your father?

A: I told him that we were shot, sir.

Q: What else did you tell your father?

A: I told him that it was Roman Lacaden who shot us, sir.

Q: And what did your father do when you sought help from him when you told him that Lacaden shot you and your companion?

A: He went out and went to see my companion, sir.

Q: Was he alone in going towards the place where your companion was?

A: He fetched my cousin, sir.

Q: How about you?

A: I was left in our house and then my uncle arrived, sir.

Q: And what happened when your uncle came?

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[10] TSN, 8 June 2006, pp. 5-9.

A: He called for me and we went to the place where Danny Valencia was and then they brought us to the hospital, sir.

Q: When you reached the place where you were shot by the accused Lacaden, did you see your companion?

A: Yes, sir.

Q: And what did you see of Danny Valencia?

A: He was lying down on the ground, sir.

Q: Do you know what happened to him?

COURT:

He said already that he died.[11]

On cross-examination, Jay testified:

Q: Were they the both persons who shot you Mr. Witness?

A: I only saw one person who shot us, sir.

Q: And who could that be Mr. Witness?

A: It was Roman Lacaden, sir.

Q: And how could you be sure that it was Roman and not Pinoy who shot you?

A: Because the color of the t-shirt of the person who shot us has the same color of that of Roman Lacaden when he confronted us, sir.

Q: So what was the color of the dress of that person who shot you Mr. Witness?

A: Black pants and black t-shirt with prints, sir.

Q: What about Pinoy, what was the color of his dress at that time?

A: I think it is like yellow, sir.[12]

Accused-appellant claims that the attack on the victim was not a product of deliberate intent. There was no treachery,

[11] *Id.* at 9-11.

[12] TSN, 5 July 2006, p. 8.

since the shooting was preceded by a quarrel and a scuffle between Pinoy and the deceased Danny.

The argument does not persuade.

Treachery qualifies the killing to murder.[13] There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and especially to ensure its execution, without risk to himself arising from any defense which the offended party might make.[14]

The elements of treachery are: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) the means of execution was deliberate or consciously adopted.[15]

A review of the evidence on record established these elements. On the evening of 18 May 2005, Jay and Danny were walking home pushing their motorbike with an empty fuel tank, unarmed and unaware of the danger hiding behind the thick shrubs in the banana plantation. All of a sudden, accused-appellant, coming from the middle of the field, launched his attack, shooting at his victims with a .38 caliber pistol. Jay was hit on the chest, but was able to run for his life and seek help. Had he not sought medical attention, he would have bled to death. When Jay was about four meters away, he saw accused-appellant shoot Danny, who fell on the ground and died.

Clearly, the manner of attack employed by accused-appellant on the two victims was deliberate and unexpected. There was no opportunity for Jay and Danny to defend themselves. Accused-appellant surreptitiously and unexpectedly emerged from the fields and came out in the middle of the road, armed with a .38 caliber gun and shot his two victims. The suddenness of the attack by accused-appellant, and without any provocation

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[13] *People v. Ramos*, 471 Phil. 115, 125 (2004).

[14] *People v. Dela Cruz*, G.R. No. 174371, 11 December 2008, 573 SCRA 708, 721; *People v. Bohol*, G.R. No. 178198, 10 December 2008, 573 SCRA 557, 567.

[15] *People v. Dela Cruz, id.*

on the part of Danny, who was on his way home with his cousin Jay, and the fact that they were unarmed, left them with no option but to run for their lives. This is the essence of treachery — a deliberate and sudden attack, affording the hapless, unarmed and unsuspecting victim no chance to resist or to escape. In treachery, what is decisive is that the attack was executed in such a manner as to make it impossible for the victim to retaliate.[16] Accused-appellant consciously and deliberately adopted his mode of attack, making sure that Jay and the deceased Danny would have no chance to defend themselves by reason of the surprise attack. Danny died on the spot. The *Post-Mortem* Autopsy Report reveals that he was shot twice, once in the mouth, and once in the back.

Accused-appellant's contention that treachery cannot be appreciated, on the ground that an altercation between Pinoy and Danny preceded the shooting, is of no merit. As a rule, there can be no treachery when an altercation ensued between the appellant and the victim. However, the evidence on record shows that after the altercation, accused-appellant and Pinoy went ahead in their motorbike. There may still be treachery even if, before the assault, the assailant and the victim had an altercation and a fisticuffs and, after the lapse of some time from the said altercation, the assailant attacks the unsuspecting victim without affording the latter any real chance to defend himself.[17] In this case, a considerable amount of time had lapsed prior to the attack. We agree with the trial court's observation that there was no fight. Jay Valencia never said in his testimony that there was a fight. He did say in his sworn statement that Danny was kicked by Pinoy, which was ignored because both he (Jay) and Danny just walked away. Jay and Danny, from their actions, were keeping the peace and avoiding a fight by ignoring the taunting by Pinoy and accused-appellant. Pinoy and accused-appellant then sped off in their motorcycle. As Danny and Jay were pushing their own motorbike, they were left walking on their way home. The two victims were unaware

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[16] *People v. Tolentino*, G.R. 176385, 26 February 2008, 546 SCRA 671, 697.

[17] *People v. Montemayor*, 452 Phil. 283, 304-305 (2003).

that accused-appellant had waited somewhere along the same direction they were heading and was armed with a deadly weapon. That the victim was shot facing the appellant, as contended by the latter, does not negate treachery. The settled rule is that treachery can exist even if the attack is frontal, as long as the attack is sudden and unexpected, giving the victim no opportunity to repel it or to defend himself. What is decisive is that the execution of the attack, without the slightest provocation from an unarmed victim, made it impossible for the victim to defend himself or to retaliate.

With respect to the crime committed against Jay, accused-appellant is charged with Frustrated Murder. For failure of the prosecution to present the testimony of the doctor who treated him to testify regarding the nature of the injury sustained by the latter, the Court cannot determine whether the injury would have produced death if not for the timely medical attention. However, accused-appellant is responsible for committing Attempted Murder.

Having commenced the criminal act by overt acts but failing to perform all acts of execution as to produce the felony by reason of some cause other than his own desistance, accused-appellant committed an attempted felony.[18] Accused-appellant commenced his attack with a manifest intent to kill by shooting Jay, but failed to perform all the acts of execution by reason of causes independent of the former's will, that is, poor aim and the swiftness of the latter in escaping. The bullet wound inflicted on Jay's chest was not sufficient to cause his death. The settled rule is that where the wound inflicted on the victim is not sufficient to cause his death, the crime is only attempted murder, since the accused did not perform all the acts of execution that would have brought about death.[19]

The twin defenses of denial and alibi raised by accused-appellant must fail in light of the positive identification made by one of his victims, Jay. Alibi and denial are inherently weak defenses

[18] Article 6, Revised Penal Code.

[19] *People v. Valledor,* 433 Phil. 158, 171 (2002).

and must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused.[20] It is only axiomatic that positive testimony prevails over negative testimony.[21] Accused-appellant and his two victims reside in the same *barangay* and are therefore familiar with one another. Thus, Jay could not have been mistaken on accused-appellant's identity. For alibi to prosper, it must be established by positive, clear and satisfactory proof that it was physically impossible for the accused to have been at the scene of the crime at the time of its commission, and not merely that accused was somewhere else.[22] Accused-appellant's alibi that he was at his sister's house at the time of the shooting, and that his cousin Pinoy later went to him and told him that he had shot the Valencias was disproved by Cristina, accused-appellant's sister and witness. Cristina testified that her brother, accused-appellant, did not visit her on the night of the incident. Moreover, where the defense of denial remains unsubstantiated by clear and convincing evidence, it becomes negative and self-serving, and must not be given more evidentiary value *vis-à-vis* the affirmative testimony of a credible witness.[23]

Finally, the defense failed to show any ill motive on the part of the prosecution's witnesses to discredit their testimonies. Absent any reason or motive for a prosecution witness to perjure, the logical conclusion is that no such motive exists, and his testimony is thus worthy of full faith and credit.[24]

With respect to the appropriate penalty, the prosecution successfully established the presence of the qualifying circumstance of treachery in the killing of Danny Valencia. The presence of treachery qualified the killing to Murder in accordance

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[20] *People v. Torres*, G.R. No. 176262, 11 September 2007, 532 SCRA 655, 665.

[21] *People v. Corpuz*, G.R. No. 168101, 13 February 2006, 482 SCRA 436.

[22] *People v. Manchu*, G.R. No. 181901, 28 November 2008, 572 SCRA 753, 763.

[23] *People v. Dionisio*, G.R. No. 130170, 29 January 2002, 425 Phil. 616, 375 SCRA 56.

[24] *People v. Dela Cruz*, *supra* note 14.

with Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659. The penalty for Murder is *reclusion perpetua* to death. Although alleged in the information, the aggravating circumstances of use of an unlicensed firearm and nocturnity were not proven during trial. There being no aggravating or mitigating circumstance, the penalty to be imposed, as properly applied by the trial court, is *reclusion perpetua*.

As to damages, when death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases.[25]

We, however, reduce the ₱75,000.00 civil indemnity *ex delicto* awarded by the RTC to ₱50,000.00.[26] As to actual damages, the widow of the deceased presented a list of expenses. The only official receipts that may be considered are the ones issued by Carbonel Funeral Homes (₱15,000.00) and Isidro Meat Dealer (₱7,360.00) totaling ₱22,360.00. However, we have held that when actual damages proven by receipts amount to less than ₱25,000.00, the award of temperate damages amounting to ₱25,000.00 is justified in lieu of actual damages for a lesser amount.[27] This is based on the sound reasoning that it would be anomalous and unfair to the victim who tried but succeeded in proving actual damages of less than ₱25,000.00. He would be in a worse situation than another who might have presented no receipts at all, but is entitled to ₱25,000.00 temperate damages. Thus, considering that funeral expenses in the amount of ₱22,360.00 were proven by Danny's heirs, an award of ₱25,000.00 as temperate damages, in lieu of this lesser amount

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[25] *People v. Tolentino*, *supra* note 16, citing *People v. Tubongbanua*, G.R. No. 169077, 31 August 2006, 500 SCRA 659.

[26] The amount of ₱75,000.00 as civil indemnity is only warranted in instances where the penalty imposable is the death penalty, but reduced to *reclusion perpetua* with the enactment of Republic Act No. 9346 prohibiting the imposition of the death penalty. (*People v. Muñez*, 451 Phil. 264, 274 [2003].)

[27] *Mahawan v. People*, G.R. No. 176609, 18 December 2008, 574 SCRA 755, 756.

of actual damages, is proper. The widow is also entitled to ₱50,000.00 moral damages, in view of the violent death of the victim, which does not require allegation and proof of the emotional suffering of the heirs.[28] With the finding of the qualifying circumstance of treachery, exemplary damages in the amount of ₱30,000.00 is properly awarded.[29]

In Criminal Case No. 21-4986, where accused-appellant was found guilty only of Attempted Murder, the RTC sentenced him to six (6) months of *arresto mayor,* as minimum, to four (4) years of *prision correccional*, as maximum. This is erroneous. Under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, the penalty for murder is *reclusion perpetua* to death. Considering the accused-appellant is only guilty of attempted murder, the penalty should be lowered by two degrees, following Article 51 of the Revised Penal Code. Under paragraph 2 of Article 61, in relation to Article 71 of the Revised Penal Code, the penalty two degrees lower is *prision mayor*. In the absence of any modifying circumstance in the commission of the crime, other than the qualifying circumstance of treachery, the maximum of the indeterminate penalty shall be taken from the medium period of *prision mayor*, which has a range of from eight (8) years and one (1) day to ten (10) years. To determine the minimum of the indeterminate penalty, the penalty of *prision mayor* should be reduced by one degree, *prision correccional*, which has a range of six (6) months and one (1) day to six (6) years.[30]

Applying the foregoing, accused-appellant should be sentenced to suffer an indeterminate penalty of from six (6) years of *prision correccional*, as minimum, to ten (10) years of *prision mayor*, as maximum. As correctly awarded by the trial court, the offended party is entitled to the sum of ₱10,000.00 as moral damages.

WHEREFORE, premises considered, the Court of Appeals Decision dated 30 September 2008 in CA-G.R. CR-HC No. 02848,

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[28] *People v. Bohol, supra* note 14.

[29] *People v. Gidoc,* G.R. No. 185162, 24 April 2009.

[30] *Rivera v. People*, G.R. No. 166326, 27 January 2006, 480 SCRA 188, 200.

affirming the Decision promulgated by the Regional Trial Court of Santiago City, Isabela, Branch 21, in Criminal Case No. 21-4985 (Murder) and Criminal Case No. 21-4986 (Frustrated Murder), finding accused-appellant Roman Lacaden *y* Parinas guilty beyond reasonable doubt of Murder and Attempted Murder, is hereby *AFFIRMED* with *MODIFICATION* as follows:

In CRIMINAL CASE NO. 21-4985, where the conviction of accused-appellant for Murder is *AFFIRMED* –

(1) The award of civil indemnity is reduced to ₱50,000.00;

(2) Temperate damages in the amount of ₱25,000.00 is awarded in *lieu* of actual damages;

(3) Exemplary damages is increased to ₱30,000.00;

(4) Accused-appellant's conviction sentencing him of *reclusion perpetua* is upheld. Moral damages in the amount of ₱50,000.00 is retained.

In CRIMINAL CASE NO. 21-4986, the conviction of accused-appellant for Attempted Murder is *AFFIRMED*. While we affirm his conviction, we increase the penalty imposed on him; and accused-appellant is hereby sentenced to suffer the indeterminate penalty of from six (6) years of *prision correccional*, as minimum, to ten (10) years of *prision mayor*, as maximum. The amount of ₱10,000.00 as moral damages is sustained.

In the service of his sentence, accused-appellant, who is a detention prisoner, shall be credited with the entire period during which he has undergone preventive imprisonment. No costs.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Nachura, and *Bersamin,*[*] *JJ.,* concur.

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[*] Associate Justice Lucas P. Bersamin was designated to sit as additional member replacing Associate Justice Diosdado M. Peralta per Raffle dated 10 June 2009.

THIRD DIVISION

[G.R. No. 188106. November 25, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ANTONIO DALISAY *y* DESTRESA,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; CRIMES AGAINST PERSONS; RAPE; PRINCIPLES THAT GUIDE THE COURTS IN RESOLVING 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 in which only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IN RAPE CASES, ACCUSED MAY BE CONVICTED SOLELY ON THE TESTIMONY OF THE VICTIM; CASE AT BAR.— In a determination of guilt for the crime of rape, primordial is the credibility of the 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. Here, the victim, in the painstaking and well-nigh degrading public trial, related her painful ordeal that she was raped by appellant. Her testimony was found by the trial court, which had the undisputed vantage in the evaluation and appreciation of testimonial evidence, to have been made in "a simple, straightforward and spontaneous manner."

3. ID.; ID.; ID.; GENERALLY, FINDINGS OF THE TRIAL COURT ARE ENTITLED TO THE HIGHEST RESPECT AND ARE NOT TO BE DISTURBED ON APPEAL.— 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. Further, deeply 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 which would have affected the result of the case.

4. ID.; ID.; DENIAL; A NEGATIVE AND SELF-SERVING EVIDENCE WHICH PALES IN COMPARISON TO THE VICTIM'S POSITIVE IDENTIFICATION OF HER ASSAILANT.— The Court discredits appellant's defense of denial for it is a negative and self-serving evidence, which pales in comparison to the victim's clear and convincing narration and positive identification of her assailant.

5. CRIMINAL LAW; CRIMES AGAINST PERSONS; RAPE; FORCE OR INTIMIDATION; MORAL ASCENDANCY AND INFLUENCE OF APPELLANT CAN TAKE THE PLACE THEREOF.— x x x The Court, likewise, does not find merit in appellant's rather belated assertion that the prosecution failed to establish force or intimidation and the resistance of the victim to the intrusion. The presence of intimidation, which is purely subjective, cannot be tested by any hard and fast rule, but should be viewed in the light of the victim's perception and judgment at the time of the commission of the rape. Not all victims react in the same way—some people may cry out, some may faint, some may be shocked into insensibility, while others may appear to yield to the intrusion. Here, the records show that the victim was coerced into submission by her fear that appellant would harm her family. In any event, established during the trial were that appellant was the live-in partner of the victim's mother, and that he was the one taking care of the children while the mother worked in Makati City. The moral ascendancy and influence of appellant, a father figure to the victim, can take the place of threat or intimidation.

6. ID.; ID.; ID.; COURT CANNOT CONVICT APPELLANT OF QUALIFIED RAPE BECAUSE THE SPECIAL QUALIFYING CIRCUMSTANCES OF MINORITY AND RELATIONSHIP WERE NOT SUFFICIENTLY ALLEGED IN THE INFORMATION.— The Court, therefore, finds appellant guilty beyond reasonable doubt of the crime of simple rape. While it has been proven that appellant was the common-

law spouse of the parent of the victim and the child was a minor at the time of the incident, the Court cannot convict appellant of qualified rape because the special qualifying circumstances of minority and relationship were not sufficiently alleged in the information. To recall, the information here erroneously alleged that appellant was the stepfather of the victim. Proven during the trial, however, was that appellant was not married to the victim's mother, but was only the common-law spouse of the latter. Following settled jurisprudence, appellant is liable only of simple rape punishable by *reclusion perpetua*.

7. CIVIL LAW; DAMAGES; AWARD OF CIVIL INDEMNITY AND MORAL DAMAGES; PROPER IN CASE AT BAR.— As to the amount of damages, the Court finds as correct the award of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages in line with prevailing jurisprudence.

8. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; AGGRAVATING CIRCUMSTANCES WHICH ARE NOT ALLEGED ALTHOUGH PROVEN WILL NOT BE CONSIDERED IN THE DETERMINATION OF THE PENALTY AND IN THE AWARD OF DAMAGES; BASIS.— Prior to the effectivity of the Revised Rules of Criminal Procedure, courts generally awarded exemplary damages in criminal cases when an aggravating circumstance, whether ordinary or qualifying, had been proven to have attended the commission of the crime, even if the same was not alleged in the information. This is in accordance with the aforesaid Article 2230. However, with the promulgation of the Revised Rules, courts no longer consider the aggravating circumstances not alleged and proven in the determination of the penalty and in the award of damages. Thus, even if an aggravating circumstance has been proven, but was not alleged, courts will not award exemplary damages. Pertinent are the following sections of Rule 110: Sec. 8. *Designation of the offense.*— The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it. Sec. 9. *Cause of accusation.*—The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated

in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

9. ID.; ID.; ID.; ID.; IN CRIMINAL CASES INSTITUTED BEFORE THE EFFECTIVITY OF THE REVISED RULES OF CRIMINAL PROCEDURE WHICH REMAINED PENDING THEREAFTER, EXEMPLARY DAMAGES MAY STILL BE AWARDED EVEN IF THE AGGRAVATING CIRCUMSTANCE HAS NOT BEEN ALLEGED, SO LONG AS IT HAS BEEN PROVEN; RATIONALE.— x x x *People v. Catubig* laid down the principle that courts may still award exemplary damages based on the aforementioned Article 2230, even if the aggravating circumstance has not been alleged, so long as it has been proven, in criminal cases instituted before the effectivity of the Revised Rules which remained pending thereafter. *Catubig* reasoned that the retroactive application of the Revised Rules should not adversely affect the vested rights of the private offended party. Thus, we find, in our body of jurisprudence, criminal cases, especially those involving rape, dichotomized: one awarding exemplary damages, even if an aggravating circumstance attending the commission of the crime had not been sufficiently alleged but was consequently proven in the light of *Catubig*; and another awarding exemplary damages only if an aggravating circumstance has both been alleged and proven following the Revised Rules.

10. CIVIL LAW; DAMAGES; EXEMPLARY DAMAGES; AWARD THEREOF IS PROPER IN CASE AT BAR; ELUCIDATED.— In the instant case, the information for rape was filed in 2003 or after the effectivity of the Revised Rules. Following the doctrine in the second set of cases, the Court can very well deny the award of exemplary damages based on Article 2230 because the special qualifying circumstances of minority and relationship, as mentioned above, were not sufficiently alleged. Nevertheless, by focusing only on Article 2230 as the legal basis for the grant of exemplary damages—taking into account simply the attendance of an aggravating circumstance in the commission of a crime, courts have lost sight of the very reason why exemplary damages are awarded. *Catubig* is enlightening on this point, thus— Also known as

"punitive" or "vindictive" damages, exemplary or corrective damages are intended to serve as a deterrent to serious wrong doings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct. These terms are generally, but not always, used interchangeably. In common law, there is preference in the use of exemplary damages when the award is to account for injury to feelings and for the sense of indignity and humiliation suffered by a person as a result of an injury that has been maliciously and wantonly inflicted, the theory being that there should be compensation for the hurt caused by the highly reprehensible conduct of the defendant—associated with such circumstances as willfulness, wantonness, malice, gross negligence or recklessness, oppression, insult or fraud or gross fraud—that intensifies the injury. The terms punitive or vindictive damages are often used to refer to those species of damages that may be awarded against a person to punish him for his outrageous conduct. In either case, these damages are intended in good measure to deter the wrongdoer and others like him from similar conduct in the future. Being corrective in nature, exemplary damages, therefore, can be awarded, not only in the presence of an aggravating circumstance, but also where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender. In much the same way as Article 2230 prescribes an instance when exemplary damages may be awarded, Article 2229, the main provision, lays down the very basis of the award. Thus, in *People v. Matrimonio*, the Court imposed exemplary damages to deter other fathers with perverse tendencies or aberrant sexual behavior from sexually abusing their own daughters. Also, in *People v. Cristobal*, the Court awarded exemplary damages on account of the moral corruption, perversity and wickedness of the accused in sexually assaulting a pregnant married woman. Recently, in *People of the Philippines v. Cristino Cañada*, *People of the Philippines v. Pepito Neverio* and *The People of the Philippines v. Lorenzo Layco, Sr.*, the Court awarded exemplary damages to set a public example, to serve as deterrent to elders who abuse and corrupt the youth, and to protect the latter from sexual abuse. It must be noted that, in the said cases, the Court used as basis Article 2229, rather than Article 2230, to justify the award of exemplary damages. Indeed, to borrow Justice Carpio Morales' words in her separate opinion in *People*

of the Philippines v. Dante Gragasin y Par, "[t]he application of Article 2230 of the Civil Code *strictissimi juris* in such cases, as in the present one, defeats the underlying public policy behind the award of exemplary damages—to set a public example or correction for the public good." In this case, finding that appellant, the father figure of the victim, has shown such an outrageous conduct in sexually abusing his ward, a minor at that, the Court sustains the award of exemplary damages to discourage and deter such aberrant behavior. However, the same is increased to ₱30,000.00 in line with prevailing jurisprudence.

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 Antonio Dalisay for rape. In the October 23, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02836, the appellate court, on intermediate review, affirmed with modification the April 11, 2007 Decision[2] of the Regional Trial Court (RTC), Branch 88 of Quezon City in Criminal Case No. Q-03-119026.

The victim in this case was, at the time of the incident, a 16-year-old lass, who, together with her siblings, stayed with her mother's live-in partner, appellant Dalisay, in a rented second-floor room in Fairview, Quezon City. Their mother worked as a baby-sitter and helper in Makati City and only came home at the end of every month.[3]

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[1] Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Magdangal M. de Leon and Ramon R. Garcia, concurring; CA *rollo*, pp. 94-110.

[2] CA *rollo*, pp. 17-29.

[3] *Id.* at 21.

On that fateful evening of July 10, 2003, the victim was alone playing cards in the aforesaid rented room, while her siblings were watching television in the common area on the ground floor. Appellant entered the room to change his clothes. He then laid himself down on the floor near the young lady, pulled her shirt up, and touched her breasts and thighs. Bent on satisfying his lust, he forced the girl down on the floor, took off her shorts and underwear, and placed himself on top of her. The defenseless lass resisted by kicking his legs and by pleading for him to stop. He, however, remained deaf to the girl's earnest entreaty, warned her that he would kill her entire family, and proceeded to bombard the gate to her chastity with his bestial toughness.[4]

Prior to this assault, appellant had already been repeatedly molesting the girl since she was 13 years old by inserting his finger into her genitalia.[5] However, paralyzed by the terror that he would make real his threats of annihilating her family, she was compelled to suffer in silence. Her trepidation was further fueled by her knowledge that appellant always carried a knife with him.[6]

In the morning of July 11, 2003, the day after the unfortunate incident, the victim and her sister had a quarrel—a blessing in disguise, so to speak, as it resulted in the latter running away from their home and disclosing to their aunt, who lived nearby, the sexual abuse. It appeared that the victim's sister witnessed an incident when appellant thought that everyone in the rented room was sleeping and pulled off his dastardly act.[7]

Alarmed by her niece's information, their aunt rushed to their home to verify from the victim the truth of the molestation. They then reported the matter to the authorities, who lost no time in apprehending appellant.[8] The ano-genital examination

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[4] *Id.* at 18 and 80.

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

[6] *Id.*

[7] *Id.* at 19.

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

of the victim revealed the presence of abrasion and congestion in the perihymenal area/vestibule and in the posterior fourchette area. Revealed further were deep healed lacerations at 5 and 7 o'clock positions in the hymen. The examining physician opined that the findings were definitive evidence of previous and recent blunt penetrating trauma to the genitals of the victim.[9]

Consequently, an Information for rape in relation to Republic Act (R.A.) No. 7610 was filed, pertinently reading:

> That on or about the 10th day of July 2003 in Quezon City, Philippines, the above-named accused, with lewd design[,] with force and intimidation[,] did then and there willfully, unlawfully and feloniously have carnal knowledge with one [name withheld], his stepdaughter[,] 16 years old, a minor[,] against her will and without her consent, to the damage and prejudice of said offended party.
>
> CONTRARY TO LAW.[10]

Appellant, on arraignment, pleaded not guilty, and, for his defense, mainly denied the accusation. He further claimed that the filing of the charge was only upon the instigation by the victim's aunt who harbored a grudge against him.[11]

After trial on the merits, the RTC rendered the April 11, 2007 Decision[12] convicting appellant of qualified rape but imposing the penalty of *reclusion perpetua* in light of the passage of R.A. No. 9346.[13] The RTC further ordered appellant to pay the victim ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages.[14]

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[9] *Id.* at 20-21.

[10] *Id.* at 17.

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

[12] *Supra* note 2.

[13] Entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines," approved on June 24, 2006.

[14] The dispositive portion of the trial court's Decision reads:

> WHEREFORE, premises considered, accused ANTONIO DALISAY *Y* DESTRESA is hereby adjudged guilty beyond reasonable doubt of the crime of rape and he is hereby sentenced to suffer the penalty of *reclusion perpetua*.

On intermediate review, the appellate court affirmed with modification the ruling of the trial court. The CA convicted the accused not of qualified rape but of simple rape, and disposed of the case in the following tenor:

> WHEREFORE, the foregoing considered, the assailed decision finding accused-appellant guilty of qualified rape is MODIFIED in that accused-appellant Dalisay is instead found guilty beyond reasonable doubt of SIMPLE RAPE and is sentenced to suffer the penalty of *reclusion perpetua*. The award of damages by the court *a quo* is affirmed.
>
> SO ORDERED.[15]

The case having been elevated to this Court, we now finally review the trial and the appellate courts' uniform findings.

We affirm the conviction of appellant Dalisay for simple rape.

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 in which only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[16]

In a determination of guilt for the crime of rape, primordial is the credibility of the 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

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Accused is further ordered to pay the private complainant [name withheld] the sum of ₱50,000.00 as civil indemnity; the amount of ₱50,000.00 as moral damages and the sum of ₱25,000.00 as exemplary damages.

SO ORDERED. (CA *rollo*, p. 29.)

[15] CA *rollo*, p. 110.

[16] *People v. Glivano*, G.R. No. 177565, January 28, 2008, 542 SCRA 656, 662; citing *People v. Malones*, 425 SCRA 318, 329 (2004).

consistent with human nature and the normal course of things.[17] Here, the victim, in the painstaking and well-nigh degrading public trial, related her painful ordeal that she was raped by appellant. Her testimony was found by the trial court, which had the undisputed vantage in the evaluation and appreciation of testimonial evidence, to have been made in "a simple, straightforward and spontaneous manner."[18]

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.[19] Further, deeply 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 which would have affected the result of the case.[20]

The Court discredits appellant's defense of denial for it is a negative and self-serving evidence,[21] which pales in comparison to the victim's clear and convincing narration and positive identification of her assailant. The Court, likewise, does not find merit in appellant's rather belated assertion that the prosecution failed to establish force or intimidation and the resistance of the victim to the intrusion. The presence of intimidation, which is purely subjective, cannot be tested by any hard and fast rule, but should be viewed in the light of the victim's perception and judgment at the time of the commission of the rape.[22] Not all victims react in the same way—some

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[17] *People v. Pascua*, G.R. No. 151858, November 27, 2003, 416 SCRA 548, 552.

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

[19] *People v. Oden*, G.R. Nos. 155511-22, April 14, 2004, 427 SCRA 634, 655.

[20] *People v. Sta. Ana*, G.R. Nos. 115657-59, June 26, 1998, 291 SCRA 188, 202.

[21] *People v. Baltazar*, 455 Phil. 320, 331 (2003); *People v. Berdin*, 462 Phil. 290, 304 (2003).

[22] *People v. Santos*, 452 Phil. 1046, 1061 (2003).

people may cry out, some may faint, some may be shocked into insensibility, while others may appear to yield to the intrusion.[23] Here, the records show that the victim was coerced into submission by her fear that appellant would harm her family. In any event, established during the trial were that appellant was the live-in partner of the victim's mother, and that he was the one taking care of the children while the mother worked in Makati City.[24] The moral ascendancy and influence of appellant, a father figure to the victim, can take the place of threat or intimidation.[25]

The Court, therefore, finds appellant guilty beyond reasonable doubt of the crime of simple rape. While it has been proven that appellant was the common-law spouse of the parent of the victim and the child was a minor at the time of the incident, the Court cannot convict appellant of qualified rape[26] because the special qualifying circumstances of minority and relationship were not sufficiently alleged in the information. To recall, the information here erroneously alleged that appellant was the stepfather of the victim. Proven during the trial, however, was that appellant was not married to the victim's mother, but was only the common-law spouse of the latter. Following settled jurisprudence,[27] appellant is liable only of simple rape punishable by *reclusion perpetua*.

As to the amount of damages, the Court finds as correct the award of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages in line with prevailing jurisprudence.[28]

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[23] *People of the Philippines v. Elmer Baldo y Santain*, G.R. No. 175238, February 24, 2009.

[24] CA *rollo*, pp. 21-23 and 40-41.

[25] *People v. Santos*, *supra* note 22, at 1062.

[26] *See* Article 266-B of the Revised Penal Code.

[27] *People v. Resuma*, G.R. No. 179189, February 26, 2008, 546 SCRA 728, 742; *People v. Aguilar*, G.R. No. 177749, December 17, 2007, 540 SCRA 509, 526-528; *People v. Villanueva*, 393 Phil. 898, 920-921 (2000); *People v. Mendez*, 390 Phil. 449, 475-476 (2000); *People v. Flores*, 379 Phil. 857, 867-868 (2000).

[28] *People of the Philippines v. Roldan Arcosiba alias "Entoy"*, G.R. No. 181081, September 4, 2009; *People of the Philippines v. Elpidio Impas*

As to the award of exemplary damages, the Court deems it opportune to clarify the basis for and the amount of the same. Article 2229 of the Civil Code provides that—

> Art. 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

Article 2230 of the same Code further states that—

> Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

Prior to the effectivity of the Revised Rules of Criminal Procedure,[29] courts generally awarded exemplary damages in criminal cases when an aggravating circumstance, whether ordinary or qualifying, had been proven to have attended the commission of the crime, even if the same was not alleged in the information. This is in accordance with the aforesaid Article 2230. However, with the promulgation of the Revised Rules, courts no longer consider the aggravating circumstances not alleged and proven in the determination of the penalty and in the award of damages. Thus, even if an aggravating circumstance has been proven, but was not alleged, courts will not award exemplary damages.[30] Pertinent are the following sections of Rule 110:

> Sec. 8. *Designation of the offense*.—The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its

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y Polbera, G.R. No. 176157, June 18, 2009; *People of the Philippines v. Bartolome Tampus and Ida Montesclaros*, G.R. No. 181084, June 16, 2009; *People of the Philippines v. Elmer Baldo y Santain*, *supra* note 23.

[29] Effective December 1, 2000, A.M. No. 00-5-03-SC.

[30] *People of the Philippines v. Dante Gragasin y Par*, G.R. No. 186496, August 25, 2009; *People of the Philippines v. Edwin Mejia*, G.R. No. 185723, August 4, 2009; *Llave v. People*, G.R. No. 166040, April 26, 2006, 488 SCRA 376.

qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

Sec. 9. *Cause of accusation*.—The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

Nevertheless, *People v. Catubig*[31] laid down the principle that courts may still award exemplary damages based on the aforementioned Article 2230, even if the aggravating circumstance has not been alleged, so long as it has been proven, in criminal cases instituted before the effectivity of the Revised Rules which remained pending thereafter. *Catubig* reasoned that the retroactive application of the Revised Rules should not adversely affect the vested rights of the private offended party.[32]

Thus, we find, in our body of jurisprudence, criminal cases, especially those involving rape, dichotomized: one awarding exemplary damages, even if an aggravating circumstance attending the commission of the crime had not been sufficiently alleged but was consequently proven in the light of *Catubig*; and another awarding exemplary damages only if an aggravating circumstance has both been alleged and proven following the Revised Rules. Among those in the first set are *People v. Laciste*,[33] *People v. Victor*,[34] *People v. Orilla*,[35] *People v. Calongui*,[36] *People v. Magbanua*,[37] *People of the Philippines v. Heracleo Abello y*

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[31] 416 Phil. 102 (2001).

[32] *Id.* at 120-121.

[33] 421 Phil. 944 (2001).

[34] 441 Phil. 798 (2002).

[35] G.R. Nos. 148939-40, February 13, 2004, 422 SCRA 620.

[36] G.R. No. 170566, March 3, 2006, 484 SCRA 76.

[37] G.R. No. 176265, April 30, 2008, 553 SCRA 698.

Fortada,[38] *People of the Philippines v. Jaime Cadag Jimenez*,[39] and *People of the Philippines v. Julio Manalili*.[40] And in the second set are *People v. Llave*,[41] *People of the Philippines v. Dante Gragasin y Par*,[42] and *People of the Philippines v. Edwin Mejia*.[43] Again, the difference between the two sets rests on when the criminal case was instituted, either before or after the effectivity of the Revised Rules.

In the instant case, the information for rape was filed in 2003 or after the effectivity of the Revised Rules. Following the doctrine in the second set of cases, the Court can very well deny the award of exemplary damages based on Article 2230 because the special qualifying circumstances of minority and relationship, as mentioned above, were not sufficiently alleged.

Nevertheless, by focusing only on Article 2230 as the legal basis for the grant of exemplary damages—taking into account simply the attendance of an aggravating circumstance in the commission of a crime, courts have lost sight of the very reason why exemplary damages are awarded. *Catubig* is enlightening on this point, thus—

> Also known as "punitive" or "vindictive" damages, exemplary or corrective damages are intended to serve as a deterrent to serious wrong doings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct. These terms are generally, but not always, used interchangeably. In common law, there is preference in the use of exemplary damages when the award is to account for injury to feelings and for the sense of indignity and humiliation suffered by a person as a result of an injury that has been maliciously and wantonly inflicted, the theory being that there should be compensation for the hurt caused by the highly reprehensible conduct of the

[38] G.R. No. 151952, March 25, 2009.

[39] G.R. No. 170235, April 24, 2009.

[40] G.R. No. 184598, June 23, 2009.

[41] *Supra* note 30.

[42] *Id.*

[43] *Id.*

defendant—associated with such circumstances as willfulness, wantonness, malice, gross negligence or recklessness, oppression, insult or fraud or gross fraud—that intensifies the injury. The terms punitive or vindictive damages are often used to refer to those species of damages that may be awarded against a person to punish him for his outrageous conduct. In either case, these damages are intended in good measure to deter the wrongdoer and others like him from similar conduct in the future.[44]

Being corrective in nature, exemplary damages, therefore, can be awarded, not only in the presence of an aggravating circumstance, but also where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender. In much the same way as Article 2230 prescribes an instance when exemplary damages may be awarded, Article 2229, the main provision, lays down the very basis of the award. Thus, in *People v. Matrimonio*,[45] the Court imposed exemplary damages to deter other fathers with perverse tendencies or aberrant sexual behavior from sexually abusing their own daughters. Also, in *People v. Cristobal*,[46] the Court awarded exemplary damages on account of the moral corruption, perversity and wickedness of the accused in sexually assaulting a pregnant married woman. Recently, in *People of the Philippines v. Cristino Cañada*,[47] *People of the Philippines v. Pepito Neverio*[48] and *The People of the Philippines v. Lorenzo Layco, Sr.*,[49] the Court awarded exemplary damages to set a public example, to serve as deterrent to elders who abuse and corrupt the youth, and to protect the latter from sexual abuse.

It must be noted that, in the said cases, the Court used as basis Article 2229, rather than Article 2230, to justify the award of exemplary damages. Indeed, to borrow Justice Carpio Morales'

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[44] *People v. Catubig, supra* note 31, at 118-119.

[45] G.R. Nos. 82223-24, November 13, 1992, 215 SCRA 613, 634.

[46] G.R. No. 116279, January 29, 1996, 252 SCRA 507, 517-518.

[47] G.R. No. 175317, October 2, 2009.

[48] G.R. No. 182792, August 25, 2009.

[49] G.R. No. 182191, May 8, 2009.

words in her separate opinion in *People of the Philippines v. Dante Gragasin y Par*,[50] "[t]he application of Article 2230 of the Civil Code *strictissimi juris* in such cases, as in the present one, defeats the underlying public policy behind the award of exemplary damages—to set a public example or correction for the public good."

In this case, finding that appellant, the father figure of the victim, has shown such an outrageous conduct in sexually abusing his ward, a minor at that, the Court sustains the award of exemplary damages to discourage and deter such aberrant behavior. However, the same is increased to ₱30,000.00 in line with prevailing jurisprudence.[51]

WHEREFORE, premises considered, the October 23, 2008 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02836 is *AFFIRMED WITH THE MODIFICATION* that the award of exemplary damages is increased to ₱30,000.00.

SO ORDERED.

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

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[50] *Supra* note 30.

[51] *People of the Philippines v. Elmer Peralta y Hidalgo*, G.R. No. 187531, October 16, 2009.

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